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“It is Rape but ...” Issues with Definition and Implications for the Australian Legal System

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Abstract

Through the use of focus groups and interviews, this research aims to increase understanding of the ways in which the public in Adelaide, South Australia draw on well documented rape myths and the influence of this process on their understandings of consent to sexual intercourse. This research explores how individual attitudes and opinions about rape are shaped through social interaction, including comparing the attitudes of men and women. Equal numbers of men and women were drawn from one geographical location by snowball sampling and vignettes were used to facilitate discussion in focus groups. Findings showed that rape myths remain influential amongst the public and are often used to attribute responsibility to women in acquaintance rape scenarios. However, analysis of the public's engagement with rape myths revealed a complex process. People did not simply adhere to or challenge rape myths but rather these myths were engaged with in different ways at different times and in different circumstances. Findings also highlighted the complexity of the notion of consent and revealed contradictions in the ways in which consent was understood. Moreover, in many cases despite being willing to label an incident as rape, participants were still reluctant to say that they would find the man guilty of the crime of rape. Overall, this study suggests that the public struggle with issues concerning how rape is defined and that this has widespread implications both for rape victims and for the Australian legal system. Findings also suggest that radical attitude change is required before any real improvement will be seen in rape conviction rates.

Table of Contents

ABSTRACT	2
TABLE OF CONTENTS	3
LIST OF FIGURES AND TABLES	5
SIGNED DECLARATION	6
CHAPTER 1: INTRODUCTION	7
CHAPTER 2: LITERATURE REVIEW	16
2.1 RAPE MYTHS	17
2.2 THE PHENOMENON OF ACQUAINTANCE RAPE	41
2.3 THEORETICAL BACKGROUND TO RAPE MYTHS	46
2.4 ISSUES WITH CONSENT	59
2.5 CONSENT AND THE AUSTRALIAN LEGAL CONTEXT	71
CONCLUSIONS	74
CHAPTER 3: METHODS AND METHODOLOGY	76
3.1 THEORETICAL APPROACH	77
3.2 DATA COLLECTION METHODS	85
3.3 SAMPLING STRATEGY	100
3.4 ETHICAL ISSUES	111
CONCLUSIONS	119
CHAPTER 4: DETERMINING CONSENT IN ACQUAINTANCE RAPE SCENARIOS	121
4.1 PARTICIPANTS' REACTIONS TO LEGAL ASPECTS OF CONSENT	123
4.2 WHAT EXACTLY CONSTITUTES CONSENT?	130
4.3 VIGNETTE 1 – HOW MUCH SHOULD BE DONE TO DETERMINE CONSENT?	138
4.4 VIGNETTE 2 – THE ROLE OF INTOXICATION IN CONSENT	146
4.5 VIGNETTE 3 – THE ROLE OF FEAR IN CONSENT	153
4.6 VIGNETTE 4 – THE ROLE OF INTIMIDATION IN CONSENT	158
CONCLUSIONS	164
CHAPTER 5: PUTTING ONESELF AT RISK AND FEMALE RESPONSIBILITY FOR RAPE	168
5.1 WOMEN ASK FOR IT THROUGH THEIR BEHAVIOUR, ATTITUDES OR DRESS	169
5.2 WOMEN SAY NO BUT MEAN YES IN SOME SEXUAL ENCOUNTERS	181
5.3 RESISTANCE REQUIREMENT MYTH	182
5.4 WOMEN AS GATEKEEPERS TO MEN'S ACTIONS	185
CONCLUSIONS	198
CHAPTER 6: RELUCTANCE TO CONVICT IN ACQUAINTANCE RAPE SCENARIOS	202
6.1 SYMPATHY FOR THE ALLEGED PERPETRATOR AND MISCONCEPTIONS ABOUT RAPISTS	203
6.2 'REASONABLE DOUBT'	206
6.3 THE PERCEIVED IMPORTANCE OF PRE-MEDITATION	211
6.4 FALSE ALLEGATIONS	220
6.5 INFLUENCE OF SEXUAL HISTORY EVIDENCE	225
6.6 FEMALE RESPONSIBILITY	227
6.7 A LESSER OFFENCE THAN RAPE?	228
CONCLUSIONS	238
CHAPTER 7: FOCUS GROUP DYNAMICS AND JUROR BEHAVIOUR	242

7.1 ALTERING VIEWPOINTS	244
7.2 CHALLENGING VIEWPOINTS	254
7.3 INTERNAL CONSISTENCY	268
CONCLUSIONS	272
CHAPTER 8: CONCLUSIONS	275
WHAT INFLUENCES DO RAPE MYTHS HAVE ON PEOPLE 'S UNDERSTANDINGS OF ACQUAINTANCE RAPE?	275
HOW DO RAPE MYTHS AFFECT PEOPLE'S PERCEPTIONS OF CONSENT IN ACQUAINTANCE RAPE SCENARIOS?	278
RAPE MYTHS AND A RELUCTANCE TO CONVICT	279
HOW DO PEOPLE ENGAGE WITH RAPE MYTHS WITHIN BOTH AN INDIVIDUAL AND A GROUP CONTEXT?	281
IS THERE A DIFFERENCE IN THE WAY THAT PEOPLE ENGAGE WITH RAPE MYTHS ACCORDING TO GENDER?	282
ABSTRACT CONCEPTS VERSUS PRACTICAL EXAMPLES	283
IMPLICATIONS OF FINDINGS FOR FUTURE RESEARCH	284
BIBLIOGRAPHY	287
CHAPTER 9: APPENDICES	306
APPENDIX 1: VIGNETTES	306
APPENDIX 2: DEMOGRAPHIC CHARACTERISTICS OF SAMPLE	310
APPENDIX 3: PARTICIPANT CONSENT FORM	312
APPENDIX 4: PARTICIPANT INFORMATION LEAFLET	313
APPENDIX 5: FOCUS GROUP INTERVIEW SCHEDULE	318
APPENDIX 6: INDIVIDUAL INTERVIEW SCHEDULE	321

List of Figures and Tables

Figure 2.1 Rape Myths	20
Figure 2.2 Role of Rape Myths in Society	40
Table 3.1 Sampling Strategy – Age	104
Figure 4.1 Vignette 1	139
Figure 4.2 Vignette 2	147
Figure 4.3 Vignette 3	153
Figure 4.4 Vignette 4	158

Signed Declaration

I confirm that this thesis has been composed by me and the work is all my own. I also verify that this work has not been submitted for any other degree or professional qualification except as specified.

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Chapter 1: Introduction

This research increases knowledge of the ways in which rape myths are drawn upon by the public and the impact that this process has for perceptions of rape and consent in scenarios that might otherwise be interpreted as acquaintance rape. Clearly, the main focus of this research is rape myths and it is therefore important to first give some consideration to the concept of ‘myth’ itself. Joanna Bourke argues that: “The term (‘myth’) does not simply connote ‘untruth’. Rather, the use of the word ‘myth’ is a shorthand way of referring to a structure of meaning permeating a particular culture” (2007:24; Lievore 2005a). In this way, a myth may be seen as a collectively held belief. It is argued that a myth has continuity; is widely shared; has influential people subscribing to it; and “is invoked in the run-up to decisions and may, therefore, influence change” (Gray, et al. 1983:43). Rape myths can be seen to satisfy these conditions – as shall be demonstrated in the course of this thesis. It is important to note that myths are not necessarily always false but may in some cases have at least some basis in truth. In this way, Gray et al argue (1983:39): “We do not mean by ‘myth’ things that are thought to be true but that are, in fact, always false”.

Rather, as Bourke suggests:

“(Myths) create unified communities by clarifying positions and transforming commonplace assumptions into objective truths. As such, myths ‘grip the mind’; they seem commonplace, unquestioned. Instead of being expressed as long, coherent narratives, myths survive as fragments – often contradictory and always delivered in sound-bite formats” (2007:24)

As we shall see, particularly in chapter two of this thesis, rape myths are influential in terms of how acquaintance rape is defined and discussed and, as such, are central to this research. It should be noted that I am defining rape myths as *popular stereotypes which affect how individuals interpret and label situations involving sexual acts and violence, threat or coercion*. However, it is important to acknowledge that other authors have their own definitions of rape myths (see for example: Brownmiller 1975:312; Carter 1995:9; Temkin and Krahé 2008:34). The following rape myths have been identified through a review of the current literature in the area and are discussed further in due course (see chapter two):

1. Women 'ask for it' through their behaviour, attitudes or dress (victim precipitation)
2. Most rapes are violent acts committed by strangers at night in isolated places (the 'real rape' myth)
3. Rape is the result of uncontrollable male urges (impulse theory)
4. Rapists are 'sick' or 'mad' and are easily distinguishable from 'normal' men (disease theory)
5. Women often 'cry rape' to get even with a man or to protect their reputations (false allegations)
6. If you do not struggle or use physical force to resist a man then you have not been raped (resistance requirement)
7. Women say no but mean yes in some sexual encounters

The main aim of this research is to increase understanding of the ways in which the public draw upon rape myths when discussing acquaintance rape scenarios –

within both group and individual settings – and the influence of this engagement on their perceptions of consent to sexual intercourse. Male and female attitudes are compared in order to explore whether any gender differences can be identified in the use of rape myths. In this thesis, I explore the ways in which rape myths may be seen as a framework for understanding how acquaintance rape is discussed and understood by the general public. My main objective is to combine sociological theories about gender and power and empirical research, i.e. an analysis of how acquaintance rape is discussed and defined by the public in Adelaide, South Australia and their engagement with rape myths. It has been suggested that “crimes such as rape have a unique ability to touch upon the public’s deep-seated beliefs about gender roles” (Benedict 1992:3). Sociological analyses of gender roles and power therefore provide an important context for this research. I would strongly agree that “to fully understand the consequences and circumstances of sexual violence, it is vital to comprehend the subordinated position that women continue to hold in society” (Rape Crisis Centre 2003:27).

The focus of this research then, is a feminist analysis of public perceptions of the phenomenon of acquaintance rape. It is also important to note that this research is limited to acquaintance rapes within a heterosexual context. This is due to the unique issues raised by same-sex rape and also because the focus of this research is gender roles and expectations as they are manifested within heterosexuality. When I use the term ‘rape’ I adopt the same approach as Susan Brownmiller (1975:18) who argues that:

“A female definition of rape can be contained in a single sentence. If a woman chooses not to have intercourse with a specific man and the man chooses to proceed against her will that is a criminal act of rape”

I use the term ‘acquaintance rape’ to indicate rapes committed by someone known to the victim – this covers a wide range of scenarios, for example, friend, neighbour, work colleague, date, partner or ex-partner. The reason that I have decided to focus on acquaintance rape is because, as discussed in chapter two, this form of rape constitutes all but a tiny minority of the known totality of rape cases yet it also seems to be the most controversial and so there is an obvious need to increase understanding of the particular definitional and legal issues involved.

Feminists have been drawing attention to rape myths since the 1970s but my research (and other research in the area) suggests that little has shifted and these myths continue to provide a frame of reference when the public discuss rape. Previous research has adequately demonstrated that rape myths do indeed have an effect on people’s attitudes towards rape and rape victims (see for example: Amnesty International UK 2005; Burton, et al. 1998; Clark 2007; Kelly 1988; Lees 2002; Temkin and Krahé 2008; Xenos and Smith 2001); my research attempts to increase knowledge about the ways in which rape myths have an effect rather than arguing whether they do actually have any effect. As stated by Schmidt (2004:192): “Rape myths not only produce and maintain ideas about victims and offenders; they shape and consequently narrow our understanding of violence and the way rape is defined”. Thus, as stated above, this thesis is motivated by a desire to discover more about the ways in which the public adhere to and/or challenge rape myths when discussing

acquaintance rape scenarios. The following research questions were developed in order to address this aim. In early 21st century Adelaide, South Australia:

1. What influences do rape myths have on people's understandings of acquaintance rape?
2. How do rape myths affect people's perceptions of consent in acquaintance rape scenarios?
3. How do the public engage with rape myths within both an individual and a group context?
4. Is there a difference in the way that people engage with rape myths according to gender?

There is a particular lack of research in this area within an Australian context – as compared to UK and US literature and empirical work in this area. My research attempts to contribute to addressing this gap in the literature and to stimulate further work in the area. Also, at the time of this research, South Australia was in a process of consultation on potential reforms to the state's rape and sexual assault laws and I felt that this climate made it an ideal location for this research. Equal numbers of men and women were drawn from one geographical location – Adelaide, South Australia – by snowball sampling. A combination of focus groups and individual interviews were then used to explore how rape myths affect the public's understanding of acquaintance rape.

This introductory chapter will now outline the legal framework relating to the crime of rape in South Australia in order to provide some contextual background to

this study. In late 2005, the South Australian government announced that they were conducting an overhaul of the state's rape and sexual assault laws. An independent review was conducted and a discussion paper produced by Liesl Chapman (2006) to stimulate debate as part of the public consultation process. Subsequent changes have since been made to the law with the introduction of the *Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008*, which came into effect at the end of last year (November 2008). South Australian law now defines rape as follows:

“A person (the offender) is guilty of the offence of rape if he or she engages, or continues to engage, in sexual intercourse with another person who –
(a) does not consent to engaging in the sexual intercourse; or
(b) has withdrawn consent to the sexual intercourse
and the offender knows, or is recklessly indifferent to, the fact that the other person does not consent or has so withdrawn consent (as the case may be).

The new legislation includes in its definition of rape a situation in which a woman withdraws her consent after initially agreeing to sexual intercourse and the other party continues regardless.¹ The law also now provides a definition of ‘reckless indifference’ to consent to sexual acts and sets out a list of circumstances in which non-consent is assumed.² For example, where sexual activity is obtained by force or threats; where the victim is asleep or unconscious; or where the victim is intoxicated to the point of being incapable of freely and voluntarily agreeing to sexual intercourse.³ Judges in rape trials are now required to explain to juries “that consent to sexual activity should not be assumed just because the victim did not say anything, did not protest or resist or had previously consented to sex with the alleged

¹ Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008 section 48

² Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008 sections 46 and 47

³ Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008 section 46

offender”.⁴ It is of course not yet known whether this new legislation will make any difference to conviction rates and/or the experience of victims in the criminal justice process.

Chapter two of this thesis examines the current literature on the emergence of rape as a contentious political issue and the issues and complexities associated with the phenomenon of acquaintance rape. It documents a wide range of supportive evidence for the existence of rape myths at all levels of society and examines the role of rape myths in terms of the ways in which acquaintance rape is discussed, understood and prosecuted. The chapter also considers the legal concept of consent in order to demonstrate how rape myths both influence and are influenced by the criminal justice system in many jurisdictions. Lastly, it argues that more research is needed on the links between rape myths and the ways in which consent is defined by the public and the law. The specific research questions addressed by this thesis are detailed at the end of this chapter. Based on chapter two, chapter three develops an appropriate research method to answer the research questions outlined at the end of the literature review chapter. It defends the choice of focus groups and individual interviews as my data collection methods and outlines the important role of vignettes within the focus group setting. This chapter also outlines the sampling strategy I employed and addresses the ethical issues associated with this research design.

The next four chapters analyse the data generated by this research. Chapter four examines the complexity of the notion of consent and the legal implications of these

⁴ Statutes Amendment (Evidence and Procedure) Act 2008 section 18

findings. Chapter five considers the research findings in relation to notions of victim precipitation and female responsibility, with the aim of further understanding issues around consent. Chapter six attempts to explore and understand the finding of an apparent reluctance to convict in acquaintance rape scenarios. This is done by examining the various issues which influence the public during the decision-making process about whether a man is guilty of rape. Chapter seven examines the actual dynamics of the focus groups as well as any divergences between opinions expressed therein and views proffered within individual interviews. It also examines the implications that these findings may have for further understanding people's engagement with rape myths. It focuses predominantly on the interpersonal dynamics in the focus groups and draws some comparisons with the behaviour of jurors in rape trials.

Finally, chapter eight presents the conclusions of the study and argues that rape myths remain influential amongst the public and are often used to attribute responsibility to the female in acquaintance rape scenarios. However, an analysis of the public's engagement with rape myths reveals a very complex process at work. It was not simply a case of adhering to or challenging rape myths but rather these myths were engaged with in different ways at different times and in different circumstances – indeed at times participants even held competing views simultaneously. Findings also highlighted the complexity of the notion of consent and revealed a clear tension in the ways in which consent was understood. This research provides further support to previous findings showing that rape myths have an effect on people's attitudes toward rape (see for example: Amnesty International

UK 2005; Burton, et al. 1998; Clark 2007; Kelly 1988; Lees 2002; Xenos and Smith 2001). My findings increase knowledge about the ways in which rape myths have an effect on these attitudes and reveal that drawing on rape myths results in: increased responsibility attributed to the woman in rape scenarios; less responsibility and/or excuses made for the behaviour of the man; and a subsequent tendency to reluctance to convict the man of rape within a criminal context. I conclude by suggesting that in order to address the extremely low conviction rates for the crime of rape, the focus cannot purely be on legal change; we must also focus on changing public attitudes.

Chapter 2: Literature Review

This chapter provides a review of the current literature relating to the phenomenon of rape in order to demonstrate how I developed the questions which my research aimed to address. It is important to note that this review will be limited in its focus and will predominantly concern itself with the issue of acquaintance rape and its particular theoretical and legal complexities. The reason for my focus on acquaintance rape is that this form of rape constitutes all but a tiny minority of known cases and so I argue that it is necessary to gain a much greater understanding of the particular issues involved in incidents where the two parties are known to each other. The main aim of this review is to document a wide range of supportive evidence for the existence of rape myths and to show that rape myths can be identified at all levels of society and across many jurisdictions. I examine the role of rape myths in terms of the ways in which acquaintance rape is discussed, understood and prosecuted. I also consider the legal concept of consent in order to demonstrate how rape myths both influence and are influenced by the criminal justice system. It is important to stress that this research approaches the issue of rape from a feminist perspective and limits its focus to rape within a heterosexual context. I have decided to focus on rape within a heterosexual context because I feel that same-sex rape raises a range of unique issues and because I am examining gender roles and expectations as they are manifested within heterosexuality. I am approaching this study from a similar standpoint to that outlined by Diana Scully, viewing rape as “an acquired behaviour – a product of cultural factors” (1991:63).

In this chapter, firstly, I outline the rape myths documented in the literature and then consider the consequences of these myths and the ways in which they are reinforced. Secondly, I examine the particular issues and complexities surrounding the phenomenon of acquaintance rape, including the use of the term ‘date rape’ and key research in the area. Next, I provide some theoretical background to rape myths by considering feminist theories about rape, including: whether rape is about sex or about violence and power; the influence of normative heterosexuality; and the idea of rape as a form of social control over women. I also examine some of the relevant empirical research on heterosexuality, power and coercion. I then outline some of the major issues which have been raised regarding the legal concept of consent – within both the socio-legal literature and feminist sociological work – including issues with the *mens rea* requirement, the re-conceptualisation of consent, the role of intoxication and resistance in consent, and also the role of sexual history evidence in rape trials. Then, I provide an account of the current situation in Australia, with particular focus on the state of South Australia. Finally, I conclude by considering what this review of the literature has revealed in terms of areas where further research is needed and how this led me to develop my own research questions.

2.1 Rape Myths

Lynne Segal states that the first job of feminist analysis was to expose the myths surrounding rape (1990:234). Rape myths attempt to provide some sort of rationale or explanation for rape occurring. They have been defined as “distorted proverbs that govern female sexuality” (Brownmiller 1975:312) and, similarly, “prejudicial, stereotyped or false beliefs about rape, rape victims or rapists” (Carter 1995:9).

Joanna Bourke argues that rape myths “enable individuals (such as perpetrators) to place their actions in a framework that is recognised by others (such as potential victims) while withdrawing legitimacy from people ... who wish to contest them” (2007:24). Colleen Ward argues in her book “Attitudes toward Rape: Feminist and Social Psychological Perspectives” that:

“The consequences of rape myths can be observed not only in macro-level analysis of institutional responses to sexual assault, but can also be considered on the micro-level in connection with individuals’ responses to victims of sexual violence” (1995:134)

Susan Brownmiller’s (1975) famous text “Against Our Will: Men, Women and Rape” was one of the first to identify key rape myths in society and this work is drawn upon throughout this thesis. It is important to acknowledge that there have been many social, legal and theoretical changes that have occurred in the thirty years since Brownmiller was writing this grand-narrative account of rape. Brownmiller views male domination as the perpetuating force of gender inequality and views this commonly experienced oppression as the most important factor binding women together (1975). It should be noted that there have been many critiques of the concept of patriarchy that Brownmiller uses – as summarised by RW Connell in the book “Gender and Power”, for example (1987). As outlined by Liz Kelly, the most fundamental criticism of patriarchy has been that it “is a universal concept which obscures historical change and cultural difference” (1988:21). Indeed, Brownmiller’s work has been criticised for failing to take account of cross-cultural differences in the prevalence of rape (Kelly 1988:23). A more post-structural approach to feminism has emerged in recent years, which acknowledges the fragmentation of the female

subject. In this way, it is now recognised that “targeting gender can have the effect of excluding, silencing or marginalising significant divisions between women”

(Ramazanoglu 2002:147). The main criticisms of Brownmiller’s work are encapsulated in the following quote by Stevi Jackson who argues that since “Against Our Will” was written:

“Feminists have become much more cautious about the dangers of sweeping cross-cultural and historical comparisons, much more reluctant to stray beyond the boundaries of our expertise, and habitually anxious about the criticisms other feminists might make of our work if we fail to carefully qualify every statement we make” (Jackson 1997:61)

Despite these criticisms, I feel that Brownmiller’s work must be acknowledged because she was one of the first authors to so powerfully draw attention to rape myths and their effect on attitudes towards rape. This chapter will now outline the main rape myths documented in the rape literature and go on to consider the consequences of these myths.

Current empirical work in the area of rape myths has documented the circulation of myths in popular culture and in rape trials (see for example: Amnesty International UK 2005; Burton, et al. 1998; Clark 2007; Kelly 1988; Lees 2002; Temkin and Krahé 2008). American and UK research has constituted the bulk of the literature in this area and there is a need to discover more about Australian perspectives – a need which this research helps to address. The diagram below (figure 2.1) illustrates the main rape myths which are documented in the rape literature – as shall be demonstrated in due course in this chapter. I examine each of these rape myths in more depth shortly but for now I wish to turn my attention to the consequences of these rape myths as this is the main focus of this research.

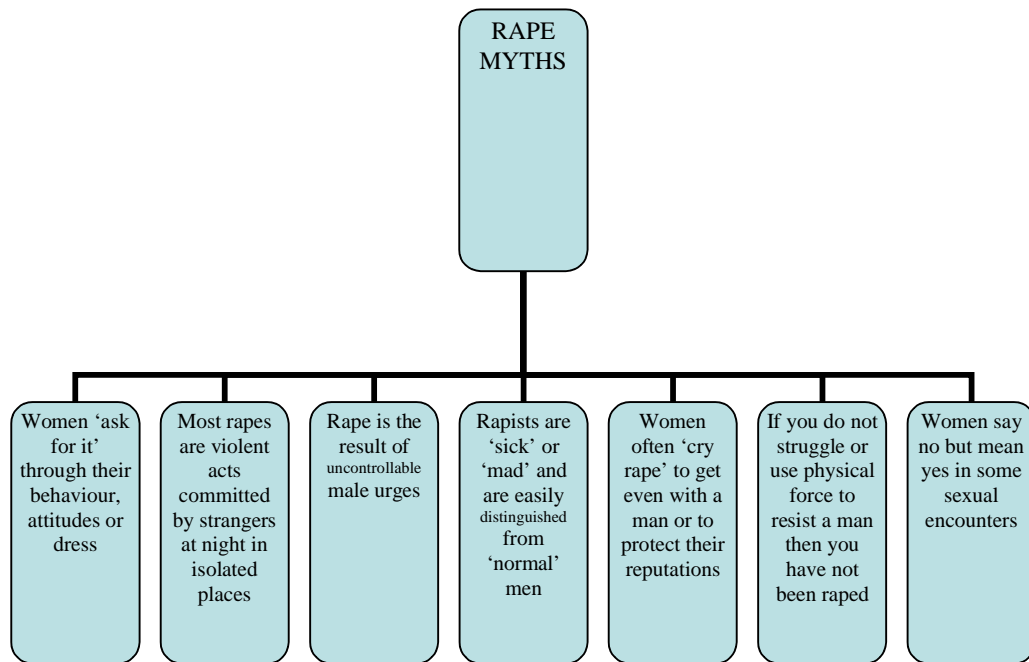


Figure 2.1

Consequences of Rape Myths

This chapter demonstrates that one of the consequences of these rape myths is that women are often perceived as responsible for rape – either by causing it or by failing to avoid it. It has been suggested that rape myths, and the stereotypes that fuel them, deeply affect society’s understanding of and response to rape (Schmidt 2004:192). Christine Carter states that: “Logically, if we have a culture with norms that support rape, we will have a culture with men who rape” (1995:9). Susan Brownmiller states that these rape myths “are the beliefs that most men hold, and the nature of male power is such that they have managed to convince many women ... for to make a woman a willing participant in her own defeat is half the battle” (1975:312). It is argued that rape myths obviously do not exist in a vacuum, “but are created and re-enforced by the media, peer groups, social institutions and living communities”

(Carter 1995:11). Diana Scully's (1991) empirical research with convicted rapists in the US showed that her research subjects believed very strongly in rape myths. It has been argued that rape myths "serve to neutralise the perceived damage and violation of non-consensual sex" (Carter 1995:11).

Over the last few decades research has suggested that rape myths have a significant influence on the ways in which sexual violence is thought about and discussed by the general public (see for example: Burton, et al. 1998; Clarke, et al. 2002; Kelly 1988; Lievore 2005a; Temkin and Krahé 2008). An Australian questionnaire-based study into attitudes towards rape by Sophia Xenos and David Smith (2001), involving a sample of 608 university students and secondary school students, also revealed the continuing influence of rape myths. A significant medium through which rape myths are reinforced is the media portrayal of rape. An examination of the literature on sexual violence in the media has shown that rape is portrayed stereotypically and tends to be sensationalised. A key text in this area is the book by Keith Soothill and Sylvia Walby (1991) on the nature of sex crime reporting in the British press. They comment that there were major increases in the amount of rape reporting in the media since the 1970s when the politicisation of sexual violence began. However, they found that the media were highly selective in their focus upon sexual violence and suggest that anyone gathering their information about rape only from the press would be seriously misled (1991:4). The authors state that:

"The nature of the reporting obscures the real nature of sexual violence: it underestimates the extent of these crimes and reports on unusual cases, for instance, those in which the rapist is a stranger, and serial rapists". (1991:157)

Martha Burt (1998:130) argues that “accepting rape myths leads to a more restrictive definition of rape and is thus rape-supportive, because such beliefs deny the reality of many actual rapes”. More recently, Jennifer Temkin and Barbara Krahé claim that “individuals who subscribe to traditional gender role beliefs show greater acceptance of rape myths and adopt narrower definitions of what constitutes rape than those who do not” (2008:36). Previous research has indicated that both men and women are responsive to rape myths (see for example: Brownmiller 1975; Holland, et al. 1998; Kelly 1988; Schwartz and Rutler 1998). Diana Russell, in a chapter on “Rape and the Masculine Mystique”, argues that in a society dominated by men it would be difficult for women’s view of rape to differ greatly from that of men (1982:328). Studies have shown that women have some of the same beliefs about rape that men do (Schwartz and Rutler 1998:115) and this could perhaps be seen as evidence of the ubiquitous nature of male dominance in contemporary society. Emily Finch and Vanessa Munro (2007) suggest that this may also be a self-protective mechanism for women where, by increasing blame and responsibility attributed to the female complainant and thus dissociating from her, they are able to convince themselves that they could prevent the same thing from happening to them by behaving differently.

Lynn Phillips (2000) conducted qualitative research with thirty young American women on the issue of sexual agency. She found that her participants spoke “with great conviction against male sexual aggression” but at the same time struggled to “identify male sexual domination as victimising in *their own* lived

experiences” (Phillips 2000:191).⁵ It has been suggested that many women find themselves caught between dominant malestream definitions and their own experiential knowledge (Kelly and Radford 1996:21). This idea is encapsulated by Lynn Phillips in the following quote, where she is talking about the participants in her research (described above):

“Even as they spoke with outrage against male violence, they admitted to having internalised many victim-blaming assumptions when it came to exploring their own experiences”. (2000:35)

It should be noted that I explore some of these issues in more depth in the analysis chapters of this thesis.

Unsurprisingly, it is frequently argued that jurors are influenced by myths and stereotypes about rape (see for example: Brownmiller 1975; Finch and Munro 2004; Lees 2002; Sanday 1996; Tang 1984; Taylor 2007). It should be noted that this body of literature is not based upon actual interviews with jurors but rather is about inferring how jurors may be influenced. However, there are a small number of exceptions including studies of mock juries (see for example: Finch and Munro 2005) and case studies of actual trials (see for example: Shepherd 2002). Susan Brownmiller argues that: “Juries are composed of citizens who believe the many myths about rape, and they judge the female according to these cherished myths” (1975:373). Judy Shepherd’s in-depth case study of a 1999 US rape trial found that “when statements made during the jury deliberations were considered in regard to

⁵ Original emphasis

common rape myths, it became apparent that almost every myth was validated by some jurors and used as an argument for acquittal” (2002:86).⁶

Natalie Taylor’s (2007) paper reports on two studies conducted by the Australian Institute of Criminology and considers whether juror bias has anything to do with the resulting extremely low conviction rates. The first study examined, by Natalie Taylor and Jacqueline Joudo (2005), consisted of a mock sexual assault jury trial research project with 210 participants. The other study, by Natalie Taylor and Jenny Mouzos, presented the findings from a community study into attitudes toward violence against women and involved a random sample of 2000 members of the general population of Victoria as well as a further 800 participants from “four selected culturally and linguistically diverse backgrounds (Chinese, Vietnamese, Italian and Greek)” (2006:xi). Worryingly, Taylor argues that the findings from these studies reveal that jurors in rape trials have generally already made up their mind about the case before the trial and that “juror judgments in rape trials are influenced more by the attitudes, beliefs and biases about rape which jurors bring with them into the courtroom than by the objective facts presented” (Taylor 2007:1). Mock jury research also suggests that rape myths concerning ‘appropriate’ female behaviour are likely to influence jurors with a profound effect on resultant verdicts in rape cases (Finch and Munro 2005). These findings indicate that legally irrelevant factors are influential when jurors consider rape cases and that rape myths are implicated in this process. If the public do not recognise rape as such due to a heavy internalisation of rape myths, then there is a risk that juries – as members of the public – will not

⁶ This research is unusual in that it was actually based on the author’s own involvement as a juror on a rape and burglary trial

either. In this way, Jennifer Temkin and Barbara Krahe argue that “negative attitudes about rape victims may be part of the explanation for high attrition rates in rape cases” (2008:41). The authors also argue that their recent UK based quantitative research with 2176 members of the general public “demonstrated the widespread existence of biases against rape victims, and that juries may well share these biases” (2008:181). Denise Lievore advocates more public education campaigns to try to dispel the myths surrounding rape and argues that:

“Over the long term, the messages of well planned and continuous education efforts would begin to filter through to individuals, so that boys and men begin to take responsibility for their actions and girls and women refuse to be silenced” (Lievore 2005a:120)⁷

In many societies, including Australia, the public and the criminal justice system are inextricably linked by their mutual reinforcement of rape myths. The public form juries which convict (or acquit) alleged rapists and the conduct of and verdicts from these rape trials are disseminated back into the general public arena which then further reinforces and institutionalises rape myths. Of course, it is important to note that studying actual jurors in rape trials might yield different results from studying the public (as potential jurors) in focus groups, due to the seriousness of the consequences in a criminal justice context as opposed to a hypothetical context. However, I would suggest that the difference may be that ‘real’ jurors are even less likely to convict if they think that imprisonment and labelling as a ‘rapist’ are the consequences. There is a clear need for research on juries especially in the case of offences, such as rape, where current conviction rates are very low – in order

⁷ The role of education will be discussed further in later chapters

to provide more understanding of why this is the case. This chapter now considers each of the rape myths documented above in turn with the aim of demonstrating how rape myths permeate all levels of society.

“Some women ask for it through their behaviour, attitudes or dress”

It has been suggested that, in contrast to victims of other crimes, rape victims are often thought to be responsible for the crime (Deming and Eppy 1981:361). Any behaviour on the part of the victim that is perceived as violating gender role expectations may be viewed as contributing to the commission of the act of rape (Scully 1991:107). In her research with convicted rapists in the US, Diana Scully found that many of her respondents attempted to “justify or excuse their own behaviour by arguing that the women (that they raped) were ‘legitimate’ victims who got what they deserved” (1991:109). It is suggested that women are supposed to dress to please and attract but only to a certain (indefinable) point after which men are no longer held responsible for their actions (London Rape Crisis Centre 1999:16). In Amnesty International’s UK-based research on attitudes towards rape, involving a random sample of 1095 adults, one third of participants felt that a woman was more responsible for rape if she was wearing “sexy or revealing clothes” (2005:7).

In addition, Sue Lees has argued that there is also a popular assumption that if a woman is sexually active, then she is sexually available (2002:152). Similarly, Amnesty International’s (2005:7) research found that almost one third of participants agreed that “having a reputation for having had many sexual partners” made a

woman somewhat responsible for being raped. David Archard raises an interesting point in connection with this viewpoint, commenting that no-one normally takes a sexually active man to have less moral integrity simply by virtue of his promiscuity (1998:137) and this can be seen as a clear indication of unequal power relations. The myth that ‘some women ask for it through their behaviour, attitudes or dress’ is closely linked to the concept of ‘victim precipitation’ which is a criminological concept that seeks to define contributory behaviour and “(it) says, in effect, an unlawful act has been committed but had the victim behaved in a different way the crime in question *might have been avoided*” (Brownmiller 1975:353).⁸

Stephen Box (1983) suggests that there is a difference between minimising the risks that we are all subjected to in our everyday lives and the inferences that are drawn from that in terms of responsibility in the context of rape. He draws comparisons with bank robbers saying that banks take precautions to minimise the risk of being robbed – as women are expected to take precautions to minimise the risk of being raped. But, as shown in the following quote, he argues that the repercussions of a person managing to rob a bank are very different from attitudes towards a woman who has been raped.

“Of course we might think banks which did not take precautions were taking unnecessary risks, but we would not think that diminished in any way the culpability of the offender. No bank robber has ever been found not guilty, or even pleaded in mitigation, that it was the bank’s fault for not protecting itself better!” (Box 1983:134)

⁸ Original emphasis

The classic study introducing the term ‘victim precipitation’ was “Patterns in Forcible Rape” by Menachem Amir (1971). In this research, Amir analysed all cases of rape listed by the police in the American city of Philadelphia for the years 1958 and 1960. One of his main arguments was that since women know what kind of situations and behaviours lead to rape, they could and should avoid these behaviours. Unsurprisingly, his work has been widely criticised for its role in reinforcing popular rape myths. More recently, many empirical studies have found that notions of victim precipitation remain influential amongst the public when discussing rape (see for example: Amnesty International UK 2005; Burton, et al. 1998; Xenos and Smith 2001). Similarly, Lois Pineau argues that: “Attempts to explain that women have a right to behave in a sexually provocative way without suffering dire consequences still meet with surprisingly tough resistance” (1996:11). Amnesty International’s UK-based research (described above) found that over a quarter of their participants thought that “behaving in a flirtatious manner” made a woman “partially responsible” for rape, while a minority of participants (6%) thought this made a woman “totally responsible” (2005:6).

Jennifer Temkin and Barbara Krahe undertook UK-based empirical research in this area, conducting three quantitative studies to explore the influence of rape myths on judgments about rape cases (2008:75). Their studies were with 74 undergraduate law students (study 1), 121 graduate students training to be lawyers (study 2), and a large sample (n=2176) of members of the general public (study 3). Across all of these studies, Temkin and Krahe found that the more their participants subscribed to beliefs that women precipitate rape then the more they blamed the complainant, the

less liable they held the defendant and (where applicable) the shorter the prison sentence they recommended (2008:120/121). Clarke et al's (2002) UK-based research, comprising a combination of 28 focus groups and 62 individual interviews, found a prevailing view that women have a responsibility for controlling men's behaviour in intimate encounters, for example participants discussed notions of 'leading the man on' or 'letting things go too far'. Their research found that respondents' initial assessments of the seriousness of rape scenarios were often based on assumptions about rape that drew on rape myths (2002:38). Previous research also demonstrates that when women break the boundaries of 'socially approved behaviour' they are held more accountable for any subsequent attack (see for example: Scully 1991:107) and it would appear that, as a corollary, men tend to be held less accountable, as we shall see in later chapters.

“Most rapes are violent acts committed by strangers at night in isolated places”

It is argued that this 'real rape' myth has “long been a subject of feminist critique” (Kelly and Radford 1996:20). As far back as 1978, Carol Smart and Barry Smart argued that this stereotype of rape is far removed from the reality (1978:92). It is proven that a steadily increasing proportion of reported rapes do not conform to this stereotypical stranger rape scenario (Lees 2002:xii). In fact, it has been demonstrated that stranger rape is the least likely form of rape that women might experience in their lifetimes (see for example: Australian Bureau of Statistics 1996;

Gavey 2005; Lees 2002; Myhill and Allen 2002a).⁹ Only 17% of all sexual offences against women reported to Australian police in 2001 were perpetrated by strangers (Lievore 2003:20). Despite this, ‘real rape’ continues to be understood as an attack by a stranger, involving weapons and resulting in injury (Kelly, et al. 2005:2).

In their research on women’s experiences of physical and sexual violence, involving 6,677 Australian women aged between 18 and 69, Jenny Mouzos and Toni Makkai found that incidents involving strangers were perceived as ‘crimes’ more often than incidents involving known males (Mouzos and Makkai 2004:112). Burton et al’s UK-based empirical research with young people aged 14-21, which comprised of survey data from 2039 participants and ten focus groups, found that “the image of a dangerous stranger perpetually lurking in the bushes came up in several (focus) groups” (1998:25). Also, from a criminal justice perspective, Denise Lievore’s 2005 paper examines the process of attrition in a sample of adult sexual assault cases (across several Australian states) and found that cases involving strangers were significantly more likely to proceed – even though there are fewer at the reporting stage (2005b:4). The fact that stranger rapes thus appear to be disproportionately represented in trials that get to court obviously helps to perpetuate the reality of the ‘real rape’ myth.

In her groundbreaking book “Real Rape”, Susan Estrich (1987) illustrates how both the law and wider society differentiates between this ‘real rape’ stereotype and typically non-violent acquaintance rapes. She argues that there is a need to

⁹ It is important to note that here one is discussing survey data rather than police recorded data

acknowledge that acquaintance rape is as real a rape as stranger rape (Estrich 1987).

In a UK Home Office study, reporting on findings from the 1998 and 2000 British Crime Surveys, Myhill and Allen comment that “narrow and sensationalist media coverage helps perpetuate the myth of most sex attacks being committed by strangers” (2002b:4). Martha Burt argues that the consequences of this ‘real rape’ myth are that:

“When (people) hear of a specific incident in which a woman says she was raped, they look at the incident, compare it to their idea of a ‘real’ rape and, all too often, decide that the woman was not ‘really’ raped” (1998:130)

Jennifer Temkin and Barbara Krahé found that, across their three studies (described above), their participants were influenced by this ‘real rape’ stereotype with defendants being held more liable and complainants blamed less in the stranger rapes than in the acquaintance rape scenarios (2008:120).

Rape is the result of uncontrollable male urges

It has been suggested that one important way that rape is explained is through the popular (but mistaken) belief that male sexual urges are uncontrollable once aroused (Lees 2002:213). Helen Benedict comments that “because rape is seen as sex, the assailant is assumed to be a hot-blooded male driven beyond self-control by lust” – and thus less responsible for his actions (1992:14). This idea is known as ‘impulse theory’ and is the basis for this myth which tries to ‘explain’ rape (Scully 1991). In this way, male sexuality has been depicted as “natural, relentless and demanding attention, an urge that boys and men cannot help or control” (Tolman and Higgins 1996:207). Lynn Phillips argues that this “‘Male Sexual Drive Discourse’ is both

fuelled by and reflected in countless implicit and explicit messages, practices and priorities woven throughout mainstream Western culture” (2000:58).

Many authors have argued that viewing rape in terms of impulse theory serves to shift the responsibility for the attack from men to women (see for example: Groth and Birnbaum 1979; Holland, et al. 1994; Jackson 1999; Jordan 2004; Summers 2002; Walby, et al. 1983). In this way, it becomes women’s responsibility not to arouse men’s ‘uncontrollable’ urges and men are excused from their behaviour on the basis of biology. Thus, “rape becomes understandable and even forgivable” if it is the result of ‘uncontrollable’ urges “which once aroused drives a man with a single-minded determination to seek sexual gratification” (Shapcott 1988:30). Burton et al’s UK-based empirical research, comprising of ten focus groups and a survey of 2039 young people aged between 14 and 21, found that “a significant minority of young men believe that they can reach a point of sexual arousal beyond which they are incapable of stopping themselves from forcing intercourse on a woman” (1998:2).

“Rapists are ‘sick’ or ‘mad’ and are easily distinguishable from ‘normal’ men”

‘Disease theory’ views rape as “a sex act perpetrated by a psychopathic individual” and is clearly linked to this myth that rapists are different from other men (Scully 1991:37). Sexually violent men still tend to be seen as deviant and separate from mainstream society i.e. there is a continuing adherence to a disease theory explanation of rape. It has been suggested that the consequence of defining

responsibility this way is that men never have to confront rape as their problem (Scully 1991:46). The pervasiveness of this disease theory model of rape is translated into individual lived experiences by the reluctance of women to define an incident as rape if they know the man concerned (see for example: Holland, et al. 1998). Also, media reporting of incidents of rape tend to suggest that the men involved are monsters or inherently evil and in this way the media also helps to reinforce this rape myth.

Diana Scully and Joseph Marolla state that “evidence indicates that rape is not a behaviour confined to a few ‘sick’ men but that many men have the attitudes and beliefs necessary to commit a sexually aggressive act” (1993:110). Scully’s empirical research, with convicted rapists in the US, found that: “sexually violent men identify with traditional images of masculinity and male gender role privilege” and have a very strong adherence to rape myths (1991:165). Research on non-rapists reveals similar findings in terms of the widespread existence of rape supportive attitudes (see for example: Amnesty International UK 2005; Burton, et al. 1998; Temkin and Krahé 2008; Xenos and Smith 2001) and this supports the argument that there is no real distinction to be made between the attitudes of convicted rapists and other members of the general public – and therefore rapists are not necessarily easily recognised as ‘deviant’. Many authors have argued that by defining rapists as ‘sick’ or ‘mad’ society is able to continue to deny the reality of rape (see for example: Allison and Wrightman 1993; Kivel 1995; Scully 1991; Walby, et al. 1983). In this way, Paul Kivel states that: “If we are male, we want to believe that rapists are different than we are. If we are female, we want to believe rapists are different from

the men we know” (1995:137). Scully argues that the belief in disease theory as a causal explanation for rape has been extremely persistent despite the relative lack of empirical support for such a view (1991:38).

Women often ‘cry rape’ to get even with a man or to protect their reputations

The literature argues that the tendency of women to lie about rape is vastly exaggerated in public opinion (see for example: Benedict 1992:18; Kelly, et al. 2005). Liz Kelly and colleagues’ study into UK attrition rates found that 216 of the 2643 rape cases they analysed were classified by police officers as false allegations – i.e. 8% (2005:47). They also commented that “even if all (these cases) designated false by the police were accepted, this is still much lower than the rate perceived by the police officers (they) interviewed” (2005:50).¹⁰ Similarly, research by Jennifer Temkin involving qualitative interviews with sixteen police officers in England found that half of the officers interviewed believed that one quarter of all rapes reported to the police were false (1997:516). Such an attitude of suspicion amongst the police toward female complainants of rape has been discussed by several other authors (see for example: Jordan 2004; Temkin 2002). Denise Lievore, in her paper on women’s help-seeking decisions and service responses to sexual assault, argues that “the police, lawyers and the judiciary continue to respond to victim/survivors with negative attitudes and to act on discriminatory stereotypes” (Lievore 2005a:121).

¹⁰ It should be noted that this paper did not provide any more information on the amount of rape cases that the police officers actually perceived to be false allegations

Philip Rumney argues that “police officers no-crime some reports on the basis of highly questionable assumptions concerning appropriate or expected complainant behaviour and responses to rape” (2006:157). Similarly, in her New Zealand based research, Jan Jordan examined 164 police reports of rape and sexual assault and found that only 21% of these were considered by the police to be genuine cases – with 38% viewed as ‘possibly true/possibly false’; 33% attributed as false by the police; and 8% labelled as false by the complainant (2004:92-94). In this context, Rumney argues that it is important to pursue research that “examines how and why police officers determine that particular (rape) allegations are false” (2006:155).

This myth appears to hold sway with the public as well as the police and it has been suggested that the prevalence of false allegations “is seemingly confirmed in the eyes of the public by the isolated examples of false rape charges that are widely publicised” (Lonsway and Fitzgerald 1994:135). In this way, Jan Jordan claims that “the media helped in the construction of a moral panic concerning false rape allegations” (2004:42). Aileen McColgan argues that although false allegations are made, “each incident is pounced upon with unwholesome relish by those who would have us believe in the myth of the vindictive accuser” (1996:103). Burton et al’s empirical study, mentioned above, found that more than three quarters of the young men and more than two thirds of the young women in their sample thought “that women often or sometimes cry rape the next day when they have had second thoughts” which suggests that this myth still has considerable support amongst the public (1998:16). It is suggested that the public have “access to a large repertoire of culturally available ‘reasons’ why women might supposedly lie about being raped”

(Burton, et al. 1998:26). Concerns about women making false allegations of rape can be traced as far back as the 17th century when England's Lord Chief Justice, Sir Matthew Hale, commented that: "(Rape) is an accusation easily to be made and hard to be proved and harder to be defended by the party accused, though never so innocent" ((1678) 1736:635). Such an assertion emphasised men's supposed vulnerability to vindictive and deceitful women.

If you do not struggle or use physical force to resist a man then you have not been raped

It has been suggested that this myth denies the effectiveness of coercion or threat of violence in causing a woman to submit to rape (Carter 1995:10). The literature has shown that violence is often not a feature of acquaintance rapes because the threat of violence is sufficient to cause the woman to submit and also because trust often already exists so no initial violence is necessary (Lees 2002:29). The following quote highlights the consequences of this 'resistance requirement' myth:

"The unenviable choice for women then, is to sustain extensive physical injury in addition to the rape, or to risk disparagement and disbelief by the legal system, family, friends and the wider community" (Stuart 1993:103)

It has been suggested that if a woman consents because of verbal manipulation, threat or coercion rather than actual physical violence then she tends herself to believe that she is to blame for the attack (Schwartz and Rutler 1998:115). More support for this myth can be found within the law itself whereby force has in the past often been a requirement to prove the crime of rape. This remains the case in some US jurisdictions to this day and has only recently been changed in other jurisdictions,

for example, Scotland as recently as 2002.¹¹ It is important to note that in South Australia, there is no reference to any requirement for force to prove the crime of rape and in fact the law explicitly states that physical resistance is not necessary to demonstrate lack of consent.¹²

Despite there being no legal requirement for force and/or physical resistance in many jurisdictions, including South Australia, Lievore's analysis of adult sexual assault cases, in a number of Australian states, suggests that the prosecution's case "is seen to be strengthened when the victim actively showed non-consent or sustained injuries during the attack, or when the defendant used force" (Lievore 2005b:5). For example, Beverley Brown et al's empirical research on the use of sexual evidence in Scottish courts found that "the presence or absence of injuries took on considerable significance" in many of the cases observed (1993:184). It was suggested that this "emphasis on injuries may also create the impression that if force was absent then rape did not occur" (Brown, et al. 1993:184). It has been argued that "jurors often expect the (rape) victim to have suffered injuries, without realising that genuine fear for their lives prevents many women from resisting physically and sustaining severe injuries" (Lees 2002:113). Ruth Hall argues that such an assumption:

"... affects not only women who are physically threatened and decide it may be safer to submit than to fight, but also women who are raped by means of other, less obvious, forms of coercion, and who have no physical proof of the crime." (1985:73)

¹¹ *Lord Advocate's Reference (No.1 of 2001)* 2002 SLT 466

¹² As set out in the *s48 Criminal Law Consolidation Act 1935 section 48* as well as the recent *Criminal Law Consolidation (Rape and Sexual Offences) Amendment Bill 2008 section 46*

This resistance myth is also linked to claims that no woman can be raped against her will because ‘you cannot thread a moving needle’ and thus women are expected to resist to the last in order to clearly demonstrate their unwillingness. The idea of resistance will be discussed in more detail later in this chapter in relation to legal concepts of consent.

Women say no but mean yes in some sexual encounters

Deming and Eppy argue that this myth continues to be problematic because, according to traditional sex roles, some degree of male aggression and female protestation are expected in consensual heterosexual encounters (1981:369). In this way, women “are expected to say ‘no’ to sex – whether they mean it or not – to preserve their reputations” (Carter 1995:13). It has been suggested that women’s physical and verbal resistance is seen to be expected “as part of the female game of pretending reluctance, or as an expression of desire to be overcome” (Russell 1982:327). Hannah Frith and Celia Kitzinger’s (1997) paper on miscommunication theory draws upon young women’s accounts of miscommunication in heterosexual encounters.¹³ The authors do not support miscommunication theory but rather argue that it:

“... is useful for women attempting to sustain heterosexual relationships because it: (a) avoids blaming men; (b) gives women a sense of control; and (c) obscures institutionalized gender power relations.”

The authors contend that an explanation frequently offered by men for misunderstanding a woman’s ‘no’ is that “women say ‘no’ as part of foreplay,

¹³ Miscommunication theory claims that sexual violence is a problem that can be solved through better communication skills between men and women (Frith and Kitzinger 1997:517)

expecting (and hoping) to be overruled so that even explicit refusals of sex are read by men as ‘token resistance’ or ‘scripted refusal’” (Frith and Kitzinger 1997:521).

The findings of Clarke et al’s (2002:11) qualitative UK research found support for this myth:

“As far as women were concerned no was taken literally to mean no. However, for some men in this study no was not always to be taken at face value. It was seen as a feature of the social ritual of the dating relationship and was to be interpreted accordingly”

This myth becomes problematic as the woman’s ‘no’ to sex requires the man to interpret it either as ‘token resistance’ or as a genuine refusal. In this way, Christine Carter states that: “Complications occur when a woman says ‘no’ and means it; because her script is dependant on his, he is the interpreter of her actions” (1995:13). This myth is linked to the concept of normative heterosexuality which emphasises female passivity in sexual encounters.¹⁴ It is argued that “if it were socially desirable for women to say ‘yes’ to sex when they want to” then this situation could possibly be improved (Carter 1995:13). However, such an approach is still dependant on the male interpretation of the situation which may be problematic given that it is suggested that “the root of the problem is not that men do not understand refusals but that they do not like them” (Kitzinger and Frith 1999:310).

¹⁴ This concept will be discussed further in due course

Rape Myths and Socialisation

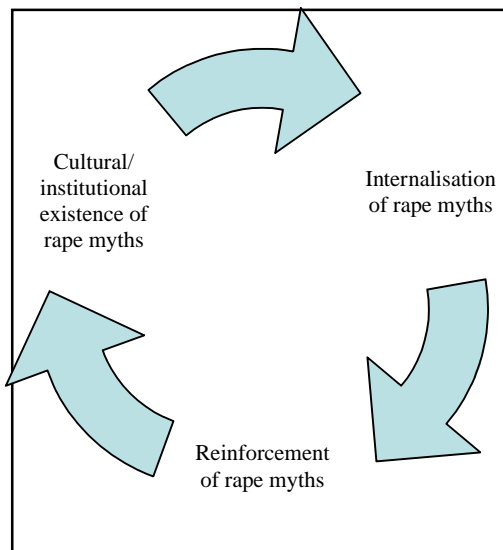


Figure 2.2

The diagram above (figure 2.2) indicates my view of rape myths and their role in society.¹⁵ Some authors have argued that rape myths are learned through cultural socialisation (see for example Schmidt 2004:191). Similarly, Sophia Xenos and David Smith (2001:1104) argue that attitudes, values and beliefs about appropriate and inappropriate sexual behaviour are acquired via the socialisation process. Moreover, the literature argues that rape myths are reinforced through channels such as the media (see for example: Smart and Smart 1978; Soothill and Walby 1991), the criminal justice system (see for example: Lees 2002; Temkin 2002) and general discussions about sexual violence (see for example: Brownmiller 1975; Burton, et al. 1998; Kelly 1988; Phillips 2000). In this way, the cyclical process identified diagrammatically above ensures and preserves the presence of rape myths in

¹⁵ By internalisation I mean the process by which something becomes a taken-for-granted assumption

contemporary society. It is important to stress at this point that the aim of this research is not to understand where rape myths come from but rather I am working from the approach that there is evidence that they do exist. Clearly, some of the literature that has already been discussed in this chapter suggests that rape myths are at least connected to perceptions of appropriate gender roles in heterosexuality. So far this chapter has examined the rape myths documented in the literature and also considered both the ways in which they are reinforced and some of the consequences of their existence. I will now go on to consider the phenomenon of acquaintance rape in order to provide a more in depth background picture to my research questions.

2.2 The Phenomenon of Acquaintance Rape

The feminist movement is credited with defining rape as a significant social problem (Deming and Eppy 1981:358). Jan Jordan suggests that “the fact that rape is a crime committed almost exclusively by men, almost exclusively against women, guaranteed it a position of prominence within the early feminist campaign” (2004:2).¹⁶ The pervasiveness of male violence had never been confronted by political action until the 1970s (Brownmiller 1999:194). The transformation of rape into a social problem has brought increased attention to the subject in both popular and academic fields (Chasteen 2001:101). Rape has increasingly become recognised as a contentious social and political issue, which is also of considerable sociological interest. It has been argued that: “One of the most important contributions which the

¹⁶ It should be noted that this is by no means denying the existence and issue of male-on-male rape but rather that this is out with the scope of this thesis. For a detailed discussion of male-on-male rape see, for example, **McMullen, R. J.** 1990 *Male Rape: Breaking the Silence on the Last Taboo*: London: GMP Publishers Ltd. or **Scarce, M.** 1997 *Male on Male Rape: The Hidden Toll of Stigma and Shame*: USA: Perseus Publishing

feminists made was to force people to see rape in a larger social, economic and political perspective” (Clark and Lewis 1977:28). In addition, feminist discourse has sought to define incidents as rape from a woman’s interpretation of the situation rather than the man’s interpretation of a woman’s signals (Chasteen 2001:106).

Since Susan Brownmiller’s groundbreaking work in 1975, acquaintance rape has been given an ever increasing amount of attention in both popular and academic literature. The term ‘acquaintance rape’ was developed in the 1970s to distinguish stranger rape from rape involving people who knew one another (Sanday 1996:xii). Sue Lees (2002:10) divides acquaintance rapes into three groups:

1. Assaults by men who had previously been unknown to the woman but with whom she had some degree of consensual social contact in the 24 hours prior to the assault
2. ‘General acquaintance’ – assaults by men whom the woman had known for more than 24 hours prior to the assault but with whom she had never had consensual sex, for example, a friend, colleague, neighbour
3. Assaults by men with whom the woman had previously had a consensual sexual relationship

The *Ms. Magazine*’s US research project on acquaintance rape headed by Mary Koss is much quoted in the sexual violence literature and is the source of the well known statistic that one in four women will be raped in their lifetime (Warshaw 1994). As stated by Martin D Schwartz, virtually every study in the field since the mid 1980s builds on this research (1997:1). Koss’s work has been criticised

methodologically because many of the incidents which were categorised as rape by the researcher were not defined as such by the women themselves and it has been claimed that this may have invalidated the results. Therefore, there was a tension between the researcher's interpretation of the situation and that of the participants'. The researchers defended their results by saying that these incidents still met the legal definition of rape even if the women themselves did not label it as such. This approach has attracted some controversy and other authors have argued that the fact that the participant was not labelling an incident as rape should mean that it was not categorised as such, and to do so is over-exaggerating the true prevalence of rape (see for example: Roiphe 1993). However, the methods and definitions used are really dependent on what one is trying to show or find and the definition of rape which I have adopted (as outlined on p10) would support Koss's approach to this issue – i.e. that an incident can be rape (in a legal sense) even if a woman does not define it as such.

For the purposes of this research, the term 'acquaintance rape' will be used to indicate that the perpetrator was a man known to the woman (this covers all the categories listed above). My research focuses on acquaintance rape scenarios because the literature indicates that given how broadly acquaintance rape is defined it constitutes all but a very small minority of rapes. Research has shown that acquaintance rape is much less likely to be reported to the police than stranger rape (see for example: Australian Bureau of Statistics 1996; Segal 1990; Udall 2003) despite the fact that it actually represents all but a tiny minority of rape experiences (see for example: Allison and Wrightman 1998; Australian Bureau of Statistics 1996;

Chasteen 2001; Gavey 2005; Gregory and Lees 1999; Lees 2002). It also tends to be considered less serious – from both a legal perspective and in lay opinion – than other forms of rape despite its obvious widespread prevalence (see for example: Australian Bureau of Statistics 1996; Lees 2002). It has been argued that “acquaintance rape cases are notoriously difficult to prove, largely because of the complexity of the issue of sexual consent in such situations” (Philadelphoff-Puren 2005:31). The concept of consent in sexual encounters will be discussed extensively in this chapter in due course.

This chapter will now consider the debate surrounding the term ‘date rape’ and its relation to the phenomenon of acquaintance rape. Aileen McColgan argues that the term ‘date rape’ was coined in the US to bring home to women that forced sex was rape even if it occurred in the context of a ‘date’ (1996:36). During the 1990s, acquaintance rape was increasingly termed ‘date rape’ by the media (Lees 2002:xii). It should be noted that not only the definition of ‘date rape’ but also its frequency is widely debated. Susan Brownmiller claims that there is a prevalent assumption that a woman who has been raped by a man she knows is a woman “... who changed her mind afterward” (1975:352). As if to illustrate this, Katie Roiphe’s controversial book “The Morning After: Sex, Fear and Feminism” argues that there is a general lack of agreement about what constitutes rape: “There is a grey area in which someone’s rape may be another person’s bad night” (1993:54). Roiphe’s work attracted a great deal of attention precisely because the author was young and female, and denying the existence of acquaintance rape. Furthermore, Sue Lees states that ‘date rape’ is often conceptualised as occurring as a result of men misreading the

woman's signals or not realising that she was not consenting, or that women have sex consensually and then regret it and cry rape (2002:xiii). As shall be explored in due course, recent empirical research demonstrates that these issues are still seen to be a concern – especially if the woman is intoxicated.

Another criticism of the term 'date rape' is that it is often used to legitimise or qualify a rape, making it seem less harmful or violent (Carter 1995:7). David Archard argues that one of the criticisms which has been made of the term 'date' or 'acquaintance' rape is that it has trivialised the crime of rape – blurring an important distinction between rape and sex which "is simply unwanted or regretted" (1998:132). Aileen McColgan believes that the term has been misused by the media who focused on the 'date' in 'date rape' to suggest that what women experienced as forced intercourse in this context was not what the law should recognise as rape – but rather that it was about "sex secured by emotional pressure, drunken flings, morning-after regrets" (1996:36). Such arguments have been criticised for reinforcing stereotypical images of rape and distorting the fact that rape is mostly about power and violence, not sex.

Other writers argue in favour of the term 'date rape'. Christine Carter declares that using the phrase 'date rape' confronts one's assumptions that 'rape' always equals "rape by a stranger" and "keeping the term 'date rape' will allow us to examine the complex of beliefs, indeed the culture, it represents" (1995:8). In this way, the phrase 'date rape' is seen to be useful in terms of identifying and/or increasing "awareness of a problem rooted in 'normal' social interactions between

men and women” (Carter 1995:7). I feel that use of the term ‘date rape’ aids recognition of the widespread nature of rape and challenges ineffective stereotypes which continue to view ‘real rape’ as a violent attack by a stranger, at night, in an isolated place. However, the term ‘date rape’ does not cover the full range of experiences which constitute acquaintance rape. ‘Date’ and ‘acquaintance’ rape have often been amalgamated into the same category which is said to be problematic because it overemphasises the potential romantic element involved in ‘date rape’, which is not present in other acquaintance rapes (Dailey 1995:114). For this reason, the term ‘acquaintance rape’ rather than ‘date rape’ is used in this research to indicate rapes committed by someone known to the victim although not necessarily in a romantic context.

2.3 Theoretical Background to Rape Myths

Having set out the reasons behind my focus on acquaintance rape this next section will examine more of the theoretical background to rape myths, beginning with the debate concerning whether rape is about sex or about violence and power; followed by consideration of the influence of normative heterosexuality and the idea of rape as a form of social control of women. Finally, this section will examine some relevant empirical research examining these theoretical ideas of heterosexuality, power and coercion.

Is rape about sex or about violence and power?

Nicola Gavey states that “there has been ongoing debate – both within and outside of feminism – over whether rape is about sex or whether it is about violence and power” (2005:31). It has been suggested that one of the biggest issues concerning acquaintance rape is that despite tremendous legal and social reform across many parts of the world, society still finds it problematic to distinguish between sex and violence (Gold and Villari 2000:1). This can be seen as especially problematic and significant in relation to acquaintance rape where women’s experiences are often not recognised as rape due to the pervasiveness of stereotypes about rape as being about sexual excess rather than the violent exercise of power (see for example: Carter 1995; Kelly 1988). It is important to note at this point that, in the context of this debate, I am not necessarily implying that ‘violence’ always equals overt physical violence but rather that it also refers to situations involving intimidation, coercion and a fear of violence.

As long as rape is seen to be predominantly about sex rather than about violence and power, it seems likely that its severity will continue to be minimised due to its inaccurate representation as a crime of passion. It has been suggested that the portrayal of rape as a sexual rather than an aggressive act encourages people not to take it seriously as a crime (Benedict 1992:14). Nicholas Groth argues that there is a common misconception that rapists are primarily motivated by sexual desire despite the fact that studies of offenders have shown that rape is in fact serving non-sexual needs i.e. that it is an expression of power and anger (1979:2). This is also supported by findings from Diana Scully’s research with convicted rapists in the US

(1991). The view that rape is predominantly about sex rather than violence is obviously linked to the discussion above concerning the myth that ‘rape is the result of uncontrollable male urges’.

It has been suggested that the rising incidence of known male-on-male rape cases provides the clearest demonstration that rape is primarily about power, not sex – as feminists have argued for decades. Men who rape other men are rarely gay (although it is acknowledged that gay men do rape as well) and do not predominantly rape out of desire – they rape to dominate, punish or degrade, as do the rapists of women – and an example of this is male-on-male prison rape (see for example: Benedict 1992; McMullen 1990; Scarce 1997). Another instance of the way in which rape may be seen to be predominantly about power and male aggression is its extensive use in war (see for example: Bourke 2007; Brownmiller 1975). A recent example of this is the widespread rape of women during the conflict in the Democratic Republic of Congo over the last decade. It is argued that, in this context, rape has been used in a particularly brutal fashion in order to exert control and power over communities.¹⁷ Another example is the systematic rape and forced impregnation of women in Bosnia with the aim of ethnic cleansing of the population (see for example: Stiglmeier 1994).

David Archard states that feminism invests rape with a certain significance i.e. that “... rape displays, in an especially clear and revealing way, the role of gender and the structure of gender relations within the society which feminism criticises”

¹⁷ Source: www.cbsnews.com/stories/2008/01/11/60minutes/printable3701249.shtml

(1998:130). The literature argues that “feminist theory considers rape to be the result of long and deep-rooted social traditions in which males have dominated nearly all important political and economic activities” (Ellis 1989:10). Sexual violence is seen as “involving the exercise of power, functioning as a form of social control by denying women freedom and autonomy” (Kelly 1988:41). Feminists have argued that because there are accounts of some societies where rape does not occur (see for example: Helliwell 2000; Watson-Franke 2002), this demonstrates that rape is not a natural function of male biology but rather linked to “socialisation practices and specific patterns of gender dynamics” (Watson-Franke 2002:605).

Sue Lees (2002), in the second edition of her book on rape and the UK criminal justice system, also stresses that it is imperative to recognise sexual violence as linked to socialisation. She argues that men are encouraged to behave in a sexually coercive manner and to boast about their sexual exploits and, therefore, rape can be seen as one end of a continuum of abusive male sexuality. Many authors have made reference to this idea of a ‘continuum of sexual violence’ (see for example: Frey 1993; Kelly 1988; Kelly 1996; Segal 1990) which “ranges from extensions of the myriad forms of sexism women encounter everyday through to the all too frequent murder of women by men” (Kelly 1988:97). One author has even suggested that “all men who act out behaviours anywhere along this continuum contribute to an environment where rape is possible” (Frey 1993:245).

It is important to note that there is a critique of this ‘rape equals power’ argument and debate exists between viewing rape as predominantly about sex (see

for example: Los 1994; Thornhill and Palmer 2000) versus viewing rape as predominantly about violence and power (see for example: Kelly 1988). Thornhill and Palmer, whose book is based on a biological explanation for sexual violence, argue that there are likely to be multiple motivations involved in decisions to rape, including sexual desire (2000:131). They claim that although rape is obviously not the same as consensual sexual intercourse, this “does not mean that the motivation of the male necessarily differs” (Thornhill and Palmer 2000:132). They argue that:

“Even when excessive violence does occur, sexual motivation still appears to be a necessary part of the explanation for why a rape rather than a non-sexual assault occurred”

Sex and power are seen as interconnected in most feminist analysis and it is not considered possible to talk about rape without also talking about sex and power (see for example: Brownmiller 1975; Kelly 1988; MacKinnon 1989). Heterosexuality is often discussed in the context of gendered power relations – as in, for example, Holland et al’s book “The Male in the Head” which considers the role of coercive sexuality and explores the extent of female agency in sexual encounters (Holland, et al. 1998). I am going to proceed on the basis that rape is *mostly* about violence and power and I feel that rape myths help to obscure this fact and indeed actually promote the viewpoint that rape is *mostly* about sex. This chapter will now examine the role of normative heterosexuality and coercive sexuality in relation to the crime of rape, in order to provide further context for my focus on rape myths.

The Role of Heterosexuality

Heterosexuality has consistently been linked with male violence and “presented as both the cause and enactment of men’s power over women” (Segal 1997:79). In her

article on compulsory heterosexuality, Adrienne Rich argues that some of the forms by which male power manifests itself are more easily recognisable as enforcing heterosexuality on women than are others (1980:185). She also states that:

“... the failure to examine heterosexuality as an institution is like failing to admit that the economic system called capitalism or the caste system of racism is maintained by a variety of forces, including both physical violence and false consciousness” (Rich 1980:191)

John MacInnes comments that Rich’s term ‘compulsory heterosexuality’ “is not about the reproduction of the species but the reproduction of men’s social power over women” (1998:72). The sexualisation and objectification of women, “as a core aspect of the main discourse on heterosexuality, has been interpreted by many as the heart of what renders women powerless in heterosexual encounters”

(Vanwesenbeeck 1997:171). In this way, Anderson and Doherty comment that:

“Normative heterosexuality is imbued with a dominance-submission dynamic leaving little room for notions of women’s active desire, pleasure or consent and little or no imperative for men to check that women are actively consenting to sex and/or finding the experience pleasurable” (2008:6)

Such a view of normative heterosexuality can also be seen to effectively blur the boundary between rape and consensual sexual intercourse.

Many authors have argued that the prevalence of rape is linked to a society which encourages male aggression and female passivity as the norm for heterosexual encounters (see for example: Adams 1996; Cahill 2001; Clark and Lewis 1977; Gavey 2005; Holland, et al. 1998; Jackson 1978; McGregor 2005). Empirical research has shown that some degree of coercive sexuality is viewed as part of ‘normal’ heterosexual encounters (see for example: Clark and Lewis 1977; Holland, et al. 1998; Lees 2002; Phillips 2000; Ward 1995). In this way, Ann Cahill argues

that “because women are hard pressed to describe sexual encounters that are not coerced, rape appears not as an exception to, but merely a variation on, normal heterosexual activity” (2001:38). It has been suggested that because women are socialised to be submissive and passive in heterosexual encounters, this puts them at risk from being raped and also explains why women may not offer strong resistance during an attack (see for example: Bevacqua 2000; Eastal 2001; Estrich 1987).

Indeed, Catharine MacKinnon argues that:

“The deeper problem is that women are socialised to passive receptivity; may have or perceive no alternative to acquiescence; may prefer it to the escalated risk of injury and the humiliation of a lost fight; submit to survive”. (1989:177)

This idea of the socialisation of women to be submissive is linked to the myth that ‘if you do not struggle or use physical force to resist a man then you have not been raped’ and it can be seen that, contrary to this myth, there are many reasons why a woman may not offer physical resistance when faced with a potential rape situation.

Another relevant issue here is that in the past police officers have advised women not to resist during an attack as this would minimise their risk of suffering other violence in addition to the actual rape (Hall 1985:73). This is problematic because, historically, rape laws required resistance in order to prove the crime and in some jurisdictions this remains the case today. However, even where resistance is not part of the law, as argued earlier and shown in later chapters, it is expected – and indeed necessary – if a rape charge is to be viewed as credible in court. Allison and Wrightman comment that “it is a sad irony that women are taught to accept the passive role in dating when this role puts them at risk to be raped” (1993:73). It has been argued that “heterosexual norms therefore provide the discursive building

blocks from which to construct a denial of rape victim status” (Anderson and Doherty 2008:7). Thus, it can be argued that the way normative heterosexuality is constructed may make it difficult to clearly distinguish between rape and ‘just sex’.

Some feminist theorists – for example Catharine MacKinnon (1989) and Andrea Dworkin (1989) – have been accused of arguing that heterosexuality is always exploitative and of dismissing women’s positive accounts and experiences of heterosexual relations as them being unaware of their own oppression and suffering from a kind of false consciousness. David Archard critiques the arguments of these theorists for their universalist nature and their lack of acknowledgment of other social factors which may be influential (1998:89). He argues that such an approach may be seen as “the denial of individual consent” (1998:87). However, in her more recent work, MacKinnon rejects such criticisms and vehemently denies proposing such an extreme viewpoint that “all sex is rape” (2005:327). Rather, she states that she has argued that “sexuality occurs in a context of gender inequality” (MacKinnon 2005:327).

It is important not to undervalue female agency in a way that is counter-productive to the main goals of feminism, including the aim of recognising women’s viewpoints as valid and worthwhile. It would be ironic to deny women the right to make a distinction between consensual and non-consensual heterosexual sex and imply that they are incapable of telling the difference. When discussing the idea of all sex as rape, Moira Carmody comments that such a viewpoint should be rejected because it “assumes women have no agency over their own sexuality and that men

are always exploitative” (2004:49). Similarly, Archard comments that such a stance “represents a refusal to take seriously what women themselves take seriously: their own giving and withholding of consent” (1998:97). Hence, Anne Edwards argues that the underlying issue still dividing feminists is whether the “power of patriarchy” is such that “all (hetero)sexual intercourse, even where the two individuals both believe their relationship is based on mutual respect and free agreement, is necessarily exploitative and coercive” (1996:186). I am going to proceed on the basis that to argue that women never have any agency in sexual encounters is far too extreme. I believe that the reality of female agency is far more complicated than such a viewpoint would suggest, in that there are many instances both where women have agency in sexual encounters and also where they are exploited or coerced – and perhaps even both simultaneously. This chapter will now examine the idea of rape as a form of social control of women by men, in order to further describe the context in which rape myths have emerged.

Rape as a form of social control of women

Carol Smart and Barry Smart argue that “rape constitutes a form of social control in so far as it represents a means of keeping women ‘in their place’; a way of constraining behaviour” (1978:100). They comment that it is not rape itself which constitutes a form of social control but rather the internalisation by women, through continual socialisation, of the possibility of rape. Similarly, Odem and Clay-Warner comment that “both as a physical act and a psychological threat, rape is a means of inducing fear in women, limiting their freedom and reinforcing their dependence on men” (1998:xi). Women are told that if they behave in certain ways they will avoid

being raped (see for example: Donat and D'Emilio 1998; Kelly 1996; Morrison, et al. 2007). It has been suggested that these rules serve only to shift responsibility onto women for what other people (i.e. rapists) decide to do, and also to control women's movements and restrict their freedom (London Rape Crisis Centre 1999:4). Women are assumed to have the ability to calculate potential risks and to minimise them (Malloch 2004:121). The idea of rape being a form of social control of women is encapsulated in the following quote by the Australian author, Anne Summers:

“The patriarchal system derives considerable benefit from the existence of rape and it is able to use this to confine women. It instils in women a fear of rape, a fear which is realistic in terms of the risk women are at; but one which is extremely hypocritical since it does not acknowledge the most frequently perpetrated kinds of rape. But the fear is there and it does keep women in line, it does restrict their movements and their actions” (2002:262)

It is argued that since patriarchal societies produce men whose frame of reference excludes women's perspectives, men are able to ignore sexual violence (Scully 1991:116).¹⁸ Wendy McElroy argues that by the mid 1980s, rape had become politicised and was viewed increasingly as “a major weapon ... by which the patriarchy keeps women in their place” (1998:30). Lynne Segal comments that some men may not rape, but only because their power over women is already secured by the rapists who have done their work for them (1990:236). In this way, Susan Brownmiller famously states: “(Rape) is nothing more or less than a conscious

¹⁸ It is important to note that ‘patriarchy’ is a contested term within feminist work. In this thesis I use it to mean a sex/gender hierarchy in which men typically dominate women. It should also be acknowledged that the concept of patriarchy has limitations and fails to acknowledge that male domination is not universal and some women are in positions of power over men some of the time. For further information on the debate over patriarchy see, for example: **Connell, R. W.** 1987 *Gender and Power: Society, the Person and Sexual Politics*: Sydney: Allen & Unwin. and **Walby, S.** 1990 *Theorizing Patriarchy*: Oxford: Basil Blackwell Ltd.

process of intimidation by which ALL men keep ALL women in a state of fear” (1975:15). It is important to stress that few feminists ever actually supported this extreme view that male power is absolute and monolithic and most have much more subtle accounts (see for example: Smart 1989; Walby, et al. 1983). There is a critique of this type of stance on power whereby power is not seen as all pervasive but rather that there are different kinds of discrimination at work, including other social factors such as ethnicity, class and sexuality (see for example: Smart 1989). Wendy McElroy (1998:33), for example, rejects the argument that men as a class have created a mass psychology of rape i.e. that all men are rapists at heart, and all women their “natural prey”. She argues that one needs to be aware that a vital aspect of what is being said in the common statistic that one in four women will be raped – that is that three out of four women will not be raped:

“Even assuming that there is a one-to-one correlation between victims and rapists – a generous assumption, since many rapists commit serial crimes – this means that 75% of all men will never commit this brutal act” (McElroy 1998:33)

Relevant Empirical Research on Heterosexuality, Power and Coercion

This chapter now considers some of the empirical work examining the theories and themes considered above. A key text investigating the social construction of sexuality is that by Janet Holland and her colleagues (1998) “The Male in the Head: Young People, Heterosexuality and Power”. This research involved qualitative interviews with 148 young women and 46 young men, aged 16-21 in two cities in England. The authors found that while young men and young women are “subject to

many of the same sources and messages in sex education, these sources address them (and are heard) in different ways, indicating the gendering of their positions in heterosexuality” (1998:56). “Men are positioned as the agents of this discourse, while women are positioned as the potential victims of a ‘natural’ and active male sexuality, involving both physical and moral danger” (Holland, et al. 1998:56). This can be seen to be linked to the myth that ‘rape is the result of uncontrollable male urges’. In this research, the authors discuss the concept of a “double standard” of sexual reputation, whereby “behaviour that made him successfully masculine ... caused her to lose her reputation ... a reputation policed just as forcefully by women as by men” (1998:11). To be verbally pressured into having sex was considered to be normal sexual practice by many young women in this study. Sue Lees states that “the problem with coercive sexuality is deciding where seduction ends and rape begins” (2002:213). Likewise, Laura Russo, in her paper on date rape in Australia, argues that the normalisation of sexual coercion in intimate relationships is one of the main reasons that acquaintance rape is not recognised as a serious problem (2000:3).

Some researchers have acknowledged that women do have varying degrees of agency within heterosexual encounters and argue that discussion of a monolithic male power is inaccurate. For example, Louisa Allen (2003) conducted empirical research in New Zealand, with six heterosexual couples aged 17-19, and explored how young people negotiate sexual activity in relationships. Her findings suggest that male power may incorporate a measure of agency for women and that this can be viewed within a framework of three types of power. She defines these as: 1) ‘equal power’ where power is supposedly shared between partners; 2) ‘mediated power’

“where young women carve out limited agency within the exercise of male power”; and 3) ‘coercive power’ “in which young men exercise repressive power over young women by attempting to overtly or covertly force them to engage in an activity they do not want” (2003:236). Thus, Allen argues that:

“While heterosexuality can operate as an oppressive institution, its power is not monolithic and neither are young women and men ‘docile’ subjects who act in complete absence of agency within its nexus” (2003:240)

Schwartz and Rutler argue that sexual violence has to be understood in the context of real and perceived male domination (1998:184). It has also been suggested that: “Heterosexuality is not as it appears to be, masculinity and femininity in opposition: it is masculinity” (Holland, et al. 1998:11).¹⁹ In other words, women have negligible power not just in heterosexual encounters as compared to men, but also in the very process of defining what heterosexuality actually is. For women, current models of heterosexuality are restrictive and women’s own ideas of heterosexuality may struggle to emerge at times because the dominant model of heterosexuality is based on the supremacy of male sexual needs and desires. Again, this can be seen to be linked to the myth that ‘rape is the result of uncontrollable male urges’.

Another example of important empirical research in the area is the project described in the article “Talk about Sexual Miscommunication”, by Hannah Frith and Celia Kitzinger (1997). They discuss the popular psychological concept of

¹⁹ Original emphasis

“sexual miscommunication theory”. This theory claims that sexual violence is a problem that can be solved through better communication skills between men and women in heterosexual encounters. According to advocates of this theory “men force women into unwanted sexual experiences because women simply don’t communicate their desires (or lack of them) effectively” (Frith and Kitzinger 1997:520). The authors argue that this theory is useful for women attempting to explain experiences of coerced sex while sustaining heterosexual relationships because it avoids blaming men, gives women a sense of control and obscures institutionalised gender power relations (1997:524). It is also suggested that “by dismissing male exploitation of power as simply ‘misunderstandings’” sexual miscommunication theory helps to maintain female subordination and male dominance (Frith and Kitzinger 1997:524). It seems that one problematic issue with this idea of miscommunication may be in situations where the man is aware that the woman is expressing dissent (i.e. that there has not really been any miscommunication) but that the man then uses the excuse of miscommunication to provide an acceptable rationale for his behaviour. It can be seen from the literature that theoretical ideas about gender and power are seen, by many authors, to be inextricably linked to rape and sexual violence. Stevi Jackson encapsulates this argument in the following quote: “Rape, then, is simply an extreme manifestation of our culturally accepted patterns of male-female relationships” (1978:55).

2.4 Issues with Consent

This chapter now considers some of the legal issues concerning consent in order to demonstrate how rape myths both influence and are influenced by legal

understandings of consent. The law not only reflects but also constructs a very limited definition of sexual violence, and in this way “plays a significant role in denying or trivialising women’s experience of male sexual violence” (Kelly and Radford 1996:19). It has been suggested that:

“By misconstruing the act of rape as a form of sex instead of a crime of violence and control and because the lynchpin of rape is consent, the courts look to a woman’s behaviour to gauge the evidence of the crime” (Oppenheim 1995:86).

The issue of consent is of central importance in the debate over acquaintance rape. It has been argued that, with developments in DNA, it is rarely problematic deciding whether sexual intercourse took place but rather the main issue in most rape cases arises over consent (Lees 2002:109). Since, in many jurisdictions, non-consent distinguishes rape from consensual sexual intercourse, the debate over recent legal reforms has centred on how to establish whether or not there was consent (see for example: Deming and Eppy 1981:372; Heath 2005). As in many Western legal jurisdictions, consent is central to Australian rape legislation reform but, like the UK and US, the Australian criminal justice system is accused of being biased against the rape victim (Russo 2000).

It has been suggested that the category of rape that causes the greatest difficulty for the justice process is where the woman and her alleged rapist “are known to each other, where there is little or no sign of violence, and where it is basically her word against his” (Edwards 1996:180). It is argued that in a stranger rape, a woman’s non-consent is more likely to be assumed, but after even the briefest meeting such assumed non-consent is lost (Nielson and Albiston 1995:152). However, it is the category of acquaintance rape that is increasingly being reported. It has been

suggested that the feminist politicisation of rape made women more inclined to report attacks (Allen 1990:225). It is documented in Australia – as in the UK and the US – that the number of women reporting rape has dramatically increased but at the same time the rate of conviction has fallen sharply (see for example: Heath 2005; Kelly, et al. 2005; London Rape Crisis Centre 1999; Russo 2000; Soothill and Walby 1991). Mary Heath calculated that, in South Australia, convictions for rape and attempted rape totalled only 1.8% of the number of those offences reported to South Australian police in 2002 (2005:5).²⁰ This discrepancy between reporting rates and conviction rates has been termed the ‘justice gap’ (Temkin and Krahé 2008:1). It is also well documented that only a small percentage of sexual offences even make it to the police reporting stage (Fitzgerald 2006). As Jennifer Temkin (2000:221) states:

“Although there have been dramatic increases in the number of recorded rapes over the last decade, the rise in the number of convictions has by no means kept pace ... This points to a persistent difficulty in obtaining rape convictions”

Denise Lievore’s Australian research, into factors impacting the help-seeking decisions of adult female victims of sexual assault, found that the majority of her 36 participants were dissatisfied with their experience of the criminal justice system and indeed many were actually “further traumatised through their involvement with the justice system” (Lievore 2005a:118).

Mens Rea Requirement

Most western legal systems require the following criteria to be satisfied in order for a perpetrator to be found guilty of the crime of rape – the *actus reus* (the unacceptable

²⁰ Heath’s calculations were based on South Australian data from the Office of Crime Statistics and Research 2003

act) and the *mens rea* (criminal intent with respect to that act) (Gordon and Riger 1991:58). Thus, “it is necessary to prove not only that the person committed the crime but also that they intended to commit the crime” (Shapcott 1988:73).²¹ It has been argued that “it is problematic that the injury of rape lies in the meaning of the act to its victim, but the standard for its criminality lies in the meaning of the act to the assailant” i.e. the *mens rea* requirement (MacKinnon 1989:180). Debate about the *mens rea* requirement has centred on whether or not the belief that the woman was consenting should have to be ‘honest’ or both ‘honest and reasonable’. This discussion originated as a result of the 1975 English case of *DPP v Morgan*.²²

In this case, Morgan had told three men that his wife enjoyed being forced to have sex and these men had accompanied him home and had sex with his wife, who resisted as Morgan had said that she would. Initially, all the men were convicted of rape and they all appealed against this conviction. The men tried to argue on appeal that they believed that the woman had consented and that the judge had misdirected the jury that their belief in consent had to be a reasonable one. When the case went before the House of Lords, there was significant discussion concerning the state of mind required for rape and it was decided that an honest belief in consent was sufficient (Douglas 2007:114). Despite this, the men’s convictions were upheld because the judges held that the jury would not have believed in an honest belief in consent in this case anyway. It is important to note that this case had widespread international impact out with the English legal system – for example, within Australian law. Heather Douglas argues that “the majority decisions in the case of

²¹ It should be noted that many jurisdictions include recklessness in their definitions of rape

²² [1976] A.C. 182

Morgan have maintained a surprising level of significance in discussions about rape and consent in the common law jurisdictions in Australia” (2007:114).²³ The circumstances of *Morgan* are also clearly linked to the myth that ‘women say no but mean yes in some sexual encounters’.

Supporters of a ‘reasonable’ belief standard argue that “those participating in intercourse, and particularly men, ought to have an obligation to investigate whether their partner is consenting rather than simply assuming that this is the case” (Tadros 2006:532). It has been argued that even a ‘reasonable’ belief in consent remains problematic because such beliefs “are often tested against societal attitudes about norms of sexual communications – going back to norms about male dominance and persistence and female submission and reluctance” (McGregor 2005:9). However, a major issue which is debated in the literature concerns how such “an objective standard of reasonableness (should) be formulated” –

“Should a jury examine the accused’s conduct by reference to some hypothetical reasonable person, or from the perspective of what would have been reasonable for a person who had the same qualities as the accused?” (Attorney General’s Department of New South Wales 2005:46)

These issues concerning an objective *mens rea* requirement are problematic because it can be seen that traditional rape myths may influence juror’s standards of ‘reasonableness’. This may potentially result in stereotypical ideas about victim precipitation and women ‘asking for it’ influencing what is considered to be ‘reasonable’ behaviour on the part of both the man and the woman.

²³ South Australia is a common law jurisdiction

Re-Conceptualising Consent

An increasing number of jurisdictions are moving towards a legal definition of consent which reflects a communicative model i.e. one based on ‘free agreement’. For example, the Australian state of Victoria has already implemented such changes and recently introduced South Australian legislation states that “a person consents to sexual activity if the person freely and voluntarily agrees to the sexual activity” and outlines in law a range of situations where a person is assumed not to have consented.²⁴ For instance, a person is taken not to freely and voluntarily agree to sexual activity if it is obtained by force or threats; where the victim is asleep or unconscious; or where the victim is intoxicated to the point of being incapable of freely and voluntarily agreeing to sexual intercourse.²⁵ Philip Rumney suggests that “one of the fundamental aspects of communicative sexuality is the idea of mutuality, that is, a form of sexuality which is concerned with exchange and agreement” (2001:899). It could be suggested that this approach attempts to discourage traditional rape myths concerning female responsibility by focusing on both parties in a sexual encounter – rather than just on what the woman did or did not do. However, a major issue with this approach is that “despite being somewhat established in the law, (such a) communicative model of consent has yet to successfully enter the norms of young people’s everyday sexual encounters” (Powell 2007:10).

²⁴ Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008 section 46

²⁵ Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008 section 46

Antioch College, in the US state of Ohio, implemented a campus policy during the 1990s which was based on this idea of communicative sexuality. The code demanded verbal consent before all sexual contact and all students were required to attend an annual educational workshop on consent. The policy stated that students who were asleep, unconscious or incapacitated by alcohol or drugs were not considered to be capable of consent (Pfister 1998:89). This policy was widely criticised as being unrealistic and extreme, as the following quote demonstrates:

“If we follow the Antioch code, we thus seem to be left with an enormous number of acts which require explicit verbal permission. Would people be expected to memorise lists? It is time to look at an alternative approach based on what we know of how people actually negotiate sexual consent” (Cowling 2004:23)

One proposed answer to this within the literature is provided by Michelle Anderson (2005) who, in her article “Negotiating Sex”, argues that there should be a verbal requirement in ascertaining consent unless there is an established prior sexual relationship. This model would require that unknown partners negotiate only penetrative acts rather than each potentially romantic act, which may prove more realistic (2005:122).

The Effect of Intoxication on Consent

There has been a great deal of debate, particularly in the UK-based literature, concerning the issue of intoxication in terms of consent. Discussions about female intoxication are linked to rape myths in terms of ideas about victim precipitation whereby women are perceived as more responsible for rape if they have put themselves in a ‘vulnerable’ situation – for example, if they are drunk. Some authors have argued that if a woman is intoxicated to the extent that her communication is

compromised then she cannot be capable of giving genuine consent (see for example: Cowan 2007b:57; McGregor 2005:146). One issue which has received a great deal of discussion is how to set in law a level of intoxication beyond which an individual is no longer regarded as competent to give valid consent (see for example: Finch and Munro 2004:790; McGregor 2005:150; Office for Criminal Justice Reform 2006:14; Temkin and Krahé 2008). Alcohol is particularly problematic in this context due to its widespread social acceptability and its role in modern heterosexual encounters (Finch and Munro 2003; Finch and Munro 2007). In this way, Joan McGregor (2005:147) states that “alcohol poses a significant problem for consent to sex since men and women use it to ‘get into the mood’ for legitimate sexual interactions”.

Emily Finch and Vanessa Munro have published a series of articles based on their UK research comprising of a series of mock jury deliberations involving trial reconstructions in which intoxicated sexual consent was at issue (2003; 2004; 2005; 2007). One persistent finding was that an intoxicated female rape victim was perceived by many to be less credible and more responsible for the incident than a sober victim. This finding can be seen to relate to myths about victim precipitation whereby women are seen as more responsible for an attack if they are intoxicated and are perceived as having been ‘reckless’ and put themselves in danger. Similarly, Charmaine Cameron and Werner Strizke’s (2003) Australian based research, which examined the reactions of 260 university students to acquaintance rape scenarios involving intoxication, also found that intoxicated victims are assigned more responsibility than sober victims, but intoxicated perpetrators are assigned less responsibility than sober perpetrators. Joan McGregor argues that “intoxicated

women are viewed as shouldering a greater responsibility for being raped than the men who rape them” (2005:148). Jennifer Temkin and Barbara Krahé found that, across their three studies (described previously), women seemed to be blamed for rape situations in which they were intoxicated because they were perceived as having put themselves at risk (2008:120).

Finch and Munro’s research found that participants differentiated between voluntary intoxication and involuntary intoxication i.e. drink-spiking. They found that slightly more responsibility was given to the defendant in cases of involuntary intoxication where the man administered well known intoxicants such as GHB or Rohypnol (2005; 2007). There was also a great deal of misunderstanding of the effects of these ‘date rape’ drugs, for example, “there was a widespread belief that Rohypnol produces an immediate unconsciousness” which is not accurate (Finch and Munro 2005:33). However, “it was notable that only a minority of jurors were able to see parallels between the administration of alcohol and other intoxicants” (Finch and Munro 2007:604). These findings clearly highlight the complex relationship between alcohol, rape and responsibility.

Consent and the Resistance Requirement

Critical commentary on criminal justice systems indicates that there is still debate about what should be taken as legal evidence of consent. For example, there are complaints that if a woman did not resist because she was in shock or terrified, “the defence may claim that this shows she did not strongly object to what was done to her” (London Rape Crisis Centre 1999:52). This clearly links into the rape myth that

‘if you do not struggle or use physical force to resist a man then you have not been raped’ and ignores the effectiveness of threat of force or fear to prevent a woman from resisting, as the following quotes explain:

“In many cases where women are frightened and physically intimidated, we give in (and in court could be said to have ‘consented’) before the threat becomes explicit – in order to avoid it becoming explicit” (Hall 1985:74)

“I think it is reasonable to interpret many acquaintance rape cases as involving the victim ‘reading in’ the threat of something worse if she does not go along, and yet it is surprising how many of these kinds of cases the courts have met with incredulity, as if a man who greatly outweighs a woman could not compel her to have sex, and suggest the threat of physical abuse” (McGregor 2005:166)

Previous UK research findings show that defence lawyers in rape cases are very adept at turning the absence of evidence of violence or resistance into evidence of consent as if a woman cannot show lack of consent by a simple verbal refusal and “hence lack of serious injuries is turned into evidence of consent” (Brown, et al. 1993:207). This ‘resistance requirement’ has been criticised for its requisite that a woman must “risk physical injury or death to be considered a credible witness in a rape trial” (Oppenheim 1995:86). This requirement is problematic because research demonstrates that most men who rape acquaintances do not need to use violence, because the threat is sufficient to cause them to submit (Lees 2002:29). However, recent UK-based empirical research on mock juries found that many participants concluded that in the absence of evidence of resistance, the intercourse which occurred was consensual (Finch and Munro 2005). It is argued that, by requiring

resistance, “the law continues to focus on the victim’s reaction to the crime, rather than the offender’s criminal conduct” (Gordon and Riger 1991:59).

In his recent text, Alan Wertheimer (2003) explores the issue of when a woman’s consent to sexual relations can be regarded as valid. He explores a wide range of issues such as coercion, fraud and intoxication. He argues that: “... the important question is not whether ‘no means no’ but whether ‘yes means yes’” (2003:2). David Archard’s (1998) work also provides a systematic philosophical examination of what is meant by ‘consent’ and what role it should play in the context of sexual activity. It is argued that “a person’s ‘yes’ to sex should not be understood as consent if it is not freely given” (Nelson 1995:61). The England and Wales 2003 Sexual Offences Act attempted to address this issue by setting out in legislation a list of circumstances where consent is considered to be absent – similar to many Australian states and proposed reforms to both South Australian law and Scots Law.²⁶ Stephen Box argues that “by making lack of consent the distinguishing feature of rape, the law misses an obvious point” (1983:123). He explains this in the following quote:

“It is not so much the absence of consent, although that has to exist, but the presence of coercion which makes rape fundamentally different from normal acts of sexual intercourse. In a situation where the female’s choice is severely restricted by the male being able to impose sanctions for her refusal, the question of her consent should become secondary to his ability to coerce. In other words, by focusing

²⁶ It is important to note that some of these lists are exhaustive e.g. England and Wales and others are non-exhaustive e.g. proposed South Australian reforms and proposed Scottish reforms. For further discussion of the England and Wales Sexual Offences Act 2003 see, for example, **Card, R.** 2004 *Sexual Offences: The New Law*, revised Edition: Bristol: Jordan Publishing Ltd. For further discussion of the situation in South Australia see, for example, **Chapman, L.** 2006 *Review of South Australian Rape and Sexual Assault Law: Discussion Paper*: Australia: Government of South Australia. For further information on the proposed reforms to Scots Law see, for example, **Scottish Law Commission** 2007 *Report on Rape and Other Sexual Offences: Scot Law Com No 209*: Edinburgh: The Stationery Office.

on consent under direct physical coercion, the law misses submission under threats of all types.” (Box 1983:123)

Sexual History Evidence

Historically, sexual history evidence has frequently been used to discredit the female complainant in court (Bourke 2007). Most feminists disagree with the argument that sexual history evidence helps to establish whether or not a woman consented to sexual intercourse (Tang 1984:106). It has been shown that, historically, legal defence lawyers have heavily relied on exposing women’s past sexual history in an attempt to discredit them in rape cases (see for example: Brownmiller 1975; Edwards 1996; Heath 2005; Lees 2002; Maybrey 2004; Temkin 2000). As stated by Lynn Jamieson, “questioning (about sexual history) generally fits with the ‘leading the man on’ characterisation of the sexual encounter” (1996:60). This clearly corresponds to the myth that ‘women ask for it through their behaviour, attitudes or dress’ whereby the focus is on the woman for behaving ‘irresponsibly’ and ‘encouraging’ the attack. It also links into myths about impulse theory whereby the man is seen to be less responsible for his behaviour if the woman has behaved provocatively and thus aroused his ‘uncontrollable’ male sex drive. Sue Lees eloquently summarises the feminist criticisms of the use of sexual history evidence in the following quote:

“Sexual history evidence is enormously prejudicial as it plays on all the stereotypes about women ‘asking for it’. The assumption is that if a woman has sex with one man, she will automatically have sex with another because she is that sort of woman; if a woman is sexually active, then she is sexually available; if she says ‘yes’ to one man, then she is more likely to say ‘yes’ to another” (Lees 2002:152)

Jennifer Temkin's (2000) qualitative research with a sample of barristers who were experienced in conducting rape trials found that sexual history evidence was viewed as an important defence tool and that the barristers were confident in gaining permission from the judge to utilise such evidence. Even more importantly, this research demonstrated that the barristers themselves held many of the beliefs and myths about rape which have been problematised in this chapter. More recently, Temkin and Krahe's research with a sample of 121 graduate students engaged in vocational training to enter the law profession in England and Wales found that their respondents were "susceptible to background information about defendants and complainants in line with rape stereotypes" (2008:97). Thus, their research found that even though these participants had been exposed to legal training this did not make them any less influenced by rape myths.

2.5 Consent and the Australian Legal Context

Since the empirical research on which this thesis is based was conducted in Adelaide, South Australia, this chapter now considers in more depth the current legal situation, in regards to the crime of rape, in Australia. In 2002/2003 the Australian component of the International Violence Against Women Survey was conducted and the researchers found that, of the 6,677 women that participated in the survey, over one third of them reported experiencing sexual violence on at least one occasion during their adult lifetime (Mouzos and Makkai 2004:110). The Crime and Safety Australia survey in 2005 found that there an estimated 44,100 adults were victims of at least one sexual assault in the year prior to the survey – this included both reported and unreported incidents (Australian Bureau of Statistics 2005:7). In terms of police

recorded data, 1677 incidences of sexual assault were reported to the South Australian police in 2007 (Australian Bureau of Statistics 2007:20). These statistics provide us with some background in terms of estimated prevalence rates of sexual violence in Australia.

The law on sexual offences applied in Australian courts today has its foundations in the English common law tradition (Heath 2005:3). However, in the last thirty years, there have been major changes to the law concerning sexual offences in every Australian state and territory (Heath 2005:3). It is important to note that each Australian state has its own distinct legislation on sexual offences, although some jurisdictions have similar approaches (Heath 2005:7). The key adult sexual offences for every state and territory have three main elements and each of these elements must be proved beyond reasonable doubt by the prosecution in order to result in a conviction (Heath 2005:19). These requirements are: firstly, physical acts, which meet the definition of “sexual intercourse” or “sexual penetration” in that jurisdiction; secondly, the non-consent of the complainant; and, finally, a specific mental state on the part of the accused (Heath 2005:19).²⁷

In her article detailing the current status of rape and sexual assault laws in Australia, Mary Heath asserts that every Australian jurisdiction recognises that there are some circumstances in which any apparent consent to sex has not been given in a free or willing way (2005:23). However, the range of circumstances in which the law recognises that consent has not been given varies dramatically from one jurisdiction

²⁷ Heath (2005:19) notes that within this framework there is considerable variation between the different Australian states and territories.

to another. It has been suggested that a lack of uniformity in the criminal law throughout Australia has caused “real difficulties in developing meaningful comparative research across the country” due to the variety of different definitions and categories of sexual offences (Model Criminal Code Officers Committee of the Standing Committee of Attorneys- General 1996:2).

As outlined in the introductory chapter to this thesis, in late 2005, the South Australian government announced that they were conducting an overhaul of the state’s rape and sexual assault laws. An independent review was conducted and a discussion paper produced by Liesl Chapman (2006) to stimulate debate as part of the public consultation process. This paper examined the current legal position in South Australia at the time and highlighted possible reforms to the current laws (Chapman 2006). Chapman’s discussion paper drew attention to the fact that all other Australian jurisdictions had already enacted legislation which defined consent and which set out a non-exhaustive list of non-consent behaviours (2006:6). The discussion paper also considered the arguments for and against changing the current subjective or ‘honest belief’ defence to a more objective or ‘honest and reasonable belief’ defence. Other Australian states are divided on this issue with the other common law jurisdictions (Victoria, New South Wales and the Australian Capital Territory) also using the ‘honest belief’ requirement while the code jurisdictions (Western Australia, Queensland and Tasmania) employ the ‘honest and reasonable belief’ defence (Chapman 2006:56). I felt that this climate of change made Adelaide,

South Australia a particularly interesting location for this study and this choice will be defended further in the next chapter.²⁸

Conclusions

The main focus of my research is the ways in which the public engage with rape myths – in terms of both collusion and rejection – and the ways in which this affects their definitions of consent in acquaintance rape scenarios. This chapter has summarised previous research indicating the existence of rape myths at all levels of society. Previous research has suggested that rape myths are highly influential in terms of the ways in which rape is defined, understood and discussed by the public and criminal justice agencies. Legal debates in the area of acquaintance rape have also shown that rape myths are replicated in court based contexts over what is actually recognised as valid consent – both within the law and by jurors on rape trials. I aim to build on this existing work through my empirical study, asking people directly about their beliefs about acquaintance rape, with the goal of finding out more about the ways in which they engage with rape myths.

The main objective of this research then is to examine in depth the ways in which rape myths are upheld and/or challenged in early 21st century South Australian society, specifically Adelaide, through an investigation of how the public converse about acquaintance rape within both group and individual settings. This research is

²⁸ It should be noted that the legislative changes resulting from this consultation process were briefly outlined in chapter one of this thesis. In the current chapter my main concern is with the climate at the time of conducting my research rather than legal changes which were implemented during the writing-up stage of this thesis.

also concerned with comparing differences in the attitudes of men and women. This literature review chapter has demonstrated that consent is a major point of debate and controversy in the literature and thus, I have decided to consider how the public's engagement with rape myths may affect their definitions of consent. The specific research questions which this study attempts to address were detailed in the first chapter on page 11. The following chapter outlines my research design, providing a defence of the data collection methods I have used and the sampling strategy that I adopted.

Chapter 3: Methods and Methodology

The aim of this chapter is to provide an explanation and defence of the choices which I have made in terms of my research design. In order to fulfil the aims of this project I needed to access the public in order to monitor the ways that rape is discussed both within groups and on a one-to-one basis. Data collection consisted of fifteen focus groups – six with men only, six with women only and three mixed gender groups. Vignettes were utilised as a tool to facilitate discussion in these groups. Subsequent individual interviews were conducted with one participant from each focus group. The sample consisted of men and women aged between 18 and 56 who were recruited through snowball sampling from the population of Adelaide, South Australia. The main criterion which was used for purposive selection of this sample was gender, although groups were also structured by age.

This chapter is organised in the following way: Firstly, I briefly outline my theoretical approach to this research in order to provide a context for the research choices made. Secondly, I defend my choice of focus groups and individual interviews as my data collection methods and describe how they were utilised in order to address the research questions outlined in the previous chapter. Next, I outline the sampling strategy which I used and finally, I consider the ethical issues involved in this research design.

3.1 Theoretical Approach

Constructionism and Symbolic Interactionism

I have approached this research from a constructionist epistemology (for a more detailed consideration of this approach see for example: Burr 2003; Crotty 1998; Marshall 1998). Social constructionism can be seen as “a general term applied to theories that emphasise the socially created nature of social life” (Marshall 1998:609). Constructionism states that “there is no objective truth waiting for us to discover it but rather truths, or meanings, come into existence in and out of our engagement with the realities in our world” (Crotty 1998:8). Burr (2003:152) comments that:

“Constructionism would regard objectivity as an impossibility, since each of us, of necessity, must encounter the world from some perspective or other and the questions we come to ask about that world, our theories and hypotheses, must also, of necessity, arise from the assumptions that are embedded in our perspective.”

Marshall (1998:609) states that social constructionist approaches “emphasise the idea that society is actively and creatively produced by human beings – the world is portrayed as made or invented, rather than merely given or taken for granted”. In the constructionist view “meaning is not discovered but constructed” (Crotty 1998:42). In this way, it can be seen that “a constructionist view considers rape to be a social consequence of the social permission that men have to dominate women and a means of reinforcing that status” (Schwartz and Rutler 1998:176). This contrasts markedly with an essentialist viewpoint where rape is seen as a consequence of men’s predatory nature, and is therefore a biological defence of rape (see for example: Thornhill and Palmer 2000). Having detailed my epistemological position it is

logical that my theoretical perspective holds these ideas at its core. The next section will outline my theoretical standpoint of symbolic interactionism in more detail.

Firstly, it is important to acknowledge that the position that is now called social constructionism (as described above) has developed from symbolic interactionism. Symbolic interactionism is a theoretical standpoint which is concerned primarily with the social actor's viewpoint of their world and their personal interpretations of it. It focuses upon "the ways in which meanings emerge through interaction" (Marshall 1998:657). Its methodological stance is that of "direct examination of the empirical social world" (Blumer 1969:47). Early interactionists, such as Mead, shared several characteristics within their approaches, "conceptualising the individual and society as inseparable and interdependent units" (Meltzer and Petras 1972:43). As far as the early interactionists were concerned, the point to be emphasised was not how people communicated, "but the fact that they were influenced by their communications in interaction" (Meltzer and Petras 1972:44). The basic premise "was not that situational factors explain all behaviour, but that knowing the individual's own interpretation of those situational factors was central for understanding his/her behaviour" (Meltzer and Petras 1972:45). Herbert Blumer (1969:2) outlines three basic principles of symbolic interactionism:

1. Human beings act toward things on the basis of the meanings that the things have for them
2. These meanings are the product of social interaction in human society
3. These meanings are modified and handled through an interpretative process used by each individual in dealing with the signs each encounters

Contemporary symbolic interactionism comprises several diverse schools of thought – including the Chicago tradition and the Iowa tradition. However, common to these different variations are the basic premises of symbolic interactionism described by Blumer (see above) and “the substantive view that human beings construct their realities in a process of interaction with other human beings” (Meltzer, et al. 1975:54). The approach which I identify with is that of the Chicago school of thought and this will be the premise for the subsequent discussion. The concept of “**sympathetic introspection**” is central to this tradition i.e. – “the student of human behaviour must get inside the actor’s world and see the world as the actor sees it, for the actor’s behaviour takes place on the basis of his own particular meanings” (Meltzer and Petras 1972:46). The Chicago approach “views human behaviour in terms of the interplay between the spontaneous and the socially determined aspects of the self and is seen as indeterminate” (Meltzer and Petras 1972:49). The position of symbolic interactionism is that “the meanings that things have for human beings are central in their own right and to ignore the meaning of the things toward which people act is seen as falsifying the behaviour under study” (Blumer 1969:3). It is argued that this “taking the role of the other” allows the sociologist to “escape the fallacy of objectivism, i.e. the substitution of one’s own perspective for that of those he is studying” (Denzin 1972:80).

“Too often the sociologist enters the field with preconceptions that prevent him from allowing those studied to tell it ‘as they see it’” (Denzin 1972:80).

Symbolic interactionism “requires the sociologist to first learn the everyday conceptions of this reality and then interpret that reality from the stance of one’s

sociological theory” (Denzin 1972:80). The sociologist must “operate between two worlds” when s/he engages in research – “the everyday world of one’s subjects and the world of one’s own sociological perspective”, in other words “one must maintain the distinction between everyday and scientific conceptions of reality” (Denzin 1972:81). These ideas link to Weber’s concept of “Verstehen” i.e. the notion that “the entire subjective dimension must be taken into consideration for an adequate sociological understanding and, therefore, that sociological understanding involves the interpretation of meanings present in society” (Berger 1963:146). Despite differing views as to the merits and demerits of such an approach,²⁹ I feel that these issues do not detract from the value of symbolic interactionism in highlighting the need to focus on understanding the social actor’s viewpoint.

Thus, the approach of symbolic interactionism fits in with my beliefs about the process and role of knowledge in society in which I give central importance to the meanings that individuals themselves attach to things rather than preset ideas. This theoretical framework is linked to the design of my empirical research in that my concern is to discover the ways in which people’s understandings and meanings may be defended, challenged and/or influenced through interaction with others. In this way, I seek to understand the phenomena of rape from the perspective of the public – i.e. what are their understandings of sexual violence and what ideas do they draw upon when discussing acquaintance rape scenarios? I feel that it is essential to

²⁹ For further discussion of the merits of this approach see, for example, **Blumer, H.** 1969 *Symbolic Interactionism: Perspective and Method*: US: University of California Press. and **Meltzer, B. N. and Petras, J. W.** 1972 'The Chicago and Iowa Schools of Symbolic Interactionism', in J. G. Manis and B. N. Meltzer (eds) *Symbolic Interaction: A Reader in Social Psychology*: US: Allyn and Bacon Inc. There have also been a number of criticisms directed against symbolic interactionism – for an account of these limitations see, for example, **Meltzer, B. N., Petras, J. W. and Reynolds, L. T.** 1975 *Symbolic Interactionism: Genesis, Varieties and Criticism* London: Routledge and Kegan Paul.

prioritise and ensure clear understanding of individuals' own meanings of their social world in order to produce good quality research i.e. 'taking the role of the other'. In terms of analysis, my theoretical approach means that my aim was, as far as possible, to accurately reflect participants' opinions and attitudes within the interpretative framework of my constructionist and feminist stance – where rape is viewed as inextricably linked to male power and female subordination.

Feminist Methodology

My commitment to the research area of sexual violence is strongly influenced by the principles of feminism, particularly my view of rape as a crime whose very existence displays the continuing presence of gender inequality. Like Kelly et al (1994:28), I view feminism as:

“... both a theory and a practice, a framework which informs our lives. Its purpose is to understand women's oppression in order that we might end it.”

It is important to note that feminist methodology is “not a static concept on which there is consensus amongst feminists” (Millen 1997:2) and indeed the idea of a distinctive feminist methodology has been widely contested (Ramazanoglu 2002). I agree with Caroline Ramazanoglu that, regardless of epistemological and ontological differences, feminist research can be characterised as being politically for women; feminist knowledge has some grounding in women's experiences, and in how it feels to live in unjust gendered relationships (Ramazanoglu 2002:16).

I do not believe that there are any research techniques which are distinctively feminist, nor that feminist research can only be done by women or on women.

Rather, I agree with Caroline Ramazanoglu that research is feminist if it is “framed by feminist theory and aim(s) to produce knowledge that will be useful for effective transformation of gendered injustice and subordination” (2002:147). I would agree that “what makes research ‘feminist’ is not the methods as such, but the framework within which they are located, and the particular ways in which they are deployed” (Kelly, et al. 1994:46). The elements of feminist methodology outlined by Claire Renzetti (1997:133) represent my interpretation of a feminist methodology and as such are central to this research and are outlined below:

1. a focus on gender and gender inequality that, in turn, implies a strong political and moral commitment to reducing inequality
2. the goal of describing or giving voice to personal, everyday experiences, especially those of women and members of other marginalised groups
3. a commitment to social action with the goal of helping to bring about change that improves the conditions under which women and the marginalised live
4. a built-in reflexivity that critically examines how factors such as the researcher’s sex, race, social class and sexual orientation, in addition to wider social, political and economic conditions, may influence the research process
5. a rejection of the traditional relationship between researcher and ‘researched’ in favour of an approach that gives research “subjects” more power in the research process

Qualitative Methodology

This research design is based on a qualitative methodology as defined by Snape and Spencer (2003:3-4). I decided to adopt a qualitative approach to data collection for a

number of reasons, but primarily because I was interested in gaining access to people's experiences and understandings. I am concerned not solely with what people think but also how they develop and defend their opinions within both a group context and an individual context. A qualitative approach facilitates insights and interpretations and allows the researcher the opportunity to explore meanings. The methods used by qualitative researchers "illustrate a common belief that they can provide a 'deeper' understanding of social phenomena than would be obtained from purely quantitative data – there is a preference for meanings rather than behaviour" (Silverman 2000:8). I am seeking to provide a deeper understanding of public perceptions of the phenomenon of acquaintance rape and therefore feel that a qualitative methodology will best achieve this.

However, it is important to note that I am not in any way disregarding the merits of quantitative research in terms of increased generalisability and representativeness. Indeed, it has been suggested that in rejecting quantification, "feminists have overlooked the contribution that research involving enumeration has made to our knowledge and understanding of women's experiences" (Maynard 1994:13). Dianne Millen states that both quantitative and qualitative forms of research "provide valuable and potentially complementary information about the social worlds one wishes to understand ... " (1997:153). Thus, I would argue that feminist researchers should employ the data collection methods most appropriate to their own particular research questions – whether qualitative or quantitative. In the case of this research, I feel that the research questions outlined in the previous chapter are best investigated through an approach which is more concerned with

depth of information. The in-depth nature of qualitative research provides an ideal tool for investigating the factors or influences that underlie particular attitudes and beliefs about rape.

Attitudinal Research

It has been suggested in the literature that sociologists are assumed not to be “interested in attitudes as a final object of enquiry but always as part of an ultimate aim of studying the structure of social conduct” (Cohen 1966:60). This explains clearly the use of attitudes in my research. A symbolic interactionist approach to ‘attitude’ attributes great importance to the concept in terms of this being a key way of understanding more about individuals’ interpretations of their social world and the meanings they attach to things. I am seeking to access people’s attitudes towards rape and their use of rape myths in an attempt to discover more about the ways in which such attitudes influence understandings of what constitutes acquaintance rape. Following on from my symbolic interactionist perspective, I believe that the best way to access attitudes and opinions is to ask individuals’ directly. I decided to use a qualitative approach with a necessarily smaller but in-depth sample in order to access the complexities underlying the construction and maintenance of certain attitudes about rape. Studying the public in this way may also help us to understand more about what might happen in juror deliberations in rape trials – since one cannot actually research juries. My aim in this research was to assess the use of rape myths in the public’s discussions about acquaintance rape.

It is important to be aware that there are several limitations and issues involved in researching attitudes rather than facts. Indeed, it has been highly documented that there is lack of a common definition of the concept of ‘attitude’ (see for example: Kiesler, et al. 1969:2). Cohen states that the term ‘attitude’, “both in colloquial as well as in scientific usage”, refers to the tendency of human beings to view things in certain ways and to act accordingly – “... attitudes are complexes of ideas and sentiments” (1966:59). It has been suggested that attitudes provide “a simple structure for organising and handling an otherwise complex and ambiguous environment” (Bohner and Wanke 2002:7). One of the issues which has been raised about attitudinal research is that individuals may “engage in impression management by trying to present themselves favourably or giving a response that seems to meet with social approval, rather than responding truthfully” (Bohner and Wanke 2002:29). However, as Louis Thurstone states: “Even if they are intentionally distorting their attitudes, we are measuring at least the attitude which they are trying to make people believe that they have” (1928:533).

3.2 Data Collection Methods

This section will outline the data collection methods which were employed in order to address the research questions outlined at the end of the previous chapter. I decided that the most appropriate method of collecting data, given my research objectives, ability and resources was a combination of focus groups and individual interviews. In this section I provide a rationale for this choice by examining, firstly, why I chose focus groups as my main data collection method and the role of vignettes in the focus group discussions. Secondly, I outline the supportive role of

individual interviews in this research design and, finally, I demonstrate the techniques which were employed to analyse the data collected.

Focus Groups

I have chosen to use focus groups as my main data generation technique because I am not just interested in individual experiences and opinions but also how these opinions are shaped in social interaction. Focus groups involve participants “discussing a chosen topic collaboratively rather than engaging in a two-way conversation with the researcher” (Allen 2005:42). Catterall and MacLaran state that an analysis of the interaction in focus groups can reveal several things (1997:5). Firstly, they can expose the beliefs and myths about the topic that are shared, taken for granted and/or challenged. Secondly, they can demonstrate the arguments which participants use when their views are challenged. Finally, they can disclose the sources of information people call upon to justify their views and how others respond to these. One of the main aims of focus group research is to “learn more about people’s attitudes, knowledge or social representations” (Hyden and Bulow 2003:319). For this reason, I believe that focus groups are the best data collection method to enable me to achieve my main research objective of discovering more about the ways in which rape is discussed and defined amongst the public.

Rosaline Barbour and Jenny Kitzinger state that focus groups are ideal for exploring how points of view are constructed and expressed (1999:5). The stronger social context enables the researcher “to see how ideas emerge in a more naturalistic setting than individual interviews” (Finch and Lewis 2003:172). Focus groups are a

useful method for accessing “the ways in which people arrive at social knowledge through interaction with their peers” (Green and Hart 1999:21). It has been suggested that the differences between participants allows one to observe “not only how people theorise their own point of view but how they do so in relation to other perspectives and how they put their own ideas ‘to work’” (Kitzinger 1994:113). It is also argued that a focus group should be seen as forming its own social context, “where the content of the data generated cannot be separated from the circumstances in which it was produced” (Munday 2006:95).

Another advantage of this data collection method is that inevitable differences within members of a group help to encourage participants to explain the reasoning behind their thought processes, rather than simply expressing an opinion (Kitzinger 1994:113). One distinctive feature of focus group research is that “participants occasionally alter or even reverse their viewpoint as a result of listening to others’ points of view or hearing others explain their logic” (Krueger 1994:145). Some commentators have considered this a deficiency of focus group research. However, it has been documented that “it is only a weakness if one assumes that people do not change their opinions in real life” i.e. that individuals always develop opinions that remain constant (Krueger 1994:146). I agree with Richard Krueger’s suggestion that since this is hardly the case, it seems that opinion change should instead be viewed as evidence that the members of the focus group are actually behaving ‘normally’ (1994:146). I also agree with claims in the literature that focus groups are extremely useful where “the group process will itself illuminate the research issue” (Ritchie 2003:37). I believe that this is the case with this research because I am predominantly

interested in how people's opinions and views about sexual violence are influenced by everyday social interaction, which obviously is itself a group process. It is also interesting to note that such group interaction is the basis of how juries reach a verdict in rape trials.

With this research method, group dynamics become an integral part of the process with participants "engaged in discussion with each other rather than directing their comments solely to the moderator" (Catterall and MacLaran 1997:1). I believe that minimal researcher intervention in the discussion allows, indeed even encourages, focus group participants to discuss the issues amongst themselves. Also, once one person expresses an unusual or non-conformist view, "others will often be emboldened to do the same, and there can be a more frank and open exchange than might happen in an individual interview" (Finch and Lewis 2003:189). Finally, when respondents are new to a subject matter (in the sense that they do not consider it everyday) "the processes involved in group discussion can facilitate orientation and reflection" (Cunningham-Burley, et al. 1999:195). This may be seen to be the case with the research area of sexual violence in that despite being a familiar concept, it is a topic that is often not discussed at any length during 'normal', everyday conversation.

The main aim of the focus groups was to explore which bodies of knowledge the public draw upon when discussing acquaintance rape scenarios and to discover the continuing adherence to or indeed challenge to rape myths. I believe that focus groups enabled me to achieve my aim of finding out not just about individual

attitudes and opinions but also how these are shaped through social interaction, which may be useful for increasing understanding of, amongst other things, how jurors may discuss such issues in rape trials. Participants were forced to provide their own challenges and/or defence of certain viewpoints, as a result of the group interaction. In this way, the group discussion may raise other ideas about the research topic which, arguably, may never have been triggered out with that group setting. People are forced to defend the attitudes and opinions they express, thus allowing an insight into the thought processes behind their viewpoint. If participants have not even considered why they hold a certain opinion they will be required through the group scenario to consider this, and explore their taken-for-granted assumptions. I would argue that the focus group situation may actually encourage participants to share their views. I believe that this is because participants may gain reassurance from the other people there and be prompted to speak out when they either agree or disagree with a viewpoint that another group member shares. Therefore, it becomes more about what the other group members are saying rather than what the researcher is saying or thinking. For these reasons, I feel that focus groups were an ideal data collection method to adopt for this research.

Limitations of Method

Despite my belief that focus groups were the best data collection method for achieving the aims and objectives of this study, I do of course acknowledge that – like all methods – they have several limitations. One of the main limitations of focus groups is for certain types of participants to dominate the research process (Morgan 1997). In order to try to minimise this issue, when introducing the focus group, I

included a statement about rules of conduct in order to draw attention to this issue and thus hopefully minimise its occurrence. This involved emphasising that it was important to give everybody a chance to share their view and that if someone was talking too much or not enough I may intervene to rectify this. In actual fact, little intervention was needed in the focus groups other than occasionally asking some quieter participants directly for their opinions if they were not contributing as much as the other participants to the discussion. However, I do not in any way claim that this fully eradicated this issue of domination and it obviously remains a problematic feature of this method.

Another suggested limitation of focus groups is that of peer pressure in terms of conformity. The issue of socially desirable responses may be particularly pertinent to this research as sexual violence is such a sensitive area to study. Jenny Kitzinger states that the downside of group dynamics is that the group “may censor any deviation from group standards” (1994:110). The general issue of respondents giving the accounts which they perceive to be acceptable to the researcher obviously applies in most research settings. However, it has been suggested that this issue may be more obvious in the focus group setting where participants may feel under pressure to provide answers which will not be subject to disapproval by other members of the group (Smithson 2000:113). A common criticism of focus groups is that the group exerts a pressure on its participants to conform to a socially acceptable viewpoint, but this can be challenged “so long as the researcher is alert to what is going on and finds ways of challenging social norms and apparent consensus” (Finch and Lewis 2003:188). To try to minimise this issue, in the introductions to the focus

groups I stressed that there were no right or wrong answers and that I was interested in diversity of opinion. However, as above, there is no way of measuring if this did anything to diminish this issue. It is important to note at this point that I try to specifically measure some aspects of group dynamics in chapter seven of this thesis.

Vignettes

It has been suggested that focus groups “offer the ideal setting to make participants ‘do’ something and answer questions in a more active way, taking the discussion more in depth” (Colucci 2007:1424). Researchers have found that participants can be much more helpful in a discussion if they are asked to respond to a “tangible stimulus” rather than “simply an abstract concept or idea” (Greenbaum 2000:105). Thus, I decided to use vignettes as a tool to facilitate focus group discussion in this research. I believe that the use of vignettes provided a new dimension to the focus group which helped to keep the participants’ attention and also gave them the opportunity to frame their ideas and opinions around the situations and the people described in the vignettes. The vignettes also provided a common external reference point for analysis in that they “introduce an element of consistency which can be useful, allowing comparison between the reactions of different participants (and groups) to the same hypothetical example” (Arthur and Nazroo 2003:129). Christine Barter and Emma Renold comment that vignettes may be used for three main purposes in social research: to allow actions in context to be explored; to clarify people’s judgments; and to provide a less personal and therefore less threatening way of exploring sensitive topics (1999:1).

When developing vignettes for use in this research, I used scenarios based on key rape myths with semi-structured follow-up questions. The aim of the vignettes was to provide greater understanding of how the public discusses rape when given the context of actual acquaintance rape scenarios. The vignettes were constructed using information about real rape cases but were an amalgamation of many cases rather than based directly on any particular case. The use of vignettes may also be useful in terms of speculating how jurors may discuss rape when attempting to reach a verdict. Currently, there is no public access to juror discussions and so this kind of research becomes particularly important. The vignettes depicting rape scenarios were presented to participants after a preliminary general discussion regarding beliefs about rape. The vignettes presented problematic and controversial, yet realistic, scenarios for discussion and focused on different issues that I specifically wanted to cover in more depth.³⁰ I deliberately did not include individuals' ages within the vignettes because I wanted to see if participants raised this question themselves i.e. why would it make any difference to whether an incident is rape or not? Except for one case, I also did not include whether the woman herself considered the incident to be rape nor if she reported it to the police or not. This was a deliberate strategy because I wanted the participants to reach their own decisions about whether an incident was rape – and even whether they thought the woman in the scenario would define it as rape. Where I did refer to the woman's view (in one vignette the woman told her boyfriend that she had been raped), this was done to explore participants' ideas about women making false allegations of rape.

³⁰ See appendices for copies of vignettes used

After a general discussion about rape which lasted approximately fifteen minutes the first vignette was distributed. Following the distribution of each vignette, there was a short break of 5-10 minutes for participants to read it through and gather their thoughts before the discussion began. I piloted the vignettes and related questions on a small sample of four individuals prior to data collection to ensure clarity and to highlight any problems. The vignettes did not address obvious force situations, and instead used clearly coercive situations to explore the boundaries of what is seen as constituting rape. I decided to focus on clearly coercive rather than obvious force situations because these are the most controversial and contested forms of rape – as the previous literature review chapter demonstrated. Four different vignettes were distributed to focus group participants and the first question asked after participants had finished reading each one through was whether or not they thought each incident was rape. A simple ‘yes’ or ‘no’ answer was requested from each participant at this stage. Discussion was then opened up and participants could give the reasons behind their choice of ‘yes’ or ‘no’. Group discussion followed about the specificities of each case and participants’ different viewpoints on the issues raised. To conclude each discussion, the final question each participant was asked was whether they would find the man in the scenario guilty or not guilty of rape i.e. if this were a real case, and they were a juror, would they convict the man of rape? Participants seemed to enjoy the process and challenge of having to reach a decision and indeed appeared to take it much more seriously than I had anticipated. Also, the use of specific questions following the distribution of the vignettes ensured that everyone had the chance to express their thoughts as each participant had to say something about what their opinion was and why they had reached their decision.

One of the advantages of vignettes is that they allow for features of the context to be specified, so that participants are being asked to make “normative statements about a specific set of social circumstances, rather than to express their attitudes and opinions in a vacuum” (Finch 1987:105). Vignettes involve discussing the actions of a third party and it has been suggested that “this depersonalisation is advantageous for studies of sensitive social phenomena” (Schoenberg and Ravdal 2000:64). In this way, it is documented that “asking about concrete situations which concern hypothetical third parties has the effect of distancing the issues from the respondent and their own life, and making the questions less personally threatening” (Finch 1987:110). As outlined by Nancy Schoenberg and Hege Ravdal, I feel that the use of vignettes presents a medium through which to “go beyond the discussion of individual life situations and toward the generation of responses on a social level” (2000:64). Participants were reassured that the vignettes were merely a tool to help them formulate their thoughts and there were no right or wrong answers.

A final point to note in relation to the vignettes is that participants were not given the legal definition of rape when asked “Was this rape?” at the beginning of each vignette discussion nor when asked “Would you convict?” at the end of each vignette discussion. There were several reasons for this choice: firstly, I was trying to access participants’ own definitions of rape so felt that I should avoid putting pre-determined legal definitions in their minds. Also, I thought that having to discuss the vignettes within a legislative framework may make the process feel more like a ‘test’ with right and wrong answers – something that I wanted to avoid. Finally, it enabled me to move away from the complexity of legal technicalities within the data

collection process and find out what sorts of factors, out with legal criteria, affected their assessment of whether or not the situation amounted to rape.

Individual Interviews

I chose to use interviews in my research design because it is widely accepted that they are particularly suited to providing access to people's views and opinions, which is the main aim in this research (see for example: Bechhofer and Paterson 2000; Blaxter, et al. 2001; Legard, et al. 2003; Punch 1998; Seale 1998). I decided to undertake semi-structured individual interviews as well as focus groups for several reasons: firstly, it may result in increased reliability and validity of findings through triangulation, in that the individual interviews will provide an opportunity to clarify and/or further explore the findings of the focus groups. While focus groups are useful for analysing social interactions, combining these with individual interviews where respondents are not influenced by group dynamics will improve the reliability of the data by allowing me to explore the consistency of the findings. Another reason is that the individual interviews followed on from the focus groups and so provided an opportunity to examine any particular or salient issues raised in the prior group discussions. Finally, using both focus groups and individual interviews for data collection allows access to both a group account and an individual account. I decided to use a semi-structured format for the data collection process because I feel that this technique combines and utilises effective techniques from the two extremes of structured versus unstructured formats. Semi-structured interviews address certain major questions in the same way each time but "the interviewer is free to alter their sequence and to probe for more information" (Fielding 1993:136). As Tim May

comments, “semi-structured interviewing allows respondents to answer more on their own terms than the structured interview permits, but still provides a greater structure for comparability over that of the unstructured interview” (1997:111).

There are also several limitations resulting from the use of semi-structured interviewing as a research method, of which the researcher should be aware. Firstly, there is no standardisation which means that responses may be very different between interviews. Also, they produce extensive data to be analysed. However, I do not feel that these limitations are of any real significance to this research. The goal of this research was not statistical representation and indeed this is not the main aim of the majority of qualitative research. The aim has been, rather, an in-depth exploration of people’s attitudes towards rape which, by necessity, leads to a small sample due to the time investment required to reach such depth. The analysis of the qualitative data I collected was concerned with thematic exploration rather than statistical quantification. I do not dispute the importance of quantitative research in this area as it is extremely important to have both statistical information as well as in-depth understanding in order to provide a full comprehension of the phenomenon of rape. However, depth rather than breadth was my focus here. I do not believe that my findings only have relevance to those limited few I researched. Rather, I feel that the data collected will be relevant to the broader population. I stress that I do not claim statistical representativeness but argue that my findings may be seen as more than isolated inferences. As Lewis and Ritchie comment:

“... Qualitative research studies can contribute to social theories where they have something to tell us about the underlying processes and structures that form part of the context of, and the explanation for, individual behaviours or beliefs.” (2003:267)

Analytic Techniques

Jennifer Mason (1996:140) comments that the role of the researcher is “to understand lay interpretations, as well as supplying social science interpretations, and to move these towards an explanation”. Transcripts of the focus group interviews and individual interviews were used as the basis for analysis. As suggested by Krueger and Casey, analysis was undertaken concurrently with data collection with each subsequent group/individual interview being analysed and compared to earlier groups/individual interviews (2000:129). I used the first two focus groups and individual interviews as ‘pilot’ interviews. However, as argued in the literature, ‘pilot’ interviews “do not need to be excluded from the data set unless a very radical change of direction or coverage occurs, and so the data collected still contributes to the research findings even if the emphasis changes slightly” (Arthur and Nazroo 2003:135).

Many commentators have noted the limited guidance in the literature in terms of how focus group data should be analysed (see for example: Catterall and MacLaran 1997; Duggleby 2005; Kidd and Parshall 2000). In this way, Wibeck et al state that:

“Some critical reviews of the focus group as a research method ... have pointed out that even though the interaction between focus group participants is considered to be a hallmark of such research, the interaction itself has seldom been evaluated, analysed or discussed in research based on empirical material collected through focus groups. Hence, the particular strength of focus groups, i.e. the interaction between participants, has rarely been explored in and of itself.” (2007:250)

The common criticism has been that the analysis of the data results in focus groups in fact resembling “individual interviews done in group settings” (Colucci 2007:1423).

I agree strongly that researchers who use focus groups and do not consider the impact of group dynamics on the data collected will “incompletely or inappropriately analyse their data” (Carey and Smith 1994:125). As observed by Asbury:

“The whole purpose and value of focus groups rests on the group interaction. To not incorporate this dimension of the data is to suggest that a different methodology should have been used in the first place.” (1995:418)

For this reason, in chapter seven I specifically focus on examining the actual dynamics of the interview situations which created the data analysed in this thesis.

I also agree with David Morgan that neither the individual nor the group constitutes a separable “unit of analysis” and focus group analysis “must seek a balance that acknowledges the interplay between these two levels” (1997:60). I adopted a participant based focus group analysis where the contributions of individual participants are separately analysed within the context of the discussion as a whole; “the information of each participant is retained and interactions between individual members is noted as part of the recording of the group dynamic” (Spencer, et al. 2003:258). In this way, I examined the focus group data on three levels: the group level, the individual level and also a comparison of the individual data with the group data (as advocated by Carey and Smith 1994). I analysed the focus group data through the transcripts themselves (verbal cues), my comments in the transcripts about group interaction (non-verbal cues) and also my field notes about each focus group. As stated by Frankland and Bloor, by virtue of being both moderator/interviewer and analyst in this research, recalling the events of the focus groups and individual interviews themselves I had “a participant’s ‘pre-understanding’” of the transcripts and this understanding was then deepened by

further submersion in the text (1999:147). I examined the group interaction in the focus groups in terms of consensus or disagreement; power dynamics within groups; how the groups' comments built on each other; and how the group interaction prompted new viewpoints. Data from the individual interviews obviously did not require any group level analysis and so analysis was conducted at the individual level combined with my field notes. Individual interview data was also analysed in relation to the equivalent themes from the focus groups and also on a case-by-case basis i.e. a comparison of what individual participants said in their focus groups versus their subsequent individual interview. I analysed the group and individual data using the same methodological approach and integrated the findings in my analysis.

Spencer et al (2003:214/5) suggest three stages of the analytic process and I based my own analysis on these: The first stage is "data management" which involves sorting and reducing the data to make them more manageable as well as generating a set of themes and concepts according to which data are "labelled, sorted and synthesised". The next stage involves "descriptive accounts" in which one makes use of the ordered data to "identify key dimensions and mapping the range and diversity of each phenomenon". The final stage consists of "explanatory accounts" which tend to be developed at the later stages of analysis and find any patterns of association within the data and then attempt to account for why these patterns occur. In the data management stage I used cross-sectional code and retrieve methods whereby "the researcher devises a common system of categories which is applied across the whole data set and used as a means of searching for and retrieving sections of labelled data"

(Spencer, et al. 2003:203). I decided to use 'NVivo 7', a package for the management and analysis of qualitative data, to facilitate this process.³¹

3.3 Sampling Strategy

This section will consider the choices I made regarding sampling. Firstly, I defend the locality chosen for the research and my choice of snowball sampling as my sampling technique. Next, I outline who was sampled and how and finally, I consider the process of data collection in terms of sampling.

Locality

I decided to locate my research in Adelaide, the capital city of the state of South Australia, which has a population of just over 1 million.³² The geographical boundaries of the research locality were a 30 mile radius of the city centre and thus it is important to note that I was examining an urban/suburban population, with no representation of a rural population. However, I would defend this limitation both in terms of limited resources and also the fact that most people do live in urban areas.³³ Another important point to note is that research participants were limited to people who did not have any professional interest in the subject. I will now provide a defence of my choice of Adelaide as the locality for this research project.

³¹ Obviously I acknowledge that this is not the only computer package that is available for these tasks

³² Source: <http://www.ga.gov.au/education/facts/capital/s.htm>

³³ Source: <http://www.unfpa.org/swp/1996/ch3.htm>

Current Reliance on International Research

It is suggested that there has been a tendency to rely on overseas research and policy initiatives to inform developments in Australia, “without a critical and detailed examination of what is already happening within Australia” (Putt and Higgins 1997:39). Thus, this study is important in terms of contributing to fulfilling a need for more Australian based research on attitudes towards sexual violence.

Current Review of South Australian Rape and Sexual Assault Law

In the past, South Australia was one of the most reforming states in the country but legal reform seems to have stagnated in recent years. South Australia was the first Australasian parliament to redefine rape in terms of the effect upon the survivor, not her husband or father (Shapcott 1988:20). In 1976, South Australia made rape in marriage a criminal offence – the first such measure in the English speaking world (Robertson 1987:111). This is seemingly progressive and suggests an awareness of acquaintance rape issues. This move could be seen as acknowledgement of the inaccuracy of the ‘real rape’ stereotype – involving a violent act committed by a stranger at night in an isolated place. However, this implied progressiveness appeared to be illusionary as the state has seen negligible reform to rape legislation since this time, despite widespread reform to rape laws in other Australian jurisdictions – in particular, Victoria. However, in late 2005, the South Australian government announced its intention to pursue a comprehensive overhaul of the state’s rape, sexual assault and domestic violence laws. Following this, Liesl Chapman (2006) prepared a discussion paper on this matter and comment was invited on the document. This current climate of review makes Adelaide, South

Australia a particularly interesting research site for this study into attitudes toward rape. Are people in Adelaide, South Australia aware of this review? Do people in Adelaide, South Australia have stereotyped views towards rape i.e. is there a strong adherence to rape myths? How does this affect their understanding of consent in acquaintance rape scenarios? These questions are addressed in the course of this research.

Snowball Sampling

I used snowball sampling in order to locate participants for this study. I felt that one of the main issues involved with my sample was a lack of motivation to participate in the research.³⁴ I tried to overcome this recruitment problem by using snowball sampling with people known to me. I asked my own acquaintances if they could suggest anyone they knew who may be willing to participate in my research. I did not wish to use my own circle of acquaintances as a sample but felt that asking them to suggest potential participants was acceptable as it still resulted in a sample unknown to me. I also felt that respondents were more likely to agree to participate in – and also actually attend – a focus group when they had been approached by a friend initially, because it then became a favour to them. Thus, this provided the motivation to become a research participant. The criterion which was used for purposive selection of my sample was gender. I decided to use gender as one criterion on which to base my sample precisely because the heterosexual rape of

³⁴ The reason that I felt that this may be an issue was because of my experience when conducting previous research on attitudes toward rape where recruitment was one of the main difficulties that I faced.

women – the focus of this research – is a gender specific reality and also because one of the aims of this research is to compare male and female attitudes toward rape.

Demographic Characteristics of Sample

Age Range

I did not initially wish to focus on a specific age range because my target population is the general public and this, by its very nature, denotes a wide age range. I expected there to be some variation in attitudes by age. The use of snowball sampling as my recruitment strategy meant that my sample was unlikely to cover all ages without particular efforts to ensure this. Pragmatically, I decided to seek a narrower age range from 18 to 49, assuming that a thirty year age span was sufficient to allow a pattern of age difference to emerge. Because of the small sample size and snowball method of recruitment, I make no claims about my sample being representative of the adult population within the age group. However, despite a lack of representativeness, I believe that my sample is adequate for my purposes in this research. I am working within a qualitative framework and, therefore, I adhere to the principle that my sample should help me “to understand the process rather than to represent (statistically) a population” (Mason 1996:96). I am interested in processes and meanings which do not require large samples.

My focus is on theoretical generalisation which means that, firstly, although my analysis is not based on a statistically representative sample there is no reason to assume that my sample is necessarily atypical and, secondly, that the rigour of my analysis enables me to make some claims for the “wider resonance” of my findings

(Mason 1996:153/154). As stated by Richard Krueger and Mary Anne Casey, my goal is to go “in-depth to the topic, and therefore, spend a sizeable amount of time conducting research with a small number of people” (2000:203). Michael Bloor et al summarise this in the following way:

“Systematic random sampling is less important here because the aim ... is not to make generalisations to a population in the same way that large-scale quantitative methods may have as their goal.” (2001:30)

I decided to target people aged between 18 and 49 years old because this was the widest age range I could feasibly conduct data collection with within the time frame I had in Adelaide.³⁵ I felt it was important to conduct two focus groups with each age band (and gender) in order to improve the reliability of the data in terms of making subsequent claims of patterns of difference according to age. The table below illustrates how I set out to structure my data collection:

Age Range	Male only focus groups	Female only focus groups	Mixed gender focus groups	Individual interviews
18-29	2 (groups)	2	1	6
30-39	2	2	1	6
40-49	2	2	1	6

Table 3.1

I believe that not restricting my sample to a narrow age range was important to allow as extensive a picture as possible to emerge of how acquaintance rape is constructed and discussed amongst the public. I decided to structure the focus groups in accordance to these age bands, and to keep similar ages together, because I wanted to examine whether there were age as well as gender effects on the way that acquaintance rape is discussed.

³⁵ I spent eleven months in Adelaide

The adoption of snowball sampling as my recruitment strategy resulted in the focus groups consisting of participants who were known to each other (albeit to varying degrees) and thus they tended to be of approximately the same age range. A number of participants remarked that they had only agreed to take part in the research because they knew other people who would be in the same group and so it was less daunting for them. Thus, it is likely that participants would have been more reluctant to take part in a group if they were not going to know anyone else participating. Therefore, it was a pragmatic decision to keep similarly aged people together in these bands.

It is important to note that the age ranges shown in the table above were my target sample and there was some deviation from this in the actual sample. Appendix two shows a detailed breakdown of the composition of the focus groups in my actual sample. There were three participants who were aged between 50 and 56 (one female and two male participants) which means that 95% of the sample was within the target range of 18 and 49. The majority of participants (74% n=48) were in the intended age range of their particular focus group. If there had been clear differences by age I would have expected differences between 'older' and 'younger' focus groups. In fact, I found no systematic age difference whether conducting analysis by focus group or by individuals. So, although I set up my research to explore potential age differences (as described above), none were identified in the analysis and this is why differences in findings according to age do not feature in the following chapters.

Genders

I chose individuals of both genders because I am interested in the attitudes of society as a whole. I do not believe that one gender alone can provide sufficient answers to the questions I wish to explore. I believe that in order to further understand the inherent complexities of rape one must consider the viewpoints of both potential victims and potential perpetrators. There is a common assumption that feminist research is research on and with women. Kelly et al comment that: "... if our concern is to understand women's oppression we need to target our attention on the ways it is structured and reproduced" (1994:33). I would suggest that it is extremely important for feminist research to study men and men's lives in order to provide a full understanding of gender relations – with a view to ending women's oppression. In this way, "studying women's lives as a feminist means that male dominance, masculinity and men are always part of the research" (Kelly, et al. 1994:33). I believe that if we do not investigate men's views on sexual violence (not just convicted rapists) then we are further contributing to a one-sided view of sexual violence. Men's attitudes need to be researched in just as much depth as women's, if we have any hope of finding any solutions to the problem of rape.

Other Social Factors

Obviously rape is a crime which has at its heart issues surrounding gender relations. Gender was the main focus of this research and so I recruited almost equal numbers of men (n=33) and women (n=32) to participate in this study. I also took into account age effects by structuring the sample in accordance to certain age bands (see above). Due to the snowball nature of my sampling process, it was difficult to ensure access

to a wide cross-section of the population in terms of social factors such as class, ethnicity etc. I collected information from participants about their occupation and this can be used as a proxy measure of social class.³⁶ My allocation of social class was based on the *UK National Statistics Socio-Economic Classification*.³⁷ I used the three category version which consists of:

- 1) Higher occupations (higher managerial and professional)
- 2) Intermediate occupations
- 3) Lower occupations (routine, semi-routine and manual)³⁸

According to the occupational data supplied, most of my research participants were employed in category three – lower occupations (53.84% n=35); just over a third were in category two – intermediate occupations (44.62% n=29) and only one participant was employed in a category one – higher occupations – position. It should be noted that there is a clear lack of representation of very affluent participants. The majority of my research participants were involved in manual or semi-skilled non-manual occupations, with some examples of employment being sales, customer service and plumbing. Ten out of the fifteen focus groups which were conducted were mixed class. Of the remaining five focus groups, two female groups and one mixed gender group were composed of only lower middle class participants, and, two male groups were composed of only working class participants. In terms of the individual interviewees: 40% of the sample were involved in category two employment – intermediate occupations – and 60% of the sample were engaged in category three occupations – routine and manual.

³⁶ See Appendix 2 for more information on the class of participants

³⁷ Source: <http://www.ons.gov.uk/about-statistics/classifications/current/ns-sec/index.html>

³⁸ Source: <http://www.ons.gov.uk/about-statistics/classifications/current/ns-sec/index.html>

Data was also collected regarding whether my research participants were Australian born or overseas born.³⁹ In my sample, 80% of participants were Australian born with the remaining 20% being born overseas. This correlates closely with statistics from the 2006 census which reveal that 74% of the South Australian population were Australian born and 20.3% of the population were born overseas (Australian Bureau of Statistics 2008:162).⁴⁰ All of those participants in this sample who were born outside of Australia originated from the UK. In the 2006 census, migrants from the UK constituted 39.2% of the South Australian population (Australian Bureau of Statistics 2008:162). This was by far the largest percentage, with the next most popular origins being Italy (7.3%), Germany (3.9%), New Zealand (3.7%) and Greece (3.5%) (Australian Bureau of Statistics 2008:162). Obviously my sample did not reflect other migrant populations apart from the UK. Eight of my focus groups were composed solely of Australian born participants and the remaining seven focus groups were made up solely of overseas born participants. There were no focus groups composed only of overseas born participants. In terms of the individual interviewees: 75% of the sample were Australian born and the remaining 25% were overseas (UK) born. The ethnic composition of this sample was predominantly white (98%) – with no aboriginal representation – and predominantly heterosexual (98%). If developing a larger-scale research project obviously it would be useful to investigate how these other demographic factors – such as class, sexuality and ethnicity – may influence one’s findings.

³⁹ See Appendix 2 for more information on participants’ birthplaces

⁴⁰ The remaining 5.7% of the population were classified as ‘birthplace not stated’ in the 2006 census.

Data Collection

I conducted fifteen focus groups in total – six with men only, six with women only and three mixed gender groups. I also carried out fifteen follow-up individual interviews with one participant from each focus group. Each focus group consisted of four to six individuals. This figure is widely recommended (see for example: Bloor, et al. 2001:26; Finch and Lewis 2003:192). Groups of this size are said to offer distinct advantages over larger groups such as greater opportunity for all participants to speak and fully express their views, and the ease of moderating a small as opposed to a large group (Munday 2006:96). This strategy provided me with a total sample of n=65 which I believe provided data saturation whilst still being feasible in terms of resources, particularly time. As stated by Julius Sim, I consider saturation to occur when no new issues seem to be forthcoming (1998:349).

I conducted individual interviews with one participant drawn from each of the focus groups in order to provide as wide a cross-section of views as possible. Only one participant from each focus group was interviewed due to a lack of time to conduct any more interviews, although obviously it would have been preferable to interview more focus group participants. Each individual interviewee had already attended a focus group, so inevitably had been influenced to a greater or lesser degree by that discussion on the issue. I decided to conduct the focus groups first rather than the individual interviews because I felt that it would be unfair and would distort the data for one individual in the group to have prior knowledge and to have already discussed in depth the research area. I decided to conduct the individual interviews with participants who had already taken part in a focus group because it

would give me a chance to clarify and/or follow up on points raised in each focus group, and also it gave them an opportunity to consider and clarify their thoughts on the topic – perhaps allowing for a more extensive discussion of the underlying processes. I was also able to discover whether they expressed the same attitudes in both data collection methods and monitor the influence of group dynamics on their contributions. Focus group participants were asked to indicate whether they would be willing to take part in an individual interview at a later date.⁴¹ From these volunteers, interviewees were chosen randomly from each focus group.⁴²

As explained above, I decided to separate men and women in the data collection process. I was concerned that some participants may have felt threatened or unable to talk freely in groups of mixed genders on this subject. However I did include three mixed gender groups in my sample because I felt that it would still be interesting to consider whether rape is discussed in a different way in single versus mixed gender groups. Each focus group lasted 1 ½ - 2 ½ hours, and each individual interview was approximately 1 hour in duration. Prior to the data collection, I sent out participant information leaflets and consent forms.⁴³ Two copies of the consent form were distributed – one to be completed and returned to the researcher and one for the participant to retain.

⁴¹ All focus group participants volunteered to take part in a subsequent individual interview

⁴² For each focus group, participants' names were written on separate pieces of paper which were then folded and put into a bowl and one drawn at random by myself

⁴³ See appendices for copies of the consent form and participant information leaflet distributed

3.4 Ethical Issues

In relation to social research, ethics refers to the “moral deliberation, choice and accountability on the part of the researcher throughout the research process” (Edwards and Mauthner 2002:14). In this research I followed the University of Edinburgh’s ‘School of Social and Political Studies Research Ethics Policy and Procedures’ and also adhered to the Australian Sociological Association’s ‘Ethical Guidelines for Research’ and the British Sociological Association’s Professional Standards. In this section I begin by considering the issue of informed consent, including the sensitivity of the topic under study. Secondly, I consider issues around confidentiality and anonymity, and power relations within the research setting. Finally, I contemplate the researcher’s influence on the data collection process and concerns with interviewing men as a female feminist researcher.

Informed Consent

It is now expected that researchers “take responsibility for informing potential participants of the aims, methods and funders of a study and the use to which the findings will be put, before they are asked to decide if they will participate” (Gillies and Alldred 2002:152). There was the possibility that some respondents in this research might experience discomfort or distress on account of the nature of the topic under investigation. The concept of sensitivity is socially constructed and what matters in the research situation is what the interviewee finds sensitive. In order to try to minimise this issue I fully briefed potential respondents on the nature of the study and what their participation would entail. I provided contact details and

availability of the researcher so that participants could contact me about the project if they wished – both prior to and after the data collection. I also made it clear to participants that they could decide not to participate at all or could choose to leave at any point in the discussion. I provided the contact number of a suitable support agency for follow-up support and also ensured informed consent in writing. I was clear to the research subjects about the purposes, intended, and possible uses of this research. I conducted the data collection in a private setting due to the sensitive nature of the topic under investigation. Participants may not have been comfortable with individuals outside the group possibly hearing their opinions, which was a distinct possibility if locating the research in a public setting.

Confidentiality and Anonymity

I tape recorded and fully transcribed both the focus groups and the individual interviews. The recordings of the interviews were then destroyed. I also took written notes on the main themes of each focus group and individual interview in the immediate aftermath of data collection i.e. within one day. In order to safeguard confidentiality and anonymity no full names appeared on either the tapes or on the transcripts of the interviews. It was made clear to participants that they may be quoted in the thesis by first name. However, participants were asked to indicate whether they wished their own first names to be used if they were referred to in the write-up or if they would prefer a pseudonym to be used. If they wished a pseudonym to be used, they were asked to select it themselves. This information was collected on a private form distributed at the end of the discussion. This was so that

participants did not feel under pressure to opt for a particular choice – either due to group pressure or perceived researcher preference – they were free to decide for themselves. I decided to give participants this choice because in my previous research on this topic I automatically allocated pseudonyms to preserve individuals' anonymity but it emerged after the research was completed that a number of participants would have preferred to have been identified with their words through the use of their real name. Therefore, this choice enabled each participant's individual preference to be respected.

Confidentiality can be ensured for those participants involved in one-to-one interviews but focus group research is a little more problematic. Although confidentiality and anonymity can be guaranteed from the point of view of the researcher, the same guarantee cannot be afforded to the other members of the focus group. Morgan (1997:32) comments that one unique ethical issue in focus groups is the fact that what participants tell the researcher is inherently shared with other group participants as well. The researcher does not have control over what the participants may disclose after they leave the research setting. When beginning the focus groups, as suggested by Smith (1995:483), I included in the introductory statement comments that acknowledged this potential problem and requested participants not to share what others in the group said with outside individuals. Also, I made it clear that all the information given would be strictly confidential unless it was a criminal issue in which I would be duty bound to report it to the relevant authorities.

Power Relations

Power is an important issue in the interview setting and traditionally “the interviewer is assumed to have power over the respondent who is given a subordinate role in this context” (Burgess 1984:101). Feminist perspectives on interviewing stress preference for non-hierarchical research relationships, “arguing that this enables greater openness and insight, a greater range of responses and therefore richer data” (Punch 1998:179). Given the influence of feminist methodology on my research design, it is logical that I adhere to this viewpoint. It has been argued that power relations may also be minimised by virtue of a shared gender identity i.e. a female researcher interviewing women can more easily extract information (Finch 1984:71). Whilst I agree with Finch’s (1984) basic argument, I feel extremely wary of viewing women as a homogenous group in this way and suggest that there are problems involved with using women as a unitary category because this ignores other power imbalances which can still exist alongside gender e.g. class and race.

It has been suggested that there is “always an ethical problem surrounding the issues of ‘interpretation’, in terms of how exactly does a researcher make sense of data derived from the voices of others?” (Clough and Nutbrown 2002:82). The analysis of interview data is an ethical issue because it “exposes power and privilege in relationships, decision-making around maintaining or curbing relationships with research subjects and the potential for profound relational violations” (Doucet and Mauthner 2002:139). Olesen states that one of the ways in which a researcher can possibly avert criticisms about the credibility of their work is by “... taking the account back to the respondents” (1994:166). In light of this, I obtained feedback

from the research participants in order to improve the validity and reliability of my work. This was done by providing a summary of the main findings for each focus group and sending it to each participant. Participants were then invited to comment on whether they felt this was a fair representation of what was discussed in that particular group. They were also asked if there were any points that they would like to comment upon or add.

By doing this my research moved towards a more participatory format and the participants of the research became further involved in the research process. There is a significant move towards an ideal of a non-hierarchical research relationship between researchers and researched. Participants were given increased power through their ability to exert control over the researcher's interpretations of their words. In this way, I believe that by endeavouring to involve participants further in the research process more significant claims of the validity and reliability of findings and conclusions can be made. In practice, there were no examples of participants disagreeing or challenging the summary provided but rather, in fact, all participants agreed with the summaries provided. This is encouraging as it implies that my summarising of the main points of the focus group discussions was perceived as accurate.⁴⁴ However, it is also important to remember that the summaries were purely based on the actual content of the groups rather than providing any interpretations of these findings – which would possibly have invoked a greater degree of disagreement! The commitment to participatory research outlined in this section stresses the importance of this goal to my research design.

⁴⁴ Of course it should be acknowledged that it may just be lack of motivation (for whatever reason) to correct my interpretation.

Researcher's Influence

Blaxter et al state that research “should be as open and transparent as possible in terms of its intentions, methodology, analysis and findings” (2001:16). Hilary Arksey and Peter Knight (1999:54) outline criteria for qualitative researchers as consistency, truth value and neutrality and I have adopted these criteria as a basis for demonstrating the credible nature of my own research. The type of information sought in this research required a neutral, non-judgmental persona which was at times in conflict with my true feelings about the subject – an issue I tried to be aware of. As argued earlier, focus groups are said to be less amenable to the researcher's influence as participants are more focused on addressing each other (Wilkinson 1999:70). However, despite this benefit the fact remains that no interview “is ... a neutral tool because the interviewer creates the reality of the situation” (Punch 1998:182).

Feminist methodology is critical of the notion of value-free social research in that “no researcher can ever be completely objective in their work” (Renzetti 1997:132). I would also agree with Claire Renzetti that despite this, one should still be committed to “the ideal of keeping one's research free from the ‘contaminating’ effects of personal beliefs and sympathies” (1997:132). One issue that arose in the course of my data collection was my own personal feelings regarding some of the clearly patriarchal statements made by participants and the feeling that I should be countering and resisting participants' use of rape myths in their discussions. It was difficult for me to stay silent in such cases due to my personal beliefs and feelings about the subject. However, I felt that it was important for my role to remain as

neutral and objective as possible. I believe that if I had challenged participants in such situations then this would have resulted in the whole research process being compromised as there would have been a danger that participants would then be reluctant to share their true opinions if they risked being challenged by the researcher. Despite my commitment to this stance, my worry about seemingly colluding with patriarchal statements was problematic for me. I constantly returned to the question of whether by not challenging them I was contradicting my feminist stance.

Another issue which I encountered in the course of data collection was that of women talking to me about experiences that I would define as rape but which they clearly did not. In the same way, Nicola Gavey found that many women in her research talked to her about experiences that they did not call rape but which she found “difficult to see as just sex” (2005:136). By not challenging these women’s normalising processes was I contradicting my feminist stance? Should I have been trying to make these women see that what happened to them was rape? Was I reinforcing the very thing that I am attempting to challenge – i.e. rape myths – through my silence? I decided to retain my neutral role despite this making me feel uncomfortable because I felt that there are many reasons why women choose not to label their experiences as rape and it was not my place to directly challenge this in this context. As Gavey (2005:179) argues, the question needs to be: “Why do so many women who have had experiences consistent with a legal definition of rape resist the label of rape victim?” Obviously, more research is needed on this issue and

it should be noted that this was not within the scope of my research questions at this time.

Interviewing Men as a Female Feminist Researcher

As highlighted by Deborah Lee, “in stark contrast to feminist interest in the dynamics of woman-to-woman interviewing, feminist reflections on women interviewing men remain in disappointingly short supply” (1997:554). One of my concerns with this research area was whether being a female moderator with male participants would be problematic, in the sense that it may discourage true attitudes and opinions. Janet Smithson states that while it might seem ideal always to have a moderator from a similar background to the participants (in my case, of the same gender), having the same moderator for all groups is also useful, as one can ensure that the same issues are addressed in all groups, as well as helping analysis (2000:111). Despite my concerns, both male focus groups in my exploratory study in this area started discussing the issue easily and seemed eager to share their viewpoints. However, this was an issue I continued to bear in mind in the main data collection process, although it did not appear to cause any problems.

Another, much less considered point is that of potential risk to the female interviewer when interviewing men. Deborah Lee (1997) addressed this issue in her article “Interviewing Men: Vulnerabilities and Dilemmas”, but there appears to be very little other analysis in this area. Lee argues that the very nature of a one-off interview means that the female interviewer has no prior knowledge of her male informant against which she can judge whether or not to feel threatened or concerned

by the prospect of interacting with him in a private setting (1997:555). I believe that this potential risk factor is an important issue which should be subject to more sustained consideration in interviewing literature. Lee stresses that she does not want these concerns to be interpreted as arguing for the policing of women's movements or that women should not interview men, but rather that female researchers should be aware of this potential risk in order to maximise their safety in the data collection process (1997:555). Luckily, I never felt at any risk in the course of the data collection for this research but I do feel that it is an important and under acknowledged concern for female researchers interviewing men.

Conclusions

This chapter has outlined and defended the choices which I made in my research design. The main aim of my research is to access people's understandings of acquaintance rape and their use of rape myths. I adopted a qualitative methodology in order to access the depth that I feel is required to understand the complexities underlying the construction and maintenance of certain attitudes. Focus groups were the primary research method utilised due to their suitability in terms of meeting the aims and objectives of this project i.e. exploring both the group and individual dynamics. These were combined with follow up individual interviews whose main aim was to further explore the issues raised in the focus group discussions. Vignettes based on acquaintance rape scenarios were used in the focus groups as a tool to facilitate discussion and also to provide more understanding of how rape scenarios are discussed within a group context. I felt that it was extremely important to ensure that the group dynamics were included in the analysis process and so data analysis

considered the data at three levels: the group level, the individual level, and also a comparison of the individual data with the group data. The qualitative software package NVivo 7 was used as a tool to assist coding and analysis procedures.

This research was located in the city of Adelaide, South Australia. I felt that this was an interesting research site due to the review of rape and sexual assault laws which was being undertaken in the state at the time of data collection. Snowball sampling was used in order to locate participants for the study and this resulted in a sample size of n=65 which I believe was sufficient in terms of both data saturation and feasibility. I moderated fifteen focus groups in total – six with men only, six with women only and three mixed gender groups. I also conducted fifteen follow up individual interviews with one participant from each focus group. The main criterion which was used for purposive selection of this sample was gender, although groups were also structured by age to see if there were age as well as gender effects. The next section of this thesis explores and analyses the data which was collected, and begins with chapter four which considers the issue of determining consent in acquaintance rape scenarios.

Chapter 4: Determining Consent in Acquaintance Rape Scenarios

“Too often a case can fail on the question of what is consent, so we will make certain that the new (South Australian) legislation defines consent as being free and voluntary”⁴⁵

Feminists have long argued that “the law’s understanding, not only of what shall count as consent but also of what shall count as the absence of consent, is defective” (Archard 1998:140). All participants in this research agreed that rape is distinguished from a “normal” sexual encounter by lack of consent. However, it was clear that the problematic issue for participants was how consent and non-consent are actually determined in everyday life. As argued by Ramon, while the laws of rape in many jurisdictions have been broadened over recent years, in practice “consent is still something that is presumed unless the victim can prove otherwise” (1997:345). In most Australian jurisdictions it remains the case that because the law sees lack of consent as the only thing distinguishing rape from sex, “the emphasis is on the woman to defend how she communicated lack of consent to the accused” (McSherry 1998:377). In South Australia, the current law on consent is based on the common law.

“The common law is that consent must be free and voluntary. It is a state of mind. The complainant may by words or conduct or both signify whether he/she gives consent. The question of consent is one of fact to be decided by the jury” (Chapman 2006:47)

However, as outlined in an earlier chapter, proposed changes to South Australian rape laws include modification of how consent is defined in the law. It is important to note at this point that data collection for this research was undertaken during the

⁴⁵ South Australia’s Attorney-General, Michael Atkinson, 25/10/2007, www.ministers.sa.gov.au/news

time of public consultation on the *Review of South Australian Rape and Sexual Assault Law: Discussion Paper*.

As examined in the previous literature review chapter, there is an extensive amount of both Australian and international academic literature detailing “the inherent problems with the legal concept of consent and how to define consent so as to give it appropriate contextual and contemporary meaning” (Attorney General's Department of New South Wales 2005:33). As Jennifer Temkin (2002:166) states:

“The non-consent requirement undoubtedly gives rise to a host of problems. It ensures that the complainant rather than the defendant is the object of attention at the trial. The prosecution must prove beyond all reasonable doubt that there was no consent and the defence will be irresistibly tempted to raise that doubt by suggesting that the complainant is the type of person who might well have consented”

Since women who bring rape complaints often have medical evidence of sexual intercourse having taken place, it is consent which becomes the central issue and courts find this particularly difficult to determine, especially where there is no visible sign of physical violence having been used (Edwards 1996:179). This is also especially problematic because perpetrators of acquaintance rape often do not need to use any additional physical violence (Lees 2002:29).

This chapter examines participants’ ideas about the concept of consent and how it may be determined in sexual encounters. Firstly, I consider participants’ reactions to some of the legal aspects of consent, such as the idea of a list of circumstances which would automatically invalidate a person’s ability to give consent and their opinions on whether consent should be defined in law or left to individual jurors to interpret. Secondly, I examine participants’ ideas about what

exactly constitutes consent, including ideas about verbal versus non-verbal consent, education about consent, and the role of positive consent in sexual encounters. Finally, I outline the issues which were raised by participants regarding consent within the context of each specific vignette discussion. It is important to note that unless specifically mentioned there was little divergence in opinions expressed according to age or gender.

4.1 Participants' Reactions to Legal Aspects of Consent

As the literature review chapter highlighted, in late 2005 the South Australian government announced that they were conducting an overhaul of the state's rape and sexual assault laws. An independent review was conducted and a discussion paper produced to stimulate debate as part of the public consultation process. None of the focus group participants in this research had any specific knowledge about rape laws in Australia – other than that rape is illegal. In addition, almost all participants (95% n=62) were unaware that South Australian rape laws were currently under review. This is despite the fact that there was some media coverage of the fact (although limited). Of the three participants who were aware of the review, one male had heard about it from his girlfriend and the other two females had learnt about it as part of their social policy course at university. This suggests that there is very little awareness or knowledge amongst the public about the Australian criminal justice system when it comes to the crime of rape.

Proposed List of Circumstances Which Would Automatically Invalidate the Ability to Give Consent

Individual interview participants were given a list of situations where consent may be invalid and were asked whether they agreed or disagreed with each statement. This list was derived from the discussion paper by Liesl Chapman (2006) which reviewed South Australian rape and sexual assault laws and suggested a list of proposed circumstances which may be seen to invalidate consent. The review stated that:

“In 1999, the MCCOC (Model Criminal Code Officers Committee) recommended a statutory definition of consent with a non exhaustive list of circumstances that vitiate consent. It agreed ... that this sort of legislative provision would make explicitly clear the bounds of acceptable sexual conduct” (Chapman 2006:49)

In the review, Chapman invites comment on whether there should be legislation setting out a non-exhaustive list of circumstances that vitiate consent and if so, exactly what circumstances such a list should contain (2006:53).

The proposed list included the following range of circumstances, in which it may be suggested that a person does not consent to sexual activity:⁴⁶

1. just because he or she does not say or do anything to indicate that she or he did not consent
2. just because he or she does not protest or offer physical resistance to the activity
3. just because he or she does not sustain any physical injury
4. if he or she allows the activity because of
 - (a) force applied to him or her or some other person; or

⁴⁶ It is important to note that the following list is quoted from Liesl Chapman’s discussion paper (2006:53-54)

- (b) the threat (express or implied) of the application of force to him or her
or
some other person; or
 - (c) the fear of the application of force to him or her or some other person
 - (d) a threat to publicly humiliate or disgrace, or to physically or mentally harass, him or her or some other person
5. if he or she is unlawfully detained
 6. if the activity occurs while he or she is asleep or unconscious
 7. if the activity occurs while he or she is so affected by alcohol or some other drug that he or she is incapable of freely agreeing
 8. if the activity occurs while he or she is affected by an intellectual, mental or physical condition or impairment of such a nature and degree that he or she is incapable of freely agreeing
 9. if he or she is unable to understand the nature of the act
 10. if he or she is mistaken about the essential nature of the act (for example, he or she mistakenly believes that the act is for medical or hygienic purposes)
 11. if he or she allows the sexual activity because he or she is mistaken about who the other person is
 12. if he or she allows the sexual activity because of false or fraudulent representations by the accused
 13. if he or she is overborne by the nature or position of another person

In this research, individual interview participants were asked whether they agreed or disagreed with some of the above statements.⁴⁷ Almost half (47% n=7) of individual interview participants agreed that a person does not consent to sexual intercourse just because she does not say or do anything to indicate that she did not consent. A third (33%) of participants disagreed with this statement and the remainder (20%) were unsure. Of the issues put to individual interview participants, this statement was the most contested which resulted in the largest divide in opinion. The main concern expressed by participants was that if the woman does not say or do anything to indicate that she does not consent then how would the man be aware that she may not be consenting? This relates to the distinction between the legal concepts of the *actus rea* and *mens rea* of rape whereby the woman may not have consented but the man must have known about or been reckless as to her non-consent in order to be found guilty of rape.

The majority (80% n=12) of these participants agreed that a person does not consent to sexual intercourse just because she does not offer physical resistance. However (as shall be demonstrated later in this chapter), vignette discussions in the focus groups highlighted many examples where it was felt that the woman did not offer enough resistance. Thus, although a lack of resistance does not necessarily indicate consent, it is felt that clear resistance is necessary to explicitly communicate non-consent. Most (80 % n=12) individual interview participants agreed that a person does not consent to sexual intercourse just because she does not sustain any physical injury. However, this appears to be slightly at odds with the debate

⁴⁷ Individual interview participants were asked if they agreed with statements 1, 2, 3, 4, 6, 7 and 13. These statements were chosen as I felt that they were the ones most related to this study and the research questions I outlined in chapter one.

concerning how much a woman should resist (resistance requirement myth) and shall be explored further in due course. Almost all (93% n=14) individual interview participants agreed that a person does not consent to sexual intercourse if she allows it to occur due to force or fear of force - either to herself or to someone else. This appears to validate the role of fear in causing a woman to submit to sexual intercourse without being accused of consenting to the act. However, this is again dependent on the circumstances (as shall be demonstrated later in this chapter).

Most (80% n=12) individual interview participants agreed that a person does not consent to sexual intercourse if it occurs while she is asleep or unconscious but this was also dependent on the circumstances (as demonstrated later in this chapter). The majority (80% n=12) of individual interview participants agreed that a person does not consent to sexual intercourse if it occurs while she is so affected by alcohol or drugs that she is incapable of freely agreeing. However, it appears that a clear differentiation was made, in both the focus groups and the individual interviews, firstly between intoxication through alcohol and intoxication through drugs; and secondly between self-intoxication and involuntary intoxication. This issue of intoxication and consent shall be explored in more depth in due course. A high number (87% n=13) of individual interview participants agreed that a person does not consent to sexual intercourse if she is overborne by the nature or position of another person. However (as shall be demonstrated later in this chapter), the discussion surrounding vignette four highlighted obvious debate about whether abuse of a position of power constitutes rape or rather sexual harassment.

Where participants disagreed with a statement it was because they felt that there may be extenuating circumstances where it was not rape, and as such they could not offer complete agreement. In other words, participants felt that there may always be a case which was an ‘exception’ to the rule and thus they could not agree with the statement completely. Melanie Beres (2007:100) states that while one can understand the benefits associated with such a list of definitive consent behaviours (or non-consent behaviours) in terms of helping the decision-making process of judges and jurors, there is a danger of over-simplifying sexual relations:

“Communicating ‘consent’ is likely more complex and nuanced than can be adequately captured by a standardised list of behaviours and risks labelling harmful and violent experiences as consensual” (Beres 2007:100)

Despite this, almost all (93% n=14) individual interview participants felt that there should be some form of legislation setting out a (non-exhaustive) list of circumstances where non-consent is assumed. This suggests that participants felt that there is room for further clarification in the law as far as the crime of rape is concerned. However, it is important to note that the distinction between an exhaustive versus a non-exhaustive list is not the most important aspect of this issue. More significant to participants was the ability to be flexible about whether or not a case is an exception to the listed rule. Thus, when participants in this research were asking for flexibility they seemed to be requesting the ability to make exceptions to the stated rule rather than asking for a non-exhaustive list per se. Participants wanted something that would give them further guidelines but still felt that there must be scope for each case to be judged on its own merit. Thus, guidelines could not be too rigid but would be rather more like examples or suggestions.

Should Consent be defined in Law or Left to Individual Jurors to Interpret?

All other Australian jurisdictions (except South Australia) have already enacted legislation which defines consent and which sets out a non-exhaustive list of circumstances which are considered to invalidate a person's ability to give consent (Chapman 2006:6). For this reason, individual interview participants in this research were asked for their opinion on whether they thought consent should be defined in law or left to individual jurors to interpret. Opinion was divided evenly between whether consent should be defined in law or left to individual jurors to interpret. Essentially, the argument against a statutory definition of consent is that consent has an implicit meaning and that consent "should be a factual matter left wholly unguided to a jury" (Chapman 2006:48). However, this may be problematic due to assumptions about the definition(s) of consent held by the public and the persistence of misapprehensions about what constitutes consent. Previous research has shown that some young people continue to perceive some acts which meet the legal definition of rape as "acceptable behaviour because they do not have an adequate concept of what constitutes consent" (Daws, et al. 1995:60).

A number of those individual interview participants who felt that consent should not be defined in law and should in fact be left to individual jurors to interpret did however still feel that there should be some instances/scenarios outlined in law to provide some guidance. It is important to note that participants mentioned benefits and drawbacks to each option. In terms of consent being defined in law, the main advantage mentioned by individual interview participants was that it would be useful

to outline some examples for reference and also that it would more clearly define the boundaries of acceptable sexual conduct. The main concern raised was that consent is too wide-ranging a concept to be captured in a legal definition which would cover all circumstances. In terms of the definition of consent being left up to jurors to interpret, the main benefit was seen to be an ability to consider each incident on a case-by-case basis thus allowing for extenuating circumstances. The main perceived disadvantage was that jurors may have their own prejudices and preconceived ideas about rape which could potentially impact on legal decisions when they should not. These findings reflect the equivalent discussion in the legal literature concerning whether consent should be defined in law or not.⁴⁸

4.2 What exactly constitutes consent?

Verbal versus non-verbal consent

The emphasis amongst participants in this research appeared to be on the woman being responsible for saying 'no' as the key way of establishing lack of consent. It seems that consent tends to be assumed unless verbally expressed otherwise. There was no general presumption that the man had responsibility to check that the woman is indeed consenting. This suggests that participants felt that one is looking for a clear 'no' rather than a clear 'yes' when determining consent, or its lack.

⁴⁸ See chapter two *Literature Review* for further discussion of this issue

Consent is assumed unless there are clear signs to the contrary

In the literature, Joan McGregor states that although rape laws in many jurisdictions do not explicitly state that consent is assumed “they imply it in the requirements of physical resistance and the search for verbal refusal” (2005:104). From a legal perspective, signs are often sought that would “inform the man unequivocally that the woman is not consenting to sex at this time; otherwise he can assume consent” (McGregor 2005:104). This idea was echoed by participants in this research – as the following quotations demonstrate:

FG F2⁴⁹

Lisa (25)

“I guess I’ve always considered that rape is when you say no and they keep going ... I hadn’t even considered it as you not saying yes”

FG F6

Linda (48)

“I suppose in the situation where it’s gone far enough, you know, the thing to do is to turn around and say ‘enough’ ... whereas if you are happy to go along with it then it is more about body language”

FG MF2

Steve (29)

“I think it comes down to not so much consent but in saying that you are not interested ... and you’d be looking for those signals more”

FG M1

Stan (19)

“If she doesn’t want it say no ... if she’s responding and that then she doesn’t really have to say anything”

⁴⁹ ‘FG’ indicates a quotation taken from a focus group. The letter following this indicates whether it was a male (M), female (F) or mixed gender (MF) focus group. The final number is the focus group number. The name of the participant is followed by his/her age in brackets. Quotations taken from individual interviews are denoted by the name of the participant, followed by his/her age in brackets and finally the words ‘individual interview’

So despite the fact that most individual interviewees agreed with the statement that doing or saying nothing does not equal consent, there still appears to be a feeling amongst participants that only lack of consent needs to be explicitly communicated. One issue with approaching sexual encounters from an assumption of consent rather than an assumption of non-consent, which participants in this research did not raise, is that there is more danger of a man automatically interpreting unclear signals as an indication of consent rather than questioning them, which is obviously problematic.

The necessity of a verbal 'no' – how do you show non-consent?

Much of the focus group discussions centred on the issues surrounding verbally saying 'no' versus physically saying 'no'. A common theme was that the woman had to either verbally or physically resist. If she resisted physically then she did not have to necessarily verbally say 'no' but if she could not physically resist (e.g. due to severe intoxication) then she had to actually articulate 'no'. Michelle Anderson (2005) explores this issue in her article "Negotiating Sex", in which she advocates a verbal requirement in establishing consent unless there is an established prior sexual relationship. She argues that men should actively seek verbal consent in non-established sexual relationships rather than assuming that women will take responsibility for indicating non-consent.

"A longer-term relationship, therefore, provides a context in which partners may reliably read one another's non-verbal behaviour. Without a custom, however, partners have to negotiate penetration verbally (Anderson 2005:126)"

Participants also felt that the way in which non-consent was indicated was dependant on how well the parties were known to each other and they felt that if they did not know each other well then there may need to be a verbal 'no' to indicate non-

consent. However, Anderson argues that in this situation an explicit 'yes' is needed to indicate consent rather than the focus being on a verbal 'no'.

The following quotations illustrate the reasons focus group participants gave for the necessity of a verbal no to indicate non-consent:

FG M2

Rodney (27)

"I think it's important to ... if it's going to go to court or something ... that she says 'no' ... because if there's no actual verbal non-consent then this guy has got the benefit of the doubt and he's going to get off ... so she has to scream ... say 'no' and maybe hit him as well ... show a bit of proof to the police that she was fighting"

Alan (28)

"Yeah but I suppose she's not thinking about that when she's in the heat of the moment"

Simon (27)

"Yeah but if you don't want to have sex then you've got to do something"

FG M6

Bruce (56)

"When it comes to saying 'no' I think you have to either physically say no or you can verbally say no ... or both"

Guy (46)

"You have to get the message 'no' across ... if you find yourself in a situation which you didn't intend ... you have to show 'no' whether by words or by actions"

FG F1

Nikki (28)

"Well if I was resisting but didn't actually say 'no', I wouldn't take him to court ... if I said 'no' then I *would* take him to court"

Caz (22)

"But then you are saying that you *should* verbally say 'no' each time?"

Nikki

"I think with someone you know well – like a partner - it doesn't have to be verbal but with someone you don't know well you should give a verbal 'no'"

The last quotation above shows a willingness to differentiate between rape that women would report and rape that they would not report. This quotation also shows that women have hetero-normative expectations of how and when consent or refusal should be communicated. According to Nikki in this quotation, non-consent is demonstrated in different ways depending on the relationship between the two parties. Interestingly, this is almost the mirror image of Michelle Anderson's argument (described above) in that Nikki is arguing that if the parties are not well known to each other then women bear more responsibility whereas Anderson suggests that men should bear more responsibility in this case. Participants in this research agreed that sexual encounters tend to involve predominantly non-verbal rather than verbal signs. It can be seen that this is where consent becomes especially problematic because it relies upon another person's correct interpretation of the body language that one is displaying. In this way, Anderson argues that "relying on body language creates too many possibilities for mistake and is therefore ethically inadequate" (2005:125).

For example, if a woman did not verbally or physically resist because she was "in shock or terrified", it may be argued in court that this demonstrates that "she did not strongly object to what was done to her" (London Rape Crisis Centre 1999:52). Anderson proposes that the law should abolish the non-consent requirement and instead develop a "negotiation model" which focuses on the centrality of negotiation in sexual encounters (2005:107). This can be seen as advantageous because:

"Unlike the consent models, the Negotiation model does not focus on the actions of the victim to repel or invite a man's sexual advances physically and verbally. Instead, the Negotiation model focuses the legal issue where it should be: on what the defendant did to obtain an

understanding of whether both partners wanted the sexual penetration to take place” (Anderson 2005:107)

One issue here is obviously how exactly one goes about attempting to change people’s perceptions about what constitutes consent or refusal and the next section will consider the role of education in consent.

Education about Consent

Individual interview participants were asked whether they thought that men should be better educated in terms of how to clearly determine consent. The majority (73% n=11) of these individual interview participants felt that more education was needed, although more women than men expressed this viewpoint (73% vs. 27%). Only male participants thought that men did not require further education about consent and it seems that they felt that their own knowledge about rape is sufficient and thus they believe that other males are likely to be similar. Those participants who thought that men needed more education felt that it should be included as part of a sex education program in schools – as illustrated by the following quotations:

“Yes definitely ... I think it should be part of a sex education program in schools. The more (kids) know about it the less they’re going to make up in their heads” Christine (47) Individual Interview

“Yes I think there should be (more education about consent) at schools ... part of a sex education program ... whenever sexual education is deemed appropriate ... there should be stuff on consent and that as well” Brian (30) Individual Interview

Those (male) participants who disagreed with this felt that men ‘just know’ the difference between consent and non-consent and that consent is just ‘common-sense’. This viewpoint is evident in the following quotations:

“I don't know about better educated, I think that's sort of like an overuse of something because like ... you just know, it's something that you just know erm ... I don't know where you pick it up, you just do ... you know right from wrong erm so for a male who's got all his faculties, you know, that is free thinking in society ... you definitely should know the difference” Bill (32) Individual Interview

FG M2

Rodney (27)

“Yeah, you know when it is consensual ... you don't always verbally ask ‘do you want to have sex?’ ... but body language and things like that”

Simon (27)

“Yeah mostly body language ... most people don't want to say ‘do you want to have sex?’

Justin (26)

“It's about instinct”

Obviously, it can be seen that such an assumption that men are easily able to distinguish between consent and non-consent is at odds with research findings which indicate that there is a great deal of scope for misinterpretation and for men to misread women's signals in sexual encounters. For example, there is a great deal of social psychological literature arguing that men often misread women's signs of refusal as signs of flirtation and/or consent to sexual contact (see for example: Abbey and Harnish 1995; Abbey and Melby 1986; Haselton and Buss 2000; Henningsen 2004). The role of education will be explored further in the following chapter:

Putting Oneself at Risk and Female Responsibility for Rape.

The Role of Positive Consent

Three quarters of focus group participants (75% n=49) expressed an opinion about the concept of positive consent.⁵⁰ All of these participants felt strongly that positive consent was not realistic. There were a variety of reasons given including: that it would ‘kill the mood’; that it shows a lack of confidence in oneself; that it removes spontaneity; that it is not practical in ‘real life’; that it appears that one is making the assumption that a potential sexual encounter will go further; and that it is unnecessary if someone is reciprocating. All of the individual interview participants (n=15) felt that ‘normal’ sexual encounters are not typically seen as involving verbal exchanges and thus positive consent was impractical. The following quotations reveal participants’ opinions on why the concept of positive consent is unrealistic:

FG F6

Mandy (39)

“Yeah but I don’t know whether you actually say ‘shall we have sex?’ ... you know, I don’t think people actually verbalise it like that”

FG M5

Steve (36)

“Yeah like saying ‘do you mind if I touch x?’ ... that’s just going to kill the mood, definitely ... I can’t say I’ve ever really come across that ... it’s just kind of that awkward thing”

“Because sex can be such an impromptu thing ... (seeking positive consent) ruins the mood for a start. You could both go along all night with just a hint here and a hint there and you are not really sure what the other person wants until like it’s happening ... and she doesn’t say no so you keep going” Christine (47) Individual Interview

⁵⁰ I am defining positive consent as verbal agreement to each stage of sexual contact

Therefore, it can be seen that, in these participants' views, positive consent certainly does not seem to be a common practice in current sexual encounters and is not seen as something that could realistically become part of the process in the future. This supports Mark Cowling's claim that continually talking about consent is seen as "tedious and as detracting from the romance of the situation" (Cowling 2004:23). This finding does not encourage optimism for minimising misunderstandings about consent by increasing verbal communication in sexual encounters. However, Anderson's proposed "Negotiation model" would require that partners negotiate only penetrative acts rather than each potentially romantic act, which may prove more realistic (2005:122). This model also makes allowances for situations where there is an established prior sexual relationship where it is argued that verbal consent would not be required. As the author suggests, perhaps such a "Negotiation model" would be achievable because it more accurately reflects how "real life" sexual encounters work (Anderson 2005).

4.3 Vignette 1 – How much should be done to determine consent?

The box below contains the text of the first vignette, as distributed to the focus group participants:

Catherine is on a night out with friends in Adelaide. She usually goes out to pubs and clubs at the weekends with her friends and they often get drunk and drink excessively. On this particular night she bumps into John and gets chatting to him. She has met John briefly a couple of times previously but only knows of him as he works with her brother's friend Mike, whom she knows quite well. Catherine spends the evening drinking vodka and coke, talking and dancing with John. They kiss passionately a few times and flirt suggestively with each other. By the end of the night, Catherine and John are both drunk. Catherine decides to go on to a party with her friends at Mike's house. She invites John. At the party Catherine and John continue drinking, talking and kissing. They also both smoke some of a cannabis joint which is being passed around the room. Her friends decide to go home but Catherine stays as she wants to spend more time with John. A couple of hours later she feels very drunk and tired so she asks Mike if she can sleep in the spare room. He agrees. She asks John if he wishes to share the bed with her. They undress down to their underwear and get into the bed. They kiss for a while before Catherine says "goodnight" and turns away from John to go to sleep on her side. Catherine wakes to find John having sex with her from behind. Her underwear has been removed. She shouts at him to "get off" which he does. She asks "what do you think you're doing? I was asleep". He replies "I thought you wanted it. I didn't realise you were asleep, you were responding when I touched you. You've been coming on to me all night". She quickly gets dressed, leaves the party and goes home.

Figure 4.1

In answer to the first question – was this rape? – although most focus group participants (68% n=44) thought that this first scenario was rape, it was nevertheless felt that it would probably be very difficult to prove this case in court and that there was unlikely to be a conviction due to reasonable doubt. The following quotations illustrate participants' reasoning on this issue:

FG F2
Rebecca (32)

“I don't think this would even get to court ... whether she wanted to prosecute it or not ... because there's too many ifs and buts, his intention wasn't to rape her, his intention was that he was having consensual sex whereas ... I just don't think they'd be able to pin it on him”

FG M4
Tim (32)

“The issue at court would be her consent, not whether he actually had sex with her ... it’s hard to decide – personally, I don’t think it would last very long in court ... since they undressed and got into bed together ... it’s not fair but that’s the way it is”

The woman said ‘goodnight’ and turned away – does this qualify as non-consent?

The main debate surrounding the first vignette centred on whether the woman saying ‘goodnight’ and turning away was sufficient to indicate dissent. Less than a third of focus group participants (29% n=19) stated that the woman saying ‘goodnight’ and turning away qualified as a clear indication of non-consent. More women than men expressed this opinion and this gender difference is reflected in the following quotations with the first two quotations (from female focus groups) illustrating support for this claim:

FG F6
Debra (42)

“Yes it is (rape) because she didn’t give her consent and I think that by saying ‘goodnight’, turning her back and going to sleep it was pretty obvious ... that she didn’t want to continue so ... yes (it was rape)”

Linda (48)

“That’s right, it comes down to the fact that she said ‘goodnight’ and went to sleep ... as far as she was concerned ... she woke up and something had happened to her that she hadn’t agreed to”

Denise (45)

“Yeah ... I mean she’s sort of led him on but I wouldn’t have said she’s crossed that line because she said ‘goodnight’ and she turned away”

FG MF2
Jillian (31)

“I suppose though she did turn around and say ‘goodnight’ and that ... in my mind, if I was a guy - a normal guy - I’d probably think ‘oh she doesn’t want any so I’ll roll over the other way’”

The next quotations (from male focus groups) demonstrate a slightly more complex consideration of whether the woman saying ‘goodnight’ was sufficient to indicate non-consent:

FG M6
Keith (47)

“It was the full lead up ... she had many, many opportunities to withdraw her consent and just the fact that she said ‘goodnight’ and dozed off a little bit ... no I don’t accept that (as non-consent) ... she never said no”

Bruce (56)

“But her saying ‘goodnight’ and turning away from him ... she sort of made it clear there ... she didn’t say ‘goodnight’ and snuggle into him – she turned away”

Keith

“So you think that was her saying ‘that’s it, finished’? No I don’t think that’s enough”

In the quotation above, Keith’s comments about the woman having had “many, many opportunities to withdraw her consent” provides further evidence that consent tends to be assumed unless there is clear evidence to the contrary. There was an assumption that the woman had already given her consent and needed to withdraw it if desired rather than that consent was something that needed to be established before intercourse took place. This quotation clearly indicates the perception that it is a ‘no’ rather than a ‘yes’ that is required.

FG M1
Trevor (22)

“The most important bit of this whole scenario is that she said ‘*goodnight*’ and then she turns

Daniel (23)	away and goes to sleep ... it's not like 'yes lets have sex'"
Trevor	"But you have to keep in mind they've had a <i>lot</i> to drink and 'goodnight' probably didn't sound like ' <i>goodnight</i> ' ... I mean he sounds like a tool, no doubt about it ... but she led everything on and put herself in that situation"
	"I mean yeah she's made some really dumb decisions leading to it ... From a girl's perspective she's gone 'I've had enough' but from a guy's perspective ... she's saying she wanted sex"

The above exchange is also an example of Trevor switching from a more objective analysis of the situation to a more subjective analysis, and being slightly swayed by the views of another participant. All of these quotations are particularly interesting because they reveal that there can easily be many different interpretations of the same 'signal' depending on personal perspective. This clearly demonstrates how easily misunderstandings can occur when relying on non-verbal cues in order to determine consent. In this way, the following section will consider the role of misinterpretation in determining consent. It is important to note that these are not 'neutral' misunderstandings but rather they are deeply gendered – as the comments I have just discussed illustrate.

Did the man misinterpret the signals and genuinely believe that he had consent?

Most focus group participants (55% n=36) felt that it was possible that the man in this scenario had genuinely believed that the woman was responding and was therefore awake and consenting – especially since he stopped as soon as she woke up and said no. The main debate in this area was whether the man genuinely

misunderstood consent or whether he was aware that the woman may not be consenting and continued regardless – what the law would call indifferent or reckless. The following quotations reveal participants’ support for a claim of misunderstanding by the man in this scenario:

FG F1
Nikki (28)

“In this scenario I think she made the line so blurred between what she wanted and didn’t want that it was reasonable to think that he could have confused the signals”

FG F4
Anne (34)

“I don’t know, I don’t think I would convict him because she says ‘get off’ and he does ... so, therefore, it’s not so much of a malicious attack – did he just get it wrong? Did he just have no idea (that she wasn’t consenting)?”

FG M1
Gus (24)

“From his understanding, he’s gone through the night, everything is leading down to (sex), they take their clothes off, go to bed, kissing for a while ... and from his understanding she’s responding to this whole fondling thing and so he goes ahead with it”

FG M3
Bill (32)

“I think it’s very hard because like when she shouts for him to get off, he does get off so ... he doesn’t carry on as if he doesn’t care so ... in his mind it wasn’t rape”

FG M5
Ian (40)

“She could have shared the bed clothed but she’s chosen to get undressed and invited him to get undressed and to get into the bed ... and for any normal male ... well you are nearly home and dry – that’s what you’d be thinking”

FG F6	
Linda (48)	“It goes back to the fact that she could have been responding to him and not been aware of it so he could be thinking it was ok. Was she responding? Or was he just saying that? You don't know”
Mandy (39)	“You don't know whether he genuinely meant that or if he's just trying to get out of it”

The final quotation above is one of the very few instances where a participant brought up the idea that the man might actually be lying about misunderstanding consent. Across all of the vignette discussions, it did not appear to occur to the majority of participants that the man may be lying yet many more participants mentioned the idea that the woman may be dishonest. This suggests the continuing influence of the myth that ‘women cry rape in order to get even with a man or to protect their reputations’ and also demonstrates that while women may be considered to be at least potential liars, men tend to be perceived as more likely to be genuine in their misunderstanding of consent.

The literature shows that men accused of rape often say that it was a ‘misunderstanding’ and “that the woman didn’t communicate clearly enough, that she gave off mixed messages, and that even if she did say ‘no’, she didn’t say it as if she meant it” (Frith and Kitzinger 1997:521). The findings of this research indicate that the general public, from whom jurors are drawn, also validate such claims of misunderstanding. As Joan McGregor states: “Should the law reward with acquittal men who remain oblivious to what women are communicating?” (2005:9). These findings about people’s validation of male claims of ‘misunderstanding consent’ link

to the *mens rea* requirement of the crime of rape and suggest that participants are more comfortable with subjective approaches to determining male intent rather than objective tests.⁵¹ These findings also reflect lay beliefs about how much men should be responsible for in sexual encounters. The onus is still on women as gatekeepers to men's actions. Thus, as my reading shows, women have to offer either physical or (clear, early and repeated) verbal resistance "or else the intercourse will not be deemed against their will" (Anderson 2005:111).

Should the man have done more to determine consent?

There was a great deal of discussion amongst focus group participants concerning whether the man in this scenario had a responsibility to check that the woman was awake before he began having sexual intercourse with her. Many participants (46% n=30) explicitly stated that the man in this scenario should have done more to determine consent i.e. by at least checking that the woman was awake. The time factor between her saying 'goodnight' to him and him having sex with her was also seen as important – whether it was a case of minutes or hours – with the more time that passed the more likely it was that the incident was seen as rape. The following quotations reveal participants' thoughts on the man's responsibility regarding determining consent:

FG F2
Lisa (25)

"Yeah I think he had a responsibility to check that she was actually awake"

⁵¹ See chapter six (section 6.3) for a more detailed discussion of findings from this research in relation to the *mens rea* requirement

FG M2	
Alan (28)	“He should have tried to wake her, checked on her before he took her underwear off”
Rodney (27)	“Yeah, you should probably know they are awake before you start (!)”
FG F6	
Christine (47)	“When she turned over and said ‘goodnight’ he should have questioned her then – he’d probably have been quite angry at that point anyway – rather than waiting until she was asleep and doing it anyway”

This last quotation is interesting and raises the question of why the man in this scenario would be quite angry. The suggestion seems to be that women do not have the right to change their minds about sexual intercourse. This is linked to traditional views of masculinity where male sexuality is viewed as aggressive and predatory, and also to notions of impulse theory where male sexual arousal is seen to be impulsive and impossible to stop once initiated. Once again, it appears that women are perceived as responsible for controlling the supposedly aggressive and voracious male sex drive (women as gatekeepers to men’s actions).

4.4 Vignette 2 – The Role of Intoxication in Consent

The box below contains the text of the second vignette, as distributed to the focus group participants:

Michelle has been on a night out in Adelaide with a friend, Sophie. They have been to several pubs over the course of the evening and are slightly drunk. They decide to move on to a local club. Michelle bumps in to Karl, who used to be one of her neighbours. A couple of months ago, Michelle had ended up having sexual intercourse with Karl when she was drunk on a night out. She feels a bit embarrassed to see him again. Karl says hello and offers to buy her a drink. She refuses as she feels she has had enough - she knows she has to work early the next day. He tries to persuade her and she starts to feel embarrassed that she is making a big deal out of it so she accepts a drink. He comes back from the bar with a neat whisky. She usually drinks alcopops and doesn't really like whisky but feels it would be rude to refuse it now that he has bought it so she drinks it. Michelle is not interested in Karl sexually but is happy to chat to him. Karl makes advances to kiss her but she tells him she's got a boyfriend and she's not interested. He apologises and they continue to talk. He gets another drink for them. She asks for a coke as she feels drunk but he returns with more whisky. Again, she drinks it as she doesn't want to make a fuss. Michelle notices that Sophie has disappeared. She is worried as she is supposed to be staying at Sophie's house that night, as she lives more than an hour away. Michelle and Karl wait until the club has cleared but cannot find Sophie. Karl says that she can stay at his that night. Michelle feels very drunk as she is not used to drinking whisky. She just wants to lie down so she agrees and they get a taxi together. When they get to Karl's flat, he has to help her up the steps as she is unsteady on her feet. Inside, Karl gets them another whisky each. Michelle just has a couple of sips as she feels very dizzy and disoriented now. She lies down on the sofa and just wants to go to sleep. Karl begins to kiss and undress her. Michelle can't find any strength to try to push him off. Karl and Michelle have sexual intercourse. When Michelle wakes in the morning, she lets herself out of the flat without seeing Karl. When she gets home, her boyfriend asks her where she has been and she tells him that Karl raped her.

Figure 4.2

Does intoxication automatically invalidate the ability to give consent?

Almost all focus group participants (92% n=60) thought that this second scenario was rape and of these the majority (80%) felt that the man would be found guilty in a criminal rape trial. However, less than half of participants (48% n=31) stated that they felt that the woman in this scenario was too intoxicated to be capable of giving consent which suggests that intoxication is not perceived to automatically invalidate

the ability to give consent. The following quotations illustrate this viewpoint that intoxication did invalidate the woman's consent:

FG F2

Rebecca (32) "Well he might not call it rape but ... he wanted to get her intoxicated to the point where she was incapable of saying no ... and to me that's rape"

FG F6

Linda (48) "Maybe she wasn't capable of saying *anything* though ... maybe she was lying there so out of it that she couldn't even talk ... you can't give consent when you are in that state"

Mandy (39) "I mean I've been drunk many times but I don't think I've ever got that drunk where I wouldn't be able to resist someone ... so I can't imagine being that incapable"

Debra (42) "I can – alcohol is a drug, it's just like giving her Rohypnol"

FG M4

Tim (32) "If it went to court then it's about what happened between those two at that moment and she was out cold – totally wasted – and he undressed her and had sex with her and that's not right"

These quotations illustrate the complexity of views surrounding the issue of intoxication and consent. In many jurisdictions, laws concerning rape do not "set a threshold of intoxication at which an individual is no longer regarded as competent to give consent to intercourse" (Finch and Munro 2003:774). Therefore, it is left to jurors to make this distinction which obviously leaves it open to influence by factors such as rape myths. Jennifer Temkin and Barbara Krahé's (2008:170) UK based quantitative study with 2176 members of the general public revealed that "cases in

which the complainant was raped while she was under the influence of alcohol were judged differently and mostly less favourably than cases where the defendant used force”.

Sharon Cowan, in her recent article on the issues surrounding intoxicated consent, argues that “there should be both greater legislative clarity on the issue of capacity, and more detailed guidance available to both judges and juries on how to treat the issue of intoxication in rape cases” (2008:901). One of the main difficulties is how one could determine when a woman has reached such a level of intoxication so as to be incapable of giving valid consent, without contravening principles of autonomy which give women the right to be able to give valid drunken consent (Cowan 2008:909). This difficulty is encapsulated in the following quote:

“In any case, what is clear is that courts need more support and guidance, which is not tainted by discriminatory views about appropriate gender behaviour, on how to tell the difference between someone who is intoxicated to the point of being unable to consent to sex, and someone who is drunk and yet retains sufficient capacity to consent to sex” (Cowan 2008:921)

Resistance Requirement

There was divided opinion amongst focus group participants over the fact that the woman did not offer any resistance in this scenario. Most participants felt that she was too intoxicated to offer any resistance and that this was valid but others felt that she needed to say or do something to show resistance. A quarter of participants (25% n=16) felt that no matter how intoxicated the woman was she should still have been able to offer more resistance and that if she was unable to physically resist then she

needed to verbally resist. Again, this provides a challenge to the idea that high levels of intoxication automatically invalidate a person's ability to give consent.⁵² Similarly, Temkin and Krahe's (2008:105) quantitative study (mentioned above) found that the complainant was blamed more in cases involving alcohol than in cases where the defendant had used force. The following quotations indicate participants' reasoning behind arguing for a requirement of resistance from the woman in this scenario:

FG F5
Diane (38)

"When you are looking at this from a jury's point of view ... he's kissing and undressing her, she can't find any strength to push him off ... I mean if someone is raping you, you are going to be trying to push them off ... I would – no matter how intoxicated I was"

FG F6
Denise (45)

"She wasn't able to push him off but she could have screamed, she could have shouted, you know"

FG M1
Gus (24)

"I don't like the line 'she couldn't find any strength to push him off' ... I agree with (Daniel), that's a lame excuse ... even if you were that drunk ... you'd still be saying 'no, no, no'"

FG F3
Anne (34)

"It says that she *can't* find any strength to push him off but ... if you don't want to be in the situation, except if you are drugged ... and there's no mention of drugs in this scenario ... so we're assuming that there are no drugs in this scenario ... no matter how drunk you are you can still say no, you can still push"

⁵² It is important to stress that intoxication does not in itself automatically preclude consent

This last quotation in particular echoes Emily Finch and Vanessa Munro's (2003) findings that a clear distinction is made between intoxication through drugs and intoxication through alcohol (even where levels of intoxication are held constant), with drugs perceived as more likely to cause a woman to be too intoxicated to consent. This finding may perhaps be because alcohol and its effects are not taken seriously enough and the use of alcohol is normalised in heterosexual encounters. These findings about intoxication and consent also confirm Lois Pineau's claim that:

“The present criterion of consent sets up sexual encounters as contractual events in which sexual aggression is presumed to be consented to unless there is some vigorous act of refusal”(1996:17).

Early female rejection of male advances

In this second vignette, the woman rejected the man's advances early on in the night by saying that she was not interested and that she had a boyfriend. Some focus group participants felt that this was sufficient to indicate dissent whilst others felt that it needed to be repeated later as she may have changed her mind during the course of the evening. It would appear that this requirement of repetition suggests that a verbal 'no' will revert to an assumed 'yes' unless repeated at timely intervals. A third of focus group participants (34% n=22) thought that the fact that the woman in this vignette asserted her disinterest early on in the scenario qualified as a clear demonstration of non-consent. Early female rejection of male advances was seen by many participants as important when determining non-consent. The following quotations illustrate participants' thoughts on this finding:

- FG F1
Nikki (28) “To me, it’s rape because she made it clear early in the night that she wasn’t interested and for him to get to the point where he had to liquor her up to get anywhere”
- FG F2
Lisa (25) “But by the same token she did tell the guy that she wasn’t interested ... and that should be respected throughout the night no matter how drunk they got”
- FG F3
Mia (35) “Yeah I mean what should you have to do ... keep saying (that you are not interested) every five minutes? (!)”
- FG M5
Ian (40) “She did (offer resistance) ... at the start because she said to him that she wasn’t interested and that she’s got a boyfriend – that’s resistance enough straight away”

It is interesting to note that almost three quarters (73%) of the participants who mentioned this were female. It can be seen that there is an obvious tension between early female rejection of male advances and the need to repeat such disinterest in case the woman has changed her mind.

4.5 Vignette 3 – The Role of Fear in Consent

The box below contains the text of the third vignette, as distributed to the focus group participants:

Elaine decided along with some friends to go to see a band that was playing at the local community centre. It started at 9pm and was due to end at 1am. Elaine had not been out for ages so she decided to dress up and wore a short black dress and boots. The toilets in the building were situated near the main entrance. On one occasion when Elaine went to the toilets, she met Scott, who was standing on his own near the main entrance. Elaine did not know him but had seen him a few times in her local pub and was attracted to him. Scott and Elaine fell into conversation but it was really noisy and they couldn't hear each other very well. Scott asked Elaine if she wanted to go for a walk and she agreed to do so. They walked around a nearby park until they reached a shelter, which backed onto the community centre's grounds, where they stopped and chatted some more. A short while later, Scott and Elaine had sexual intercourse in this shelter. Elaine claimed that she did not consent whereas Scott claimed that he honestly believed that she had consented. Elaine said that Scott made her sit down and started to put his hands down her tights. She said that she told him that she did not want "that". She tried to push his arms away but could not do so, on account of his strength. Eventually, after further struggling Elaine said that Scott achieved intercourse. At this stage Elaine screamed and bit Scott. Both parties agreed that Elaine said sorry after she bit Scott. Scott said he thought this meant that she had "just got carried away in the heat of the moment" not that she objected to what was happening. Scott also argued that he had believed that she was consenting because Elaine had helped him to unlace one of her boots and had removed her tights herself. Elaine argued that she did this in the hope that she would be able to run away more easily because the tights were half down and would have prevented her from doing so.

Figure 4.3

Most focus group participants (69% n=45) thought that this third scenario was rape but despite this almost half of focus group participants (49% n=32) felt that the case would not result in a guilty verdict in a rape trial. Less than a quarter of participants (22% n=14) said that they understood and/or believed the woman's reasons for removing her tights in this scenario. More women than men mentioned

this behaviour (64% vs. 36%). Those participants who believed the woman felt that she was just doing whatever she could think of in that moment to get out of the situation, but other participants felt that taking off her tights was giving out mixed signals and may even have indicated that she was consenting to what was happening. The following quotations demonstrate the debate amongst focus group participants surrounding the woman's behaviour in this scenario:

FG F4

Melissa (34)

"I do have to say though, if you were going to be raped would you give a shit about your tights and boots? You'd just want to get out of there"

Jenny (36)

"But that's what she was trying to do"

Anne (34)

"Maybe she was pulling (her tights) down to encourage him"

Jenny

"No she wasn't ... she was trying to take them off so she could run not because she wanted to have sex with him"

FG F6

Denise (45)

"I don't think I would have taken my tights off – I would have pulled them *up* if I didn't want sexual intercourse"

Debra (42)

"If they're down around your knees then the quickest way is to pull them off and run"

Denise

"I don't know whether it is or not ... and she helped him to unlace one of her boots – that's a bit dodgy"

Debra

"But if she's frantic to get away and if they were high (heeled) boots and you want to run ... you are just doing whatever comes into your mind to get away"

FG M1

Gus (24)

"This thing about her tights ... I mean if they were half down in the first place ... hmmm ... that's a bit dodgy ... plus wouldn't it be easier just to pull tights up?"

[All participants agree]

FG M3 Wallace (54)	“Just the fact that she undid one of her boots and had removed her tights herself ... now that doesn't make it seem like she doesn't want sex”
Bill (32)	“You would think that she'd be struggling, saying no and pulling her tights up”
Wallace	“Yeah exactly”

These findings indicate that there was more consensus amongst the male focus groups that this behaviour (removing her tights) was suspicious, and more disagreement about what this action might mean in the female focus groups.

There was also confusion over why the woman had apologised for biting the man in this scenario. Some focus group participants couldn't understand why you would apologise when someone was raping you whilst others felt that fear of further repercussions was sufficient reason. Only a third of participants (31% n=20) stated that they understood and/or believed why the woman in this scenario might apologise for biting him. More women than men mentioned this (65% vs. 35%) and the following quotations illustrate the debate amongst focus group participants concerning this aspect of the woman's behaviour:

FG F2 Caz (22)	“Well she probably got that instinct that something wasn't right and bit him and then thought, oh shit I'm over-reacting ... so that could explain the whole sorry thing ... I'm leaning more towards that yeah it <i>was</i> rape”
Lani (31)	“I lean towards it being rape but I am really worried about the fact that she said sorry that she bit him”
Nikki (28)	“I actually thought about that ... why would you say sorry in that situation? ... I'm thinking that if she bit him and he looked really pissed off she might have said sorry so that he didn't hit her”
Lani Jo (31)	“Yeah that's true” “It's a natural response”

Nikki	“So maybe she was scared that he was going to get more violent with her ... I think it was a defensive thing”
FG F4	
Anne (34)	“See all I keep reading is Elaine said sorry”
Melissa (34)	“That she bit him, not for anything else ... she might have drawn blood or something and was afraid he was going to smack her one”
Anne	“Why would you say sorry to someone who was raping you regardless of//”
Melissa	“//because you think he’s going to do more harm to you ... that he’s going to kill you ...”
Jenny (36)	“You don't know what’s going to happen ... you just want to get out of there”
FG M1	
Trevor (22)	“Yeah ... if you were being raped you wouldn't be apologising for biting someone”
Gus (24)	“I'd say so yeah”
Trevor	“Surely she would be biting him again rather than apologising?”
Daniel (23)	“Unless it's out of fear that he would do even worse unless she apologised ... maybe it was the look in his eye or something ... she realised that she was the vulnerable one”

These findings tie into my previous argument that fear and/or coercion is often sufficient to cause someone to submit to rape so that actual physical violence is not necessary in many cases.

Resistance Requirement

Many focus group participants (38% n=25) felt that the woman should have offered more physical resistance in this scenario. The majority of participants who mentioned this were male (76%) – suggesting that men may be particularly

influenced by the resistance requirement myth. The following quotations are typical of discussion concerning the requirement of resistance in this scenario:

- FG M1
Rodney (27) “I (think she should have resisted more) ... if she has time to say sorry, she has time to say ‘no get the fuck off me’ and fight back”
- Justin (26) “But she’d already said she didn’t want it ... that would classify as a no”
- Rodney “That was before though ... I just think she had a bit of time to do something”
-
- FG M6
Chris (41) “Well I don’t think she could have resisted more because she was overpowered”
- Keith (47) “She could have stood up and made it very clear – you know like a hard slap in the face and a ‘stop it’”
- Guy (46) “She should have carried on screaming, biting, scratching”
- Keith “That’s right, scream for help – I mean there was a concert going on fifty yards away, you know ... yeah, I think she could have done a bit more (to resist)”
-
- FG MF3
Gaynor (41) “She could have resisted a lot more – I mean the fact that she has (resisted) a bit *should* have been enough but it wasn’t enough so you keep going”

There appeared to be an expectation by many participants in this research that women should behave rationally in potential rape situations and little allowance is made for the role of intoxication or fear. For some participants, their perceptions of consent appeared to be very narrow in that no matter what pressure is placed on you if you make the decision to submit to intercourse then you have consented. There also seemed to be an expectation that women should be able to resist pressure and be consistent in their reactions to potential rape situations.

4.6 Vignette 4 – The Role of Intimidation in Consent

The box below contains the text of the final vignette, as distributed to the focus group participants:

Wendy was on her first business trip with her boss, Eric. On the last evening they had dinner together as they had finished all their business meetings that afternoon. Eric began to flirt with Wendy during the meal which she found unsettling as they were both married and Eric had previously always acted in a purely professional manner. However, she dismissed it as high spirits resulting from the deal they had signed earlier that day and the wine he had been drinking. Wendy was not drinking as she was on antibiotics. After they had finished dinner Eric suggested a nightcap in his suite. Wendy suggested the hotel bar instead but Eric was insistent so she agreed. In his suite, they chatted about work and their families and Wendy felt silly for feeling uneasy about Eric earlier. After a couple of hours, Wendy got up to leave and return to her own room. Eric caught her arm and tried to kiss her. Wendy pushed him off. Eric laughed "Oh come on it could do great things for your career!" Wendy told him she wouldn't do anything like that. Eric pulled her close to him and said "Well do you want to keep your job? I could make sure you never work at this level again". Although he was still smiling, Wendy was scared and worried that he would get violent if she didn't give him what he wanted. She thought about trying to fight him off but knew that she was no match for him. Eric undressed Wendy and then they had sexual intercourse. Afterwards, Eric fell asleep and Wendy returned to her own room. The next morning, Eric chatted as normal with her and made no reference to the previous night.

Figure 4.4

Fear and the Resistance Requirement

Most focus group participants (71% n=46) thought that this fourth scenario was rape. However, more than a quarter of participants (29% n=19) did not believe that this situation was rape but rather that it constituted sexual harassment. This indicates some debate concerning the role of coercion in acquaintance rape scenarios. Most participants (57% n=37) stated that they felt that the woman did not do enough to try

to get out of the situation and should have shown more resistance – at least by trying to walk out of the room. There was debate as to whether her submission through fear of violence was valid – some participants thought that the man did not give any indication that he would get violent and therefore such “immediate” acquiescing was unnecessary. Participants were divided on whether one should test a fear of violence rather than submit immediately without offering any resistance. It is important to note that in this scenario there are two types of possible coercion – underlying fear of violence and also job security.

The following two quotations illustrate the debate amongst focus group participants concerning whether the woman in this scenario should have resisted more:

FG F1

Nikki (28)

“Yeah, she could have left at any time ... she didn’t even try to leave to see whether it would turn into something violent ... if she went to leave and he grabbed her more forcefully then maybe I’d consider it rape ... but no, I think she allowed this to happen to her”

Caz (22)

“Just because he didn’t actually hit her doesn’t mean that his body language didn’t suggest that he would”

Lani (31)

“She’s given in to him, she thought about fighting him off but realised she couldn’t ... so she felt it was her only option to submit ... she might have saved her life”

FG M2

Simon (27)

“She ‘suspected’ he’d be too strong for her to fight him ... to me, that’s not enough”

Alan (28)

“That’s a thought in her head, not necessarily true”

Simon

“She hasn’t even made an effort, you either take the consequences of being bashed or hurt ... I mean she didn’t say yes but she didn’t say

no ... if she'd resisted then maybe it wouldn't have happened"
[All participants agree]

The next two quotations reveal greater understanding of the role of fear in causing someone to react similarly to the woman in this scenario:

FG F2

Rebecca (32)

"The worry about the physical threat ... well for me personally I would ... tend to try and get out of the room and if there is physical violence that results from that ... I'd fight back and see how far I got ... but some people are ... really really worried about the threat of physical violence just as much as the actual act of violence"

FG M6

Guy (46)

"I also think that this man is behaving in a way that he's not behaved with her before ... he's been pretty unpredictable so she's got every reason to be scared of that ... given all the other strange things he's done there's no reason why he wouldn't get violent"

Therefore, it can be seen from the quotations above that the role of fear remains significant and yet problematic for participants in my research. Participants seem to be acknowledging the role of fear but not accepting it as a good enough reason not to provide active resistance. This is despite sociological research which suggests that becoming 'frozen with fear' is an extremely common reaction to rape (see for example: Anderson 2005:105; Hall 1985:74; Lees 2002:113). Christine Boyle also draws attention to the inability of courts to understand women's fear in rape situations (Boyle 1994). The incredulity of some of my participants about fear justifying inaction is often shared by jurors according to the following quote by Joan McGregor:

“I think that it is reasonable to interpret many acquaintance rape cases as involving the victim ‘reading in’ the threat of something worse if she does not go along, and yet it is surprising how many of these kinds of cases the courts have met with incredulity, as if a man who greatly outweighs a woman could not compel her to have sex and suggest the threat of physical abuse” (McGregor 2005:166)

The role of coercion

The majority of focus group participants (86% n=56) believed that a psychological threat was sufficient to constitute rape and a physical threat was not necessarily essential.⁵³ However, there was some debate as to what exactly constitutes a valid psychological threat and whether this particular scenario constituted a valid threat. Some participants felt that the threat of losing one’s job was not sufficient to constitute a valid threat and it needed to be something like a threat to kill one’s parents. A number of participants could not understand how the threat of losing one’s job would be sufficient to cause someone to submit to sexual intercourse but others could understand this in particular circumstances, for example: she could be a single parent; the main breadwinner; in a lot of debt; worked hard to reach that level of her career. There were participants who could take themselves out of the situation and still understand why someone might react differently to themselves but other participants spoke as if the only way of understanding actions was by what they perceived that their own actions would be. The following quotations illustrate participants’ feelings about a purely psychological threat being insufficient to cause someone to submit to rape:

⁵³ Participants were asked if they thought that there needs to be a physical rather than purely psychological threat to constitute rape. They were asked this toward the end of the discussion about vignette four.

FG F4
Nat (37) “I just think I wouldn't let his psychological threats get in the way of my safety whereas with physical violence ... if he's got you pinned ... you've got no hope”

FG MF1
Andrea (22) “But there's no real demonstration of a reason for her to be fearful ... I mean if it was a threat like 'if you don't have sex with me I'm going to kill your mother' then you would do it because you don't want your mum to die ... you've been forced into it by threats, so I think that's rape ... this situation isn't rape because there is no demonstrated threat ... it's not severe enough anyway”

Conversely, the quotation below demonstrates an understanding of the validity of a psychological threat in this situation:

FG F6
Mandy (39) “That last point about the psychological threat is something I hadn't thought about before ... because you always think of rape as being purely physical”
Linda (48) “Being forced, yeah”
Mandy “That someone could intimidate you that much – I hadn't thought of that before”
Interviewer “Do you think that is valid?”
Mandy “Yeah I do”

It has been argued that “a woman threatened with some kind of harm if she does not agree to some form of sexual activity has not agreed to anything at all, regardless of her seeming compliance” (Nelson 1995:61). However, almost a third of focus group participants (31% n=20) stated that they felt that the woman in this scenario made the decision to submit to the sexual intercourse and thus in a way did consent. This clearly relates to both the resistance requirement myth – whereby a

woman needs to struggle or offer physical resistance in order to demonstrate that she strongly objects to what is being done to her – and also what can legitimately equal coercion. Obviously, this finding suggests that there is some debate about the role of intimidation and whether subsequent submission to sexual intercourse qualifies as rape and suggests that threats need to be physical rather than purely psychological and/or economic. The following quotations illustrate participants’ reasons for believing that the woman in this scenario may have consented in a way:

FG F6

Mandy (39)

“I’m having problems with this one because although he’s threatened her, she’s almost kind of resigned herself to like ‘come on let’s get on with it then’”

Linda (48)

“It’s not right but she does have a choice – she could have turned around and said “I’m out of here” ... she was threatened but she wasn’t *forced*”

FG M1

Gus (24)

“The situation was there, sure there’s the blackmail involved but she made a decision ... ‘yes I will have sex with him’ or ‘no I won’t have sex with him’ ... and she *decided* to have sex with him”

FG M4

Tim (32)

“Basically she had her choice whether to have sex with him or not, so therefore it’s not rape, in my opinion. She *could* have fought it, she didn’t *have* to continue her career, she could say no to the bloke, she had a choice and she chose to have sex. I mean fair enough there’s a lot of pressure on her but that’s not the point. At the end of the day though she had the choice to say ‘no’ ...”

FG MF1

Michelle (23)

“I don’t think it is rape because she could have walked away ... you know the whole job thing could go into unfair dismissal ... so in a way

she did consent because she didn't *have* to ...
she wanted to keep her job, there's other
avenues she could have taken"

Therefore, it can be seen from the quotations above that a number of participants clearly felt that a choice made under pressure was nevertheless still a choice and thus subsequent sexual intercourse could not be seen as non-consensual.

Conclusions

In conclusion, this chapter has demonstrated the complexity of the notion of consent. These findings suggest that the public is divided on whether consent should be defined in law or left to individual jurors to interpret. There appears to be support for the provision of increased guidelines detailing situations which automatically invalidate the ability to give consent whilst still retaining the ability to make 'exceptions' to a stated rule. However, the research can also be read as an indication that 'suggestions' or 'examples' would not improve conviction rates for rape as the same prejudices would still be at work. I am therefore cynical as to how much impact such guidelines would have on the juror decision-making process. I feel that jurors are likely to simply deem that their case is an 'exception' to the stated rule. As Finch and Munro's (2005) mock jury research in the UK has shown, jurors are still likely to rely on 'exceptions' to the rule even in light of increased guidelines. My participants' view of this as an appropriate compromise between having guidelines yet not wanting to lose the element of flexibility which a non-exhaustive list would provide is somewhat in contrast with the situation in, for example, England and Wales after the Sexual Offences Act 2003 which provided an exhaustive list of circumstances.

Findings suggest that consent tends to be assumed unless there are clear signs to the contrary and that determining consent relies on a clear 'no' rather than a clear 'yes'. This becomes even more complicated when one considers that sexual encounters tend to be seen as involving predominantly non-verbal rather than verbal signs, and positive consent is seen as an unrealistic expectation for 'normal' sexual encounters. This can be seen to be linked to the myth that "women say no but mean yes in some sexual encounters" in that women's initial resistance may be perceived to be insincere. The issue is how does one accurately judge the difference between alleged 'token resistance' and genuine resistance? These findings also illustrate that in sexual encounters a 'no' has to be clear, early and repeated.

There is debate amongst the public about the role of intimidation and coercion and whether subsequent submission to sexual intercourse constitutes rape. In practice, intoxication is not perceived by the public as automatically invalidating consent but rather is dependent on the circumstances surrounding the intoxication i.e. whether the intoxication is caused by alcohol or by drugs and how the intoxicant was administered. There is a widespread belief that women need to clearly demonstrate resistance in a potential rape scenario – either verbally or physically (or both). There appears to be inconsistency amongst participants in terms of the role of resistance in acquaintance rape scenarios. Despite the fact that the majority of individual interview participants agreed that a person does not consent to sexual intercourse just because she does not sustain any physical injury, the focus group vignette discussions highlighted numerous examples where participants felt that the woman should have resisted more to indicate her non-consent.

This suggests an inconsistency in people's beliefs where, on the one hand, clear resistance in acquaintance rape scenarios is advocated yet, on the other hand, there is a reluctance to accept the need to demonstrate physical injury to clearly signal non-consent, although this is the consequence that follows. This relates to the resistance requirement myth and demonstrates the complexity of participants' engagement with this myth. Participants both collude with and challenge this myth and this process is not straightforward. In terms of this rape myth, there was a clear difference in findings according to gender with men much more likely to make comments subscribing to this resistance requirement myth.

There was a clear difference in opinion according to gender in terms of the need for men to be better educated about consent. Female participants in this research were much more likely to feel that men should be better educated in terms of how to clearly determine consent. This suggests that women, in particular, feel that there is room for improvement in the ways in which men negotiate consent in sexual encounters. However, it would appear that the public are nevertheless prepared to validate men's claims of misunderstandings around consent – which in many cases are seen as understandable or at least non-malicious. Again, there appears to be some inconsistency in people's beliefs here. It could be suggested that frequent validation of such claims of misunderstanding is unlikely to encourage men to take greater care when negotiating consent and further education is needed to rectify this issue.

The findings explored in this chapter also have important legal implications. As my reading demonstrates, there is a great deal of debate over “whether an accused person should be required to take reasonable steps to find out whether the person is consenting, rather than have a model which allows an accused to assume consent unless something is done by the other person to suggest otherwise” (Chapman 2006:7). The findings outlined in this chapter suggest that currently the focus remains upon the victim’s behaviour when the public are making decisions about (lack of) consent in acquaintance rape scenarios. These findings support calls for a shift to a communicative model of sexuality which “does not require that a woman proves she did not consent but instead asks what happened to show and demonstrate consent” (Beres 2007:103). The major questions would then be concerning ‘What did he do to obtain consent?’ not ‘What did she do to show that she did not consent?’ but it has been suggested that “getting jurors to take this point of view may be nigh impossible given the prevailing stereotypes about rape” (Sanday 1996:182). The following analysis chapter will consider the research findings in relation to myths about victim precipitation and female responsibility, with the aim of further understanding issues around consent in acquaintance rape scenarios.

Chapter 5: Putting Oneself at Risk and Female Responsibility for Rape

*“If you take out uncovered meat and place it outside on the street, or in the garden or in the park, or in the back yard without a cover, and the cats come and eat it ... whose fault is it, the cats or the uncovered meat? The uncovered meat is the problem.”*⁵⁴

*Mr Justice Willes, in an 1856 trial, commented that there was “some doubt entertained whether the offence of rape could be committed upon the person of a woman who had rendered herself perfectly insensible through drink”*⁵⁵

The quotations above indicate the long and continuing influence of the rape myth that ‘women ask for it through their behaviours, attitudes and dress’. It has been argued that the question ‘why was the victim raped?’ rather than ‘why does the rapist rape?’ has an extensive history and is still prevalent today (Allison and Wrightman 1993:26). It has been suggested that “the responsibility for setting limits on sexual activity is still placed in the hands of the woman” (Jackson 1999:48). This chapter aims to examine participants’ notions of female precipitatory behaviour and their attributions of responsibility in acquaintance rape scenarios, in order to understand more about people’s ideas about consent. This chapter is structured around the rape myths which focus group participants drew upon when attributing responsibility in the vignette discussions. Firstly, I discuss participants’ use of the myth ‘women ask for it through their behaviour, attitudes or dress’. Secondly, I examine the myth that

⁵⁴ Sheik Taj Din al-Hilali, Australia’s most senior Muslim cleric, quoted in ‘The Australian’ 26/10/2006

⁵⁵ *The Times* 6 December 1856 Quoted in **Stevenson, K.** 2000 ‘Unequivocal Victims: The Historical Roots of the Mystification of the Female Complainant in Rape Cases’, *Feminist Legal Studies* 8: 343-366.

‘women say no but mean yes in some sexual encounters’. Next, I outline participants’ ideas about the necessity of resistance in potential rape scenarios. Finally, I consider participants’ notions of women as gatekeepers to men’s actions, in terms of setting boundaries and avoiding putting themselves in potentially ‘risky’ situations. It should be noted that unless specifically stated there was little or no divergence in the opinions expressed according to age or gender. It is also important to note that the ideas of responsibility discussed in this chapter have further legal implications which are explored further in the next chapter: *Reluctance to Convict in Acquaintance Rape Scenarios*.

5.1 “Women ‘ask for it’ through their behaviour, attitudes or dress”

This myth assumes that women bring on rape by their behaviour prior to the crime – “it is not seen to be the rapist who ‘caused’ the rape but rather it was the woman who failed to prevent herself from enticing him” (Benedict 1992:16). Almost all focus group participants made reference to female behaviour which was seen as ‘putting oneself at risk’ or ‘sending mixed signals’. This relates to the rape myth that ‘women ask for it through their behaviour, attitudes or dress’ i.e. victim precipitation. The remainder of this section will examine participants’ notions of victim precipitation in more detail.

Dress

The majority of focus group participants (89% n=58) felt that the way a woman is dressed should not have any influence on whether she is attributed any responsibility for rape. This shows a clear resistance to the myth that women 'ask for it' by the way they are dressed. The following quotations reflect this majority view that a woman is not 'asking for it' if she is dressed provocatively:

FG F5
Glenyss (52)

“ ... I think a lot of men still look at young women today ... especially if they wear short skirts and skimpy tops ... and the attitude would be, they're asking for it ... they're asking for what? They're asking to be an individual ... to express themselves in the way they want ... and I think guys really need to get the message”

FG M4
Frank (31)

“I mean there was this girl at the work function I was at last night who was wearing one of those tiny little tops which doesn't leave much to the imagination but [it is not] *as if* she was going up to guys going 'please rape me' (!)”

FG MF1
Jacqui (25)

“... when I used to go out and my brothers would say 'why are you dressed like that?' ... you know, in a short skirt and top ... I don't go out with the intention to be raped or to be harmed in any way ... I do go out for attention ... and that's what a lot of girls like but there is no way that I would expect to be raped or touched in any way that I didn't want to be touched ... some women just like to get dressed up”

However, some respondents (11% n=7 of 65) felt that if women dressed in a revealing manner then they were making themselves more likely targets for rapists. It

is important to note that this does not automatically equate to a belief that ‘women ask for it by the way they are dressed’. The idea that a woman attracts more attention to herself by dressing provocatively and thus increases her susceptibility to rape is subtly different from the belief that such actions mean that women are ‘asking for it’. The majority of participants who expressed the viewpoint that if women dressed in a revealing manner then they were making themselves more likely targets for rapists were male (86% n=6 of 7) which suggests that some men continue to believe that there is a link between the way women are dressed and rape. However, it can be seen as encouraging that this link may not be as explicit as the belief that women are ‘asking for it’ if they are dressed provocatively. There is obviously a more complex process going on here than simply an acceptance or rejection of the myth that ‘women ask for it by the way they dress’. The following quotation illustrates this viewpoint:

FG M1

Trevor (22)

“I think (women) can do what they want ... yeah I don't disagree with that ... they can dress (provocatively) if they want to ... just don't be surprised if some other guy's going to start getting ideas ... and don't be completely shocked like 'oh I've been raped’”

Trevor's comments here reveal this complexity because, on the one hand, he is clearly subscribing to aspects of the myth that ‘women ask for it by the way they dress’ when he suggests that women who dress provocatively would be foolish not to expect undesired attention from men, which may potentially result in a rape situation. But on the other hand, he also comments that women should have the freedom to dress as they please which is somewhat contradictory. Trevor has an interesting

perception of the concept of choice – I would argue that women cannot really have a ‘choice’ to wear what they wish if they then have to accept that they should not be shocked if they are raped. This illustrates a clear inconsistency whereby, on the one hand, women can dress provocatively if they wish but, on the other hand, they must accept responsibility for the perceived potential outcome of such actions. This indicates a more complex process occurring where people are working with rape myths differently at different times and in different circumstances and/or holding competing views simultaneously. Thus, it can be seen that rape myths concerning the way a woman is dressed do still continue to be influential for some members of society, in particular men. However, it should be noted that the majority of participants in this research rejected such myths.

Alcohol

A common theme in these research findings was that women have to take some responsibility for incidents occurring after their voluntary consumption of alcohol or drugs - resulting in impaired behaviour, passing out and/or blackouts.⁵⁶ A lot of the focus group discussion surrounding the second vignette was related to the use of alcohol as a coercion tool. Almost a third (31% n=20) of focus group participants stated that they believed that the man in this scenario behaved inappropriately by ignoring the woman's requests for a soft drink and instead bringing her alcohol – as the following quotations demonstrate:

FG F1
Caz (22)

“Basically the bastard was feeding her whisky all night even though she specifically asked for

⁵⁶ An alcohol blackout is where one cannot remember things that occurred whilst intoxicated

coke and then he took her back to his place and took advantage of her”

FG M6

Keith (47)

“The fact that she asked for a coke and he was coming back with a scotch is pretty poor”

It is interesting that although many participants expressed that they felt the man had acted inappropriately, there was also significant debate concerning the woman's responsibility for the outcome of this scenario. So although the man was seen to have behaved irresponsibly, for many participants the majority of the responsibility still lay with the woman. Similarly, Emily Finch and Vanessa Munro (2005), whose UK research consisted of a pilot study using a combination of focus groups and a trial simulation, found that often responsibility was still attributed to the woman even in cases where the man had deliberately interfered with her drink to bring about intoxication.

Some focus group participants (23% n=15) felt that the woman in vignette two had to take some responsibility for the situation as she accepted the alcohol even though she had said that she wanted a soft drink. With regards to alcohol, Amnesty International's UK research, involving a representative sample of 1095 members of the general public, found that 30% of their research sample thought that being drunk makes a woman at least partially responsible for being raped (2005:5). The participants in my research who felt that the woman had some responsibility for the outcome of the scenario argued that she should have refused the drink or simply not drunk it – as reflected in the following quotations:⁵⁷

⁵⁷ These participants were divided on whether or not the scenario was rape

FG F2	
Lisa (25)	“I think the interesting thing about this is that she knew what she was drinking and she still drank it ... I mean fine the first one you're embarrassed and you don't want to make a big deal out of it but//”
Luan (30)	“//She could have just sipped on that one all night and then said ‘no’ when he asked her if she wanted another”
Lisa	“Yeah ... when she asked for coke and got whisky then she should have gone and got her own drink next time”
FG M4	
Frank (31)	“The only thing is, instead of her saying 'no I'm alright for a drink' she's put herself in a bit of a situation - that's risky sort of behaviour, she's been pretty spineless ... I think that was slightly irresponsible”

My findings in this area were similar to those by Emily Finch and Vanessa Munro, where their participants felt that “the voluntary ingestion of intoxicants placed a higher burden of responsibility for events that followed onto the victim and that this led to a corresponding lessening of the defendant’s responsibility” (2005:31). Participants in my research acknowledged a difference between knowingly intoxicating oneself (even if pressurised/coerced) versus being unaware that you were consuming an intoxicant. This is also reflected in the England and Wales Sexual Offences Act 2003 where involuntary drink spiking is specified as giving rise to a presumption of a lack of consent whereas voluntary ingestion leading to incapacity is not. In my research, women were perceived to have much greater responsibility in cases of self-intoxication – responsibility both for their intoxication and for any subsequent sexual attack. This finding can be linked to rape myths

concerning victim precipitation where women who are intoxicated in public are often viewed as ‘asking for it’ to a certain extent, or at the very least putting themselves at risk. In this way, Sharon Cowan argues that “there are residual prejudices and biases inherent in the jury decision-making process regarding the responsibility and credibility of a woman who has been drinking” (2008:918). The practice of some men attempting to use alcohol to increase the likelihood of sexual intercourse was also acknowledged by participants and it was seen as the woman’s responsibility to be aware of this.

Other ‘Risky’ Behaviour

Leading a Man On

Flirtatious behaviour was seen by focus group participants as sending mixed messages to the man involved although it was recognised that this was a relative concept subject to individual interpretations. A great deal of the focus group discussion surrounding vignette one was related to the concept of ‘leading the man on’. Most focus group participants (72% n=47) referred to the idea of the woman in this scenario having ‘led the man on’, for example: by inviting him to share a bed with her; stripping down to her underwear; initiating some sexual contact i.e. kissing. This relates to previous social psychological research findings which document the common practice of female signals being misinterpreted by men (see for example: Abbey and Harnish 1995; Abbey and Melby 1986; Haselton and Buss 2000; Henningsen 2004). The following quotations illustrate the popularity of the notion of ‘leading a man on’:

- FG F4
Anne (34) “As a male I guess sleeping in the same bed could be perceived as a given that you are going to have sex”
- FG F5
Morag (49) “You don't ask someone to come to bed with you and get down to your underwear when you've just met them if you are not thinking ... you know (that you are going to have sex)”
- FG M5
Darren (43) “I mean my daughter is nearly 15 now and she's had a lot of platonic guy friends and she's been hugging them and stuff and I've had to say to her ... use the word 'prick-tease' with her – because she doesn't understand ... but I know what it's like to be the young lad with the hormones racing ... (women) have got to be careful”

An interesting point in relation to this discussion was that participants in this research were reluctant to actually go as far as to state that a woman was ‘asking for it’ by ‘leading a man on’. Although the concept of ‘responsibility’ was mentioned frequently during the vignette discussions, participants seemed disinclined to explicitly connect this with the notion of ‘asking for it’.⁵⁸ The consensus amongst those who attributed responsibility to the woman in the vignettes was that she ought to have known better than to get into such a situation. It was thought that women should be more aware of how their actions might be perceived by others (i.e. potential rapists) and by not doing so thus had to be allocated some degree of responsibility for the resulting incident. In some cases, it seemed that participants’

⁵⁸ Please note that I did not specifically ask whether participants connected the concept of ‘responsibility’ with notions of ‘asking for it’ but rather am simply noting a lack of use of this language

allocation of responsibility to the woman in the scenario correlated to the man's lack of guilt.⁵⁹ No matter how much responsibility participants attributed to the female they remained uneasy about actually saying she was completely at fault and 'asking for it' – perhaps it was felt that this was too condemnatory. Despite there being reluctance to actually go as far as to use the term 'asking for it', participants were still clearly using notions of victim precipitation in their discussions about responsibility. This still relates to the myth that 'women ask for it through their behaviour and attitudes' – albeit on a more subtle and less obvious level. Thus, it can be seen that it is not as simple as the public simply accepting or rejecting rape myths but rather there is a complex and somewhat contradictory process of engagement occurring here.

The following quotations reveal the complexity of participants' engagement with the myth that 'women ask for it through their behaviour, attitudes and dress':

FG M1

Gus (24)

"I mean they (women) are not at fault exactly but ... I think when you are looking at a situation like rape ... there's a lot before it that would give you ideas that something like that might be about to occur ... and then within that time, obviously women have plenty of decisions they can make whether they ... put themselves in a position where that could happen"

FG F1

Nikki (28)

"If you put yourself in a dangerous situation then you have made a lot of choices that have led up to that ... not that you ever deserve to

⁵⁹ This issue will be dealt with in more depth in chapter seven: *Reluctance to Convict in Acquaintance Rape Scenarios*

have that happen to you ... you're not asking for it but ... I think you should take some sort of moral or personal responsibility for allowing yourself to be in that situation"⁶⁰

Such opinions are linked to Stephen Box's (1983) discussions of perceived female responsibility in rape scenarios. In chapter two, I outlined Box's analogy of comparing women taking precautions against being raped with banks taking precautions against being robbed. In this way, he comments that:

"For whatever a woman chooses to do or not do, just as whatever a bank chooses to do or not do, by way of taking precautions, if she is sexually assaulted or the bank robbed, it is still the person who chooses to take advantage of the woman or the bank and does the raping or the robbing who is to blame" (Box 1983:134)

It can be seen that, contrary to this viewpoint, the participants in the quotations above seem to be reinforcing the view that the victim is, to a certain extent, "the author of her own victimisation" (Box 1983:131). These kinds of views also relate to perceptions of legal findings about guilt which will be explored further in the next analysis chapter: *Reluctance to Convict in Acquaintance Rape Scenarios*.

Isolating Oneself

Women isolating themselves or allowing themselves to be isolated was seen by focus group participants as putting oneself at risk. Examples of this type of behaviour would be: going for a walk alone with a man or going to a man's room/house. In the focus group discussion about vignette three, 51% (n=33) of participants felt that it was not irresponsible for the woman to go for a walk alone with a relative stranger. A quarter of participants (25% n=16) argued that this behaviour was irresponsible and

⁶⁰ My emphasis

the remainder of participants did not offer an opinion either way. The following quotations demonstrate the range of discussion in this area:

- FG F1
Lani (31) “It was a bit dodgy that she went to a park with him and she doesn’t know him at all”
- FG M3
Wallace (54) “However, she did go for a walk ... I mean it’s normal human behaviour, regardless of what age group you are in”
- Brian (30) “I thought about that but then I thought ... you know, that happens all the time”
- Bill (32) “Yeah, girls can be up for a big deep and meaningful (chat) rather than going for sex”
- Brian “More often than not that situation will happen ... you’ll go for a walk, have a great conversation, get to know the guy a little bit better and then go back to the party”

Similarly, in the focus group discussion about vignette four, a third of participants (34% n=22) felt that it was not irresponsible for the woman to go back to the man's hotel room. However, a quarter of participants (26% n=17) argued that this behaviour was irresponsible – especially when his flirting had already made the woman feel uncomfortable – and that she should have insisted on the hotel bar.⁶¹

The following quotations demonstrate the typical debate amongst focus group participants concerning this aspect of responsibility:

- FG F4
Melissa (34) “This is the responsibility thing ... she shouldn't have gone back to his room”
- Jenny (36) “Hang on ... why does the woman have to be responsible when she ... went for a walk/had a drink/went back to a guy’s room? We’re not

⁶¹ 40% of participants did not offer an opinion either way

	allowed to do anything because something may happen to us – this is ludicrous (!)”
Melissa	“But you are asking for trouble going back to someone else’s room for a drink ...”
Jenny	“Rubbish ... You should be able to go back to your boss’s room for a drink”
Melissa	“No – do it at the bar (!)”
FG M5	
Ian (40)	“But he’s been making sexual innuendos and whatever ... yet she still goes up to his room ... she should be saying ‘it’s the hotel bar or nothing”
Darren (43)	“And she’s got her wits about her because she’s not been drinking”
Steve (36)	“Yeah but she’s going to be thinking if he pushes her for sex, she’ll say no and that will be the end of the story ... he’s a work colleague so you are going to expect that things will stay professional, he’s never done it before so she’s got no reason to expect it ... they’re both married as well”
Darren	“No, she’s as much of a fool as he is”
Steve	“I’m not saying she’s not a fool but I can understand how she got to that room feeling absolutely no fear for her safety whatsoever”
Darren	“Well I can’t see that at all”

The discussion in the quotation above (from focus group M5) demonstrates differences in opinion not only in what these male participants are saying about women but also what they are saying about men. There is a divide in opinion as to whether the man in this vignette (four) should automatically be perceived as potentially aggressive and predatory, or whether he can be described as reasonable. This highlights a continuing conflict between different perceptions of masculinity and also different perceptions of femininity i.e. appropriate socio-sexual behaviour. This is also linked to ideas about female responsibility because some participants are arguing that the woman in this scenario should have taken more care not to isolate

herself and should have been more aware of the potential for sexual danger. It can be seen that there was a lot of debate and mixed opinions concerning the extent of female responsibility for rape when the woman has isolated herself or allowed herself to be isolated. However, the majority of focus group participants felt that this behaviour was not irresponsible. This is similar to findings by Amnesty International's UK research (discussed previously) where 69% of research participants thought that being alone in a dangerous/deserted area does not make a woman responsible for being raped (2005:7).

5.2 "Women say no but mean yes in some sexual encounters"

Individual interview participants were asked whether they thought that women say no but mean yes in some sexual encounters. 60% (n=9) of individual interview participants felt that this statement was incorrect. This means that the majority of participants were resistant to the myth that 'women say no but mean yes in some sexual encounters'. However, 40% (n=6) of individual interview participants - a large percentage - still agreed with this rape myth, which is significant. A few focus group participants (9% n=6) also mentioned the myth that 'women say no but mean yes in some sexual encounters'. Almost all of the focus group participants (83%) who mentioned it were in agreement with this myth. More men than women (67% vs. 33%) mentioned this myth in the focus groups which suggests that men are more likely than women to believe the myth that 'women say no but mean yes in some

sexual encounters'. The following quotations illustrate participants' ideas about why women might say no but mean yes in some sexual encounters:

“Yes ... they might (say no but mean yes) because they don't really know if they do or not and so they say no but really they do mean yes ... I guess because they're not sure of themselves ... and they've probably gone too far with the guy in whatever circumstances ... like kissing the guy and then he wants more ... and she goes 'no, no, no' but ... you know, she's happy to go along with it really” Jacqui (25) Individual Interview⁶²

“Yes erm ... I think they don't want to be seen as ... easy so a little bit of resistance is good but we know where we're going to end up later, you know” Keith (47) Individual Interview⁶³

These findings relate to the issue of men misunderstanding female signals, as discussed in chapter four, where previous research has shown that men read women's signs of refusal as flirtation and/or consent.

5.3 Resistance Requirement Myth

Implicit in the resistance requirement myth is “the belief that a healthy woman can always resist rape if she wants to” (Carter 1995:9). The lack of physical resistance by women in acquaintance rape cases is “raised repeatedly in defence arguments as a method of undermining women's claim of rape” (McGregor 2005:147). Opinion was divided amongst participants in this research as to whether a woman not offering any resistance when faced with a potential rape situation was potentially sending a man mixed signals as he may be unaware that she does not consent. This is also linked to the issue of mixed signals discussed above where men interpret women's non-verbal

⁶² When asked whether women say no but mean yes in some sexual encounters

⁶³ As above

signals to mean 'yes' when in fact they mean 'no'. In the individual interviews participants were asked whether they thought that women have a responsibility to struggle and offer physical resistance when faced with a rape situation. 60% (n=9) of these participants did not feel that women had to physically resist which provides a challenge to the resistance requirement myth. However, it should be noted that 40% (n=6) felt that women do have a responsibility to resist which demonstrates (considerable) continuing support for the resistance requirement myth.

Thus, there is evidence that the public is divided in their support of this myth - although the majority does challenge it. This is another example of the complexity of people's engagement with rape myths. It also highlights differences between what participants said in the more 'abstract' discussions in the individual interviews as opposed to the more specific focus group vignettes - which provided actual examples of those abstract discussions. The following quotations illustrate participants' reasoning concerning whether women have a responsibility to resist when faced with a potential rape situation:

"No (women do not have a responsibility to resist) because it depends on the situation ... whether they fear for their safety or not" Brian (30) Individual Interview

"I'd have to say that given the fact that the majority (of rapes) are by people that (the victim) knows I'd have to say yes (they do have a responsibility to resist). I probably would, I'd think 'I'm not going to lie here and do nothing. I don't want this to happen to me so I have to do whatever it takes to stop them ... or at least make it difficult for them.'" Christine (47) Individual Interview

There was significant debate about the woman's lack of resistance in the second vignette. Most focus group participants (62% n=40) felt that she was incapable of offering any further resistance due to her severe intoxication. However, some participants (14% n=9) felt that no matter how intoxicated she was she should still have been able to offer some form of resistance.⁶⁴ This opinion was only expressed by female participants which may be a distancing strategy employed by some women to convince themselves that rape can be avoided and that they would behave differently in the same situation and thus evade rape. Finch and Munro explain this idea further in the following quote:

“If jurors are forced to accept that an undeserved injustice has happened to the victim, they are faced with the prospect that they might similarly be visited with undeserved ill-fortune. If, however, the complainant can in some way be viewed as being the ‘author of her own misfortune’, jurors no longer perceive any injustice and the scenario can be rewritten into one in which a bad thing has happened to a bad person. In consequence, jurors are thus reassured about their own safety and ability to protect themselves against similarly harmful or distressing experiences” (2007:20)

In this research, when discussing the vignettes, female participants tended to consider the situation from the viewpoint of ‘that could not be me’ and/or ‘I would never let that happen to me’ and in this way were trying to distance themselves from the event and reinforce their own feelings of safety.

Overall, it appears that the majority of participants disagreed with the rape myth that ‘if you do not struggle or use physical force to resist a man then you have not been raped’ although, again, engagement with this myth was not straightforward.

⁶⁴ The remaining participants (24%) did not offer an opinion either way

The following exchange demonstrates the typical debate amongst focus group participants in this area:

FG F5 Diane (38)	““She couldn't find the strength to push him off” so she knew it was happening ... she's awake ... and she's accepted drinks to get her into that state so I would question it ... I don't know ... she's allowing it to happen ... so I wouldn't call it rape, I'd call it stupidity on her part but I don't think she can accuse him of rape”
Glenyss (52)	““She couldn't find the strength to push him off” ... he has plastered her with alcohol deliberately to take her home and you don't call that rape?” [Incredulous]
Diane	“No ... erm I don't ... she has put herself in that situation ... yeah he manipulated her but that's not rape”

Diane's comment above is very similar to findings by Finch and Munro (2005; 2007), in their recent UK research with mock juries, where their respondents felt that women put themselves in position of not having the freedom and capacity to choose whether or not to consent by getting so intoxicated.

5.4 Women as Gatekeepers to Men's Actions

Many focus group participants (45% n=29) made comments related to the idea of women as gatekeepers to men's actions i.e. “women's conceptions of male sexuality which make her feel responsible for his state of arousal and its resolution” (Holland, et al. 1996:253).⁶⁵ Liz Kelly argues that women feel that they have to be “constantly aware of their environment, watching and checking the behaviour of men they may encounter, trying to predict their motives and actions” (1996:192). Lynn Phillips

⁶⁵ It is important to note that such categorisation was made by the researcher rather than by the participants themselves.

states that “society (including women) presumes clear lines and stands ready to hold women responsible as gatekeepers for men’s actions” (2000:9). This implies an attitude towards sexual violence where men tend not to be considered responsible for their behaviour; and instead, “women (have) the responsibility to not be the catalysts for men’s behaviour” (Chung, et al. 2006:16). In the current research, the concept of women as gatekeepers to men’s actions was discussed by participants in the following areas: female responsibility for setting guidelines for sexual encounters; whether education about rape should predominantly focus on teaching women to avoid certain behaviour/places; the reality of women curtailing their freedom in order to avoid ‘risky situations’; the role of female assertiveness; and the widespread nature of self-blame. This chapter now considers each of these areas in turn.

Setting Guidelines

There was a prevailing view amongst participants in this research that women have a responsibility for controlling men’s behaviour in intimate encounters. Previous UK-based qualitative research by Clarke et al, comprising a combination of 28 focus groups and 62 individual interviews, demonstrated such beliefs amongst their respondents (2002:29). A few focus group participants in my research (9% n=6) mentioned the idea of women setting guidelines in sexual encounters i.e. if she does not wish to have full intercourse then it is necessary for her to explicitly state how far she is prepared to go. Burton and Kitzinger’s UK-based research with young people aged 14-21, which comprised of survey data from 2039 participants and ten focus groups, revealed similar findings with focus group participants emphasising that girls could be at fault for “laying themselves open to unwanted sex by not being clear in

advance about what they wanted out of a sexual encounter” (1998:2). The following quotation illustrates this idea of setting guidelines:

FG F2

Lisa (25)

“... there's still human nature ... I mean you generally know what guys want and if you're not into that then you have to make sure that they fully understand that that's not what's going to happen”

For example, in vignette one there was a great deal of discussion concerning the ‘mixed signals’ that the woman was perceived to be giving. Most focus group participants (71% n=46) felt that she was giving the man mixed signals through her behaviour, i.e. by inviting him to share a bed with her; by stripping down to her underwear; by flirting and kissing all night; by the fact that they were both drunk and smoked a joint. This is linked to perceptions that women are responsible for men’s misunderstandings around consent due to women sending out ‘mixed signals’ – as demonstrated by the following quotation:

FG M2

Alan (28)

“I think it was rape, but I think it might have been brought on by her a little bit ... I mean you never like the idea that a girl could get raped in that situation but ... I mean the whole night she’s been coming on to him; they’ve been drinking; she goes back to a party with him ... erm and then she asks him to go to bed with her, you know ... the fact that she passed out, yeah fair enough, they should have discussed what was about to happen ... like he should have said to before she went to sleep ‘do you want to have sex with me?’ ... and she obviously would have said yes or no, and that would have been it ... there was no talk ... everything that’s she’s done ... asking him to bed with her and undressing down to her underwear, I mean that’s asking for trouble”

A few focus group participants (9% n=6) thought that the woman in this first scenario needed to make it very clear before sharing a bed that she did not want to have sex – as the following quotations illustrate:

- FG M5
Dave (37) “She also could have made it clear before they got into the bed, said you know, this is just a platonic thing here”
- Darren (43) “There's no chance of that with the alcohol and the drugs - she's not going to think like that”
- Dave “Well she's either very naive or very stupid - if she didn't want to have sex with him then she should have set clear boundaries beforehand”
- Ian (40) “Yeah but she's stripped off apart from her underwear, invited him into bed and then//”
- Dave “//Yeah but if she'd made the rules clear at the start ... different ball game”

The above exchange obviously raises questions about notions of consent and how it is determined. The emphasis appears to be on her being responsible for saying ‘no’ and consent being assumed unless spoken otherwise rather than it being his responsibility to check that she is indeed consenting. These and other issues were considered in detail in the previous chapter *Determining Consent in Acquaintance Rape Scenarios* where it was argued that this assumption is problematic and keeps the onus on women as being gatekeepers to men’s actions, as well as enabling men to avoid responsibility. This relates to the resistance requirement myth where it is assumed that if a woman is not struggling or offering physical resistance then she does not strongly object to what is being done to her.

Education

A number of focus group participants (28% n=18) stated that they felt that women should be further educated about avoiding potentially ‘risky’ situations which may

lead to rape. However, it must be noted that it may be seen as sensible for women to avoid these situations without necessarily implying that women need to take on the responsibility of being gatekeepers to men's actions. Most of the participants who mentioned this were male (65%) which suggests that men are particularly influenced by the idea that women should avoid what they regarded to be risky situations. This role emphasises rape as a female avoidance issue rather than a male prevention issue. Thus, it appears that there is a continuing tendency to view it as a predominantly female responsibility to avoid rape situations – as illustrated by the following quotation:

FG MF1
Gavin (26) “I think people know what rape is but maybe more education on the female side about how to avoid it ... not put themselves in situations”

Some focus group participants (12% n=8) stated that more education is needed to promote female self-esteem so that women have more confidence to deal with potential rape situations. Almost all participants who mentioned this were women (88%). The following quotations reflect this finding:

FG F1
Nikki (28) “I think there's enough information on what rape is ... but not how to have the confidence to say 'no'”

FG F2
Jessica (28) “I think women need to be encouraged to have really good self-esteem ... having the guts to say 'no'”

Many (28% n=18) focus group participants felt that some women need to learn to be more assertive and stand up for themselves. Almost all of the discussions relating to

female assertiveness occurred in relation to vignette two where participants were annoyed by the woman's lack of assertiveness and felt that she was responsible for putting herself in the situation as a result. The following quotations relate to vignette two and indicate participants' frustration with the woman's lack of assertiveness:

FG F2

Luan (30)

"Girls need to get some more balls about them (!) ... she obviously really didn't want to have the drinks ... so she shouldn't have had them ... she obviously really didn't want to stay at this guy's house ... so she shouldn't have got in the cab with him ... I mean it's not then an invitation for him to do that but ... I mean come on (!) ... she didn't do anything to stand up for herself"

FG M5

Steve (36)

"... I mean she doesn't even like scotch, she doesn't like it but she still keeps drinking it because she doesn't want to be rude to him ... yeah there's no doubt that this guy is a rapist but ... for god's sake mate help yourself"

FG M6

Guy (46)

"She could do with some education and I think he was at fault but she could do with some education not to get herself into those situations - if she doesn't want to drink whisky then don't drink whisky"

Almost a third (31% n=20) of focus group participants explicitly stated that they felt that men need further education about rape and consent. Many more women than men mentioned this (85% vs. 15%) and the following quotation illustrates this viewpoint:

FG F1
Caz (22)

“I do think that's an issue - that men aren't taught to recognise that sort of stuff (consent) ...
... left just to learn themselves ... and if you grow up in a good family then you'll probably get educated about that sort of stuff but if you don't ... or if your family isn't open like that ... then you're just going to have to teach yourself ... so it does need to be introduced somewhere ... I think teaching guys about recognising consent would help lower the rape rate ... it wouldn't stop rape but you know ... it might help”

A recent UK study included an evaluation of the effects of two posters which had been used in a Home Office mass media campaign about consent and “explored whether seeing the posters while judging rape scenarios would lead participants to pay more attention to the issue of consent” (Temkin and Krahe 2008:99). Their sample consisted of 2176 members of the public aged 18-69 and data was collected using an online survey. Jennifer Temkin and Barbara Krahe found that there was “little evidence ... that the posters were effective in achieving the stated goal of promoting awareness about consent and dispelling myths about rape” (2008:119). Obviously this is discouraging and raises the question of how exactly men could be better educated about consent. Of course, it should be noted that there are some methodological issues with measuring impact in this way and also that there are other methods of education – rather than posters – that might be more effective.

In 2004, Shine SA (a South Australian sexual health agency) ran a project entitled ‘RESPECT. Getting it together ...’ with young men aged 16-20 years old, in

the Adelaide northern metropolitan region.⁶⁶ Shine SA's website states that "the key aim of the project was to assist in reducing the incidence of sexual based violence (and) also aimed to share information with young men to help them make the best possible choices when trying to establish a healthy relationship".⁶⁷ The project utilised the 'Rape Myth Busters Manual' which was "developed as a resource to be used within a curriculum framework to support school and community education aimed at encouraging young men to have attitudes and behaviours that do not support rape" (Friedman 1998:v). Unfortunately, there is no available evaluation of this project but its very existence demonstrates that it was felt that men needed further education about issues surrounding sexual assault and consent.

Several focus group participants (15% n=10) stated that they felt that there was sufficient information about rape and no further education was necessary. The majority of participants who mentioned this were male (70%).

FG M1

Daniel (23)

"I think (education about rape) is fine as it is ... I don't think you should shove it in people's faces anymore than it has to be ... it starts getting people over-protective and paranoid if you do it too much"

Another issue is that education may actually end up having the opposite to the intended effect, as in the case of Temkin and Krahé's (2008) recent research where one of the consent posters was found to be particularly counter-productive. This particular poster depicted a man in the top bunk bed in a prison cell with the caption "If you don't get a 'yes' before sex, who'll be your next sleeping partner?" (Temkin and Krahé 2008:110).

⁶⁶ Source: <http://www.shinesa.org.au/index.cfm?objectid=11399194-E081-51EF-A753680F671D3347>

⁶⁷ Source: As above

The authors suggest that one explanation for this may be that “rather than emphasising the importance of consent, the poster highlights the undesirability of the consequences a defendant would face if found guilty of rape” and their participants may have focused on this aspect and found him less responsible in order to make him less likely to go to prison (Temkin and Krahé 2008:119). Another possible explanation put forward was that the caption on the poster may be seen to be “suggesting that the man might himself be subjected to sexual aggression once in prison, thus shifting the focus from consent to punishment and revenge” (Temkin and Krahé 2008:119). Whatever the reasons, it can be seen that there is a risk that campaigns aiming to educate men about consent could have counter-productive outcomes. This relates to findings in this research which demonstrate that the target audience of such campaigns (i.e. men) often feel that they do not require any further education about consent and so are potentially not receptive to the message about consent that the campaign is attempting to convey.

Women Curtailing Freedom

Many focus group participants (42% n=27) mentioned the idea of women curtailing their freedom in an attempt to avoid or minimise their risk of rape. It is generally supposed that women can minimise the likelihood of being raped by “voluntarily restricting their freedom and thus giving the rapists less opportunity to get to them” (Shapcott 1988:52). Women are expected to behave in a way which minimises the perceived risk and are “assumed to have the ability to calculate potential risks and to mitigate those risks accordingly” (Malloch 2004:121). If a woman chooses not to

adopt such cautionary measures then “she is perceived to be knowingly taking a calculated risk” (Shapcott 1988:52). Camille Paglia controversially commented that:

“Feminism keeps saying the sexes are the same. It keeps telling women they can do anything, go anywhere, say anything, wear anything. No, they can't. Women will always be in sexual danger” (1998:96)

This viewpoint simply accepts that women are policed by the threat of sexual attack and therefore that choice is taken away from them.

It has been suggested that it is common for women to manage the threat of rape in their everyday lives by “learning to avoid situations perceived as ‘risky’, which often translates into a fear of many public spaces” (Morrison, et al. 2007:20). The following quotations reflect this idea of female avoidance of certain situations:

FG F5
Morag (49)

“It's like a pack of animals in the wild - the lion will pick out the weakest one - so if you are going to get yourself plastered so you're sitting on the side of the road throwing up and some guy comes along then you're in a really vulnerable situation ... so there are lots of ways that you can avoid putting yourself into that situation by erm as a group looking after and looking out for each other ... you can teach your kids ways of *not* putting themselves in a vulnerable position ... so yes (women) are responsible for their own safety to a point”

“It shouldn't be the responsibility of the woman to watch out and have safeguards but that's probably the main thing that is going to stop occurrences of rape ... not that (women) are to blame for being blasé or walking through a park by themselves but ... erm ... if they don't do things like that then rape will be minimised” Brian (30) Individual Interview⁶⁸

⁶⁸ Response to question asking what the respondent thought could be done to minimise occurrences of rape

It is important to note that these quotations take a pragmatic rather than blaming approach. These viewpoints of course fail to recognise that most rapes are not stranger rapes but acquaintance rapes and this does not usually involve being alone in an isolated area. However, it has been suggested that more women are now being targeted by perpetrators at social venues, such as pubs, if they are drunk and vulnerable (Kelly 2008).

In this research, more women (63% n=41) than men (37% n=24) mentioned women curtailing their freedom to avoid or minimise occurrences of rape – probably because women are more aware of this practice than men. There appeared to be a conflict amongst many female participants concerning their feelings about on the one hand, women having the right to freedom and on the other hand, women taking steps to protect themselves. The following quotations illustrate this conflict:

FG F4

Jenny (36)

“We're not living in a perfect world so yeah we do have to make concessions”

FG F4

Anne (34)

“I mean if you start saying well I can't go with this person or that person then you're going to end up going nowhere and having no life ... so you have to have some freedom”

FG F2

Jessica (28)

“I think that the most frustrating thing as a female is that yes we do have to watch our backs ... and if we're somewhere and we're blind drunk then there is always that possibility that someone is going to take advantage of us and rape us”

Participants mentioned several steps which women may take to avoid rape including: not isolating oneself/staying in a group; not going out alone at night; avoiding catching taxis alone; and avoiding excessive drinking. Thus, it can be seen that the focus remains on women avoiding situations which are perceived as unsafe or 'risky'.

“In the short run, activity restriction may be the best advice for women who wish to avoid rape, but blaming survivors for the degrading and violent behaviour of men legitimises a society in which women are forced to restrict their lives out of fear of rape” (Pitts and Schwartz 1997:70).

Some focus group participants (9% n=6) expressed the opinion that women need to be watchful over one another. This continues to make rape women's responsibility by putting the emphasis on women looking after other women to try to avoid rape. This idea was mainly expressed in relation to discussion about vignette two where participants felt that the woman had been abandoned by her friend and thus placed – unnecessarily – in a more vulnerable position. More women than men (83% vs. 17%) expressed this opinion and once more this may be seen as a distancing strategy employed by some women to explain why they would not end up in the same situation – i.e. their friends would not leave them alone. The following quotations relate to discussion about vignette two and illustrate this idea of female surveillance:

FG F5
Morag (49)

“Girls really have to stick together and look out for each other”

FG F5
Johan (43) “I’d kill my girlfriend if she left me alone like that (!)”

FG M3
Darren (32) “And also her friend has pissed off and left her”
Bill (32) “Yeah that’s a moral thing”
Darren “Yeah you don’t do that to your mates”

There is also an assumption here that individually women are less likely to avoid risk and potential rape situations than if they were in groups.

Self-Blame

Some focus group participants (12% n=8) explicitly stated that they believe that women are reluctant to label and report incidents as rape when they feel any degree of responsibility for the situation. More women than men (63% vs. 37%) mentioned this and the following quotations illustrate this issue of self-blame:

FG F4
Anne (34) “I’d feel guilt that I’d caused it”
Interviewer “Can you say a bit more about that?”
Anne “I think a lot of women feel guilty about what did I do that night to bring it on ... I had one too many to drink; or I smiled too nicely; or I touched the back of his arm; therefore I encouraged it, therefore I deserved it ... so it's not rape because I kind of brought it on myself ... even though they didn't ... I really think guilt is a huge issue in terms of why women don't come forwards ... you self-analyse”

FG F4 Vignette 1
Kate (29) “From the way he's worded what he said to her afterwards ... like I thought *you* wanted it, I didn't realise *you* were asleep, *you* were coming onto me ... he's then putting the guilt trip and everything onto her ... to make her then think

'well hang on a minute, *did* I respond? Was it my fault?'"

FG M3

Brian (30)

“(Women may be reluctant to report an incident as rape because they) possibly believe they are at fault ... whether it's a valid reason or not ... they might just feel that if they weren't there or if they hadn't done this or that then it wouldn't have happened”

These quotations suggest that perceived victim precipitatory behaviour is seen as likely to make women reluctant to report rape to the police and, in some cases, even to define an incident as rape to themselves. These findings suggest that women are influenced by the myth that ‘women ask for it through their behaviour, attitudes or dress’ as revealed by their reluctance to define an incident as rape if they have behaved in certain ways. This reveals the complexity of female participants’ engagement with this rape myth.

Conclusions

A recent small-scale Australian study, with a non-random sample of 61 men and women, discovered that nearly all of its participants (98%) considered rape myth factors as relevant in determining the seriousness of any particular offence (Clark 2007:22). Similarly, in the current research, ideas about appropriate female behaviour that are found in rape myths were expressed in all of the focus groups when considering notions of responsibility for rape. In all of the vignette discussions there was reference made to victim precipitatory behaviour and subsequent allocation

of increased female responsibility for the outcome of the scenario. This shows that the public continue to be influenced by the rape myths that:

- Women ask for it through their behaviour, attitudes and dress (victim precipitation)
- Women say no but mean yes in some sexual encounters
- If you do not struggle or use physical force to resist a man then you have not been raped (resistance requirement)
- Women are gatekeepers to men's actions

In many of the findings presented in this chapter there was little divergence according to gender. However, it is important to note that there were some exceptions to this in terms of engagement with the above rape myths. For example, men were more likely to refer to the myth that 'women ask for it through their behaviour, attitudes and dress' and men were also more likely to mention the myth that 'women say no but mean yes in some sexual encounters'. Another gender difference was that women were more condemnatory than men concerning victims who were too intoxicated to offer resistance. Also, women were much more likely than men to mention women curtailing their freedom and/or watching over each other in order to avoid or minimise occurrences of rape. Another point to mention is that more men than women thought that women needed more education and more women than men thought that men needed more education, which reveals another clear gender difference. This suggests that both men and women feel that current socio-sexual norms and behaviours need to be adjusted, though emphasis on what needs to change differs according to gender.

Thus, this chapter has shown that traditional stereotypes about rape still continue to affect people's perceptions about and interpretations of acquaintance rape scenarios. However, it is important to note that there are also varying degrees of resistance to (as well as support for) these rape myths. The findings in this chapter have demonstrated the complexity of individuals' engagement with rape myths. It has been shown that it is not simply a case of either accepting or rejecting rape myths but rather that the public engage with rape myths differently at different times and in different circumstances. Lay judgments about responsibility in rape scenarios are more subtle and complex than rape myths but are not entirely independent of them. Participants in this research continue to perpetuate rape myths by colluding with elements of, and sometimes making explicit reference to, rape myths whilst also often acknowledging that reality is more complex.

If a woman is perceived as 'putting herself at risk' then she tends to be attributed increased responsibility for rape and there tends to be greater issue concerning notions of consent and correspondingly there tends to be less guilt attributed to the alleged perpetrator. The level of responsibility varies depending on how much or in what way the woman is perceived to have put herself 'at risk'. Overall, dressing provocatively was seen to have little influence on whether women are attributed any responsibility for rape. Women tended to be seen as more responsible for incidents occurring after their voluntary intoxication and as much less responsible for incidents occurring after their involuntary intoxication. Behaviour perceived as conducive to 'leading a man on' also increased female responsibility for rape, with the level of responsibility attributed depending on the type of behaviour.

In most cases, women isolating themselves or allowing themselves to be isolated was not seen to significantly increase female responsibility for rape. Overall, it seemed that women who did not offer any resistance when faced with a potential rape situation were not necessarily attributed more responsibility and a woman being too fearful to resist was seen to be legitimate in some cases. However, as stressed throughout this chapter, it is important to note that engagement with these rape myths was not a straightforward process.

Participants' widespread use of the concept of victim precipitation – and subsequent allocation of increased female responsibility for rape – also has important implications for understanding the behaviour of jurors in rape trials. It suggests that traditional stereotypes about rape continue to be commonplace amongst the public – and thus also amongst potential jurors. Such myths may influence the verdicts which jurors reach through increased responsibility attributed to the victim and subsequent lessening of the defendant's perceived responsibility. In other words, it seems that participants in this research viewed men accused of rape as less responsible in situations where the victim is perceived to have put herself 'at risk' – and this may consequently translate to a reluctance to convict amongst jurors due to ambiguity over what legally constitutes consent. This may help to explain the extremely low conviction rates for rape in Australia – as well as in other Western societies. The following chapter will examine in more detail this issue of reluctance to convict in acquaintance rape scenarios.

Chapter 6: Reluctance to Convict in Acquaintance Rape Scenarios

“Fewer than 20% of (South Australian) rape cases that reach the court result in conviction so there may be something wrong with how we define what is a rape or sexual assault”⁶⁹

In many jurisdictions, the number of rapes reported to the police has increased dramatically but this has not been reflected by a parallel increase in conviction rates, and it is “this discrepancy that has been termed the *justice gap*” (Temkin and Krahé 2008:1). It has been suggested that by failing to address the nature of juror decision-making in rape cases, “the law reform process has ignored a crucial element in the enforcement of the substantive law” (Rumney 2001:907). As touched upon in the previous analysis chapters, a common theme which emerged when discussing the vignettes was that despite thinking that an incident was rape many focus group participants were still reluctant to find the man guilty of rape. So, although participants defined an episode as rape, they felt that as a juror they would not convict the man of rape. The starkest example of this was in vignette one where despite 68% (n=44) of focus group participants defining the scenario as rape only 6% would find the man guilty. Therefore, just 9% of those participants who thought that this scenario was rape would also find the man guilty. It was also felt that it would probably be very difficult to prove the case in court and there was unlikely to be a conviction due to lack of evidence. This chapter aims to explore and understand this apparent contradiction.

⁶⁹ South Australia’s Attorney-General, Michael Atkinson, 25/10/2007, www.ministers.sa.gov.au/news

There were a number of reasons given by participants for this reluctance to convict despite defining an incident as rape and this chapter is structured around these reasons.⁷⁰ Firstly, I examine participants' expressions of sympathy for the alleged perpetrator and their conceptions of 'real' rapists. Secondly, I consider the influence of the legal concept of 'reasonable doubt' on participants' decisions about guilt. Next, I outline the issues surrounding the defendant's honest versus reasonable belief in consent (the *mens rea* requirement) and the role of intent. Following this, I consider participants' beliefs about the following factors: women's propensity to make false allegations of rape; the relevance of sexual history evidence on verdicts; and their ideas about female responsibility for rape. Finally, I examine participants' desire for more variance in punishments for the crime of rape. It is important to state that many of the above themes are overlapping and although every effort will be made to minimise repetitiveness some reiteration may be necessary. It should also be noted that unless specifically mentioned there was little divergence in opinions expressed according to age or gender.

6.1 Sympathy for the Alleged Perpetrator and Misconceptions about Rapists

Many focus group participants (38% n=25) expressed sympathy for the men in the vignettes – vignette one in particular - when considering whether or not to convict him of rape. This matter is discussed first in this chapter as much of its content will overlap with subsequent issues. Reasons given by participants for this sympathy clearly displayed continuing references to stereotypical notions about rape. For

⁷⁰ Please note that the reasons listed here are not an exhaustive list and were derived from the data

example, participants expressed an understanding of how the men in the scenarios may have misinterpreted the situation due to the ‘mixed signals’ given by the female – this is connected to the myth that ‘women ask for it through their behaviour, attitudes and dress’. Other reasons given by participants included the sexual reputation of the female as well as the possibility of women making false allegations of rape – this is obviously connected to the myth that ‘women cry rape to get even with a man or to protect their reputations’. Another reason was the persistence of the ‘real rape’ myth whereby the incident was seen as a case of the man getting ‘carried away in the heat of the moment’ (non-malicious) rather than grabbing a woman off the street (malicious) – this also highlights the continuing influence of impulse theory. Finally, several references were made to the fact that the men in the scenarios might be ‘decent’ and have a good reputation or background – this is connected to the myth that rapists are easily identifiable from ‘normal’ men i.e. disease theory.

Sue Lees states that “inaccurate stereotypes of rapists distort jurors’ judgments and lead them to acquit dangerous men” (2002:210). It has been suggested that rapists are not always distinguishable from ‘normal’ men and that “rape is not a behaviour confined to a few ‘sick’ men but that many men have the attitudes and beliefs necessary to commit a sexually aggressive act” (Scully and Marolla 1993:27). However, it can be seen that the participants in this study continue to be influenced by notions of impulse theory and disease theory – as illustrated by the following quotations:

FG F2 Vignette 1

Luan (30) “When you look at it without the lead-up what he did was wrong ... but when you look at what happened

before ... yes it's still wrong but does he deserve to go to jail with all the other real rapists?"⁷¹

"I mean when they talk about rape – you know, the guy's an animal ... and all that gets fed back to us and we're going 'this guy isn't an animal, he's pretty cool, he's wearing a suit and tie, he's got two kids ... you know, I'm not taking a chance here'" Keith (47) Individual Interview

In these quotations, the participants are drawing on myths about disease theory i.e. that rapists are 'sick' or 'mad' and are easily distinguishable from 'normal' men. Luan's mention of "real rapists" clearly demonstrates that she is making a distinction between different types of rape and has a clear idea in her mind of what constitutes a 'real' rape in her opinion. Keith highlights the continuing pervasiveness of stereotypes about rapists as being easily identifiable as different from other men. Men who are seen as 'respectable' and either 'just like them' or, for women, 'just like the men we know' are perceived as unlikely rapists. There seems to be a fear of admitting that rapists could be men just like those one knows. It is self-protective to believe that rapists are clearly abnormal and deviant in comparison to 'normal' men. This is also linked to Emily Finch and Vanessa Munro's (2007) arguments about dissociation in that, by believing that rapists are recognisably deviant, participants are able to reinforce their confidence that either the men known to them or they themselves could not possibly be rapists. In this way, women are protected from having to confront the possibility that men just like those in their lives may have the capacity to rape and therefore, they can convince themselves that they are safe and this situation could not possibly happen to them. Similarly, men are protected from

⁷¹ My emphasis

having to confront the possibility that men just like themselves may have the propensity to rape.

6.2 'Reasonable Doubt'

No Doubt versus Reasonable Doubt

During the vignette discussions, several focus group participants (22% n=14) made specific reference to the legal concept of 'reasonable doubt' when considering whether they would convict the man of rape. Participants felt that if there was any doubt whatsoever in the man's guilt then one should not convict due to this legal requirement. This legal concept was heavily drawn upon when participants felt that there was a lack of sufficient evidence to prove the case either way. The term was brought up by the participants themselves and was used confidently which indicates a familiarity with this aspect of the legal system. However, it has been argued that 'reasonable doubt' is "a difficult concept for legal experts to define and even more difficult to explain to jurors, who are unlikely to be trained in legal terminology" (Wright and Hall 2007:91). Vicki L Smith (1993) suggests that jurors' lay understandings of legal terms, such as 'reasonable doubt', affect verdict outcomes. She argues that people have developed their own representations of popular legal concepts – such as the 'reasonable doubt' standard – "that influence their perceptions of fact situations and their verdict preferences" (Smith 1993:509).

In an article based on their psychological experiments, Wright and Hall (2007) consider whether judges should define the phrase 'reasonable doubt' to jurors given

that research has shown that there is a widespread false belief that a conviction beyond reasonable doubt should equate to certainty of the accused's guilt. One of the experiments in their research involved asking twenty six undergraduate students to read a rape case and decide whether the man was guilty with some participants being given guidelines on the reasonable doubt standard and some participants being given no guidance at all. Their findings showed that providing instruction to participants on the reasonable doubt standard "affected people's belief in guilt, their reasonable doubt threshold, and the way in which they justify their verdicts" (2007:97).

Their findings revealed that participants who were not given any instruction on the reasonable doubt standard used the phrase only to justify *not guilty* verdicts – similar to the findings of my own research. The other participants were given the following instruction:

"You do not have to be certain of the defendant's guilt. You may be able to imagine a scenario in which the defendant is not guilty, but still believe the defendant is guilty 'beyond a reasonable doubt'" (Wright and Hall 2007:93)

Interestingly, when participants were given this short instruction the majority (60%) that used the phrase 'reasonable doubt' did so to justify *guilty* verdicts, arguing that "although they were not certain about guilt, they felt that there was enough evidence against the defendant that their belief in guilt exceeded reasonable doubt" (Wright and Hall 2007:95). The authors argue that these findings suggest that providing instruction on the reasonable doubt standard "may cause participants to lower their threshold for reasonable doubt" (2007:95) and "allows participants the opportunity both to express uncertainty and to deliver a guilty verdict" (2007:97). It is also interesting to consider the percentages that people associate with the term 'beyond

reasonable doubt'. In my empirical research – on which this thesis is based – because participants felt that if there was any doubt then one should not convict this would suggest a high threshold of guilt associated with the reasonable doubt standard. This supports the view that when the term 'reasonable doubt' is left open to interpretation by jurors, this may result in a reluctance to convict.

Lack of Evidence

Another issue raised in relation to the concept of 'reasonable doubt' was participants' concern with a lack of evidence. In my research, 'reasonable doubt' also seemed to be used as a concept when participants felt that there was not enough evidence to prove a case either way – there was a fear of making a mistake when the man may be innocent. This apprehension did not seem to translate into an equal fear of acquitting a guilty man. The concept of 'reasonable doubt' was most often utilised in situations where participants attempted to justify their reasons for returning a not guilty verdict after saying that they thought the situation *was* rape. Paradoxically, what was judged sufficient evidence to call the scenario rape was not sufficient evidence to find the man therein guilty of rape. Obviously, reaching a not guilty verdict is the appropriate legal outcome if people do indeed have a reasonable doubt but this balancing act shows a clear tension between defining an incident as rape and convicting a man of that rape. It seemed that rather than uncertainty over the man's guilt, the greater concern amongst participants was more to do with reluctance to convict in terms of punishment (i.e. a prison sentence) and labelling (as a rapist) which the man would be subjected to.

In this way, many participants who used the phrase ‘reasonable doubt’ stated that they felt the man in the scenario was probably guilty, but not to the perceived required level. This is similar to findings by Wright and Hall, whose research is described above, where in a psychological experiment in which participants were given no guidelines on the ‘reasonable doubt’ standard, everyone who used this phrase returned a not guilty verdict – with many of these arguing that “they felt the man was probably guilty but not to the necessary level” (2007:95). As mentioned above, this highlights the fact that people seem to be conflating ‘no doubt’ and ‘reasonable doubt’ and believe that any doubt in a man’s guilt means that they cannot return a guilty verdict. Although legally ‘reasonable doubt’ does not mean absolute certainty or ‘no doubt at all’ it would appear that some people may interpret it this way, and this is obviously problematic.

Participants’ Use of ‘Reasonable Doubt’

Most focus group participants (55% n=36) raised the issue of ‘reasonable doubt’ during the general discussion about vignette one. Vignette one generated the most discussion out of all of the vignettes and seemed to be the most controversial. Most participants felt that it was possible that the man had genuinely believed that the woman was responding and was therefore awake and consenting – especially since he stopped as soon as she woke up and said no. The concept of ‘reasonable doubt’ was raised by many more women than men (79%). The main reason given by participants for raising the concept of ‘reasonable doubt’ was the fact that they could understand how the man may have misinterpreted the woman’s signals as being signs of consent and/or sexual interest. This may be related to theories about belief in a just

world where “by attributing responsibility to the victim for her behaviour, women observers can decrease their own perceived likelihood of being assaulted, and increase their feelings of control” (Foley and Pigott 2000:937). It is argued that, as a result of women’s familiarity with their role as ‘gatekeepers to men’s actions’, “women are more likely to criticise the victim’s behaviour and actions and to conceptualise a way in which she could have avoided the situation by behaving differently” (Finch and Munro 2007:600). Therefore, by drawing upon the legal concept of ‘reasonable doubt’, and thus questioning the woman’s actions and the man’s perception of those actions, female jurors are potentially refusing to accept that the same incident could happen to them – because they would not behave in the same way as the woman in this scenario and thus would avoid her fate.

The following quotations illustrate participants’ use of the legal concept of ‘reasonable doubt’:

FG F5 Vignette 1

Diane (38)

“There’s just not enough there that would influence me as a juror to say that that was rape”

Morag (49)

“But if that’s all the information there is//”

Diane (38)

“// and you’ve got to convict without any doubt ... and there’s too much doubt there ... ‘reasonable doubt’”,⁷²

FG F6 Vignette 2

Linda (48)

“I think it would be very difficult in court ... and with ‘reasonable doubt’ I don’t think it would stand a chance – you just can’t prove it”

Debra (42)

“One person’s word against another”

FG M2 Vignette 3

⁷² My emphasis

Simon (27) “I’m not saying I wouldn’t say he’s guilty but there’s just not enough for me to convict him ... ‘reasonable doubt’”

“There’s lack of evidence, there’s still that ‘innocent until proven guilty’. If there’s not enough evidence and if you’re not 100% sure then it’s hard to convict someone ... it’s like, you know, strange things happen and you could like just be on the wrong end of it ... the ‘reasonable doubt’ thing” Bill (32) Individual Interview⁷³

It would be interesting to find out more about the kinds of numbers people associate with the concept of ‘beyond reasonable doubt’ – is it for example, 75% or 100%? In the final quotation above, it would appear that for Bill one must be 100% sure of the accused’s guilt in order to convict them beyond reasonable doubt. Again, this demonstrates that people may be confused about what exactly ‘beyond reasonable doubt’ actually means i.e. that it does not mean absolute certainty.

6.3 The Perceived Importance of Pre-meditation

The *Mens rea* Requirement

One of the most controversial areas concerning the law of rape relates to the accused person’s *mens rea* that must be proved to establish sexual intercourse without consent (Attorney General's Department of New South Wales 2005:42). In many jurisdictions (including South Australia), once a jury is satisfied that the complainant was not consenting to the sexual conduct, they must then consider whether the accused knew that the complainant did not consent or was reckless as to consent. It must be proved beyond ‘reasonable doubt’ that the accused knew that the complainant did not consent. This requires an assessment of what was going on in

⁷³ My emphasis

the mind of the accused person. The accused may honestly, though wrongly, believe that the complainant was consenting to sexual intercourse (the honest belief defence). In recent times, a recurrent issue amongst many legal jurisdictions has been whether the defence of honest, but mistaken, belief in consent should continue in its current form (Attorney General's Department of New South Wales 2005:45). South Australia legislation states that:

“A person (the offender) is guilty of the offence of rape if he or she engages, or continues to engage, in sexual intercourse with another person who –
(a) does not consent to engaging in the sexual intercourse; or
(b) has withdrawn consent to the sexual intercourse,
and the offender knows, or is recklessly indifferent to the fact that that the other person does not consent or has so withdrawn consent (as the case may be)”⁷⁴

All focus group participants in this research were unaware of the possibility of a defence of an honest albeit unreasonable belief and when asked stated that the law should require a both honest and reasonable belief in consent.⁷⁵ As noted earlier, a small number of participants commented that there is the potential that the man may be lying about his honest belief and should have to prove that his belief was also reasonable. There was a feeling that those who simply ‘honestly believed’ obviously desperately needed education as to what was reasonable but should still be punished despite this lack of understanding. However, as will be shown in the remainder of this section, comments made by participants when discussing the vignettes indicated that they are actually content with the accused man’s subjective belief in consent

⁷⁴ (My emphasis) Source: South Australia Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2007 Part 2, Section 48

⁷⁵ In relation to the third vignette, the terms ‘honest belief’ and ‘honest and reasonable belief’ were explained to the participants and then they were asked for their thoughts on that fact that the man in this scenario expressed an ‘honest belief’ in the woman’s consent

without the requirement of a reasonable aspect. There was only one participant who explicitly defended the honest belief requirement. Jared felt that if a man honestly believed then he should not be convicted of rape:

FG MF2

Jared (30) “Yeah I know (it’s not fair) but you can’t punish a person if they don’t know they’re committing a crime”

It is interesting to note that this is exactly the legal justification given for preferring a subjective test of the *mens rea* requirement.

Obviously the main issue with a reasonable belief requirement is how the concept of ‘reasonable’ is determined. The literature argues that a major question is whether a jury should: “examine the accused’s conduct by reference to some hypothetical reasonable person, or from the perspective of what would have been reasonable for a person who had the same qualities as the accused?” (Attorney General's Department of New South Wales 2005:46). My findings highlighted the same issues as those raised by Emily Finch and Vanessa Munro’s mock jury research in the UK, namely that:

“Participants’ comments illuminate the difficulties presented by applying a reasonable belief test in a context fuelled by questionable socio-sexual myths and by seeking to define the boundaries of what counts as ‘reasonable in all the circumstances’ for this purpose” (Finch and Munro 2006:317)

The following section will examine in more depth factors affecting participants’ perceptions of objectivity versus subjectivity in terms of the *mens rea* requirement.

The Role of Intent

In this research, there was a clear tension amongst participants as to whether the accused's decision-making process should be assessed objectively or subjectively. One of the main issues seemed to be the concepts of intent and pre-meditation in relation to the accused's mindset. The notion of intent was considered to be determined by the extent to which the event was pre-meditated. Many participants felt that for the man to have had intent to rape it had to have been planned from the very beginning of the scenario as opposed to where his initial intent may not have been rape but when the opportunity presented itself his intent at that later point was rape i.e. the perpetrator had to have had long-term intent rather than spur-of-the-moment intent. The following quotations illustrate focus group participants' clear differentiation between intent to have sex and intent to rape:

FG MF2 Vignette 2

Jacqui (25)

"I don't think anyone's intent is to rape unless they are sitting there hiding behind a wall or something ... waiting for the next woman to come along ... although I do think he might have known that she wasn't into it but he wouldn't call it rape"⁷⁶

FG MF3 Vignette 2

Interviewer

"Do you think it was his intent to rape from the beginning?"

Gaynor (41)

"To have sex with her yeah"

[All participants agree that sex rather than rape was his intent]

Steve (45)

"He knows what happened last time so he's looking for it to happen again"

Gaynor

"Yeah I doubt he would even see that as rape"⁷⁷

Steve

"He wouldn't – he was just hoping all the way through that somewhere along the line she would come round"

⁷⁶ My emphasis

⁷⁷ My emphasis

This last quotation above is interesting because despite the participants' assertion that the man in this scenario was determined all along to have sexual intercourse with her, they do not consider that to have anything to do with pre-meditation to rape. Participants are clearly differentiating between intent to have sex versus intent to rape. It is not clear what, in their view, a man would have to do in order for his act to be perceived as a pre-meditated rape. The fact that – by their own admission – this man was determined to have sexual intercourse with the woman, seemingly no matter what, did not seem to be sufficient for the participants to consider the act to be pre-meditated rape. This reliance on pre-meditation as a defining characteristic of intent to rape is problematic because it does not reflect legal requirements of rape law. From a legal perspective, it is not necessary to prove pre-meditation in order to show guilt yet it would appear that for these participants pre-meditation is an important pre-requisite to labelling a man as guilty of rape. If this concern with pre-meditation is also present in jurors then it could be suggested that they may be acquitting men due to legally irrelevant factors. If this is the case, until attitudes amongst the public change there is little hope of improving the effectiveness of the law.

The following quotations further illustrate the clear tension amongst focus group participants as to how the accused's decision-making process should be assessed:

FG F5 Vignette 2
Morag (49)

“I mean guys look at things in a different way from women ... from this guy's perspective, they'd slept together before, she was accepting his drinks, she admits that she was quite

comfortable chatting with him ... he could easily be getting all the wrong signals”

FG M3 Vignette 1

Bill (32)

“I think it’s still very hard because like when she shouts for him to get off he does get off so ... he doesn’t like carry on as if he doesn’t care so ... in his mind it wasn’t rape”⁷⁸

FG F3 Vignette 1

Mia (35)

“I couldn't say (whether his intent was rape from the beginning) ... he might be really genuine when he says he didn't realise that she was asleep because she was responding when he touched her”

Julie (46)

“Yeah I couldn't say either”

Anne (34)

“No I don't think it was his intent from the beginning given that they spent the night leading up to it together”

These quotations reveal that participants do not seem to understand – or are reluctant to view it in this way – that the law only requires intent (or recklessness) in the moment of penetration and not the pre-existence of intent or knowledge.

The concept of pre-meditation is legally irrelevant yet participants still appear to use this as a pre-requisite of guilt in many cases and when examining what the accused perceived from the whole context of the encounter participants are often considering legally irrelevant factors, such as rape myths. The above quotations also indicate that participants were thinking about the accused’s guilt in terms of subjectivity i.e. what was going on in his mind. In the abstract sense, participants agree that an honest and reasonable belief makes absolute sense but when given an actual, practical example they are in fact relying on the man’s own subjective assessment of consent, without any regard for reasonableness. This discrepancy

⁷⁸ My emphasis

suggests that – as has been shown several times in this thesis – while participants may agree with a concept in the abstract sense, when they are given that concept within a real-life example they tend to then contradict themselves.

The findings presented here indicate that there is an obvious difficulty in establishing the *mens rea* requirement when acquaintance rapists are rarely seen as having the intent to rape (as opposed to having the intent to have sex) – given the way that the concept of intent appears to be currently understood by members of the public . This suggests that there will continue to be a significant obstacle to securing convictions while acquaintance rapists are not seen as having the *mens rea* requirement for the crime of rape. This reliance on the concept of pre-meditation suggests a continuing adherence to the stereotypes about 'real rape' as involving a random, but planned, violent attack by a stranger. It has been suggested that acquaintance rapes tend to “reflect more subtle types of coercion than rapes by strangers which typically employ verbal threats, physical violence and weapons” (Allison and Wrightman 1993:65). In ‘real rape’ scenarios the rape is obviously pre-meditated and the perpetrator has clear intent. When rape does not occur in these circumstances – for example, like the scenarios depicted in the vignettes - it would appear that the public struggles with the temporal aspects of the concept of intent. This highlights the problematic issue that the legal definition of rape is attempting to capture a snapshot of a moment in time. Everyday people, including jurors, are attempting to apply these laws and reach a decision about guilt by referring to surrounding context and past events and the problem is that this context is often read through the lens of prejudicial rape myths.

Especially in situations where a victim behaved in ways that were often regarded as precipitating events, the man tended to be seen by participants in terms of impulse theory i.e. getting carried away in the heat of the moment – or as having been led to that point by the previous behaviour of the woman – rather than it being seen as a pre-meditated attack. As David Shapcott (1988:30) states, in this way rape becomes:

“... understandable and even forgivable if it is simply the result of a powerful, urgent, all-consuming, biological urge which once aroused drives a man with a single-minded determination to seek sexual gratification”.

This effectively puts the burden onto women to avoid rape and the notion that the rapist is driven by uncontrollable urges again effectively removes from him some of the responsibility for the rape (Walby, et al. 1983:90).

Intent to Have Sex versus Intent to Rape

It would appear that participants in this research distinguished between a determined intent to have sex from intent to rape. Many focus group participants (38% n=25) - an equal number of men and women - explicitly stated in the various vignettes that they believed that the man's intent was definitely sex but not rape. As one male participant put it:

FG MF1 Vignette 2
Leroy (25) “His intent was to ride but not necessarily to rape”

This elides the fact that intent to have sex ‘no matter what’ is a good indication that the accused is indifferent to the woman’s consent. This is legally enough for a rape conviction because it falls under the category of ‘recklessness’, yet the public – and

thus, potentially, also jurors – seem to separate intent to have sex and intent to rape as mutually exclusive. As my reading shows:

“To regard rape as an expression of sexual desire is not only an inaccurate perception but also a dangerous assumption, for it results in the shifting of the responsibility for the incident in large part from the offender onto the victim” (Groth and Birnbaum 1979:2).

The responsibility for setting limits on sexual activity is thus placed in the hands of the woman – as discussed previously in chapter five – and women are perceived as gatekeepers to men’s actions.

In terms of the vignettes, none of the focus group participants thought that the man in vignette one had intent to rape. Opinion was divided on whether the men in the other vignettes had intent but in each scenario the majority of participants felt that he did not have intent or were unsure as to whether he had intent.⁷⁹ There was a popular belief amongst focus group participants that the women in the vignettes had been raped but that the men did not have the intent to rape and therefore could not be found guilty. Douglas Husak and George Thomas (2001) discuss this issue in their paper on consent and reasonable mistake, differentiating between a person committing the *act* of rape and a person committing the *crime* of rape. They ask the question: “If this person has committed an act of rape, but lacks *mens rea* and thus has not committed the crime of rape, is he a rapist?” (Husak and Thomas 2001:86). It would appear that participants in this research were also differentiating between the commission of the *act* of rape and the *crime* of rape and this was reflected in their reluctance to convict.

⁷⁹ It is important to note that I did not specifically discuss the term ‘recklessness’ with research participants but rather opened up the discussion by asking whether they thought that the man’s intent was rape from the beginning of the scenario

Thus, as discussed above, one can see that current attitudes held by the public are clearly problematic for the current *mens rea* requirement. In practice, these attitudes confine rape to cases in which the defendant has long-term intent to procure non-consensual sex and results in “acquittals where the defendant has mistakenly assumed that the victim consents, even in the absence of objective reasons for the mistake” (Power 2003:381). As Catharine MacKinnon states:

“It is problematic that the injury of rape lies in the meaning of the act to its victim, but the standard for its criminality lies in the meaning of the act to the assailant” (1989:180)

These debates about intent clearly relate to previous discussions in this thesis about the role of pressured sex in modern heterosexual encounters.⁸⁰ Previous empirical research has shown that some degree of coercive sexuality is viewed as part of ‘normal’ heterosexual encounters (see for example: Clark and Lewis 1977; Holland, et al. 1998; Lees 2002; Phillips 2000; Ward 1995). Such coercive sex reflects the mentality that the man will do whatever needs to be done in order to get the woman to ‘give in’ to him. These findings indicate that participants in this research consider there to be a clear difference between pre-meditation to obtain sex, which may result in the common practice of pressured and/or coerced sex, versus pre-meditation to rape.

6.4 False Allegations

During the focus group discussions, the issue of women making false allegations of rape was not specifically addressed by the moderator. However, despite this, 38% (n=25) of focus group participants made comments relating to the possibility of

⁸⁰ See Chapter two *Literature Review* for a more in-depth consideration of normative heterosexuality

women making false claims about rape.⁸¹ It appears that the myth that ‘women cry rape to get even with a man or to protect their reputations’ still remains influential amongst these participants. As discussed in the *Literature Review* chapter, although false allegations are undoubtedly made to the police, there is no evidence that fabrication occurs more often in rape cases than in other crimes (Kelly, et al. 2005:47; Temkin 2002:5). The literature suggests that it may be problematic that “a large number of those who are reported for rape are not later convicted which may be misinterpreted by the public as indicating that there was no sexual assault and that women must be lying about being raped” (Chung, et al. 2006:10). Similar to the findings of Clarke et al’s (2002) UK-based qualitative research into attitudes towards acquaintance rape, consisting of 28 focus groups and 62 individual interviews, a majority of the focus group participants in this study felt that women did not often make false allegations of rape. However, despite this claim, the notion of women possibly ‘crying rape’ did continue to provide a clear frame of reference for many participants who were reluctant to convict.

In the individual interviews participants were asked how common they thought it was for women to make false allegations of rape. Participants were divided on whether it was common or not, with a slightly larger majority feeling that it was not very common although it did happen. There was an even gender divide on this issue. These findings reveal evidence of both adherence to and rejection of the myth that ‘women often cry rape to get even with a man or to protect their reputations’, thus demonstrating the complexity of engagement with this rape myth. There were several

⁸¹ There was no gender divide on this issue

reasons given by participants as to why a woman might make a false allegation of rape including regret, financial benefit, revenge, attention seeking, and shame or guilt. Similar to the focus group participants in Burton and Kitzinger's UK-based research with young people aged 14-21, the participants in my research also "clearly had access to a large repertoire of culturally available 'reasons' why women might supposedly lie about being raped" (1998:26).

FG MF3 Vignette 3

Steve (45)

"Well I mean if you believe her story it is (rape) but erm on the other hand, everything could have gone smoothly and at the end of the day when it was all over she might have thought 'shit, that shouldn't have happened, better go and make up this story'"

In response to the question how common does she think it is for women to make false allegations of rape?

"I think it probably happens so that's the scary part. Why? Because they feel ashamed ... like 'I went out last night and I let him have his evil way with me and I didn't mean that to happen, I just got too drunk and I've told my boyfriend I was out all night so I'm just going to say that he raped me' ... or she might convince herself that she didn't really give consent for that to happen ... or revenge ... getting their own back on someone for whatever reason" Christine (47)
Individual Interview

Two female participants – in separate focus groups - mentioned that friends of theirs who were in the police force had told them that reports of rape are often not believed:

FG MF1

Michelle (23)

"Yeah but my friend is in the police in Queensland – and she said these days a lot of chicks, whether it's rape or not, cry rape ... and they're really wary now because so many chicks do cry rape"

FG F5

Glenyss (52)

“I think with education ... the attitudes of the police are very interesting ... I’ve heard this from the mouths of policewomen ... that reports of rape are often not believed ... and it’s just not their job to make those judgments or assumptions”

This anecdotal evidence supports the worrying findings of research which has shown that in many jurisdictions attitudes amongst the criminal justice system are non-supportive of rape victims (see for example Jordan 2004; Temkin 2002). Kelly et al’s research, whose aim was to increase understanding of the attrition process in the UK, found that even if all the cases designated false by the police were accepted (approximately 10% of their sample of rape cases) this was still very much lower than the rate perceived by police officers interviewed in their study (2005:50).⁸² It has been suggested that “just as norms about rape cannot be understood without perceiving how they fit within an existing cultural framework, the workers in the (Australian) criminal justice system cannot be seen in isolation from societal attitudes” (Easteal 1992:6).

Almost all of the participants who mentioned false allegations within the context of the vignettes did so in relation to vignette two – probably because this was the only vignette which clearly stated that the woman actually told someone else that she had been raped and labelled the incident as such, as well as it being the only vignette which specified that the woman had a boyfriend – and it was my intention to draw this out and discuss it. All other instances of participants drawing upon this rape myth were located within the general discussion at the beginning of the focus

⁸² It should be noted that the actual rate which the police officers perceived to be false was not mentioned in this research.

groups or isolated comments in relation to the other vignette discussions. When discussing vignette two some participants (18% n=12) felt that the female may have lied about being raped in order to explain to her boyfriend where she had been the previous night. Again, this shows the continuing influence, in some circumstances, of the myth that ‘women cry rape to get even with a man or to protect their reputations’.

The following quotations illustrate the suggestion by some focus group participants that the woman in the second vignette may be lying about being raped:

FG MF3 Vignette 2

- Debora (36) “Also, when she goes home and her boyfriend asks her where she’s been, she’s going to cover her own back so she says ‘oh I’ve been raped’”
- Gaynor (41) “Would she have said it was rape if her mum had asked her?”
- Debora “Or if a girlfriend asked her or something like that, you know, ‘where’d you get to last night?’ kind of thing ... but because it was her boyfriend”

FG F6 Vignette 2

- Christine (47) “Or she’s just justifying it”
- Interviewer “Can you say a bit more about that?”
- Christine “Well she was maybe just justifying to her boyfriend when he said, you know, ‘where the hell have you been all night?’”
- Mandy (39) “Yeah this might be the little story that she has made up”

FG M5 Vignette 2

- Steve (36) “But it’s like well if he raped you then why didn’t you go straight to the police? Why did you go home, realise your boyfriend had found out you’d been out all night and (the police are) going to say to her, ‘well if the boyfriend hadn’t been home would you have said anything at all – if you had got away with it?’”

This adherence to the myth that women lie about rape – as indicated in the above quotations – is also interesting from the point of view that none of the participants considered the social conditions that may make women feel pressurised to make false allegations about rape i.e. in order to protect their sexual reputations.

6.5 Influence of Sexual History Evidence

The participants of one focus group (F5) were all unaware of the use of sexual history evidence in rape trials.⁸³ However, all other focus group participants (94% n=61) were aware of this practice. Overall, a number of participants were under the impression that the defendant's sexual history would be examined and treated in the same way as the victim's and also that any past rape allegations or convictions would be made known to the jury. This obviously indicates a limited and confused knowledge of the legal system and specifically the nature of rape trials. Focus group participants were divided on whether a woman's sexual history was relevant in a rape trial. Only one female focus group participant felt that when a woman's rape case comes to court her sexual history should be brought up and used as evidence. By contrast, fourteen male focus group participants (22%) felt that sexual history evidence should be utilised in a rape trial. This obviously shows a marked distinction in this matter according to gender. The male participants who promoted the use of sexual history evidence were equally distributed across the age ranges.

The following quotations illustrate the opinions of some male participants regarding the use of sexual history evidence in rape trials:

⁸³ I recognise that this finding is odd but there is no apparent explanation for it.

FG M1

- Daniel (23) “Yeah you’ve got to protect the guy as well, he might be a genuine guy who thought it was going somewhere ... you know ... she might sleep around with whoever she meets every single night and then all of a sudden she’s decided she doesn’t want it and he’s sort of landed in it ... and it could come down to everything she was feeding him and then she decided no//”
- Gus (24) “// right at the last minute”

FG M2

- Simon (27) “Obviously if she was young and had slept with like thirty blokes and this happened to her ... then the jury would have to say ... maybe she flirts a lot, maybe she ... she’s had this many partners ... it might change their opinions upon the case ... I know it shouldn't but ... I’m sure people in the back of their minds do think like that”

These findings suggest that rape myths concerning sexual reputation may still be influential, for men in particular, in some circumstances. This may link back to patriarchal notions of traditional gender roles whereby perhaps some men are less accepting of increased equality in the sexual arena and this is reflected in the retention of stereotypical beliefs concerning women’s sexual history.

Those participants who disagreed with the use of sexual history evidence felt that legal decisions should not be influenced by moral judgments such as these. A number (28% n=18) of focus group participants made reference to the fact that the purpose of using sexual history evidence is to discredit the complainant. Many more women than men mentioned this and the women often discussed the possibility of being personally affected by the potential derogatory attitudes associated with female sexual reputation. One thing that all focus group participants agreed on was that

sexual history information undoubtedly influences a jury when making a decision about the guilt of the alleged perpetrator – as illustrated by the following quotation:

FG F6

Christine (47) “I think (the jury) would definitely think differently if they said this is a well known prostitute who’s worked on the streets for twenty years and this guy raped her ... and there’s no doubt that it was rape ... as opposed to an innocent, young girl on her way home from school that gets raped ... I’m sure a jury would view both of those crimes differently – even if it was done by the same guy in the same way”

6.6 Female Responsibility

Where there was perceived female precipitatory behaviour, many focus group participants in this research felt more sympathy for the alleged perpetrator and thus were more reluctant to convict the man of rape. Various conduct was perceived by some participants as female precipitatory behaviour including intoxication, wearing revealing clothing, going home with a man, isolating oneself and sending out ‘mixed signals’. In relation to vignette one, a female participant commented in her individual interview:

“And see like that scenario (vignette one) ... I know a lot of the girls (in her focus group) thought that it *was* rape but said that they wouldn't convict him. And the reason they wouldn't convict him is because they knew in their heads that she was 50% responsible for what happened ... and so they didn't want to convict a man of rape and send him to jail for a misunderstanding. If the woman has 50/50 responsibility then they don't want to find the guy guilty.” Nikki (28)
Individual Interview

This quotation makes a clear reference to perceived female responsibility for rape and the impact that this can have on willingness to convict the man involved. It is interesting to note that any responsibility which was attributed to the woman in the

scenarios resulted in a subtraction in the responsibility assigned to the man. This indicates that people have a “zero sum picture of responsibility”, as suggested by David Archard in his book on sexual consent (1998:139). The issues relating to participants’ perceptions of female precipitatory behaviour were covered in depth in the previous chapter *Putting Oneself at Risk and Female Responsibility for Rape* and, therefore, to avoid unnecessary repetition, it is suffice to state here that perceived female responsibility was clearly linked to a reluctance to convict.

6.7 A Lesser Offence than Rape?

Leading on from this reluctance to convict, focus group participants were keen to have the option of a lesser offence than rape (as they understand it) rather than simply a guilty or not guilty verdict for rape. Participants discussed this idea of a lesser offence option in a number of different ways – both in terms of sentencing options and in terms of verdicts. In terms of sentencing, when contemplating the reasons behind their reluctance to convict, focus group participants mentioned the severity of punishments associated with the crime of rape which discouraged many from returning a guilty verdict. There were also seen to be ‘different levels’ of rape and many focus group participants felt that some scenarios did not warrant a harsh punishment thus they were reluctant to convict a man when they would not have any control over sentencing. Thus, focus group participants were unwilling to return a guilty verdict when the man may then receive what – in their opinion – was too harsh a punishment. For this reason, if they felt that a man was guilty but did not deserve a long sentence then they were more likely to vote not guilty in order to ensure that this did not happen. In the same way, Rosemarie Tang stated that “because they feel

that the punishment is disproportional to the crime juries frequently refrain from convicting rapists” (1984:114). Participants in this research were deterred by their perceptions of severe prison sentences that accompany the crime of rape and felt that more variance in punishments is needed.

Three focus group participants (5%) referred to the trend of men convicted of rape only receiving short prison sentences or alternatively suspended sentences. They felt that this was a major reason why women would be reluctant to report rape to the police. The lack of substantial punishment for convicted rapists was seen to potentially discourage many women from going through the process (and subsequent trauma) of a rape trial. Conversely, when considering whether they would find a man guilty of rape - within the structure of the vignette discussions – a few focus group participants (8% n=5) expressed concern over the sentence which would be imposed if they were to convict the man of rape. Participants felt that in some cases the man did not deserve a long term prison sentence. Overall, there was greater concern over sentencing in terms of a reluctance to convict rather than in terms of leniency of punishments.

A great deal of the discussion about sentencing occurred in relation to vignette two where participants felt that although the man’s behaviour was inappropriate, the woman did not do anything to help her situation. The following quotations illustrate discussion about concerns over sentencing:

FG MF2 Vignette 2
Jared (30)

“I think it is rape and I'd find him guilty, I'd just be worried about what his punishment would be

... I don't think the book should be thrown at him”

When asked why he thought that people may consider an incident to be rape but would still be reluctant to convict:

“I think the penalties are too harsh. If you weren't going to get ten to fifteen years ... I mean if you put this guy in jail for six months then that's a lesson. I mean for a guy like me six months might as well be sixty years because my wife would leave me, I'd lose my job etc etc ... but if it's ten years then that's guy's life is *completely* ruined ... so if you put the penalties at three, five, six months ... it doesn't sound much but it gets them off the streets and it says to the girl 'you've been validated' ... I think that would be better” Keith (47) Individual Interview

Participants in the first two focus groups undertaken mentioned that they would prefer to have the option of a lesser offence than rape which would be an alternative to a guilty verdict and a likely prison sentence. One participant suggested the idea of a register:

FG F2 Vignette 2

Rebecca (32)

“Some kind of register that there has been an incident marked against this guy because I mean ... there are guys who prey on women who are really drunk - the wounded gazelle thing - and it's disgusting”

Jessica (28)

“Three black marks and you go to jail type of thing”

Rebecca

“Yeah you get a mark against your name and if you get enough then you get a prison sentence”

Interviewer

“If you had that kind of choice do you think you would have gone for it rather than found him not guilty?”

[All participants agree enthusiastically]

This idea of having the option of a register of this kind prompted significant discussion in these first focus groups so I decided to ask about this idea in the remainder of the focus groups.

This chapter will now consider the idea of the option of a lesser offence than rape in terms of verdicts i.e. when participants felt that the man's crime was not severe enough to warrant a guilty verdict for the current crime of rape but that he had behaved inappropriately and should be punished to a certain degree. The following quotations reveal participants' thoughts in this area:

FG M5 Vignette 1

Ian (52) "So you'd probably say that technically it is rape but//"
Steve (36) "//I think it would be very difficult to prove"
Ian "Yeah"
Dave (37) "I'd hate to see the bloke do a lot of time for it"
Ian "I'd hate to even see a conviction against him"
Dave "He's in the wrong but like not enough to be guilty of rape"

When asked why he thought that people may consider an incident to be rape but would still be reluctant to convict:

"Because of the label 'rape' ... it's a big label to give to someone ... calling it another name would make a difference in convictions ... i.e. sexual assault ... different degrees of sexual assault ... would gain more convictions, I believe" Brian (30) Individual Interview

Focus group participants who were opting for not guilty verdicts due to 'reasonable doubt' frequently remarked that they would have gone for the option of a lesser offence than rape if it was available instead. This was seen to work in the following way: The first time a man is found guilty of a lesser offence than rape it is registered and he attends an education program (this was seen to involve discussion about how to clearly determine consent).⁸⁴ If another incident occurs and again it goes to court and again the man is found guilty of a lesser offence than rape then a

⁸⁴ For a discussion of the success or otherwise of public education campaigns see, for example, Temkin and Krahe's (2008) recent book.

mandatory prison sentence would follow.⁸⁵ The following quotations illustrate participants' views on such an alternative:

FG F2 Vignette 1

Jessica (28) "I think it would be really sad if he was a really nice guy and he fucked up once and he was sent to jail ... and if there was another alternative then yeah ... that would be good"

FG MF1 Vignette 1

Andrea (22) "I think that's a good happy medium as well because he doesn't deserve to go to jail ... this would be like trying to correct the behaviour of those who maybe look like they might drift off the track you know ... he didn't do it but he could do it, so they're correcting it now"

In Clarke et al's UK-based qualitative study, comprising a combination of twenty eight focus groups and sixty two individual interviews, the majority of respondents felt that in the case of rape a prison sentence should be mandatory (2002:9). However, in my research several participants felt that there were 'different levels' of rape and that this should be reflected by a variety of punishments – not necessarily always a mandatory prison sentence. The following quotations show the ways in which participants discussed the idea of 'different levels' of rape:

FG M1

Daniel (23) "I think you've got almost different levels of rape and erm, you know ... rape where it's led up to and the guy never meant it to be that ... and then he gets landed in it ... and then there's the guy who just intentionally set out to rape someone ... and women can't do anything about that happening ... but they are responsible for the steps leading up to cases where the guy didn't

⁸⁵ The purpose of my research was not to analyse proposals for the ways in which the crime of rape could be redefined. For a more in-depth analysis of this see, for example, **Power, H.** 2003 'Towards a Redefinition of the Mens Rea of Rape', *Oxford Journal of Legal Studies* 23(3): 379-404. or **Tadros, V.** 2006 'Rape without Consent', *Oxford Journal of Legal Studies* 26(3): 515-543.

mean to do that ... then (women) should be held accountable for their actions”⁸⁶

FG F1 Vignette 1

Lani (31) “Even though I do think it is rape, I wouldn't convict him ... only because of the situation//”

Nikki (28) “// doesn't that contradict yourself a bit?”

Lani “Maybe ... but it's such a grey area ... I don't think it's a strong enough case to put him away for five years or whatever ... yeah it's rape but there are different levels of it, you know”⁸⁷

When asked why she thought people may consider an incident to be rape but still be reluctant to convict:

“I don't know, it's weird ... I didn't even realise that anyone was doing that at the time (in the vignette discussions)... erm ... I think it's probably the mandatory prison sentence that puts people off convicting ... maybe the answer would be that there needs to be more variance in the punishments given ... to reflect different levels of rape, you know” Caz (22) Individual Interview⁸⁸

Thus, participants in this research had in their minds a hierarchy of rape despite the fact that there is no definitional differentiation between crimes of this nature.

Participants may consider an incident to be rape but not be willing to attach the legal label to it nevertheless. Hence, the attraction for participants of the option of a lesser offence than rape for occasions when they felt that the man's behaviour was not severe enough to be found guilty of rape but that he had nonetheless done something wrong.

There were many reasons given by participants for preferring to have the option of a lesser offence than rape. These reasons referred both to issues with sentencing as well as issues with verdicts. Participants felt that they would be more willing to

⁸⁶ My emphasis

⁸⁷ My emphasis

⁸⁸ My emphasis

convict if there was an alternative to incarceration. They also liked the idea of a lesser offence so that they could indicate that they felt the victim was partially responsible for the outcome of the situation and that they did not feel that the man was completely to blame. Another reason was that participants felt that being found guilty of a lesser offence than rape would be less harmful for the man's future endeavours than being found guilty of rape. Participants preferred having the option of a lesser offence than rape in cases where both parties were intoxicated and in cases where it was felt that there was too much 'reasonable doubt' to return a full guilty verdict. There was also a feeling that being able to find the man guilty of a lesser offence than rape meant that they could indicate recognition of some partial responsibility and/or wrongdoing on the part of the man. In this way, it was felt that it would be more satisfying for a victim than a not guilty verdict as at least the man's wrongdoing is acknowledged in part. Another reason given by participants was that being found guilty of a lesser offence than rape could be seen as a warning system – like a good behaviour bond where so long as the man never did it again then he would be fine but if he re-offended then he would be imprisoned. A final reason was a belief that some men may genuinely not have had any education about how to clearly determine consent and so should have the opportunity to be educated – and thus have the opportunity to correct their behaviour – before being imprisoned.

Several focus group participants (14% n=9) commented that some kind of register or lesser offence than rape (as described previously) was a good idea because any 'innocent' man who had been accused of rape would make extremely sure that he would never get into a situation like that again. Thus, participants felt that a register

would apprehend those offenders who are 'real rapists'; repeat offenders. There were an equal number of men and women who expressed this opinion. The following quotations relate to focus group discussions about vignette one:

FG MF3

Debora (36) “I mean if it’s only a one-off, ok his name is in the register but if it’s just a one-off then he’s got nothing to worry about ... and you would expect him never to get into that situation again ... but if he really is a rapist then he’ll get caught ... stops people flying under the radar”

FG M5

Steve (36) “I think it’s important for previous behaviour to be taken into account ... if it happens once and especially if he genuinely believed that he hasn’t raped her ... but then if he does it again then he’s a fuckin idiot for getting into that situation a second time, or you kind of go maybe he is guilty ... so if you are dumb enough to do it a second time then the dude should just go to jail”

Dave (37) “If it was the second time that scenario had happened with the same guy, I’d say he deserves to go to jail ... going through this once - court and everything – if he was a normal bloke he’d make sure that he *never* put himself in that situation again”

Dave’s assertion above that “if he was a normal bloke” supports notions of disease theory whereby rapists are seen as ‘different’ and easily distinguishable from ‘normal’ men.

A number of focus group participants (25% n=16) felt that in some cases the woman should be sent to an education program as well as the man. An equal number of men and women expressed this view - there was no differentiation by gender. This opinion was usually given when the woman was seen to have some responsibility for the situation and, for example, was considered to have 'led the man on'. This indicates continuing interaction with the idea that women are responsible for

arousing men's 'uncontrollable' urges (i.e. impulse theory) and the notion of women as gatekeepers to men's actions. This view was expressed solely in relation to vignette one where the woman was seen by many to be at least partly responsible for the outcome of the situation – as illustrated by the following quotations:

FG F3 Vignette 1

Julie (46) “If there was something in the middle, like an education program, I might send them *both* off to it”

Mia (35) “Would you? Really?”

Julie “I wouldn't just send *him* off”

Mia “Why would you send *her* off? What's she done? Why's it her responsibility that he doesn't know when to ask? I'm with a mandatory education program for him”

FG F6 Vignette 1

Denise (45) “In a case like this, yeah (a lesser offence option) would be good because you're not sure whether it was or it wasn't (rape)... obviously he's done it and she's saying I didn't want you to do it so yeah send him on an education program ... but then probably she needs to go on a program as well to know that you can't mess with guys like that”

Many participants felt that a register would aim to apprehend the cases that keep ‘slipping under the radar’ and that if a man accrued a certain number of guilty verdicts for a lesser offence than rape then he should automatically receive a prison sentence. It was felt that this would hopefully punish serial offenders of acquaintance rape who would otherwise have been likely to escape any consequences for their actions. However, this could be seen as overly optimistic given that most cases that currently ‘slip under the radar’ do not make it to court and/or are not even reported. The main concern raised by participants who discussed the idea of a register was that women may be able to use this knowledge to make false allegations of rape towards

men that were already on the register – with the aim that because they already had one strike against them this time they would go to prison. This concern was raised only by male participants and this fear shows the persistence of the myth that ‘women cry rape to get even with a man or to protect their reputations’. There were no other negative views expressed about the idea of having the option of a lesser offence than rape available to jurors in rape trials. In terms of verdicts, participants felt that having the option of finding a man guilty of a lesser offence than rape would basically be saying that the man in question had done something wrong but there was not enough evidence or it was too ambiguous to return a guilty verdict for rape so this would serve as a warning to discourage him from repeating the behaviour in the future. However, participants were unsure as to how such a legal option could or should be labelled - for example, ‘quasi-rape’ or ‘irresponsible sexual behaviour’ or something else?

My findings indicate that people are likely to find it very difficult to return a guilty verdict in rape scenarios and suggest that participants want to have ‘something in the middle’ in terms of legal options. When referring to having the option of a lesser offence than rape, participants were sometimes talking about sentencing options and at other times they were discussing verdicts and wanting legal options to reflect ‘different levels’ of rape. Clearly, the participants in this study were uncomfortable with only having one option and one crime of rape and there was an evident discomfort with the perceived lack of flexibility which rape laws currently provide. However, changing the law will not change people’s attitudes and it seems that the main issue is not necessarily the law itself but rather the attitudes of the

public towards rape and their engagement with rape myths within a legal context. I would suggest that providing the option of a lesser offence than rape would simply encourage the prejudicial views of the public and support their use of legally irrelevant factors when reaching decisions about guilt in rape cases as well as encouraging their distinction between ‘real’ and ‘other’ rapes.

Conclusions

This chapter has examined the various issues which influence the public during the decision-making process about whether a man is guilty of rape. It would appear that in cases where participants were reluctant to convict they looked for reasons to support this reluctance in the way that the man differed from their perceptions of ‘real rapists’ and the way that the man or the woman in the situation behaved during the period leading up to the incident. It should be noted that, when discussing the vignettes, male participants were considering the situation from the position of ‘that could be me’ and were identifying with the man in the scenario, whereas the women were saying ‘that could not be me’ and/or ‘I would never let that happen to me’. This shows a clear difference according to gender in how the focus group participants in this research dealt with this matter.

The findings in this chapter have shown that my participants continue to be influenced by common misconceptions about rapists in terms of both impulse theory and disease theory. However, it is important to note that this is not a straightforward reproduction and findings have demonstrated that there was a very complex process occurring between participants and rape myths – involving both collusion with and

rejection of rape myths at different times and under different circumstances. In many cases, participants expressed sympathy for the alleged perpetrator and stated that they could understand how he may have misinterpreted the situation. There was a feeling that he could have made a 'genuine' mistake and thus did not have the perceived malicious intent required to be a rapist. Participants revealed a heavy reliance on pre-meditation as a prerequisite of intent to rape. This is particularly problematic because the concept of pre-meditation has no legal relevance and should not influence whether or not a man is convicted of rape. Satisfying the requirement of 'intent' was seen to call for the man to have clear long-term intent rather than spur-of-the-moment intent due to circumstances.

The legal concept of 'reasonable doubt' was widely drawn upon by participants in this research and tended to be used when they felt that they could not return a guilty verdict if there was any doubt in their mind about the man's guilt. The possibility of women making false allegations of rape 'to get even with a man or to protect their reputations' remains influential amongst the public and this myth continued to provide a clear frame of reference for many participants who were reluctant to convict. Participants were divided on the relevance of sexual history evidence in a rape trial. Findings suggested that it is mostly men who advocate the use of sexual history evidence, which suggests that rape myths concerning sexual reputation may still be influential in some circumstances – particularly for men. However, engagement with this myth was much more sophisticated than it simply being a case of clear acceptance. Varying support for the use of sexual history evidence suggests that in some cases the public – especially men – may be

particularly influenced by the type of information which would be revealed and this could explain a reluctance to convict – as the woman is perceived to have (at least partly) brought it upon herself.

This chapter has shown that people find it difficult to return a guilty verdict in rape cases and want ‘something in the middle’ in terms of legal options. Participants were keen to have the option of a lesser offence than rape rather than simply a guilty or not guilty verdict. This idea was discussed in terms of both having more control over sentencing and the need to reflect ‘different levels’ of rape. The option of a lesser offence than rape was seen as a compromise between a guilty and a not guilty verdict and it was felt that it would be particularly useful for cases that were ambiguous, where there was a lack of evidence, and where the man was not seen to bear complete responsibility for the situation. However, I would argue that this evident discomfort with the lack of flexibility which rape laws are perceived to currently provide does not necessarily mean that legal change is the only solution required. Rather, it suggests that the attitudes of the public are adversely affecting the legal process due to a reliance on legally irrelevant factors. Thus, any changes to the law may not be reflected in improved conviction rates unless work is done to alter the attitudes of the general population – and thus potential jurors.

My findings have shown that many of the factors which are used to determine guilt or innocence are issues which are not legally relevant. I argue that more research needs to be conducted into definitional issues surrounding rape within a legal framework. This research has shown that the public is often willing to label an

incident as rape in a personal, non-legal context yet are subsequently reluctant to potentially return a conviction for the crime of rape for the same scenario. This reflects other findings in this thesis where participants have said one thing in relation to discussion about an abstract concept but when presented with a practical example of that concept they express a different view. It has been suggested that: “Although rape laws define the line and the punishment, these laws are useless if juror attitudes are affected by myths and stereotypes” (Sanday 1996:293). I believe that further work is essential in order to extend understanding (as far as is possible without access to real juries) of the processes which are utilised when reaching a verdict about guilt (or lack of) in rape trials. Further understanding is needed of how jurors may (mis)interpret legal definitions of consent. The current work of Emily Finch and Vanessa Munro has begun to address this issue from a UK perspective but more research within the Australian context is needed. Work is needed to shed more light on the way that the public interacts in discussing these views in order to aid understanding of the processes potential jurors use when dealing with questions of responsibility, consent and appropriate socio-sexual behaviour. The following chapter will examine the actual dynamics of the interview situations with the aim of further exploring the claims which have been made here concerning the possible behaviour of jurors in rape trials.

Chapter 7: Focus Group Dynamics and Juror Behaviour

“Measures that better inform juries and tackle the myths around rape are necessary and welcome. If the conviction rate is going to be improved there needs to be a greater understanding in the courtroom of the realities of rape”⁸⁹

This final analysis chapter aims to explore the actual dynamics of the interview situations which created the data which has been analysed in the previous chapters, and the implications that these findings may have for further understanding the public’s engagement with rape myths. This chapter focuses predominantly on the dynamics of the focus groups and draws some comparisons with the potential behaviour of jurors in rape trials. Many of the group dynamics involved in juror deliberations have remained inaccessible to real-time research because of legal restrictions limiting jurors talking about their experiences (Winship 2000:548). There has, however, been some important work on mock juries in regards to the crime of rape – in particular recent UK research by Emily Finch and Vanessa Munro (2005; 2006; 2007).

Although my own research did not consist of mock juries per se, the focus groups, by virtue of their composition, do provide me with the ability to make some suggestions of comparison. They were made up of members of the public who are potential jurors – although it must be acknowledged that the focus groups in this research were mostly single gender whilst juries are mixed gender groups. It is also

⁸⁹ Jon Collins, Spokesman for the equality group the Fawcett Society, 27/11/2007, source: www.telegraph.co.uk/news/uknews/1570558/Juries-to-be-made-aware-of-rape-victim-‘myth’.html

important to note that the focus groups in this research were not composed of total strangers – as they would be in a jury – but rather individuals known to each other, albeit to varying degrees. Also, the selection process of my sample was not random to the extent that it would be in the jury selection process and the class background, ethnicity and age span of my sample were all narrower than would be achieved by the jury selection process. Another issue to bear in mind, as outlined by Emily Finch and Vanessa Munro, is that:

“... researchers’ inability to compel public participation demands reliance (to a greater or lesser extent) on recruitment via self-selection, which in turn leads to an attitudinal or cognitive composition that may not be wholly representative of the general population” (2008:44).

It is also important to stress that, unlike the focus groups in this research, a jury would have explicit directions about what the law requires; they would not have a researcher present asking questions and framing the discussion; they would be required to reach a majority verdict rather than individual verdicts; and they would not have a statement about rules of conduct in relation to individuals dominating the discussion or not sufficiently contributing. However, it should be stressed that obviously a focus group involves collective group discussions and is thus similar to juries in this way. Also, the participants in my sample are the sort of people who may be selected for jury service and would be likely to bring the similar thought processes to the jury deliberation process. Emily Finch and Vanessa Munro, in their recent paper on the use of focus groups and trial simulations in legal research, argue that:

“... in a situation in which research involving real jurors continues to be prohibited ... it would seem that being dismissive of simulation studies purely on the basis of their ‘mock’ nature closes the door

inappropriately on what might be our best route into the jury room” (2008:49).

This chapter considers the following issues in terms of the ways in which rape myths were utilised, defended and/or challenged during the course of data collection and the implications these findings may have for jurors in rape trials. Firstly, I consider incidents from the focus groups where participants have altered their viewpoints during the course of the discussions. Secondly, I examine some examples of participants challenging each other’s opinions during the course of the focus group discussions. Finally, I consider the issue of internal consistency in the data in terms of differences between what participants said in their individual interviews versus what they said in the focus groups.

7.1 Altering Viewpoints

This chapter now begins by examining a number of examples from the current study where participants altered their viewpoints during the focus group discussions and considers the implications of these findings for further understanding of juror behaviour in rape trials.

Sexual History Evidence

The two following quotations demonstrate examples where focus group participants changed their opinions in relation to the use of sexual history evidence in rape trials:

FG M3 Vignette 1

Bill (32) “And this is where I can see why they go on about sexual history and character of the person and stuff ... because they haven’t really got a lot to go on here if they’re going for a conviction ...”

Brian (30) “Yeah I guess when you put it that way that’s true ... I hadn’t thought about it like that before ... that’s a good point ... if it’s the sort of thing that’s happening every other weekend then ...”

Bill “Exactly and also the guy ... you don’t know if he’s got previous history with this sort of stuff ... and if other women would come forward ...”

Brian “She might go out every other weekend and get wrecked, sleep with a different guy ... she just took a dislike to this guy”

Interviewer “So are you saying that you think that sexual history *is* relevant?”

Brian “I just thought that that was a very valid point ...I still don’t agree with it but I can understand their reasoning behind (sexual history evidence) now (after the discussion) ...”

In the quotation above, initially Brian was adamant that sexual history evidence was not relevant when a woman’s rape case comes to trial yet after hearing Bill’s ideas about why sexual history might be relevant Brian conceded that he hadn’t thought about it in that way before. This is interesting because it demonstrates the ways in which the group situation provides participants with previously unconsidered alternative opinions and viewpoints which they must think about in relation to their own current opinions. As in this case, this may lead to a revision or alteration of a previous viewpoint. In the above example, the focus group participants draw upon myths regarding female reputation and the tendency for women to lie about rape as the basis of their argument in favour of sexual history evidence. Also, in the above example Bill raises the idea that the man’s previous behaviour might also be relevant but Brian only hears how sexual history might be relevant to the woman involved.

This is interesting as well and perhaps indicates that people process things against the backdrop of their already formed viewpoint. It has already been noted that participants in this research were generally much more likely to regard the man's previous sexual behaviour (not previous convictions) as not relevant at all.

In another example, when the issue of sexual history evidence was first raised Dave confidently stated that he did believe that it was relevant in a rape trial. The rest of the focus group was of mixed opinion as to whether sexual history evidence was relevant. After the focus group had discussed the reasoning behind their opinions the interviewer then asked whether they thought sexual history information influences a jury. All focus group participants agreed that a jury had to be influenced by such knowledge and it was at this point that Dave made the following statement:

FG M5

Dave (37)

“Having thought about it I'd change my yes (that sexual history *is* relevant) to a no because I *would* be influenced”

These views support previous claims in the literature that “one of the consequences of sexual history evidence is jury prejudice against the complainant” (Temkin 2002:197). Dave's statement is interesting because it shows how his opinion was changed by considering the issue as though he were in a different context i.e. the influence of sexual history information on jurors. Dave tried to put himself in the shoes of a juror and imagine what information would affect him in the context of a rape trial. Thus, the relevance of a piece of information might change depending on the context in which it is considered.

Other Examples

The following group of quotations give further examples of the ways in which focus group participants altered their opinion as a result of the group discussions.

FG F6 Vignette 3

Interviewer	“What about the fact that she apologised for biting him?”
Mandy (39)	“Yeah I thought that was a bit weird”
Debra (42)	“No I don’t because at what point did she apologise? Was he still being physically aggressive with her? Was she worried that he was going to hit her?”
Linda (48)	“She said sorry after she bit him – so what’s she saying sorry for though?”
Debra	“For hurting him”
Mandy	“Because she might be scared about what he’s going to do next”
Debra	“Yeah”
Mandy	“He might have a knife in his other pocket”

At the start of the above exchange, Mandy does not understand why the woman in this scenario would apologise for biting the man. However, after listening to Debra’s thoughts Mandy then changes her viewpoint and herself lists some reasons why the woman may have felt the need to apologise. Debra’s opinions appear to have made Mandy consider the issue from a different perspective.

In the following quotation, Mandy acknowledges an apparent contradiction of her own views in the opinions she is expressing about the woman in the second scenario:

FG F6 Vignette 2

Mandy (39)	“I’m just annoyed with her ... see now I’m saying that she deserved it, which – I would never say that normally”
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At the beginning of the focus group Mandy was adamant that women are not to blame for rape and yet when she began discussing the vignettes she recognised that

she was expressing some victim-blaming opinions. This is interesting because it shows how the focus group discussion challenged her perhaps previously unquestioned attitudes towards rape victims and revealed that perhaps she is more stereotypical than she thought. Also, by providing Mandy with a practical, real-life example rather than just asking for her general view it has made her think about the issue in a less abstract way. The above quotation shows her reflecting on her own views and displaying self awareness of the fact that she may herself carry prejudicial beliefs about blame and responsibility.

Labelling an Incident as Rape – From Yes to No

The following group of quotations reveal incidences where participants initially stated that they believed an incident was rape but then altered their opinion as a result of the subsequent focus group discussion.⁹⁰

FG M2 Vignette 4
Alan (28)

“I don’t think it *is* rape actually after discussing it ... I mean I think what he’s done is wrong, he’s a cocksucker but it’s not rape ... she’s basically giving up because he’s her boss and if she wants to keep her job then she has to do what he wants ... she hinted at the start that she wasn’t interested but when he was coming on to her ... and verbally threatened her, she’s given in, she hasn’t resisted at all”

In this example, Alan changes his initial opinion regarding whether the incident was rape after discussing it within the focus group context. This change of opinion occurred early on in the discussion about this vignette after the other focus group

⁹⁰ It should be noted that these were the only three examples of this behaviour

participants considered whether a case like this would get to court. Participants felt that a case like this would not get to court and that even if it did the man would be found not guilty because the woman did not do enough to clearly show that she did not consent. It appears that hearing the other participants' thoughts forced Alan to more thoroughly explore his own thought processes and led him to express his change of opinion. It is possible that Alan (and the other focus group participants) were drawing on the rape myth concerning the requirement to struggle or use physical force to resist when he changed his mind. His opinion change reveals that this myth certainly did not initially frame his understanding of rape with its narrow view of resistance and his engagement with this myth is not reducible to an automatic or straightforward influence.

In another example, initially, Leroy stated that in vignette two the scenario was rape but in the quotation below was talking as though he thought it was not rape. Another focus group participant, Andrew, quizzed him on this and Leroy had not seemed to realise that he was contradicting himself until Andrew pointed it out to him. Thus, when the interviewer asked "was this rape?" Leroy was the first participant to respond with "yes definitely". The other participants then responded in turn followed by some initial discussion before Leroy made the comment below:⁹¹

FG MF1 Vignette 2
Leroy (25)

"... He knows she's an easy ride ... he's had her before ... the fact she's got a boyfriend is pretty irrelevant ... you know ... she said she'd go home with him, he's ridden her before ... why not, let's go you know ... the fact that she hasn't got the strength to push him off and she wants to means that she's ... I don't think you

⁹¹ Four of the other five focus group participants stated that they thought this scenario was rape whilst one participant argued that it was not rape.

can be in that state though to be fair ... if she's in enough of a mental state to be able to *try* to push him off but not be able to ... then I can guarantee that she's in enough of a mental state to open that fuckin gob of hers and say 'no I don't want you to be doing this'"

Andrew (27) "So are you changing your yes to a no?"
Leroy "Oh I mean ... I'm not sure ... yeah maybe I am changing it to a no ... I think she needs to sort herself out ... so actually no I don't think this is rape"

This quotation is particularly interesting because it shows how people's opinions about rape can be confusing and contradictory without them even realising it. In this way, Catterall and MacLaran comment that focus group participants' comments can be self-contradictory so that what they say at the outset of the group may be different from and directly contradict what they say later (1997:4). This suggests that such confusion and contradictory feelings may also be present in jury deliberations about rape. In the above quotation, Leroy is making reference to two rape myths in his reasoning - the resistance requirement myth and notions of victim precipitation. It is important to note that Leroy's confusion here also clearly indicates the way that rape myths are engaged with in a more complex manner than straightforwardly accepting or rejecting such myths.

In this final example, Bill also expressed a change of opinion but did not provide the same level of detail as shown previously. After finding out that two of the other three focus group participants did not consider vignette three to be rape and hearing their reasons Bill simply said that he had changed his mind on his initial statement that this scenario was rape.

FG M3 Vignette 3

Bill (32)

“Yeah I actually change my yes to a no on this one ... after reasoning it”

This may be an example of censoring whereby he did not feel confident enough initially to state that he did not think this scenario was rape but after realising that the other focus group participants concurred he felt able to express his true opinion.

However, it may also be that he simply altered his opinion after hearing the other focus group participants' reasons as to why they did not believe it was rape.

Unfortunately it is difficult to confidently distinguish between these two alternatives when it comes to analysis.

Labelling an Incident as Rape – From No to Yes

There was only one clear example where a focus group participant had initially stated that they felt an incident was not rape but then altered their opinion as a result of the subsequent group discussion. At first, Tim stated confidently that vignette four was not rape explaining that he felt the woman “had consented in a way” and “at the end of the day she had the choice to say no”. However, after listening to the other focus group participants' opinions – they all felt that it was rape – he altered his opinion and made the statement below:

FG M4 Vignette 4

Tim (32)

“Yeah I agree he's a bastard, it's just the physical act I'm not so sure about ... I guess in a way it is rape ... Yeah, after talking about it I've changed my mind – psychologically he blackmailed her into having sex so I guess that it is rape, yes ... so I'd say actually yes it was rape”

This highlights how focus group participants change their views and opinions in the course of the discussion “once they have had an opportunity to hear and reflect on other’s opinions, through introspection and retrospection” (Catterall and MacLaran 1997:4). It is also interesting to note that this one instance of a participant changing his mind from a ‘no’ to a ‘yes’ occurred in relation to this particular vignette where there was a lot of disagreement amongst participants across all focus groups as to whether this was coercion.

There was only one other example of a focus group participant considering whether they might alter their original opinion. Mandy stated that:

FG F6 Vignette 2

Mandy (39)

It’s really difficult because I could change my mind now (from no it was not rape to yes it was rape)

However, Mandy did not change her opinion during the subsequent discussion and stuck to her original assertion that this second scenario was not rape. These quotations also indicate the complexity of these participants’ engagement with rape myths in that they both collude with and reject various stereotypes about rape when trying to process their thoughts and come to a decision about these potential rape situations.

It is also possible that this reflects the pervasiveness and power of rape myths – and/or peer group adherence to the myths. Previous chapters have shown focus group participants making frequent use of elements of rape myths in ways that undermine their acknowledgement of acquaintance rape as rape. This suggests that rape myths may mean that jurors who may initially consider an incident involving acquaintances

to be rape may be both more likely to face opposing views during the deliberation process than those taking the opposite position and more likely to be vulnerable to altering their viewpoint. And vice versa, jurors who believe that an incident is not rape may be less likely to face opposition and less amenable to considering opposing viewpoints and potentially altering or modifying their negative opinion.

Classic social psychology experiments suggest that the minority position in a group is always more liable to change. In the 1950s, the social psychologist Solomon Asch (1951) conducted a famous experiment which demonstrated the power of conformity in groups. In this experiment participants were surrounded by individuals who all gave different measurements of a line than was reality. Asch found that over one third of his participants went along with the clearly erroneous majority and concluded that it is difficult to maintain that you see something when no-one else does.

Therefore, it can be seen that the quotations in this section on altering viewpoints highlight how focus group interaction – either through direct challenges or by offering a possible set of reasons for the victim’s actions – can prompt new viewpoints and raise issues or perspectives that participants had not considered previously. As my reading suggests, such opinion changes “should not be considered a methodological weakness but rather an indication that focus group participants are functioning in a normal, natural manner since these processes of negotiation and revision of views and opinions is a feature of everyday life” (Krueger 1998:34). I would suggest that these processes may also occur in jury deliberations in rape trials

since people are likely to bring these thought processes to the juror process. The findings here support claims made in the previous analysis chapters concerning the complexity of participants' engagement with rape myths. The following section will explore focus group participants' use of rape myths in more detail.

7.2 Challenging Viewpoints

This chapter now examines how participants drawing on rape myths in their dialogue were challenged (or not) by others during the focus group discussions. These examples are grouped together according to the rape myth which is being discussed and will be examined under the following headings:

- Women 'ask for it' through their behaviour, attitudes or dress
- Victim precipitation – the role of alcohol
- Resistance requirement
- False allegations
- Legal Aspects

Jenny Kitzinger states that focus group participants “do not just agree or disagree with each other, they also misunderstand each other, question each other and try to persuade each other of the justice of their own point of view” (1994:113). It has been suggested that “the range of argumentative behaviours exhibited by participants results in a depth of dialogue not usually found in individual interviews” (Smithson 2000:115). Thus, it can be seen that with focus groups:

“Agreements or disagreements are fundamental processes that influence the nature and content of responses as the group progresses” (Kidd and Parshall 2000:294)

In this way, this chapter will now further explore some examples of focus group participants challenging the use of rape myths by other participants during the group discussions.

“Women ‘ask for it’ through their Behaviour, Attitudes or Dress”

The notion of victim precipitation was the rape myth which was drawn upon most often by focus group participants during the vignette discussions. The following quotation, from the discussion about vignette three, relates to this myth:

FG F4

Kate (29)

“I guess though she’s put herself in a riskier situation by going round to the local park to chat ... couldn’t she have stayed out the front of the community centre?”

Jenny (36)

“But why should she be restricting herself like that?”

Kate

“Yeah I know but she’s with a strange guy ...”

Jenny

“She’s seen him around before ... I don’t think this is very outrageous at all”

Anne (34)

“I just wouldn’t have gone for a walk with someone I only knew from looking at him from across the room in other situations ... at some point you do need to take responsibility for yourself ...”

Jenny

“See I would actually have thought I was safe going for a walk with someone who I vaguely knew”

Nat (37)

“But you haven’t spoken to him ... I wouldn’t be going”

Anne

“In both of the previous scenarios they knew each other prior to ... in this case she doesn’t know him, she should have been more cautious”

Jenny

“I don’t think she could have or should have thought that was going to be the end result of her going for a walk with him”

In the above exchange, Jenny challenges the other focus group participants' viewpoint that the woman in this scenario was irresponsible for going for a walk alone with a man that she hardly knew. Although, Jenny does not succeed in changing their minds in the end, this challenge provides more insight into the participants' considerations and reasons for attributing responsibility. In this way, "the presence of other group members with contradictory opinions often leads to elaborated presentations of particular point of view" (Wilkinson 1998:118).

In the following quotation, Glenyss challenges the other focus group participants' viewpoint that the woman in this scenario was irresponsible for going back to the man's hotel room. This challenge helps to clarify exactly why the other participants felt that the woman was irresponsible and thus provides a deeper insight into their thought processes.

FG F5 Vignette 4

Morag (49)	"She knew he was hitting on her, she should never have gone up to his room ... he was flirting with her"
Glenyss (52)	"She dismissed that as high spirits resulting from a deal they'd signed//"
Morag	"//She's delusional (!)"
Glenyss	"No she was being a professional"
Diane (38)	"All the threats didn't come until she was in his room"
Morag	"That's why she should never have gone there ... she should have had more sense"
Diane	"I don't think he'd ever have threatened her if they'd stayed at the bar, in public"
Glenyss	"I still think that she has a right as an individual to be and do ... in a professional capacity ... whatever she wants"
Diane	"But is it right that she went to his room?"
Glenyss	"Yes, I really think it was"

In the next example, Justin challenges Alan's comments about the role of provocative clothing in rape. Alan appeared to have some very stereotypical opinions about the way in which women dress and expressed them throughout his focus group discussion. In all cases, the other focus group participants did offer resistance to his claims and expressed strong disagreement. It could be suggested that perhaps it is easier to disagree when someone seems to have such extreme views rather than when such viewpoints are more subtly expressed.

FG M2	
Alan (28)	"I think if you see a girl at a pub and she's dressed like a tart ... obviously she's an easier target than someone who is covered up and acting normally ... whereas someone who's tarted up ... you can always tell the sluts"
Justin (26)	"That's where you are getting stereotypical though ... it's not necessarily true that that chick might be dressed up for that sole purpose"
Alan	"They usually are ... if a girl's there with her boobs hanging out, boots on and a skirt up to her breakfast"
Justin	"That still doesn't mean she's responsible//"
Alan	"No, not for rape, but she is drawing more attention to herself and I think that sort of thing can bring things on"

The following quotation shows a male focus group participant, Ian, clearly drawing upon the myth that 'women ask for it through their behaviour, attitudes or dress' i.e. victim precipitation:

FG M5	
Ian (52)	"Sometimes (women are at fault for rape) ... by what they wear ... behaviour ... and then when the hard word gets put on them they go 'oh sorry I was only playing games'"

Ian's opinion is not directly challenged by the other participants but is indirectly challenged as all of the other focus group participants stated that they felt that women are never at fault for their own rape. However, it is interesting to note that there are examples elsewhere in the focus group data where these other participants do actually draw upon myths about victim precipitation. Thus, despite professing initially that they did not feel that women were ever at fault for their own rape, participants expressed contradictory viewpoints during the subsequent vignette discussions. Again, this demonstrates that engagement with rape myths is not a straightforward process and participants in this research both colluded with elements of rape myths whilst also often acknowledging that reality is in fact more complex.

The following quotation reflects an archaic view of female sexuality expressed by one female participant:

FG F5 Vignette 2
Diane (38)

“She's got a boyfriend so she shouldn't be accepting a drink from another guy”

The interesting point to note is that this condemnatory view was not challenged by any of the other female focus group participants. However, this does not necessarily indicate whether it was unchallenged because they agreed with it or whether they simply did not offer verbal disagreement. It would have been interesting to observe whether such a comment would have been challenged by the women in this group if it had been made by a man.

Victim Precipitation – The Role of Alcohol

In the following example, the other focus group participants challenge Nikki's opinion that it is inappropriate for drunken women to have sex and by implication that men should not have sex with drunken women. It is seen to be unrealistic by the other participants and this helps to highlight the normalisation of alcohol use in sexual encounters.

FG F1 Vignette 1

Nikki (28)	“If you are not in your clear mind then you should not be going home having sex with someone ... that's just my opinion”
Caz (22)	“Yeah but how realistic is that? ... and like for a lot of girls that's the only time they <i>will</i> feel comfortable enough to go home with someone otherwise it would never happen”
Jo (31)	“I might not have ever had sex in my life if I didn't drink (!)”
Lani (31)	“Me too (!)”

This quotation above also raises a few other issues relating to the use of alcohol.

Firstly, it highlights the perception that alcohol acts as a disinhibitor for people in sexual encounters. The other focus group participants' reaction to Nikki's comment challenges the idea that a drunk woman should not or cannot have sex and argues that a drunk woman can still make an autonomous choice. This relates to debates considered in the *Literature Review* chapter which consider whether intoxicated women are still capable of giving valid consent and/or at what stage such consent is assumed invalid. Similarly, it also raises questions of whether it is the man's responsibility not to take advantage of an intoxicated woman rather than the woman's responsibility to refuse alcohol or not be sexually active when intoxicated.

In the following quotation, Daniel challenges the other focus group participants' viewpoints about the role of alcohol in the second scenario:

FG M1 Vignette 2

Gus (24)	"I think when she was coherent and sober she made valid points of non-interest then ... obviously as people come under the influence of alcohol//
Daniel (23)	"// so that's the excuse? Alcohol?"
Gus	"It's a big factor"
Daniel	"She drank it though"
Trevor (22)	"You can say fair enough she drank it but the point was that he was feeding it to her as well; you know ... he kept buying the drinks"
Daniel	"She doesn't have to drink it"
Trevor	"Yeah she didn't have to drink it ... but he didn't have to buy it for her"

It is important to note that neither viewpoint expressed here prevailed but rather each participant adhered to their original opinion. This quotation provides further information about how these focus group participants consider alcohol to be linked to responsibility for rape and, as discussed above, clearly demonstrates the tension between beliefs about male responsibility for avoiding sex with intoxicated women versus female responsibility for avoiding putting themselves in such situations. This supports previous research findings which suggest that "observers often hold intoxicated complainants at least partially responsible for their victimisation" (Finch and Munro 2007:605). It also seems that, in the quotation above, Trevor is trying to play the role of mediator and see both sides of the debate.

In the next example, Debra challenges the other women's assertions that they find it difficult to imagine anyone being so intoxicated that they cannot offer any resistance by sharing her own personal experiences. Thus, focus groups may have a part to play in trying to prompt people into imagining something beyond just their

own experiences. This also relates to the idea of women disassociating and distancing themselves from the actions of rape victims – an issue which will be examined again later in this chapter.

FG F6 Vignette 2

Mandy (39)	“I just haven’t been <i>that</i> intoxicated”
Denise (45)	“No I haven’t been that far gone either”
Debra (42)	“Oh I have”
Denise	“Have you really? And do you lose everything?”
Debra	“You lose consciousness”
Linda (48)	“I think there are situations where you can get so drunk that you don’t make any sense”

Resistance Requirement

In the following example, the other focus group participants challenge Leroy’s stereotypical comments about women being able to resist rape if they “really want to”. This comment provoked particularly vehement disagreement from all of the other participants in that focus group – perhaps due to its extreme nature.

FG MF1 Vignette 3

Leroy (25)	“Girls can always swing their legs mate and get them to end up in your nuts ... it’s a pretty easy way to resist ... I don’t think any bloke is strong enough to be able to have sex with a girl and her not be able to stop it from happening ...”
Jacqui (25)	“Are you kidding?”
Gavin (26)	“Dude we’ve got three times the power that girls do ...”
Leroy (25)	“Yeah I know but ... if you are pinning a bird down ... there’s no way you can put it in and control what her legs are doing ... she can thrash like fuck ... you can’t hold every single one of her limbs down ...”
	[Others participants disagree strongly]
Jacqui	“Yeah you can, you idiot”

Gavin	“If you think that, Leroy, then you seriously under-estimate your power ...”
Leroy	“All I’m saying is that she could have made more of an effort”

This demonstrates that group discussions can prompt robust exchanges, particularly where some of the participants already know each other. As Deborah Warr suggests, “the familiarity between participants allows them to challenge each other in ways that a researcher would never wish to do in a research encounter” (2005:216). As my reading shows, “focus group participants are able to contradict and disagree with each other in a manner which, coming from the researcher, might have seemed authoritarian” (Wilkinson 1998:118). It could be suggested that the same might be true of juries where they discuss the evidence from rape trials without the judge or other clear ‘leader’ or authoritarian figure, although of course they may find their own ‘leaders’ in this context.

In the following quotation, Jillian is surprised by Jeremy’s decision that this scenario was rape thus forcing him to further explain his reasoning - and also allowing her to explore her own.

FG MF2 Vignette 4

Jeremy (34)	“It was definitely rape”
Jillian (31)	“You think it was rape? (Incredulous)”
Jeremy	“Yeah fuckin oath it was”
Jillian	“Pigs arse, she could have said ‘fuck off do <i>you</i> still want to keep working at this level?”
Jeremy	“She was scared, scared for herself physically, erm I don't think she even cared about her job by that stage, she was just scared”
Jillian	“He was smiling and she was worried that he <i>might</i> get violent”

Jeremy	“No I reckon he needs to go to a cell with bubba for a little while (!)”
Jillian	“I think it was fully consensual; it’s not rape at all, not at all”

Similarly, Jenny Kitzinger’s qualitative research, comprising fifty two focus groups using participants who were already acquainted, found that people who already knew each other prior to the group “were sometimes surprised to discover how differently they thought about some things and such unexpected dissent led them to clarify why they thought as they did” (1994:113).

In the following exchange, Barry challenges Gaynor’s statement about the non-violent nature of the incident, thus providing more insight into how rape is defined by these focus group participants and the role of resistance and violence in sexual encounters.

FG MF3 Vignette 1

Gaynor (41)	“I mean technically I guess it’s termed as rape but maybe it should be a lesser term – like ‘non-consensual sex’ or something – because rape has such a stigma with it ... he hasn’t been violent, he hasn’t done anything wrong, it’s just//”
Barry (36)	“// who says that rape has to be violent? She said ‘no’”
Gaynor	“But as soon as she says no he’s jumped straight off and just ended it”
Barry	“But he’s violated her person ... I think you’ve got to call it rape full stop, I don’t think there can be varying degrees of it ... we perceive rape to be what we hear on TV ...”
Gaynor	“Violent, sexual activity” [All participants agree]
Barry	“But in this instance //”
Debora (36)	“// it was lack of communication”
Barry	“It’s still classed as rape though because it was non-consensual”

This quotation also shows different participants relying on different sources to support their argument including legal sounding or legally influenced arguments.

The above exchange also clearly demonstrates the complexity of engagement with the resistance requirement myth. In terms of the role of resistance in rape law, although all Australian jurisdictions recognise that some threats can make people so intimidated or fearful that they submit to sexual intercourse (Heath 2005:23), many other jurisdictions – e.g. some US states – still require an element of force in order to prove the crime of rape (Cowan 2007a:94). Thus, not only is there a great deal of debate and uncertainty amongst the public about the role of resistance in rape but it would also appear that such uncertainty is also somewhat reflected in the approach of different legal jurisdictions to the role of resistance. However, it is important to note that this has not been the subject of serious debate within Australian law for many decades and indeed there is no reference to any requirement for force in South Australian rape law.

False Allegations

In the following quoted section of dialogue, the other focus group participants disagree that the woman is lying about being raped in order to protect her reputation and challenge Steve's argument about time delay factors in reporting rape. However, Steve maintains the suggestion of false allegation but ultimately dissociates himself from the disagreement by taking on an 'objective' third party voice, rather than using his own.

FG M5 Vignette 2

- Steve (36) “One of the problems is that she gets up in the morning and leaves – she doesn’t say anything to him – and then goes home and it’s only when her boyfriend says ‘where have you been?’ that she says she was raped ... if she’d gone straight to the police//”
- Ian (40) “// but she’s got a thumping headache, she’s embarrassed”
- Steve “But it’s like well if he raped you why didn’t you go straight to the police? Why did you go home, realise your boyfriend had found out you’d been out all night and they’re going to say to her, well if the boyfriend hadn’t been home would you have said anything at all – if you had got away with it?”
- Darren (43) “But what about the women it happens to who go home and sit in the shower for three hours?”
- Steve “I’m talking about what your lawyer is going to say”
- Darren “She’s just got out of there and the first thing she’s thought is ‘I want to go home’ and the boyfriend is there and she’s told him what’s happened”
- Steve “I’m just saying a lawyer will say that it’s only when she got home and her boyfriend found out that she’d been out all night ... and thought he was going to dump her ... that’s when she said it”

Thus, it can be seen that at first Steve frames his dialogue as his own opinion then after being challenged he alters it slightly to say that his point is what a lawyer would say about the situation – rather than necessarily his own opinion per se. Steve distances himself from the view that he is expressing by attempting to adopt a more neutral third party voice and arguably also attempts to give it authority or credibility by framing it as a legal argument. It could be suggested that he is putting his argument forward objectively in order to protect himself from critique and to be more persuasive.

Legal Aspects

In the following example, Nikki challenges Lani's contradictory statement thus providing further insights into the reasoning behind her assertion:

FG F1 Vignette 1

Lani (31)	“Even though I do think it <i>is</i> rape, I wouldn't convict him ... only because of the situation//”
Nikki (28)	“// doesn't that contradict yourself a bit?”
Lani	“Maybe ... but it's such a grey area ... I don't think it's a strong enough case to put him away for five years or whatever ... yeah it's rape but there's different levels of it you know”

This quotation is interesting because Lani's comments draw on the 'real rape' myth and underlying beliefs about 'real' rapes versus 'other' rapes. In the next example, probing by Jacqui further highlighted two male participants' opinions on rape and the legal system:

FG MF1 Vignette 1

Interviewer	“Ok do you think that this case would get to court?”
Andrew (27)	“Yes”
Jacqui (25)	“Hang on you just said that this wasn't rape so why do you think it would go to court?”
Leroy (25)	“Any time a bird goes this happened, that happened it's going to court mate, simple as that ... sexism has turned in the opposite direction ...we (men) get discriminated against these days and you guys (women) get all the bloody glory”
Andrew (27)	“Yeah exactly”

Two other participants from this group, drawing upon myths about the tendency of women to lie about rape, argued that this case may not get to court because the police would discover that the woman was lying about the incident before it got to that stage.

This section on challenging viewpoints has revealed numerous examples where focus group participants were drawing upon rape myths to support arguments and viewpoints during the focus group discussions. Similarly, Judy Shepherd (2002:86) found in her research that when statements made during jury deliberations were considered in regard to common rape myths, “it became apparent that almost every myth was validated by some jurors and used as an argument for acquittal”. Shepherd’s research experience was unique in that she was able to actually serve as a juror on a rape trial and thus had the opportunity to participate and observe jury deliberations in a way that is usually inaccessible to researchers. My research appears to support previous research findings that suggest that jurors may be influenced by non-legal factors, such as rape myths, when reaching a decision about guilt in rape cases (see for example: Finch and Munro 2005; Temkin and Krahe 2008).

The literature suggests that “the implication is that guilty jury verdicts in a rape trial are more likely if individual jurors tend not to blame the victim and tend to blame the offender” (Fischer 1997:500). Thus, by contrast it can be argued that when individual jurors tend to blame the victim and tend not to blame the offender then the most likely verdict is that of not guilty. This is consistent with what happened in this research in that focus group participants were more reluctant to potentially convict the man of rape if they felt that the woman was responsible to some degree for circumstances which meant that the man may have been confused by or misinterpreted her behaviour. The dynamics of arguments and outcomes I have described as typical of my focus groups, influenced as they were by rape myths, seem to be consistent with this wider literature and provide a further piece of the

picture explaining the low conviction rates for rape evident in many criminal jurisdictions, including Australia. Similarly, Jennifer Temkin and Barbara Krahé's UK-based research, involving an online survey with 2176 members of the general public, found that "higher rape myth acceptance and endorsement of female precipitation beliefs were linked to lower defendant liability, shorter sentences and higher complainant blame ratings" (2008:109).

7.3 Internal Consistency

Another consideration of this chapter relates to the internal consistency (or inconsistency) of the participants' comments. This section will examine the differences between what participants said in individual interviews versus what they said in focus groups. As discussed in more detail previously in chapter four, individual interview participants were given a list of situations and asked whether they thought that consent was invalid in each scenario. Most individual interview participants agreed with all of the examples provided. However, in the earlier focus group discussions one third (n=5) of these participants had provided thoughts and opinions which countered these statements. I will now provide some examples of this.

In the individual interviews, the following propositions were put to participants. Firstly, that *a person does not consent to sexual intercourse just because she does not offer physical resistance* and secondly, that *a person does not consent to sexual intercourse just because she does not say or do anything to indicate that she did not*

consent. Despite agreeing with these statements in their subsequent individual interviews, in the focus groups these interviewees made comments such as:

FG F4 Vignette 2

Anne (34)

“It says that she can’t find the strength to push him off but ... if you don’t want to be in the situation ... no matter how drunk you are, you can still say no, you can still push away ... you have to do something”

FG MF1 Vignette 3

Jacqui (25)

“If she didn’t want it then she would have been there screaming her lungs out”

FG F5 Vignette 4

Morag (49)

“Yeah but she didn’t put up any fight ... she should have been assertive enough to say no”

The above quotations demonstrate that, when discussing the vignettes, some focus group participants had issues with the woman not doing enough (in their opinion) to demonstrate non-consent. This is clearly at odds with the assertions made in the individual interviews. It was only female participants who contradicted themselves in this way which suggests that, when given actual examples as opposed to general statements, it may be women in particular who struggle with the extent to which one needs to communicate non-consent. They feel in theory that women should not have to offer physical or verbal resistance but when given a practical scenario where they have to consider how consent or refusal should be indicated, their opinions are rather more contradictory. This is perhaps because in reality they know that they do attribute blame to a woman (or know that they would be blamed) if she does not take what they perceive to be ‘proper’ responsibility or draw clear

boundaries. Of course, it is important to acknowledge that there are a range of ways in which differences between views in individual interviews and focus groups can be interpreted. A group situation is a more complex arena in which to negotiate a presentation of self than an individual interview. As the previous section has shown, the challenge of other viewpoints can result in shifts in views. This finding can also be linked to women using theories about belief in a just world as a distancing strategy in order to reassure themselves of their own safety – as discussed extensively in previous chapters. It is argued that females account for an overwhelming majority of rape victims and have been shown to be more fearful of rape – thus, this process would be expected to occur more strongly in female jurors (Rempala and Bernieri 2005:539) and my findings would appear to support this argument.

Individual interview participants were also asked to comment on the statements that *a person does not consent to sexual intercourse if she allows it to occur due to force or fear of force - either to herself or to someone else* and also that *a person does not consent to sexual intercourse if she is overborne by the nature or position of another person*. Despite agreeing with these statements in their individual interviews, in the focus groups the interviewees made comments such as:

FG MF1 Vignette 4
Jacqui (25)

“I feel like this is not rape because ... he threatened her ... but all she had to do was walk away ... yeah she was verbally threatened and she got scared by that and thought she'd better have sex with this guy ... but that's not rape because she was still choosing to do it”

FG MF2 Vignette 4

Jared (30)

“I think he should have to show at least the start of some violence for her to legitimately have that fear”

The above quotations demonstrate that when discussing the vignettes some focus group participants had issues with the role of intimidation and fear in sexual encounters. Again, this is at odds with claims made in their individual interviews where they argued that a woman does not consent if she does so due to force or fear of force nor if she is overborne by the nature or position of another person.

It could be suggested that these findings on internal consistency may help to explain why participants are often reluctant to convict in acquaintance rape scenarios. Participants agree in principle with the list of circumstances which may invalidate consent but when it comes down to actually applying that to ‘real life’ incidents they appear to contradict themselves and perhaps this causes them to waver when it comes down to actually convicting a man of rape. It appears that when faced with a more theoretical and abstract debate about rape (such as in the individual interviews) participants drew less upon rape myths and had less stereotypical opinions but when faced with actual scenarios where these theoretical debates ‘came to life’ their views proved much more contradictory and they drew upon rape myths to a much greater extent. These findings also highlight that the general public’s engagement with rape myths is far from a straightforward process and lay discussions about rape may be more complex than simply colluding with rape myths but at the same time they are far from entirely independent of them. Apart from this apparent contradiction, there appeared to be no other significant differences between what participants said in individual interviews versus focus groups.

Conclusions

To conclude, this chapter has examined the influence of the actual dynamics of the interview situations which created the data collected. Obviously, it is important to note that my findings have to be read in light of the fact that participants' opinions may have been influenced by many factors. Opinions are not static and only capture a snapshot in time. Jenny Kitzinger identifies two styles of focus group interactions: "complementary interactions" which involves consensus amongst the group and "argumentative interactions" where participants disagree or challenge one another (1994:107). This chapter has shown that the ways in which participants alter their opinions and challenge one another's viewpoints throughout the course of the focus group discussions is a very significant part of the group dynamic and influences the data collected. Focus group participants assist the researcher "by asking questions of each other; by contradicting and disagreeing with each other; and by pointing to apparent contradictions in each other's accounts" (Wilkinson 1998:118).

As previously stated, I would argue that one can identify a link between the group dynamics of focus groups and the potential behaviour of jurors in rape trials.

The following quote encapsulates the reasoning behind my argument:

"While focus groups and trial simulations differ in terms of their structure and stimuli, both methods seek to generate a controlled collective environment in which the dynamics of group decision-making can be observed. To the extent that the jury itself resembles this kind of discursive forum, these methods offer the potential to (at least partially) replicate the verdict deliberation process, and thus provide insight into what in fact goes on behind the closed doors of the jury room" (Finch and Munro 2008:32)

I would argue that the ways in which participants interacted during the focus group discussions may be similar to the processes involved in jury deliberations. For

example – agreeing or disagreeing with one another; altering or defending one’s opinion; reaching a final decision about guilt; and also forcing others (and self) to probe more deeply and explain more fully why a particular view is taken. In this way, the findings from this research provide an insight into how group dynamics may influence jurors reaching a verdict in rape trials. It is important to note that I am not claiming that the focus groups in this research were in any way representative of juries in rape trials – that was never an intention of the research. However, by virtue of their composition they do provide us with the ability to make some claims of comparison i.e. they are made up of members of the public who are potential jurors and would be likely to bring these thought processes to the juror process.

This chapter has shown that rape myths are frequently drawn upon in collective discussions and negotiations when deciding whether or not to define an incident as rape. This can be seen to support previous findings that have consistently shown that mock jurors, when given the task of attributing responsibility for rape, are often influenced by factors which, legally, should have no bearing on the verdict (Weir and Wrightsman 1990:901). This has serious implications for understanding juror behaviour in actual rape trials. It becomes apparent that if jurors are influenced by rape myths which blame the victim and fail to attribute responsibility to the perpetrator during their deliberations then the probability of obtaining a guilty verdict becomes much lower. This was also found in recent UK research which revealed that rape myth acceptance is linked to “lower defendant liability, shorter sentences and higher complainant blame ratings” (Temkin and Krahe 2008:109).

As the literature shows, not guilty verdicts in rape trials “not only establish what qualifies as rape but also serve to strengthen any pre-existing myths about rape” (Sinclair and Bourne 1998:577). This clearly demonstrates that, when attempting to address the extremely low conviction rates for rape, a focus purely on legal change would, in my opinion, be highly ineffective. I would argue that the findings in this thesis indicate that the main focus must be on changing societal attitudes and stereotypes, otherwise any legal changes are likely to be limited in their effectiveness. The following chapter will consider the wider implications of the findings of this research and draw some final conclusions.

Chapter 8: Conclusions

What influences do rape myths have on people's understandings of acquaintance rape?

This research has found that traditional myths about rape still continue to affect people's perceptions about and interpretations of acquaintance rape scenarios. All of the rape myths outlined in this thesis found varying degrees of support and were defended by some participants in this research although varying degrees of resistance were also evident which suggests that rape myths are not all powerful (although unfortunately still very influential). The findings of this research reveal the complexity of people's engagement with rape myths. It was not simply a case of participants either adhering to or challenging rape myths but rather there was evidence that they engaged with rape myths differently at different times and in different circumstances. Lay judgments about responsibility in rape scenarios are more subtle and complex than rape myths but at the same time are not entirely independent of them. My findings suggest that people continue to perpetuate rape myths by colluding with some elements and sometimes making explicit reference to myths whilst also sometimes providing a direct challenge to myths and/or acknowledging that reality is more complex. This chapter will now consider each rape myth in turn in terms of adherence and/or challenge by participants and also the influence it may have had on their understandings of acquaintance rape.

This research found that the myth that ‘women ask for it through their behaviour, attitudes or dress’ remained influential amongst participants and ideas about appropriate female behaviour were still important when considering notions of responsibility for rape. It was found that if a woman is perceived as ‘putting herself at risk’ then she tends to be attributed increased responsibility for rape and there tends to be a greater issue concerning whether or not she consented. This level of responsibility varies depending on how much or in what way the woman is perceived to have put herself ‘at risk’. Overall, participants challenged the myth that ‘women ask for it by dressing provocatively’ and this was not seen to have any influence on whether women are attributed any responsibility for rape. Women tended to be seen as more responsible for incidents occurring after their *voluntary* intoxication but much less responsible for incidents occurring after their *involuntary* intoxication. ‘Leading a man on’ was also seen to increase female responsibility for rape, with the level of responsibility attributed depending on the type of behaviour. In most cases, women isolating themselves or allowing themselves to be isolated was not seen to increase female responsibility for rape. My findings also suggest that it is mostly men who advocate the use of sexual history evidence in rape trials, which implies that rape myths concerning women’s sexual reputation are still influential – particularly for men. It is important to note that participants were reluctant to go as far as to actually say that women were ‘asking for it’ but were making statements that clearly subscribed to this myth. Thus, it can be seen that although there was an appearance of challenge to this myth, in actual fact participants were still actively subscribing to its premise – even if perhaps on a more subconscious level.

The myth that ‘if you do not struggle or use physical force to resist a man then you have not been raped’ remains influential amongst participants in this research – as indicated by a clear inconsistency about the role of resistance in acquaintance rape scenarios. Overall, it seemed that women who did not offer any resistance when faced with a potential rape situation were not necessarily attributed more responsibility and a woman being too fearful to offer physical resistance in such a situation was seen to be legitimate. However, there was clearly a great deal of irregularity of response to the question of what the role of resistance in acquaintance rape scenarios should be and this demonstrates the complexity of participants’ engagement with this myth. On the one hand, increased and clear resistance in acquaintance rape scenarios was advocated by participants yet, on the other hand, there was a reluctance to accept that this in turn means the acceptance of the need to demonstrate physical injury to clearly signal non-consent.

The myth that ‘women often cry rape to get even with a man or to protect their reputations’ remains influential and provided a clear frame of reference for many participants when they were considering whether a man was potentially guilty of rape. This research found that the myth that ‘women say no but mean yes in some sexual encounters’ received both continuing support and some challenge from participants. One of the issues with this myth is that women’s initial resistance may be perceived as insincere and the issue is how one accurately judges the difference between alleged ‘token resistance’ and genuine resistance. My findings also showed the continuing influence of the ‘real rape’ myth which results in acquaintance rape being seen as a ‘lesser’ crime than stranger rape. Common misconceptions about

rapists in terms of impulse theory (rape is the result of uncontrollable urges) and disease theory (rapists are 'sick' or 'mad' and are easily distinguishable from 'normal' men) also remain influential, particularly with respect to the question of criminal conviction. In many cases, participants expressed sympathy for the man in the scenario and stated that they could understand how he could have made a 'genuine' mistake and misinterpreted the situation, and thus lacked the perceived malicious intent required to be a rapist.

How do rape myths affect people's perceptions of consent in acquaintance rape scenarios?

My findings reveal the complexity of the notion of consent and suggest that rape myths do affect people's perceptions of consent in acquaintance rape scenarios. On the one hand, participants felt that there is room for improvement in the ways in which men negotiate consent in sexual encounters but, on the other hand, they were nonetheless prepared to validate men's claims of misunderstandings around consent. This reveals a clear tension in the ways in which consent is understood by the general public. There was divided opinion on whether consent should be defined in law or left to individual jurors to interpret but there was almost universal support for the provision of increased guidelines detailing situations which automatically invalidate a person's ability to give consent. However, there was considerable demand for retaining the ability to make 'exceptions' to a stated rule.

My findings suggest that consent tends to be assumed unless there are clear signs to the contrary and that determining consent relies on a clear 'no' rather than a clear 'yes'. This is problematic due to a tendency to rely on non-verbal signs in 'normal' heterosexual encounters and also the widespread rejection by participants of the concept of positive consent. This is linked to the myth that 'women say no but mean yes in some sexual encounters' in that a woman's attempts to communicate 'no' may simply be seen as part of her 'playing the game' rather than a genuine sign of non-consent. There was also considerable debate amongst participants in terms of the role of intimidation and coercion and whether subsequent submission to sexual intercourse constitutes rape. Participants were also divided on the amount of resistance required to demonstrate non-consent. These findings suggest that currently the focus remains upon the victim's behaviour when the public are making decisions about (lack of) consent in acquaintance rape scenarios. If these findings can be seen in the general public, it seems likely that rape myths will also be influential on the verdicts which jurors reach in rape trials through increased responsibility being attributed to the victim and subsequent lessening of the defendant's perceived responsibility. I argue that a reliance on legally irrelevant factors, such as rape myths, may consequently result in jurors being reluctant to convict due to ambiguity over what legally constitutes consent.

Rape myths and a reluctance to convict

One of the major findings of this research is that, despite being willing to label an incident as rape, participants were still reluctant to find the man guilty of the crime of rape. So, although an incident was defined as rape, it was felt that a jury would not or

should not convict the man of rape. This clear contradiction needs to be explored more thoroughly through future research in order to increase understanding of the processes which are utilised when reaching a verdict about guilt in rape trials and the ways in which jurors may (mis)interpret legal definitions of consent. In particular, more research is needed in this area within an Australian context. This research revealed an evident discomfort with the perceived lack of flexibility which rape laws currently provide. The severity of punishments associated with rape was one reason behind participants' reluctance to convict. The findings from this research show that people find it difficult to return a guilty verdict in rape cases and want 'something in the middle' in terms of legal options. Participants were keen to have the option of a lesser offence of rape rather than simply the choice of a guilty or not guilty verdict. There were seen to be 'different levels' of rape and participants felt that there should be more variance in punishments to reflect this. It is important to note that misunderstandings about the law were also at work here rather than simply an adherence to rape myths. Findings reveal a clear misinterpretation of legal concepts such as pre-meditation, intent and reasonable doubt which suggests that more guidance is needed on the law.

The option of a lesser offence than rape was seen as a compromise between a guilty and a not guilty verdict and participants felt that it would be particularly useful for cases that were ambiguous and where there was a lack of evidence. Participants argued that this would be useful because they felt that if a man accrued a certain number of lesser offence verdicts then he should automatically receive a prison sentence for rape. This evident discomfort with the lack of flexibility which rape

laws are perceived to currently provide does not necessarily point to legal change as the only solution. Rather, I feel that this suggests that the attitudes of the public may be adversely affecting the legal process, in terms of the crime of rape, due to a reliance on legally irrelevant factors, such as rape myths. Thus, I argue that any legal change will not be reflected in improved conviction rates unless there is an accompanying shift in the attitudes of the public and their continuing engagement with rape myths.

How do people engage with rape myths within both an individual and a group context?

This research found that rape myths are frequently drawn upon in collective discussions and negotiations when deciding whether or not to define an incident as rape – more so than in individual interview settings.⁹² I argue that one can identify a link between the group dynamics of focus groups and the potential behaviour of jurors in rape trials. Participants' deliberations over the vignettes revealed a great deal about the ways in which real jurors may approach rape cases. They illustrated the enduring influence of rape myths on people's analyses of rape scenarios and also highlighted the focus on the victim's behaviour and how she might be viewed as in some way responsible for the incident. It becomes apparent that if jurors are influenced by rape myths which blame the victim and fail to attribute responsibility to the perpetrator during their deliberations then the probability of obtaining a guilty verdict becomes much lower. In other words, jurors may view men accused of rape

⁹² It should be noted that this was at least partly because the questions in the individual interview setting were more abstract rather than simply because they were individual interviews.

as less responsible in situations where the victim is perceived to have put herself 'at risk' (i.e. the myth that 'women ask for it through their behaviour, attitudes or dress') – and this may consequently result in a reluctance to convict due to ambiguity over what legally constitutes consent. There was clearly an acceptance of contributory negligence within the vignette discussions which is problematic because this is not the legal position and thus jurors are potentially reaching decisions about guilt based on legally irrelevant factors, such as rape myths. I feel that this clearly demonstrates that, when attempting to address the extremely low conviction rates for rape, the focus cannot be purely on legal change but must also be on changing societal attitudes and stereotypes.

Is there a difference in the way that people engage with rape myths according to gender?

In many of the findings presented in this thesis there was little divergence according to gender. However, it is important to note that there were some exceptions to this in terms of engagement with the above rape myths. For example, men were more likely to refer to the myth that 'women ask for it through their behaviour, attitudes and dress' and men were also more likely to mention the myth that 'women say no but mean yes in some sexual encounters'. Another gender difference was that women tended to be more condemnatory than men concerning victims who were too intoxicated to offer resistance. Also, women were much more likely than men to mention women curtailing their freedom and/or watching over each other in order to avoid or minimise occurrences of rape. Another point to mention is that more men

than women thought that women needed more education and more women than men thought that men needed more education, which reveals another clear gender difference. Myths concerning sexual reputation and the relevance of sexual history also appeared to be more influential for men than for women. These findings clearly indicate that in some areas men and women differ in their likelihood of adherence to certain rape myths. More research is needed to explore exactly why these gender differences exist and to tease out background beliefs and how gender is at work here.

Abstract concepts versus practical examples

This research has shown that there appears to be a discrepancy in that participants have said one thing in relation to discussion about an abstract concept but when presented with a practical example of that concept in ‘real-life’ they tend to then say something different. For example, findings suggest that the public is often willing to label an incident as rape in a personal, non-legal context yet are subsequently reluctant to return a conviction for the crime of rape for the same scenario. Another example is that despite the fact that the majority of individual interview participants agreed that a person does not consent to sexual intercourse just because she does not sustain any physical injury, the focus group vignette discussions highlighted numerous examples where participants felt that the woman should have resisted more to indicate her non-consent.

It seems to me that when presented with an abstract concept people are more likely to subscribe to perceived ‘politically correct’ viewpoints – this could either be a deliberate effort to conceal their more extreme opinions or simply that this is what

they honestly think that they believe. However, when they are presented with practical examples it may be that people are less able to hide their true opinions, or that their view changes when applied to a 'real' scenario, and this is reflected in their sometimes contradictory statements. It appears that forcing people to look at an abstract concept in the light of an actual real-life example forces them to actually interact more with the people in the scenario and further explore their thought processes. It is important to note that I am not suggesting that this is a conscious procedure but rather that people are more able to explore their thoughts on a concept when it is given in the context of a practical example, involving people and situations which they can easily relate to, rather than simply an abstract example or concept. The findings of this research show that participants would distance themselves from certain behaviours on the part of the victim or they would feel ambivalence or sympathy for the accused, often due to the perceived possibility of him having 'misunderstood' the situation regarding consent. This adds support to previous research in this area which revealed similar findings (see for example: Finch and Munro 2003; Finch and Munro 2005; Finch and Munro 2007; Temkin and Krahé 2008).

Implications of findings for future research

In conclusion, the findings of this research have shown that rape myths continue to influence people's definitions of acquaintance rape. However, engagement with rape myths is not a straightforward process and it is not simply a case of people colluding with or challenging these myths but rather that they engage with them in different ways at different times according to the circumstances and they also often

acknowledge that reality is more complex. Findings revealed that rape myths affect the general public's perceptions of consent to sexual intercourse, especially in terms of people validating men's claims of misunderstandings around consent. This thesis has also found that rape myths are frequently drawn upon in collective negotiations and discussions when deciding whether or not to define an incident as rape and I argue that this can be seen to have implications for potentially understanding more about the behaviour of jurors in rape trials.

One of the major findings of this research is that, despite being willing to label an incident as rape, participants were still reluctant to find the man guilty of the crime of rape. I suggest that this clear contradiction needs to be explored more thoroughly through future research in order to increase understanding of the processes which are utilised when reaching a verdict about guilt in rape trials and the ways in which jurors may (mis)interpret legal definitions of consent. I argue that there needs to be less focus on the actual wording of the law and more attention directed towards improving juror understandings of how to actually implement the law. I feel that more research is needed with actual jurors in order to confirm that these findings are also evident in the context of an authentic rape trial. Throughout this thesis I have argued that when attempting to address the extremely low conviction rates for rape, a focus purely on legal change would, in my opinion, be highly ineffective. My findings indicate that there must be an equivalent focus on changing societal attitudes and minimising reliance on traditional stereotypes about rape, otherwise any legal changes are likely to be very limited in their effectiveness. Future research is needed to explore the most effective way of attempting to change

the attitudes of the public and minimise reliance on rape myths when people are making decisions about guilt in rape cases.

Bibliography

- Abbey, A. and Harnish, R. J.** 1995 'Perception of Sexual Intent: The Role of Gender, Alcohol Consumption, and Rape Supportive Attitudes', *Sex Roles* 32(5/6): 297-313.
- Abbey, A. and Melby, C.** 1986 'The Effects of Nonverbal Cues on Gender Differences in Perceptions of Sexual Intent', *Sex Roles* 15(5/6): 283-297.
- Adams, D. M.** 1996 'Date Rape and Erotic Discourse', in L. Francis (ed) *Date Rape: Feminism, Philosophy and the Law*: US: Pennsylvania State University Press.
- Allen, J. A.** 1990 *Sex and Secrets: Crimes Involving Australian Women since 1880*: Melbourne: Oxford University Press.
- Allen, L.** 2003 'Power Talk: Young People Negotiating (Hetero) Sex', *Women's Studies International Forum* 26(3): 235-244.
- 2005 'Managing Masculinity: Young Men's Identity Work in Focus Groups', *Qualitative Research* 5(1): 35-57.
- Allison, J. A. and Wrightman, L. S.** 1993 *Rape: The Misunderstood Crime*: London: Sage.
- Amir, M.** 1971 *Patterns in Forcible Rape*: USA: University of Chicago Press.
- Amnesty International UK** 2005 'Sexual Assault Summary Report (prepared by ICM)', http://www.amnesty.org.uk/news_details.asp?NewsID=16618 Accessed: 11/05/2007.
- Anderson, I. and Doherty, K.** 2008 *Accounting for Rape: Psychology, Feminism and Discourse Analysis in the Study of Sexual Violence*: London: Routledge.
- Anderson, M.** 2005 'Negotiating Sex', *Southern California Law Review* 78: 101-138.
- Archard, D.** 1998 *Sexual Consent*: Oxford: Westview Press.
- Arksey, H. and Knight, P.** 1999 *Interviewing for Social Scientists*: London: Sage.
- Arthur, S. and Nazroo, J.** 2003 'Designing Fieldwork Strategies and Materials', in J. Ritchie and J. Lewis (eds) *Qualitative Research Practice*: London: Sage.

- Asbury, J. E.** 1995 'Overview of Focus Group Research', *Qualitative Health Research* 5(4): 414-421.
- Asch, S. E.** 1951 'Effects of Group Pressure upon the Modification and Distortion of Judgment', in H. Guetzkow (ed) *Groups, Leadership and Men*: Pittsburgh, PA: Carnegie Press.
- Attorney General's Department of New South Wales** 2005 *Criminal Justice Sexual Offences Taskforce: Responding to Sexual Assault - the Way Forward*: Sydney: Oxford Publishing.
- Australian Bureau of Statistics** 1996 *Australian Women's Safety Survey*: Canberra: Australian Bureau of Statistics.
- 2005 *Crime and Safety Australia*: Canberra: Australian Bureau of Statistics.
- 2007 *Recorded Crime - Victims*: Canberra: Australian Bureau of Statistics.
- 2008 *The People of South Australia: Statistics from the 2006 Census*: Canberra: Department of Immigration and Citizenship.
- Barbour, R. S. and Kitzinger, J.** (eds) 1999 *Developing Focus Group Research: Politics, Theory and Practice*: London: Sage.
- Barter, C. and Renold, E.** 1999 'The Use of Vignettes in Qualitative Research', *Social Research Update* 25.
- Bechhofer, F. and Paterson, L.** 2000 *Principles of Research Design in the Social Sciences*: London: Routledge.
- Benedict, H.** 1992 *Virgin or Vamp: How the Press Covers Sex Crimes*: New York: Oxford University Press Inc.
- Beres, M.** 2007 'Spontaneous' Sexual Consent: An Analysis of Sexual Consent Literature', *Feminism and Psychology* 17(1): 93-108.
- Berger, P.** 1963 *Invitation to Sociology: A Humanistic Perspective*: Harmondsworth: Penguin Books.
- Bevacqua, M.** 2000 *Rape on the Public Agenda: Feminism and the Politics of Sexual Assault*: Boston: Northeastern University Press.
- Blaxter, L., Hughes, C. and Tight, M.** 2001 *How to Research*, 2nd Edition: Maidenhead: Open University Press.

- Bloor, M., Frankland, J., Thomas, M. and Robson, K.** 2001 *Focus Groups in Social Research*: London: Sage.
- Blumer, H.** 1969 *Symbolic Interactionism: Perspective and Method*: US: University of California Press.
- Bohner, G. and Wanke, M.** 2002 *Attitudes and Attitude Change*: US: Taylor and Francis Inc.
- Bourke, J.** 2007 *Rape: A History from 1860 to the Present*: London: Virago.
- Box, S.** 1983 *Power, Crime and Mystification*: London: Routledge
- Boyle, C.** 1994 'The Judicial Construction of Sexual Assault Offences', in J. V. Roberts and R. M. Mohr (eds) *Confronting Sexual Assault: A Decade of Legal and Social Change*: Toronto: University of Toronto Press
- Brown, B., Burman, M. and Jamieson, L.** 1993 *Sex Crimes on Trial*: Edinburgh: Edinburgh University Press.
- Brownmiller, S.** 1975 *Against Our Will: Men, Women and Rape*: New York: Fawcett Columbine.
- 1999 *In Our Time: Memoir of a Revolution*: London: Aurum Press.
- Burgess, R. G.** 1984 *In the Field: An Introduction to Field Research*: London: Allen and Unwin.
- Burr, V.** 2003 *Social Constructionism*, 2nd Edition: London: Routledge.
- Burt, M. R.** 1998 'Rape Myths', in M. E. Odem and J. Clay-Warner (eds) *Confronting Rape and Sexual Assault*: US: Scholarly Resources Inc.
- Burton, S., Kitzinger, J., Kelly, L. and Regan, L.** 1998 *Young People's Attitudes towards Violence, Sex and Relationships: A Survey and Focus Group Study*: Edinburgh: Zero Tolerance Charitable Trust.
- Cahill, A. J.** 2001 *Rethinking Rape*: USA: Cornell University Press.
- Cameron, C. A. and Stritzke, W. G. K.** 2003 'Alcohol and Acquaintance Rape in Australia: Testing the Presupposition Model of Attributions about Responsibility and Blame', *Journal of Applied Social Psychology* 33(5): 983-1008.

- Card, R.** 2004 *Sexual Offences: The New Law*, revised Edition: Bristol: Jordan Publishing Ltd.
- Carey, M. A. and Smith, M. W.** 1994 'Capturing the Group Effect in Focus Groups: A Special Concern in Analysis', *Qualitative Health Research* 4(1): 123-127.
- Carmody, M.** 2004 'Sexual Ethics and the Erotics of Consent', in M. Cowling and P. Reynolds (eds) *Making Sense of Sexual Consent*: Aldershot: Ashgate Publishing Ltd.
- Carter, C.** (ed) 1995 *The Other Side of Silence*: US: Avocus Publishing Inc.
- Catterall, M. and MacLaran, P.** 1997 'Focus Group Data and Qualitative Analysis Programs: Coding the Moving Picture as well as the Snapshots', *Sociological Research Online* 2(1).
- Chapman, L.** 2006 *Review of South Australian Rape and Sexual Assault Law: Discussion Paper*: Australia: Government of South Australia.
- Chasteen, A. I.** 2001 'Constructing Rape: Feminism, Change and Women's Everyday Understandings of Sexual Assault', *Sociological Spectrum* 21: 101-139.
- Chung, D., O'Leary, P. J. and Hand, T.** 2006 'Sexual Violence Offenders: Prevention and Intervention Approaches' *Australian Centre for the Study of Sexual Assault: ACSSA Issues No.5*: Melbourne: Australian Institute of Family Studies.
- Clark, H.** 2007 'Judging Rape: Public Attitudes and Sentencing' *Australian Centre for the Study of Sexual Assault: Aware Newsletter No.14 (June)*: Melbourne: Australian Institute of Family Studies.
- Clark, L. and Lewis, D.** 1977 *Rape: The Price of Coercive Sexuality*: Canada: The Women's Press.
- Clarke, A., Moran-Ellis, J. and Sleney, J.** 2002 *Attitudes to Date Rape and Relationship Rape: A Qualitative Study*: University of Surrey for London: Sentencing Advisory Panel.
- Clough, P. and Nutbrown, C.** 2002 *A Student's Guide to Methodology: Justifying Enquiry*: London: Sage.
- Cohen, P.** 1966 'Social Attitudes and Sociological Enquiry', in N. Warren and M. Johoda (eds) *Attitudes*: London: Penguin Books.

- Colucci, E.** 2007 'Focus Groups can be Fun': The Use of Activity-Oriented Questions in Focus Group Discussions', *Qualitative Health Research* 17(10): 1422-1433.
- Connell, R. W.** 1987 *Gender and Power: Society, the Person and Sexual Politics*: Sydney: Allen & Unwin.
- Cowan, S.** 2007a 'Choosing Freely: Theoretically Reframing the Concept of Consent', in R. Hunter and S. Cowan (eds) *Choice and Consent: Feminist Engagements with Law and Subjectivity*: London: Routledge Cavendish.
- 2007b 'Freedom and Capacity to Make a Choice: A Feminist Analysis of Consent in the Criminal Law of Rape'.
- 2008 'The Trouble with Drink: Intoxication, (In)Capacity, and the Evaporation of Consent to Sex', *Akron Law Review* 41(4): 899-922.
- Cowling, M.** 2004 'Rape, Communicative Sexuality and Sex Education', in M. Cowling and P. Reynolds (eds) *Making Sense of Sexual Consent*: Aldershot: Ashgate Publishing Ltd.
- Crotty, M.** 1998 *The Foundations of Social Research: Meaning and Perspective in the Research Process*: London: Sage.
- Cunningham-Burley, S., Kerr, A. and Pavis, S.** 1999 'Theorising Subjects and Subject Matter in Focus Group Research', in R. S. Barbour and J. Kitzinger (eds) *Developing Focus Group Research: Politics, Theory and Practice*: London: Sage.
- Dailey, D. M.** 1995 'Understanding the Difference between Acquaintance and Date Rape', in C. Carter (ed) *The Other Side of Silence*: US: Avocus Publishing Inc.
- Daws, L., Brannock, J., Brooker, R., Patton, W., Smeal, G. and Warren, S.** 1995 *Young People's Perceptions of and Attitudes to Sexual Violence: Report to the National Youth Affairs Research Scheme*: Hobart: National Clearinghouse for Youth Studies.
- Deming, M. B. and Eppy, A.** 1981 'The Sociology of Rape', *Sociology and Social Research* 65(4): 357-381.
- Denzin, N.** 1972 'The Research Act', in J. G. Manis and B. N. Meltzer (eds) *Symbolic Interaction: A Reader in Social Psychology*: US: Allyn and Bacon Inc.
- Donat, P. L. N. and D'Emilio, J.** 1998 'A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change', in M. E. Odem and J. Clay-Warner (eds) *Confronting Rape and Sexual Assault*: US: Scholarly Resources Inc.

- Doucet, A. and Mauthner, M.** 2002 'Knowing Responsibly: Linking Ethics, Research Practice and Epistemology', in M. Mauthner, M. Birch, J. Jessop and T. Miller (eds) *Ethics in Qualitative Research*: London: Sage.
- Douglas, H.** 2007 'Stories of Mistaken Consent: Still in the Shadow of *Morgan* ', in R. Hunter and S. Cowan (eds) *Choice and Consent: Feminist Engagements with Law and Subjectivity*: London: Routledge-Cavendish.
- Duggleby, W.** 2005 'What about Focus Group Interaction Data?', *Qualitative Health Research* 15(6): 832-840.
- Dworkin, A.** 1989 *Pornography: Men Possessing Women*: New York: E.P.Dutton.
- Easteal, P.** 1992 *Violence Prevention Today No.1: Rape*: Canberra: Australian Institute of Criminology.
- 2001 *Less than Equal: Women and the Australian Legal System*: Australia: Butterworths.
- Edwards, A.** 1996 'Gender and Sexuality in the Social Construction of Rape and Consensual Sex: A Study of Process and Outcome in Six Recent Rape Trials', in J. Holland and L. Adkins (eds) *Sex, Sensibility and the Gendered Body*: Basingstoke: MacMillan.
- Edwards, R. and Mauthner, M.** 2002 'Ethics and Feminist Research: Theory and Practice', in M. Mauthner, M. Birch, J. Jessop and T. Miller (eds) *Ethics in Qualitative Research*: London: Sage.
- Ellis, L.** 1989 *Theories of Rape: Inquiries into the Causes of Sexual Aggression*: USA: Hemisphere Publishing Corporation.
- Estrich, S.** 1987 *Real Rape: How the Legal System Victimises Women who say No*: US: Harvard University Press.
- Fielding, N.** 1993 'Qualitative Interviewing', in N. Gilbert (ed) *Researching Social Life*: London: Sage.
- Finch, E. and Munro, V.** 2003 'Intoxicated Consent and the Boundaries of Drug-Assisted Rape', *The Criminal Law Review*: 773-787.
- 2004 'The Sexual Offences Act 2003: Intoxicated Consent and Drug-Assisted Rape Revisited', *The Criminal Law Review* 789: 789-802.

— 2005 'Juror Stereotypes and Blame Attribution in Rape Cases Involving Intoxicants: The Findings of a Pilot Study', *British Journal of Criminology* 45: 25-38.

— 2006 'Breaking Boundaries? Sexual Consent in the Jury Room', *Legal Studies* 26(3): 303-320.

— 2007 'The Demon Drink and the Demonised Woman: Socio-Sexual Stereotypes and Responsibility Attribution in Rape Trials Involving Intoxicants', *Social and Legal Studies* 16(4): 591-614.

— 2008 'Lifting the Veil: The Use of Focus Groups and Trial Simulations in Legal Research', *Journal of Law and Society* 35: 30-51.

Finch, H. and Lewis, J. 2003 'Focus Groups', in J. Ritchie and J. Lewis (eds) *Qualitative Research Practice*: London: Sage.

Finch, J. 1984 'It's Great to Have Someone to Talk to': The Ethics and Politics of Interviewing Women', in C. Bell and H. Roberts (eds) *Social Researching: Politics, Problems and Practice*: London: Routledge and Kegan Paul.

— 1987 'Research Note: The Vignette Technique in Survey Research', *Sociology* 21(1): pp105-114.

Fischer, G. J. 1997 'Gender effects on individual verdicts and on mock jury verdicts in a simulated acquaintance rape trial', *Sex Roles* 36(7-8): 491-501.

Fitzgerald, J. 2006 'The Attrition of Sexual Offences from the New South Wales Criminal Justice System', *Crime and Justice Bulletin No.92*.

Foley, L. A. and Pigott, M. A. 2000 'Belief in a Just World and Jury Decisions in a Civil Rape Trial', *Journal of Applied Social Psychology* 30(5): 935-951.

Frankland, J. and Bloor, M. 1999 'Some Issues Arising in the Systematic Analysis of Focus Group Materials', in R. S. Barbour and J. Kitzinger (eds) *Developing Focus Group Research: Politics, Theory and Practice*: London: Sage.

Frey, R. 1993 'What is it About Men That Makes Them Do the Things They Do?', in P. Eastaugh (ed) *Without Consent: Confronting Adult Sexual Violence: Proceedings of a Conference held 27-29 October 1992*: Canberra: Australian Institute of Criminology.

Friedman, B. 1998 *Rape Myth-Busters: A Program for Young Men about Rape Prevention*: Australia: Shine SA.

Frith, H. and Kitzinger, C. 1997 'Talk about Sexual Miscommunication', *Women's Studies International Forum* 20(4): 517-528.

Gavey, N. 2005 *Just Sex? The Cultural Scaffolding of Rape*: London: Routledge.

Gillies, V. and Alldred, P. 2002 'The Ethics of Intention: Research as a Political Tool', in M. Mauthner, M. Birch, J. Jessop and T. Miller (eds) *Ethics in Qualitative Research*: London: Sage.

Gold, J. and Villari, S. (eds) 2000 *Just Sex: Students Rewrite the Rules on Sex, Violence, Activism and Equality*: USA: Rowman and Littlefield Publishers Inc.

Gordon, M. T. and Riger, S. 1991 *The Female Fear: The Social Cost of Rape*: USA: University of Illinois Press.

Gray, J., McPherson, A. F. and Raffe, D. 1983 *Reconstructions of Secondary Education: Theory, Myth and Practice since the War*: London: Routledge and Kegan Paul.

Green, J. and Hart, L. 1999 'The Impact of Context on Data', in R. S. Barbour and J. Kitzinger (eds) *Developing Focus Group Research: Politics, Theory and Practice*: London: Sage.

Greenbaum, T. L. 2000 *Moderating Focus Groups: A Practical Guide for Group Facilitation*: London: Sage.

Groth, A. N. and Birnbaum, H. J. 1979 *Men who Rape: The Psychology of the Offender*: USA: Plenum Press.

Hale, M. (1678) 1736 *History of the Pleas of the Crown*: London: Gyles, Woodward and Davis.

Hall, R. 1985 *Ask Any Woman: A London Inquiry into Rape and Sexual Assault*: Bristol: Falling Wall Press.

Haselton, M. G. and Buss, D. M. 2000 'Error Management Theory: A New Perspective on Biases in Cross-Sex Mind Reading', *Journal of Personality and Social Psychology* 78(1): 81-91.

Heath, M. 2005 'The Law and Sexual Offences against Adults in Australia' *Australian Centre for the Study of Sexual Assault: ACSSA Issues No.4*: Melbourne: Australian Institute of Family Studies.

- Helliwell, C.** 2000 'It's Only a Penis': Rape, Feminism and Difference', *Signs: Journal of Women in Culture and Society* 25(3): 789-816.
- Henningsen, D. D.** 2004 'Flirting with Meaning: An Examination of Miscommunication in Flirting Interactions', *Sex Roles* 50(7/8): 481-489.
- Holland, J., Ramazanoglu, C., Sharpe, S. and Thomson, R.** 1994 'Power and Desire: The Embodiment of Female Sexuality', *Feminist Review* 46: 21-38.
- 1996 'Pressured Pleasure: Young Women and the Negotiation of Sexual Boundaries', in S. Jackson and S. Scott (eds) *Feminism and Sexuality: A Reader*: Edinburgh: Edinburgh University Press.
- 1998 *The Male in the Head: Young People, Heterosexuality and Power*: London: The Tufnell Press.
- Husak, D. N. and Thomas, G. C.** 2001 'Rapes without Rapists: Consent and Reasonable Mistake', *Philosophical Issues* 11: 86-117.
- Hyden, L. C. and Bulow, P. H.** 2003 'Who's Talking: Drawing Conclusions from Focus Groups - Some Methodological Considerations', *International Journal of Social Research Methodology* 6(4): 305-321.
- Jackson, S.** 1978 'The Social Context of Rape: Sexual Scripts and Motivation', *Women's Studies International Quarterly* 1: 27-38.
- 1997 'Against Our Will', *Trouble and Strife* 35: 61-67.
- 1999 *Heterosexuality in Question*: London: Sage.
- Jamieson, L.** 1996 'The Social Construction of Consent Revisited', in L. Adkins and V. Merchant (eds) *Sexualising the Social: Power and Organisation of Sexuality*: London: MacMillan Press.
- Jordan, J.** 2004 *The Word of a Woman? Police, Rape and Belief*: Hampshire: Palgrave MacMillan.
- Kelly, L.** 1988 *Surviving Sexual Violence*: Cambridge: Polity Press.
- 1996 'It's Everywhere: Sexual Violence as a Continuum', in S. Jackson and S. Scott (eds) *Feminism and Sexuality*: Edinburgh: Edinburgh University Press.
- 2008 'Impunity as Usual: Attrition in Reported Rape Cases across Europe' *Rethinking Rape Law Conference*, Durham University, UK.

Kelly, L., Burton, S. and Regan, L. 1994 'Researching Women's Lives or Studying Women's Oppression? Reflections on what Constitutes Feminist Research', in M. Maynard and J. Purvis (eds) *Researching Women's Lives from a Feminist Perspective*: London: Taylor and Francis Ltd.

Kelly, L., Lovett, J. and Regan, L. 2005 *A Gap or a Chasm? Attrition in Reported Rape Cases (Home Office Research Study 293)*: London: Home Office.

Kelly, L. and Radford, J. 1996 'Nothing Really Happened: The Invalidation of Women's Experiences of Sexual Violence', in M. Hester, L. Kelly and J. Radford (eds) *Women, Violence and Male Power*: Buckingham: Open University Press.

Kidd, P. S. and Parshall, M. B. 2000 'Getting the Focus and the Group: Enhancing Analytical Rigour in Focus Group Research', *Qualitative Health Research* 10(3): 293-308.

Kiesler, C. A., Collins, B. E. and Miller, N. 1969 *Attitude Change: A Critical Analysis of Theoretical Approaches*: London: John Wiley and Sons.

Kitzinger, C. and Frith, H. 1999 'Just Say No? The Use of Conversation Analysis in Developing a Feminist Perspective on Sexual Refusal', *Discourse and Society* 10(3): 293-316.

Kitzinger, J. 1994 'The Methodology of Focus Groups: The Importance of Interaction between Research Participants', *Sociology of Health and Illness* 16(1): 103-121.

Kivel, P. 1995 'Why 'Real' Men Rape Women', in C. Carter (ed) *The Other Side of Silence*: US: Avocus Publishing Inc.

Krueger, R. A. 1994 *Focus Groups: A Practical Guide for Applied Research*, 2nd Edition: London: Sage.

— 1998 *Analyzing and Reporting Focus Group Results*: London: Sage.

Krueger, R. A. and Casey, M. A. 2000 *Focus Groups: A Practical Guide for Applied Research*: London: Sage.

Lee, D. 1997 'Interviewing Men: Vulnerabilities and Dilemmas', *Women's Studies International Forum* 20(4): 553-564.

Lees, S. 2002 *Carnal Knowledge: Rape on Trial*, 2nd Edition: London: The Women's Press Ltd.

- Legard, R., Keegan, J. and Ward, K.** 2003 'In-Depth Interviews', in J. Ritchie and J. Lewis (eds) *Qualitative Research Practice*: London: Sage.
- Lewis, J. and Ritchie, J.** 2003 'Generalising from Qualitative Research', in J. Ritchie and J. Lewis (eds) *Qualitative Research Practice*: London: Sage.
- Lievore, D.** 2003 *Non-Reporting and Hidden Recording of Sexual Assault: An International Literature Review*: Canberra: Australian Institute of Criminology.
- 2005a *No Longer Silent: A Study of Women's Help-Seeking Decisions and Service Responses to Sexual Assault*: Canberra: Australian Institute of Criminology.
- 2005b 'Prosecutorial Decisions in Adult Sexual Assault Cases' *Trends and Issues in Crime and Criminal Justice No.291*: Canberra: Australian Institute of Criminology.
- London Rape Crisis Centre** 1999 *Sexual Violence: The Reality for Women*, 3rd Edition: London: The Women's Press Ltd.
- Lonsway, K. A. and Fitzgerald, L. F.** 1994 'Rape Myths: In Review', *Psychology of Women Quarterly* 18(2): 133-164.
- Los, M.** 1994 'The Struggle to Redefine Rape in the Early 1980s', in J. V. Roberts and R. M. Mohr (eds) *Confronting Sexual Assault: A Decade of Legal and Social Change*: Toronto: University of Toronto Press.
- MacInnes, J.** 1998 *The End of Masculinity: The Confusion of Sexual Genesis and Sexual Difference in Modern Society*: Buckingham: Open University Press.
- MacKinnon, C. A.** 1989 *Toward a Feminist Theory of the State*: London: Harvard University Press.
- 2005 *Women's Lives: Men's Laws*: US: Harvard University Press.
- Malloch, M.** 2004 'Risky' Women, Sexual Consent and Criminal 'Justice', in M. Cowling and P. Reynolds (eds) *Making Sense of Sexual Consent*: Aldershot: Ashgate Publishing Ltd.
- Marshall, G.** 1998 *Oxford Dictionary of Sociology* Oxford: Oxford University Press.
- Mason, J.** 1996 *Qualitative Researching*: London: Sage.
- May, T.** 1997 *Social Research: Issues, Methods and Process*, 2nd Edition: Buckingham: Open University Press.

- Maybrey, C.** 2004 'Blaming the Victim' Syndrome', in M. W. Smith (ed) *Encyclopaedia of Rape*: London: Greenwood Press.
- Maynard, M.** 1994 'Methods, Practice and Epistemology: The Debate about Feminism and Research', in M. Maynard and J. Purvis (eds) *Researching Women's Lives from a Feminist Perspective*: London: Taylor and Francis Ltd.
- McColgan, A.** 1996 *The Case For Taking the Date out of Rape*: London: HarperCollinsPublishers.
- McElroy, W.** 1998 'Rape is Too Broadly Defined', in M. E. Williams (ed) *Date Rape: At Issue*: California: Greenhaven Press Inc.
- McGregor, J.** 2005 *Is it Rape? On Acquaintance Rape and Taking Women's Consent Seriously*: Aldershot: Ashgate Publishing.
- McMullen, R. J.** 1990 *Male Rape: Breaking the Silence on the Last Taboo*: London: GMP Publishers Ltd.
- McSherry, B.** 1998 'Constructing Lack of Consent', in P. Eastal (ed) *Balancing the Scales: Rape, Law Reform and Australian Culture*: Sydney: The Federation Press.
- Meltzer, B. N. and Petras, J. W.** 1972 'The Chicago and Iowa Schools of Symbolic Interactionism', in J. G. Manis and B. N. Meltzer (eds) *Symbolic Interaction: A Reader in Social Psychology*: US: Allyn and Bacon Inc.
- Meltzer, B. N., Petras, J. W. and Reynolds, L. T.** 1975 *Symbolic Interactionism: Genesis, Varieties and Criticism* London: Routledge and Kegan Paul.
- Millen, D.** 1997 'Some Methodological and Epistemological Issues raised by Doing Feminist Research on Non-Feminist Women', *Sociological Research Online* 2(3).
- Model Criminal Code Officers Committee of the Standing Committee of Attorneys- General** 1996 *Draft Model Criminal Code Chapter 5: Sexual Offences against the Person Discussion Paper*: Canberra: Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General.
- Morgan, D.** 1997 *Focus Groups as Qualitative Research*, 2nd Edition: London: Sage.
- Morrison, Z., Quadora, A. and Boyd, C.** 2007 'Ripple Effects' of Sexual Assault' *Australian Centre for the Study of Sexual Assault: Issues No.7*: Melbourne: Australian Institute of Family Studies.

- Mouzos, J. and Makkai, T.** 2004 'Women's Experiences of Male Violence: Findings from the Australian Component of the Violence Against Women Survey (IVAWS)' *Research and Public Policy Series No.56*: Canberra: Australian Institute of Criminology.
- Munday, J.** 2006 'Identity in Focus: The Use of Focus Groups to Study the Construction of Collective Identity', *Sociology* 40(1): 89-105.
- Myhill, A. and Allen, J. A.** 2002a *Rape and Sexual Assault of Women: Findings from the British Crime Survey*: London: Home Office.
- 2002b *Rape and Sexual Assault of Women: The Extent and Nature of the Problem - Home Office Research Study 237*: London: Home Office.
- Nelson, D. M.** 1995 'When is 'Yes' not Consent?', in C. Carter (ed) *The Other Side of Silence*: US: Avocus Publishing Inc.
- Nielson, L. B. and Albiston, C. R.** 1995 'Rape Enforced by Society: A Feminist Perspective of Date Rape', in C. Carter (ed) *The Other Side of Silence*: US: Avocus Publishing Inc.
- Odem, M. E. and Clay-Warner, J.** (eds) 1998 *Confronting Rape and Sexual Assault*: US: Scholarly Resources Inc.
- Office for Criminal Justice Reform** 2006 *Convicting Rapists and Protecting Victims - Justice for Victims of Rape: A Consultation Paper*: London: Home Office.
- Olesen, V.** 1994 'Feminisms and Models of Qualitative Research', in N. Denzin and Y. Lincoln (eds) *Handbook of Qualitative Research*: California: Sage.
- Oppenheim, J.** 1995 'Revising Rape Law: From Property to People', in C. Carter (ed) *The Other Side of Silence*: US: Avocus Publishing Inc.
- Paglia, C.** 1998 'Anti-Rape Policies are Ineffective', in M. E. Williams (ed) *Date Rape: At Issue*: California: Greenhaven Press Inc.
- Pfister, B.** 1998 'College Campuses Need Anti-Rape Policies to Combat Date Rape', in M. E. Williams (ed) *Date Rape: At Issue*: California: Greenhaven Press Inc.
- Philadelphoff-Puren, N.** 2005 'Contextualising Consent: The Problem of Rape and Romance', *Australian Feminist Studies* 20(46): 31-42.
- Phillips, L. M.** 2000 *Flirting with Danger: Young Women's Reflections on Sexuality and Domination*: New York: New York University Press.

- Pineau, L.** 1996 'Date Rape: A Feminist Analysis', in L. Francis (ed) *Date Rape: Feminism, Philosophy and the Law*: US: Pennsylvania State University Press.
- Pitts, V. L. and Schwartz, M. D.** 1997 'Self-Blame in Hidden Rape Cases', in M. D. Schwartz (ed) *Researching Sexual Violence Against Women: Methodological and Personal Perspectives*: London: Sage.
- Powell, A.** 2007 'Sexual Pressure and Young People's Negotiation of Consent' *Australian Centre for the Study of Sexual Assault: Aware Newsletter No.14 June*: Melbourne: Australian Institute of Family Studies.
- Power, H.** 2003 'Towards a Redefinition of the Mens Rea of Rape', *Oxford Journal of Legal Studies* 23(3): 379-404.
- Punch, K.** 1998 *Introduction to Social Research*: London: Sage.
- Putt, J. and Higgins, K.** 1997 *Violence against Women in Australia: Key Research and Data Issues*: Canberra: Australian Institute of Criminology.
- Ramazanoglu, C.** 2002 *Feminist Methodology*: London: Sage.
- Ramon, P.** 1997 'Gendered Justice: Some Feminist Interventions into Law', in K. P. Hughes (ed) *Contemporary Australian Feminism 2*: Australia: Longman.
- Rape Crisis Centre** 2003 *Rape and Sexual Assault: A Handbook*: Glasgow: Ricoh Print Scotland.
- Rempala, D. M. and Bernieri, F. J.** 2005 'The Consideration of Rape: The Effect of Target Information Disparity on Judgments of Guilt', *Journal of Applied Social Psychology* 35(3): 536-550.
- Renzetti, C. M.** 1997 'Confessions of a Reformed Positivist: Feminist Participatory Research as Good Social Science', in M. D. Schwartz (ed) *Researching Sexual Violence: Methodological and Personal Perspectives*: London: Sage.
- Rich, A.** 1980 'Compulsory Heterosexuality and Lesbian Existence', in A. Snitow, C. Stansell and S. Thompson (eds) *Powers of Desire: The Politics of Sexuality*: USA: Monthly Review Press.
- Ritchie, J.** 2003 'The Applications of Qualitative Methods to Social Research', in J. Ritchie and J. Lewis (eds) *Qualitative Research Practice*: London: Sage.
- Robertson, P.** 1987 *The Guinness Book of Australian Firsts*: Australia: Collins.

- Roiphe, K.** 1993 *The Morning After: Sex, Fear and Feminism*: USA: Little, Brown and Company.
- Rumney, P.** 2001 'The Review of Sex Offences and Rape Law Reform: Another False Dawn?', *The Modern Law Review* 64(6): 890-910.
- 2006 'False Allegations of Rape', *Cambridge Law Journal* 65(1): 128-158.
- Russell, D.** 1982 'Rape and the Masculine Mystique', in E. Whitelegg (ed) *The Changing Experience of Women*: Oxford: Open University Press.
- Russo, L.** 2000 'Date Rape: A Hidden Crime' *Trends and Issues in Crime and Criminal Justice No.157*: Canberra: Australian Institute of Criminology.
- Sanday, P. R.** 1996 *A Woman Scorned: Acquaintance Rape on Trial*: London: University of California Press Ltd.
- Scarce, M.** 1997 *Male on Male Rape: The Hidden Toll of Stigma and Shame*: USA: Perseus Publishing
- Schmidt, H.** 2004 'Rape Myths', in M. W. Smith (ed) *Encyclopaedia of Rape*: London: Greenwood Press.
- Schoenberg, N. E. and Ravdal, H.** 2000 'Using Vignettes in Awareness and Attitudinal Research', *International Journal of Social Research Methodology* 3(1): 63-74.
- Schwartz, M. D.** 1997 'Introduction: Research on Sexual Assault on College Campuses', in M. D. Schwartz (ed) *Researching Sexual Violence Against Women: Methodological and Personal Perspectives*: London: Sage.
- Schwartz, P. and Rutler, V.** 1998 *The Gender of Sexuality*: USA: Pine Forge Press.
- Scottish Law Commission** 2007 *Report on Rape and Other Sexual Offences: Scot Law Com No 209*: Edinburgh: The Stationery Office.
- Scully, D.** 1991 *Understanding Sexual Violence: A Study of Convicted Rapists*: London: Routledge.
- Scully, D. and Marolla, J.** 1993 'Riding the Bull at Giley's': Convicted Rapists Describe the Rewards of Rape', in P. B. Bart and E. G. Moran (eds) *Violence Against Women: The Bloody Footprints*: London: Sage.
- Seale, C.** (ed) 1998 *Researching Society and Culture*: London: Sage.

- Segal, L.** 1990 *Slow Motion*: London: Virago.
- 1997 *New Sexual Agendas*: London: MacMillan.
- Shapcott, D.** 1988 *The Face of the Rapist*: Australia: Penguin Books.
- Shepherd, J.** 2002 'Reflections on a Rape Trial: The Role of Rape Myths and Jury Selection in the Outcome of a Trial', *Affilia-Journal of Women and Social Work* 17(1): 69-92.
- Silverman, D.** 2000 *Doing Qualitative Research*: London: Sage.
- Sim, J.** 1998 'Collecting and Analysing Qualitative Data: Issues Raised by the Focus Group', *Journal of Advanced Nursing* 28(2): 345-352.
- Sinclair, H. C. and Bourne, L. E.** 1998 'Cycle of Blame or Just World: Effects of Legal Verdicts on Gender Patterns in Rape-Myth Acceptance and Victim Empathy', *Psychology of Women Quarterly* 22(4): 575-588.
- Smart, C.** 1989 *Feminism and the Power of the Law*: London: Routledge.
- Smart, C. and Smart, B.** 1978 *Women, Sexuality and Social Control*: London: Routledge and Kegan Paul.
- Smith, M. W.** 1995 'Ethics in Focus Groups: A Few Concerns', *Qualitative Health Research* 5(4): 478-486.
- Smith, V. L.** 1993 'When Prior Knowledge and Law Collide: Helping Jurors Use the Law', *Law and Human Behaviour* 17(5): 507-536.
- Smithson, J.** 2000 'Using and Analysing Focus Groups: Limitations and Possibilities', *International Journal of Social Research Methodology* 3(2): 103-119.
- Snape, D. and Spencer, L.** 2003 'The Foundations of Qualitative Research', in J. Ritchie and J. Lewis (eds) *Qualitative Research Practice*: London: Sage.
- Soothill, K. and Walby, S.** 1991 *Sex Crime in the News*: London: Routledge.
- Spencer, L., Ritchie, J. and O'Connor, W.** 2003 'Analysis: Practices, Principles and Processes', in J. Ritchie and J. Lewis (eds) *Qualitative Research Practice*: London: Sage.
- Stevenson, K.** 2000 'Unequivocal Victims: The Historical Roots of the Mystification of the Female Complainant in Rape Cases', *Feminist Legal Studies* 8: 343-366.

- Stigmayer, A.** (ed) 1994 *Mass Rape: The War Against Women in Bosnia-Herzegovina*: Lincoln: University of Nebraska
- Stuart, D.** 1993 'No Real Harm Done: Sexual Assault and the Criminal Justice System', in P. Eastal (ed) *Without Consent: Confronting Adult Sexual Violence: Proceedings of a Conference held 27-29 October 1992*: Canberra: Australian Institute of Criminology.
- Summers, A.** 2002 *Damned Whores and God's Police*, 2nd Edition: Australia: Penguin Books.
- Tadros, V.** 2006 'Rape without Consent', *Oxford Journal of Legal Studies* 26(3): 515-543.
- Tang, R.** 1984 *Women, Sex and the Law*: USA: Rowman and Littlefield Publishers Inc.
- Taylor, N.** 2007 'Juror Attitudes and Biases in Sexual Assault Cases' *Trends and Issues in Crime and Criminal Justice No.344*: Canberra: Australian Institute of Criminology.
- Taylor, N. and Joudo, J.** 2005 'The Impact of Pre-Recorded Video and Closed Circuit Television Testimony by Adult Sexual Assault Complainants on Jury Decision-Making: An Experimental Study' *Research and Public Policy Series no.68*, Canberra: Australian Institute of Criminology.
- Taylor, N. and Mouzos, J.** 2006 *Community Attitudes to Violence against Women Survey 2006: A Full Technical Report*: Canberra: Australian Institute of Criminology.
- Temkin, J.** 1997 'Plus Ça Change: Reporting Rape in the 1990s', *British Journal of Criminology* 37(4): 507-528.
- 2000 'Prosecuting and Defending Rape: Perspectives from the Bar', *Journal of Law and Society* 27(2): 219-248.
- 2002 *Rape and the Legal Process*, 2nd Edition: Oxford: Oxford University Press.
- Temkin, J. and Krahé, B.** 2008 *Sexual Assault and the Justice Gap: A Question of Attitude*: US: Hart Publishing.
- Thornhill, R. and Palmer, C. T.** 2000 *A Natural History of Rape: Biological Bases of Sexual Coercion*: USA: The MIT Press.

- Thurstone, L.** 1928 'Attitudes can be Measured', *American Journal of Sociology* 33(4): 529-554.
- Tolman, D. L. and Higgins, T. E.** 1996 'How Being a Good Girl can be Bad for Girls', in N. B. Maglin and D. Perry (eds) *Bad Girls, Good Girls - Women, Sex and Power in the Nineties*: USA: Rutgers University Press.
- Udall, E.** 2003 *Rape: Your Survival Guide*: London: Robson Books.
- Vanwesenbeeck, I.** 1997 'The Context of Women's Power(lessness) in Heterosexual Interactions', in L. Segal (ed) *New Sexual Agendas*: London: MacMillan Press.
- Walby, S.** 1990 *Theorizing Patriarchy*: Oxford: Basil Blackwell Ltd.
- Walby, S., Hay, A. and Soothill, K.** 1983 'The Social Construction of Rape', *Theory, Culture and Society* 2(1): 86-98.
- Ward, C. A.** 1995 *Attitudes toward Rape: Feminist and Social Psychological Perspectives*: London: Sage.
- Warr, D. J.** 2005 'It was Fun ... But We Don't Usually Talk about These Things': Analysing Sociable Interaction in Focus Groups', *Qualitative Inquiry* 11(2): 200-225.
- Warshaw, R.** 1994 *I Never Called it Rape: The Ms. Report on Recognising, Fighting and Surviving Date and Acquaintance Rape*, 2nd Edition: US: Harper Perennial.
- Watson-Franke, M.** 2002 'A World in which Women Move Freely without Fear of Men: An Anthropological Perspective on Rape', *Women's Studies International Forum* 25(6): 599-606.
- Weir, J. A. and Wrightsman, L. S.** 1990 'The Determinants of Mock Jurors' Verdicts in a Rape Case', *Journal of Applied Social Psychology* 20(11): 901-919.
- Wertheimer, A.** 2003 *Consent to Sexual Relations*: Cambridge: Cambridge University Press.
- Wibeck, V., Abrandt Dahlgren, M. and Oberg, G.** 2007 'Learning in Focus Groups: An Analytical Dimension for Enhancing Focus Group Research', *Qualitative Research* 7(2): 249-267.
- Wilkinson, S.** 1998 'Focus Groups in Feminist Research: Power, Interaction, and the Co-Construction of Meaning', *Women's Studies International Forum* 21(1): 111-125.

— 1999 'How Useful are Focus Groups in Feminist Research?', in R. S. Barbour and J. Kitzinger (eds) *Developing Focus Group Research: Politics, Theory and Practice*: London: Sage.

Winship, G. 2000 'Jury Deliberation: An Observation Study', *Group Analysis* 33(4): 547-557.

Wright, D. B. and Hall, M. 2007 'How a 'Reasonable Doubt' Instruction Affects Decisions of Guilt', *Basic and Applied Social Psychology* 29(1): 91-98.

Xenos, S. and Smith, D. 2001 'Perceptions of Rape and Sexual Assault among Australian Adolescents and Young Adults', *Journal of Interpersonal Violence* 16(11): 1103-1119.

Chapter 9: Appendices

Appendix 1: Vignettes

Vignette 1

Catherine is on a night out with friends in Adelaide. She usually goes out to pubs and clubs at the weekends with her friends and they often get drunk and drink excessively. On this particular night she bumps into John and gets chatting to him. She has met John briefly a couple of times previously but only knows of him as he works with her brother's friend Mike, whom she knows quite well. Catherine spends the evening drinking vodka and coke, talking and dancing with John. They kiss passionately a few times and flirt suggestively with each other. By the end of the night, Catherine and John are both drunk. Catherine decides to go on to a party with her friends at Mike's house. She invites John. At the party Catherine and John continue drinking, talking and kissing. They also both smoke some of a cannabis joint which is being passed around the room. Her friends decide to go home but Catherine stays as she wants to spend more time with John. A couple of hours later she feels very drunk and tired so she asks Mike if she can sleep in the spare room. He agrees. She asks John if he wishes to share the bed with her. They undress down to their underwear and get into the bed. They kiss for a while before Catherine says "goodnight" and turns away from John to go to sleep on her side. Catherine wakes to find John having sex with her from behind. Her underwear has been removed. She shouts at him to "get off" which he does. She asks "what do you think you're doing? I was asleep". He replies "I thought you wanted it. I didn't realise you were asleep, you were responding when I touched you. You've been coming on to me all night". She quickly gets dressed, leaves the party and goes home.

Vignette 2

Michelle has been on a night out in Adelaide with a friend, Sophie. They have been to several pubs over the course of the evening and are slightly drunk. They decide to move on to a local club. Michelle bumps in to Karl, who used to be one of her neighbours. A couple of months ago, Michelle had ended up having sexual intercourse with Karl when she was drunk on a night out. She feels a bit embarrassed to see him again. Karl says hello and offers to buy her a drink. She refuses as she feels she has had enough - she knows she has to work early the next day. He tries to persuade her and she starts to feel embarrassed that she is making a big deal out of it so she accepts a drink. He comes back from the bar with a neat whisky. She usually drinks alcopops and doesn't really like whisky but feels it would be rude to refuse it now that he has bought it so she drinks it. Michelle is not interested in Karl sexually but is happy to chat to him. Karl makes advances to kiss her but she tells him she's got a boyfriend and she's not interested. He apologises and they continue to talk. He gets another drink for them. She asks for a coke as she feels drunk but he returns with more whisky. Again, she drinks it as she doesn't want to make a fuss. Michelle notices that Sophie has disappeared. She is worried as she is supposed to be staying at Sophie's house that night, as she lives more than an hour away. Michelle and Karl wait until the club has cleared but cannot find Sophie. Karl says that she can stay at his that night. Michelle feels very drunk as she is not used to drinking whisky. She just wants to lie down so she agrees and they get a taxi together. When they get to Karl's flat, he has to help her up the steps as she is unsteady on her feet. Inside, Karl gets them another whisky each. Michelle just has a couple of sips as she feels very dizzy and disoriented now. She lies down on the sofa and just wants to go to sleep. Karl begins to kiss and undress her. Michelle can't find any strength to try to push him off. Karl and Michelle have sexual intercourse. When Michelle wakes in the morning, she lets herself out of the flat without seeing Karl. When she gets home, her boyfriend asks her where she has been and she tells him that Karl raped her.

Vignette 3

Elaine decided along with some friends to go to see a band that was playing at the local community centre. It started at 9pm and was due to end at 1am. Elaine had not been out for ages so she decided to dress up and wore a short black dress and boots. The toilets in the building were situated near the main entrance. On one occasion when Elaine went to the toilets, she met Scott, who was standing on his own near the main entrance. Elaine did not know him but had seen him a few times in her local pub and was attracted to him. Scott and Elaine fell into conversation but it was really noisy and they couldn't hear each other very well. Scott asked Elaine if she wanted to go for a walk and she agreed to do so. They walked around a nearby park until they reached a shelter, which backed onto the community centre's grounds, where they stopped and chatted some more. A short while later, Scott and Elaine had sexual intercourse in this shelter. Elaine claimed that she did not consent whereas Scott claimed that he honestly believed that she had consented. Elaine said that Scott made her sit down and started to put his hands down her tights. She said that she told him that she did not want "that". She tried to push his arms away but could not do so, on account of his strength. Eventually, after further struggling Elaine said that Scott achieved intercourse. At this stage Elaine screamed and bit Scott. Both parties agreed that Elaine said sorry after she bit Scott. Scott said he thought this meant that she had "just got carried away in the heat of the moment" not that she objected to what was happening. Scott also argued that he had believed that she was consenting because Elaine had helped him to unlace one of her boots and had removed her tights herself. Elaine argued that she did this in the hope that she would be able to run away more easily because the tights were half down and would have prevented her from doing so.

Vignette 4

Wendy was on her first business trip with her boss, Eric. On the last evening they had dinner together as they had finished all their business meetings that afternoon. Eric began to flirt with Wendy during the meal which she found unsettling as they were both married and Eric had previously always acted in a purely professional manner. However, she dismissed it as high spirits resulting from the deal they had signed earlier that day and the wine he had been drinking. Wendy was not drinking as she was on antibiotics. After they had finished dinner Eric suggested a nightcap in his suite. Wendy suggested the hotel bar instead but Eric was insistent so she agreed. In his suite, they chatted about work and their families and Wendy felt silly for feeling uneasy about Eric earlier. After a couple of hours, Wendy got up to leave and return to her own room. Eric caught her arm and tried to kiss her. Wendy pushed him off. Eric laughed "Oh come on it could do great things for your career!" Wendy told him she wouldn't do anything like that. Eric pulled her close to him and said "Well do you want to keep your job? I could make sure you never work at this level again". Although he was still smiling, Wendy was scared and worried that he would get violent if she didn't give him what he wanted. She thought about trying to fight him off but knew that she was no match for him. Eric undressed Wendy and then they had sexual intercourse. Afterwards, Eric fell asleep and Wendy returned to her own room. The next morning, Eric chatted as normal with her and made no reference to the previous night.

Appendix 2: Demographic Characteristics of Sample

Focus Group	Target Age Range	Name or Pseudonym	Age	Australian Born (AB) or Overseas Born (OB)	Social Classification ⁹³
<i>Female Focus Groups</i>					
F1	18-29	Bec	21	AB	3
F1	18-29	Caz	22	AB	3
F1	18-29	Jo	31	AB	2
F1	18-29	Lani	31	AB	2
F1	18-29	Nikki	28	AB	3
F2	18-29	Jessica	28	AB	2
F2	18-29	Lisa	25	AB	2
F2	18-29	Luan	30	AB	2
F2	18-29	Rebecca	32	AB	2
F3	30-39	Anne	34	AB	2
F3	30-39	Julie	46	AB	3
F3	30-39	Mia	35	AB	3
F4	30-39	Anne	34	AB	2
F4	30-39	Jenny	36	AB	2
F4	30-39	Kate	29	AB	2
F4	30-39	Melissa	34	AB	2
F4	30-39	Nat	37	OS	2
F5	40-49	Diane	38	OS	2
F5	40-49	Glenyss	52	AB	2
F5	40-49	Johan	43	OS	2
F5	40-49	Morag	49	AB	3
F6	40-49	Christine	47	OS	2
F6	40-49	Debra	42	AB	2
F6	40-49	Denise	45	OS	3
F6	40-49	Linda	48	OS	2
F6	40-49	Mandy	39	OS	2
<i>Male Focus Groups</i>					
M1	18-29	Daniel	23	AB	2
M1	18-29	Gus	24	AB	3
M1	18-29	Stan	19	AB	3
M1	18-29	Trevor	22	AB	3
M2	18-29	Alan	28	AB	3
M2	18-29	Justin	26	AB	3

⁹³ 1 = Higher occupations (managerial and professional), 2 = Intermediate occupations and 3 = Lower occupations (routine, semi-routine and manual) Source: <http://www.ons.gov.uk/about-statistics/classifications/current/ns-sec/index.html>

M2	18-29	Rodney	27	AB	1
M2	18-29	Simon	27	AB	3
M3	30-39	Bill	32	AB	3
M3	30-39	Brian	30	OS	3
M3	30-39	Darren	32	AB	3
M3	30-39	Wallace	54	OS	3
M4	30-39	Frank	31	AB	3
M4	30-39	Larry	36	AB	3
M4	30-39	Simon	31	AB	3
M4	30-39	Tim	32	AB	3
M5	40-49	Darren	43	AB	3
M5	40-49	David	37	AB	3
M5	40-49	Ian	52	AB	3
M5	40-49	Ian	40	OS	3
M5	40-49	Steve	36	AB	3
M6	40-49	Bruce	56	AB	2
M6	40-49	Chris	41	AB	2
M6	40-49	Guy	46	OS	2
M6	40-49	Keith	47	OS	2
<i>Mixed Gender Focus Groups</i>					
MF1	18-29	Andrea	22	AB	3
MF1	18-29	Andrew	27	AB	3
MF1	18-29	Gavin	26	AB	3
MF1	18-29	Jacqui	25	AB	2
MF1	18-29	Leroy	25	OS	3
MF1	18-29	Michelle	23	AB	2
MF2	30-39	Jared	30	AB	3
MF2	30-39	Jeremy	34	AB	3
MF2	30-39	Jillian	31	AB	3
MF2	30-39	Steve	29	AB	2
MF3	40-49	Barry	36	AB	2
MF3	40-49	Debora	36	AB	3
MF3	40-49	Gaynor	41	AB	3
MF3	40-49	Steve	45	AB	2

Appendix 3: Participant Consent Form

TITLE OF PROJECT: SEXUAL VIOLENCE – ATTITUDES AND OPINIONS

Researcher: Laura Kerr

PLEASE READ THE FOLLOWING. ONCE YOU ARE HAPPY WITH EACH STATEMENT, PLEASE TICK THE APPROPRIATE BOX.

I understand what the research is about and what participation involves

I understand that my participation is voluntary and I may leave at any time without penalty

I understand that the research is fully confidential and anonymous, that the name of the location will not be used in the study although what I said may be quoted

I understand that if I am quoted a pseudonym may be used in place of my real first name if desired

I agree to the interview(s) being tape-recorded

I understand that the researcher will provide me with a summary of the interview transcripts at a later date and I agree to comment upon and return them

I agree to take part in the above study

Participant's Name:

Participant's Signature:

Date:

Appendix 4: Participant Information Leaflet

PARTICIPANT INFORMATION BOOKLET

Research into Sexual Violence – Attitudes and Opinions

Department of Sociology
University of Edinburgh
Scotland
United Kingdom

Thank you very much for volunteering to participate in this study. This leaflet sets out what the research is about, what taking part involves and your rights.

About the Research

I am a postgraduate student in the Department of Sociology, University of Edinburgh and am conducting a study examining people's views about sexual violence. I am interested in finding out how people define rape and what factors affect their judgments. To investigate people's views I am running several group discussions, with both men and women. The findings from this research will be used as the basis of my PhD thesis.

I can be contacted on the following number and email address:

Laura Kerr

0400 264571

L.A.Kerr-2@sms.ed.ac.uk

What Taking Part Involves

What will I need to do to take part?

Group Interviews:

You will need to discuss your views and ideas about sexual violence in a group with five other people of the same gender as you and a researcher. I will put forward some issues to start the discussion and then the group will be encouraged to put forward their own ideas and issues. The discussion will last about 2 hours – 2 ½ hours and light refreshments will be provided.

Individual Interviews:

One member of each group will be asked to participate in a subsequent individual interview at a later date. If this applies to you then you will need to discuss your views and ideas about sexual violence in a one-to-one interview with a researcher. The interview will last approximately 1 hour.

Is there anything else I need to do?

You will need to sign the attached consent form to show you agree to take part in the research and that you understand what this will entail.

What will you do with the discussion?

The discussion will be tape recorded and then typed out so that it can be analysed in more detail. No full names will appear on either the tapes or the transcripts.

What will be done to protect my confidentiality?

I will do three things to protect anonymity and confidentiality:

1. I will ask all group discussion members not to discuss things people said during the meeting with people outside the group. I will only discuss what was said in all interviews (both group and individual) with my university supervisors and not with anyone else.
2. Tapes will be stored securely and only I will listen to the tapes. Also, tapes will be destroyed after transcription.
3. When the tapes are typed up and when I write anything about the research I will only use first names and will not reveal the name of the place where the discussion took place. Participants will be free to choose whether they would prefer their real first names to be used in my thesis or if they would prefer to choose a pseudonym.

Please note that all information given in the interviews will be strictly confidential unless it is a criminal issue in which case the researcher would be duty bound to report it to higher authorities.

Am I free to leave the discussion before the end?

Yes, you are free to leave the group at any time.

Will some of the questions or part of the discussion shock/upset me?

Although it is hard to know what will upset or shock people, it is not my aim to be shocking and the questions have been carefully chosen to make it possible for people to discuss the topic safely.

What if I feel upset later on about this topic?

There is a list of support groups at the back of this leaflet that you can contact if you feel you need to talk about your feelings or things that have affected you.

What if I want to say something else later on after the discussion?

You can contact me by phone or email if there is anything that you would like to discuss. As part of the research, I will send a copy of a summary of the relevant group discussion to all participants and you will be invited to read through and comment upon this document.

Support and Information

This research has been designed to generate discussion without being intrusive or distressing for those taking part. This sheet provides the contact numbers of organisations who offer support and advice for issues to do with sexual violence.

Yarrow Place Rape and Sexual Assault Service

Norwich Centre Level 2

55 King William Road

North Adelaide 5006

Tel. 8226 8777

Freecall 1800 817 421

After Hours Emergency Line 8226 8787

www.yarrowplace.sa.gov.au

Appendix 5: Focus Group Interview Schedule

General Discussion Questions

(Approximately 20 minutes)

How would you distinguish rape from a "normal" sexual encounter?

Are women ever at fault and/or responsible for rape?

- If yes, under what circumstances?

Do you think women are responsible for taking steps to try to avoid rape?

What measures do you think women could take to try to avoid rape?

Women = Does the threat of rape impact upon your everyday lives? How?

Men = Do you think the threat of rape impacts upon women's everyday lives? How?

When a woman's rape case comes to court, do you think it is relevant for her sexual history to be brought up?

- Why/why not?

- Do you think that sexual history information influences a jury?

Why do you think a woman might be reluctant to report an incident as rape?

Do you think that rape is predominantly about power or about sex?

Do you think that more education about rape is needed?

- Who needs to be targeted? Men versus women

- What format?

What do you know about rape laws in Australia?

Did you know that South Australian rape laws are currently under review?

Vignette Discussion Questions

(Approximately 20 minutes discussion per vignette)

Do you think this was rape?

- Why/why not?

Do you think that this case would get to court?

Why/Why not?

Do you think the man and/or the woman in this scenario were behaving responsibly?

- If not, why not?

- How responsible do you think the man/woman was for the outcome of this scenario? (No responsibility - complete responsibility)

- Can any blame be attributed to either the man or the woman for what happened in this scenario?

Do you think the man's intent was rape from the beginning?

Do you think she was giving him mixed signals?

If you were a jury member would you convict this man of rape?

Would you opt for an alternative to a prison sentence in this case?

Final verdict – guilty/not guilty/lesser offence

Vignette Specific Questions

Vignette 1

Do you think that he should have done more to determine consent?

Do you think that she made it clear that she didn't want sex?

Responsibility – what about the fact that she invited him to share a bed with her?

Vignette 2

Do you think that she is responsible for her intoxication?

What about the fact they had slept together previously?

What about the fact that she didn't offer any resistance?

What do you think constitutes consent?

What about the idea of positive consent i.e. verbal agreement? Is it realistic?

Vignette 3

What about the way that she was dressed?

What about the fact that she went for a walk alone with him?

What about the fact that she apologised for biting him?

Do you think that she should she have resisted more?

What about the fact that he “honestly believed” that she consented?

Vignette 4

Do you think she should have resisted more?

What about the fact that she went back to his hotel room?

Do you think that there needs to be a physical rather than purely psychological threat to constitute rape?

Appendix 6: Individual Interview Schedule

The purpose of this interview is to explore some of the issues raised in the group discussions in a bit more detail. You were chosen at random from the individuals that participated in your group discussion.

Rape myths

I want to start with some general questions. Here are some things that may be said about rape ... I want to find out what your opinion is on them.

1. Do you think that the majority of rapes are committed by strangers or by men known to the woman?
2. Do you think that women say no but mean yes in some sexual encounters?
If yes, explore when/why
3. Do you feel that women have a responsibility to struggle and offer physical resistance when faced with a rape situation?

Consent

In the discussion groups, all participants agreed that rape was defined as sex without consent. So now I want to ask you a few questions about consent, and how it is determined.

South Australian rape laws are currently being reviewed and one thing that is being considered is providing a list of situations where non-consent is automatically assumed. In other words, the law would not recognise consent if it was brought about under certain circumstances. I want to get your thoughts on these circumstances.

4. a) a person does not consent to sexual intercourse just because she doesn't offer physical resistance
- b) a person does not consent to sexual intercourse just because she doesn't say or do anything to indicate that she didn't consent
- c) a person does not consent to sexual intercourse just because she doesn't sustain any physical injury

- d) a person does not consent to sexual intercourse if she allows it to occur due to force or fear of force – either to herself or someone else
- e) a person does not consent to sexual intercourse if it occurs while she is asleep or unconscious
- f) a person does not consent to sexual intercourse if it occurs while she is so affected by alcohol or drugs that she is incapable of freely agreeing
- g) a person does not consent to sexual intercourse if she is overborne by the nature or position of another person

(Heath (2005:36-37) provides a list of situations which automatically negate the need for consent according to the law in each Australian state. The prompts above were derived from this source)

5. Do you think there should be legislation setting out a (non-exhaustive) list of circumstances where non-consent is assumed?
6. Do you think that consent should be defined in law or should it be left to individual jurors to interpret?
7. Researcher explains terms ‘honest belief’ and ‘reasonable belief’ (already discussed in focus groups): Should South Australia retain the honest belief defence or change it to be honest and reasonable?
8. *I want to talk about positive consent now – i.e. gaining verbal consent to each stage of sexual contact*
 - a) Why do you think this is seen to be unrealistic?
 - b) Do you think that ‘normal’ sexual encounters are not typically seen as involving verbal exchanges?
9. Do you think that men should be better educated in terms of how to recognise consent and how to clearly determine consent?
If yes, how could this occur?

Why Men Rape

Now I'm interested in your thoughts on why men rape and how men get into situations where they are accused of rape.

10. Why do you think that some men rape?
 - Explore notions of intent
 - disease theory versus impulse theory

- a) Do you think that it is easy for a man to 'get carried away in the heat of the moment'?
- In what way?
- b) Do you think that rape is mostly carried out by men who are mentally ill or by men getting carried away in the heat of the moment?

Criminal Justice System

Ok now I want to talk about criminal justice process in terms of the crime of rape.

- 11. *Research has shown that many rapes go unreported to the police.*
Can you think of any ways that women could be encouraged to report incidents of rape to the police?
(What do you think are the main factors which discourage women from reporting rape?)
- 12. How common do you think it is for women to make false allegations of rape?
Why do you think they might do this?
- 13. *In the discussion groups, some people felt that although they thought the situation was rape, they wouldn't find the man guilty.*
Why do you think that people may consider an incident to be rape but still be reluctant to convict?
- 14. *Research has shown that very few men who are accused of rape are actually convicted.*
Why do you think that conviction rates for rape are so low?
- 15. *In the discussion groups we talked a bit about providing an alternative to a prison sentence when a man is found guilty of rape – a sort of lesser offence option - e.g. an education program, a register of accruing demerits.*
What were your thoughts on these options?
- 16. Can you foresee any potential problems with offering an alternative to a prison sentence for men convicted of rape?
- 17. Finally, do you have any ideas what (if anything) can be done to minimise occurrences of rape?