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Community attitudes and the role of the victim offender relationship in child sexual abuse cases

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sentenced known offenders significantly less harshly than unknown offenders (Pollard, 1992). Evidently, the victim-offender relationship played a significant role in the perceived seriousness of sexual assaults, and therefore sentencing decisions, perceived blameworthiness of the victim and the harm suffered by the victim.

The aforementioned research demonstrates that the decision-making of both the criminal justice system and community, with regard to the crime of rape is often influenced by the relationship that exists between the victim and the offender

(Gottfredson & Gottfredson, 1988; Pollard, 1992; Simon, 1996). Although the criminal justice system consistently charged a perpetrator known to the victim with the more serious offence, strangers were consistently sentenced more harshly. Community respondents viewed non-stranger offenders as less serious and imposed a more lenient sentence. Wexler (1985, as cited in Simon) speculated that such perceptions exist because the criminal justice system and community perceive stranger offenders as more dangerous, unpredictable and indiscriminate in their selection of victims in comparison to known offenders who simply behave in a manner out of character and within a specific network of individuals.

Sexual Assaults Against Children: Community And Judicial Responses

Past research into community and judicial responses to the victim-offender relationship has focused upon crimes perpetrated against adults. Perusal of the research regarding the victim-offender relationship and crime highlights a bias towards examining sexual offences perpetrated against adults (Gottfredson & Gottfredson, 1988; Pollard, 1992; Simon, 1996). A similar survey of the literature demonstrates that research associated with the victim-offender relationship and child sexual abuse is

severely lacking. In fact, minimal research into the role of the victim-offender relationship and child sexual abuse exists. What research there is, fails to examine the victim-offender relationship in detail. Instead, the victim-offender relationship has typically been a small component within a larger study aimed at examining other issues related to child sexual abuse. Nonetheless, the available research highlights the presence of some inconsistencies between actual judicial practice (Cashmore & Horsky, 1988), attitudes of professionals within the area (Corkhill, 1997), community members (Community Services Victoria, 1992) and the child sexual abuse legislation (Western Australia Criminal Code, 1913). In and of themselves, these inconsistencies are noteworthy. However, given the importance of public opinion within policy development, these contradictory perceptions of, and responses to, child sexual abuse and the victim-offender relationship are worth further consideration. It should be noted that for the purpose of this paper, a "child" is defined as a person under the age of 16 years.

As a precursor to developing a programme aimed at educating the public on the issue of child protection, Community Services Victoria (1992) investigated the attitudes of the Victorian public regarding child sexual abuse. Their study provided necessary insight into the *community's* view of child sexual abuse which was integral to the development of education programmes. The findings from this research are also relevant to child sexual abuse policy, particularly given the attention paid to community perceptions of the seriousness of the offence, the victim and offender profiles and the anticipated versus desired reaction from both welfare and judicial authorities.

Researchers interviewed 600 people aged 17 years and over from both the Victorian metropolitan and country areas (Community Services Victoria, 1992). Seventy six

percent of respondents classified child sexual abuse as a *very serious* social problem, 5 percent stating that it was *not so serious*. Despite 76 percent of respondents believing that child sexual abuse was a very serious problem, only 63 percent of these

respondents considered the sexual abuse of children to *always* be a criminal offence, with 27 percent believing that it is *sometimes* a criminal offence. Results of

examinations into the perceived harm caused to children sexually abused showed that 91 percent believed they suffered emotional harm, and 35 percent believed they

suffered physical harm (Community Services Victoria, 1992).

Examination of community perceptions related to the victim-offender relationship

showed that eighty percent of respondents believed the perpetrator would be known to the child with 19 percent stating the offender would be inside the home, 40 percent

stating the offender would be outside the home, and 21 percent stating the known

offender could be inside or outside of the home. Furthermore, results showed the

perceived typical victim-offender relationship as being; stepfathers, fathers, a male

friend of the family, an uncle and a neighbour (from most likely to least likely). Sixty

eight percent of the respondents believed that in all cases the offender is entirely

blameworthy. However, 27 percent believed that the child should take the blame in

some cases (Community Services Victoria, 1992).

In terms of the manner in which the victim-offender relationship influenced the

community's decision making with regard to reporting and desired action against child sexual abusers, the results showed a reaction consistent with the studies related to adult sexual assault discussed earlier (Pollard, 1992; Simon, 1996). That is, respondents

indicated that they would be less likely to report, and desired a less punitive response (i.e. no imprisonment as opposed to a term of imprisonment) the closer the victim-offender relationship. The preferred option for stranger offenders proved to be counselling *with* a prison sentence and for known offenders (particularly family members), a counselling *without* prison option. However, even though this research examined the manner in which the victim-offender relationship influenced community attitudes with regard to the punishment of the offender, it failed to directly examine how it influenced the perceived seriousness of the offence. As such, it is not possible to argue that the punishment imposed reflected the perceived seriousness of the crime. Furthermore, it is also not possible to conclude whether the community perceived sexual abuse by known perpetrators as less or more serious than abuse perpetrated by strangers (Community Services Victoria, 1992).

Cashmore and Horsky (1988) have carried out the most recent examination into the *judiciary's* response to child sexual assault cases. This research was particularly interested in providing information regarding the New South Wales' criminal justice system's response to sexual assaults against children. A component of this study included the examination of the manner in which the victim-offender relationship influenced decision-making at various stages of the criminal justice system. Before discussing the findings of this study, some background information will be provided in order to place the research outcomes in context. The research included 235 indictable cases of sexual assault in the New South Wales courts in 1982 where the victims were under the age of 18 years at the time of the offence. Some offenders included in this study had abused two or more victims. The majority of victims were female (68.6%) and their average age was 11.1 years. The victim-offender relationship were as follows;

members of the victim's family or household (25.1%); (of which 77.1% were fathers and father-figures); a close friend of the family (8.9%); a friend, neighbour or acquaintance of the victim (42.9%); someone who held a professional position of authority in relation to the child (8.9%) and total strangers to the victim (14.1%). The most common offence with which offenders were charged was indecent assault, with this constituting the principal offence in 61.3% of cases. Examination of police and court documentation regarding these cases of child sexual abuse, demonstrated that decisions to proceed with prosecution following committing were influenced by the victim-offender relationship. Cases involving offenders who were closely related to their victims were found to be more likely to proceed. Further, those offenders were also more likely to be convicted following a "not guilty" plea and were more likely to receive a custodial sentence than offenders unrelated to the victim. Therefore unlike the community sample surveyed by Community Services Victoria (1992), the judicial response to the sexual abuse cases examined for the New South Wales study indicates that child sexual abuse perpetrated by known offenders is more serious than abuse committed by strangers.

Given these results, there appears to be a discrepancy between community attitudes and actual judicial practice with regard to the victim-offender relationship and crime of child sexual abuse. In generalising these findings, one could suggest that in some cases a known offender is likely to receive a non-custodial sentence from community respondents. However, a harsher penalty is often imposed upon that same offender by the judiciary. Should the sentencing practices as reflected by Cashmore and Horsky's study (1988) serve to act as indicators of perceived seriousness, there would again appear to be disparity between community attitudes and judicial practice. In other

words, the general community may consider child sex offences committed by known perpetrators as less serious than those committed by a stranger. The criminal justice system would propose the opposite.

Child Sexual Abuse Legislation

In 1987 the Western Australian government established a task force (Child Sexual Abuse Task Force) to examine the issue of child sexual abuse and the legislation governing such crime. The committee called for public submissions, placing a notice in The West Australian. Although they received approximately seventy responses, only thirty-eight were received from non-professional community members. The remainder were received from individual professionals working within the area of child sexual abuse, Government Departments and community based services (Child Sexual Abuse Task Force, 1987). Therefore, although the general public was invited to air their views and respond to this issue, only a minority of responses obtained reflected non-professional community attitudes. As such, the Task Force's recommendations primarily reflect the attitudes of professionals within the area of child sexual abuse. Although these professionals are also members of the community, it is suggested that their knowledge base (although highly relevant) may have overly biased the results. As such, non-professional public opinion may have had minimal impact upon the subsequent legislative changes.

In 1992 the recommendations made by the task force were implemented and the legislation changed. The current legislation proposes harsher penalties for offenders

known to the victim (particularly those in a position of trust or authority) than strangers. Table 1 outlines the various penalty structures used to guide the sentencing process.

Table 1
Western Australia Criminal Code: 1913: Chapter XXXI - Sexual Offences (s321 & s329)

Offence	Age of Victim	Victim-Offender Relationship / Statutory Penalty	No Prior Person in Relationship	Person in Authority	Relative Defacto / Linal /
Sexual Penetration	U13 years 13-16 years	20 years 14 years	20 years 20 years	20 years 20 years	20 years 20 years
Indecent	U13 years	10 years	10 years	10 years	10 years
Dealing	13-16 years	7 years	10 years	10 years	10 years

A primary change to the legislation was to treat the commission of a sexual offence by a person in authority in an identical fashion as those perpetrated by family members, and as such, as a circumstance of aggravation. The crux of this recommendation, and subsequent change in legislation was that "these offences are serious because the abuse of the victim is made easier by the position of trust which the offender occupies in relation to the victim" (Western Australian Hansard, 1992, p. 1804). The Task Force defined teachers, employers, guardians or counsellors as being "persons in authority", commenting that these offences constituted a serious breach of trust and were therefore serious and harmful. Justice Malcolm commented that although the breach of trust principle was already inherent in the sentencing process, the legislation now made it an explicit element in the Criminal Code given the penalty structures prescribed (Malcolm, 1997). In other words, recommendations made by the Child Sexual Abuse

Task Force relating to the concept of "trust" were translated into legislation by including "those in a position of authority" as a circumstance of aggravation. These changes in legislation were clearly prompted by the perception that sexual offences occurring within a familial relationship or committed by a person of authority must be punished more harshly than sexual offences occurring outside those relationships. The underlying belief for these changes appears to have been that offences committed within these relationships constitute a serious breach of trust and reflect a *more serious act* than those perpetrated without the element of trust (Western Australian Hansard, 1992, p. 1804). Within the framework of the Western Australian Sentencing Act (1995) the sentence imposed is determined by offence seriousness which in turn is dependent upon many factors including aggravating factors. Given that the concept of "breach of trust" was now considered to be an aggravating factor, then an offence where trust exists must be viewed as more serious and as warranting a harsher penalty than an offence where trust does not exist (Malcolm, 1997). Such opinion subsequently impacted upon the sentencing penalties prescribed. This then meant that both relatives and persons in authority would receive an identical penalty to one another and in turn, they also receive a greater penalty than those offences committed by persons outside of those categories.

In contrast to the community respondents sampled by Community Services Victoria (1992), it would therefore seem that legislators consider offences perpetrated by relatives and by those in authority as equally serious as one another, yet more serious than stranger offences. This is consistent with judicial practice as demonstrated by Cashmore and Horsky (1988). However, the researcher raises the questions as to whether the degree of trust (and subsequent breach of trust when a sexual offence

occurs) is actually equal between relatives and persons in authority. Unfortunately, the recommendations that prompted the legislative changes outlined above do not comment as to whether the degree of trust is or is not equal between these two groups. Rather, they simply comment that they both possess a high degree of trust.

Is Trust Equal Between Relationships?

Trust is considered to be a universally accepted moral value (Trusted, 1987), and a basic component of any social system or social interaction (Eisenstadt & Roniger, 1984). It is defined as the fulfilling of obligations, both explicit and implicit (Trusted).

Trust is particularly important because people have a need to believe that the world is a relatively predictable and safe place to live, especially when they are in the confines of their own home (Kennedy, 1983). The degree to which a trust is violated is dependent upon the type of relationship that exists between the parties involved (Thomas &

Diver-Stammes, 1993). It is assumed that family environments foster closeness within relationships from the outset, and as such are based on a high degree of unconditional trust (Eisenstadt & Roniger). However, in others where closeness is not inherent but rather developed, such as the relationship between defacto parents and children, trust builds slowly as the relationship itself strengthens over time. As such, the moral obligation of keeping trust would vary between these two types of relationships.

Nonetheless, these relationships both constitute "individual trust" in that an individual (the child) places his or her trust in the adult (the father or defacto father). However, Duck (1992) proposes that a third type of relationship exists which results in varying levels of trust. This type of trust is best described as a contractual or professional relationship, such as teacher - student, where trust is agreed upon from the outset.

Moral responsibility is determined not only by the fact that a person caused the

harm but also the social expectations placed upon that person as a result of their social role (Hamilton, 1978). This principle would therefore apply to a professional

relationship, such as teacher-student. Such a relationship often reflects what is referred to as "public trust", in that the community trusts certain individuals to fulfil their

obligations. For example, parents trust that teachers will fulfil their obligation of caring for their child. Given that a child also places his or her trust in their teacher, the teacher

— student relationship possesses both individual and public trust. It is noteworthy that the act of entrusting a child to a teacher may ironically "provide the opportunity and

means for its abuse" (Shapiro, 1987, p. 625).

Therefore, although trust is inherent in all relationships, the degree of trust which

exists in the relationship is evidently determined by the type of relationship between the offender and victim (Duck, 1992; Eisenstadt & Roniger, 1984). As such, the trust

between a father and child is assumed to be greater than that which exists between a defacto father and child. However, it appears inconclusive as to whether the trust

between a father and child is greater than that which exists between a teacher a student given that the latter relationship carries the added value of "public trust" (Thomas &

Diver-Stammes, 1993). Nonetheless, such argument suggests that the degree of trust is *not* equal between these relationships.

Victim-offender relationship: Various relationship types

In addition to these arguments regarding the degree of trust which exists within various relationships, alternative debate has been put forward to provide further

support for claims that child sexual abuse is not as equally serious between all

offenders.

On reviewing literature examining the effects of child sexual abuse, Corkhill (1997) claimed that abuse perpetrated by a trusted adult is far more damaging to the child and leaves the child with a greater sense of betrayal. She likened the breach of trust and subsequent sense of betrayal inherent in child sexual abuse perpetrated by family members or friends, to that which is inherent within employee fraud and larceny. Such offences are treated as very serious and therefore afforded harsh consequences by the criminal justice system. Given that the family is essential for the survival of the child, Rayner (1991) perceives child sexual abuse perpetrated by family members as being more serious than abuse perpetrated by any other individual. Others take a similar

approach to child sexual abuse by family members and comment that the family unit is the basic unit on which society depends for its stability. Daugherty (1979) argued

against removing the crime of "incest" and replacing it with "sexual abuse of children". This argument was based on the premise that a sexual encounter with a stranger was more likely to be a one-time occurrence, whereas incestuous abuse was apt to be

chronic, extending over a period of years, because the abuser had ready access to the child. Furthermore, she noted that offenders who live in the same home as the victim hold their victim in a particularly helpless position because they are in a natural position of authority over the child and as such, the child was financially and emotionally dependent upon them. Singer (1979) has stated that intrafamilial child

abuse "is a disease of our society; a society which dehumanises and isolates the

individual, yet trusts him with the most important task for the continuation of that society - the rearing of children and the moulding of our future generation" (p. 3).

Clearly these authors believe that the level of trust is highest within a family

environment.

Contrary to those arguments outlined above, is the view that those in a position of

authority or responsibility, such as religious leaders and teachers, possess a higher

degree of trust than all other individuals (Martin, 1994). Those that support such claims

take an accumulative approach to the degree of trust which exists, taking into account

both the "individual trust" between the teacher and student and the "public trust"

evident given that the teacher is acting in loco parentis. They argue that those in

positions of authority not only abuse the child's trust, but also the parent who placed

the child in their care (Goddard, 1993). Some perpetrators of child sexual abuse use

their work or professional role to gain sexual access to children and as such, have been

afforded the privilege of trust from parents, extended family and the community

(Burgess, Kelley & Hartman, 1988). Lastly, others comment that whilst a child is in the

care of another, such as at school, they are more vulnerable given that they are

separated from their familiar networks (Forward, 1995). As such, they propose that

teachers and the like should be subject to greater scrutiny and the harshest penalty

(Forward, 1995).

Whether these arguments related to "trust" are consistent with the legislation,

judicial practice and community attitudes as outlined in this paper, remains largely

unknown. This is primarily because the legislation does not distinguish as to whether

"trust" is equal between family members and persons in authority. It merely indicates

that the level of trust for both is very high (Child Sexual Abuse Task Force, 1987;

Western Australian Criminal Code, 1913). Further, the judicial and community studies

discussed, did not examine the construct of trust (Cashmore & Horsky, 1988;

Community Services Victoria, 1992).

Summary and Conclusion

This paper takes the position that it is imperative that community attitudes be

reflected in legislation and judicial responses to crime. Although it is recognised that community attitudes may not represent a rational or educated response to crime, it

remains necessary that public opinion (at the very least) be considered when policy is developed. A number of reasons for this stance were outlined. The criminal justice

system's sentencing practices have received considerable attention within the media,

particularly given that they reflect the perceived seriousness of the offence (Roberts &

Stalans, 1997). This paper has reviewed the literature examining the manner in which

the victim-offender relationship influences the perceived seriousness of crime. When

considering sexual assaults perpetrated against adult women, a small sample of studies

indicated that the criminal justice system and the community respond in a similar

fashion. That is, they perceive those assaults committed by an offender known to the

victim as being less serious as those perpetrated by strangers, and subsequently prefer

more lenient sentences (Pollard, 1992; Simon, 1996). In contrast, this paper has

highlighted inconsistencies between legislation, judicial practice and community

attitudes with regard to the perceived seriousness of child sexual abuse, and therefore

the preferred penalties. However, it must be noted that the research examining

community attitudes is limited and as such, drawing firm conclusions is not possible.

Furthermore, there has been no systematic exploration of the manner in which the

victim-offender relationship influences the public's view of the seriousness of this

offence. In fact, perusal of existing literature illustrated that no one state or territory has examined the manner in which the victim-offender relationship influences community attitudes, judicial practice and legislation with regard to child sexual abuse. With regard to this paper, the community's perceptions discussed were those of the Victorian public, judicial practice was that of New South Wales and the legislation presented was Western Australia's. Given that the available research has been undertaken in different states and that the manner in which these studies were carried out was vastly different, accurate comparisons are difficult to make. However, this is the only research available and as such, reflects the best starting point to examine the issue.

Although these studies suggest that the public considers child sexual abuse to be a serious social problem, some members fail to perceive this offence as a crime (Community Services Victoria, 1992). Further, they are more likely to prefer a non-custodial punishment for offenders who have had a prior relationship with the victim. Judicial practice and legislation has been shown to present an entirely different trend (Cashmore & Horsky, 1988; Child Sexual Abuse Taskforce, 1987; Western Australian Criminal Code, 1913). The legislative and judicial response highlighted in a number of papers, appears to reflect an attitude that those offences where the perpetrator is in a position of trust or authority are more serious and more harmful, warranting a harsher response. From these studies, it can be suggested that contradictions may exist between community attitudes, legislation and the criminal justice system with regard to the manner in which the victim-offender relationship influences the perceived seriousness of the offence, the harm suffered by the victim and subsequently, the severity of the punishment. Community attitudes appear to have had minimal impact upon either the

prosecuting authorities or the judiciary with regard to the manner in which the

Australian criminal justice system responds to child sexual abuse cases (Corkhill,

1997).

Further, of note is that offences perpetrated within the family and those perpetrated

by individuals in a position of trust and authority to the child, such as teachers, receive identical penalties as set out by the Western Australian Criminal Code (1913, s321 &

s329). Comment has been made that a lineal or defacto relative offender should receive

the harshest penalty (Corkhill, 1997) based upon the assumption that such relationships

are close from the outset, and as such inherently possess a high degree of unconditional

trust (Eisenstadt & Roniger). Others propose that offenders who are in a position of

trust or authority over the child, such as teachers, should be seen as more serious and

punished accordingly (Forward, 1995). This argument is based upon the fact that in

these circumstances the offence constitutes a breach of the child's, parents' and

community's trust. Based on these arguments, it is suggested that child sexual abuse

perpetrated by family members and those in a position of authority be viewed as

serious and as such, penalised harshly. However, it remains unclear as to whether these

offences should attract identical or distinct sentences.

The Current Study

Against this background, the present study examined the effects of various victim-

offender relationships on the perceived seriousness and emotional and physical harm

suffered as a result of indecently dealing with the 14 year old female victim. For all 4-

relationship types, the scenarios depicted a camping situation where the child sustained

minor injuries and whilst tending to them, the perpetrator indecently dealt with the