

## **Issue: The lenient sentencing of rapists**

**That community concerns about the nature of serious rape crimes must be reflected in sentencing.**

Can you imagine the feeling of violation, the obscene, bitter thoughts you will now hold forever? The smile upon your face is violently wiped off and you are thrown against the wall; raped in a malicious release of testosterone by a cowardly animal. If you can imagine this, you are probably not a Judge. Recent community outcry over the controversial issue of the 'obscenely lenient'<sup>1</sup> sentencing of rapists has sparked wide spread debates. These valid concerns must be reflected in sentencing. "The community is entitled through the parliament to make what ever changes it considers necessary...It is for the judges to administer those laws."<sup>2</sup>

Despite changes in legislation, serious sex offenders convicted in recent years have not received significantly longer jail terms. Figures show that the average sentence for rape is five years, similar terms to those imposed before legislation was proclaimed in 1991 to increase a maximum penalty of 25 years. Some 1994 offenders convicted of rape received lower sentences than those convicted of the same offences in 1992<sup>3</sup>. The Judiciary have declared that they now 'take a more serious view of sexual assault than they have in the past.'<sup>4</sup> Though the Department of Justice says that Judges have not generally handed out tougher penalties for rape. "Judges and lawyers seem completely unconcerned by community dissatisfaction with the sentencing process."<sup>5</sup> Rape is notoriously under-reported,

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<sup>1</sup> Premier Kennett reported by Matthew Pinkey & Christine Giles, 'Deport Him', *Herald Sun*, 9 February 1996

<sup>2</sup> Editor 'Crime and Punishment' *Herald Sun*, 20 March 1996.

<sup>3</sup> Paul Conroy & Nicole Brady, 'Rape terms not longer, figures show', *THE AGE*, 10 February 1996

<sup>4</sup> Paul Conroy & Nicole Brady, 'Rape terms not longer, figures show', *THE AGE*, 10 February 1996

<sup>5</sup> Quote: Mr Greg Craven, written by Mark G. Woods, president, Law Institute of Vic, Letters to the Editor. 'Attack on lawyers a matter for regret' *Herald Sun*, 17 February 1996.

causing mental anguish amongst victims. As a result of the lenient sentences, rape victims will be more likely not to follow through the assault by pressing charges. According to a counsellor and advocate at the Centre Against Sexual Assault (CASA), Karen Carlson, 'the sentences made a mockery of the legislation.'<sup>6</sup> She fears this might deter some sexual assault victims from going through the court process.

The justice system is still dominated by men, whose acknowledgment and understanding of the victims' suffering is limited. A County Court Judge launched a 'scathing attack'<sup>7</sup> upon the Law Institute as he sentenced a 20-year-old rapist for the rape of a fifteen year old schoolgirl. The Judge would have regarded six months jail 'a just and sufficient sentence'<sup>8</sup> for the crime, but felt obliged to impose the longer, though minimal 12 month term. The sentence issued to the rapist will mean that the victim will not even finish high school before her attacker is out and free to stalk the streets again. Whilst the judiciary have accused parliament of having little understanding of the justice system, the Judges themselves display a 'lamentable lack of understanding'<sup>9</sup> of the pain and torment the victims suffer.

Judges are reluctant to impose longer sentences because they are apprehensive that their decision would be overturned on appeal. The State Opposition (The Liberal Party) and the Law Institute of Victoria appealed to the State Government (ALP) to set up an inquiry into sentencing laws, describing current legislation as 'unworkable and frustrating for the judiciary.'<sup>10</sup> Restrictions on the Director of Public Prosecutions (DPP) capacity to appeal against inadequate sentences should be eased. According to the DPP there are few restraints on the accused appealing

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<sup>6</sup> Victoria Guvich, 'Outcry over 'lenient' doctor rape term', *THE AGE*, 9 February 1996

<sup>7</sup> Christine Giles, 'Judge slams rape law', *Herald Sun*, 1 March 1996

<sup>8</sup> Christine Giles, 'Judge slams rape law', *Herald Sun*, 1 March 1996

<sup>9</sup> Christine Giles, 'Judge slams rape law', *Herald Sun*, 1 March 1996

<sup>10</sup> Paul Conroy, 'Law body demands sentencing review' *THE AGE*, 2 March 1996

against an excessive sentence but the DPP may only appeal against a lenient sentence if a fundamental error has been made. Contrary to public opinions as published by the *Herald Sun*<sup>11</sup>, demonstrating that 94.1% of people polled believe that recent sentencing have been too lenient, the Supreme Court believes its Judges to be adequate and have followed all guidelines involved in responding to severe sexual crimes. The time has come for judges to feel that their sentencing is truly the most considered and final, that they will not have their knowledgeable decisions constantly overturned.

As in 1995, when the Supreme Court over-ruled a 12 year sentence for rape because the judges thought his crime was not “very grave.”<sup>12</sup>

The Supreme Court appears to be out of touch with community expectations involving the incontestable obscenely lenient sentencing of rapists. Rape is recognised as an act of sexual violence and the community is increasingly reluctant to see offenders ‘let off lightly.’ Changes in legislation should allow a substantial increase in the jail terms, judges should not feel that their decision will be contested. In the interests of community protection, rapists need to be given sentences substantial enough to deter them from re-offending. The general public who have displayed their anger through an extraordinarily large number (over 1100) Letters to the Editor’ *Herald Sun* should be consulted in the review of the sentencing of serious sex offending crimes. “The public must have confidence in the criminal justice system... The appropriateness of sentences must be measured against community expectations... It is the responsibility of Parliament, to define specific crimes and maximum sentences reflecting the views of the community.”<sup>13</sup>

(Word Count: 784)

<sup>11</sup> Phone Poll Vote Line, ‘Do you think the rapists sentence was adequate?’, *Herald Sun*, 12 February 1996

<sup>12</sup> Editorial, ‘Leniency in Court’, *THE AGE*, 10 February 1996

<sup>13</sup> Jan Wade, ‘HEAD TO HEAD: Should the public have a say in jail sentences?’ *Herald Sun*, 25 March 1996

## Part 1: Language Analysis

Word Count : 919

### Focus Statement:

Media Presentation of the debate over the leniency in the justice system in regard to convicted rapists jail sentences.

### Contention:

The media have been critical of the courts' lenient sentencing of rapists.

*"Injustice anywhere is a threat to justice everywhere"*<sup>1</sup>

Victims of the cruel and horrific, personal violation of rape are currently being further assaulted by the Supreme Courts. This is the result of judges handing down "*obscenely lenient*"<sup>2</sup> sentences to convicted rapists who are walking away laughing. The victims of these heinous crimes continue to suffer eternal torment and extreme mental anguish whilst their rapists are free to stalk the streets again in a just a few years time. "*The issue arises from the precedents set by the Supreme Court that, in many cases, appear lenient*"<sup>3</sup> and has taken prominence in the media since the new year (1996). Opinions of the controversial issue have been clearly expressed in a range of media texts. The media have print media have been critical of the courts' lenient sentencing of rapists.

The sole, front page news article featured in the ( Pinkey M. et al: Herald Sun [9/2/1996])<sup>4</sup> is entitled "*DEPORT HIM*". This bold, simple headline has been printed in a predominant font designed to grab the readers attention. The secondary headline is short and harsh, depicting the rapist; Shaun O'Rourke, as smiling, using alliteration ("Smiling rapist sentence sparks anger") and loaded language such as "*sparks anger*" which effectively enrage the reader with connotations of a 'satisfied rapists.' Constant

<sup>1</sup> Martin Luther King (1929-1968)

<sup>2</sup> Herald Sun 9/2/96 "*Deport Him*"

<sup>3</sup> The Age 10/2/96 "*Leniency in court*"

<sup>4</sup> Refer to Appendix 1

references and direct quotations from the Premier make the text more credible. He uses repetitive methods; (Kennett is quoted, describing the sentence as “obscenely lenient” twice) to reiterate his personal stance. The angry tone of the article is expressed using emotional landmines such as “*sparked uproar*”. The inclusion of the description of O’Rourke’s barbarous mannerisms as he was led from the court (“*He grinned broadly and rubbed his hands*”) is a potent weapon of persuasion.

The article has underlying accusations of inappropriate sentences against the judicial system, stating that “*groups joined the Premier in venting their anger... at the sentence handed down by judge Leo Hart.*” After a humble middle section repeating similar views towards the “heinous” crime, the article concludes with a dismissive quote, repeating Kennett once again to agitate the reader.

Eloquence and style dominate persuasive techniques in the editorial titled “*Leniency in Court*”(The AGE 10/2/96 Editorial)<sup>5</sup>. The editorial aims to convince the reader the “*obscenely lenient*” sentences handed to convicted rapists are just not stern enough, “*in the interests of community protection, rapists need to be given sentences substantial enough to deter them from re-offending.*” Emotive language is used in the description of “*judicial obtuseness*”, where satirical allegations are used, (“*older male judges are sadly in need of the gender awareness programs*”) as unsavoury tactics of persuasion. The editorial remained politically correct by using measured phrases such as “*appears to be.*” In concluding with an emotive plea, “*We can only hope that he does so,*” the author is appealing to you as the reader in an intimate, refined style that represents the intensity of the editorial.

Contrary to the sophisticated editorial, the Opinion Column “*We own the rape laws.*” (Herald Sun 5/3/96 - Sally Morrell)<sup>6</sup> is packed full of colloquialisms and coloured, loaded language. Morrell’s use of rhetorical questions, along with a hint of satire “*What so wrong with being opposed to rapists in the same way that Americans are said to be*

<sup>5</sup> Refer to Appendix 2

<sup>6</sup> Refer to Appendix 3

*in favour of apple pie?*”, emphasises her appeal to the general public. The use of colloquialisms such as “*sure as hell didn't do their cause much good*” and emotive language “*horrific... violation of a woman*”, which actively persuades the reader.

Continual reference is made to “*public views*”, though some of these statements appear to be unsupported and presumptuous. This is the result of a lack of factual evidence, or statistical data. Graphic imagery of the assault of a young “*schoolgirl*” who is left to “*dress alone*” after the incident, vigorously dramatises the case, thus exposing the reader to the alarming stereotype of the rapist. The rapist whom in her opinion, is not being suitably punished.

Though it could be argued that her relaxed, conversational tone is too “*lenient*” for the seriousness of the issue as she appeals to the ‘common’ people in a relaxed manner about an extremely solemn issue. The article has achieved a powerful reckoning with the reader, overwhelming in detail using various linguistic devices to persuade the rational mind.

All three pieces are conventional and individual in style appropriately targeting the educated readers who are their audience. All assume a basic knowledge of the issue, and adopt a similar stance, though each tackles the subject differently. In tone (factual reporting, sophisticated intimacy, colloquial appeal, respectively.) The inclusion of O’Rourke’s photo in the first article taints it with an assertive degree of sensationalism, it depicts an angry, emotive tone through its references. The Herald-Sun article is a human interest article as opposed to the in-depth editorial that has offered personal opinions and allegations, (of “*sexistied older male judges*”), together with eloquence and sophistication. The later article by Morrell is dramatic and opinionated.

The editorial is by far the superior of the three articles. It is well -informed, detailed advocacy of the injustice caused to rape victims. Morrell is blatantly crass and is shameless in her use of hyperbole, Pinkey text is limp, lacking depth, and obviously selective at the risk of forming an opinion. All articles are structured on the same

opinion and narrative (of O'Rourke rape case). Particularly in regards to this solemn issue, the patriarchal media have been critical of the courts' lenient sentencing of rapists.