

**FREE AS A BIRD**  
**Legal Outcomes and Public Perceptions of Gendered Violence Alleged of**  
**National Rugby League Players: Two Case Studies**

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‘...Passion is a great distorter of logic, and you need to remind yourself of that in my job. The most frustrating thing is when I see people take sides on an issue because of personal feelings towards those involved rather than because of any objective analysis on the issue - I see that regularly.’

David Gallop, Former National Rugby League Chief Executive Officer, 2007

‘And as drunk as I was and as tired as I was, and passed out, I was trying to push him off me. But I couldn't, I didn't have the strength to push him off me...Why would you go forward [to the police]? You're about to be ridiculed and your name dragged through the mud and you will be made out to be something that you're not and that you asked for it.’

Charmyn Palavi to reporter Sarah Ferguson, ‘Code of Silence’, *Four Corners*, ABC, 2009

‘Unfortunately...it’s a matter of reflexes. The poor bloke may have the best intention, but he can’t be thinking about the Judiciary all the time – and accidents do happen’.

Alan Jones, Former Director of Football, South Sydney Rugby League, 1995

## **Abstract**

Research about gendered violence allegations brought against footballers is limited in Australia and largely focuses on media representations.

This research explores whether the legal outcomes of allegations brought against footballers align with public perceptions. A socio-legal case study approach combining doctrinal legal research with a social science survey was used to examine two cases of gendered violence brought against professional footballers in NSW.

Over half of survey respondents believe football players are treated differently to other citizens when charged with serious crimes. Yet the legal outcomes in these two cases are largely comparable to other sexual assault and domestic violence case outcomes in the legal system, raising further questions about media representations and public perceptions of footballers – as well as other celebrities – charged with gendered violence, and the effectiveness of the criminal justice system in managing these kinds of allegations more broadly.

## **Statement of Candidate**

I certify that the work in this thesis entitled, 'Free as a Bird: Legal Outcomes and Public Perceptions of Gendered Violence Alleged of National Rugby League Players: Two Case Studies,' has not previously been submitted for a degree, nor has it been submitted as part of requirements for a degree to any other university or institution other than Macquarie University.

I also certify that the thesis is an original piece of research and it has been written by me. Any help and assistance that I have received in my research work and the preparation of the thesis itself have been appropriately acknowledged.

I certify that all information sources and literature used are indicated in the thesis.

In addition, Macquarie University Ethics Review Committee approved the research presented in this thesis, reference number 5201500365, on 14 July 2015.

<Signature>

Frances Cole, Student Number 41163125, 30 October 2015

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For Len, with love.

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### ***Researcher's Note***

It is acknowledged by the researcher that both domestic violence and sexual assault are criminal offences also perpetrated against men. However, women are primarily affected by both these crimes: women are the complainants in 85 per cent of incidents of sexual assault reported to police.<sup>1</sup> The 2012 ABS Personal Safety Survey reported that 51,800 men experienced intimate partner violence in the previous 12 months, compared to 132,500 women.<sup>2</sup> This research has therefore focused on violence of these types perpetrated against women.

It should also be noted that the term, 'victim,' although widely used in legal discourse to describe a person directly affected by crime, is a controversial term in feminist analyses of sexual assault and domestic violence. Therefore, unless directly quoting a source or a known term (e.g. 'victim blaming'), the term, 'complainant,' is used as an alternative throughout.

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<sup>1</sup> Australian Bureau of Statistics, *Reports of sexual assault increase, most other crimes down* (Media Release, 26 June 2014) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4510.0Media+Release12013>>.

<sup>2</sup> Australian Bureau of Statistics, *4906.0 Personal Safety Survey* (11 December 2013) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0/>>.

## Introduction

In July 2015, yet another high profile football scandal unfolded: this time in relation to poor spectator treatment of an Aboriginal Australian Football League (AFL) player during play. While the debate about whether crowd behaviour constitutes racism rages in the media, a sign appears outside a Brisbane café. A photo of the sign rapidly spreads through social media. 'How about booing the rapey footballers instead?' it reads<sup>3</sup>.

There is no question gendered violence allegations made of footballers have garnered significant media attention over the past decade. In 2004, allegations of abhorrent sexual assault perpetrated by professional footballers hit the press. That year, the Australian Broadcasting Corporation (ABC) aired a documentary using the *Four Corners* flagship series called 'Fair Game', exploring recent allegations of rape made by young women about separate incidents in regional areas and major cities involving two football codes and three clubs. Reporter Ticky Fullerton spoke of a long history of sexual assault allegations and rumours about footballers, stating that, 'in the past 20 years not one of the cases of the alleged rape in Australian Football League (AFL) and rugby league has led to successful prosecution'<sup>4</sup>. Mewett and Toffoletti, writing about the 2004 allegations, reported, 'women involved in the care of rape victims claim that sexual assaults by sportsmen have occurred historically, but with little media fanfare.'<sup>5</sup>

The *Four Corners* story undertook detailed investigation of media reports from late February of the same year - 'what many see as a pervasively anti-

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<sup>3</sup> Unknown, *Facebook Page: Catherine Deveny* (31 July 2015) Facebook <<https://www.facebook.com/catherinedeveny/photos/a.378846627295.158127.168359682295/10153509097672296/>>.

<sup>4</sup> Australian Broadcasting Corporation, 'Fair Game,' *Four Corners*, 3 December 2004 (Ticky Fullerton) <<http://www.abc.net.au/4corners/content/2004/s1142725.htm>>.

<sup>5</sup> Peter Mewett and Kim Toffoletti, 'Rogue Men and Predatory Women: Female Fans' Perceptions of Australian Footballers' Sexual Conduct' (2008) 43 *International Review for the Sociology of Sport* 165, 166.



female culture in sections of the league<sup>6</sup>. In those reports, player behaviour involved allegations of sexual assault, 'stories of prostitutes being hired for group sex, and "bonus" points being given if women are shared among mates. The practice is known as "roasting", a reference to meat being stuffed<sup>7</sup>. One Canterbury player at the time was quoted as saying, 'Some of the boys love a "bun"...gang banging is nothing new for our club or the rugby league<sup>8</sup>. While remaining equivocal on the subject of group sex more broadly, media reporting focused on the deprecatory and objectifying language used to describe sex acts and the women who participated in them, raising serious questions about a culture of misogyny across football codes.

Public response was divided. Journalist and commentator Anne Summers reported:

'In Coffs Harbour, a sign saying "Charge the Dirty Dogs" was hung on an overpass over a local road. And a young woman interviewed in the street by reporters said: "If you speak to her [the victim], tell her she's a legend. Tell her Coffs chicks support her"<sup>9</sup>

Academic Sally Kift wrote that at the time the allegations surfaced through the media 'all the old stereotypes and myths were trotted out...to shift the focus on to complainants,' with the, 'implication that the players were the real victims and the real offenders the predatory, vengeful women/groupies'<sup>10</sup>. From the outset, therefore, there was divergence in media representations and public perceptions of the allegations: those supportive of the complainants, and those focusing on their culpability. Public discussions turned to whether football codes were allowing a culture of disrespect of women to thrive among players. Both the AFL and the

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<sup>6</sup> Jacqueline Magnay, 'Rugby rocked by fresh rape claims', *The Age* (Melbourne), 29 February 2004  
<<http://www.theage.com.au/articles/2004/02/28/1077677017509.html>>.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Anne Summers, 'No Rape Charges Against Canterbury Bulldogs,' on Anne Summers, [annesummers.com.au](http://www.annesummers.com.au) (5 May 2004)  
<<http://www.annesummers.com.au/2004/05/no-rape-charges-against-canterbury-bulldogs/>>.

<sup>10</sup> Sally Kift, 'Sport and the law : sex and the team player : when a team becomes a gang' (2005) 30(3) *Alternative Law Journal* 136, 145.

National Rugby League (NRL) scrambled to respond with new policies on sexual assault and penalties for player misconduct. As police investigations continued, the NRL commissioned research led by former journalist and feminist academic Catharine Lumby to investigate, 'player attitudes and behaviours to women and the role and status of women across the game'.<sup>11</sup>

Over the next decade the allegations kept coming. The year of 2009 was a particularly troubling year with a series of serious gendered violence allegations against women surfacing. At the NRL Manly Sea Eagles season launch, Manly player Anthony Watmough was alleged to have approached a father and daughter attending, denigrated the appearance of the young woman, and punched the father. Later that same day and after the event, Manly star player Brett Stewart was involved in an incident with a young woman outside his apartment block and was consequently charged with indecent assault<sup>12</sup>. In May of that same year, a young New Zealand woman came forward to tell of her ongoing psychological distress following an incident in Christchurch in 2002 where six members of the Cronulla Sharks NRL team had sex with her while other players and team staff looked on. While *Four Corners* did not allege sexual assault in this incident, reporter Sarah Ferguson said, '...a woman involved in degrading group sex can still be traumatised whether she consents or not'.<sup>13</sup> The next month, former Cronulla Sharks NRL player Greg Bird was sentenced to gaol following an incident where his partner was glassed in the face, requiring hospital treatment.

In 2015, allegations against footballers and violence against women continue to surface. Majak Daw, a North Melbourne AFL player, is awaiting trial after pleading not guilty to three charges of rape.<sup>14</sup> Nick Stevens, a former AFL

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<sup>11</sup> Catherine Lumby, 'Playing by the Rules - Off the Field' (2005) 28(1) *UNSW Law Journal* 313.

<sup>12</sup> Andrew Webster, 'Inside the Manly season launch party that went wrong', *The Daily Telegraph* (Sydney), 11 March 2009 <<http://www.dailytelegraph.com.au/inside-the-party-that-went-wrong/story-e6freuy9-1111119092858>>.

<sup>13</sup> Australian Broadcasting Corporation, 'Code of Silence,' *Four Corners*, 11 May 2009 (Sarah Ferguson).

<sup>14</sup> Jane Lee, 'Majak Daw committed to stand trial over alleged rape', *The Age* (Online), 16 December 2014 <<http://www.theage.com.au/afl/afl->

star, was found guilty of assaulting his girlfriend and sentenced to eight months gaol earlier in the year (he is currently on bail, after appealing the sentence).<sup>15</sup> Paul Mulvihill, former rugby union and league player, is currently appealing a 29 year sentence after being found guilty of the stabbing murder of lover Rachelle Yeo.<sup>16</sup> Rugby league player Matthew Lodge faces 25 years in an American gaol for a string of charges after allegedly stalking two women in New York.<sup>17</sup>

The gendered violence alleged of footballers has loomed large in the public consciousness since those first public allegations made the media in 2004. Anna Krien's 2014 book, *Night Games*, examined the 2010 allegations of a young woman who said she was forced to have sex with a number of men before being raped by another footballer, Justin Dyer (alias used by Krien). Krien follows Dyer's trial, while unpacking the long history of gendered assault allegations made against footballers. Krien argues that both men and women are victims of the culture of football, where a particular kind of masculinity is respected, women are not, and the entitlement awarded players allows them to behave however they want.<sup>18</sup>

In feminist circles, discussions circulate about how football creates a culture where disrespect for women and sexual assault is normalised. Writing about Krien's book and the protagonist Justin Dyer, journalist Melissa Welham states:

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news/majak-daw-committed-to-stand-trial-over-alleged-rape-20141216-1284pl.html>.

<sup>15</sup> Adam Cooper, 'Former footballer Nick Stevens jailed for eight months for assaulting ex-girlfriend', *The Age* (Online), 25 March 2015 <<http://www.theage.com.au/victoria/former-footballer-nick-stevens-jailed-for-eight-months-for-assaulting-exgirlfriend-20150325-1m7422.html>>.

<sup>16</sup> Louise Hall, 'Paul Darren Mulvihill appealing conviction and sentence for domestic violence murder of Rachelle Yeo,' *Sydney Morning Herald* 16 August 2015 <<http://www.smh.com.au/nsw/mulvihill-appealing-conviction-and-sentence-for-domestic-violence-murder-of-rachelle-yeo-20150816-gj015g.html>>.

<sup>17</sup> Ellen Connolly, 'Matthew Lodge faces New York court, ordered to stay away from women he allegedly stalked', *Sydney Morning Herald* 2015 <<http://www.smh.com.au/rugby-league/wests-tigers/matthew-lodge-faces-new-york-court-ordered-to-stay-away-from-women-he-allegedly-stalked-20151021-gkf7aw.html>>.

<sup>18</sup> Anna Krien, *Night Games* (Black Inc, 2013).

‘The footballer involved in the case that Krien so closely followed was, eventually, found *not* guilty of rape. As many footballers have before him. And as many will after. But the question is: how do you change a culture that seems to regularly be involved in – if not create – problems like these?’<sup>19</sup>

Similarly, academic Deb Waterhouse-Watson writes:

‘...I do not suggest that footballers cannot be good role models, and some clearly are; however to claim moral superiority for the ‘overwhelming majority,’ of players is to deny that football could support the, ‘rape culture,’ that its discourses describe’.<sup>20</sup>

While it appears straightforward to assume the culture of football is causative in the gendered violence allegations that continue about football players, what is missing in all of these discussions is context. Australia has a serious problem with violence against women across all sectors of society. As at late October 2015, 75 women had been murdered in intimate partner violence in this country.<sup>21</sup> In the 2012 Australian Bureau of Statistics (ABS) Personal Safety Survey, 17 per cent of women over 18 identified they had experienced sexual assault since the age of 15, compared to 4 per cent of men. Of those women who were sexually assaulted, 88 per cent were assaulted by a perpetrator known to them<sup>22</sup>. The allegations made against footballers are noticeable because they are extensively reported when they occur – most gendered violence is invisible because it is under-reported to police and support services. According to the Australian component of the International Violence Against Women Survey, just 14 per cent of women who had been subjected to violence by an intimate partner and 16 per cent of women who experienced violence perpetrated by a man who was not an

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<sup>19</sup> Melissa Welham, *Win together. Lose together. F\*\*\* together? The pack mentality of professional football*. (20 June 2013) [www.mamamia.com.au](http://www.mamamia.com.au/news/rape-culture-and-football/) <<http://www.mamamia.com.au/news/rape-culture-and-football/>>.

<sup>20</sup> Deb Waterhouse-Watson, *Athletes, Sexual Assault, and "Trials by Media" : Narrative Immunity*, Routledge Research in Sport, Culture and Society (Taylor and Francis, 2013), 147.

<sup>21</sup> Destroy the Joint, *Counting the Dead Women* (27 October 2015) <[https://www.facebook.com/DestroyTheJoint/info/?tab=page\\_info](https://www.facebook.com/DestroyTheJoint/info/?tab=page_info)>.

<sup>22</sup> Statistics, above n 1.

intimate partner reported the incident to police.<sup>23</sup> Of all women who indicated they had experienced intimate partner violence, 84 per cent did not contact a specialised agency after the incident.<sup>24</sup> When gendered violence is reported in the media, it is usually because it involves significant harm (for example, homicide) or a celebrity.

That is not to say examination of allegations of gendered violence made against footballers should not be undertaken. Because these cases are publicly reported, they serve an important purpose in raising the profile of gendered violence, while also allowing exposure of the dominant masculine cultures in Australia and how they construct women. What is concerning though, is these cases, rather than viewed in their context as highlighting the significant levels of violence against women in this country generally, become celebrity cases that obscure the complex issues that underpin gendered violence against women in Australia. There is a real risk that without careful treatment, the 'rapey footballers' become part of the already extensive mythologies around rape and gendered violence that work to confound women reporting these allegations.

In this research I have explored the differences between public perceptions and legal outcomes in two gendered violence cases alleged of footballers. Using a case study approach, I have used socio-legal research methods to determine whether public perceptions and legal outcomes align in the two cases chosen. My analysis demonstrates that they do not. While there is a significant perception among the surveyed cohort that footballers are treated differently under the law when gendered violence allegations are made against them, the legal outcomes for the two case studies presented are largely comparable statistically to those charged with similar offences.

In Chapter 1, I have described my disciplinary approach. I have then situated the case studies in context by describing the historical development

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<sup>23</sup> Jenny Mouzos and Toni Makkai, 'Women's Experiences of Male Violence: Findings from the Australian Component of the International Violence Against Women Survey (IVAWS)' (Australian Institute of Criminology, 2004) 101.

<sup>24</sup> Ibid, 101.

of law in relation to gendered violence, and the current legal framework following law reform in Australia today. I have provided detail of statistics in terms of gendered violence and the criminal justice system, demonstrating the prevalence of these types of crimes in this country, and the small number of prosecutions that succeed.

In Chapter 2, I have explored the literature about gendered violence and footballers, starting with empirical literature, followed by qualitative analyses. I have demonstrated gaps and concerns within the existing literature – in particular, the focus on sports participation and off-field aggression, the lack of doctrinal legal research, and the lack of quantitative testing of theories posed in narrative research. The contextualisation of gendered violence alleged against footballers with gendered violence statistics more broadly is a particular omission in existing literature. I have proposed a research question using a case study approach to address some of these gaps, and identified my hypotheses.

In the Chapter 3 I have outlined my methodology for undertaking this research. In particular I have demonstrated how I combined doctrinal legal research in considering the judgments, sentencing comments, and directions to the jury in the two cases, with the design of a survey to test public perceptions of the two cases chosen.

In Chapters 4 and 5 I have described the findings of both elements of research. This included describing the dissonance between the legal outcomes delivered and the public perceptions tested.

In Chapter 6 I have undertaken discussion of the findings, explored how previous research connects with my findings, and identified points of note demonstrated by this research.

In the last chapter, I have drawn conclusions based on my research and identified opportunities for myself, as well as future researchers.

## Chapter 1: Background

The discipline used to undertake this particular piece of research is a sub-discipline of law known as socio-legal studies. Griffith University describes socio-legal scholarship as having, ‘its theoretical and methodological base in the social sciences. It seeks to understand law as a social phenomenon...its methodology is predominately empirical and social-theoretical’.<sup>25</sup>

Case studies are a common tool of socio-legal researchers.

Critical to the consideration of case studies is the understanding of the context in which the case study is sited. In this chapter I will provide a historical background to how sexual assault and domestic assault have been traditionally considered and constructed within the common and criminal law, as well as criticisms from a feminist legal perspective of the treatment of women over time when they report these crimes to the criminal justice system. I will provide an overview of the existing legal framework for addressing sexual assault and domestic violence within Australia accompanied by statistics and commentary on the efficacy of the criminal justice system’s response to sexual assault and domestic violence in this country. This chapter, therefore, is a contextual lens for the viewing of the two case studies.

The use of a case study as a research method aims to understand a particular phenomenon, ‘in depth, and in its natural setting, recognising its *complexity and its context*’,<sup>26</sup> (emphasis added). It would be remiss of a socio-legal scholar to present case studies about gendered violence without describing the broader social, cultural, historical and legal framework in which they sit.

### ***Feminist Jurisprudence and its Impact on the Law***

Feminist thinkers have been interested in the law and its impact on women since the 1700s, where writers like Mary Wollstonecroft called for greater

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<sup>25</sup> Griffith University, *Socio-Legal Research Centre* Online <<https://www.griffith.edu.au/criminology-law/socio-legal-research-centre>>.

<sup>26</sup> Keith F Punch, *Introduction to Social Research: Quantitative and Qualitative Approaches* (SAGE first published 1998, 3<sup>rd</sup> ed) 120.

opportunity for women to reach their potential through education and loosening of existing social mores<sup>27</sup>.

Central to these considerations has been the traditional concept of 'public' and 'private' spheres. Smith (1974) explained:

‘The public sphere is the sphere in which ‘history’ is made. But the public sphere is the sphere of male activity. Domestic activity becomes relegated to the private sphere and is mediated to the public sphere by men who move between both. Women only have a place in the private sphere’.<sup>28</sup>

As Boyd (1996) highlighted however, the ‘line’ between the two spheres is an ideological construct and therefore continues to be contested<sup>29</sup>. Historically, the legal system has constructed the family, and events that occur within it, ‘as a zone of non-intervention,’<sup>30</sup> in the classic liberal tradition (despite the intervention of the state into family life through a range of activities including taxation and social security<sup>31</sup>). As a consequence, the law has been historically prejudicial towards women, particularly in areas that affect women most – domestic violence and sexual assault. In addition to this general prejudice, there has been further discrimination against sub-groups of women. For example, in *R v Harris*, Justice Starke, in dismissing an appeal by the prosecution for a harsher sentence for Mr Harris, a man who had raped two women in concert (one who he had solicited for sexual services, the other who he abducted), included the following in his decision:

‘...It seems to me that the crime when committed against prostitutes, at all events in the circumstances of this case, is not as heinous as when committed, say, on a happily married woman living in a flat in

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<sup>27</sup> Carol Smart, *Law, Crime and Sexuality* (SAGE Publications, 1995) 163.

<sup>28</sup> Dorothy Smith, 'Women, the Family, and Corporate Capitalism' (1975) 20 *Berkeley Journal of Sociology* 55, 57.

<sup>29</sup> Susan B. Boyd, 'Can law challenge the public/private divide? Women, work, and family. (Canada)' (1996) 15 *Windsor Yearbook of Access to Justice* 161, 168.

<sup>30</sup> Regina Graycar and Jenny Morgan, *The Hidden Gender of Law* (Federation Press, 2<sup>nd</sup> ed, 2002) 10.

<sup>31</sup> *Ibid* 12.



the absence of her husband when the miscreant breaks in and commits rape on her'.<sup>32</sup>

One of the most cited examples of how the criminal law has been historically prejudicial towards women is the historical protection for husbands from prosecution for marital rape, now removed from both Australian and English law doctrine. This protection had its origins in Sir Matthew Hale's *The History of the Pleas of the Crown*:

'The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract'.<sup>33</sup>

Historically of course, heterosexual rape is less an injury to the person but an infringement of property rights for the male to whom the woman belongs.<sup>34</sup> Graycar observed that while this has changed over time and rape is now considered injurious to women under criminal law, 'feminists have also recognised that it is an area where the law's own response to rape has itself further injured women'.<sup>35</sup>

Writing about the institution of the legal system, British socio-legal academic Carol Smart stated that, 'law is a reflection of male interests and values...law is part of the patriarchal state'.<sup>36</sup> Smart argued that the law is constantly constructing and reconstructing masculinity and femininity, contributing to, 'a common sense perception of difference which sustains the social and sexual practices feminism is attempting to challenge'.<sup>37</sup> Nicola Lacey, writing later in 1998, identified that the practice of criminal law in cases of sexual

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<sup>32</sup>R v Harris (unreported August 1981) (Starke J) quoted in Jocelyne A. Scutt, 'Judicial vision: Rape, prostitution and the 'chaste woman'' (1994) 17(4) *Women's Studies International Forum* 345.

<sup>33</sup> Sir Matthew Hale, *The History of the Pleas of the Crown* Vol 1 (1736) ch 58, 629 quoted in Wendy Larcombe and Mary Heath, 'Developing the common law and rewriting the history of rape in marriage in Australia: PGA v the queen' (2012) 34(4) *Sydney Law Review* 785.

<sup>34</sup> Nicola Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Hart Publishing, 1998) 106.

<sup>35</sup> Graycar and Morgan, above n 30, 343.

<sup>36</sup> Smart, above n 27, 72.

<sup>37</sup> Ibid 79.

assault has historically produced, 'a norm of adult heterosexual sexuality, and of penetrative sexual intercourse as the paradigm of normal sexual behaviour'.<sup>38</sup>

As feminist legal theory developed, writers like Smart have argued against the development of a feminist jurisprudence because it renews, 'legitimacy to the power of law to organise and regulate our lives'.<sup>39</sup> Other feminists, including Lacey, have disagreed, writing, 'what we need is not an abandonment (of the law)...but rather the development of more sophisticated understandings of legal practices, their strengths...and limitations'.<sup>40</sup> These debates have been ongoing since the 1970s. Cumulatively, this exploration of the impacts of the law on women, and women's ability to impact the law, created a groundswell that eventually delivered law reform in the areas of sexual assault and domestic violence.

### ***Gendered Violence and Law Reform***

While there has been significant law reform in Australia since the 1970s to attempt to address the law's traditional bias against women, feminist criticism continues of how the law (alongside other institutions) constructs women. Feminist scholars have continued to raise questions about the effectiveness of law reform to address personal harms most commonly experienced by women, including domestic violence and sexual assault. Therefore, any case study investigation into gendered violence allegations made against footballers would be negligent without considering the broader Australian context in terms of the prevalence of similar allegations and how comparable cases are managed when they are reported to the criminal justice system.

As highlighted in the Introduction, violence against women is an entrenched and serious problem both internationally and in Australia. One of the challenging issues confronting researchers, governments and reformers is that statistics relating to gendered violence do not provide a comprehensive

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<sup>38</sup> Lacey, above n 34, 103.

<sup>39</sup> Smart, above n 27.

<sup>40</sup> Lacey, above n 34, 180.

picture of the phenomenon. As identified previously, the majority of incidents are not reported to support services or to police.<sup>41</sup>

This means official estimates form the basis of shared understanding of prevalence of these crimes. The Australian Institute of Criminology (AIC) reported in 2007 that 60,000 sexual assaults were estimated to take place in Australia per annum, with less than a third reported to police. Those complaints made to police experienced high attrition rates, with less than a quarter (3,600) resulting in formal investigation. Of those cases that proceed to court, 1,800 people are convicted of sexual assault – just 10 per cent of the reports made to police.<sup>42</sup> Reasons for attrition are varied but usually relate to the unwillingness of the complainant to continue or a lack of evidence (Lea, Lanvers and Shaw 2003; Fitzgerald 2006; Daly and Bouhours 2010).

In the ABS 2012 Personal Safety Survey, 41 per cent of women aged over 18 reported they had experienced violence since the age of 15. In 83 per cent of these cases, the perpetrator was a man known to them, and in 50 per cent of the cases where the man was known, he was a current or former partner.<sup>43</sup> There were 187 domestic homicides recorded by police from 2010 to 2012. Of these homicides, the majority (109 cases, or 58 per cent) were classified as intimate partner homicides.<sup>44</sup> Stab wounds, followed by beatings, were the most common causes of death in domestic homicides.<sup>45</sup> Of those murdered in intimate partner homicides, 76 per cent were women, and 27 per cent were Indigenous.<sup>46</sup> Given that approximately two per cent of Australia's population aged 18 or over is Indigenous, Aboriginal Australians

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<sup>41</sup> Professor Donna Chung, 'Understanding the Statistics about Male Violence Against Women' (May 2013) 4.

<sup>42</sup> Australian Institute of Criminology, 'Guilty Outcomes in Reported Sexual Assault and Related Offence Incidents' (No 162, 18 December 2007).

<sup>43</sup> Chung, above n 41, 7-8.

<sup>44</sup> Australian Institute of Criminology, 'Homicide in Australia: 2010–11 to 2011–12' (Australian Institute of Criminology, 24 April 2015) <[http://www.aic.gov.au/publications/current%20series/mr/21-40/mr23/04\\_homicide-2010-12.html](http://www.aic.gov.au/publications/current%20series/mr/21-40/mr23/04_homicide-2010-12.html)>

<sup>45</sup> Ibid

<sup>46</sup> Ibid.

are over-represented in homicide statistics, including intimate partner homicides.<sup>47</sup>

In NSW during the 2000 calendar year, the Indigenous arrest rate exceeded the non-Indigenous arrest rate in every crime category.<sup>48</sup> In that year, arrest rates were highest for domestic violence assaults and break and enter.

Arrest rates of Indigenous Australians for murder were six times higher than for non-Indigenous offenders, and four times higher for sexual assault.<sup>49</sup>

As at 30 June 2014, Aboriginal and Torres Strait Islander prisoners accounted for 27 per cent of the total Australian prisoner population.<sup>50</sup>

These figures underline the significant disadvantage experienced by Aboriginal and Torres Strait Islander Australians.

Gendered violence has significant social and economic costs. The National Council to Reduce Violence Against Women estimated domestic and non-domestic violence against women and their children cost the Australian economy \$13.6 billion in 2009.<sup>51</sup> This figure takes into account the health, social, economic participation and financial costs of violence.

As mentioned previously there have been attempts at law reform in Australia to address the high attrition rate of sexual assault cases and to support complainants to feel more confident in bringing their issues to the criminal justice system. In 2004, then NSW Attorney General, Bob Debus, announced the establishment of the Criminal Justice Sexual Offence taskforce to examine alternate models for prosecution, possibilities for legislative and procedural change, and to identify potential for alternative supports for

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<sup>47</sup> Ibid.

<sup>48</sup> Joy Wundersitz, 'Indigenous Perpetrators of Violence: Prevalence and Risk Factors for Offending' (2010) 15.

<sup>49</sup> Ibid 16.

<sup>50</sup> Australian Bureau of Statistics, 'Prisoners in Australia 2014' (11 December 2014 2014)

<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2014~Main%20Features~Prisoner%20characteristics,%20Australia~4>>.

<sup>51</sup> Janet Phillips and Penny Vanderbroek, 'Domestic, Family and Sexual Violence in Australia: an overview of the issues' (Australian Government, 14 October 2014) 1.

complainants.<sup>52</sup> In 2008, amendments were made to the *Crimes Act 1900* (NSW) in an attempt to address low levels of reporting and conviction and the high levels of case attrition.<sup>53</sup> In 2010, the Australian Law Reform Commission released their final report into family violence, including sexual assault and domestic violence, in an attempt to address a complex range of legal issues associated with these types of crime. That same year, the Australian Government released the first version of the *National Strategy to Reduce Violence Against Women and their Children*.

### ***Effectiveness of Law Reform***

Despite efforts to date, criticism continues from both sexual assault survivors and feminist legal theorists about the effectiveness of law reform as the sole means to address the complexity of sexual assault issues. The criminal justice system continues to be the primary mechanism for responding to sex offences. As demonstrated, the system is not utilised by the vast majority of women who have experienced sexual violence, and when it is used, it is ineffective in securing successful prosecutions when compared to other offences. This is largely due to the nature of sex offences themselves, where the complainant is often the only witness to a crime that usually occurs in private, may involve delays in reporting, and the reliance of the judicature, prosecutors and juries on the credibility of the parties involved. Clark reports that despite these long years of law reform many of the:

‘key problems underlying prosecuting cases of sexual assault have not been addressed, including problems with the design of the legal system (particularly adversarial processes) for responding to the justice needs of the victim/survivors, as well as evidentiary issues that result from perpetrator strategies and power disparities that underlie

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<sup>52</sup> Criminal Justice Sexual Offences Taskforce, 'Responding to Sexual Assault - the Way Forward' (NSW Attorney-General's Department, 2005) vi.

<sup>53</sup> Ian Dobinson and Lesley Townsley, 'Sexual assault law reform in New South Wales: issues of consent and objective fault' (2008) 32(3) *Criminal Law Journal* 152.

sexual offending'.<sup>54</sup>

One of the other significant reasons law reform has not been effective is that 'feminists found...simply creating legal access could not work because of social and institutional resistance'.<sup>55</sup> This is borne out in multiple examples, including evidence of public, prosecutor and juror prejudice towards complainants in gendered violence cases (Dinos et al 2015; Perilloux, Duntley and Buss 2014; Grubb and Harrower 2008; Darwinkel, Powell and Tidmarsh 2014; Taylor 2007).

While there may be time lag issues, it is clear from the 2012 ABS Personal Safety Survey that law reform alone has not been successful in addressing violence against women in the Australian community. Even as the profile of domestic and family violence increases as a result of the work of campaigners like Australian of the Year, Rosie Batty, sexual and domestic violence incidents reported to police still continue to increase. In 2014, the ABS reported that there were around 20,000 sexual assault complaints recorded across the country by police in 2013, an increase of eight per cent on the previous year, and the highest number in the previous four years.<sup>56</sup> The same report identified that in NSW, 28,780 individuals made reports to police in relation to having experienced domestic or family violence. There were 800 individual incidents of sexual assault in family and domestic violence contexts reported to NSW police.<sup>57</sup> Given the known under-reporting of incidents to authorities, these statistics provide significant challenges for the criminal justice system, support services, policy makers and legislators.

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<sup>54</sup> Haley Clark, "'What is the justice system willing to offer?' Understanding sexual assault victim/survivors' criminal justice needs' (2010) (85) *Family Matters* 28.

<sup>55</sup> Aya Gruber, 'Neo-Feminist Assessment of Rape and Domestic Violence Law Reform, A Race, Gender, and Class at a Crossroads: A Survey of Their Intersection in Employment, Economics, and the Law' *Symposium Article* (2012) *The Journal of Gender Race and Justice* 590.

<sup>56</sup> Australian Bureau of Statistics, '4510.0 Recorded Crime - Victims Australia 2014' (22 July 2015) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4510.0~2014~Main%20Features~Sexual%20Assault~10>>.

<sup>57</sup> Ibid.

It is within this context that these two case studies, and allegations of gendered violence more broadly, must be considered.

## **Chapter 2: Literature Review**

The previous chapter provided contextual background demonstrating that Australia has a significant problem with violence against women generally, and despite significant law reform, the numbers of cases that progress to trial, and to a guilty verdict, are small when compared with other criminal offences. This chapter will explore the existing literature into links between football and the perpetration of off-field violence. The literature examined has predominately been authored in America, however I will also consider Australian research, including identification of disciplines used. Much of the existing literature attempts to develop arguments that hypermasculine sports like football create a predisposition among players to violence generally, and violence against women in particular. However, I will demonstrate this literature is unclear in linking gendered violence to athletes, despite the fact that much of the qualitative literature relies upon it to draw conclusions about allegations of gendered violence made against footballers.

I will also investigate Australian research by sociologists, gender specialists and communications academics into media representations of footballers and gendered violence. This research uses media and narrative analysis to demonstrate that media reports of these allegations work to deflect blame from the footballer and on to the complainant, while also reinforcing, 'rape mythologies', and traditional stereotypes of the parties involved. I will contrast this with research undertaken by criminologists which demonstrates that a large proportion of the population rely on media to inform their attitudes about crime – but believe the judiciary is too lenient in relation to crime. This research suggests that the power of the narratives in media reports of gendered violence alleged of footballers is not as powerful as the sociologists, gender specialists and communication academics suggest.

Following the scoping of the context of existing research in this area, I will identify research gaps for consideration by myself and future researchers,



outline my research question, and pose my hypotheses based on the literature to date and contextual information already provided.

### ***The evolution of literature regarding footballers and gendered violence***

The majority of research undertaken into footballers and gendered violence has emerged predominately from America, developing from feminist and 'new men's studies,' analyses of sports and sports participants in the late 1970s and 1980s. New thinking in feminist and men's studies within that era involved the critical examination and deconstruction of traditional ideas of masculinity. Australian sociologist R.W. Connell's theories of masculinity have been a crucial lens in the academic analysis of the behaviour of sportsmen both on and off-field in the disciplines of gender, media and cultural studies, sports sociology and socio-legal studies. Essentially, Connell argues that masculinities are multiple, socially constructed, and impacted by historical and social context. This mutable nature, therefore, produces the dynamics of domination and oppression between (and within) groups of men and women. Consequently 'hegemonic masculinity' – the primary masculinity occupying, 'the hegemonic position in a given pattern of gender relations...[is] always contestable'.<sup>58</sup>

For Connell, 'the present forms of sport are among the important ways in which the overall effect of gender inequality is achieved.'<sup>59</sup> It is unsurprising, then, that sporting culture, practices and participation grew as areas of interest for critical analysis by feminists, pro-feminists and intersectional academics. Australian sociologist Lois Bryson identified as early as 1987 the importance of feminist analyses of sport and sporting behaviours, for, 'if we are to understand the processes of our domination, we ignore sport at our peril'.<sup>60</sup> Hall highlighted the importance of this work in understanding power relationships and oppression, given that sport is 'historically produced, socially constructed, and culturally defined to serve the interests and needs

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<sup>58</sup> R W Connell, *Masculinities* (Polity Press, 1995) 76.

<sup>59</sup> Raewyn Connell, 'Supremacy and subversion – gender struggles in sport' (2012) 3(3) *Asia-Pacific Journal of Health, Sport and Physical Education* 177, 178.

<sup>60</sup> Lois Bryson, 'Sport and the maintenance of masculine hegemony' (1987) 10(4) *Women's Studies International Forum* 349.

of powerful groups in society...[it is a] cultural representation of social relations and...includes gender, class, and race relations'.<sup>61</sup>

From these early explorations, there have been ongoing attempts since the mid-1980s to determine the relationship between male dominated contact sports, like football, to off-field aggression perpetrated by players, particularly towards women. This means the literature has evolved in a particular way. Because of this history, it is essential the literature be examined to show its contradictory nature, and to highlight the risks of relying upon it in drawing inferences about footballers and gendered violence in an Australian context.

### ***Football as 'Rape Culture'***

Timothy Curry (1991) undertook analysis of conversations between American college athletes preparing for a football game in their locker room identifying a, 'traditional masculinity', excluding gay men, but that also, 'generally treated women as objects, encouraged sexist attitudes towards women, and, in its extreme, promoted rape culture'.<sup>62</sup> Michael A Messner and Donald F Sabo (1990, 1994) found similar themes in their 1994 work, *Sex, Violence and Power in Sports*, arguing, 'it is the way sports are organised to influence masculine identities and male peer groups that leads many male athletes to rape'<sup>63</sup>. In their analysis, locker room talk focusing on the objectification of women, male bonding, peer group influences, the historical exclusion of women from sport, and 'achievement' models of sexuality focusing on 'performance' allow the fostering of a 'rape culture'.<sup>64</sup>

The term 'rape culture', used in these analyses has been in use in feminist dialogues since the 1970s. While the definition of the term is contested, it is broadly understood to include:

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<sup>61</sup> M. Ann Hall, 'From Pre- to Post Feminism: A Four Decade Journey' in Pirkko Markula (ed), *Feminist Sports Studies - Sharing Experiences of Joy and Pain* (State University of New York Press, 2005) 53.

<sup>62</sup> Timothy Jon Curry, 'Fraternal Bonding in the Locker Room: A Profeminist Analysis of Talk About Competition and Women' (1991) 8(2) *Sociology of Sport Journal* 119.

<sup>63</sup> Michael A. Messner and Thomas Sabo, *Sex, Violence and Power in Sports: Rethinking Masculinity* (Crossing Press, 1994) 34.

<sup>64</sup> Ibid 50.

‘a complex of beliefs that encourages male sexual aggression and supports violence against women...In a rape culture women perceive a continuum of threatened violence that ranges from sexual remarks to sexual touching to rape itself. A rape culture condones physical and emotional terrorism against women *as the norm*’.<sup>65</sup>

The concept of, ‘rape myths’ is also mentioned in many analyses. Evolving alongside the concept of, ‘rape culture,’ in the 1970s, an awareness of, ‘rape myths’ emerged – ‘prejudicial, stereotyped or false beliefs about rape, rape victims and rapists’<sup>66</sup> held within the community and those enforcing the law. Rape myths include assumptions about female complainants (e.g. ‘the victim in some way...may precipitate the offence’<sup>67</sup>) and perpetrators (e.g. ‘rape is a sexual act’<sup>68</sup>). Burt (1980) argued that there were strong links between acceptance of rape myths, sex role stereotyping and tolerance of violence.

Research undertaken since the work of Curry, Messner and Sabo into football and off-field violence can be broadly categorised into three groups. The first group examines links between the playing of aggressive contact sports (like football) and off-field aggression. This family of research is primarily empirical and involves surveying, analysis and self-report of athlete behaviour. For the purposes of this work will be called, ‘behavioural research’.

The second group is predominately phenomenological analysis, attempting to understand attitudes and perceptions of footballers and gendered violence, taking a sociological approach. This family of research will be classified ‘phenomenological research,’ for the purposes of this work.

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<sup>65</sup> Emilie Buchwald, *Transforming a Rape Culture* (Milkweed, 1993) i.

<sup>66</sup> Martha R. Burt, ‘Cultural myths and supports for rape’ (1980) 38(2) *Journal of Personality and Social Psychology* 217.

<sup>67</sup> Patricia Weiser Easteal, ‘Rape prevention : combatting the myths’ (Paper presented at the Without Consent : Confronting Adult Sexual Violence Conference, Canberra, 27-29 October 1992) 315.

<sup>68</sup> Ibid.

The final group features investigative analysis featuring sociological research, cultural analysis, media analysis and gender research. It seeks primarily to investigate portrayal of footballers and complainants within the media and to draw inferences about public perceptions and legal outcomes from this analysis. This family of research is primarily qualitative, and for the purposes of this work will be called, 'narrative,' research.

### ***Behavioural Research: Contact Sports and off-field violence***

Since the 1980s behavioural research has attempted to draw linkages between participation in contact sports, like football, and participation in off-field aggression. A large proportion of the behavioural research literature in the United States focuses on college athletes. This research evolved from growing concerns related to gender based assaults on college campuses and college sportsmen in the 1980s and 1990s. There is conflicting evidence as to whether involvement in sporting activity among these cohorts is a predictor of violent behaviour in non-sport settings (Miller et al 2006; Trebon 2007; Tharp et al 2012). Nixon (1997) argues participation in contact team sports can reinforce aggressive non-sports behaviours in college men, and Boeringer (1999), reported links between members of college athletic organisations and support of 'rape myths'. Locke and Mahalik (2005) reported similar findings, demonstrating links between college men, masculinity norms, alcohol use, acceptance of rape myths and sexual aggression towards women.

Yet there is also a large body of work demonstrating weak or no links between participation in contact sports and sexual aggression (Koss and Gaines 1993; Brown, Summer and Nocera 2002; Forbes et al 2006). Other studies demonstrate no significant difference in sexual aggression between athletes and non-athletes (Crosset et al 1995; Caron et al 1997; Lackie and de Man 1997; Gidycz, Warkentin and Orchowski 2006).

Consequently significant questions have been raised about the body of research as a whole and its ability to definitively conclude whether participation in contact sports is a predictor of violence and sexual aggression off-field (Kimble et al, 2010). In particular, the differences in

methodologies used, the wide variety of locations of college campuses, the American college fraternity system, the inclusion and exclusion of different types of sports and assault across studies, display a series of variables that make it difficult to establish a coherent picture. There is extensive existing research from the fields of psychology and criminology about the characteristics of adult perpetrators of violence identifying a range of predictors for violent offending, none of which identify contact sports participation as a variable (Scechory, Weiss, Weinstein 2011; Keelan and Fremouw 2013; Laubacher et al 2014). In fact, some research (Jenkins and Ellis, 2011) identifies combat sports as a potential treatment for violent offenders.

Within Australia, there have been two identified pieces of research undertaken to explore the relationships between sportspeople, alcohol and alcohol related aggression (O'Brien 2012; Dietze, Fitzgerald and Jenkinson). Both showed links between sport and aggression, however O'Brien et al recommended further research to establish whether, 'it is excessive alcohol consumption, or cultural and psychosocial factors (e.g., masculinity that underpin these differences)'.<sup>69</sup>

Sonderland et al (2014) undertook a review of existing behavioural research on alcohol intake, sports participation, aggression and violence, noting the very small amount of existing work connecting these three factors, and the limited research published outside the United States. This work agreed that alcohol intake, violence and aggression are higher in sports populations, but, similar to O'Brien, noted that the exact reasons for this are unclear and recommended further research be undertaken.<sup>70</sup>

These contradictions in behavioural research caution against researcher reliance upon it to justify off-field football player aggression towards women in an Australian context. Rather than providing a neat answer as to whether participation in sporting activity predisposes male athletes to sexual

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<sup>69</sup> Kerry S. O'Brien et al, 'Alcohol-related aggression and antisocial behaviour in sportspeople/athletes' (2012) 15(4) *Journal of science and medicine in sport / Sports Medicine Australia* 292, 296.

<sup>70</sup> Anders L. Sønderslund et al, 'The association between sports participation, alcohol use and aggression and violence: a systematic review' (2014) 17(1) *Journal of science and medicine in sport / Sports Medicine Australia* 2, 7.

aggression against women, existing behavioural research is best viewed as an attempt to explore the issues and complexities while attempting to identify if there are potential variables that may affect aggressive behaviour in male athletes (for example, alcohol).

### ***Phenomenological Research: Attitudes and Behaviours of Footballers and Female Fans***

As described in the Introduction to this paper, the National Rugby League (NRL), commissioned research in 2004 by media studies expert Associate Professor Catharine Lumby and a team of researchers with expertise in governance, counselling, sexual ethics and male violence to examine, ‘player behaviour and the role and status of women across the game’<sup>71</sup>.

Lumby and her team managed a research project involving 170 questionnaires from current players and 200 detailed interviews with players, club executives, coaches, support staff and women working within the League<sup>72</sup>. While making a series of recommendations to motivate cultural change within the NRL, to increase player education and to grow the number of women in leadership positions, Lumby’s team found, ‘many of the player attitudes and behaviours towards women are not out of step with groups of other young men who have been the subject of related research’.<sup>73</sup> The research identified a series of, ‘male attitudes, behaviours and bonding rituals which...manifest themselves in many public and private institutions and cultures’.<sup>74</sup> Basically, Lumby’s team reported that the attitudes and behaviours towards women identified among players and within NRL culture were not dissimilar to attitudes and behaviours in the mainstream community.

Mewlett and Toffoletti (2009) interviewed 16 self-identified female AFL fans from Sydney and Melbourne to explore their views of gendered violence alleged against AFL players. While all interviewees strongly condemned

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<sup>71</sup> Lumby, above n 11, 312.

<sup>72</sup> Ibid 313.

<sup>73</sup> Ibid 314.

<sup>74</sup> Ibid 314-315.

sexual violence, all reported that player sexual misconduct occurred when players were pursued for sex (Mewlett and Toffoletti identify this as the narrative of the, 'predatory' female). Respondents also advised they saw women as understanding the potential outcome of the situation should they socialise with footballers, casting the players' misconduct as a 'problem of individual women,'<sup>75</sup> rather than a systemic or cultural issue. Other reasons female fans gave for sexual assaults alleged against footballers included player entitlement, the use of alcohol, team bonding activities, and male physiology (the 'rogue' male). All of these arguments ultimately appear to demonstrate support for rape mythology.

Katherine Albury, a member of the research team appointed by the NRL and led by Catharine Lumby, later reflected on the effectiveness of the work undertaken with young NRL players as a result of that research. Albury et al (2011) highlighted the concern that, 'sportsmen have been read as embedded in a pattern of hegemonic masculinity countless times in academic articles,'<sup>76</sup> and caution needs to be exercised given the heterogeneous nature of the cohort (for example, Indigenous representation in AFL is high).

The phenomenological research in Australia is very small. However, it indicates that attitudes and behaviours within institutions like the NRL and among NRL players are not dissimilar to those held by non-footballers and other institutions in the community, reminds us of the heterogeneous nature of the professional football cohort, and demonstrates a small cohort of female fans explained allegations of sexual aggression by AFL players by using tropes to explain the behaviour (the 'rogue' male and the 'predatory' female).

### ***Narrative Research: Football and Gendered Violence***

The largest group of research extant in Australia relating to football and gendered violence is research relying primarily on analysis of media reports. Narrative research of gendered violence perpetrated by athletes has been

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<sup>75</sup> Mewett and Toffoletti, above n 5, 170.

<sup>76</sup> Kath Albury et al, 'Playing by the rules: researching, teaching and learning sexual ethics with young men in the Australian National Rugby League' (2011) 11(3) *Sex Education* 339, 344.

undertaken by academics and writers in many disciplines, including sociology, media studies, and law.

In reviewing these analyses, it is important to understand the concept of 'media framing'. Scheufele (2012) explains media effects occur through interaction between the mass media and the public. Individuals construct meaning through discourse presented by media, and media in turn is influenced by public opinion. The media, therefore, establish the frames of reference that their audience use to interpret, discuss and re-communicate events. That is, journalists 'give the story a 'spin'...taking into account their organisational and modality constraints, professional judgements, and certain judgments about the audience'.<sup>77</sup> The audience, receiving and interpreting the story, have their own pre-existing individual and shared histories that influence the way they interpret the information.<sup>78</sup> Narrative researchers argue that the way media stories of gendered violence alleged of athletes and footballers in Australia and overseas are presented construct narratives of blame deflection, rape mythology, and victim blaming, affecting the interpretation of events by readers and viewers.

### ***Background to Narrative Research of Football and Gendered Violence***

The scrutiny of media reports to analyse narratives of off-field violence alleged of athletes is first evident in the work of Messner and Sabo (1994) who argued there is a standard treatment of gendered crimes perpetrated by athletes in the media, with predictable stages including admission of sin, public confession, public evangelism, and public redemption. Additionally, Messner and Sabo found the reporting of the story featured subversion of complainants' narrative.<sup>79</sup> Messner and Sabo argue this type of, 'framing,' is a 'result of sports' reporters immersion in a hegemonic ideology based in corporate and patriarchal relations of power'.<sup>80</sup>

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<sup>77</sup> D A Scheufele, 'Framing as a theory of media effects' (1999) 49(1) *Journal of Communication* 103, 105.

<sup>78</sup> Neuman RW, Just MR and Crigler A N, *Common Knowledge: news and the construction of political meaning* (University of Chicago Press, 1992) 120.

<sup>79</sup> Messner and Sabo, above n 63, 58-64.

<sup>80</sup> Ibid 63-64.



Media interpretations are important in considering gendered violence allegations made against footballers for a series of reasons. These allegations garner significant media coverage because of the celebrity of the accused. Also, in court matters in Victoria and NSW, transcripts involving sexual assault or domestic violence are restricted. The media present in court, therefore, become the interpreters and communicators of the legal outcome. Lastly, there is substantial existing research on the way sports media works to create community perceptions of gender and in particular, how it continues to emphasise gender divisions by reproducing, ‘traditional expectations regarding femininity and masculinity’<sup>81</sup>. This is amplified by the gender profile of Australian sports journalists. Research by Nicholson, Zion and Lowden (2011) into the profile of Australian sports journalists demonstrated that just 10 per cent are female, with 70 per cent of female sports journalists reporting they have experienced prejudice in the newsroom.<sup>82</sup> Sports journalism continues to be produced predominately by men.

News reporting works to replicate traditional gender structures and beliefs. Dwyer, Easteal and Hopkins (2012) argue that media reporting of sexual assault cases can perpetuate rape myths, with a, ‘tendency...to portray women as either “victims” or “whores” or “ideal” and “undeserving victims”’.<sup>83</sup> In reporting crime, Judd and Easteal state that ‘the media constructs a version of reality that favours those in power...the media’s use of clichéd characters can be seen as a shorthand method of reinforcing dominant social values about gender and the law’<sup>84</sup>.

As previously described, most academic analyses of gendered violence and football touch on football as performance of a particular type of masculinity,

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<sup>81</sup> Nathalie Koivula, 'Gender Stereotyping in Televised Media Sport Coverage' (1999) 41(7-8) *Sex Roles* 589.

<sup>82</sup> Matthew Nicholson, Lawrie Zion and David Lowden, 'A Profile of Australian Sport Journalists (Revisited)' (2011) (140) *Media International Australia, Incorporating Culture & Policy* 84, 88.

<sup>83</sup> Tahlia Dwyer, Patricia Easteal and Anthony Hopkins, 'Did she consent? Law and the media in New South Wales' (2012) 37(4) *Alternative Law Journal* 249, 250.

<sup>84</sup> Keziah Judd and Patricia Easteal, 'Media reportage of sexual harassment: the (in)credible complainant' (2013) 25 *Denning Law Journal* 1, 3.

and the objectification of women, promiscuity, and group sex practices in football teams as a 'technique' for team bonding. A significant concern for all researchers at the time of the first public sexual assault allegations in the mid-2000s was that, 'in living memory, no successful prosecution of sexual assault against AFL or NRL players has been sustained'.<sup>85</sup>

Dr Nina Philadelphoff-Puren (2004) examined the power of existing criminal processes and public narrative in the handling of allegations brought against footballers. Both Philadelphoff-Puren, and Hindley (2005), suggest that academic analysis focusing on consent is not adequate in considering these cases, because the issue is not just one of sexual violence, but also one of the symbolisation of sport and the 'difference' of women within Australian culture. Philadelphoff-Puren highlights how women bringing these allegations women are seen as predators, and the real, 'victims' are footballers because of the impact of these allegations on their careers.<sup>86</sup> This reinforces the progression of gendered violence allegations made against athletes within the media described by Messner and Sabo.

Toffoletti (2007) found similar narratives in newspaper coverage of the 2004 Canterbury Bulldogs allegations. She describes narratives of the 'confused player' and the 'predatory woman,' – 'the modern player is framed as the confused innocent in this unfamiliar sexual landscape, struggling to ward off the advances of predatory groupies who won't let up'.<sup>87</sup> Toffoletti argues while the narrative of player as victim would normally be emasculating, when accompanied by the discourses of the woman as a wanton or temptress, 'it works to protect male heterosexual privilege'.<sup>88</sup> The other primary theme identified by Toffoletti in media reporting is one where players alleged of sexual assault are portrayed as 'wayward,' – that is, 'inappropriate male behavior is an individual rather than a cultural phenomenon'.<sup>89</sup>

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<sup>85</sup> Kift, above n 10, 136.

<sup>86</sup> Nina Philadelphoff-Puren, 'Dereliction: Women, Rape and Football' (2004) 21(1) *Australian Feminist Law Journal* 35.

<sup>87</sup> Kim Toffoletti, 'How is gender-based violence covered in the sporting news? An account of the Australian Football League sex scandal' (2007) 30(5) *Women's Studies International Forum* 427, 432.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid 433.

Waller and Oakham (2008) make similar findings in their case study analysis of media coverage regarding domestic violence allegations made in 2007 in relation to AFL footballer Wayne Carey. Themes comparable to those seen in footballer sexual assault allegations are repeated in news reporting on the Carey incident: perpetrator blame deflection, victim blaming, woman as sexual aggressor, marginalization of the woman bringing the allegations, and sensationalisation of the abuse. Lorentzen (2012) draws similar conclusions in reflecting on the group sex incident involving a young woman and a number of Cronulla Sharks players in New Zealand, which first came to light in another Four Corners program aired in 2009, 'Code of Silence'. The woman involved revealed the incident left her suicidal and diagnosed with post-traumatic stress disorder.<sup>90</sup> Lorentzen agrees that, 'the prevalent and continuous narrative about football players is one that hails them as studs while the women...are 'up for it' and deserving of what they get'<sup>91</sup> (the 'predatory' woman and 'rogue' footballer of Toffoletti's research).

### ***Waterhouse-Watson and 'Narrative Immunity'***

Perhaps the most influential academic on this issue in recent years is Deb Waterhouse-Watson. Waterhouse-Watson is an academic at Monash University's Centre for Comparative Literature & Cultural Studies, and her 2009 PhD thesis, *Narrative Immunity: Australian Footballers in Sexual Assault 'Trials by Media'*, used narratological methodology to demonstrate that the way media texts about footballers and sexual assaults are 'framed' invalidate allegations of rape and deflects blame on to the complainant. Her thesis was published as a series of articles and later as a book: *Athletes, Sexual Assault and Trials by Media* (2013). Waterhouse-Watson writes:

'New cases continue to be reported with similar frequency, and no Australian footballer has yet been convicted of sexual assault. [This book] seeks to account for this anomaly, arguing that it is the

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<sup>90</sup> Australian Broadcasting Corporation, 'Code of Silence,' *Four Corners*, 11 May 2009 (Sarah Ferguson).

<sup>91</sup> Peter Lorentzen, 'A league of extraordinary gentlemen: groupies and gang bangs in the NRL' in Centre for Citizenship and Globalisation (ed), *The sex factor : media representations of women and men in Australia* (Deakin University, 2012) 36, 38.

circulation of popular women blaming narratives that shields accused players from being prosecuted for sexual assaults'.<sup>92</sup>

Waterhouse-Watson reports that the strategy of distributing blame and responsibility is repeated with each fresh allegation, providing what she calls a, 'narrative immunity,' against being accountable to the allegations. This effectively creates a 'trial by media', which results in the acquittal of the footballer. The, 'narrative immunity,' concept seems to indicate these media narratives are so powerful they influence the prosecution of cases and court outcomes.

There is deeper exploration of stereotypes generated by media reporting of these kinds of cases: Waterhouse-Watson identifies other varieties than Toffoletti's 'predatory woman,' including 'The Woman Scorned', 'Gold Diggers,' 'Party Girls,' and 'Groupies'. Further building upon Toffoletti's symbol of the, 'rogue male' Waterhouse-Watson identifies other male characters used by football clubs in the media to avoid footballer blame – the, 'bad apple', the, 'hero' and the, 'little boy'.<sup>93</sup>

Waterhouse-Watson is critical of the NRL's 2005 'Playing by the Rules' research, relying (in part) upon the conflicting American behavioural research discussed previously to support her argument – Boeringer (1999), Crossett, Benedict and McDonald (1995) and Koss and Gaines (1993). She writes that:

'in direct contradiction to the bulk of available research into the attitudes and behaviours of professional male athletes towards women...the summary claims there is no evidence that male athletes are more prone to rape than other men'.<sup>94</sup>

In fact, as demonstrated earlier in this chapter, the evidence is inconclusive as to whether male athletes are more prone to rape than other men. The reliance on this research, combined with a lack of acknowledgement of the

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<sup>92</sup> Waterhouse-Watson, above n 20, 20.

<sup>93</sup> Ibid 130.

<sup>94</sup> Ibid, 155.

significant attrition and low prosecution rates of sex offences in Australia, raises questions about the validity of the, 'narrative immunity,' concept.

### ***Criminology Research: Public Perceptions of Crime in Australia***

Only a very small proportion of Australian citizens interact directly with the criminal justice system. Consequently the public forms its opinions about crime rates, types of crime and sentencing based on media reporting. In 2009, Roberts and Indermaur found that media sources including newspapers, TV and radio as either, 'fairly,' or 'very' important for 80 per cent of Australian citizens in forming their views about crime.<sup>95</sup> The 2007 Australian Survey of Social Attitudes (AuSSA) demonstrated that:

A large majority of the public have inaccurate views about the occurrence of crime and the severity of sentencing. Consistent with previous Australian and international research, the Australian public perceives crime to be increasing when it isn't, overestimates the proportion of crime that involves violence and underestimates the proportion of charged persons who go on to be convicted and imprisoned.<sup>96</sup>

There is existing research demonstrating public misperceptions of sentencing practices and legal outcomes, including Australian studies that have tested knowledge of crime and imprisonment rates (Weatherburn, Matka and Lind 1996; Weatherburn and Indermaur 2004; Indermaur and Roberts 2005). The findings of this research predict the AuSSA findings.

Criminology research poses significant questions for Waterhouse-Watson's theory of, 'narrative immunity'. This thesis has shown that the media uses traditional discourses of gender and rape mythologies in presenting cases of gendered violence. Waterhouse-Watson argues that it is these discourses that secure footballer acquittal. However, the public (80 per cent of whom say the media is important in determining their views on crime) thinks the criminal justice system is not tough enough on crime. This indicates that,

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<sup>95</sup> Lynne Roberts and David Indermaur, 'What Australians think about crime and justice: results from the 2007 Survey of Social Attitudes' (2009) ix.

<sup>96</sup> Ibid.

despite narratives of rape mythology and victim blaming, the public appears to be immune to them for the purposes of determining whether courts are delivering what the public perceives as the right legal outcomes. This suggests that the low rate of prosecution Waterhouse-Watson identifies for footballers is not really about the narrative at all, but is in fact far more complex, involving many more factors than solely media representation of cases.

### ***Research gaps***

Much of the narrative research in Australia does not situate allegations within the context of broader cultures of sexual and domestic violence against women. Looking across the research, a picture emerges of an Australian football culture supportive of gendered violence, where there is a high prevalence of sexual assault and domestic violence perpetration by professional footballers. It also suggests that because of their celebrity and influence, professional footballers are somehow, 'above the law', when charged with sexual assault or domestic violence. However, this picture is misleading and requires further examination. There has been no use of doctrinal legal approaches – for example, the examination of transcripts of footballer trials in gendered violence cases – in the qualitative research found to date. Waterhouse-Watson herself suggests that:

‘analysis of court proceedings from footballers on trial for assault and sexual assault would add an extra dimension to the issue of representation of footballers’ (alleged) criminal behaviour’.<sup>97</sup>

There is no comparison of the prevalence of allegations in football codes to other occupations, or even to the community generally. There is no provision of statistical analysis, or investigation into case attrition for similar non-celebrity allegations. This is problematic, as a lack of context may lead the reader to assume that there is a higher level of gendered violence in professional football than across the population generally. This minimises the seriousness and insidiousness of this issue in Australia.

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<sup>97</sup> Waterhouse-Watson, above n 20, 184.

Overall, the amount of research in Australia focusing on football and gendered violence is very small. Gaps in behavioural and phenomenological research in Australia include:

- The use of a consistent methodological approach across codes of football (NRL, AFL, rugby union, soccer) at both professional and amateur level to comprehensively determine if links exist between football participation and gendered violence in this country; and
- The use of a consistent methodological approach across codes of football into personal characteristics and attitudes towards women at both professional and amateur level in Australia.

Research gaps of particular interest to socio-legal researchers include:

- Examination of the legal outcomes of gendered violence allegations involving footballers to establish whether they are comparable to similar cases reported to the criminal justice system;
- Prevalence research to establish whether rates of charges of gendered violence brought against footballers are higher, lower or comparable to other occupations across jurisdictions;
- Empirical testing of Waterhouse-Watson's theory of, 'narrative immunity,' with the public in the cases of tried gendered violence allegations involving footballers to establish whether the public is really persuaded by media techniques of blame deflection and reinforcement of rape/domestic violence mythologies.

### ***Research Identified and Research Question Proposed***

There are now a handful of gendered violence cases against footballers tried within the court system. To address some of the identified research gaps, it is proposed that two footballers be identified where gendered violence allegations made against them have been tried. It is proposed to review the judgments in both cases in context using the traditional legal research technique of doctrinal analysis. Comparison will then be made to the legal outcomes of these two cases with similar cases in the criminal justice system.

The legal outcomes of these cases, reported through the media, will then be tested through a traditional social science quantitative method: an anonymous survey.

In exploring the alignment, or the differences in, public perceptions and legal outcomes, the Discussion chapter will use feminist legal research and compare the findings to existing research in this area, already identified within this chapter, and existing statistics on the progression of similar cases in the NSW criminal justice system.

This study attempts to address the gaps in existing research into footballers and gendered violence in Australia by asking the question, 'Do public perceptions align with the legal outcomes of the gendered violence cases brought against Greg Bird and Brett Stewart?'

It should be noted that there is no intention in this research to question the legal outcomes of these cases. The purpose of this research is simply to compare and contrast public perceptions and the legal outcomes in these two instances.

My hypotheses are as follows:

- There will be similarity in the legal outcomes of the two case studies and those of comparable cases in the criminal justice system.
- The research to date indicates that media narratives in Australia employed in reporting these cases are compelling, touching upon existing rape and domestic violence mythology, leading to sympathy for the defendant and undermining the complainant. However, the public perception research undertaken by criminologists suggests that the public believes courts are too lenient in dealing with crime.

I hypothesise that public perceptions within the survey will align with those identified by Australian criminologists (e.g. Roberts, Indermaur, Weatherburn) rather than qualitative researchers focusing on narrative (e.g. Waterhouse-Watson). That is, I expect that the majority



of survey respondents will indicate a lack of support for the legal outcomes as reported in the two case studies, but also potentially for the legal outcomes in two comparator media articles provided.

### Chapter 3: Method

In the previous chapter I explored the existing literature in relation to the violence alleged against footballers. I highlighted the research gaps in terms of doctrinal legal research and empirical testing of public perceptions of legal outcomes. I also proposed two hypotheses based on the existing literature. In this chapter, I will describe a methodology to allow the testing of those two hypotheses.

Case studies are a traditional social science approach to the study of a particular phenomenon in a 'real-life' context. Punch describes the case study as an opportunity to, 'understand the case in depth, and in its natural setting, recognising its complexity and context'.<sup>98</sup> The case study allows the investigation of, 'a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident'.<sup>99</sup> Hutchison confirms the appropriateness of the use of the case study for legal research, proposing, 'this methodology can be well utilised by legal researchers,' and, 'can be combined quite well with a doctrinal study'.<sup>100</sup>

Two NRL footballer cases have been chosen.

The first is Greg Bird, charged in 2008 with maliciously inflicting grievous bodily harm (later downgraded to reckless wounding) and acquitted in 2009 of his then girlfriend, Katie Milligan. Bird is a professional rugby league footballer, born in Newcastle. His professional playing history commenced in 2002, at the age of 18, when he joined the Cronulla Sharks. Bird has had a long and distinguished playing career, having represented Australia at the Rugby League World Cup in 2013 and the Four Nations Tour in 2010, and

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<sup>98</sup> Punch, above n 26, 120.

<sup>99</sup> Robert K Yin, *Case Study Research Design and Methods*, Applied Social Science Research Methods Series (SAGE, 3<sup>rd</sup> ed, 2003) 13.

<sup>100</sup> Terry Hutchinson, *Researching and Writing in Law* (Thomson Reuters Lawbook, 3<sup>rd</sup> ed, 2010) 115.

represented New South Wales (NSW) fourteen times between 2007 and 2012.<sup>101</sup> Bird's current salary is estimated at AU\$550,000 per season.<sup>102</sup>

The second is Brett Stewart, charged with sexual assault of a young woman following the Manly season launch party in 2009, and found not guilty of the charges by jury later that same year. Stewart is also a professional rugby league footballer, born in Wollongong. His professional playing career commenced in 2003, when, also at the age of 18, he commenced playing for the Manly Sea Eagles. Stewart has a similarly distinguished professional career, having represented NSW in the State of Origin series and Australia in the Rugby League World Cup.<sup>103</sup> Stewart's annual salary is estimated at approximately \$550,000.<sup>104</sup>

These two cases were chosen for a range of methodological reasons:

- Both Bird and Stewart play within the same football code – the NRL;
- Both players were charged and tried in the same jurisdiction (NSW) in approximately the same time period (2008-2009);
- Both players were at similar career stages in the same football code at the same time charges were brought (both had commenced first grade play in 2002-2003);
- One player identifies as Indigenous (Bird), the other does not;
- One case was an intimate partner domestic assault case; the other a sexual assault case;
- One case was heard by a magistrate (and judge on appeal), the other by a jury;

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<sup>101</sup> *Greg Bird* Telstra Media <<http://www.titans.com.au/team/profiles/greg-bird.html>>.

<sup>102</sup> Jeremy Pierce, *NSW and Australia forward Greg Bird re-signs with the Gold Coast Titans for another four years* (11 January 2013) Fox Sports <<http://www.foxsports.com.au/nrl/greg-bird-has-re-signed-with-the-gold-coast-titans-for-another-four-years/story-e6frf3ou-1226552144999>>.

<sup>103</sup> *Brett Stewart* Telstra Media <<http://www.seaeagles.com.au/team/profiles/brett-stewart.html>>.

<sup>104</sup> Dean Ritchie, 'Manly Sea Eagles fulback Brett Stewart's salary cap drama could lead to more player cuts', *The Daily Telegraph* (Sydney), 27 February 2013 <<http://www.dailytelegraph.com.au/sport/nrl/manly-sea-eagles-fulback-brett-stewarts-salary-cap-drama-all-but-over/story-e6frexnr-1226587037933>>.

- Both cases were covered extensively in the media due to player celebrity; and
- Both cases have a known legal outcome.

These methodological reasons will allow for the case studies to, 'stand alone,' but to also be compared and contrasted to each other and the statistical legal outcomes of similar cases in the NSW criminal justice system.

Prior to undertaking doctrinal and media analysis of the two cases, descriptions of the progression of both cases through the criminal justice system are provided.

### **Case Study 1:**

#### ***Director of Public Prosecutions v Bird* (Unreported, Local Court of NSW, Magistrate Clisdell, 22 June 2009) ('Bird No 1') and *Bird v R* (Unreported, District Court of NSW, Judge Finnane, 25 November 2009) ('Bird No. 2')**

On 25 August 2008 Bird appeared at Sutherland Local Court to face charges of maliciously inflicting grievous bodily harm<sup>105</sup>. The previous morning, his partner Katie Milligan had been admitted to hospital with cuts to the face and a fractured eye socket. Police attended the hospital, and later charged Bird. Police alleged Bird smashed a glass in Milligan's face following an argument at his apartment that same day, and took out an Apprehended Violence Order (AVO) on Milligan's behalf. It was also alleged by police Bird had advised them his temporary flat mate, semi-professional golfer Brent Watson, was responsible for the injuries to Milligan. However Mr Watson was playing a golf tournament at the time the incident occurred.<sup>106</sup> Magistrate Bev Schurr granted Bird bail on a \$5000 surety and ordered he comply with the conditions of the AVO.<sup>107</sup>

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<sup>105</sup> Paul Bibby and Andrew Webster, 'Greg Bird charged with violent attack', *The Sydney Morning Herald* 25 August 2008 <<http://www.smh.com.au/news/news/greg-bird-charged-with-violent-attack/2008/08/25/1219516278505.html>>.

<sup>106</sup> Andrew Webster and Grant Naylor, "We have told police it's you. How do you feel about that?", *The Sydney Morning Herald* (Sydney), 26 August 2008.

<sup>107</sup> 'Flatmate refuses to take the fall for Bird', *AAP* 25 August 2008.

In mid-September 2008 Milligan attempted to have the AVO overturned, but decided not to proceed following discussion between her representatives, Bird's representatives and the prosecution.<sup>108</sup> On 21 September 2008, it was reported Milligan had refused to give a statement to police and viewed the issue as a 'personal matter'.<sup>109</sup> A week later on 29 September Bird was charged with two further charges, public mischief and making a false accusation to police.<sup>110</sup> Appearing before Chief Magistrate Graeme Henson on 9 October 2015, representatives of Milligan and Bird requested the existing AVO be amended to include a condition allowing them to contact each other. Chief Magistrate Henson refused. Crown Prosecutor Peter Stanhope indicated, however, that Bird's charge of assault causing grievous bodily harm would be dropped, with Bird to face a lesser charge of reckless wounding.<sup>111</sup>

On 27 April Bird appeared before Magistrate Roger Clisdell at the Downing Centre Local Court. Bird pleaded not guilty to the charges of assault occasioning actual bodily harm, reckless wounding, and making a false accusation to the police. He pleaded guilty to a charge of public nuisance. The case was adjourned to the following day to allow Magistrate Clisdell to read the brief of evidence. None of the 29 witnesses was required to appear, as the defence had agreed to Magistrate Clisdell being provided the brief. Crown Prosecutor Peter Stanhope advised Magistrate Clisdell that no statement had been received from Milligan, who was overseas at the time of the hearing.<sup>112</sup> On 28 April Magistrate Clisdell found Bird guilty of all charges and set a sentencing date for June 2009.<sup>113</sup> Bird appeared again

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<sup>108</sup> Harriet Alexander, 'Milligan opposes AVO against league player', *The Sydney Morning Herald* (Sydney), 18 September 2008.

<sup>109</sup> Katherine Danks, 'Police fear collapse of Bird case', *The Sunday Telegraph* 21 September 2008.

<sup>110</sup> 'NRL Star Bird to face two new charges', *SBS World News* 29 September 2008.

<sup>111</sup> Larissa Cummings, 'I love my girlfriend Kate Milligan, says Greg Bird', *The Daily Telegraph* 9 October 2008.

<sup>112</sup> 'Bird's girlfriend made no police statement, court told', *AAP* 27 April 2009.

<sup>113</sup> Stuart Honeysett and Joe Kelly, 'Guilty Bird reaches the end of the line', *The Australian* 29 April 2009

<<http://www.theaustralian.com.au/archive/news/guilty-bird-reaches-end-of-the-line/story-e6frg7mo-1225704707201>>.

before Magistrate Clisdell on 22 June 2009 and was sentenced to a minimum of eight months in prison for reckless wounding, was fined \$5000 and given a three-year good behaviour bond on the charge of making a false accusation to police. Bird's legal team immediately lodged an appeal and Bird was released on bail.<sup>114</sup> Bird appeared before the court again, this time accompanied by Milligan, for his appeal hearing before Judge Michael Finnane, on 25 November 2009. Bird's appeal was upheld and the false accusation charge was set aside.<sup>115</sup> The final appearance on this matter was again before Magistrate Clisdell, who fined Bird \$2500 for public mischief for making a false representation to police in relation to how the incident occurred.<sup>116</sup>

***Case Study 2: R v Stewart (Unreported, District Court of NSW, Williams J, 29 September 2009)***

On 8 March 2009, reports emerged of allegations that Brett Stewart had sexually assaulted a young woman outside apartments in Manly, following the Manly Sea Eagles season launch party at a local hotel. Police served an interim AVO on Stewart, preventing him from contacting the girl or her family.<sup>117</sup> Stewart denied the allegations. He refused to be interviewed by police and was released pending further enquiries.<sup>118</sup> On 10 March, Stewart attended Dee Why police station where he was charged with sexual assault and was granted bail to appear in Manly Local Court on 7 April.<sup>119</sup> Stewart appeared before Magistrate Margaret Quinn at Manly Local Court on that date, and pleaded not guilty to a charge of sexual intercourse without

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<sup>114</sup> Lisa Davies, 'Greg Bird jailed for glassing lover Katie Milligan', *The Daily Telegraph* 22 June 2009 <<http://www.dailytelegraph.com.au/greg-bird-jailed-for-glassing-lover-katie-milligan/story-e6freuy9-1225739340975>>.

<sup>115</sup> Lisa Davies, 'Tears, hugs and hope...Despite the lies, Bird wins appeal against glass attack on Milligan', *The Daily Telegraph* 26 November 2009 <[https://global-factiva-com.simsrad.net.ocs.mq.edu.au/ha/default.aspx#!/?&\\_suid=143770871608607935811961069703](https://global-factiva-com.simsrad.net.ocs.mq.edu.au/ha/default.aspx#!/?&_suid=143770871608607935811961069703)>.

<sup>116</sup> 'Bird fined \$2500 for public mischief', *Australian Associated Press General News* 8 December 2009.

<sup>117</sup> Les Kennedy, 'Parents rush to aid of screaming daughter', *The Sun-Herald* (Sydney), 8 March 2009.

<sup>118</sup> 'Stewart charged over sexual assault', *Australian Associated Press General News* 10 April 2009.

<sup>119</sup> Ibid.

consent and not guilty to an act of indecency. Magistrate Quinn continued his bail and extended the AVO for an additional three months, and set down the next appearance for 26 May at the Downing Centre. Stewart was advised he did not need to attend if he had appropriate legal representation.<sup>120</sup> On that date, the case was adjourned until the following month.<sup>121</sup> Stewart's case came before the court again on 23 June. Stewart did not appear, but his legal representatives asked for a decision to be made on which documents in the case were privileged, including comments made by a psychiatrist in relation to the complainant. Stewart's bail was continued, with the matter adjourned until September.<sup>122</sup> On 29 September, a one-day committal hearing was set down for 4 February 2010 to determine whether Stewart should face trial.<sup>123</sup> On that date, the matter came before Deputy Chief Magistrate Paul Cloran. Magistrate Cloran heard and suppressed evidence from a psychiatrist treating the complainant. The committal hearing was further adjourned to allow Magistrate Cloran to consider the evidence,<sup>124</sup> and recommenced on 22 March. The complainant's father gave evidence and was cross-examined as part of the hearing. Magistrate Cloran committed the case for a jury trial in the District Court. When asked if he had anything to say to the charges, Stewart responded, 'I have nothing to say and reserve my defence'.<sup>125</sup> On April 9 Stewart appeared before Judge Peter Berman who set down a trial date of 13 September, with an expectation the trial would last three weeks.<sup>126</sup> Stewart was arraigned before Judge Jonathan Williams on that date, pleading not guilty to a charge of

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<sup>120</sup> 'Stewart returns to NRL action after not guilty plea', *Australian Associated Press General News* 7 April 2009.

<sup>121</sup> Bellinda Kontominas, 'Stewart case put off', *The Sydney Morning Herald* (Sydney), 27 May 2009.

<sup>122</sup> 'Stewart's lawyers want access to psychiatrist's report - Brett Stewart's case will return to court in September.', *Australian Broadcasting Corporation News* 23 June 2009.

<sup>123</sup> 'Sexual assault hearing in 2010', *Adelaide Advertiser* (Adelaide), 29 September 2009.

<sup>124</sup> Jason Avedissian, 'Sexual assault case adjourned but club confirms...Brett will play', *The Manly Daily* 5 February 2010.

<sup>125</sup> Margaret Scheikowski, 'Brett Stewart ordered to stand trial', *The Sydney Morning Herald* 22 March 2010 <<http://www.smh.com.au//breaking-news-national/brett-stewart-ordered-to-stand-trial-20100322-qptj.html>>.

<sup>126</sup> 'Brett Stewart unlawful sex trial date set', *AAP* 9 April 2010 <<http://www.dailytelegraph.com.au/brett-stewart-unlawful-sex-trial-date-set/story-e6freuy9-1225851764537>>.

sexual intercourse without consent, and not guilty to two counts of assault with an act of indecency.<sup>127</sup> The jury found Stewart not guilty on all charges after an hour and a half of deliberation on 29 September.

### ***Methodology One: Doctrinal Legal Research – Legal Realities***

Judgments or directions relating to the Bird and Stewart cases are unavailable online. Media reports indicated that both matters were heard at the Downing Centre in Sydney, and requests were placed with the Downing Centre Local and District Court Transcript section for access to the judgment and sentencing remarks made by Magistrate Roger Clisdell (Bird) and the appeal decision made by Judge Michael Finnane (Bird), as well as any summing up comments made to the jury by Judge Jonathan Williams (Stewart), redacted as appropriate. Magistrate Clisdell, Judge Finnane and Judge Williams all agreed to the release of their decisions for educational purposes.

It should be noted that the complainant in the Stewart trial is not named in any media reports, as is appropriate protocol in sexual assault complaints. However, Katie Milligan is named as the woman allegedly assaulted in the incident with Greg Bird in all media reports.

A comparison of the two case studies to statistical outcomes of similar court cases will be undertaken to determine if the legal outcomes in these cases are in fact similar or different to those alleged of non-celebrity cases.

### ***Methodology Two – Social Science Survey – Public Perceptions***

The researcher developed an anonymous online survey using LimeSurvey software available through the Australian Consortium for Social and Political Research (ACSPRI). Because of the short time frame, a 'server side' approach was used. Punch describes the server side approach as one where a survey is published on a website and individuals are invited by email to consider

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<sup>127</sup> Kim Arlington, 'Brett Stewart breaks down as jury finds him not guilty of sexually assaulting girl', *The Sydney Morning Herald* (Sydney), 29 September 2010 <<http://www.smh.com.au/rugby-league/league-news/brett-stewart-breaks-down-as-jury-finds-him-not-guilty-of-sexually-assaulting-girl-20100929-15wgn.html>>.



completing it.<sup>128</sup> The survey was posted via the researcher's Facebook page, and shared by Facebook friends through their Facebook pages or by sending the link to third parties via email.

*Note on use of Facebook as a recruitment method:*

The use of social media platforms (SMPs), including Facebook, as a tool for research recruitment is in its nascency. This is primarily due to the relatively recent development of social media as a communication and social connection method. As a consequence, debate continues in the research community about the suitability of SMPs for this purpose.

Hill et al (2013) have identified a number of significant challenges facing researchers who use traditional research approaches in the collection of viable data, and have highlighted the research opportunities SMPs provide. For example, traditional research recruitment methods are resulting in falling survey response rates, and there are frame coverage errors for telephone sampling resulting from a decline in the use of landline numbers. These challenges impact on the ability of researchers to achieve delivery of timely and accessible data.<sup>129</sup> Consequently, the research community has turned increasingly towards consideration of the use of SMPs as a way of both understanding human behaviour and accessing potential research subjects, seeing it, 'and in particular, Facebook, (as) an innovative venue for recruiting participants for research studies'.<sup>130</sup> However, alongside the rapid and expanding application of social media as a research tool, a series of potential issues have been identified as emerging for researchers using SMPs, particularly in relation to large studies. Examples include:

1. Population bias: Population bias occurs across different SMPs. Pew Research has identified that of all internet users in the United States, those most likely to use Facebook are Hispanic, aged 18-29, with a high school education, and earning less than US\$30,000 per annum.

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<sup>128</sup> Punch, above n 26, 284.

<sup>129</sup> Craig A Hill, Elizabeth Dean and Joe Murphy, *Social Media, Sociality and Survey Research* (Wiley, 2013) 11-17.

<sup>130</sup> Julie M Kapp, Colleen Peters, Debra Parker Oliver, 'Research Recruitment Using Facebook Advertising: Big Potential, Big Challenges' (2013) 28 *Journal of Cancer Education* 134, 137.

Effectively, the platform chosen can potentially produce a, 'monoculture,' within the sample;<sup>131</sup>

2. Representations of human behaviour: To increase the use of SMPs, designers have created algorithms that connect likeminded people. Therefore, representativeness - and view diversity - in a sample is particularly difficult to achieve; and
3. Comparability: The comparison of survey findings from a representative population sample to findings from social media research survey is problematic, because the proxy population is not the same.<sup>132</sup>

Nonetheless, there are a number of researchers in the medical and social sciences that support the use of SMPs for research recruitment on a variety of grounds, particularly because these applications, 'make it possible to do survey research faster, cheaper and with less assistance than ever before'.<sup>133</sup> Notably, while the, 'use of any one recruitment method is unlikely to result in a representative sample...a greater understanding of these methods will empower researchers to use them to target specific populations'.<sup>134</sup> It should also be recognised that some researchers have reported correlation of demographics in subject responses sought through SMPs to broader population demographics (Brickman Bhutta 2012, Harris 2014).

There are also some benefits to the use of SMPs in research recruitment. SMPs have the 'advantage of reaching underrepresented populations such as people from culturally and linguistically diverse backgrounds, people in

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<sup>131</sup> Maeve Duggan et al, *Demographics of Key Social Networking Platforms* (9 January 2015) < <http://www.pewinternet.org/2015/01/09/demographics-of-key-social-networking-platforms-2/>>.

<sup>132</sup> Derek Ruths and Jurgen Pfeffer, 'Social Media for Large Studies of Behaviour' (2014) 346 (6213) *Science* 1063, 1063-1064.

<sup>133</sup> Christine Brickman Bhutta, 'Not by the Book: Facebook as a Sampling Frame' (2012) 41(1) *Sociological Methods and Research* 57, 57.

<sup>134</sup> Michael T. Nolte, Melissa J. Shauver, Kevin C. Chung, 'Analysis of four recruitment methods for obtaining normative data through a web-based questionnaire : a pilot study' (2015) 10 *Hand* 529-534, 529.

difficult-to-reach geographic locations, or people with disabilities’.<sup>135</sup>

Recruitment of survey respondents from a researcher’s own Facebook page is not unusual (for example, Brickman Bhutta, 2012) and Facebook is seen as a useful tool particularly when using a, ‘snowball sampling,’ frame: surveys on a user’s wall are visible to friends within their network, and can be shared across their network as well, providing potential exposure to a wide range of possible subjects.

Taking into account the significant cautions associated with the use of SMPs to recruit survey respondents, the recruitment approach used and the responses received within this research should be understood as an initial exploration of public perceptions about gendered violence and footballers within the cohort rather than a definitive or representative picture of public views. While the sample used is not representative and subject to the limitations (and benefits) of SMP recruitment, it is still extremely valuable in highlighting a number of considerations and useful themes for future researchers in this area, and showing the tool’s potential for use in a larger, representative sample.

Macquarie University Human Research Ethics Committee gave ethical and scientific approval to the survey on 15 July 2015. The letter of approval is at **Appendix A.**

### *Survey Design*

There are five parts to the survey design.

Part 1 includes a description of the purpose of the study and outlines questions to be asked of participants. This section assured participants their responses would be confidential and they were able to withdraw from participation at any time. It advised that by undertaking the survey, consent was given to participate in the research. Potential participants were also advised that the Macquarie University Human Research Ethics Committee

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<sup>135</sup> Melissa L. Harris et al, ‘Recruiting Online: Lessons from a Longitudinal Survey of Contraception and Pregnancy Intentions of Young Australian Women’ (2014) 181 (10) *American Journal Of Epidemiology* 737, 737.

had approved the research. Participants were warned the survey included media reports of sexual assault and violence, and numbers for the National Sexual Assault Domestic Family Violence Counselling Service and Lifeline were provided. These contact numbers were also provided at various points throughout the survey.

Part 2 of the survey sought to understand the demographics of respondents. The survey was deliberately limited to residents of Australia over the age of 18. This is because individuals in Australia must be at least 18 years of age and eligible to vote to be included on a jury in all jurisdictions. As the research compares public perceptions and legal outcomes, participants who would usually be eligible for jury duty in this country were sought. Usual demographic information was collected: age range, gender identification, and state and territory of residence.

Part 3 of the survey sought to understand participants' exposure to the NRL. Given the work of Mewett and Toffoletti focusing solely on female fans, the survey sought to distinguish self-identified fans and frequent NRL viewers/readers from individuals who do not like the NRL, or those that do, but do not have time to engage with the sport. All participants were asked whether NRL players were viewed as role models in Australia, and whether they were role models for the participant personally. Furthermore, participants were asked to identify characteristics of NRL players in general and in relation to the two case studies, using traditionally understood adjectives of masculinity. Albury provides background and examples:

‘Within Australian popular mythology, working-class masculinity is understood as deeply embedded within archetypes (the brave Anzac digger, the sporting hero, the surf lifesaver) and specific rituals of sporting success and athletic heroism – acts to prove one is strong, courageous, aggressive, autonomous, masterful, adventurous, tough, heterosexual, brave, honourable, competitive, capable, not intimate, not soft, not emotional, and so on’.<sup>136</sup>

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<sup>136</sup> Albury et al, above n 76, 344.

Participants were also asked if they were familiar with the two footballers whose cases are the subject of the case studies, and if they were, what they may know about each of them from previous media coverage. This was to establish whether some or all participants may have already formed views on the case studies presented.

Finally, participants were asked if, in their opinion, NRL players charged with serious crimes are treated the same way before the law as other citizens.

Part 4 was adapted from parts of the 2013 National Community Attitudes towards Violence Against Women survey.<sup>137</sup> This section sought to understand respondents' attitudes towards violence towards women, and in particular, their opinions about domestic violence and rape supportive myths and beliefs. Grubb and Turner (2012) report that, 'there are a number of variables which have been found to influence the degree to which blame is allocated to the victim of a crime, including perceiver's beliefs, victim characteristics and situational aspects'.<sup>138</sup> Including these elements will allow the researcher to determine if there is any significant links between public perceptions of legal outcomes and rape/domestic violence supportive beliefs, or not. This part also included further questions to attempt to determine whether participants held traditional or more liberal views about women in Australia.

Part 5 of the survey sought to understand public perceptions of the legal outcomes of the trials of the two case studies, alongside the legal outcomes of two comparator cases also reported in the media. The comparator cases were chosen because one involved an allegation of sexual assault, the other involving domestic violence resulting in homicide. Respondents were requested to read the media article and identify on a scale from 1 to 10 the level of support for the legal outcomes described in the media articles.

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<sup>137</sup> VicHealth, 'Australians' attitudes to violence against women. Findings from the 2013 National Community Attitudes towards Violence Against Women Survey (NCAS)' (2014).

<sup>138</sup> Amy Grubb and Emily Turner, 'Attribution of blame in rape cases: A review of the impact of rape myth acceptance, gender role conformity and substance use on victim blaming' (2012) 17 *Aggression and Violent Behavior* 443, 444.

Respondents were then asked to provide a short explanation of why they chose the number they did. While all cases were different, the articles provided an opportunity for the researcher to test whether there was similarity or difference in respondent attitudes for celebrity defendants as opposed to non-celebrity defendants, different kinds of alleged crimes against women, or different kinds of legal outcomes. This approach is similar to one taken by Roberts and Doob (1990). Investigating news media influences on public opinions of sentencing, Roberts and Doob showed one participant group a media report of the legal outcome, while showing a control group the actual court documents from the sentencing hearing. Those who read the media report were more supportive of harsher sentences than those who reviewed the court documents.<sup>139</sup>

The survey is available at **Appendix B**.

### ***Research limitations***

The entirety of this research, including Macquarie University Ethics review and approval, was completed within nine months. As a consequence, the survey sample could not be designed to be representative of the population, because of the time required to identify and engage representative respondents. Therefore, findings of the survey are applicable only across the cohort, rather than the broader population.

As earlier discussed, the ongoing development of research techniques using SMPs means the survey recruitment process and outcomes should be viewed as a pilot opportunity to confirm the effectiveness of the survey tool and to determine whether a larger-scale, representative sample should be pursued. The survey outcomes also have an important purpose in highlighting areas for further investigation within this topic for future researchers.

Despite being requested in April 2015, the summing up comments from the first day of the Stewart trial were not transcribed due to an oversight at the District Court and were unavailable at the time of writing. The only

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<sup>139</sup> Julian V. Roberts and Anthony N. Doob, 'News media influences on public views on sentencing' (1990) 14(5) *Law and Human Behavior* 451.

transcription available for *R v Stewart* was the jury's decision, where Judge Williams advised the court the jury had reached a verdict and advised of the jury's findings. For this reason, analysis has focused on the likely progression of the summing up and directions to the jury through analysis of Bench Books and Handbooks on sexual assault and the conduct of criminal trials in NSW.

## Chapter 4: Doctrinal Legal Research

### ***Doctrinal Legal Research – Bird No 1***

Having found Bird guilty of all charges in April 2009, Magistrate Clisdell delivered his sentencing decision on the matter on 22 June 2009.

Magistrate Clisdell commenced by outlining the legal context of sentencing as a combination of both common law and statutory provisions. He referred to *Veen v The Queen (No 2)* (1988) 164 CLR 465 (*Veen No.2*) in which the High Court considered proportionality of sentencing in an appeal from the Supreme Court of NSW. In *Veen No.2*, Mason, CJ, Brennan, Dawson and Toohey JJ write in their joint judgment that:

‘... sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case’.<sup>140</sup>

Magistrate Clisdell stated these purposes are codified in Section 3A of the *NSW Crimes (Sentencing Procedure Act)* 1999 and consequently ‘the sentence to be passed must ultimately reflect the objective seriousness of the offence committed and must be reasonably proportionate to the crime committed’.<sup>141</sup>

Magistrate Clisdell advised that in making his sentencing decision in *Bird No. 1*, he had referenced both glassing and domestic violence offences. In terms of glassing he quoted Howie J, who in *Sayin v R* (2008) NSWCCA 307 wrote:

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<sup>140</sup> *Veen v The Queen (No 2)* (1988) 164 CLR 465 .

<sup>141</sup> DPP v Bird (Unreported, Local Court of NSW, Magistrate Clisdell, 22 June 2009).



‘...Glassing...is becoming so prevalent in licensed premises there are moves on foot to stem the opportunity for the offence to be committed...The courts clearly must impose very severe penalties for such offenders but of course within the limits afforded by the prescribed maximum penalty’.<sup>142</sup>

Magistrate Clisdell noted that the Supreme Court had made clear the importance of deterrence in domestic violence cases. He referred to judgments made by Adams J and Wood J in which both judicial officers emphasised the importance of courts in ensuring proven domestic violence is appropriately punished as a deterrent. It is evident Magistrate Clisdell is, in his determination, siting the incident as a domestic violence event. He acknowledges while this incident does not fall into the circumstances of the cases quoted, it is still an offence that happened within the domestic environment.

Magistrate Clisdell determined that despite the circumstantial nature of the evidence the only inference that could be drawn is that there was a domestic argument involving Mr Bird and Ms Milligan, where Ms Milligan received an injury to her face caused by a glass being used or thrown by Mr Bird. The conflicting accounts given by both parties in relation to who caused the injury led Magistrate Clisdell to conclude there has been a conscious attempt to avoid the implication of Mr Bird. It is mentioned that Bird advised an employee of the criminal justice system that he did not lie about the incident due to guilt, but to avoid publicity.

Magistrate Clisdell mentioned a number of references provided for Mr Bird, all whom spoke highly of him. Magistrate Clisdell referred to the reference from Ms Milligan, stating Mr Bird had never intentionally harmed her, while also noting that the charge of malicious wounding does not require malicious intent.

In his deliberations, Magistrate Clisdell considered extra-curial punishments already experienced by Mr Bird, including his separation from Ms Milligan,

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<sup>142</sup> *Sayin v R* (2008) NSWCCA 307.

the loss of his contract with his football team, the loss of income as a result, and embarrassment inflicted as a result of visa restrictions. He also considered the case's mitigating factors, including unplanned nature of Ms Milligan's injury; Mr Bird's lack of criminal record, his good character, and good prospects for rehabilitation.

Magistrate Clisdell advised that the offence of reckless wounding in a domestic violence context carries a maximum penalty of seven years in gaol, and he viewed this offence in the mid to lower range of seriousness. However, he stated his view that a custodial sentence was called for in all of the circumstances. He concluded in considering the seriousness of the offence and all the evidence, including the views of the Court of Criminal Appeal in glassing cases and the domestic setting of the incident, anything other than a custodial sentence would be a sentencing error.

Consequently, Magistrate Clisdell sentenced Mr Bird to a non-parole full time custodial period of eight months and an additional term of eight months (sixteen months in total) for the charge of reckless wounding. For the false accusation charge, Magistrate Clisdell fined Bird \$5000 with a three year good behaviour bond. Sentencing for the public mischief offence was adjourned for a three-month period.

There are a number of key themes/outcomes evident in Magistrate Clisdell's sentencing determination. They are as follows:

- The reckless wounding offence took place within a domestic environment and involved 'glassing'. Previous judgments of domestic violence and glassing cases emphasise the need for severe penalties for offenders (within proscribed sentencing limits and taking into account the circumstances of each case) for both punishment and deterrence purposes;
- The defendant's good character, good prospects for rehabilitation and existing extra-curial punishments were taken into account in sentencing; and

- A custodial sentence was justified for the reckless wounding charge taking into account all evidence and previous judicial determinations in relation to glassing and domestic violence.

### ***Doctrinal Legal Research – Bird No 2***

Bird's appeal came before Judge Michael Finnane in the Downing Centre District Court on 25 November 2009. Judge Finnane's first task was to make a decision on the application made on Mr Bird's behalf to bring fresh evidence. Judge Finnane described, 'fresh evidence,' for the court in accordance with s18 of the NSW *Crimes Appeal and Review Act* (2001) as 'evidence in addition to, or in substitution for, the evidence given in the proceedings from which the appeal proceedings have arisen'.<sup>143</sup> He also stated a decision to support the bringing of fresh evidence could be made, if, also in accordance with s18, 'the court is satisfied that it is in the interests of justice that the fresh evidence be given'.<sup>144</sup> Judge Finnane confirmed he was providing leave for Mr Bird to bring new evidence as in the trial at which Mr Bird was sentenced, neither Mr Bird nor Ms Milligan had given evidence or provided a formal statement to police. Statements from both parties were now available and had been submitted to the court.

Judge Finnane advised that at the time of the incident, Ms Milligan had received legal advice that she should not make herself available to either party in Mr Bird's trial. The legal advice provided two reasons: firstly that Mr Bird would not be convicted without her evidence (Judge Finnane described this advice as 'unsound'), and secondly that her evidence could expose her to prosecution for criminal offences (he agreed with this advice).

Judge Finnane said Ms Milligan's statement indicated she had attempted to strike Mr Bird with the glass, and it was also her idea to tell the hospital and police Brent Watson had been responsible for her injuries. She had done this under the false misapprehension that if she made clear she did not want charges pressed, there would be no further consequences for Mr Watson.

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<sup>143</sup> *Crimes (Appeal and Review) Act* 2001.

<sup>144</sup> *Ibid.*

Judge Finnane then outlined his decision in relation to the Mr Bird's appeal, taking into account the new evidence provided to the court. He prefaced his decision by acknowledging that in recent years a number of, 'sensational allegations,'<sup>145</sup> had been made against rugby league footballers, resulting in police conducting an extremely detailed investigation of this case.

Judge Finnane advised it had been the experience of the courts over a long period to see a relationship of dependence between victim and perpetrator in domestic violence relationships, resulting in situations where a victim forgives the perpetrator's conduct. Justice Finnane said he was of the view that Ms Milligan was a, 'forthright, intelligent, somewhat neurotic young woman,'<sup>146</sup> who he perceived as independent of Mr Bird, and therefore not fitting this usual presentation. He described his interpretation of the incident as set out in the statements by Mr Bird and Ms Milligan and advised the court he had accepted the evidence provided by both Mr Bird and Ms Milligan to this point as fact. He acknowledged that it could appear surprising given that both parties have been proved to have engaged in, 'telling discreditable and perhaps malicious stories,'<sup>147</sup> in an attempt to blame Brent Watson for the incident.

In April 2009, in Bird's appearance before Magistrate Clisdell, Ms Milligan was out of the country and had not provided a statement before leaving. As a result, the decision was taken by Mr Bird and his legal team to plead not guilty to the charges, relying instead on the prosecution having to prove the case against Mr Bird. Judge Finnane acknowledged the prosecution had achieved this to the satisfaction of Magistrate Clisdell.

Judge Finnane said as Magistrate Clisdell did not have access to statements from either Mr Bird or Ms Milligan in April 2009, he was required to decide the case on the basis of inferences from the evidence. Judge Finnane reported he had come to a different conclusion to that of Magistrate Clisdell,

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<sup>145</sup> *Bird v R* (Unreported, District Court of NSW, Finnane J, 25 November 2009).

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*

not on the basis of the evidence already considered, but as a consequence of the additional ‘fresh evidence’.

Justice Finnane commended Ms Milligan for providing evidence that reflected poorly on her behaviour. She had acknowledged on the night prior to the incident, she had misused medication prescribed to her and had drunk a large amount of alcohol. Judge Finnane stated he accepted, given Ms Milligan’s ingestion of medication and alcohol, she became, ‘quite irrational’.<sup>148</sup> On returning to the flat she shared with Bird, Ms Milligan had attempted to provoke him. She had a glass with water in it, which she threw on him, then attempted to hit him with the glass. Mr Bird grabbed her by the wrists. Judge Finnane said that he did not doubt that it was this action that caused the injury experienced by Ms Milligan. Judge Finnane said that in his opinion, Mr Bird had not intended to injure Ms Milligan.

Judge Finnane then explored the meaning of the offence, ‘reckless wounding’. As defined in the NSW *Crimes Act* (1900), if an act is undertaken intentionally, without regard to whether injury is caused or not, then, ‘reckless wounding,’ is proved. Consideration was then given to ss 118 and 119 of the *Crimes Act*, which describe ‘self-defence’. His Honour then referred to *R v Katarzynski* (2002) NSW 613 where Howie J directed the jury as follows:

‘The questions to be asked by the jury under s 418 [of the *Crimes Act*] are:

- (i) is there is a reasonable possibility that the accused believed that his or her conduct was necessary in order to defend himself or herself; and,
- (ii) if there is, is there also a reasonable possibility that what the accused did was a reasonable response to the circumstances as he or she perceived them’.<sup>149</sup>

Judge Finnane advised that he accepted that Mr Bird had grabbed Ms Milligan’s wrist to prevent her from striking him, and that Mr Bird had

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<sup>148</sup> Ibid.

<sup>149</sup> *R v Katarzynski* (2002) NSW SC 613.

believed his conduct was necessary at the time. In addition, His Honour said that there was a, 'reasonable possibility',<sup>150</sup> that Mr Bird's actions were reasonable in the circumstances, meaning the prosecution had not succeeded in proving the case.

Judge Finnane then considered the prosecution's case, as also put to Magistrate Clisdell, the lies told by Bird showed consciousness of guilt. Judge Finnane advised that the evidence of someone who had previously deliberately lied would have to be treated cautiously. His Honour referred to *Edwards v R* (1993) 178 CLR 193 in which the High Court had advised caution in giving direction about consciousness of guilt to a jury – the jury must also be told that there are many reasons why people lie.

Judge Finnane said Ms Milligan had behaved foolishly and unjustly in blaming Mr Watson for her injury. In her statement, Ms Milligan claimed the reason she had done this was to garner urgent attention from hospital staff – to emphasise her injury and her need for immediate care, she had said a glass was thrown at her. She also had lied to protect Mr Bird, given his high profile. His Honour reflected that Ms Milligan 'presents in the witness box as a fairly volatile person'.<sup>151</sup> He noted she had persuaded Mr Bird to follow her story, and Mr Bird had acted very solicitously towards Ms Milligan after her accident. He added that he did not believe the lies were to protect Mr Bird, but a way for Ms Milligan to avoid any future problems because if she said she had been struck with a glass, and didn't want anything done about it, she believed the matter would be at a close.

His Honour reflected that Magistrate Clisdell did not have any explanation from Mr Bird, and therefore it was understandable that he would have arrived at the conclusion of consciousness of guilt. Judge Finnane then advised he upheld the appeal, directed the conviction for reckless wounding be set aside, and acquitted Mr Bird. Judge Finnane also set aside the false accusation charge.

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<sup>150</sup> ('*Bird no. 2*').

<sup>151</sup> *Ibid.*

There are a number of key themes/outcomes evident in Judge Finnane's decision in *Bird No 2*. They are as follows:

- The court can consider fresh evidence if it is in the interests of justice, under s18 of the NSW *Crimes Appeal and Review Act* (2001). In this case, Judge Finnane agreed that it was in the interests of justice to allow Mr Bird and Ms Milligan to provide statements to defend Mr Bird's innocence.
- In domestic violence cases that appear before the court, there is dependence between complainants and perpetrators.
- It was Ms Milligan's admission that her prior intake of alcohol and unauthorised use of her own prescription medication that resulted in the irrational behaviour preceding the injury to her face.
- Mr Bird did not have the intent to cause injury to Ms Milligan, instead acting in self-defence, with his actions potentially reasonable under the circumstances to defend himself, in the belief that he would be injured if he did not grasp Ms Milligan's wrists. Therefore the prosecution had not proved the reckless wounding charge.

***Doctrinal Legal Research - R v Stewart (Unreported, District Court of NSW, Williams J, 29 September 2009)***

As previously advised, the summing up comments made by Judge Jonathan Williams were not available at the time of writing. The only available transcript was of the second day, where Judge William advised the jury had arrived at a verdict of not guilty to all charges at 10.30am on 29 September 2009. Judge Williams advised Mr Stewart he was free to go at 10.30am, and discharged the jury at 10.33am.

For this reason, the research will instead examine guidelines for NSW judicial officers provided through the *Criminal Trials Courts Bench Book* and the *Sexual Assault Trials Handbook*, both produced by the Judicial Commission of NSW, considering elements of these that would have been applied to the summing up and directions given to the jury at trial. Historical versions of these documents, current at September 2009 (the time period of the trial) will be used, as well as the historical version number 40 of the

*Crimes Act 1900* (NSW), in use between 6 July 2009 and 7 January 2010. This will provide a sense of how the summing up for *R v Stewart* may have proceeded.

The charges for which Mr Stewart was arraigned before court were sexual intercourse without consent, and assault with an act of indecency. The allegations made against Mt Stewart by the complainant were that he had, 'sexual intercourse involving digital penetration with the girl without her consent,' and, 'forced his tongue into (the girl's) mouth'.<sup>152</sup>

In the *Crimes Act 1900* (NSW) s 61H, sexual intercourse is defined as follows:

(a) sexual connection occasioned by the penetration to any extent of the genitalia (including a surgically constructed vagina) of a female person or the anus of any person by:

(i) any part of the body of another person, or

(ii) any object manipulated by another person,

except where the penetration is carried out for proper medical purposes, or

(b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person, or

(c) cunnilingus, or

(d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c).<sup>153</sup>

The defendant's knowledge of sexual intercourse without consent is defined in the *Crimes Act 1900* (NSW) s 61HA (3):

'A person who has sexual intercourse with another person without the consent of the other person knows that the other person does not consent to the sexual intercourse if:

(a) the person knows that the other person does not consent to the sexual intercourse, or

(b) the person is reckless as to whether the other person

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<sup>152</sup> Lisa Davies, 'Court hears of Stewart threats', *The Daily Telegraph* (Sydney), 23 March 2009.

<sup>153</sup> *Crimes Act 1900* (NSW).



consents to the sexual intercourse, or

(c) the person has no reasonable grounds for believing that the other person consents to the sexual intercourse.

For the purpose of making any such finding, the trier of fact must have regard to all the circumstances of the case:

(d) including any steps taken by the person to ascertain whether the other person consents to the sexual intercourse, but

(e) not including any self-induced intoxication of the person.<sup>154</sup>

For a guilty verdict to a charge of sexual intercourse without consent to be delivered, the Crown must prove beyond reasonable doubt three elements: the defendant did have sexual intercourse with the complainant; the complainant did not consent to the sexual intercourse; and the defendant knew the complainant had not given consent, or was reckless as to whether the complainant was consenting.

The Bench Book provides guidance to judges in giving directions to the jury. In particular, it advises that judges should take particular care in directing juries about issues not relevant to the case, as demonstrated in *R v Mueller* (2005) 62 NSWLR 476 where Acting Justice of Appeal Hunt said:

‘In order to ensure a fair trial, the summing-up must be tailored appropriately to the particular circumstances of each case...the inclusion of every statement which may be very relevant in other cases, but only peripherally relevant in the particular case, converts the summing-up into a series of formulae which are not necessarily appropriate to the facts and circumstances of the particular case’.<sup>155</sup>

The *Sexual Assault Trials Handbook* provides significant detail to support the operation of sexual assault trials in NSW. Among other elements, it provides a chapter on a ‘Checklist of Jury Directions’. This is particularly relevant in the case of *R v Stewart* as Mr Stewart was found not guilty on all charges by jury.

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<sup>154</sup> Ibid.

<sup>155</sup> *R v Mueller* (2005) 62 NSWLR 476.

Sexual assault trials include different elements to other criminal trials, particularly in relation to the giving of evidence. For example, NSW has in place, 'rape shield laws,' within the *Criminal Procedure Act 1986* (NSW) s 293 that makes inadmissible evidence of the complainant's sexual history, unless it directly relates to the offence that is being tried. There are also a number of other evidentiary elements that may be used to reduce trauma to the complainant during trial (for example, the use of pre-recorded video statements). It is not known to what extent these elements may have been used in *R v Stewart*.

In remarks during summing up to the jury, the judicial officer is able to make comments in relation to the complainant's reliability in accordance with s 165 of the *Evidence Act 1995* (NSW). Under s 165 1(c) there is a dispensation for evidence that may be unreliable because there is, 'evidence the reliability of which may be affected by age, ill health (whether physical or mental), injury or the like'.<sup>156</sup>

Section 165 (2) of the *Evidence Act* states the following:

If there is a jury and a party so requests, the judge is to:

- (a) warn the jury that the evidence may be unreliable, and
- (b) inform the jury of matters that may cause it to be unreliable, and
- (c) warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it.'<sup>157</sup>

Magistrate Paul Cloran had heard and suppressed evidence in the matter's appearance in February 2010 from a psychiatrist in relation to the young woman, and in the September jury hearing, the media reported that Crown Prosecutor Peter Skinner had advised the jury that the complainant:

'...has had in the past, and (has been treated) in the past, some acute episodes for a severe thought disorder...I expect [the psychiatrist's] evidence will be that she was on medication and that the last time she

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<sup>156</sup> *Evidence Act 1995* (NSW).

<sup>157</sup> *Ibid.*

needed treatment for psychotic behaviour and auditory hallucinations was in October 2008'.<sup>158</sup>

It could therefore be expected that the defendant's representatives would request the judge warn the jury the complainant's evidence could be unreliable in accordance with the *Evidence Act*. Unfortunately, this is unable to be reviewed or confirmed in transcripts.

It is also likely that the jury was given a 'KRM direction' (also known as a 'separate consideration' warning) as part of the summing up comments. There are no statutory provisions for a KRM direction, rather, it has its basis in the common law, in particular *KRM v The Queen*. In that judgment, Justice McHugh wrote:

It has become the standard practice in cases where there are multiple counts, however, for the judge to direct the jury that they must consider each count separately and to consider it only by reference to the evidence that applies to it (a "separate consideration warning").<sup>159</sup>

The *Sexual Assault Trials Handbook* indicates that a KRM direction will usually also include a warning that if the jury has reasonable doubt about one count, then it is also relevant to the complainant's credibility on the other counts. This is sometimes known as a Markuleski direction, from *R v Markuleski* where Chief Justice Wood wrote:

'As a general rule the trial judge should direct the jury that a reasonable doubt with respect to the complainant's evidence on any count, ought to be taken into account in its assessment of the complainant's credibility generally'.<sup>160</sup>

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<sup>158</sup> 'Teen who accused League star of sex assault had 'history of hallucinations', court hears', *Sydney Morning Herald* 15 September 2010 <<http://www.smh.com.au/rugby-league/league-news/teen-who-accused-league-star-of-sex-assault-had--history-of-hallucinations-court-hears-20100915-15c8c.html>>.

<sup>159</sup> *KRM v The Queen* (2001) 206 CLR 221.

<sup>160</sup> *R v Markuleski* (2001) 52 NSWLR 82.

Again, although the transcripts for summing up are unavailable, it could be expected that a Markuleski direction was very likely given if a KRM direction was also given to the jury in *Stewart* (Unreported, District Court of NSW, Williams J, 29 September 2009).

Mr Stewart had refused to be interviewed by police after the alleged incident, so it could also be presumed that the trial judge warned the jury it would be unfair for the defendant to have exercised his right to silence, and then for the jury to interpret this as evidence of guilt. S 89 of the *Evidence Act* states that an, ‘inference unfavourable to a party must not be drawn from evidence that the party or another person’, if they have failed or refused to answer questions put to them by the investigation of an alleged offence.<sup>161</sup>

The *Crimes Act 1900* (NSW) s 61L defines an ‘indecent assault’ as:

‘Any person who assaults another person and, at the time of, or immediately before or after, the assault, commits an act of indecency on or in the presence of the other person’.<sup>162</sup>

The *Criminal Trials Court Bench Book* [‘the Bench Book’] suggests direction should be given to the jury that the Crown is required to prove all four of the following elements for the defendant to be found guilty of the charge of indecent assault: that the accused assaulted the complainant, that the assault was indecent, the assault was without consent, and the accused knew the complainant was not consenting (or did not care whether the complainant was consenting).<sup>163</sup> The Bench Book also suggests that the jury be instructed the accused can only be found guilty if the Crown has proved its case for each element beyond reasonable doubt.

The Bench Book provides a series of notes explaining the precedents for each element. In terms of the Crown proving there was an assault and consent was not given, one case the Bench Book refers to *Fitzgerald v Kennard* where Acting Chief Justice Kirby stated that:

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<sup>161</sup> *Evidence Act*.

<sup>162</sup> *Crimes Act*.

<sup>163</sup> Judicial Commission of NSW, *Criminal Trial Courts Bench Book* (Judicial Commission of NSW, 2009).

‘...in the case of an alleged indecent assault upon a female, if it be established that, without the consent of the victim, the accused touched her, that will normally constitute the ingredient of assault, unless the touching arises from the exigencies of everyday life’.<sup>164</sup>

That is, the Crown must establish that the act alleged of the accused was both deliberate, and not consented to, by the complainant. Indecent assault must also have a sexual connotation to be an indecent assault. ‘The exigencies of everyday life,’ for example, may include a doctor’s examination of a patient, which would not be indecent assault if part of appropriate medical treatment. The Bench Book refers to *Fitzgerald v Kennard* in demonstrating that the assault and act of indecency may be one and the same incident (as they are in these allegations): Acting Chief Justice Kirby said in his judgment that, ‘the act of assault may itself constitute the act of indecency’.<sup>165</sup>

In terms of intoxication of the defendant, the Bench Book advises that if the intoxication was self administered, it cannot be taken into account as District Court Justice Berman outlines in his judgment in *R v Petersen*:

‘I look to s 428D [of the *Crimes Act 1900* (NSW)], which provides that evidence of intoxication of the accused cannot be taken into account. ...It follows that the jury must perform a rather artificial exercise. They must take the accused as he was, except they must pretend - and I used the word ‘pretend’ after consideration - that the accused was perfectly sober.’<sup>166</sup>

This is the same requirement to s 61 HA(3)(e) of the *Crimes Act 1900* that also makes this clear in terms of sexual intercourse without consent. Therefore, where there is evidence that the accused is intoxicated, the jury must be instructed by the judge this must be put aside and instead focus on what the intent of the accused was had he/she not been intoxicated at the

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<sup>164</sup> *Fitzgerald v Kennard* (1995) 38 NSWLR 184.

<sup>165</sup> *Ibid.*

<sup>166</sup> *R v Petersen* (2008) NSWDC 9.

time of the alleged offence. It could be presumed such a warning was given to the jury by the trial judge in the Stewart case, given media reports that a witness appearing for the prosecution was a security guard at the Steyne Hotel who stated to police that, 'I've seen a lot of intoxicated people in my job and I think Brett was drunk'.<sup>167</sup>

It is only possible to speculate on summing up and directions given to the jury in *R v Stewart* using the *Sexual Assault Trials Handbook* and the *Criminal Trials Bench Book* due to the unavailability of the transcripts. However, the jury acquitted Mr Stewart on all charges after two hours of deliberation.<sup>168</sup>

Summary of likely key themes from the *Stewart* trial:

- It is likely the defence argued for a direction from the judge to the jury in relation to the unreliability of the complainant due to expert evidence of in relation to her mental illness in accordance with Section 165 (2) of the *Evidence Act NSW* (1995);
- It is likely that the judge provided a direction to the jury that, despite witness reports of Mr Stewart being intoxicated at the time of the alleged incident, this must be set aside in their considerations;
- It is likely that the judge gave both a KRM and Markuleski direction to the jury in terms of their consideration of different counts;
- It is likely that the trial judge advised the jury to not draw any inference from Mr Stewart's decision to remain silent after the alleged incident occurred;
- The Crown had not successfully prosecuted its case on either of the counts beyond reasonable doubt before the jury, and Mr Stewart was consequently acquitted.

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<sup>167</sup> Andrew Drummond, *Manly's Brett Stewart was 'drunk' before assault, witness tells court* (15 September 2009) Murdoch <<http://www.foxsports.com.au/nrl/nrl-premiership/manlys-brett-stewart-was-drunk-before-assault-witness-tells-court/story-fn2mcuj6-1225924625565>>.

<sup>168</sup> *R v Stewart* (unreported, District Court of NSW, Williams J, 29 September 2009).

## Chapter 5: Social Science Survey: Public Perceptions

The Public Perceptions survey (‘the survey’) was operational on Facebook for three weeks between July and August 2015. The researcher’s goal was to collect at least 100 surveys. 108 completed responses were received; however four were from outside Australia and could therefore not be included in analysis. The total valid survey number was 104 ( $n = 104$ ).

Full tables of statistics from the survey can be found at **Appendix C**.

### ***Demographics of survey participants***

All participants were Australian residents aged over 18 years of age, and aged under 75 years. The mode age range was 35 to 44, with 36.5 per cent of respondents aged between these years. Just 16 respondents (15 per cent of respondents) were aged less than 35. Respondents were predominately female, at 73 per cent of the total of survey participants. Nearly 84 per cent of participants lived in NSW, which is useful, as both *Bird 1 and 2*, and *R v Stewart*, were tried in the jurisdiction of NSW.

### ***Watchers of National Rugby League***

Of respondents, 60 per cent did not watch the NRL because they did not like it: the remaining 40 per cent either watched occasionally, once or more a week, or would like to watch the NRL but did not get the opportunity. The most frequent vehicle for watching NRL (noting that respondents could choose multiple options) was free-to-air television (93 per cent of watchers), followed by cable TV (25 per cent of watchers), and attendance at games (23 per cent). Of those that regularly NRL, only 43 per cent (17 people) self-described themselves as football fans, with the other 57 per cent of watchers describing themselves as not being fans. Just 35 per cent of NRL watchers said they kept up to date with NRL news through the media. Of those that did keep up to date with NRL news through the media, the most popular methods of access to NRL news was jointly through the *Sydney Morning Herald* and social media, followed by news sites on the internet. Other less popular methods of access included the *Daily Telegraph*, Fox Sport’s website, ABC TV, cable news and commercial TV news.

### ***Characteristics of NRL players in general***

Nearly 85 per cent of respondents identified in their opinion, first grade rugby league players are viewed as role models in Australia. However, only one respondent identified rugby league players were role models for them personally. This discrepancy is important given that 40 respondents identify as regular watchers of NRL. Respondents were asked to identify, in their opinion, what characteristics professional NRL players demonstrate in general. Respondents were asked to identify all that apply. The highest scoring characteristic identified from the list was aggression (82 per cent of respondents), followed by competitiveness (76 per cent), fitness (74 per cent), athleticism (67 per cent), and toughness (65 per cent). The lowest scoring characteristics identified by respondents were integrity (3 per cent), sensitivity (2 per cent) and intelligence (2 per cent). Some respondents identified other characteristics not included within the list: pejorative terms such as 'bogan' and 'meathead,' were identified by 4 per cent of respondents, with 2 per cent identifying 'entitlement'. Other characteristics identified included capitalism, perseverance, determination, lifestyle choice, macho, traditional masculinity, success, arrogance, cliqueness, bullying, hubris and tribalism.

### ***Awareness of Greg Bird***

Nearly 53 per cent of respondents (55 individuals) confirmed their awareness of Gold Coast Titans player, Greg Bird, with the remaining 47 per cent stating they were not aware of him.

In terms of detailed knowledge about Bird of those who confirmed they were aware of him, 15 per cent confirmed they knew his nickname; 11 per cent knew his wife's name; 7 per cent knew he first played professionally in 2002; 82 per cent knew that he had been found guilty and later acquitted of physical assault of his live-in partner in 2009; 18 per cent were aware of his NRL playing position; 16 per cent knew he identified as Indigenous; 47 per cent were aware of his not guilty plea to cocaine charges in early 2015; 35 per cent knew of his playing history with Cronulla; and 9 per cent knew of his playing history with the Catalan Dragons in France. The significant level



of awareness of charges brought against Bird in the past, compared with knowledge of his football playing history, is an insightful statistic.

Of the 55 respondents who identified awareness of Bird, 29 per cent identified athleticism as a characteristic Bird displays. Fitness was identified as a characteristic by 35 per cent, none identified integrity, beauty, courage, fairness, sensitivity, honesty, sexual attractiveness; 24 per cent identified self confidence, 31 per cent identified toughness, 15 per cent identified endurance, 69 per cent identified aggression, 38 per cent identified ignorance, 4 per cent identified mateship, 16 per cent identified strength, 35 per cent identified competitiveness, 29 per cent identified rebelliousness, 24 per cent identified wealth. Of other characteristics identified by respondents, 4 per cent used the characteristic, 'violent.'

### ***Awareness of Brett Stewart***

A similar number of respondents were aware of Brett Stewart as those aware of Bird: 52 per cent of total respondents. Of those respondents aware of Stewart, 13 per cent knew of his nickname, 33 per cent were aware of his position, 33 per cent knew of his football playing elder brother, 11 per cent knew of his diabetes, 41 per cent knew of his whole playing career with Manly, 15 per cent were aware of his Vice Captain position, 20 per cent of his try scoring history, 2 per cent of his birthplace, and 85 per cent of his being found not guilty after being charged for sexual assault. This is similar to the high level of awareness of charges brought against Bird previously.

### ***Treatment of NRL Players charged with serious crimes***

Of all respondents, 64 per cent identified that, in their opinion, NRL players charged with serious crimes are not treated the same way before the law as other citizens alleged to have committed similar crimes. Only eight per cent of respondents believe they are. The remainder of respondents (20 per cent) are not sure.

### ***Violence against women in the community***

The cohort of respondents showed a high awareness of violence against women compared with the general population. The cohort rated equal to, or higher than, the surveyed population in the *National Community Attitudes Towards Violence Against Women Survey* (NCAS) in all domains including:

- Understanding of the law;
- Understanding of patterns and consequences of violence;
- Perceived main causes of violence;
- Attitudes excusing violence;
- Attitudes trivialising violence;
- Attitudes shifting blame from perpetrator;
- Attitudes towards gender roles and relationships.

The researcher added four additional statements to this section for rating on a scale from one to five (with 1 being strongly agree, and 5 being strongly disagree). The statements and their outcomes were as follows:

Diagram 1

<b>Statement</b>	<b>Rating</b>									
	<b>1 strongly agree</b>		<b>2</b>		<b>3</b>		<b>4</b>		<b>5 strongly disagree</b>	
The legal system is effective in dealing with allegations of domestic violence	3	3%	3	3%	18	17%	37	36%	43	41%
The legal system is effective in dealing with allegations of sexual violence against women	6	6%	1	1%	16	15%	34	33%	47	45%
The law is effective in dealing with violence against women	4	4%	8	8%	19	18%	24	23%	49	47%
When sexual assault and violence allegations are made by women against professional footballers, footballers are treated the same under the law as any other person.	4	4%	8	8%	19	18%	24	23%	49	47%

From these additional questions, it is clear respondents in this cohort did not believe the criminal justice system was effective in addressing violence against women. Of all respondents, 70 per cent did not believe the law is effective in dealing with violence against women. In addition, 70 per cent of respondents did not agree that footballers are treated the same under the law when sexual assault and violence allegations are made against them by women.

### ***Media Reports and Public Perceptions***

Survey respondents were asked to read four articles published in major metropolitan and regional papers. Two of the articles were about the legal outcomes of the two case studies. The other two articles reported the legal outcomes of two other cases of tried violence against women – one an allegation of sexual assault, the other a homicide. Survey respondents were asked to read the individual articles and then identify, on a Likert scale of 1 to 10, their level of support for the judgment made by the court as described by the article.

After reading the article, ‘Greg Bird has conviction quashed,’ 72 per cent of respondents identified that they did not support the outcome, with 19 per cent of respondents neutral or unsure, and 8 per cent supporting the legal outcome (Appendix B, Table 21, Chart 1). Key themes identified in respondents’ comments (Table 22) included non-support for the legal outcome, the observation that violence is never acceptable no matter what the circumstances, trust in the criminal justice system to deliver the right outcome, a concern that in some relationships women feel obligated to protect their partners when family violence issues come before the court, and an inability to make comment based solely on the article. A small number of respondents raised concerns about the impact of celebrity on the case, the language used by Judge Michael Finnane in describing Milligan as, ‘agitated,’ and ‘irrational’, and the inability to trust newspapers to appropriately report court outcomes.

After reading the article, “Brett Stewart breaks down as jury finds him not guilty of sexually assaulting girl,” 47 per cent of respondents identified they did not support the outcome, 46 per cent were unsure or neutral, and 7 per cent supported the outcome (Table 23, Chart 2). Key themes identified in respondents’ comments (Table 24) included the inability to make comment based solely on the media report and a lack of support for the legal outcome. Fewer individuals indicated trust in the judicial system to deliver the right outcome. A small number raised concerns about the mention of the mental health issues of the complainant and the potential impact of celebrity.

After reading the article, ‘Cheating cop lover cleared in rape case,’ 56 per cent indicated they do not support the legal outcome, with 40 per cent of respondents neutral or unsure, and 3 per cent supporting (Table 25, Chart 3). Key themes identified in respondents’ comments after reading the article (Table 26) included concern about the judicial system’s ability to operate well in these kinds of cases, a lack of support for the legal outcome, and a lack of opinion on the article. Other themes included a trust for the judicial system to get it right and concerns that women tend not to lie about sexual assault. A smaller number of respondents raised concerns about the language used by the judge in relation to the complainant, with others identifying a lack of trust in the media to accurately report court outcomes, and distrust of police generally.

After reading the article, ‘Killer found guilty of murder,’ 84 per cent of respondents identified they did not support the legal outcome, with 13 per cent neutral or unsure, and 3 per cent supporting (Table 27, Chart 4). Key themes identified in respondents’ comments after reading the article (Table 28) include a lack of support for the legal outcome, and concerns about the past history of the defendant. Other themes included a lack of opinion on the article, and intoxication and mental health being no excuse for homicide. Smaller numbers of respondents identified that earlier mental health intervention could have prevented the homicide, while others identified their trust in the criminal justice system to get it right, a lack of trust in newspaper reporting of court outcomes, and not having enough information to comment.

## Chapter 6: Discussion

In the last two chapters I discussed the application of methodology for the doctrinal legal research element and the survey, as well as the findings from each of those separate project elements. This section will consider the findings of the doctrinal legal research undertaken, and the survey outcomes, in application to the two case studies to answer the question: 'Do public perceptions align with the legal outcomes of the gendered violence cases brought against Greg Bird and Brett Stewart?' Again it is important to reiterate that there is no intention in this research to question the legal outcomes of these cases. The purpose of this research is simply to explore the alignment, or not, between public perceptions and the legal outcomes.

This section will demonstrate that the answer to the research question 'Do public perceptions align with the legal outcomes of the gendered violence cases brought against Greg Bird and Brett Stewart?' is very clearly no. In terms of my hypotheses, it will show that my one of my hypotheses is correct, and the other is partially correct. That is:

- There is similarity between the legal outcomes of one of the case studies and those of comparable cases in the criminal justice system (*R v Stewart*);
- There is difference *and* similarity in the legal outcomes of one of the case studies and those of comparable cases in the criminal justice system (*Bird No 1 and Bird No 2*); and
- The majority of survey respondents have indicated a lack of support for the legal outcomes as reported in the two case studies, but also for the legal outcomes in two comparator media articles provided.

This means that Waterhouse-Watson's concept of 'narrative immunity,' does not hold true when tested on real allegations raised against footballers. While the media narrative may be compelling and the outcome of these cases may be acquittal, there are far more complex factors at work that impact the legal outcomes of these (and other allegations of serious crime), and how the public perceives them when they are reported.

### ***Case Study 1: Bird No.1 and Bird No.2***

Of the 55 people who identified that they knew of Bird (53 per cent of the cohort), the highest awareness of him relates to him being found guilty and later acquitted of physical assault of his live-in partner (82 per cent). Only 35 per cent of those who knew of Bird were aware he previously played for Cronulla, only 18 per cent knew what position he played on the field, and just 16 per cent knew he was Indigenous (Table 12). This is perhaps not so surprising given only 38 per cent of respondents identified as NRL viewers (Table 4), however it can be seen as an indicator of the significant media exposure that occurs when a celebrity is charged with a serious crime. This may also explain why 69 per cent of those respondents confirming knowledge of Bird identified, 'aggression' as a primary characteristic (although this is still significantly less than the 82 per cent identified for footballers generally). Respondents rated Bird highly on other 'traditional' male characteristics, including fitness, athleticism, toughness and competitiveness.

The doctrinal legal research undertaken in relation to Bird demonstrates a progression of the case reasonably in accordance with the statistics for similar cases. As discussed, Bird was found guilty of reckless wounding by Magistrate Clisdell in April 2009. The Bureau of Crime Statistics and Research (BOCSAR) in NSW reported that of 124 individuals charged with reckless wounding in a domestic violence context in 2008-09, 47 individuals (38 per cent of the total) were sentenced, with the median sentence being 10 months.<sup>169</sup> Only 11 per cent of individuals found guilty of domestic violence overall were given a sentence of imprisonment, and the probability of being sentenced to imprisonment for reckless wounding in a domestic violence context was 11 per cent.<sup>170</sup> Magistrate Clisdell sentenced Bird in June 2009 to at least eight months imprisonment, just slightly less than the median sentence. When scrutinising these statistics, it could be seen as surprising that Bird was sentenced at all. However, Bird identifies as Indigenous. In

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<sup>169</sup> Jacqueline Fitzgerald and Clare Ringland, 'Factors influencing the sentencing of domestic violence offenders' (NSW Bureau of Crime Statistics and Research, July 2010)

<<http://www.bocsar.nsw.gov.au/Documents/BB/bb48.pdf>> 3.

<sup>170</sup> Ibid 6.

January 2008 to June 2009, BOCSAR reports that the rate of Indigenous offenders sentenced to prison for domestic violence offences was 28 per cent, compared to just 7 per cent for non-Indigenous offenders.<sup>171</sup> Therefore, statistically, the likelihood for Bird to receive a prison sentence after being found guilty for a domestic violence offence would be much higher than for non-Indigenous offenders found guilty of a similar offence.

In terms of appeals against convictions and sentences combined in NSW, in 2009, one in four cases (25%) where conviction and sentence were appealed to the District Court were upheld<sup>172</sup>. While there is no specific appeal information for domestic violence appeals in the period 2001-2007 (individuals are generally charged under a variety of assault charges), 34 per cent of appeals for, 'acts intended to cause injury,' were upheld.<sup>173</sup> This is in contrast to sexual assault conviction appeals for the same time period, upheld in 43 per cent of cases.<sup>174</sup> Appeals against sexual assault convictions comprised just over a quarter of all conviction appeals, and just under a third of all successful conviction appeals. The Judicial Commission of NSW reports that sexual assault and related offences are over-represented in conviction appeal cases, and these offences are more likely to be appealed, with nearly 52 per cent of offenders convicted in the period 2001 to 2007 appealing their conviction.<sup>175</sup>

Bird's appeal was unusual in terms of comparable statistics, as Milligan – the key witness – had returned from overseas with 'fresh evidence,' that was consequently allowed by Judge Finnane following due consideration. Only 16 fresh evidence cases were upheld on appeal in the period 2001 to 2007. The majority were sexual assault and related offences (7 cases), followed by homicide and related offences (4); robbery, extortion and related offences (3),

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<sup>171</sup> Ibid 4.

<sup>172</sup> NSW Bureau of Crime Statistics and Research, 'NSW Criminal Courts Statistics 2009' (2010) <<http://www.bocsar.nsw.gov.au/Documents/CCS-Annual/ccs09.pdf>> 14.

<sup>173</sup> Hugh Donnelly, Rowena Johns and Patrizia Poletti, 'Conviction Appeals in NSW' (Judicial Commission of NSW, 2011) <[http://www.judcom.nsw.gov.au/publications/research-monographs-1/research-monograph-35/Monograph35\\_complete\\_final.pdf](http://www.judcom.nsw.gov.au/publications/research-monographs-1/research-monograph-35/Monograph35_complete_final.pdf)> 9.

<sup>174</sup> Ibid.

<sup>175</sup> Ibid 20.

deception and related offences (1) and illicit drug offences. Only three of the cases involved witnesses not called at trial. Acquittal occurred in four of the 16 cases.<sup>176</sup> In *Bird No 2* therefore, the appeal outcome was unusual statistically. However, the appearance of the key witness (Milligan) providing evidence to exonerate Bird is a crucial factor in the appeal being upheld.

The legal outcomes for *Bird No 1* are also unusual. In similar cases for the time period, 38 per cent of defendants were found guilty, so the legal outcome in the case of *Bird No 1* demonstrates the case outcome was actually in the minority of legal outcomes for similar charges. However, as previously indicated, Bird is of Indigenous heritage, and statistically, more likely to be sentenced to imprisonment. The sentence given by Magistrate Clisdell was in accordance with sentencing statistics for that period, just slightly below the median sentence.

In terms of survey outcomes, there is no evidence of ‘narrative immunity,’ for the article provided to respondents, ‘Greg Bird has conviction quashed’ (see **Appendix B**). To recap, the research to date indicates that media narratives in Australia employed in reporting cases of violence against women touch upon existing rape and domestic violence mythology (Kift 2005; Toffoletti 2007; Waller and Oakham 2008). Deb Waterhouse-Watson writes of a, ‘narrative immunity,’ provided to footballers in media reports of these cases, demonstrating patterns of distributing blame and avoiding responsibility. She argues that this results in, ‘trials by media,’ where footballers are consequently acquitted.<sup>177</sup> However, it appears the majority of the respondents were not affected by the factors narrative researchers identify, with 72 per cent of respondents indicating that they did not support the legal outcome as reported (Appendix B, Table 21, Chart 1). In fact, a small number raised concerns about the language reported within the article to have been used by the judge to describe Milligan (for example, ‘agitated’ and ‘irrational’), which demonstrates that critical readers are able to identify these narrative strategies, rather than being beguiled by them. In this instance, it could be a result of survey respondents having a higher

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<sup>176</sup> Ibid 147-148.

<sup>177</sup> Waterhouse-Watson, above n 20



awareness of rape and domestic violence mythologies compared to the general population (Tables 18 and 19) resulting in a resistance to the narrative reflected in the reporting. Another consideration is that 73 per cent of respondents to the survey were women. Therefore, in the case of *Bird No 1* and *Bird No 2*, and with this cohort of respondents, the, 'narrative immunity,' argument does not hold, indicating instead the perspective of criminologists that the public views courts as too lenient.

The group demonstrating the next highest rating in relation to support of the judgment was those who identified as neutral or who felt they did not have enough information based solely on a media article to make comment. This appears to demonstrate that while there may be compelling narratives in media stories about allegations of gendered violence against footballers, this cohort read the articles critically enough to either not be influenced by those narratives, or to decide that there was not enough information to make comment. This reinforces the earlier point that while those narratives may be present, they are not as influential to readers as narrative researchers suggest.

The other key themes identified from respondent comments include the observation that violence is never acceptable no matter what the circumstances, a trust in the criminal justice system to deliver the right outcome, a concern that in some relationships women feel obligated to protect their partners when family violence issues come before the court, and an inability to make comment based solely on the article. Only a handful (4%) felt that celebrity may have had an impact on the legal outcome.

***Case Study 2 - R v Stewart (Unreported, District Court of NSW,  
Williams J, 29 September 2009)***

Similarly to Bird, the greatest awareness of Brett Stewart in the 52 per cent of the cohort that identified that they knew of him was in relation to the fact that he was acquitted of sexual assault in 2009 (Table 14). Of the 54 respondents who identified knowing of Stewart, 85 per cent knew of his acquittal. Just 41 per cent of respondents who knew of Stewart identified

knowing that he played for the Manly Sea Eagles his whole career. Again, this indicates the power of media coverage of these issues, as only 40 (38%) respondents of the total 104 identified as watchers of NRL (Table 4), whereas 46 (44%) respondents of the total who identified as knowing of Stewart were aware he had been acquitted of sexual assault in 2009.

Characteristics identified by respondents familiar with Stewart (Table 16) included athleticism (52%), fitness (52%), aggression (44%), toughness (31%) and endurance (30%). While these are all characteristics that could be considered traditional masculine characteristics, Stewart, like Bird, was rated lower on all these characteristics than footballers generally. What this seems to suggest is that there is a perception of footballers as a homogenous cohort representing traditional masculine characteristics, whereas individually, the perception of those characteristics does not hold as true. For example, for the characteristic, “aggression,” 82 per cent of respondents identified footballers generally demonstrated this characteristic, as compared to 69 per cent for Bird, and just 44 per cent for Stewart. This has important implications for how footballers are perceived both individually and as a group, as it gives weight to Albury’s view of the heterogeneous nature of football players, and not all players have access to the same level of privilege.

After reading the media article, ‘Brett Stewart breaks down as jury finds him not guilty of sexually assaulting girl,’ (see **Appendix B**) the number of those who did not support the legal outcome (47%) and those who were neutral or unsure (46%) were almost equal (Table 21, Chart 1). Seven per cent of respondents indicated they supported the legal outcome after reading the article. The key theme in the responses (42%) to the legal outcome in Stewart’s case was there was not information in the media article to inform comment, followed by those who indicated they simply did not support the outcome based on the media article (24%). The next most frequent key themes at 8 per cent each were support for the outcome according to the article, a concern that celebrity may have had impact, and concern that the article mentioned the mental health history of the complainant (particularly that this had been included in court proceedings). Again, this supports the

criminologists' perspective that public perceptions of the criminal justice system are not supportive of the legal outcomes delivered by it.

In terms of doctrinal legal research, the legal outcome of *R v Stewart* is in line with similar sexual assault trials both in NSW and across the country. While unable to review summing up given to the jury by the trial judge, it is expected that the trial progressed in accordance with trials of similar offences. In Australia, sexual assault offences have the highest rate of acquittal and the lowest rate of proven guilt when compared with other offences.<sup>178</sup> The AIC reported that in 2006, police across Australia received reports of approximately 18,000 incidents of sexual assault. AIC estimated that this represents only about 30 per cent of all incidents, as the majority are not reported to police, and of those reported to police, only about 20 per cent resulted in the laying of charges and criminal proceedings. About a quarter to a third of cases at this point were dismissed without a hearing. Of defendants who pleaded not guilty where a decision was reached (approximately 40 per cent of remaining cases) around four in ten defendants were found guilty.<sup>179</sup>

In NSW in 2009, 4011 sex offence incidents involving complainants 16 years of age or older were reported to police. Of these, criminal proceedings were commenced in 726 cases. Of the total 737 people that were charged in relation to those offences, 50 per cent were found guilty. Of the total 1404 individualised charges to come before court, 42 per cent were proved.<sup>180</sup> Despite significant law reform over the past two decades, sex offences continue to provide significant challenges for the criminal justice system in striking the balance between support for complainants and a fair trial for defendants.

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<sup>178</sup> Natalie Taylor, 'Juror Attitudes and biases in sexual assault cases No 344' (Australian Institute of Criminology, August 2007) 1.

<sup>179</sup> Australian Institute of Criminology, above n 42.

<sup>180</sup> NSW Bureau of Crime Statistics and Research, 'The progress of sexual offences through the NSW Criminal Justice System 2014' (2014) <<http://www.bocsar.nsw.gov.au/Documents/sexualattributiondiagrams.pdf>> 6.

There are extensive studies about jury attitudes in sexual assault cases.

Taylor (2007) concluded that:

‘It is time to acknowledge that jurors do not (because they cannot) make objective judgments about consent and guilt based on the facts presented to them in court. Jurors actively interpret what they see and hear, based on their own knowledge, experiences, attitudes, biases and expectations. Identifying these beliefs and expectations and understanding how they impact on judgments relating to credibility and guilt, is essential to understanding some of the barriers to successful prosecution and how prosecution rates might be improved in the future’.<sup>181</sup>

Given the findings from the National Community Attitudes Survey in relation to rape myths (Table 19), Australia still has some way to go in understanding the mythologies that surround sexual assault. Until this happens, jurors will continue to rely upon their own discursive history in determining verdicts.

Statistically and doctrinally, at face value, there is nothing to indicate anything unusual from a legal perspective in the outcome of *R v Stewart*. However, while the trend is not as strong as in Bird No.1 and Bird No 2, public perceptions and legal outcomes clearly do not align.

### **Comparator Cases**

The two comparator media articles provide further insight into the narrative immunity argument. After reading the media article, ‘Cheating cop lover cleared in rape case,’ (see **Appendix B**) 58 respondents (56 per cent) identified they did not support the legal outcome, with 43 respondents (41 per cent) unsure or unable to comment (Table 25, Chart 3). Just three per cent of respondents supported the legal outcome after reading the article. The key theme identified by respondents in identifying why they chose the rating they did related to concerns about the judicial system and how it operates in determining these kinds of cases, particularly reliance on the, ‘he said, she said,’ nature of adversarial court proceedings. Similarly, 84 per cent of respondents identified they did not support the legal outcome (Table 27, Chart 4) after reading the media article, ‘Killer found not guilty of

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<sup>181</sup> Taylor, above n 178, 6.

murder' (see **Appendix B**). There has been no comparison or analysis by narrative researchers like Toffoletti or Waterhouse-Watson to non-celebrity cases. It could in fact, be argued that all reporting of sexual assault cases also contain elements of blame deflection: for example, in the 'Cheating cop lover cleared in rape case,' the reporter included the following:

'In his decision, Judge Peter Berman said the woman's reactions and behaviour toward Mr Bennett, once that message was sent, "changed" and became "more consistent with the actions of a woman who has been deceived".'<sup>182</sup>

Further research is required to compare the reporting of legal outcomes of celebrity and non-celebrity cases to determine if in fact, 'narrative immunity,' holds across all reporting of gendered violence against women, or just in the case of footballers, as argued by Waterhouse-Watson.

Nicola Lacey writes that the law, 'constructs knowledge which claims objectivity, but 'objectivity' in fact expresses a male point of view'. The doctrinal legal research (and the media articles presented in survey) demonstrates numerous examples of how judicial officers describe complainants and violent relationships. For example, Milligan is described as, 'hysterical,' and, 'neurotic,' in *Bird No 2*, and her relationship with Bird does not demonstrate the usual, 'dependence,' features apparently evident in domestic violence relationships. In *R v Stewart*, the complainant's mental illness is not contextualised, so she is simply represented as mad. The, 'woman deceived,' is a term used by Berman J in the comparator case. The power of these descriptors in defining complainants is evident. Further research into the role of the judiciary in perpetuating mythologies about complainants and violence against women is warranted.

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<sup>182</sup> Amy Dale, 'Cheating cop lover cleared in rape case', *Daily Telegraph* (Sydney), 4 June 2014.

## Chapter 7: Conclusion

This research shows quite clearly that, within the survey cohort, public perceptions do not align with the legal outcomes as reported in the cases of *R v Stewart* and *Bird No.1* and *Bird No.2*. It demonstrates that, contrary to previous feminist research exploring media narratives of footballer gendered violence allegations, the charging and prosecution of footballers in these two case studies largely follows the progression of comparable cases in the legal system, although, particularly with Bird, some anomalies which statistically suggest linkages to his Indigenous heritage. It also questions perceptions of, 'rapey footballers,' because none of the media reports of legal outcomes, including in comparator cases, were supported by respondents, indicating the survey cohort disagreed with the legal outcomes in all the media articles presented, not just the footballer cases. These outcomes indicate that there is value in expanding the survey to a larger, representative sample to assist a more robust understanding of public perceptions deriving from media reports and legal outcomes of gendered violence in high profile cases. This broader testing will also clarify whether the views of the cohort surveyed are confirmed (or not) among the broader population.

Rather than accepting previous inconclusive international research on offending rates of sportspeople, and of footballers as potentially more likely to offend than non-footballers, this research instead proposes alignment with Hindley's view that, 'football presents a context where it is an amplification and acceleration of issues that are embedded in Australian ideologies'.<sup>183</sup> What is concerning about research and media representations about footballers and gendered violence to date is that the literature does not comprehensively consider these cases in relation to offending rates in Australia, nor attrition rates of similar cases, or prevalence of these kinds of incidents more broadly. The risk for feminist researchers in range of fields is that it is tempting to use the high exposure and hyper-masculine nature of NRL and other football codes to explain ongoing allegations of gendered violence and attrition rates in criminal justice processes in that cohort, or to view the cohort as homogenous. The reality is, the prevalence of allegations,

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<sup>183</sup> Debbie Hindley, 'Footballer's Fight Club' (2005) 6(1) *Soccer & Society* 16.

and the attrition in footballer cases when brought to the criminal justice system, are simply comparable to similar cases.

This research also poses questions about the concept of, 'narrative immunity'. Further research is required to determine whether media reporting delivering, 'narrative immunity,' and, 'trials by media,' resulting in acquittal of footballers as argued by Waterhouse-Watson applies just to that particular group of men, or if it is actually applicable across the reporting of all sexual assault cases. It is too long a bow to draw to claim this concept of, 'narrative immunity,' and, 'trial by media,' achieves acquittal. There are complex, multivarying factors resulting in the attrition of gendered violence claims when reported to police. It is overly simplistic to claim the way these allegations are reported in the media is primarily responsible. The prevalence of mythology about complainants bringing sexual assault and family violence claims is deeply entrenched in Australian society. As Stubbs writes:

'It is true that feminist engagement with law reform concerning sexual assaults has a long history and a limited impact...blunted by masculinist assumptions underpinning the criminal law, and the centrality of constructs such as consent'.<sup>184</sup>

This is particularly apt in terms of language used by judicial officers in legal decisions and discourse in relation to the way complainants are described and portrayed in cases, as demonstrated in this research. Lacey speaks of how law works to, 'reflect, reproduce, express, construct and reinforce power relations along sexually patterned lines,'<sup>185</sup> and the language used by judicial officers, reported in the media and written in common law, is a way this occurs. A number of respondents raised concerns about the description of complainants in media reports of judicial officer's comments as, 'hysterical,' 'neurotic,' and as a, 'woman has been deceived'. Concerns were also raised about the media reporting of a complainant's mental health issue, and how these were brought to bear in her court case. Further research into language used by judicial officers and court participants in relation to

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<sup>184</sup> Julie Stubbs, 'Sexual Assault, Criminal Justice and Law and Order' (2003) (14) *Women Against Violence: An Australian Feminist Journal* 14, 15.

<sup>185</sup> Lacey, above n 34, ix.

complainants and defendants in transcripts, particularly summing up and in judgments, would assist in better understanding how the judicial system continues to construct, 'victims,' and 'perpetrators', and contributes to rape mythologies.

The fact that respondents in the cohort did not support the legal outcomes as reported is in line with criminology research relating to public opinion and the criminal justice system generally. Indermaur and Roberts' (2005) provided analysis of public perceptions of crime and justice following the first Australian Survey of Social Attitudes (AuSSA) in 2004. In that survey:

'The majority (almost three-quarters) of respondents indicate that they have 'not very much' (46 per cent) or 'no' (24 per cent) confidence in the courts and legal system...This finding points to a broader confidence problem for the courts and legal system which casts a shadow over their legitimacy'.<sup>186</sup>

Roberts, Spiranovic and Indermaur (2011) report:

'Sentencing legislation is often introduced on the basis of assumptions about public attitudes...However, there is usually very little systematic testing or understanding of these attitudes. What is taken as the public attitude by key decision makers is usually what is gleaned from the nature and intensity of media focus.'<sup>187</sup>

There is extensive literature as to why legislators should not take their lead from public opinion polls about sentencing. Berry's (2012) findings align with those of the 2007 Australian Survey of Social Attitudes, as analysed by Roberts and Indermaur in 2009:

'Part of the reason why public opinion appears so punitive in polls

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<sup>186</sup> David Indermaur and Lynne Roberts, 'Perceptions of Crime and Justice' in Wilson Shaun; et al (eds), *Australian Social Attitudes: The First Report* (UNSW Press, 2005).

<sup>187</sup> Lynne D. Roberts, Caroline Spiranovic and David Indermaur, 'A country not divided: A comparison of public punitiveness and confidence in sentencing across Australia' (2011) 44(3) *Australian & New Zealand Journal of Criminology* 370, 371.



(about the criminal justice system) is that it rests on ignorance and misunderstanding about the operation of the criminal justice system. This low and distorted level of public knowledge is closely related to the reporting of crime, particularly in the tabloid press, where little context and much negative editorial comment is attached to sentencing decisions'.<sup>188</sup>

Public perceptions of legal outcomes are important because they carry political influence and assist in driving law reform. Poor, sensationalist or biased reporting of the law by the media – the primary channel to communicate legal outcomes to the public – affects perception of legal decisions, given 80 per cent of Australians surveyed in 2007 indicated the media is important when forming their views on crime.<sup>189</sup> Given the prominent media focus on allegations of serious crimes made against celebrities, further examination between the legal outcomes in celebrity cases and media reporting in the context of national crime statistics and criminal justice system outcomes is warranted.

This research demonstrates very clearly that perceptions of the surveyed cohort do not align with legal outcomes in the cases of *Bird No.2* and *R v Stewart*, in line with the survey outcomes of the 2007 Australian Survey of Social Attitudes. There is no evidence of the direct influence of the, 'narrative immunity,' concept Waterhouse-Watson describes. However, the research demonstrates legal outcomes in both cases are largely consistent with comparable cases in the jurisdiction in which they were tried. This highlights the importance of ensuring any research or media representations of tried outcomes in gendered violence cases are always contextualised. In particular, feminist researchers need to exercise caution in using institutions like the NRL as examples of, 'rape culture', lest we perpetrate further myths about characteristics of potential offenders.

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<sup>188</sup> Mike Berry et al, 'Media coverage and public understanding of sentencing policy in relation to crimes against children' (2012) 12(5) *Criminology & Criminal Justice* 567, 570.

<sup>189</sup> Roberts and Indermaur, above n 95, 9.

Finally, the work undertaken shows definitively the need for more extensive investigation into public perceptions and legal outcomes in tried cases of gendered violence – for example, mass surveys, or longitudinal studies. Further survey research will assist understanding of how media coverage of celebrity cases, like those alleged of rugby league footballers, shape broader public opinion about gendered violence. In addition, it will provide the identification of opportunities for the modelling and development of new media, judicial and societal approaches that actively work to influence the reduction of violence against women.

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**MACQUARIE**  
University  
SYDNEY • AUSTRALIA

15 July 2015

Dr Kate Gleeson  
Macquarie Law  
School Faculty of  
Arts Macquarie  
University NSW  
2109

Dear Dr Gleeson

**Reference No:** 5201500365

**Title:** *Public Perceptions and Legal Realities: Sexual Assault, Violence and Sport*

Thank you for submitting the above application for ethical and scientific review. Your application was considered by the Macquarie University Human Research Ethics Committee (HREC (Human Sciences & Humanities)) at its meeting on 24 April 2015 at which further information was requested to be reviewed by the Ethics Secretariat.

The requested information was received with correspondence on 15 June 2015.

I am pleased to advise that ethical and scientific approval has been granted for this project to be conducted at:

- Macquarie University

This research meets the requirements set out in the *National Statement on Ethical Conduct in Human Research* (2007 – Updated March 2014) (the *National Statement*).

This letter constitutes ethical and scientific approval only.

## Standard Conditions of Approval

1. Continuing compliance with the requirements of the *National Statement*, which is available at the following website:

<http://www.nhmrc.gov.au/book/national-statement-ethical-conduct-human-research>

2. This approval is valid for five (5) years, subject to the submission of annual reports. Please submit your reports on the anniversary of the approval for this protocol.

3. All adverse events, including events which might affect the continued ethical and scientific acceptability of the project, must be reported to the HREC within 72 hours.

4. Proposed changes to the protocol must be submitted to the Committee for approval before implementation.

It is the responsibility of the Chief investigator to retain a copy of all documentation related to this project and to forward a copy of this approval letter to all personnel listed on the project.

Should you have any queries regarding your project, please contact the Ethics Secretariat on 9850 4194 or by email [ethics.secretariat@mq.edu.au](mailto:ethics.secretariat@mq.edu.au)

The HREC (Human Sciences and Humanities) Terms of Reference and Standard Operating Procedures are available from the Research Office website at:

[http://www.research.mq.edu.au/for/researchers/how\\_to\\_obtain\\_ethics\\_approval/human\\_research\\_ethics](http://www.research.mq.edu.au/for/researchers/how_to_obtain_ethics_approval/human_research_ethics)

The HREC (Human Sciences and Humanities) wishes you every success

in your research. Yours sincerely



**Dr Karolyn White**

Director, Research Ethics & Integrity,  
Chair, Human Research Ethics Committee (Human Sciences and Humanities)

This HREC is constituted and operates in accordance with the National Health and Medical Research Council's (NHMRC) *National Statement on Ethical Conduct in Human Research* (2007) and the *CPMP/ICH Note for Guidance on Good Clinical Practice*.

**Details of the Approval are as follows:**

**Date of Approval** 14 July 2015

The following documentation has been reviewed and approved by the HREC (Human Sciences & Humanities):

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Documents reviewed	Version no.	Date
Macquarie University Ethics Application Form	2.3	July 2013

Correspondence from Ms Frances Cole responding to the issues raised by the HREC (Human Sciences and Humanities)

Received 15/06/2015

# Public Perceptions and Legal Realities: Sexual Assault, Violence and Sport

**TRIGGER WARNING:** This survey contains allegations of sexual assault and violence reported in the media which may be confronting to some people. Both Lifeline (13 11 14) and the National Sexual Assault Domestic Family Violence Counselling Service (1800 737 732) provide 24 hour national information and support.

You are invited to participate in a study of public perceptions and legal realities of gendered violence and sport. The purpose of the study is to investigate if there is any difference between the way the public views gendered violence allegations raised against sports people and the legal outcomes that occur when these cases are tried through the justice system.

The study is being conducted to meet the requirements of the Master of Research under the supervision of Dr Kate Gleeson, Senior Lecturer, Macquarie University Law School, 02 9850 4091, [kate.gleeson@mq.edu.au](mailto:kate.gleeson@mq.edu.au).

If you decide to participate, you will be asked:

- whether or not you are a fan, or watcher, of the National Rugby League (NRL);
- your perceptions as to the possible characteristics of NRL players;
- your perceptions of two particular players, including possible characteristics you think they display;
- your opinions about violence against women;
- your opinions about four news stories that describe the court outcomes of allegations of violence against women made against four men, two of whom are NRL players, and your views on the legal outcomes of those cases.

**It should be noted that the news stories provided in the survey describe allegations of sexual assault and violence which may be confronting to some people. Both Lifeline (13 11 14) and the National Sexual Assault Domestic Family Violence Counselling Service (1800 737 732) provide 24 hour national information and support.**

The survey will take approximately half an hour to complete.

Any information or personal details gathered in the course of the study are confidential, except as required by law. No individual will be identified in any publication of the results. Data will be available to the researchers involved for the purposes of the Masters of Research project. A summary of the results of the data can be made available to you on request by email to [fran.cole@students.mq.edu.au](mailto:fran.cole@students.mq.edu.au). It is not anticipated that the data will be made available for use in future Human Research Ethics Committee-approved projects.

Participation in this study is entirely voluntary: you are not obliged to participate and if you decide to participate, you are free to withdraw at any time without having to give a reason and without consequence.

By undertaking this survey I agree that I have read and understand the information above. By undertaking this survey I agree to participate in this research, knowing that I can withdraw from further participation in the research at any time without consequence.

The ethical aspects of this study have been approved by the Macquarie University Human Research Ethics Committee. If you have any complaints or reservations about any ethical aspect of your participation in this research, you may contact the Committee through the Director, Research Ethics & Integrity (telephone (02) 9850 7854; email [ethics@mq.edu.au](mailto:ethics@mq.edu.au)). Any complaint you make will be treated in confidence and investigated, and you will be informed of the outcome.

There are 34 questions in this survey:

## **[ ]Are you 18 years of age, or older? \***

Please choose **only one** of the following:

☐ Yes

☐ No

We are looking for people aged 18 or over to take this survey.

## **[ ]Thank you, but this survey is only available for people aged 18 and over.**

**Only answer this question if the following conditions are met:**

Answer was 'No' at question '1 [G1Q00001]' (Are you 18 years of age, or older?)

**[ ]Please enter your age range \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?)

Please choose **only one** of the following:

- 18 to 24
- 25 to 34
- 35 to 44
- 45 to 54
- 55 to 64
- 65 to 74
- 75 or older

**[ ]With which gender do you identify? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?)

Please choose **only one** of the following:

- ☐ Female
- ☐ Male

**[ ]Do you live in Australia? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?)

Please choose **only one** of the following:

- ☐ Yes
- ☐ No

(This survey is for individuals currently living in Australia)

**[ ]Thank you, but this survey is for individuals who reside in Australia only.**

**Only answer this question if the following conditions are met:**

Answer was 'No' at question '5 [G1Q00004]' (Do you live in Australia?)

**[ ]Please identify which state or territory you live in \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose **only one** of the following:

New South Wales

Queensland

Victoria

Tasmania

Australian Capital Territory

South Australia

Western Australia

The Northern Territory



**[ ]How often do you watch the National Rugby League? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose **only one** of the following:

Never. I don't like the NRL.

- ☐ Never. I'd like to, but I don't get time.
- ☐ Occasionally
- ☐ Once a week
- ☐ More than once a week

**[ ]How do you watch the NRL? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?) *and* Answer was 'Occasionally' *or* 'Once a week' *or* 'More than once a week' at question '8 [NRL1]' (How often do you watch the National Rugby League?)

Please choose **all** that apply:

Attend NRL games

- ☐ Free-to-air TV
- ☐ Cable TV
- ☐ PC, laptop or tablet
- ☐ Other not listed

**[ ]Would you describe yourself as an NRL fan? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?) *and* Answer was 'Occasionally' *or* 'Once a week' *or* 'More than once a week' at question '8 [NRL1]' (How often do you watch the National Rugby League?)

Please choose **only one** of the following:

Yes

☐ No

**[ ]Do you keep up to date on NRL news through the media? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?) *and* Answer was 'Occasionally' *or* 'Once a week' *or* 'More than once a week' at question '8 [NRL1]' (How often do you watch the National Rugby League?)

Please choose **only one** of the following:

Yes

☐ No

**[ ]What methods do you use for keeping up to date on NRL news? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?) *and* Answer was 'Occasionally' *or* 'Once a week' *or* 'More than once a week' at question '8 [NRL1]' (How often do you watch the National Rugby League?) *and* Answer was 'Yes' at question '11 [NRL4]' (Do you keep up to date on NRL news through the media?)

Please choose **all** that apply:

The Telegraph  
The Courier-Mail  
The NT News  
The Herald Sun  
The Age  
The Sydney Morning Herald  
Australian Financial Review  
The Australian  
Brisbane Times  
The West Australian  
The Adelaide Advertiser  
The Tasmania Mercury  
News sites on the web  
www.NRL.com  
Fox Sport  
www.ZeroTackle.com  
www.abc.net.au  
Cable news  
Commercial TV  
Social media

Other:

**[ ]In your opinion, are first grade NRL players viewed as role models in Australia? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose **only one** of the following:

Yes

☐ No

**[ ]In your opinion, are NRL players role models for you personally? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose **only one** of the following:

Yes

☐ No

**[ ]In your opinion, what characteristics do professional NRL players display in general? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose **all** that apply:

- Athleticism
- Fitness
- Integrity
- Courage
- Self-confidence
- Intelligence
- Toughness
- Endurance
- Aggression
- Beauty
- Ignorance
- Fairness
- Sensitivity
- Mateship
- Sexual attractiveness
- Strength
- Competitiveness
- Rebelliousness
- Wealth
- None of these

Other:

**[ ]Are you aware of a Gold Coast Titans player called Greg Bird? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose **only one** of the following:

Yes

☐ No

**[]Which of the following have you heard or know about Gold Coast Titans player, Greg Bird?**

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) and Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?) and Answer was 'Yes' at question '16 [NRL9]' (Are you aware of a Gold Coast Titans player called Greg Bird?)

Please choose **all** that apply:

His nickname is 'Birdman'

His wife is called Becky

He first played NRL professionally in 2002

He was found guilty and later acquitted of physical assault of his live-in partner in 2009

His position is five-eighth/lock

He identifies as Indigenous

He pleaded not guilty to cocaine possession and supply charges in early 2015

He previously played for Cronulla

He has played in France for the Catalan Dragons

Identify any of the statements you have heard or know about Greg Bird.

**[]Which of the following characteristics do you think Titan's player Greg Bird displays? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) and Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?) and Answer was 'Yes' at question '16 [NRL9]' (Are you aware of a Gold Coast Titans player called Greg Bird?)

Please choose **all** that apply:

☐ Athleticism

☐ Fitness

☐ Integrity

☐ Courage

☐ Self-confidence

☐ Intelligence

☐ Toughness

☐ Endurance

☐ Aggression

☐ Beauty

☐ Ignorance

☐ Fairness ☐

Sensitivity ☐

Mateship

Honesty

☐ Sexual attractiveness

☐ Strength

☐ Competitiveness

☐ Rebelliousness ☐

Wealth

☐ None of these

☐ Other:

**[ ]Are you aware of a Manly Sea Eagles player called Brett Stewart? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose **only one** of the following:

Yes

No

**[ ]Which of the following have you heard or know about Manly Sea Eagles player, Brett Stewart? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?) *and* Answer was 'Yes' at question '19 [NRL10]' (Are you aware of a Manly Sea Eagles player called Brett Stewart?)

Please choose **all** that apply:

☐ He is known as 'The Prince of Brookvale'

☐ He plays fullback

☐ His older brother is also a footballer

☐ He has diabetes

☐ He has played his entire career for the Sea Eagles

He is vice captain of the Sea Eagles

☐ He was found not guilty of sexual assault in 2010

☐ He is the most prolific try-scorer in the Manly Sea-Eagles' history

☐ He was born in Wollongong

Identify any of the statements that you have heard or know about Brett Stewart

**[ ]Which of the following characteristics do you think Manly Sea Eagles' player Brett Stewart demonstrates? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?) *and* Answer was 'Yes' at question '19 [NRL10]' (Are you aware of a Manly Sea Eagles player called Brett Stewart?)

Please choose **all** that apply:

- Athleticism
- Fitness
- Integrity
- Courage
- Self-confidence
- Intelligence
- Toughness
- Endurance
- Aggression
- Beauty
- Ignorance
- Fairness
- Sensitivity
- Mateship
- Honesty
- Sexual attractiveness
- Strength
- Competitiveness
- Rebelliousness
- Wealth
- None of these

Other:

Tick all that apply

**[ ]In your opinion, are NRL players who have been charged with serious crimes treated the same way before the law as other citizens who have been alleged to have committed similar crimes? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose **only one** of the following:

- ☐ Yes
- ☐ No
- ☐ I'm not sure

**[ ]Please indicate to what extent you agree or disagree that violence against women is a serious issue for our community? \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) and Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose **only one** of the following:

- Strongly agree
- ☐ Somewhat agree
- ☐ Neither agree or disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree

**[ ]A series of statements about domestic violence follows. Please indicate your opinion about each of the statements on the scale of 1 to 5, with 1 being strongly agree, and 5 being strongly disagree. \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) and Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose the appropriate response for each item:

	1	2	3	4	5
Domestic violence is a criminal offence					
Most people turn a blind eye to, or ignore domestic violence					
It's hard to understand why women stay in violent relationships					
Domestic violence is a private matter to be handled in the family					
Police now respond more quickly to domestic violence calls than they did in the past					
Domestic violence can be excused if the violent person was themselves abused as a child					
Domestic violence can be excused if the violent person is under a lot of stress in their lives					
Domestic violence can be excused if, afterwards, the violent person genuinely regrets what they have done	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Domestic violence can be excused if it results from people getting so angry that they temporarily lose control	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Domestic violence can be excused if the victim is heavily affected by alcohol					
Domestic violence can be excused if the offender is heavily affected by alcohol					
Most women could leave a violent relationship if they really wanted to					
In domestic situations where one partner is physically violent towards the other it is entirely reasonable for the violent person to be made to leave the family home	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The legal system is effective in dealing with allegations of domestic violence		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please indicate your opinion about each of the statements on the scale of 1 to 5, with 1 being strongly agree, and 5 being strongly disagree.

**[]Following are some statements about sexual assault and harassment. Please indicate your opinion about each of the statements on the scale of 1 to 5, with 1 being strongly agree, and 5 being strongly disagree. \***

**Only answer this question if the following conditions are met:**  
Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) and Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose the appropriate response for each item:

	1	2	3	4	5
Women are more likely to be raped by someone they know than a stranger					
Women rarely make false claims of being raped					
Women often say 'no' when they mean 'yes'					
Women who are sexually harassed should sort it out themselves rather than report it					
If a woman goes to a room alone with a man at a party, it is her fault if she is raped					
If a woman doesn't physically resist - even if protesting verbally - then it isn't really rape					
Rape results from men not being able to control their need for sex					
A woman cannot be raped by someone she is in a sexual relationship with					
A man is less responsible for rape if he is drunk or affected by drugs at the time					
If a woman is raped while she is drunk or affected by drugs she is at least partly responsible					
A lot of times, women who say they were raped had led the man on, and then had regrets					
The legal system is effective in dealing with allegations of sexual violence against women					

Please indicate your opinion about each of the statements on the scale of 1 to 5, with 1 being strongly agree, and 5 being strongly disagree.

**[]Following are some attitudes that some people hold. Please indicate your opinion about each of the statements on the scale of 1 to 5, with 1 being strongly agree, and 5 being strongly disagree. \***

**Only answer this question if the following conditions are met:**  
Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) and Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose the appropriate response for each item:

	1	2	3	4	5
On the whole, men make better political leaders than women.					
When jobs are scarce men should have more right to a job than women					
Discrimination against women is no longer a problem in the workplace in Australia					
Men should take control in relationships and be the head of the household					
Women prefer a man to be in charge of the relationship					
The law is effective in dealing with violence against women					
Where sexual assault or violence allegations are made by women against professional footballers, footballers are treated the same under the law as any other person.					

Please indicate your opinion about each of the statements on the scale of 1 to 5, with 1 being strongly agree, and 5 being strongly disagree.



Media Perceptions

TRIGGER WARNING: The news articles that follow contain allegations of sexual assault and violence reported in the media which may be confronting to some people. Both Lifeline (13 11 14) and the National Sexual Assault Domestic Family Violence Counselling Service (1800 737 732) provide 24 hour national information and support.

[ ]  
Please read the following news article from the Newcastle Herald, 25 Nov 2009:

Greg Bird has conviction quashed

Former Maitland and Newcastle Knights junior rugby league player Greg Bird has walked free after a judge quashed his conviction for cutting his girlfriend's face with a glass.

The former Cronulla Shark player's girlfriend, Katie Milligan, suffered a broken eye socket and cuts to her eye during an altercation at Bird's flat in August last year.

Judge Michael Finnane believed the evidence of Bird and Milligan that her injury was an accident, caused when an "agitated" and "irrational" Milligan lunged at him with a glass in her hand.

Bird was sentenced in June to at least eight months' jail time, with a maximum of 16 months, after being found guilty of reckless wounding.

Bird, who now plays for the Catalan Dragons in the English Super League, has been on bail after lodging an appeal following the guilty verdict.

Bird and his girlfriend then claimed it was all an accident, blaming Milligan's drug use and aggression, and saying she started the fight.

\*  
Only answer this question if the following conditions are met:  
Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) and Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose the appropriate response for each item:

On a scale from 1 to 10, where 1 is 'Fully Support' and 10 is 'Do not support at all', please indicate the level of your support for the judgment made by the Court in this case as described in this article.

1 2 3 4 5 6 7 8 9 10

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

On a scale from 1 to 10, where 1 is 'Fully Support' and 10 is 'Do not support at all', please indicate the level of your support for the judgment made by the Court in this case as described in this article.

**[ ]Please briefly outline why you chose the scale number you did. \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please write your answer here:

[ ]

Please read the following article from the Sydney Morning Herald, 29 September 2010

# Brett Stewart breaks down as jury finds him not guilty of sexually assaulting girl

Rugby league star Brett Stewart has been found not guilty of sexually assaulting a 17-year-old girl.

Stewart, supported in court by his girlfriend Jaime Baker, his parents, family, friends and teammates broke down and cried as the Sydney jury of five women and seven men returned its verdict after less than two hours of deliberation.

Stewart, 25, pleaded not guilty to two counts of indecent assault and a charge of sexual intercourse without consent over allegations he tongue-kissed and digitally penetrated the girl.

The alleged assault occurred outside Stewart's Manly home on March 6 last year, after he caught a taxi home following the Sea Eagles' season launch.

The teenager, who cannot be named, told the court she had been smoking outside the townhouse complex when a man she recognised from television - but whose name she did not know - got out of a taxi.

"I remember saying to him, 'You've been drinking, haven't you?'" she told the court.

The girl said that after some conversation, the man looked around then "just leant in and kissed me. I pushed him away then he came in again and put his tongue in my mouth."

The man allegedly put his hand up her shorts and touched her.

The court heard the teen had been diagnosed with a mental illness.

In his own testimony, Stewart said the girl made advances towards him. He said she had approached him, asking "Are you Brett Stewart?" and if she had seen him on TV. He said he resisted when she tried to kiss him and denied making unlawful advances or forcing himself on her in any way.

The courtroom was so packed during the two-week trial that observers were sprawled on the stairs between the seats of the public gallery.

Manly teammates Anthony Watmough and David "Wolfman" Williams were among those who turned up to support Stewart while high-profile witnesses, including Manly coach Des Hasler and deputy senior Crown prosecutor Margaret Cunneen, SC, gave evidence of his good character.

"We will give Brett and his partner Jaime Baker all the time they need to recover from the traumatic last year-and-a-half," Sea Eagles chairman Scott Penn said in a statement.

"Everyone at the Sea Eagles from the staff in the front office, the coaching staff, teammates, sponsors, members and supporters wish him well and a successful return from a long period out with injury to his famous number one jersey next season."

Stewart has played only six games in the NRL since the 2008 grand final - five in 2009 and one in 2010 - because of knee problems. \*

Only answer this question if the following conditions are met:

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) and Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose the appropriate response for each item:

1   2   3   4   5   6   7   8   9   10

On a scale from 1 to 10, where 1 is 'Fully Support' and 10 is 'Do not support at all', please indicate the level of your support for the judgment made by the Court in this case as described in this article.

On a scale from 1 to 10, where 1 is 'Fully Support' and 10 is 'Do not support at all', please indicate the level of your support for the judgment made by the Court in this case, as described in this article.

**[ ] Please briefly outline why you chose the scale number you did. \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) and Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please write your answer here:

Please read the following news article from the Daily Telegraph, 4 June 2014:

## Cheating cop lover cleared in rape case

**A POLICE officer has been acquitted of sexually assaulting his girlfriend, who accused him of rape after discovering he had cheated on her while holidaying in Vietnam.**

**Shaun Anthony Bennett broke down in tears of relief in the dock yesterday as he was found not guilty of sexual intercourse without consent, following the allegation of his ex-partner in 2011.**

**During the judge-alone trial, the Sydney District Court heard Mr Bennett texted the woman, who cannot be named for legal reasons, to tell her: “I wasn’t good in ‘Nam — you are better off without me — I lasted a week.” The couple of six months had argued in the lead-up to the holiday about whether he would stay faithful to her, and on the day he arrived back in Sydney he initially told her he had not slept with anyone else.**

**In his decision, Judge Peter Berman said the woman’s reactions and behaviour toward Mr Bennett, once that message was sent, “changed” and became “more consistent with the actions of a woman who has been deceived”.**

**The court heard the couple spent the day together after Bennett arrived back in Sydney from his trip, travelling back to the Central Coast where she bought vitamins and dinner for him.**

**The woman alleged that, during sex, Mr Bennett grabbed her by the ponytail and forced her to perform oral sex on him against her consent. He denied this, saying all of their relations were consensual.**

**The Crown had said that the woman’s “distressed, shaking and hysterical” complaints to friends about the alleged assault were consistent with it having occurred. But Judge Berman said the evidence “left him with a reasonable doubt about the accused’s guilt”. \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) and Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose the appropriate response for each item:

1   2   3   4   5   6   7   8   9   10

On a scale from 1 to 10, where 1 is 'Fully Support' and 10 is 'Do not support at all', please indicate the level of your support for the judgment made by the Court in this case as described in this article.

On a scale from 1 to 10, where **1 is 'Fully Support'** and **10 is 'Do not support at all'**, please indicate the level of your support for the judgment made by the Court in this case as described in this article.

**[ ] Please briefly outline why you chose the scale number you did. \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) and Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please write your answer here:

**[ ]**

**Please read the following article from the Australian, 24 February 2015**

## **Killer found not guilty of murder**

**A MAN who stabbed his girlfriend to death with a kitchen knife after she allegedly said "I want you to do it" has been found not guilty of her murder.**

**AMY Aiton's family and friends shook their heads and cried as Michael John Aller was instead found guilty of the lesser charge of manslaughter on Tuesday, with the Supreme Court finding he was suffering from an abnormality of the mind when he carried out the "ferocious" attack.**

**As the 48-year-old was led away, one man yelled out "You got away with murder, you grub".**

**The court heard Aller had "smashed" a number of schooners of beer and six cans of bourbon and Coke when he got into an argument with Ms Aiton at their Narara townhouse on the NSW Central Coast on July 31, 2012.**

**After stabbing her repeatedly with a kitchen knife, he changed his clothes and hopped on a train to Sydney where he spent the night drinking at a hotel.**

**The following morning he handed himself into police, saying the pair had become embroiled in an argument that spiralled "way out of control".**

**During the fight, he alleged Ms Aiton noticed him looking over at a knife.**

**"I glanced at it and she saw me glance at it and she said, 'Go on ... I want you to do it. You either do it or I'm going to ... do it to you'," he claimed.**

**"I snapped. I grabbed it, and I repeatedly stabbed Amy."**

**The court heard Aller had a history of alcohol abuse and domestic violence.**

**After the breakdown of his marriage to another woman in 2008, he was admitted to hospital after allegedly throwing a brick through her house.**

**He was again admitted in 2011, saying he had been "betrayed" by another woman who had an AVO out against him.**

**While in rehabilitation at another facility from October 2011 to June 2012, he described having thoughts of harming himself and his ex-partner when heavily intoxicated.**

**Shortly after leaving this facility he met Ms Aiton who, after suffering serious injuries from a car accident years earlier, had developed a dependence on marijuana.**

**In finding him not guilty of her murder, Justice Peter Hidden said there was nothing in Aller's history to suggest violence of the "extreme order exhibited in this occasion".**

**He agreed with forensic psychiatrist Dr Richard Furst's conclusion that although there was still some doubt about Aller's claim of hearing voices at the time of the killing, it was highly likely he had a serious mental illness prior to the offence.**

**Aller, who sat with his head in his hands throughout the judgment, will return for sentencing at a later date.**

**\***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) and Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please choose the appropriate response for each item:

1   2   3   4   5   6   7   8   9   10

On a scale from 1 to 10, where 1 is 'Fully Support' and 10 is 'Do not support at all', please indicate the level of your support for the judgment made by the Court in this case as described in this article.

On a scale of 1 to 10, where 1 is 'Fully support', and 10 is 'Do not support at all', please indicate your level of support for the judgment given Mr Aller in this news article.

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

**[ ] Please briefly outline why you chose the scale number you did. \***

**Only answer this question if the following conditions are met:**

Answer was 'Yes' at question '1 [G1Q00001]' (Are you 18 years of age, or older?) *and* Answer was 'Yes' at question '5 [G1Q00004]' (Do you live in Australia?)

Please write your answer here:



## **Public Perceptions: Survey Outcomes**

### **Demographics of Respondents**

Total valid survey responses: 104 ( $n = 104$ )

Table 1: Age ranges of survey respondents

Range	Count	Percentage
18 - 24	3	3%
25-34	13	12%
35-44	38	37%
45-54	24	23%
55-64	23	22%
65-74	3	3%
	<i>N</i> =104	100%

Table 2: Gender identification of survey respondents

Gender identified	Count	Percentage
Male	28	27%
Female	76	73%
	104	100%

Table 3: State or Territory of Residence

State or Territory of Residence	Count	Percentage
NSW	87	83%
WA	2	2%
Qld	3	3%
Vic	7	7%
Tasmania	2	2%
ACT	3	3%
	104	100%

## Exposure to National Rugby League (NRL)

Table 4: Frequency of National Rugby League Viewing among cohort

Frequency of Viewing	Count	% of total respondents
Never I don't like the NRL	62	59%
Never, I'd like to but I don't get time	2	2%
Occasionally	31	30%
Once a week	5	5%
More than once a week	4	4%
	104	100%
<b>Total number of NRL viewers</b>	<b>n = 40</b>	<b>38%</b>

Table 5: What formats do NRL viewers use? (choose all that apply)

Attend games	Free to Air TV	Cable TV	PC/Laptop or Tablet	Other
9	37	10	1	1 (ABC Radio)
23 %	93%	25%	1%	1%

Table 6: Do NRL viewers describe themselves as NRL fans?

	Count	Percentage
Yes	17	43%
No	23	57%
	40	100%

Table 7: Do NRL viewers keep up to date on NRL news through the media?

	Count	Percentage
Yes	14	35%
No	26	65%
	40	100%

Table 8: What methods do NRL viewers use for keeping up to date on NRL news? (choose all that apply)

News source	Number of viewers
The Daily Telegraph	4
The Age	1
The Sydney Morning Herald	1
The Tasmania Mercury	1
News sites on the web	5
<a href="http://www.NRL.com">www.NRL.com</a>	3
<a href="http://www.foxsport.com">www.foxsport.com</a>	4
<a href="http://www.abc.net.au">www.abc.net.au</a>	4
Cable news	4
ABC Radio	2
Rabbitohs app	1

Table 9: In your opinion, are first grade NRL players viewed as role models in Australia?

	Count ( <i>n</i> = 104)	Percentage of cohort
Yes	88	85%
No	16	15%
	104	100%

Table 10: In your opinion, are NRL players role models for your personally?

	Count ( <i>n</i> = 104)	Percentage of cohort
Yes	1	1%
No	103	99%
Total	104	100%

Table 11:

Are you aware of a Gold Coast Titans player called Greg Bird?

	Count ( <i>n</i> = 104)	Percentage of cohort
Yes	55	53%
No	49	47%
Total	104	100%

Table 12:

Which of the following have you heard or know about Greg Bird? Please choose all that apply

Items known or heard	Count ( <i>n</i> =55)	Percentage of count
His nickname is 'Birdman'	8	15%
His wife is called Becky	6	11%
He first played NRL professionally in 2002	4	7%
He was found guilty and later acquitted of physical assault of his live-in partner in 2009	45	82%
His position is five-eighth/lock	10	18%
He identifies as Indigenous	9	16%
He pleaded not guilty to cocaine possession and supply charges early in 2015	26	47%
He previously played for Cronulla	19	35%
He has played in France for the Catalan Dragons	5	9%

Table 13:

Are you aware of a Manly Sea Eagles Player called Brett Stewart?

	Count ( <i>n</i> = 104)	Percentage of cohort
Yes	54	52%
No	50	48%
Total	104	100%

Table 14:

Which of the following have you heard or know about Brett Stewart? Please choose all that apply

Items known or heard	Count (n=54)	Percentage of Count
He is known as the Prince of Brookvale	7	13%
He plays fullback	18	33%
His older brother is also a footballer	18	33%
He has diabetes	6	11%
He has played his entire career for the Sea Eagles	22	41%
He is Vice Captain for the Sea Eagles	8	15%
He was found not guilty of sexual assault in 2010	46	85%
He is the most prolific try-scorer in Manly Sea-Eagles' history	11	20%
He was born in Wollongong	1	2%

Table 15:

In your opinion, are NRL players who have been charged with serious crimes treated the same way before the law as other citizens who have been alleged to have committed similar crimes?

Response	Count (n = 104)	Percentage
Yes	8	8%
No	67	64%
I'm not sure	29	28%

Table 16:

Characteristics of Footballers: please choose all that apply

Characteristic	Footballers Generally (n= 104)		Greg Bird (n= 55)		Brett Stewart (n= 54)	
Athleticism	70	67%	16	29%	28	52%
Fitness	77	74%	19	35%	28	52%
Integrity	3	3%	0	0	3	6%
Courage	17	16%	0	0	9	17%
Self-confidence	41	39%	13	24%	15	28%
Intelligence	2	2%	0		2	4%
Toughness	68	65%	17	31%	17	31%
Endurance	44	42%	8	15%	16	30%
Aggression	85	82%	38	69%	24	44%
Beauty	6	6%	0	0	0	0
Ignorance	42	40%	21	38%	11	20%
Fairness	5	5%	0	0	3	6%
Sensitivity	2	2%	0	0	1	2%
Mateship	61	59%	2	4%	10	19%
Sexual attractiveness	11	11%	0	0	1	2%
Strength	64	62%	9	16%	15	28%
Competitiveness	79	76%	19	35%	17	31%
Rebelliousness	28	27%	16	29%	6	11%
Wealth	33	32%	13	24%	7	13%
None of these					6	11%
Other						

Table 17:

Please indicate to what extent you agree or disagree that violence against women is a serious issue in our community. (NCAS response 2013: 95%)<sup>190</sup>

Response	Response Number (n = 104)	Percentage
Strongly agree	101	97%
Somewhat agree	2	2%
Neither agree nor disagree	0	0
Somewhat disagree	0	0
Strongly disagree	1	1%
Total	104	100%

<sup>190</sup> Indermaur and Roberts, above n 152.

Table 18:

Indication of opinion about each of these statements about domestic violence on the scale of 1 to 5, with 1 being strongly agree, and 5 being strongly disagree ( $n = 104$ )

Statement	NCAS Rate (% agree) <sup>191</sup>	Rating									
		1 Strongly agree		2		3		4		5 Strongly disagree	
		No.	%	No.	%	No.	%	No.	%	No.	%
Domestic violence is a criminal offence	95%	96	92%	2	2%	0	0	0	0	6	6%
Most people turn a blind eye to, or ignore, domestic violence		16	15%	54	54%	26	25%	6	6%	2	2%
It's hard to understand why women stay in violent relationships	78%	12	12%	30	29%	20	19%	21	20%	21	20%
Domestic violence is a private matter to be handled in the family	17%	7	7%	2	2%	3	3%	10	9%	82	79%
Police now respond more quickly to domestic violence calls than they did in the past	44%	9	9%	21	20%	56	54%	12	11%	6	6%
Domestic violence can be excused if the violent person was themselves abused as a child	12%	6	6%	0	0	0	0	8	8%	90	86%
Domestic violence can be excused if the violent person is under a lot of stress in their life	12%	6	6%	0	0	0	0	3	3%	95	91%
Domestic violence can be excused, if afterwards, the violent person genuinely regrets what they have done	21%	4	4%	1	1%	2	2%	6	6%	91	87%
Domestic violence can be excused if it results from people getting so angry that they temporarily lose control	22%	6	6%	0	0	0	0	2	2%	96	92%
Domestic violence can be excused if		7	7%	1	1%	0	0	1	1%	95	91%

<sup>191</sup> Roberts, Spiranovic and Indermaur, above n187, 371.

Statement	NCAS Rate (% agree) <sup>191</sup>	Rating									
		1 Strongly agree		2		3		4		5 Strongly disagree	
		No.	%	No.	%	No.	%	No.	%	No.	%
the victim is heavily affected by alcohol											
Domestic violence can be excused if the offender is heavily affected by alcohol	9%	6	6%	0	0	0	0	2	2%	96	92%
Most women could leave a violent relationship if they really wanted to	51%	7	7%	14	13%	17	16%	27	26%	39	38%
In domestic situations where one partner is physically violent towards the other it is entirely reasonable for the violent person to be made to leave the family home	89%	68	65%	17	16%	4	4%	7	7%	8	8%
The legal system is effective in dealing with allegations of domestic violence	N/A	3	3%	3	3%	18	17%	37	36%	43	41%



Table 19: Indication of opinion about each of these statements about sexual assault and harassment on the scale of 1 to 5, with 1 being strongly agree, and 5 being strongly disagree ( $n = 104$ )

Statement	NCAS Rate (% agree)	Rating									
		1 Strongly agree		2		3		4		5 Strongly disagree	
		No.	%	No.	%	No.	%	No.	%	No.	%
Women are more likely to be raped by someone they know than a stranger	64%	50	48%	32	31%	14	13%	6	6%	2	2%
Women rarely make false claims of being raped	59%	32	31%	34	33%	25	24%	8	7%	5	5%
Women often say 'no' when they mean 'yes'	16%	6	6%	2	2%	3	3%	10	9%	83	80%
Women who are sexually harassed should sort it out themselves rather than report it	12%	5	5%	2	2%	1	1%	11	10%	85	82%
If a woman goes to a room alone with a man at a party, it is her fault if she is raped	12%	5	5%	0	0	0	0	4	4%	95	91%
If a woman doesn't physically resist – even if protesting verbally – then it isn't really rape	10%	6	6%	0	0	1	1%	3	3%	94	90%
Rape results from men not being able to control their need for sex	43%	10	9%	8	8%	14	13%	8	8%	64	62%
A woman cannot be raped by someone she is in a sexual relationship with	9%	5	5%	0	0	0	0	2	2%	97	93%
A man is less responsible for rape if he is drunk or affected by drugs at the time	9%	7	7%	0	0	0	0	2	2%	95	91%
If a woman is raped while she is drunk or affected by drugs she is at least partly responsible	19%	3	3%	2	2%	1	1%	6	6%	92	88%
A lot of times women who say they were raped led the man on, and then had regrets	38%	3	3%	6	6%	9	9%	17	16%	69	66%
The legal system is effective in dealing with allegations of sexual violence against women	N/A	6	6%	1	1%	16	15%	34	33%	47	45%

Table 20: Opinions about attitudes held by some people

Opinion	NCAS Rate (% agree)	Rating									
		1 Strongly agree		2		3		4		5 Strongly disagree	
		No.	%	No.	%	No.	%	No.	%	No.	%
On the whole men make better political leaders than women	27%	5	5%	1	1%	8	8%	9	8%	81	78%
When jobs are scarce men should have more right to a job than women	12%	6	6%	0	0	1	1%	5	5%	92	88%
Discrimination against women is no longer a problem in the workplace in Australia		6	6%	1	1%	2	2%	17	17%	77	74%
Men should take control in relationships and be the head of the household	19%	3	3%	4	4%	7	7%	9	8%	81	78%
Women prefer a man to be in charge of the relationship	28%	4	4%	2	2%	22	21%	11	10%	65	63%
The law is effective in dealing with violence against women	N/A	3	3%	2	2%	13	12%	21	20%	65	63%
When sexual assault and violence allegations are made by women against professional footballers, footballers are treated the same under the law as any other person.	N/A	4	4%	8	8%	19	18%	24	23%	49	47%

Table 21: Support for judgment after reading media article, “Greg Bird has conviction quashed”

Rating	Responses	Percentage
10 Do not support at all	46	44%
9	19	18%
8	11	10%
7	1	1%
6	2	2%
5	16	15%
4	1	1%
3	2	2%
2	4	4%
1 Fully support	2	2%
	104	99%

Chart 1: Support for judgment after reading media article, “Greg Bird has conviction quashed” where a rating of 1 indicates, “Fully support’ and a rating of 10 indicates, “Do not support at all”.

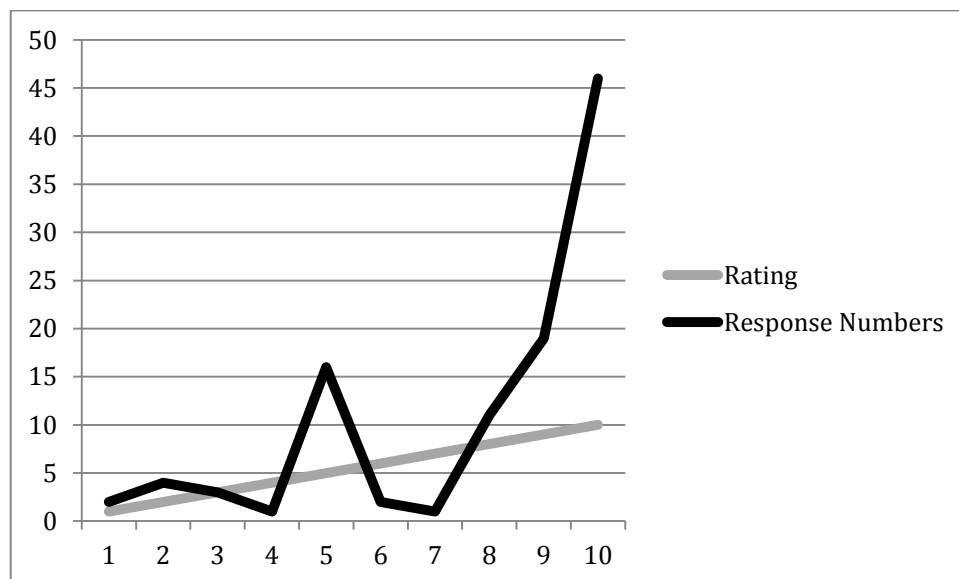


Table 22: Key themes identified from respondents' comments after reading media article, "Greg Bird has conviction quashed"

<b>Number</b>	<b>%</b>	<b>KEY THEMES</b>
32	31%	I chose the scale number I did because I do not agree with the legal outcome
16	15%	I chose the scale number I did because violence is always unacceptable.
4	4%	I chose the scale number I did because in my opinion celebrity affected the outcome
14	13%	I chose the scale number I did because I do not have enough information to comment
12	12%	I chose the scale number I did because I trust the judicial system to deliver the correct outcome
14	13%	I chose the scale number I did because I believe some women are under pressure to protect their partners when DV issues come before the court
1	1%	I chose the scale number I did because I do not trust footballers
2	2%	I chose the scale number I did because I do not trust newspaper reporting of these kinds of stories
4	4%	I chose the scale number I did because I believe some of the language reported to have been used by the judge about the alleged victim was deprecating
3	3%	I chose the scale number I did because in my opinion both parties are at fault
2	2%	I chose the scale number I did because I do not have an opinion
104	100%	

Table 23: Respondents' support for judgment after reading media article, 'Brett Stewart breaks down as jury finds him not guilty of sexually assaulting girl'.

Rating	Responses	Percentage
10 Do not support at all	31	30%
9	8	7%
8	11	10%
7	5	5%
6	6	6%
5	33	32%
4	3	3%
3	1	1%
2	1	1%
1 Fully support	5	5%
	104	100%

Chart 2: Respondents' support for judgment after reading 'Brett Stewart breaks down as jury finds him not guilty of sexually assaulting girl' where a rating of 1 indicates, "Fully support" and a rating of 10 indicates, "Do not support at all".

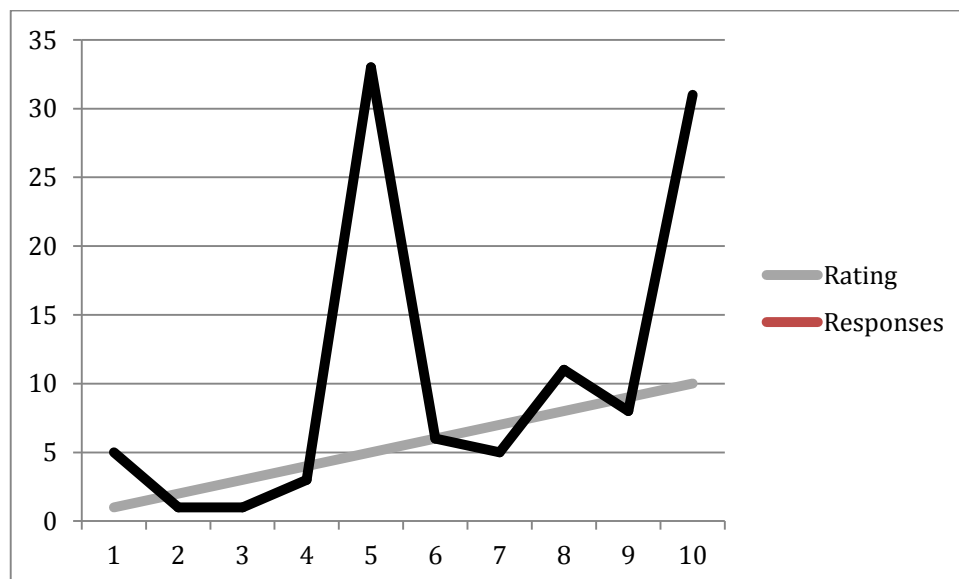


Table 24: Key themes identified from respondents' comments after reading media article 'Brett Stewart breaks down as jury finds him not guilty of sexually assaulting girl'.

<b>Number</b>	<b>Percentage</b>	<b>Key themes</b>
25	24%	I chose the scale number I did because I do not agree with the legal outcome
3	3%	I chose the scale number I did because celebrity figures should always display appropriate behaviour in public
8	8%	I chose the scale number I did because I believe celebrity affected the outcome
44	42%	I chose the scale number I did because I do not have enough information to comment
8	8%	I chose the scale number I did because I trust the judicial system to deliver the correct outcome, and/or I support the outcome
9	8%	I chose the scale number I did because the report's mention of the mental health history of the complainant is concerning
2	2%	I chose the scale number that I did because the reporting portrays the defendant as the victim
1	1%	I chose the scale number that I did because do not have an opinion
2	2%	I chose the scale number I did because I do not like football culture
2	2%	I chose not to comment/comment unclear

Table 25: Respondents' support for judgment after reading media article, 'Cheating cop lover cleared in rape case'.

Rating	Responses	Percentage
10 Do not support at all	34	33%
9	16	15%
8	9	8%
7	7	7%
6	10	10%
5	22	21%
4	2	2%
3	2	2%
2	0	0%
1 Fully support	1	1%
	104	100%

Chart 3: Respondents' support for judgment after reading media article 'Cheating cop lover cleared in rape case' where a rating of 1 indicates, "Fully support" and a rating of 10 indicates, "Do not support at all".

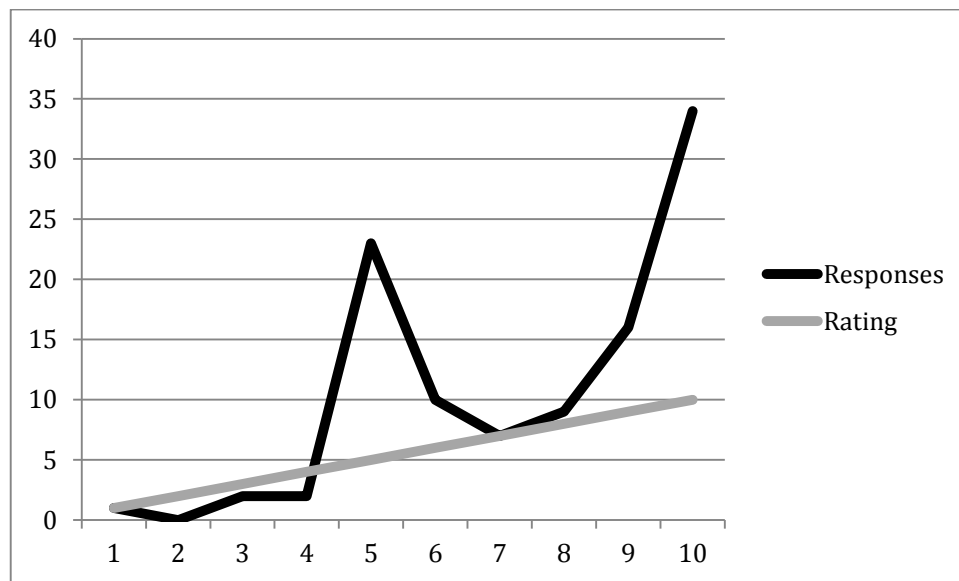


Table 26: Key themes identified from respondents' comments after reading media article 'Cheating cop lover cleared in rape case'.

<b>Number</b>	<b>Percentage</b>	<b>Key themes</b>
18	17%	I chose the scale number I did because I do not agree with the legal outcome
7	7%	I chose the scale number I did because I trust the judicial system to deliver the correct outcome, and/or I support the outcome
30	29%	I chose the scale number I did because I do not believe the judicial system operates well in these kinds of cases
5	5%	I chose the scale number I do not trust police
5	5%	I chose the scale number I did because I believe some of the language reported to have been used by the judge about the alleged victim was deprecating
8	8%	I chose the scale number that I did because women rarely lie when claiming sexual assault
5	5%	I chose the scale number I did because I do not trust newspaper reporting of these kinds of stories
8	8%	I chose the scale number I did because I do not have enough information to comment
15	14%	I chose the scale number that I did because do not have an opinion
3	3%	I made no comment/comment unclear
104	101% *	

\* rounding effect



Table 27: Respondents' support for judgment after reading media article, 'Killer found not guilty of murder'.

Rating	Responses	Percentage
10 Do not support at all	67	64%
9	7	7%
8	13	13%
7	3	3%
6	0	0%
5	9	8%
4	2	2%
3	0	0%
2	2	2%
1 Fully support	1	1%
	104	100%

Chart 4: Respondents' support for judgment after reading media article 'Killer found not guilty of murder' where a rating of 1 indicates, "Fully support" and a rating of 10 indicates, "Do not support at all".

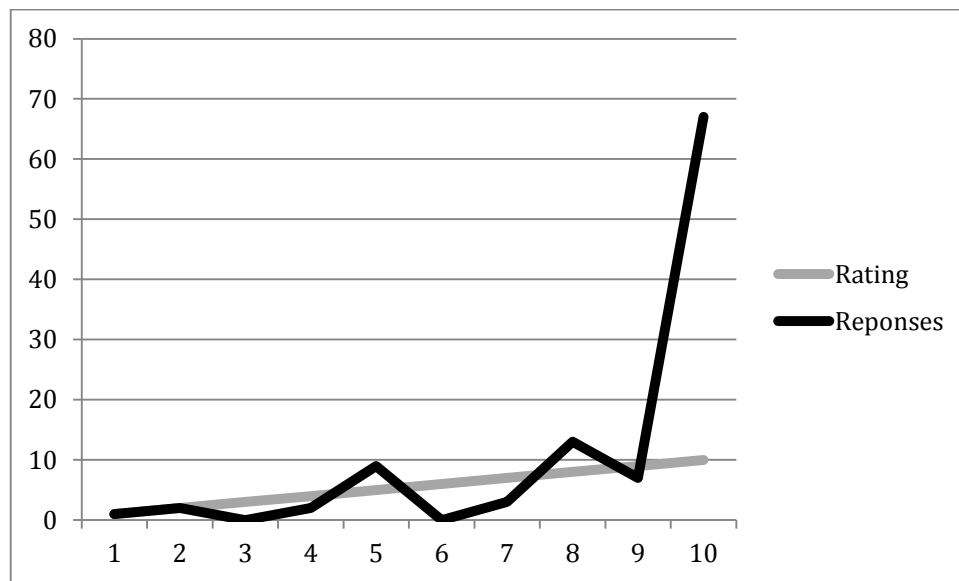


Table 28: Key themes identified from respondents' comments after reading media article 'Killer found not guilty of murder'.

<b>Number</b>	<b>Percentage</b>	<b>Key themes</b>
51	49%	I chose the scale number I did because I do not agree with the legal outcome
2	2%	I chose the scale number I did because I trust the judicial system to deliver the correct outcome, and/or I support the outcome
5	5%	I chose the scale number I did because being intoxicated is not an excuse
6	6%	I chose the scale number I did because having a mental health issue is not an excuse
3	3%	I chose the scale number I did because earlier mental health intervention could have made a difference
24	23%	I chose the scale number I did because of the previous track record of the defendant
1	1%	I chose the scale number I did because the defendant has a mental health issue
2	2%	I chose the scale number I did because I do not trust newspaper reporting of these kinds of stories
2	2%	I chose the scale number I did because I do not have enough information to comment
7	7%	I chose the scale number that I did because do not have an opinion
1	1%	I made no comment/comment unclear
104	101%*	

\* rounding effect

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