(Un)reasonable Doubt: A "Narrative Immunity" for Footballers against Sexual Assault Allegations

"Beyond reasonable doubt" is the standard of proof for...
criminal cases in a court of law. However, what happens when doubt, reasonable or otherwise, is embedded in the media reporting of criminal cases, even before charges have been laid? This paper will analyse newspaper reports of recent rape cases involving Australian footballers, and identify narrative figures that are used to locate blame solely with the alleged victims, protecting the footballers from blame. I uncover several stock female “characters” which evoke doubt in the women’s claims: the Predatory Woman, who hunts down footballers for sex and is always sexually available to any and all footballers; the Woman Scorned, who makes a false rape complaint out of revenge; and the Gold Digger, who makes a false complaint for money. I will argue that the news media thus effectively provide footballers with a criminal defence, before the cases can even reach court.

Rape and Football in Australia

The issue of football and rape first came to mass public attention in February 2004, when six players from National Rugby League (NRL) team the Canterbury Bulldogs allegedly raped a woman while at a New South Wales resort. Two weeks later, two players from the St Kilda Australian Football League (AFL) team allegedly raped a woman following their pre-season cup victory. These two football codes are the nation’s most popular, with rugby league dominating the north-eastern states, with the southern, eastern and western the domain of Australian Rules.

In neither case were charges laid, and although at least twenty distinct cases have been reported in the Australian media, involving more than fifty-six footballers and officials, only one—NRL star Brett Stewart—has yet been tried. Stewart was acquitted in September 2010. Former AFL footballer Andrew Lovett has also been ordered to stand trial in July 2011 for allegedly raping a woman on Christmas Eve, 2009. Nevertheless, the majority of cases never reach court.

In criminal cases, the Director of Public Prosecutions (DPP) ultimately decides whether to pursue charges through the courts, and, as most cases will be decided by a jury drawn from the general public, the DPP must decide whether the general public would accept the prosecution’s evidence as proof of guilt “beyond reasonable doubt.” This means that if a jury retains any doubt that the accused person is guilty, as long as that doubt is reasonable, they must return a verdict of “not guilty.” Public opinion in high-profile cases is therefore extremely important. If the DPP perceives a high level of public scepticism about a particular case, this indicates that the likelihood of the general public accepting the
prosecution’s evidence is low, and they will often decide not to pursue the case.

My analysis will show that media reports of the cases, which were published before any decision about laying criminal charges was made, can in fact work to create doubt, taking popular, victim-blaming stories to cast doubt on the complainants’ testimonies. Thus “reasonable doubt,” or a doubt that seems reasonable to many or most readers, is created before the case can even reach court.

**Predatory Women, Gold Diggers and Women Scorned**

When debate began in 2004 and explanations were sought for the high numbers of cases, stories abounded in which women have consensual sex with footballers, and then make a false rape complaint. I identify the principal characters of these stories as the Predatory Woman, Gold Digger and Woman Scorned. These stories were particularly prevalent amongst football representatives, blog contributors and talkback radio callers. Some media commentators provided alternative explanations (Magnay, for example), and others were explicitly critical of such stories (Pinkney, Wilson, for example); however, other journalists in fact evoked these same stereotypes. All of these characters have “common currency” (Smart 39), and have been used by defence lawyers in criminal trials for centuries, which means they are likely to be believed. These commentators therefore (indirectly) portray the complainants as liars, and reinforce the pervasive victim-blaming discourses in the wider public.

**The Predatory Woman**

The Predatory Woman character can be traced back at least as far as the early nineteenth century, when so-called “fallen” women were frequently “scorned as predatory creatures who lured young men into sin” (Clark 59). In her study of newspaper articles on football and sexual assault, gender theorist Kim Toffoletti identified the “predatory female” as a recurrent figure who is used to portray footballers as victims of “deviant” female sexuality (432-3). Toffoletti argues that the assumption underlying the use of the predatory female is that “incidents of sexual assault can occur when women deviate from the ‘conventions’ of heterosexual relations that expect them to be passive and sexually available, and men to exude sexual virility” (433). However, I argue that commentators’ usage often carries this further, and rather than using the story to claim that a victim of rape “deserved” it, the Predatory Woman actually serves as a replacement for the Raped Woman, therefore implicitly claiming that the complainant was
lying.

The Predatory Woman is the aggressor in all sexual encounters with footballers, a “sexual predator” (McCabe 31) who is said to “target” players and “hunt in packs” (Lyon 1). In a 2004 interview, one footballer described the phenomenon as “frightening” (McCabe 31), and another in 2009 claimed that footballers are “given temptations,” and “some of them [women] are downright predators” (Cunningham 30). The hunting animal metaphor clearly represents women as sexual aggressors, virtually suggesting that they are committing violent acts—moving in on unsuspecting footballers for the “kill” (sex). Thus portraying a complainant as one who seeks out sex with footballers implies that she victimised the players. As a woman cannot be both sexual aggressor and rape victim, the character of the Predatory Woman replaces that of the Raped Woman, therefore invalidating a complainant’s testimony and creating doubt.

The Woman Scorned

The Woman Scorned, another popular character in footballer sexual assault narratives, has also been evoked by the defence in criminal rape trials for centuries (Sanday; Benedict 2, 39-40, 83; Larcombe 100, 104-106, 111; Lees 78). The prevalence of footballers’ beliefs in the Woman Scorned story when NRL player Simon Williams commented about the prevalence of group sex/rape incidents involving NRL players on the 2009 Four Corners “Code of Silence” episode:

It’s not during the act, it’s the way you treat them after it. Most of them could have been avoided, if they [players] had put them [women] in a cab and said thanks or that sort of thing not just kicked her out and called her a dirty whatever. It’s how you treat them afterwards that can cover a lot of that stuff up.

Williams’ implicit claim here is that no woman would make a rape complaint as long as footballers always “said thanks” after sex. He thus implies that “most” of the complaints have been about revenge from women who felt mistreated after consensual sex: Women Scorned.

The Gold Digger

The Gold Digger is also an established character in both football rape stories and criminal rape trials; Peggy Sanday identifies her in cases dating from the eighteenth century. In rape cases, the Gold Digger can be evoked when a prominent and/or wealthy man—such as a noble in the eighteenth century, or a footballer in the present context—is accused of rape, whether or not the alleged victim seeks or receives a financial settlement. Many football fans evoked the Gold Digger on Internet blog
sites, even when there were no observable characteristics corresponding to the Gold Digger in any of the media narratives. One declared: “My mum said she was probably being a slut, then after they ‘did’ her, she decided 2 say summin coz she thought she could get money or summin out of it [sic]” (in Baird 41). The Gold Digger stereotype invalidates a rape complaint, as a woman who alleges rape for financial gain must be lying, and was therefore not raped. Her claims are to be doubted.

**Narrative Immunity**

From 2009 onward, although traces of these characters remained, the focus of the debate shifted, from the possibility of sexual assault to players’ alcohol intake and the prevalence of “group sex.” Nina Philadelphoff-Puren identifies implicit claims that the complainants were lying in the statements of football representatives (37, 41-43), which imply that they must be Predatory Women, Women Scorned or Gold Diggers. In order to show clearly how journalists mobilised these characters more directly to evoke doubt, I conducted a search of the “Newsbank” newspaper database, for opinion pieces that sought to explain why the allegations were made, using varying combinations of the search terms “AFL,” “NRL,” “football,” “sexual assault,” “rape,” “rugby,” “sexual violence,” “sex” and “women.” Articles were sought in broadsheet newspapers *The Age* (Melbourne) and *The Sydney Morning Herald*, and tabloids *The Herald Sun* (Melbourne) and *Daily Telegraph* (Sydney), the most widely read newspapers in the cities where the alleged incidents occurred. The time-frame selected was 27 February 2004 to 1 May 2004, which covered the period from when the Canterbury Bulldogs case was first reported, until debate died down after the announcement that no charges would be laid against St Kilda footballers Steven Milne and Leigh Montagna. Twenty articles were collected for analysis: two from the *Daily Telegraph*, eight from the *Herald Sun*, seven from the *Age*, and three from the *Sydney Morning Herald*. Of these, half (ten) overtly blamed the alleged victims, with seven of those explicitly evoking Predatory Woman, Woman Scorned and/or Gold Digger stereotypes, and one strongly implying them. Although it might be expected that tabloid newspapers would be much more likely to (re-)produce popular stereotypes than broadsheets, the same numbers were found in each type of newspaper.

The “common currency” (Smart 39) these stories have means that they are more likely to be considered credible than other stories. Their use by respected media commentators—particularly broadsheet journalists, whose publications lay claim to an educated readership and
more progressive attitudes–is of even greater significance. In this paper, I will analyse three broadsheet articles in detail, in order to illustrate the various strategies used to evoke the stereotyped characters for an educated readership. The articles selected are by writers from very different backgrounds–a former footballer, a feminist and a “life-skills” coach to AFL footballers–and although it might seem that they would provide markedly different perspectives on the issue, I will show that all three evoke stereotypes that cast doubt on the complainants’ claims.

The Story of the “Insider”

Former AFL footballer Tim Watson’s “AFL Players and the Trouble Zone” was published shortly after the allegations against the St Kilda AFL players were made public in 2004. The article features a number of Predatory Women, who make “victims” of footballers; however, while Watson does not provide direct narrative accounts of the alleged rapes, he instead recounts narratives of other interactions between footballers and women. Predatory Women therefore come to replace Raped Women as characters and invalidate the alleged victims’ claims; as Watson represents these women as the sole agents, full responsibility for these incidents is attributed to women.

The bulk of Watson’s article relates two stories unconnected with any (known) sexual assault cases, about AFL teams travelling to the country for training and being harassed by women. Placing the narratives immediately after warnings about “trouble zones,” when the article is clearly responding to the sexual assault allegations, suggests that his narratives explain what “potential trouble” and “trouble zones” are. He therefore implies that his narratives illustrate what “really” happened with the St Kilda (and Canterbury) players. The only instances where players are given grammatical agency in this narrative is when they “mingled with the locals” and “left the function as a group”; all the narrative action is attributed to women. Mingling has no sexual connotation, and “the locals” is a gender neutral term, implying that the players’ only action at the function was to interact with men and women in a non-sexual way.

The characters of “a couple of girls” are introduced, and according to Watson these “girls”
In order to portray the women more clearly as the sole sexual aggressors—Predatory Women—Watson leaves out any events where players actively participate, events which are highly likely to have occurred. For example, in Watson’s narrative there is no two-way flirtation, and the players do not seek out, encourage or even respond in any (positive) way to the female attention they receive, although anecdotal evidence suggests this is extremely unlikely to have happened (Mewett and Toffoletti 170, 172-73). The women are only grammatical agents with intentions—their agency relates to what they plan to do—however, emphasising the fact that the team left as a group suggests that it was only this defensive action which prevented the women from carrying out their intentions and instigating sexual activity. Using “sidled” rather than “went” or “approached” characterises the woman as sly and manipulative, casting her in a negative light and adding to the sense that she was solely responsible.

The second story is described as “almost identical” to the first, but Watson takes even greater pains to emphasise the players’ passivity, again portraying them as victims of Predatory Women. Watson attaches only the passive voice to the players: he says that they were “woken in their hotel rooms” and “subject to determined, but unwanted, advances.” The women are entirely absent from these statements. They appear only as shadows presumed responsible for waking the players and making the unwanted advances. This erasure of the female agent only emphasises the players’ passivity in the face of female seduction and general resistance to overwhelming female sexual aggression. As in the first story, the only action attributed to a footballer is defensive: a senior player convincing the women to leave. This reinforces the idea that male footballers are the victims when it comes to casual sexual relations, and casts doubt on any claims of rape.

The Story of the “Insider- Outsider”

The second article, “When an Elite Footballer Has Sex with a Girl...,” is by “life skills” coach to AFL players Damien Foster, who calls himself “a classic insider-outsider” to football (SBS). As a partial outsider, Foster would therefore presumably have less vested interest in protecting footballers than Watson; however, his narrative also denies the complaints’ credibility, clearly evoking a victim-blaming character: the Woman Scorned.

Foster obliquely claims that the St Kilda and Canterbury cases arose simply because women and men view sex
differently and therefore “a footballer may land himself in trouble because it just doesn’t occur to him to develop tactful, diplomatic methods of saying goodbye”. He continues, “When the girl [sic] realises the total indifference with which she is being treated after intimacy, bitterness sets in and it lingers. There are many girls in Australia now in this situation.” While Foster does not directly say that the “girls” who made rape complaints against the Bulldogs and St Kilda are Women Scorned, the fact that this story is used to explain why the allegations were made says it for him. According to Foster’s logic, if footballers learnt to say “thanks, love, that was great” after sex, then no rape complaints would ever be made.

**A “Feminist” Story?**

Controversial feminist Germaine Greer would seem even more likely to avoid victim-blame than men involved with football clubs, and she does not follow Watson’s portrayal of utterly passive, squeaky-clean footballers, or Foster’s narrative of undiplomatic players. In “Ugly Sex Has Just Got a Lot Louder,” she does acknowledge that some harm may have been done; however, Greer nevertheless portrays the complainants as Predatory Women, Women Scorned and Gold Diggers.

Greer elects to tell a “history” of male footballer-female interactions, establishing male athletes’ disrespect for and mistreatment of women as a given. However, she goes on to evoke the Predatory Woman, portraying her as utterly desperate and willing to go to any lengths to have contact with players. Greer laments,

> good family men have been known to succumb to the groupies’ onslaught, believing that as long as they don’t kiss these desperate creatures, as long as they make no move that could be interpreted as a sign of affection, they haven’t been genuinely unfaithful to their wives and sweethearts. Indeed, the more brutal the treatment of the women they have casual sex with, the less they have to reproach themselves for. Pack rape in such circumstances can come to seem guiltless, a condign punishment for being a stupid slag, even.

This explanation of footballers’ behaviour contains several grammatical patterns which represent the players as passive and not responsible for anything that takes place. In the first sentence, the only things these footballers actually do are succumbing and believing, both passive verbs; the rest of the sentence is devoted to what they do not do: “as long as they don’t kiss... as long as they make no move.” Thus it would seem that the players do not actively participate in the sexual activity instigated by these women, that they simply lie...
back and allow the women to do as they will. That the women are labelled “desperate creatures” who launch an “onslaught” to which footballers “succumb” confirms their sexual aggression.

Although the second and third sentences depict violence and rape, these actions are not directly attributed to the players. The brutal treatment of the women the players have casual sex with has no grammatical agent—“the more brutal the treatment of the women they have casual sex with”—dissociating them from the brutality and subtly implying that “someone else” is responsible for it. Similarly, “pack rape” has no agent: no player commits or is involved in it, and it appears to happen independently of them. As Susan Ehrlich demonstrates, this denial of agency is a common tactic for accused rapists to use, in order to deny that they were responsible for their actions (36-61). Thus Greer uses the same grammatical patterns which deflect blame away from footballers, even when the behaviour involved is violent rape. This continual emphasis on the players’ passivity reinforces the portrayal of the women as sexually aggressive Predatory Women.

Greer also introduces the figures of the Woman Scorned and Gold Digger. She claims that the only difference between the “old days” and the present scenarios is that now women are “not embarrassed to say that they agreed to sex with one man they’d only just met, or even with two, but they hadn’t agreed to being brutalised, insulted or humiliated, and they want redress.” This paragraph appears almost directly after the one where Greer mentions pack rape and violence, and it may seem therefore that the redress these women seek is for rape. However, since Greer claims that at least some of the women who “want redress” want it because they have been “insulted or humiliated,” rather than raped, this evokes the Woman Scorned.

Greer continues by introducing the Gold Digger as a further (and complementary) explanation for these insulted and humiliated women to seek “redress.” Greer writes that women now “also seem quite interested in another factor in sex with footballers – namely, indecent amounts of money.” With this statement, she implies that some women have sex with footballers just so that they can make a rape complaint afterwards and obtain a large payment. She concedes that the women who make allegations against footballers may have been “abused,” but she trivialises them by claiming that they “scream and holler,” portraying them as hysterical. She thus discredits them and casts doubt on their claims. Greer ignores the fact that only one woman has either sought or obtained a financial settlement from footballers for a case of rape, and this woman only applied for it after charges against the players responsible were dropped.
Whilst this argument is clearly unfounded, the strength of the Gold Digger story, along with the Woman Scorched and Predatory Woman, is likely to give the impression that the rape complaints made against the footballers were unfounded.

Conclusion: The Benefit of the Doubt

The fact that a significant number of media commentators employed tactics similar to those defence lawyers use in rape trials suggests that a de facto “trial” took place; one in which stories that discredit the complainants were prominent. These stories were enough to evoke “(un)reasonable doubt” in the women’s claims, and the accused footballers were therefore “acquitted.” That doubt can be evoked so easily in such high-profile cases is particularly problematic as rape cases in general are those least likely to be believed (Jordan 64-83). Further, many victims state that the fear of disbelief is one of the most important factors in deciding not to pursue criminal charges (Warshaw 50). Even if one leaves aside the likelihood that the prevalence of doubt in the media and the “blogosphere” contributed to the DPP’s decision not to pursue charges, the media “acquittal” is likely to have two further effects: it may deter future complainants from coming forward, if they assume that their claims will similarly be doubted; and it contributes to more generalised beliefs that women habitually lie about rape, particularly those who accuse footballers. While of course any accused person must be held innocent until proven guilty, it is equally important to give an alleged victim the benefit of the doubt, and not presume that all rape complainants are liars unless proven otherwise.

References


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