

which sexual assault law reform has failed to curtail defence counsel strategies which are designed to undermine the credibility of complainants and failed to educate the judiciary about the dangers of reliance on myth and stereotype to inform issues of admissibility: Kealley, L. and Killey, C., 'We're Going to Light the Bloody Thing Ourselves'; Taylor, S., 'Understanding the Impact of the Legal Process on the Sexual Assault Victim'; and Eastea, P., 'A Masculocentric Reality: The Limits of Law Reform and Choices for the Future'.

21. La Free, F., Reskin B. and Visser, C.A., 'Jurors' Responses to Victims' Behavior and Legal Issues in Sexual Assault Trials', (1985) 32 *Social Problems* 389 at 400; cited in *R v Seaboyer* (1991) 83 DLR (4th) 193 at 216, per L'Heureux-Dube J.
22. La Free, F. and others, above, p.397; cited in *R v Seaboyer* (1991) 83 DLR (4th) 193 at 216, per L'Heureux-Dube J.
23. Catton, K., 'Evidence Regarding the Prior Sexual History of an Alleged

Rape Victim—Its Effect on the Perceived Guilt of the Accused', (1975) 33 *University of Toronto Faculty Law Review* 165 at 173; cited in *R v Seaboyer* (1991) 83 DLR (4th) 193 at 216, per L'Heureux-Dube J.

24. *R v Osolin* at 522, per Cory J. The notation in question indicated that the complainant was concerned that there may have been some conduct on her part that had led the accused to believe she consented. However, at trial, there had been no dispute that the complainant, a 17-year-old, had been abducted by the accused and a companion, tied up, raped and then found naked and hysterical on a highway at 3.30 a.m. in the morning: *R v Osolin* at 574 per McLachlin J.
25. *R v Seaboyer* at 227, per L'Heureux-Dube J.
26. *R v Osolin* at 500, per L'Heureux-Dube J.
27. *R v Osolin* at 501, per L'Heureux-Dube J.

LEGAL STUDIES

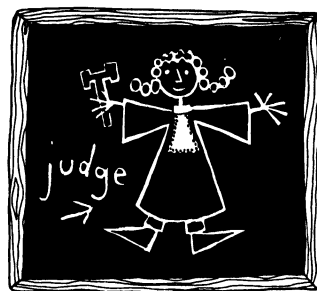
The suggestions for class work and discussions below are based on the article 'Contempt or confidentiality' by Annie Cossins, with additional text by Patricia Eastea and Angela Jones published on p.223 of this issue.

Questions

1. What would be the implications of counsellors not being able to provide guarantees of confidentiality to victims of sexual assault for their counselling sessions?
2. What similarities does the admission of a victim's sexual history have to admission of counselling notes? What can we learn from the rape shield legislation when looking at law reform that limits admission of counselling records?
3. What happened to the Canberra Rape Crisis counsellor? How does Angela Jones believe that the law conflicts with the Service's commitment?
4. What are the limitations of the recent New South Wales Evidence Amendment Bill in dealing with rape crisis counselling notes? What problems (include a discussion of the shifting burden) are associated with the 'judicial discretion' type of option that is outlined in Annie Cossins' article?
5. Explain the connection between rape mythology and the problems that Annie Cossins describes as possible outcomes with a judicial discretion model?
6. What are some of the rape myths which contribute to survivors feeling shame about their experience?

7. Why is counselling vitally important for a survivor of sexual assault and why is confidentiality of the process particularly important?

8. What is some of the damaging (to the victim) information that could be extracted from counsellors records?



9. What model of law reform does Annie Cossins present as an alternative to judicial discretion? What arguments would critics of her approach present.

10. Explain the connection that the article draws between rape mythology and the perception of counselling records as relevant. In other words, explain how 'commonsense' is derived from a gendered reality.

Discussion

The law cannot be seen in isolation from the society in which it is a part. Discuss how the issues involved in admitting counsellors' confidential records in the court and the issues involved in law reform dealing with this subject can be understood in the context of our society.

Look at these issues from both historical and current perspectives.

Research

Research sexual assault in Australia and law reform in the last 20 years. Specifically look at:

- The response that victims have received by the police and variation based on the relationship of the perpetrator to the victim.
- The response that victims have received in the court and variation based on the relationship of the perpetrator to the victim.
- The issues related to consent and how different jurisdictions have dealt with it.
- The issues related to admission of sexual history and the rape shield legislation.
- The issues related to delays in reporting the sexual assault and how different jurisdictions have dealt with it.

Debate

Confidential sexual assault counselling notes are relevant to a sexual assault trial and should therefore be admissible.

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