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Athletes, Sexual Assault, and "Trials by Media"

Narrative Immunity

Deb Waterhouse-Watson



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Athletes, Sexual Assault, and “Trials by Media”

Since footballer sexual assault became top news in 2004, six years after the first case was reported, much has been written in the news media about individual cases, footballers and women who have sex with them. Deb Waterhouse-Watson reveals how media representations of recent sexual assault cases involving Australian footballers amount to ‘trials by media’, trials that result in acquittal. The stories told about footballers and women in the news media evoke stereotypes such as the ‘gold digger’, ‘woman scorned’ and the ‘predatory woman’, which cast doubt on the alleged victims’ claims and suggest that they are lying. Waterhouse-Watson calls this a ‘narrative immunity’ for footballers against allegations of sexual assault.

This book details how popular conceptions of masculinity and femininity inform the way footballers’ bodies, team bonding, women, sex and alcohol are portrayed in the media, and connects stories relating to the cases with sports reporting generally. Uncovering similar patterns of narrative, grammar and discourse across these distinct yet related fields, Waterhouse-Watson shows how these discourses are naturalised, with reports on the cases intertwining with broader discourses of football reporting to provide immunity. Despite the prevalence of stories that discredit the alleged victims, Waterhouse-Watson also examines attempts to counter these pervasive rape myths, articulating successful strategies and elucidating the limitations built into journalistic practices, and language itself.

Deb Waterhouse-Watson is an Associate Lecturer in the School of English, Communications and Performance Studies at Monash University, Australia. With research interests at the intersection of media, law, gender and language, her current work is on the criminal trials of Australian footballers, in the courtroom and the media.

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A Note on Terminology

There has been much feminist debate over the most appropriate term to describe a woman who has (allegedly) been raped: 'victim', 'survivor', or 'complainant'. Linda Alcoff and Laura Gray (1993) explicitly link 'victim' with passivity and 'survivor' with activity, and in their article refer to all raped women as 'survivors'. Sharon Lamb (1999, 119) cautions against the use of 'survivor' as it is a 'grand term' indicating 'that the victim's life was at stake and that the victim survived an event on a par with a genocide', which may deter women who did not consider their experience to entail this level of destruction from recognising it as rape. Nicola Gavey (1999, 78) also warns that 'it may be difficult for a woman to call herself a survivor without necessarily marking her self-image with the sense that severe damage has occurred', suggesting that adopting this term may affect a woman's ability to move on from the experience. Joanna Bourke (2007, 7) also prefers 'victim' as it 'draw[s] attention to the hurt of abuse' adding that 'it is not a moral judgement, nor an identity', and does not preclude victims from also being survivors. Each position has its merits; however, individuals will find different words applicable and helpful, and part of regaining a sense of control over their situation might involve making that choice. I therefore consider that it should be an individual victim/survivor's own choice which term they feel best applies to their situation.

As the majority of the cases I analyse have not been legally tested, I will primarily use 'complainant', as it draws attention to the act of *speaking* about rape. In addition, I will at times use '(alleged) victim', as in legal discourse 'victim' is the term ascribed to a wronged party; more importantly for this book, in Jean-François Lyotard's (1988) terminology, 'victim' has the additional sense of one who has been wronged but is denied the possibility of testifying to the wrong (see Chapter Three). For these reasons I will use it in this book in preference to survivor or victim/survivor.

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Chapter 2:

'(Un)Reasonable Doubt: Narrative Immunity for Footballers against Allegations of Sexual Assault'. *Media/Culture* 14 (1), 2011.

'All Women Are Sluts: Australian Rules Football and Representations of the Feminine'. *Australian Feminist Law Journal* 27: 155–162, 2007.

Chapter 4:

'Playing Defence in a Sexual Assault "Trial by Media": The Male Footballer's Imaginary Body'. *Australian Feminist Law Journal* 30: 109–129, 2009.

Chapter 5:

'"It Was the Beer . . .": The Discursive Function of Alcohol in Representations of Sexual Violence'. In *The Future of Applied Linguistics: Local and*

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Global Perspectives, edited by Christina Gitsaki and Richard B Baldauf Jr. 311–327. Newcastle upon Tyne: Cambridge Scholars Press, 2012.

Chapter 7:

'Framing the Victim: Sexual Assault and Australian Footballers on Television'. *Australian Feminist Studies* 27 (71): 73–88, 2012.

Afterword:

'The Affair that Ended in Rape'. *The Sociological Imagination*. <http://sociologicalimagination.org/archives/929>, 2010

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Introduction

We are all aware of the fact that in recent months and the last couple of years there [has] been a lot of publicity about the behaviour of footballers and young women associated with footballers. You might have a view one way or the other about those things. Let me implore you to completely erase it, any thoughts you have about the issue from your mind in considering this case.

—Prosecutor Michael Tovey’s opening address at the trial of Australian Rules footballer Andrew Lovett (Lowe 2011)

Footballers’ off-field behaviour, and that of ‘young women associated with footballers’ of all codes, has been a hot topic internationally for several decades. Disproportionate numbers of elite male athletes, at high school, university and professional levels, have been accused of sexual assault as compared with men in the wider community. Is there a culture of disrespect in football? Why all the group sex? Is there anything wrong with that? Why are the athletes so rarely convicted? These are the kinds of questions that many in the media, and some academics, have attempted to address. Some have tried to blame alcohol, or even women who sleep with elite athletes, for the high numbers of rapes athletes allegedly commit. Others, particularly in mainstream and social media, claim that all of the allegations are false. Most recently, in April 2012, UK Sheffield United soccer player Ched Evans was convicted of raping a woman who was too drunk to consent, and jailed for five years. Almost immediately following the verdict, teammate Connor Brown apparently tweeted ‘Money grubbing tramp’, and ‘If ur a slag ur a slag don’t try to get money from being a slag [*sic*]’. Twitter hashtags (used so that other users can track conversations about an issue) such as #FreeChedEvans and #JusticeforChed began to appear. Some supporters of the footballer illegally released the victim’s name,¹ also claiming that she had made the complaint for money or because she felt rejected. They thus claimed that she was lying.

While the ‘Twittersphere’ came alive with rejoinders (#Chedgotjustice and #Ibelieveher also swiftly became popular hashtags), these particular responses are telling. Of course she was a gold digger! Or a woman scorned, out for revenge. The fact that she never sought financial compensation, and that twelve jurors presented with evidence from both sides agreed that Evans was guilty, was irrelevant to his supporters. Although there is no factual basis for the myth that women commonly make up allegations of rape because they want to make money, or to get revenge on a lover who has rejected them, these stories hold such currency that they appear as a ‘knee-jerk’ reaction for those who seek to discredit a complainant.

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In this sense, the Evans case is nothing out of the ordinary. But it is unusual in another, very important way: Evans was convicted. This has not happened in any Australian case to date. Although more than fifty-five elite Australian football players and staff have been involved in alleged rapes since 1999, not one has been convicted.² Only Australian Rules footballer Andrew Lovett and National Rugby League star Brett Stewart have ever been tried, and both were acquitted.³ Stories of women lying about rape are integral to the way these cases have been presented in the media, which remains the only public record of all but these two cases.

FOOTBALL AND SEXUAL ASSAULT ON THE AUSTRALIAN PUBLIC AGENDA

Although high profile footballer rape cases in the United States date back at least as far as the 1980s (Nelson 1994), the issue only became headline news in Australia in 2004. On 24 February, a handful of articles appeared in Australian newspapers, reporting that members of the Canterbury Bulldogs rugby league team⁴ allegedly raped a woman at the Pacific Bay Hotel in the New South Wales coastal town of Coffs Harbour. The following day, the police report of the case was read out on Sydney's Radio 2GB by 'shock jock' Ray Hadley, revealing that the twenty-one-year-old complainant had been taken to hospital and treated for 'grazing, bruising and trauma' (Halloran and Magnay 2004), after at least six Bulldogs players allegedly 'sexually assaulted her, without consent, by anal, oral and vaginal penetration' (Breen 2004). Commentators pointed out that 2004 was the third year in a row that the National Rugby League (NRL) pre-season had begun with an alleged sexual assault. Prominent *Sydney Morning Herald* sports journalist Jacquelin Magnay wrote at length about the culture within rugby league that endorses the subordination and denigration of women (2004). This followed on from her 2003 exposé, written with colleague Jessica Halloran, which first revealed to the public that 'gang bangs' and disrespect for women in general are commonplace for NRL players (Halloran and Magnay 2003). Many fans also expressed their 'outrage and revulsion', declaring that if the players were guilty, 'the full force of the law should take its course and the game of rugby league should abandon the perpetrators' (Frilingos 2004a). Others suggested that the complainant was lying in order to gain a financial settlement, or, in the words of one blog contributor, 'that after consensual sex with one or two of [the players] they treated her disdainfully and she got hysterical' (Baird 2004). In other words, like Ched Evans' victim, she was labelled a 'gold digger', or a 'woman scorned' out for revenge.

The intense media debate that surrounded the Canterbury Bulldogs case escalated when news broke less than a month later that players from the Australian Football League (AFL)—St Kilda's Steven Milne and Leigh

Montagna—allegedly raped a woman following the club's pre-season competition victory. The woman and a friend each had consensual sex with one player. The woman said that the players then wanted to swap partners and forced her to have sex with the other player against her will. While Canterbury was widely criticised for adopting a 'siege mentality' (Magnay 2004), refusing to co-operate with the media, St Kilda was generally praised for its comparative 'openness and honesty' in handling the case (Wilson 2004b). Nevertheless, the revelations prompted many to question whether the AFL might also have problems with regard to sexual assault. Some groups pointed to the culture of football codes as a source of negative attitudes towards women and called for change, the majority suggesting limiting players' alcohol consumption (Chapter 5) or implementing 'education' programs (Chapter 6) as solutions.

Despite six weeks of police investigations into the Canterbury incident, evidence of rape, and police belief that they would be able to charge players with sexual assault, the case was dropped by the Director of Public Prosecutions (DPP).⁵ Shortly afterwards, the St Kilda case met the same fate. Canterbury officials declared, 'We knew from day one we've been guilty of nothing' (Brown 2004b), 'I think this should be seen as a true vindication', and 'Let's believe nothing happened in Coffs Harbour' (Kennedy and Magnay 2004). This pattern of events has been repeating in the media ever since, in both the NRL and the AFL, the two football codes that this book will investigate: footballers are accused of group sexual assault against a woman or women⁶ (a few cases involve a single player), and police cite evidence that rape occurred. Nevertheless, the case is thrown out before it can be tried in court, or, in the two cases that were tried, result in acquittal.⁷ Coaches, CEOs and other football representatives then declare that 'their' players have been found 'innocent'.

The question of footballers' involvement in sexual assault has been considered by scant few scholars, and the majority of these rely on constructing narratives of selected sexual assault cases to explain and provide evidence for their arguments (Benedict 1997, 1998; Nelson 1994). Only two consider the important role of language and representation in the cases' public existence in the media. Gender theorist Kim Toffoletti presents a preliminary investigation of a select sample of newspaper articles covering the alleged rape involving St Kilda footballers, considering various aspects of media representations of the case (2005, 2007), and Nina Philadelphoff-Puren analyses statements of football club representatives in relation to both the Canterbury and St Kilda cases (2004). However, there has been no comprehensive investigation of the role of language and *narrative* in the public articulation of these cases and the discourses that underpin them. In the absence of actual legal adjudication, each case plays out entirely within the public discourse, and thus language and narrative effect a *de facto* adjudication of the cases. This occurs through discursive and narrative contests between those who uphold the validity of complainants' words—that is,

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render them *admissible* as evidence in a ‘trial by media’—and those who oppose them and undermine their testimony. These kinds of narrative contests ultimately *decide* the truth or falsity of each claim (I use the term ‘decide’ in its legalistic sense), and for this reason analysing the narrative existence of these events is of critical importance.

The stories told in the media also necessarily have a bearing on actual legal proceedings, as jurors are drawn from the general public and are consumers of news. Alan Dershowitz, a lawyer who defended boxer Mike Tyson in his appeal against a rape conviction in the 1990s, claims, ‘Whenever I come into a case my client has already been tried and convicted in the press’ (quoted in Chancer 2005, 134); however, the reverse seems to be true in the case of Australian footballers. The more widespread the doubt in complainants’ testimony, the less likely it is that any case will result in conviction. Michael Tovey’s exhortation that jurors set aside their views about the issue seems overly optimistic: not only has the issue been hotly debated in the Australian media over the past decade, but popular beliefs about the cases stem from beliefs about women, about men and about sexuality that have deep historical roots. Ched Evans’ supporters did not invent the gold digger and woman scorned slurs; they are embedded in western culture. Further, recent studies indicate that the prevalence of rape myths in a news article,⁸ or overt challenges to these myths, can impact an audience’s perceptions of an accused rapist’s guilt or innocence in a pending rape case involving a high-profile athlete, in this case US basketballer Kobe Bryant (Franuik, Seefeldt and Vandello 2008).⁹ In addition, Franuik, Seefeldt and Vandello (2008, 796) found that male participants exposed to rape-endorsing headlines were less likely to think that Bryant was guilty, whether or not the headlines related to the Bryant case specifically. This highlights the importance of mainstream media reinforcement of persistent myths, as well as challenges to those myths.

HIDDEN MYTHS

While rape myths and stereotypes are often evoked overtly, closer analysis of media reporting shows that victim-blaming structures are also embedded within the narrative and language patterns used to represent the cases. I employ a narratological methodology to uncover the ways in which narrative and grammatical structures in media texts operate to distribute blame and responsibility, and hence invalidate claims of rape. I also explore how these narratives intersect with wider discourses and stories about women and sexual assault. Football representatives, as well as media commentators, construct narratives that shift blame away from footballers and onto the women involved, frequently ascribing sole agency for anything that occurred to the women. They also deny footballers’ agency in their actions, thus implicitly denying their *intention* to commit any crime. This is of

particular significance as, in legal proceedings, an accused person's intention to commit a crime—their *mens rea*—is critical in determining guilt, and one cannot be found guilty of a crime one did not intend to commit. This kind of blame-shifting and denial most frequently occurs at the level of language and story structure rather than overtly, and is therefore less easy to recognise, interrogate and refute.

These same patterns of distributing blame and responsibility are repeated with each new case, providing footballers with what I call a 'narrative immunity' against being answerable for allegations of sexual assault (Chapter 2).¹⁰ This is tantamount to a successful legal defence in a trial by media. Complainants are largely denied a voice within the debate, with the majority of news space devoted to the statements of football representatives. These narratives also effect a *silencing* of complainants' accounts, making it virtually impossible for rape testimony against footballers to be considered admissible as 'evidence' in the media adjudication of the cases (Chapter 3).

The sexual assault discourses form only one small part of the discursive construction of football, and I therefore also analyse media sports reporting and football literature unrelated to sexual assault, uncovering similar patterns of allocating blame and responsibility. The representations of the sexual assault cases and these broader discourses reinforce each other to render players blameless, no matter what they do. Discourses surrounding injury and the footballer's body (Chapter 4), team bonding and alcohol (Chapter 5), and 'education' and the official league discourses (Chapter 6) reinforce the narrative immunity provided in media portrayals of the cases. The discourses of football also imply a 'rape culture' (Donat and D'Emilio 1992; Heberle 1996; Herman 1984), or 'rape prone society', as anthropologist Peggy Reeves Sanday terms it (1981, 1986). However, alternative narrative strategies to those that blame alleged victims also circulate in the media. Although they are marginalised in favour of those that blame complainants, this nevertheless demonstrates possibilities for undermining footballers' immunity and lending truth-value to the words of complainants (Chapter 7).

Mirroring the focus of the debate, the Australian Football League and National Rugby League introduced measures aimed at circumventing the 'causes' of sexual assault; however, their discourses continued to uphold footballers' narrative immunity, repeating the same patterns of shifting responsibility away from footballers. The AFL introduced penalties for players and clubs for responding inappropriately to an allegation of sexual assault (see Chapter Six), the AFL and NRL implemented 'education' programs, and many clubs introduced measures to curb players' drinking, which indicates their belief that alcohol is really at fault, rather than the footballers. These measures were supposed to bring about change and inhibit players from committing sexual assault in the future, although the clubs and leagues persistently denied that any of the allegations could be

valid. However, 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 circulation of popular woman-blaming narratives that shields accused players from being prosecuted for sexual assault. This means that complainants in the footballer cases become what philosopher Jean-François Lyotard terms 'victims'—that is, they are divested of the means to prove that they have been wronged and they cannot therefore act as 'plaintiffs' who have the ability to prove their case (1988, 8).

In Chapter 1, 'The Story of Rape', I unpack the construction and 'constructedness' of sexual assault narratives, arguing that individual narratives are populated with the same stock female 'characters' who willingly have sex with footballers and make false complaints, for different reasons. These characters, or 'stereotypes' (Gilman 1985), include those of the Predatory Woman, Woman Scorned, Gold Digger, Groupie and Party Girl, all of whom can replace the Raped Woman and thus undermine complainants' testimonies. I also demonstrate the power of narrative alone to render a complain(an)t credible or incredible by juxtaposing two narratives based on the same testimony, one of which validates the testimony, while the other undermines it.

Chapter 2, 'Narrative Immunity', examines the discourses of the 2004 footballer sexual assault cases and traces narrative patterns of deflecting blame away from footballers onto any and all women. My analysis examines: media texts, which were produced immediately after the events; Roy Masters' *Bad Boys* (Masters 2006), which is the only Australian book to date to address the issue in detail; and statements of football representatives. I thus uncover the narrative immunity such texts supply to footballers. I also elucidate the ways in which familiar stock characters, or 'stereotypes', inform these texts, invalidating women's claims of rape.

In Chapter 3, 'Silencing the Feminine', I consider the role of silence in the 2004 debate—both the silence of actual complainants and more particularly the silencing effects of the types of discourses discussed in Chapters 1 and 2. The silencing of complainants is both literal and figurative, as it deprives complainant testimony of truth-value and inhibits others from speaking out. This constitutes a *différend*, as Jean-François Lyotard explains it, under which a rape complaint against a footballer is virtually impossible to be registered as a harm. Complainants are thus rendered 'victims' rather than 'plaintiffs', denied the means to argue their case in the public domain.

Chapter 4, 'The Male Footballer's Imaginary Body', demonstrates that an 'imaginary' of the footballer's body is produced in the discourses of football generally, as well as those related to sexual assault. This body is tough, violent, invulnerable, sexually driven, and provides footballers with excuses for rape; I argue that this, along with the practical training of the body involved in football, helps to construct a subjectivity prone to commit rape. Footballers

are also constructed as ‘bodies without minds’, who therefore cannot be held responsible for anything they do, which provides them with further ready-made excuses for committing sexual assault. However, the contradiction that these representations present when football clubs claim that their players could not have committed any rapes goes unremarked.

In Chapter 5, ‘Rape is Not a Team Sport’, I contend that the narratives and practices of team bonding in the Australian football codes help to construct a masculine subjectivity that endorses the degradation and humiliation of women, and hence sexual assault. These narratives and practices interlink with discourses of alcohol and the military to deflect blame away from footballers, and provide them with excuses for sexual assault. I argue that the bond not only excludes women, but is also constructed as a defence against them, which in turn constructs a rape complaint as an unconscious attack on the team, by an outsider whose words cannot be trusted.

Chapter 6, ‘The Official Story’, considers the official discourses of the AFL and NRL, arguing that these discourses attempt to project any potential problems onto rogue individuals, and simultaneously represent the AFL and NRL themselves as community leaders in addressing the problem of sexual assault. This problem, they implicitly claim, really exists outside football. I identify recurring footballer ‘characters’—the Bad Apple, Heroes and Little Boys—terms which are used to exonerate footballers and the leagues from any blame. I analyse the statements of the CEOs of both leagues, the AFL’s official policy document *Respect and Responsibility*, and the NRL’s *Playing by the Rules*, and unpack the contradictions inherent in the stories they tell about football, footballers and sexual assault, which simultaneously admit and deny that footballers could, and do, rape.

Chapter 7, ‘Fighting Words’, examines alternative narratives—ones that seek to portray the complaints and complainants as credible—and argue that the media framing of a complainant’s testimony against footballers plays a vital role in legitimating or undermining it. I analyse newspaper articles, as well as television programs, which seek to allow complainants’ own words to be heard and have truth-value, and employ narrative strategies that circumvent negative female stereotypes. I also demonstrate that this process is fraught, as complainants can still be diminished and their narrative authority undermined or denied, even when their words are (re-) presented in the public sphere. However, despite the potential dangers, it is through these strategies that the *différend* may begin to be broken down, and footballers’ narrative immunity against being held accountable for sexual assault demolished. Thus the complainants may appear as plaintiffs rather than victims, and their testimony may be considered admissible in the *de facto* media adjudications of the cases.