

‘Enabling Justice’

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Enabling Justice¹

This paper is based on an analysis of a single combined explanatory - exploratory case study concerning a report of sexual assault made by an adult victim/survivor with cognitive impairment. Unlike other such reports this case is unusual in that it ultimately lead to conviction of the perpetrator. In an effort to better understand why this case was successful, an analysis was conducted in an attempt to identify the facilitators of case progression. The Social Model of Disability informs my discussion of cognitive impairment in this paper, particularly in the comparison I draw between the pathways of this case and other such reports made to Victoria Police by adult victim/survivors with cognitive impairment. Factors that appear to have contributed to the successful prosecution of this case include commitment to justice from both the advocate and the police officer, continuity of key people including police officer and advocate and finally the police officer taking time to build the a relationship with both the victim/survivor and advocate.

Introduction

A mounting body of research suggests that adults (particularly women) with cognitive impairment specifically intellectual impairment, mental illness and dementia are particularly vulnerable to sexual assault (McCarthy & Thompson, 1997; Sobsey & Doe, 1991; Smith, & Hightower, 2001; Davidson, 1994; Hightower, Blyth 2003; Jeary, 2004). Despite the prevalence of sexual assault perpetrated against adults with cognitive impairment, few assaults are reported. Once reported, few cases proceed through the criminal justice system and result in the prosecution of the offender.

In the state of Victoria (Australia) there are a number of critical stages within the criminal justice system through which a report of sexual assault must be successfully navigated before it reaches trial. This paper is based on the preliminary analysis of interviews conducted with an adult victim/survivor of sexual assault with cognitive impairment, her mother/advocate and a police member of the Sexual Offences and Child Abuse Unit (SOCAU) who was involved in the case from its inception to finalisation. This case was chosen because, unlike the majority of sexual assault reports made to police by victims with cognitive impairment which do not progress, the case resulted in the prosecution of the perpetrator. While this case study provides potential opportunities to learn and improve the system for other victim/survivors, it appears that it was successful due to a number of factors, mainly attributed to the three main characters, the victim/survivor, her mother/advocate and the investigating police office.

The focus of the main project, of which this study is part, is two fold. Firstly, to better understand the pathways through the criminal justice system of reports of sexual assault made by adult victim/survivors with cognitive impairment to Victoria Police. A second focus is to shed light on the influences on discretionary decisions made by police in relation to reports of sexual assault made by victims with cognitive impairment. Cognitive impairment is defined here in accordance with the Australian Crimes Act

¹ This research is part of a larger project funded by an Australian Research Council (Linkage) grant. The industry partner is the Victorian based, Disability Discrimination Legal Service. The project was developed by project chief investigator Dr. S. C. Taylor.

(1958) which refers to adults whose cognition is impaired due to mental illness, intellectual disability, and dementia or brain injury.

The case discussed within this paper is unusual. The majority of reports of sexual assaults do not successfully navigate through the justice system and do not conclude with conviction of the perpetrator. Miles and Huberman (1994:271), amongst others, refer to cases which 'disconfirm' or do not follow the norm, as a 'negative' case.

The case study is both exploratory and explanatory in that the central questions the case study seeks to answer are what was the pathway of this report? And what aspects or components contributed to its successful outcome? My purpose is to analyse this case in order to gain insights into why this case was successful (Yin, 1994:5-6). In seeking to ascertain why this case was successful, I apply the perspective of the Social Model of Disability in order to compare the pathway of this successful report to the usual report pathway and to ascertain if there is any evidence to suggest that the report pathway may have varied in this instance in ways that renders the process more 'enabling', particularly within an adversarial system which looks for doubt and in so doing focuses on perceived weakness.

Prior to discussing the case in greater detail, it is important, from a contextual perspective, to provide an overview of the broader issue of sexual assault specifically in relation to adults with cognitive impairment.

Background: Adults with cognitive impairment as victim/survivors of sexual assault.

To date, there is an absence of reliable data which identifies the number of victim/survivors of sexual assault with cognitive impairments or with impairments generally. This coupled with the limited comparability of existing data (due in part to definitional differences and to the wide and varied range of methodological variables) from independent research, makes it difficult to find any source which can reliably illustrate the prevalence of sexual assault among members of the population who have cognitive impairments (Brown, Stein, & Turk, 1995: 4; Roeher Institute 1994: 11; Carmody, 1990).

Notwithstanding the lack of reliable data, a number of independent researchers have found that adults with cognitive impairment, specifically intellectual disability, mental illness and dementia are particularly vulnerable to sexual assault (McCarthy & Thompson, 1997; Sobsey & Doe, 1991; Smith, & Hightower, 2001; Davison, 1994; Hightower, Blyth 2003; Jeary, 2004). Current literature suggests that the elderly with dementia are likely to be subjected to numerous forms of abuse, with sexual abuse experienced less frequently than other forms. However, as a number of researchers have found, sexual assault of elderly people occurs more frequently than the broader community is willing or prepared to accept. Such findings have prompted several researchers to suggest that official data sources may not accurately reflect the incidence of sexual assault perpetrated against this group (Jeary, 2004; Hightower et al, 2001; Ramsey-Klawnsnik, Teaster, Mendiondo, Abner, Cecil & Tooms, 2007).

Vulnerability to sexual assault is exacerbated by a number of factors, including the level or type of impairment, dependence on the perpetrator for care (Roberto & Teaster, 2005), the environment in which the victim resides

as well as other social and systemic factors. Acceptance of this view may indicate that the elderly with dementia residing in nursing homes may be at higher risk than the literature currently suggests.

There are many similarities experienced by the majority of sexual assault victim/survivors. These similarities include police and organisational responses to sexual assault incidence and common characteristics such as gender of perpetrator (predominantly male) and victim (predominantly female), the power dynamics associated with the crime of sexual assault, the relationship between victim and perpetrator, the places where sexual assaults occur and issues related to delayed reporting to police (Victorian Law Reform Commission, 2001, 2003, 2004; Fitzgerald, 2006; Lievore, 2003, 2004a, 2005; Jordan, 2004; Temkin, 2002). However, there is a growing body of evidence which demonstrates that people with cognitive impairment are subject to more frequent sexual assaults, with elderly victims subjected to more physically injurious attacks, with most victims subjected to abuse over a longer period of time than other victims (Reynolds, 2004; Jeary, 2004; McCarthy, 1997).

Previous reviews of the legislative framework in Victoria (Australia) in relation to sexual assault have led to legislative and procedural reforms (VLRC, 2001:9-16; Victorian Law reform Commission, 1988). However, there are still many cases (in Victoria) which do not progress beyond the reporting stage or within the first few months after reporting. The implication is that many victims of sexual assault and, in particular, those with cognitive impairment do not receive a satisfactory or just outcome from the justice system.

Most researchers agree that decisions, which are made either by police or prosecutors, are based on substantive law and discretionary elements including, but not limited to, the demeanour of victim/survivor post assault and presumed ability of the victim/survivor to withstand the rigors of a trial, including hostile cross examination. Lievore (2004b, p.4) identifies a number of what she refers to as 'victim related factors' which Crown Prosecutors will consider when deciding to proceed with a case. They include victim credibility, demeanour of the victim (including the victims post assault behaviour); and the ability of a victim/survivor to recall and retell the events of the assault in a way which is consistent over time.

The extent however, to which police and prosecutor discretion impacts on case outcomes, is not entirely clear. There is evidence that very few reports of sexual assault reach police, due mainly to the 'gatekeeping' role of the person of first report, either a family member or other trusted adult (Roehrer Institute 1994, p.18). Evidence is also mounting regarding the perceived impact of victim impairment, particularly cognitive impairment on case progression, particularly in relation to credibility (Heenan & Murray, 2006 p.23; Jordan, 2004; Lievore 2004b; Davidson, 1994).

Whatever reasons can finally be attributed to the low rates of conviction of perpetrators in sexual assault cases where the victim has a cognitive impairment, it is clear that the consequences effectively silence and render this group even more vulnerable, rather than increase authorities' awareness and motivation to ensure protection and justice. It could be argued that the justice system unwittingly perpetuates a cycle of abuse against people with cognitive impairment, as perpetrators know that this group are

easy targets, and they, as perpetrators are less likely to be brought to justice for their crimes. It is precisely for these reasons that it is important to unpack and attempt to understand the range of processes at work which can either hinder or facilitate justice in these cases.

Usual report pathway

As is illustrated in the diagram below, once a report of sexual assault is made to the police, there are at least six points (not including trial outcome) at which decisions are made concerning the progress of the report. The decision-maker at each successive stage of the process will make his or her decision about whether to proceed to the next stage based predominantly on the written view of the previous decision maker. While these decisions about case progression will in part be based on evidentiary factors, individual decision makers will also apply discretion.

Usual Disclosure and Report Pathway

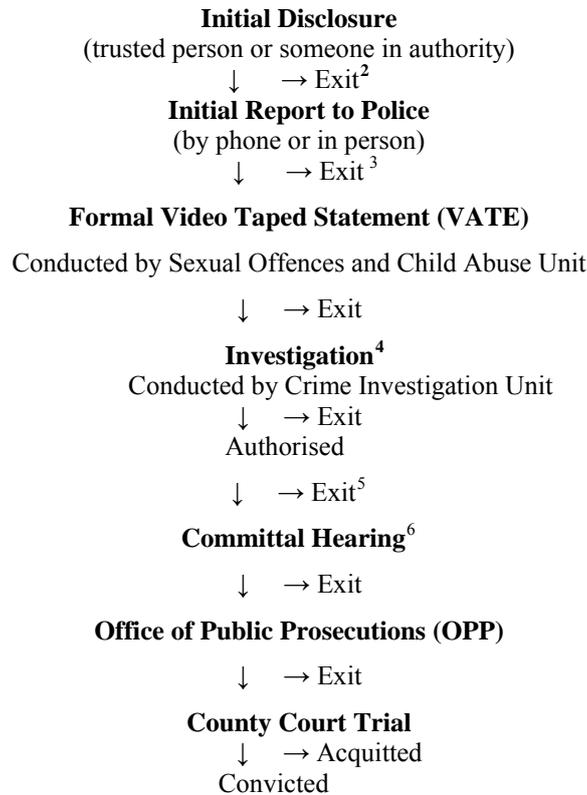


Figure 1

Note: the pathway described above does not represent or discuss the option of hearing the offence (often a lesser charge) summarily in the Magistrates Court. In addition it does not discuss the possibility of plea bargain options available to the OPP, or the range of other possible prosecution outcomes other than conviction of rape.⁷

Method

A 'negative' case allows the situation to be viewed from a different angle and has the potential to uncover new insights. In order to appreciate the full context of the case, multiple data sources, including the analysis of the case file, trial transcript and individual interviews are each examined. Data analysis was conducted using two methods, 'explanation building' and

² Often, but not always, a victim/survivor may decide to disclose the assault to another person. Research indicates that this person's role is often one of 'gatekeeper', first of all choosing whether to believe the victim/survivor and then deciding whether to report to police.

³ Two focus group interviews, one with Victoria Police members and one with advocates, had discussed reports made by victims were not being taken by police at the first point of report.

⁴ Hand over from SOCAU to CIU, minimal or no SOCAU involvement after this point.

⁵ At this point a decision is made based on evidentiary and discretionary elements as to the likelihood of success.

⁶ The purpose of the committal is to hear all the evidence and to determine whether there is enough evidence for the accused to stand trial. A decision can be made at this point that there is not enough evidence to proceed.

⁷ See Victorian Law Reform Commission. (2001). *Sexual Offences Law and Procedure: Discussion Paper*: Victorian Law Reform Commission. pp. 29-49 for full description of pathways of sexual assault report through the criminal justice system

'chronology' (Yin 1989: 109-119). Both methods were used concurrently. The latter focuses on the timing and sequence of events in chronological order to ascertain whether specific events documented chronologically contributed, either individually or collectively, to a successful case outcome.

Further, the analysis will consider how the range of events or factors, not necessarily in chronological order, may have contributed to the progression of the police investigation and subsequent trial. These events and factors will also be cross referenced across two types of data sources, the three individual interviews and the case file. Finally, all the elements found to have been influential on case progression within the case study, were compared against what is understood to be the 'usual' report pathway as described by the Victorian Law Reform Commission (2001:29-49).

The intention is to draw upon the multiple sources of data pertaining to this single case study in order to gain qualitative insight into the lived experiences, from the perspectives of three main characters, the victim/survivor, her mother/advocate and the Police Officer, of the process undertaken and decisions applied in this case. The analysis below focuses on the individual interviews.

Case study: Background

The case discussed below is one which has, for reasons which will be discussed later in the paper, weaved its way through the justice system. The case finally emerges with the perpetrator being found guilty by the jury and sentenced to a term of incarceration. In compliance with ethical and confidentiality standards, all participants have been given pseudonyms; Vicki (victim/survivor), Jan (mother/advocate) and Paula (Police Officer).

Vicki is a young female, who at the time of the assaults was aged 18 years. She has a diagnosed cognitive impairment and, according to Jan, her adoptive mother, has a 'mild disability'. The offender was a young male, a fellow student known to Vicki. According to both Jan and Paula, unlike other fellow students the perpetrator had a learning disability and not an intellectual disability⁸.

Three assaults occurred over a six month period. Two assaults were penetrative, with the offender became more violent with the second assault. Characteristically, as is the case with the majority of sexual assaults, there were no witnesses to either assault; however there was corroborating evidence in the form of nine witnesses (list of witnesses - police file) who could corroborate elements of the victim's story. One witness saw the victim distressed immediately after one assault took place. The victim also disclosed the attacks to two other people, a teacher and a friend. Unfortunately, whilst the option of reporting the crime to the police was discussed, according to the interview the victim's statement, she was not aware or given any information or opportunity to find out what making a report to police would mean.

Although the institution knew of the allegations, they were not reported to the police until six months after the first assault. In essence, this meant that the Vicki had, over a six month period endured two sexual assaults, one of

⁸ A search of the literature on sexual assault and people with cognitive impairment indicates clearly that there is not one single definition of either intellectual or learning disability. Both terms are used interchangeably as having the same meaning or alternatively, each term is used to denote a separate and specific condition. Clearly in this case both Jan and Paula adopt the latter view.

which might have been prevented, had her initial disclosure had not met with distrust and ultimately rejection. Moreover, she remained in the same classroom with the perpetrator. In addition, she was stalked by the perpetrator. In her mother's words,

the whole time the young man, who was raping her, was stalking her. When ever she went down the street, school, she was being stalked constantly (mother - interview transcript)

After the mother reported the assaults to the police, instigated an investigation and charged the offender. Characteristically, the perpetrator pleaded not guilty. According to Paula, this was a strong indicator, based on her experience of previous jury decisions that the trial would result in an acquittal. There had been no other sexual assault case (heard in this regional area) in the memory of this police officer, where a defendant (with or without impairment) who had pleaded not guilty, had been found guilty by the jury (Police Officer- interview transcript).⁹

Factors leading to successful prosecution

There are a number of factors which contributed to the successful prosecution in this particular case. The main factor is that each of the main players in the prosecution Vicki, Jan and Paula remained resolute to seeing the case through. The actions of each character will be discussed separately, so that critical aspects of their respective roles can be discussed.

Mother

Jan was pivotal in ensuring the crime was reported to police. In addition, she ensured that the police remained focused on the case and, finally, she ensured that her daughter was supported throughout the justice system process.

First and foremost, Jan was a strong and determined advocate for Vicki.

Her adopted daughter Vicki, is a survivor of physical abuse and neglect perpetrated against her in a succession of foster homes '28 before the age of five' (mother – interview transcript). This heightened Jan's determination that despite Vicki's past, her future could be different, "she (Vicki) was powerless at four but she was not powerless at eighteen" (mother - interview transcript). Despite thinking that "it would ...so easy for me to say to her, don't do anything just let it go, we'll just go on with life. But it just kept on playing over in my mind; I thought I can't do that not for her" (mother –interview transcript). Jan reported the crime to police as soon as she learned of the assault, which was some time after the second assault, had occurred.

The role of an advocate who ensures an allegation of sexual assault is taken seriously by the police is pivotal in cases involving victims with a cognitive impairment (Connelly & Keilty 2000). The ongoing role of the

⁹ While accessing data which relates specifically to this regional area is not possible, reports issued by the Australian Bureau of Statistics indicate that sexual assault as an offence resulted in the highest proportion of acquittals. See ABS (2003-2004). 'Criminal Courts Australia' catalogue number 4513.0. ABS (2006-07) 'Criminal Court Australia' Catalogue no. 4513.0. Also see Fitzgerald, J. (2006). The attrition of sexual offences from the New South Wales criminal justice system. *Crime and Justice Bulletin : Contemporary issues in Crime and Justice*, 92. Taylor, N. (2007). *Juror attitudes and biases in sexual assault cases*. Australian Institute of Criminology

advocate is also crucial in improving the possibility of a successful outcome. This point was reinforced during focus group discussions with advocates. The role of the advocate may include ensuring police maintain focus on the case, which in some cases involves waiting several months before the case is brought to trial (VLRC, 2003 pp.151-152). It can also include encouraging, or in Jan's case, insisting on, an ongoing dialogue with Paula, in the form of regular updates about how the case was proceeding.

Another factor that was crucial to the success of the case was that Jan knew Vicki very well, her past and her present. "We got these girls [Vicki and her sister], we got them when they were in a thousand pieces and we got them to one hundred pieces" (interview transcript – mother).

She knew her capabilities, limitations, vulnerabilities and strengths. 'You know when I breathe in she breaths out, since the day we brought her home to live, there's such an empathy' (interview transcript – mother)

Jan's intimate knowledge of her adopted daughter ensured that some aspects of the process could be handled in a way that would best suit Vicki. To this end, the initial statement made to police was made at her home where Vicki felt safe, and not at the police station as police had requested. Jan's insight and knowledge about the manifestations of Vicki's impairment were also helpful in preparing her daughter for the rigors of the trial. Jan spent hours with her daughter 'walking through the bush' asking her to repeat statements like 'could you repeat the question' in preparation for cross examination.

Finally, Jan provided invaluable emotional support to Vicki from initial report to the conclusion of the trial and beyond. Jan mentions that she waited outside the court room as Vicki was giving evidence. At each break Vicki would sit on Jan's lap, curled up and wanting to be hugged and rocked gently. While Jan embraced Vicki she whispered encouraging words in her ear, such as "not too much longer to go", "you are strong, you can do this" (mother -interview transcript)

In summary Jan played at least three main roles, that of reporter, supporter and advocate.

Police Officer

Jordan (2004) argues in relation to rape victims that:

The most significant aspect to emerge from interviews with [rape victims] concerns the paramount importance of the police in establishing a positive relationship with the complainant (Jordan 2004: 212)

In this case, the relationship between Paula and Vicki was vital in securing the prosecution of the offender. Paula has many years experience in area of sexual assault. As a member of the Sexual Offences and Child Abuse Unit (SOCAU), Paula works exclusively with adult and child victims of sexual assault as well as with children subjected to other forms of abuse. The central task of a SOCAU member is to make a Video Audio Taped Evidence (VATE)¹⁰ to record a statement of the offence/s from the victim. Members of SOCAU see themselves as 'victim focused', and, as such, will endeavour to

¹⁰ Section 37B of the Evidence act 1958 stipulates that a statement can be recorded on VATE if that person has 'a cognitive impairment or under the age of 18'. This recording can be wholly or partly used as evidence-in-chief during trial.

build a rapport with the victim, in order to establish an atmosphere where victims can feel sufficiently 'comfortable and safe' to tell their story (SOCAU members - focus group interviews) .

As a victim-focused police officer, Paula took the time to develop a strong rapport with both Vicki and Jan throughout the process. This relationship was a sustaining factor for both Jan and Vicki. It strengthened their ability to endure the rigors of the justice system and rollercoaster-like emotional journey imposed upon them by this crime. Comments from Vicki such as 'I trusted Paula', 'Paula was good to me', 'Paula told me what was happening', provide a glimpse into not only the importance of this relationship to Vicki, but of Paula's ability to recognise Vicki's needs and to respond accordingly.

In addition to Paula's ability to respond to the needs of sexual assault victims, she also took an active interest in the case from beginning to end. As discovered during the interview, the case file had not been sent to the Crime Investigation Unit (CIU) for investigation as normal procedure would dictate.

Broadly speaking, the role of the Crime Investigation Unit is to investigate a diverse range of crimes, including sexual assault. In particular, their role is to establish if in fact a crime has been committed and if so, what if any charges may be laid against the accused. In this investigative domain there is, compared with the role of SOCAU, less emphasis on building rapport with the victim. In the view of the CIU member, the victim is but one source of evidence which will contribute to establishing the occurrence of a crime. In addition to establishing whether a crime has indeed been committed, CIU members must then make an assessment about whether the case has a 'reasonable prospect of success' in leading to conviction of the perpetrator. This assessment will be based on evidentiary and discretionary considerations, one factor being the ability of the victim to contribute positively to a successful prosecution. This is a crucial area of police decision making, the outcome of which can determine whether the case is recommended for prosecution.

In this instance, Paula, for a number of reasons, decided to seek permission to investigate this particular case herself rather than pass it onto CIU. Paula was very interested in doing investigations. Her decision to seek permission to undertake the investigation in this case was also influenced by who was available in CIU, "it depends on who's on in our CIU as to whether they're interested or not, it might have been that the interested people were away or something" (police officer-interview transcript).¹¹ In addition, Paula did not receive encouragement to investigate the case, from SOCAU manager at the time.

to be perfectly blunt, I think probably the attitude [of the SOCAU manager] was 'well, she's [victim] intellectually disabled so it's not going to get anywhere'. So it'll all be a storm in a tea cup, get it over and done with and that's it (interview transcript- Police Officer)

However, Paula was determined. 'I just thought no, this kid is...she's a gem, you haven't met her' (police officer-interview transcript). Not only did Paula

¹¹ Views expressed by the police officer in this interview is a personal view only, and does not necessarily represent Victoria Police policy or a position in relation to the issues presented.

conduct the entire investigation, including identifying and interviewing all potential witnesses, she also took the proactive step of introducing the case to the prosecutor on circuit in the region, something that (according to interviews with CIU members) does not normally happen¹². This was a deliberate attempt on Paula's part to ensure the prosecutor would be familiar with the case, perhaps earlier than would ordinarily be possible¹³. Indeed Paula had ensured that the prosecutor met with both Vicki and Jan some two weeks prior to the trial, knowing that this would go some way in assisting Vicki to feel more at ease with the process.

To me it's just so important that if you spend hours with the victim and then hours with the witnesses, you have a far better understanding of approaching the interview with the offender than someone who is just doing it cold (interview transcript – Police Officer)

There was a variety of influences which ultimately appeared to shape Paula's decision to seek permission to investigate the assault. These included her eagerness to move beyond her usual role, her belief that Vicki was a 'gem', seeing her abilities, and whose case was worth perusing, the personnel in CIU at the time of the investigation and finally to Paula herself, who wanted to change the system.

I also have a belief that we should be taking more cases to court, be they intellectual disabled or not and lose more at court, because we would...we'd lose more in court, just to start changing the attitudes of those in the court system, the jury the judge, the whatever, to start them changing the system (interview transcript – Police Officer)

Victim/Survivor

As with all cases of sexual assault that are reported and certainly those which manage to reach the trial stage, the victim/survivors themselves require and indeed demonstrate the most courage and determination. This case is certainly no exception. The softly spoken Vicki, showed extraordinary strength throughout the case which took over twelve months before reaching trial. Once the trial commenced, she endured a stressful and distressing (two and a half days) period of cross examination which was prolonged due to difficulties with Close Circuit Television¹⁴ (CCTV) technology.

During her interview Vicki was able to look back and identify people who assisted her through a difficult process, as well as those who may have made the process more difficult. When describing how her disclosure was handled by the education facility, Vicki said, 'well, they wanted me to go to a counsellor, but I told them I didn't want to'¹⁵ (interview transcript – victim/survivor) 'Well, I felt sad...cause I really wanted to tell mum'

¹² Although responses varied slightly, the majority of group interviews with CIU members indicated that the OPP have little time prior to the trial to read the case file or meet the victim. However, this is contradicted by members of OPP.

¹³ The majority of focus group discussions with police members indicated that due to what they understood as time constraints, on occasions (particularly on circuit) the OPP would read the case the day before the trial.

¹⁴ In Victoria CCTV is used to enable the witness to give evidence from a remote location.

¹⁵ According to interview transcripts from all three characters, Vicki felt pressured into seeing a counsellor, even though at the time, Vicki had expressed that this was something she did not want to do

(interview transcript – victim/survivor & victim - police statement). Another aspect of importance to Vicki was the consistency and support she had during the entire process. The two people central as Vicki's support were her mother and the female police officer.

Vicki's mother accompanied her to every interview and meeting with various players in the case leading up to trial. Although there were other people brought in to assist Vicki at various stages, such as the Independent Third Person (ITP)¹⁶ and other court staff. 'The people at the court were good. They supported me and I had [Paula] and my mum there too' (interview transcript – victim/survivor).

It is clear that the presence of these support people that she knew and trusted were of pivotal importance. In describing her relationship with Paula Vicki said 'that's where we met [Paula], she understood, she was good to speak to' (interview transcript – victim/survivor). Vicki's case against the perpetrator was successful, in that he is now serving a gaol sentence.

What made the difference?

To understand what factors contributed to this successful case outcome, it is important to draw out the salient elements associated with this case. One way of analysing the pathway of the report is to look at it in relation to the diagram discussed earlier, the 'usual pathway of reports'.

Prior to discussing the initial report made by the victim, it is important to stress that without the assistance and advocacy from her mother Jan, the report would not have been made to police. Indeed, at a focus group discussion with advocates, this case involving Vicki was highlighted as being successful because of the strength of the advocate; although it was unknown to the researcher at the time that this was the case being discussed as, for ethical reasons names were not disclosed.

For a variety of reasons, including, but not limited to, lack of knowledge of what has occurred as being a crime, lack of information about legal rights, fear, and shame and taught helplessness, some adults with cognitive impairments tend to disclose assaults to a trusted adult before or instead of going to the police. The person, to whom the disclosure is made, plays a crucial role in deciding whether or not an allegation of sexual assault is reported to police. In effect, adults with impairments face an additional level of 'gate keeping' to the rest of the community. In this case, the person to whom the disclosure was first made (the teacher) chose not to report the crime, or provide further information to Vicki about reporting. Vicki endured two separate sexual assaults before a report was made to police. Indeed, Jan only became aware of the first assault, by chance. Information concerning the first assault did not come to light until the investigation into the second assault had commenced.

¹⁶ 'An Independent Third Person (ITP) is [a trained volunteer] there to assist a person who has a cognitive disability (intellectual disability, acquired brain injury or dementia) or a mental illness during an interview or when making a formal statement to Victoria Police. The person may be a victim, witness or suspect. The role of the ITP is to: facilitate communication, assist the person to understand their rights and support the person throughout the process' (Office of the Public Advocate)

Initial Police Report

The importance of the first response by police is clearly highlighted in this case. Paula's empathic, informative first response positively impacted on Jan and Vicki's decision to follow through with the report. The decision to make a formal complaint, came after the initial enquiry made by Jan about options available for her daughter.

Formal Police Statement by Victim/Survivor

Consistency in police personnel is another important aspect of this case. Paula's decision to remain involved in the case from inception to end, ensured continuity for the victim. It also ensured information did not get lost or reinterpreted, as can be the case where there is a change in personnel. The importance of continuity and the frustrations which can be caused by changes in personnel working on any one case were expressed in focus group discussions with advocates.

The VATE statement is a video taped recording of the victim's statement in which the victim provides a first hand account of the assault which took place. The importance of this statement as a facilitator to case progression cannot be underestimated. As such it is vital that the VATE is conducted by an officer experienced in using VATE and if not experienced in interviewing people with cognitive impairment, then certainly it requires a person who is willing to listen and who provides the opportunity for the victim/survivor to describe the assault. A separate incident involving another victim/survivor, described in a focus group with police members illustrates this point.

her allegations were clear, very clear how it happened, where it happened and she was wanting to get the VATE done. And I thought well, we'd give it a go and she was saying (making groaning noises) you could just make out what she was saying, it was like a muted deaf person's speech and where he put it and how he held her, and because she couldn't write, so in the end she drew, really quite good drawing skills, of person leaning over against a wall and someone having sex with her from behind. The whole thing she explained. The CI [Criminal Investigation] just laughed at her. They said 'how can you even tell that that's the word penis' and I said 'just listen to it'. I only had two meetings with her and I could understand her. You had to really listen (focus group transcript 1S, p. 26)

In broad terms there were two main factors, at this preliminary analysis stage, which may have made the difference, these included;

1. Determination to seek justice: Both Jan (mother) and Paula (police officer) expressed a strong desire that Vicki (victim/survivor) deserved justice. They believed Vicki's version of events and believed the perpetrator should be punished.

2. Continuity: The usual pathway of a report through the justice system, from point of report to Office of Public Prosecutions is characterised by the division or compartmentalising of tasks, what is often referred to as demarcation or the division of labor. This can mean as many as five people being involved in the case (not including changes in staff due to illness, transfer and annual leave). As discussed during focus group discussions with members of Victoria Police, each level has a specifically defined role,

indicating the point at which they become involved and the point at which the case is handed over to the person at the next level.

Although a number of people were involved for short periods of time throughout the case, the two main supports for Vicki during the entire case were her mother/advocate and Paula. Contrary to what has occurred in this instance, it is all too common for victim/survivors, especially those with cognitive impairment (if they are connected to a service at all), to be referred to a number of services throughout the process. This can be due to a number of factors, including lack of understanding of legal rights of sexual assault victims by disability workers or a lack of understanding of needs and how to respond to people with cognitive impairment by sexual assault advocates (Goodfellow & Camilleri, 2003).

a. Relationship building: Resources and time constraints and role boundaries are some of the reasons provided by police during focus group interviews, for not being able to spend a greater length of time with a victim. As the quote used earlier illustrates, the amount of time invested can make the difference in understanding what the victim is saying and consequently to case progression or exit. Paula did take the time, she listened and she wanted to know. As Jordon (2004) has pointed out, the time invested in establishing the relationship between victim and police is of pivotal importance. When a victim decides to report the crime, they risk the huge uncertainty of not being believed, being blamed, re-traumatisation from retelling the story and of having other judgements made about their character. It is logical to assume then, that the process of reporting and then agreeing to continue with the report will be greatly assisted if time is taken to build trust and confidence.

b. Commitment and investment in seeing it through: This case is an example of a movement against the tide of the last 100 years to where we have seen increasing specialization and division of labor and associated separation of conception and execution of tasks. Here we see the value of a mother and police woman who conceptualised the notion of a just outcome. Respectively, they invested emotion, energy and time, characteristic of those who are focused on an outcome. They were able to conceptualise and execute many of the tasks associated with the progress of the case. In contrast, the 'usual report pathway' can be described using Braverman's analysis of the division of labor as discussed by Staiger (1979).

Essentially, separating the tasks involved in 'usual pathway' is seen, certainly by some members of both SOCAU and CIU as specialized work domains. SOCAU members are trained in (amongst other things) building rapport with victims, interviewing and recording VATE statements, whilst CIU members typically view their area of specialization as 'the investigation'. Once their respective task has been completed the job is moved into the next phase where a new group of specialists become involved. The effect of this approach is that no unit is involved from beginning to end. Victoria Police have since established two pilot Sexual Assault and Child Investigation Teams (SOCITs) (one located in rural station and one metropolitan station). One of the aims of

the SOCITs is to facilitate a smoother transition between first and second stages. Whilst an evaluation of the pilot Sexual Assault and Child Investigation Teams is yet to be conducted, it remains to be seen whether the specialization in the area of sexual offences brings the desired improved outcomes in terms of increased convictions and improved police response for victims. If what has transpired in this case study is any indication, perhaps the improved outcomes may be better achieved, by continuity of personnel and the associated ‘investment’ in the case outcome.

Usual Disclosure and Report Pathway	Pathway of successful case
Disclosure to trusted person or someone in authority	<ul style="list-style-type: none"> • Despite initial disclosure to teacher where the assault was not reported. A second disclosure was made to the mother who did report.
Initial Police report (by phone or in person)	<ul style="list-style-type: none"> • Initial enquiry was made by phone, call referred directly to SOCAU. Police officer began to develop rapport with victim/survivor and mother.
Formal Video Taped Statement Proceed to investigation or exit	<ul style="list-style-type: none"> • Time taken by police officer to build rapport with victim/survivor and mother assisted victim/survivor to feel more secure and comfortable.
Investigation outcome Proceed to investigation or exit	<ul style="list-style-type: none"> • Decision and permission sought to conduct investigation. • Persistence and determination needed on behalf of investigating officer, due to some pressure being applied to let the case go, particularly as there had been many sexual assault trials which have not been successful in this regional area. • SOCAU member advocating for case to progress. • SOCAU member prepared brief and submitted for authorisation.
Committal Hearing	<ul style="list-style-type: none"> • ‘Paper committal’ - defendant’s legal representation waived their client’s right to a committal hearing.
OPP seek to prosecute	<ul style="list-style-type: none"> • Police officer briefed prosecutor and arranged for the prosecutor to meet the victim prior to the trial. • Mother/advocate knew difficulties her daughter would have, begins rehearsing with her daughter how to respond if she doesn’t understand a question.
County Court Trial Convicted or acquitted	<ul style="list-style-type: none"> • SOCAU member still involved, interested in outcome and supportive of victim/survivor and mother.

Conclusion

Reflecting on the first two elements, namely ‘Determination to seek justice’ and ‘Continuity’ the Social Model of Disability offers the most saliency in explaining or giving meaning to what has transpired in this case. The focus of the Social Model of Disability is on the socially constructed systems, including systemic, which create barriers that exclude and effectively disable access and participation in society by people with impairments.¹⁷ According to Jones and Brassier Marks (1999) the constructed legal system in Australia has a history of rendering a number of groups ‘disabled’ or ‘lacking legal competency or legal capacity’ (p.5). These include children, women and what the medical and the legal professions referred to as ‘lunatics and idiots’ (p.5). Whilst there is continuing debate regarding the inclusiveness of the Social Model of Disability in regards to people with cognitive impairment (Thomas & Corker, 2002), there is little doubt that access and inclusion have not been at the forefront of society’s systems and structures in Australia. Certainly, one would only need look into the recent past in Victoria to find that people with ‘impairments’ were not included into general society, rather, people with ‘impairments’ were locked away in institutions and controlled, the forced sterilization of women and young girls of child bearing age as a case in point (Jones & Brassier Marks, 1999, p. 7).

It should come as no surprise that police decision making in relation to reports of sexual assault is informed by the justice system and society in which they work and are part. By this I refer to our adversarial system of justice, which sets one against another, not necessarily to seek the truth but to create doubt and to find and exploit weakness. Certainly, according to Jones and Brassier Marks (1999), the law has historically constructed “people with disabilities as ‘other’ ” (p. 7).

In this case the police officer ‘Paula’ in effect ‘adjusted’ (within the confines of her power) how the system responded to Vicki. What could be described as a disabling environment for many victim/survivors, was rendered more enabling by the steps Paula took to maintain involvement with the case and for ‘Vicki’ to be seen as a real person and not merely as a ‘disabled’ witness. Rather, than labelling this a ‘special case’, perhaps it should be seen as an example of how the justice system could improve its response to all victim/survivors. In providing the opportunity for the victim/survivor, mother/advocate and the police officer to work closely together, this case facilitated building rapport¹⁸, trust, and understanding of both the system and of the victim including her abilities. Finally, such an approach reduces the level of fear and uncertainty often experienced by victim/survivors.

Doubtless, the success of this case was also assisted by Vicki’s ability to communicate verbally. It remains a reality that those victim/survivors who use alternative means of communication or those, whose means of communication is currently unrecognised and deemed inadmissible by the

¹⁷ There are a number of excellent discussions about the origins and applicability of the Social Model of Disability see Oliver, M. (1990). *The politics of disablement*. Basingstoke, Hampshire: Macmillan and Thomas, C. (1999). *Female Forms: Experiencing and understanding disability*. Buckingham: Open University Press.

¹⁸ As discussed earlier, Jordon (2004) highlights the importance of the relationship between police and victim/survivor in ensuring a positive outcome.

justice system, remain in the first instance, beyond belief and consequently beyond justice.

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