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Date Rape: A Hidden Crime

Laura Russo

Despite an increasing awareness of the problem of sexual violence, there is still reluctance in some quarters for date rape to be considered criminal or even unacceptable behaviour. This is due partly to the hidden nature of the crime and the complicated issue of sexual consent. Numerous Australian women have experienced date rape. This paper outlines the main issues underlying date rape. Because of low-reporting, it is difficult to establish an accurate measure of the extent of the problem, thus reducing the possibility of identifying appropriate responses for prevention and for treatment of victims and perpetrators. Victims who do not recognise forced sex as unacceptable are unlikely to seek help, despite the potential impact of date rape being just as severe and traumatic as other types of rape. This paper discusses prevention measures that range from a change in the formulation of Rohypnol, which has been misused as a "date rape drug", through to a description of school and community activities concerned with the prevention of violence.

Adam Graycar
 Director

Date rape is a controversial and ambiguous crime. There has been much debate regarding the definition, prevalence, and importance of date rape in the past twenty years. This uncertainty is evident in the attitudes of date rape victims/survivors and offenders, of professionals in the criminal justice system, and in the wider community. Rape in marriage was only criminalised in the 1970s. This is a reflection of the tolerance in our society towards rape in intimate relationships. Very few cases of date or marital rape are prosecuted in court.

This paper provides an overview of date rape, including what is known of its incidence in Australia, factors that contribute to its occurrence, why it is a hidden crime, its impact on victims, and responses to it, including prevention strategies. The paper also aims to increase the level of understanding of complex issues such as sexual consent and the underlying causes of sexual violence such as prevailing attitudes about sexuality and gender roles.

What is Date Rape?

The term "rape" has (largely) been replaced in Australian legal terminology with the term "sexual assault". Sexual assault includes any sexual activity carried out against the will of the victim through the use of violence, coercion or intimidation, even if it did not end in penetration (ABS 1996). Sexual assault is a criminal offence.

Date rape is a type of sexual assault where the victim and the offender are in, or have been in, some form of personal social relationship, ranging from a first date to an established relationship. Date rape may be easily recognised as "rape", or it may involve coercive sex that has left the victim feeling confused and traumatised. Victims of date rape often experience emotional but not physi-

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cal injury (Bechofer and Parrot 1991). Date rape is not a legal term, and is sometimes referred to as “relationship rape” in the Australian literature.

Measuring the Incidence of Date Rape

It is difficult to accurately estimate the incidence of date rape, which as other forms of acquaintance rape, is a very much under-reported crime. Some indication of the extent of date rape in Australia can be found in sexual assault statistics that specify the relationship between the victim and the offender. The most recent official sexual assault statistics available include police records published in *Recorded Crime, Australia* (ABS 1999b), the results of national crime victim surveys published as *Crime and Safety Australia* (ABS 1999a) and *Women’s Safety Australia, 1996* (ABS 1996).

There are, however, some limitations with the available statistics. Police statistics in *Recorded Crime* underestimate the incidence of sexual assault. According to the recent *Crime and Safety Survey*, only about 30 per cent of female sexual assault victims in 1998 reported the incident to the police (ABS 1999a). Moreover, crimes that are reported to the police are only officially recorded if police believe enough evidence exists to support the claim (David, Cook and Grant, forthcoming). National crime victim surveys generally provide a higher (and more accurate) measure of the incidence of sexual assault, as they are based on questionnaires sent to thousands of households around Australia, and include both reported and unreported crimes.

Unlike *Recorded Crime* and the *Crime and Safety Survey*, the *Women’s Safety Survey*, includes the category “boyfriend/date” in its estimate of the incidence of sexual assault. Here, sexual assault by a boyfriend or a date

Table 1: Australian Female Victims of Sexual Assault by Relationship to Offender, in the 12 Months Previous to 1996 survey, and Since Age 15

| Relationship | In Past 12 Months ^(a) | | Since Age 15 ^(b) | |
|--------------------------------|----------------------------------|--------------|-----------------------------|--------------|
| | Number | % | Number | % |
| Known to Victim | | | | |
| Current Partner ^(c) | 12 400 | 8.7 | 37 300 | 4.8 |
| Previous Partner | 16 500 | 11.5 | 176 500 | 22.8 |
| Boyfriend/Date | 23 800 | 16.6 | 215 500 | 27.8 |
| Other Known Man | 44 400 | 31.1 | 259 400 | 33.5 |
| Total | 97 100 | 67.9 | 688 700 | 89 |
| Unknown to Victim | 45 800 | 32.1 | 85 400 | 11.0 |
| Total | 142 900 | 100.0 | 774 100 | 100.0 |

(a) If a woman experienced sexual assault by more than one other known man/woman she was only counted once in the total; includes only victims over the age of 18.

(b) Total excludes women whose last incident occurred more than 20 years ago.

(c) Includes married and defacto relationships; excludes boyfriend/date

Source: Adapted from *Women’s Safety, Australia* (ABS 1996).

represents 16.6 per cent of all sexual assaults, a total of 23,800 incidents in the 12 months prior to the survey (see Table 1). This finding is close to a 1992 national survey on sexual assault (Easteal 1993), which found that 13 per cent of sexual assaults were committed by a boyfriend or a date.

However, there are several reasons why the *Women’s Safety Survey* may also underestimate the actual extent of date rape. These are:

- responses in crime victim surveys are based on the participant’s perception that they have been the victim of a crime, yet date rape is often not recognised as a crime;
- male victims are not included; and
- figures for the previous 12 months (Table 1) do not include victims under the age of 18, yet young people aged between 15 and 19 years have been identified as representing the highest risk group for sexual assault (ABS 1999b).

The *Women’s Safety Survey* was a one-off survey, and is not likely to be repeated for some years. Consequently, it will not be possible to estimate the incidence of date rape in Australia in the future, unless a specific national research project is undertaken, or the periodic *Crime and Safety Survey* incorporates the category “boyfriend/girlfriend /date” to

describe the relationship between offender and victim.

Explaining Date Rape

Rape Myths

Common understandings of rape and sexual assault are informed by widely accepted cultural myths, which also influence legal processes and institutions (Bechofer and Parrot 1991). Rape myths are false beliefs about rape and sexuality that disadvantage women and are incongruent with the experience of people who have been raped. An understanding of the issues relating to sexual consent highlights the link between traditional sex-role stereotypes, the occurrence of date rape, and date rape not being recognised as unacceptable or potentially criminal behaviour.

Sexual Consent and Coercion

The issue of sexual consent is central to the problem of date rape. Sex forced on a date or partner who has not consented clearly constitutes rape. However, there is a reluctance in our society to accept that sexual consent can be denied within relationships. This is partly because consent is not always communicated clearly, and because consent is sometimes wrongly assumed for a range of reasons, including an adherence to rape myths. The literature

stresses the importance of clear communication of sexual consent to overcome ambiguous messages (Pineau 1989).

The normalisation of sexual coercion in intimate relationships is one of the main reasons date rape is not recognised as a serious problem. Sexual consent obtained through physically violent coercion can clearly be seen as rape, whereas verbal or emotional coercion can result in a multitude of situations which may be difficult to categorise as “rape” or “not-rape”, but may be traumatic for the person being coerced. Research has shown that young women in particular are inclined to perceive sexual coercion in dating or romantic situations as acceptable behaviour. Moreover, a significant proportion of young men in the United States have admitted that “they would force sexual intercourse if they knew they would not be caught”, yet a substantial minority admit to having committed sexual violence (Bateman 1991).

Date Rape Drugs

Drugs have been used to facilitate sexual assault in Australia and abroad. Offenders sometimes covertly spike their victim’s drink in order to incapacitate them, typically at a party or a bar. Drugs misused in this way include prescription drugs such as Flunitrazepam (Rohypnol), as well as illegal drugs such as gamma-hydroxybutyrate (GHB), a steroid alternative for body-builders (International Association of Chiefs of Police (IACP) 1999). Rohypnol is prescribed for insomnia in Australia, and in response to its misuse as a date rape drug, the pharmaceutical company Roche recently changed its formulation. Its availability and tablet strength have been reduced, and it now releases a bright blue dye in liquid, with the aim of making it more difficult for potential date rape offenders to abuse. However, generic versions of the drug which do not contain blue dye are still avail-

able. Research in the United States points to a range of date rape drugs, and there is evidence to suggest other drugs besides Rohypnol and GHB are used in Australia to facilitate sexual assault (McKey 2000).

The extent of date rape drug use in Australia is presently unknown. Date rape drugs are a fairly recent phenomenon in Australia, and data collection only began in 1998, so figures are not yet available (McKey 2000). Furthermore, date rape drugs commonly result in a loss of consciousness and memory, so victims often do not report the crime. For this reason, investigation and prosecution of drug-facilitated sexual assault cases is difficult as identification of suspects and details of the attack are difficult to establish (IACP 1999).

The Role of Alcohol

Alcohol is a widely used social stimulant that is sometimes consumed in the hope it will enhance people’s sexual encounters. Research has shown a high correlation between the use of alcohol and sexual assault, including acquaintance rape. However this does not indicate a causal link (Richardson and Hammock 1991). Alcohol can cloud judgement during a sexual encounter, reducing the ability for the victim to resist unwanted sexual advances, and is sometimes used as an excuse to justify sexually manipulative behaviour (Richardson and Hammock 1991).

The impact of rape can be devastating to a victim. It may be even more destructive and humiliating when she/he has lost the ability to offer resistance, for example if under the influence of drugs or alcohol (IACP 1999). Legislative reform has led to the Victorian *Crimes (Rape) Act 1991* expressly stating that there is no “free agreement”, or consent, if the victim was asleep or unconscious (including through intoxication) during a sexual assault (McSherry 1998). In other states,

judicial rulings that sexual assault is less damaging to the victim if she/he is unconscious at the time of the attack have “quite properly” been overturned on appeal (Warner 1998). An Australian study found that one of the reasons for non-disclosure and a reluctance to seek help was self-blame by date rape victims who had been drinking (Easteal 1994).

The Impact of Date Rape

The IACP has stated that “Except for homicide, rape is the most serious violation of a person’s body because it deprives the victim of both physical and emotional privacy and autonomy” (IACP 1999). Contrary to popular belief, the vast majority of sexual assaults are not committed with a weapon and do not result in physical injury. Most victims experience a range of serious and long lasting effects including emotional, psychological, financial, educational, and vocational repercussions (David, Cook and Grant, forthcoming). Victims may also be at risk of unwanted pregnancy and sexually transmitted diseases. Some of the emotional problems resulting from sexual assault include anxiety, depression, relationship and sexual difficulties, substance abuse, eating disorders and sleep disturbances (Bechofer and Parrot 1991). The stigma associated with being a victim of sexual assault in our society, and the disbelief of family or friends that the incident occurred are other problems victims face, potentially hindering their recovery (Easteal 1994).

Research suggests that sexual assault by an acquaintance, such as date rape, can be just as traumatic as sexual assault by a stranger, and may be more traumatic because it also involves a breach of trust (Frazier and Seales 1997). Another problem specific to date rape is confusion over whether sexual coercion is acceptable behaviour and a failure to define the incident as rape or

sexual assault. This often leads to self-blame by the victim and a delay in seeking treatment, which can also impede recovery (Schwartz and Legget 1999).

Responses to Date Rape

Date Rape and the Criminal Justice System

There is little specific reference in the current literature to the response of the Australian criminal justice system to date rape *per se*, probably due to the small number of such cases that are reported to police or end up in court. However, much attention has been directed towards a tendency within our legal system to focus on the rights of sexual assault offenders over those of victims, and in particular for stranger rape to be viewed as more serious and more plausible than acquaintance rape (Graycar and Morgan 1990).

Police Response

The traditional police response to sexual assault in Australia included sometimes insensitive, inappropriate, or inadequate treatment of victims. Efforts have been made in most states to address these issues, including the introduction of officer education programs, and specialised units with trained staff to assist victims (David, Cook and Grant, forthcoming). Despite some improvements in the police response to sexual assault, victims are still often reluctant to report to the police, particularly those victims who are acquainted with the offender. Apart from the failure by victims to recognise date rape as a crime, other reasons for not reporting include a reluctance to have the offender arrested, fear of retribution by the offender, shame, and a belief the police could/would not help (ABS 1996; ABS 1999a).

Judicial Response and Legislative Changes

In the past three decades, the unsatisfactory treatment of

victims in rape trials has received much attention. Law reforms have now been introduced to achieve a better balance between the rights of the sexual assault victim and the accused, with varying degrees of success, often dependent upon the discretion of individual judges (Easteal 1998).

One aspect of sexual assault legislation that has been subject to reform is the issue of consent. Consent is pivotal to the legal definition of sexual assault: it signifies the difference between sex and sexual assault. However, determining consent is problematic: in some states a rape conviction requires proof that the alleged victim did not consent. Whereas in others, it must *also* be proven that the alleged offender intended to have sexual intercourse without the consent of the other person, or was reckless in determining their consent (McSherry 1998). A fundamental problem regarding the lack of recognition of date rape as a crime is that it does not usually involve clear physical injury, and rape trials still focus on the prosecution proving lack of consent through physical resistance, despite law reform to the contrary (McSherry 1998).

Rates of Attrition and Conviction

As noted above, sexual assault is a considerably under-reported crime in Australia (ABS 1999a). Only a very small proportion of sexual assault cases that *are* reported to the police (particularly those involving intimates) result in the offender being prosecuted (David, Cook and Grant, forthcoming). Reasons for such high rates of attrition include the case being dropped or the charge reduced due to a perceived lack of evidence (particularly if no injuries are sustained, as is often the case in date rape); or the case going to court but the defendant being found not guilty. It is not possible to establish the national rate of attrition for sexual assault due to limitations of the ABS statistics. However, New South Wales

figures show that of all sexual assaults recorded by the police in 1996-1997, only 5 per cent resulted in a guilty verdict (David, Cook and Grant, forthcoming). In effect, "this means sex-offenders can expect a good measure of legal impunity and most victims expect to remain unprotected" (Carmody and Carrington 1999). It is also worth noting that contrary to popular belief, there is no evidence of there being more false reports of rape than of any other crime (Graycar and Morgan 1990).

Treatment: Rape Crisis Centres

Victims of date rape are less likely to classify their experience as "rape" than those raped by a stranger, and they are also less likely to seek professional help. For those who do seek help, rape crisis centres play an important role in providing counselling, information, and support. Rape crisis centres have been established in major Australian centres over the past twenty years, in response to efforts of the women's movement for sexual violence to be recognised as a "public" rather than "private" matter. Rape crisis centres operate from a philosophy that acknowledges the existing "social context which condones, even encourages, male violence against females" (Daws et al. 1995). It has been noted, however, that young people in particular have a very limited knowledge of support services, and few services for male victims of sexual assault are available (Daws et al. 1995).

Prevention Strategies

Preventing sexual assault is very difficult. However, there are strategies with the potential to address some of the problems of date rape. In Australia, sexual assault prevention strategies have been implemented but not rigorously evaluated, while programs that are successful in other countries have been identified here, but not put into practice (Carmody and Carrington 1999). Prevention strategies in Australia

include public awareness campaigns and educational programs aimed at students. Unfortunately, public awareness campaigns have not been thoroughly evaluated, so their preventative impact is unknown.

In a national survey conducted in 1995, Australian education departments reported the inclusion of educational programs in their curricula to raise students' awareness of human relationship issues including sexual violence (Daws et al. 1995). Studies have shown that a disturbingly high level of teenage boys condone sexual violence, reinforcing the need for sexual violence prevention education in secondary schools (Bateman 1991). Education programs aimed at tertiary students are also considered important. The prevalence of date rape amongst university students has been widely documented in the United States, and research in Australia and New Zealand suggests similar levels of sexually coercive behaviour (Patton and Mannison 1995). However, the difficulty of changing beliefs about sexual relationships that are already deeply ingrained must be recognised (Carmody and Carrington 1999). Another prevention strategy in Australia is based on re-education programs for violent men. It has been noted, however, that these have focused on physically and not sexually violent offenders (Carmody and Carrington 1999).

It is widely recognised that "best practice" sexual assault prevention programs have a philosophical basis that recognises the link between gender and violence, and aim to destabilise rape myths (Daws et al. 1995). They also aim to educate young people to set up relationship models built on equality, mutual respect and caring (Bateman 1991). Concern has been expressed that some prevention strategies have shifted the responsibility for avoiding sexual assault onto the victim, by advis-

ing women how to change their behaviour to avoid being sexually assaulted. Exercising caution may be common sense, but the importance of avoiding a "blame the victim" attitude has been repeatedly emphasised. Particular care must also be taken to ensure programs are of the appropriate length, address drug and alcohol issues, are properly evaluated, and take into consideration the diversity of backgrounds of victims.

A prevention program that revealed both the successes and the limitations of addressing adolescent dating violence is the Safe Dates Project. The Safe Dates Project was implemented in a United States rural community in 1995, and consisted of school and community activities aimed at the prevention of psychological, sexual and physical dating violence amongst high school students (Foshee et al. 1998). Prevention activities addressed gender-stereotyping, norms associated with partner violence, conflict management skills, beliefs about the need for help, and awareness of services. A one-month follow-up of participants found a significant positive change in attitudes towards dating violence, as well as a considerable decrease in perpetration of sexual violence. Help-seeking by victims and perpetrators also increased, although it was noted that those seeking help were still in a minority (Foshee et al. 1998).

A one-year follow-up of the Safe Dates Project revealed that positive changes in attitudes towards dating violence were maintained, but that short-term behavioural effects had disappeared (Foshee et al., in press). This reveals the difficulty of effecting long-term changes in behaviour with exposure to only one prevention program. It is important to conduct follow-up prevention programs to maintain behavioural changes. For instance, positive effects have been noted up to six years after the introduction of adolescent sub-

stance abuse programs where follow-up programs had been included (Foshee et al., in press).

Conclusion

This paper has revealed the complexity of date rape: it is difficult to define, to measure, and to prevent. The main problems with date rape centre around the complicated issue of consent, and the potentially traumatic consequences of forced/coercive sex on individuals, predominantly (although not exclusively) young women. The extent of date rape in Australia is currently very difficult to estimate, and will remain hidden unless appropriate changes are made in the collection of sexual assault statistics. The underlying causes of sexual violence and the inadequate response of the criminal justice system have been linked to prevailing attitudes about sexuality and gender roles that disadvantage women. Prevention measures should, therefore, be directed primarily towards young men and women during adolescence, when they begin having intimate relationships.

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