

# PUBLIC PERCEPTION OF TEACHERS' SEXUAL MISCONDUCT WITH STUDENTS

## Does the sex of the teacher make a difference?

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Within the last few years, stories of teachers having sexual relationships with their students have 'littered the inside pages of [our] newspapers'.<sup>1</sup> In 2004 Karen Ellis, 36 'had sex with a 15-year-old boy before taking him to McDonalds for lunch then returning him to school'.<sup>2</sup>

In 2008 a 30-year-old male teacher was charged with 9 counts of sexual penetration of a child and possessing child pornography.<sup>3</sup>

In 2006 a 44-year-old woman had sex with a 14 year-old boy and later harassed him for child support after she bore his child.<sup>4</sup>

In New South Wales alone, between 2008 and 2009, 45 public school teachers were investigated for allegedly having sexual relationships with students.<sup>5</sup> Of those, 15 teachers were dismissed for sexual misconduct.<sup>6</sup>

Statistics and incidents such as these have led to the question; does the sex of the teacher make a difference in community perception of criminality or seriousness of the offence? Our interest was piqued when looking at the most recent 10 judgments (six males and four female defendants) on electronic databases that came up when the search terms 'sexual offences' and 'teacher and student', 'sexual assault and teacher and student', 'teacher-student sexual relationships' and 'sexual offences and student and sentencing' were entered into a number of databases including Legal Online, LexisNexis, and AustLII.<sup>7</sup> The average sentence for female offenders was considerably lower (2.1 years) than the average male sentence of 10.4 years. This may be attributed to the fact that individual women were charged with fewer offences: 7.3 counts of committing offences with an underage child, in contrast to an average of 10.5 counts for the male defendants. It could also point to differences in the nature of the offence. Furthermore, it might be indicative of community attitudes that minimise the criminality of a female teacher having sexual relations with a male student who is under the age of consent.

The purpose in our research, by using a survey methodology, was to investigate whether the sentences referred to above were in fact indicative of community attitudes about female criminality. The study also aimed to determine if there are biases or differences in the way that female teachers who have sexual relations with a student are seen as compared to their male colleagues.<sup>8</sup> Specifically, the survey was intended to identify if the sex of the teacher and the

student affected how the survey respondents rate the seriousness of the offence, whether they define the offence as rape or as consensual intercourse and how they weigh the degree of harm to the victim.

The research instrument included some statements about teachers and students, to which respondents were asked (on a Likert scale) to agree or disagree. Participants were also presented with two scenarios and asked a number of questions relating to the events described. The scenarios were identical except for the sex of the teacher and student. Scenario one involved a female student (aged 15) and a male teacher, and scenario two involved a male student (aged 15) and a female teacher. In both, the students' parents were going through a divorce which indicated the student's fragile state. Because of each student's sporting abilities, their physical education teacher was paying more attention to them. The teacher and student subsequently developed a close relationship and completed the act of sexual intercourse.

Our survey was created and distributed online through the program Survey Monkey.<sup>9</sup> An email was then sent to University of Canberra students through the University's student association. The 'snowball' method of distribution was used, with recipients asked to forward the survey email on to people who might be interested in participating. Of the 61 respondents, 32 were female and 29 were male. The median age of male participants was 28 years old; the median age for female participants was 29. Therefore, the sample is representative of a particular demographic and not a cross-section of the community.

Through their quantitative and qualitative responses, we are able to discern how gender affects a segment of the community's construction of the criminality of the misconduct, perceived culpability of the teacher and measurement of injury to the student. If there are any differences in community perception of these variables, they may be shared by judicial officers and could explain the more lenient sentences given to women teachers.

### Defining sexual misconduct

Sexual misconduct against children by teachers may involve a range of actions, which differ in levels of violence, coercion, or force. This variation is illustrated in the dichotomous model of *quid pro quo* and hostile environment.<sup>10</sup> *Quid pro quo*, translated as *this for that*, occurs when 'school employees explicitly or implicitly grant a student a favour in exchange for sexual gratification'.<sup>11</sup>

#### REFERENCES

1. Kay Levine, 'No Penis, No Problem' (2006) 33(2) *Fordham Urban Law Journal*, 357-405.
2. Stephen Mohnahin, 'Teacher Pleads Guilty to Sex with Student', *The Age* (Melbourne), 18 August 2004.
3. Kerri-Ann Hobbs, 'Horrorified family will never forgive abusive teacher', *The Geelong Advertiser* (Geelong), 19 February 2009.
4. 'The harm when women prey on boys', *The Age* (Melbourne), 18 March 2006.
5. 'Dozens of NSW teachers in sex claims', *The Daily Telegraph* (Sydney), 23 August 2009.
6. Ibid.
7. Sentences related to offences in the *Crimes Act or Criminal Code of the ACT, Queensland, SA and Victoria* and included offences of sexual intercourse with a person under the age of 16; sexual penetration of a child under the age of 16; committing an act of indecency upon a person under the age of 16; sexual penetration of a child under the age of 16 under the care, supervision and authority of the respondent; indecent assault; gross indecency with a person under the age of 16; indecent treatment of a child under the care of the respondent; and maintaining a sexual relationship with a young person.
8. Approval was obtained from the University of Canberra Committee for Ethics in Human Research.
9. Survey Monkey: [www.surveymonkey.com](http://www.surveymonkey.com).
10. Brad Goorian, 'Sexual Misconduct by School Employees' (1999) *ERIC Digest*, 134, EDO-EA-99-10, <<https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/3357/digest134.pdf?sequence=1>> at 7 August 2010.
11. Ibid.

*The difference in perception of the misconduct is associated with perceptual differences in culpability and harm depending upon the sex of the teacher and the student with female teachers seen as less responsible and female students as experiencing greater harm.*

The student may submit to unwelcome sexual advances, grant sexual favours, or agree to engage in other verbal, non-verbal or physical conduct of a sexual nature.<sup>12</sup> A hostile environment involves verbal or physical sexual contact that is 'sufficiently severe, persistent, or pervasive to limit a student's ability to participate in ... an educational program or activity'.<sup>13</sup>

*Sexual misconduct has been classified too as encompassing a broad range of behaviours. These may be limited to non-contact behaviour, such as exhibitionism and sexual hugging;*<sup>14</sup> non-contact behaviour such as sexual comments, and asking students about their sexual experiences;<sup>15</sup> and contact behaviour that is readily recognisable as sexual misconduct.<sup>16</sup>

As teachers are in a position of authority they are able to utilise a number of techniques to manipulate a student.<sup>17</sup> For example, they can use intimidation and threats (ie, 'If you tell, I will fail you'), and/or they are able to exploit the power structure in schools (ie, 'If you tell, no one will believe you'). Also, they can manipulate the child's affections (ie, 'If you tell, I won't be able to be your friend anymore').<sup>18</sup> This was the case in *R v Schneider; ex parte A-G (Qld)* where the court outlined that the teacher involved in the teacher-student sexual relationship:

threatened that if she [the female student victim] told anyone she would be expelled and it would be her fault if he [male teacher] lost his job. He told her he would leave her friends alone if she did what he wanted. He told her that if she stopped coming to see him he would make school a difficult place for her ... when she refused ... he told her she would have to do something to make up for it'.<sup>19</sup>

Sexual misconduct does uniformly constitute a breach of students' trust and sexual integrity, and also compromises their learning environment as,

teachers hold a position of ... confidence and responsibility. If he or she acts in an improper way ... there may be a loss of public confidence in the teacher, a loss of respect by students for the teacher involved, and other teachers generally, and there may be controversy in the school ... which disrupts the proper carrying on of the education system.<sup>20</sup>

### Survey results: Some gendered differences

When evaluating the level of seriousness of sexual misconduct by a male teacher with a female student, 70.6 per cent of the participants rated the event as being at the most serious level on the scale (7). However, when rating its seriousness if the teacher was

female and the student male, only 58.1 per cent rated the seriousness at 7.

### Was it rape?

The respondents were asked whether they thought that an incident of rape had occurred. There were mixed views in response to both of the scenarios. With the female student (named Sarah) and male teacher (named Mr Jones), the majority of respondents expressed the view that a rape had occurred. As the following comments show, respondents who answered affirmatively focused upon the male teacher's position of trust and the female student's vulnerability.

*Definitely. Mr Jones used Sarah for easy sex and took advantage of the situation. Sarah was going through tough times at home, she was looking for attention and Mr Jones gave her that attention... and more.* (Male, 30)

*Yes, because she is a minor and he is in a position of authority and power.* (Female, 28)

*Yes, absolutely... Sarah cannot possibly have the same level of maturity as Mr Jones. Mr Jones is an adult with life experience who knows and understands the consequences of his actions.* (Female, 26)

*Yes, I think that an incident of rape had occurred. Mr Jones took advantage of a vulnerable Sarah.* (Female, 25)

*Yes. Sarah is under the age of legal consent. Also, there are issues with regards to the trust placed in the teacher by the student, her parents and the community.* (Male, 19)

Those who thought that a rape had not occurred regarded the sexual behaviour as consensual, commenting:

*It would not be deemed rape as Sarah full knowingly consented to the act...* (Male, 20)

*Not rape, as Sarah was aware of what she was doing.* (Female, 25)

*I don't think that it is rape because it was consensual and 15 year-olds have a mind of their own.* (Female, 24)

With the male student (named Andrew) and female teacher (named Ms Jones) scenario, respondents were not as emphatic in their comments about whether a rape had occurred. As the following comments show, although most indicated that while they thought that a rape had occurred *legally*, they *personally* did not hold that view because both parties had provided consent:

*According to Australian law yes an incident of statutory rape has occurred, as the boy is not of legal consensual age. If you were to ask my personal opinion, I would*

12. Goorian, above n 10.

13. Ibid.

14. Charol Shakeshaft and Audrey Cohan, 'Sexual Abuse of Students by School Personnel' (1995) 76(7) *Phi Delta Kappan*, 512–20.

15. Ibid.

16. Ibid.

17. Ibid.

18. Ibid.

19. *R v Schneider; ex parte A-G (Qld)* [2008] QCA 25 at 3.

20. Stuart Piddocke, Romulo Magsino and Michael Manley-Casimir 'Teachers in trouble: an exploration of the normative character of teaching,' (1997) *University of Toronto Press*, 101.

*suggest that both participated willingly in the act and both parties were of sound mind when they did so (even Andrew, who is 15 — I believe 15 to be old enough to know the repercussions of sexual activity and thus old enough to be able to make an informed and enlightened decision regarding sexual activities), and as such, an incident of rape did not occur. (Male, 22)*

*Personally, no they both consented and Andrew is almost the legal age. Legally, yes. (Female, 32)*

*I would not personally classify this as rape per say as it is consensual... (Male, 26)*

Like the situation with the female student and male teacher, some respondents did feel that a rape had occurred because of the teacher's fiduciary duty. The comments also indicated that the student's immaturity was a factor perceived by respondents as contributing to the student being influenced by the teacher:

*In the eyes of the law, yes she [the teacher] has committed statutory rape because he is under 16. With this scenario, Andrew has probably over-planned this scene in his head and is prepared for the intended result. He is the predator (in his own mind) and has come to terms emotionally about his intentions towards Ms Jones. (Male, 33)*

*Yes, Ms Jones is an adult who knows that sex with a minor is illegal. A 15-year-old does not have the maturity to consent with an adult who manipulates him with the line that they are not doing anything wrong. (Male, 40)*

*Yes, because the boy is not old enough to decide what is right and wrong, especially when influenced into the decision by an authority figure/ adult. (Female, 28)*

*I think that it was an incident of rape. The teacher is an adult who has had the chance to develop and mature psychologically through life experience and she is fully aware of the ramifications of her actions... One cannot honestly expect the maturity level of a teenager to fully understand and comprehend the consequences of his/ her actions. While it may seem 'cool' now, this may (and will most likely) impact Andrew psychologically in a negative way in the later years. (Female, 26)*

*Yes, Andrew is underage and vulnerable. Ms Jones should have prevented the act from occurring as she is an adult and in a position of trust. (Female, 24)*

*Yes — Andrew is under the age of 16 and Ms Jones is in a position of power. (Female, 32)*

However, in comparison to the female student and male teacher scenario, more participants in their qualitative responses (such as the following), expressed a view the female teacher had not raped the male student:

*I don't think it was rape because it was consensual. (Male, 26)*

*No, because Andrew initiated the act. (Male, 22)*

*No. The word rape should not be used for consensual behaviour... someone that forces sexual intercourse on another person is far more dangerous and deserves different disciplinary action than someone who engaged in*

*consensual sexual behaviour and would never force sex on anyone. (Male, 28)*

*No, as the male has made sexual advances to the female and it is a consensual act. (Male, 34)*

*No way, they both wanted it. (Female, 22)*

*Not really, because young males are more inclined to actually want sex than young females. (Male, 22)*

Comments like these could be reflective of a cultural attitude that normalises males as sexual predators with active libidos that correlate with consensual intercourse more than with being vulnerable to rape.

Not surprisingly, associated with these gender differences in perception of the sexual activity as rape we found that there were differences too in the assigning of responsibility or blame depending upon the sex of the teacher. Almost one half of respondents (47.1 per cent) were in total agreement that the male teacher was entirely to blame for the sexual relationship with the female student. This was in comparison with the 38.1 per cent who completely agreed that the female teacher was to blame. Interestingly, 12 per cent believed that the female teacher was either not to blame or only a little to blame for the relationship in contrast to no respondents in the scenario involving the male teacher.

Accordingly, almost 30 per cent agreed with the statement, 'It is an accomplishment if a male student has sexual relations with a female teacher', and almost one quarter believed that 'Male students are able to seduce female teachers'. In fact, in the following comments the male student is actually seen as the predator:

*I would argue that she was seduced or 'let herself be seduced' by Andrew as she [also had] close feelings towards him. (Male, 33)*

*Yes, as he made the advances. But the teacher placed herself, knowingly or not, [into] the situation. (Male, 34)*

An acceptance of the inoffensiveness of sexual intercourse between female teachers and male students was seen in a participant's comment which stated '... good on Andrew for chasing down the cougar and giving her one! Yew!' (Male, 22). Such an attitude correlates with a model of sexuality in which women enjoy being coerced and seduced persistently and males are seen as having achieved an accomplishment by doing so.

Interestingly, references to the female teacher being seduced usually mentioned the teacher being in an emotional vulnerable state:

*If Ms Jones is emotionally immature or in need of comfort/ support/ attention then yes [she was seduced]. (Female, 32)*

*Ms Jones might be in a low point in her life and she may have had bad experiences with men. Then this bright young boy makes her feel good about herself, and she loses control of her emotions. (Male, 21)*

This would accord with sex role stereotyping of females as needy (aka weak) and emotional.

*A common thread that ran through many of the responses was that the male student had not been victimised by the sexual relationship with his female teacher.*

### **Impact on the Victim**

When asked whether the male student would be negatively affected by the relationship, 34.9 per cent rated the negative affect at 4 (medium impact), while 41.2 per cent assessed the effect on the female student at 4. In fact, of the 61 participants, 23.3 per cent did not have any sympathy for the male student. This is in marked contrast to 24.5 per cent of participants who had total sympathy for the female student. And, when the participants were asked whether they thought the student's actions were acceptable, 41.2 per cent rated the female student's actions at 3 (mid-point on the 7 point Likert scale with '1' being not at all acceptable, '4' medium impact and '7' indicating total agreement with the statement) in contrast to the 37.2 per cent who believed that the male student's actions were not at all acceptable.

The comments below assist us in understanding why there is less sympathy for the male student and why three respondents did not believe that the male student's life would be negatively affected whilst no one believed that a female student would be similarly unscathed. The following statements centre on the level of impact that the respondents believed the relationship had on the student:

*I doubt Andrew (or his friends) will see himself as a victim. Someone needs to bring it to Andrews's attention that despite him not seeing himself as a victim he is still at risk of harms associated with sexual conduct, such as STDs, self-esteem problems, and possibly teenage parenthood. He should think about these possible life-long consequences before 'coming onto' his teacher to impress his friends. (Male, 26)*

*It is generally more acceptable for a female teacher to have sex with a male student than vice versa. This may seem strange but it's just the way it is, and male students are almost always keen for it... it is seen as a great conquest to sleep with a female teacher. The reverse is not always seen as positively as people assume the young girl has been taken advantage of even if [she] initiated the relationship. (Female, 23)*

*I personally would not see the male student as a victim because sleeping with your teacher is something that a male who is sexually developing [wants] to achieve. (Female, 32)*

*I doubt that it is reasonable for Andrew to report it. If he did, there would probably be a negative backlash from his friends. By reporting it he would be showing his*

*vulnerability. Plus, what boy wouldn't want to sleep with an attractive older woman! If I was able to seduce one of my teachers I would be way more sexually confident! (Male, 28)*

*She [Ms Jones] will not be seen as a risk to the community, and thus will get a lighter sentence, if any at all. He [Andrew] will also say he provided consent. Female perpetrators are often seen as less of a risk... he will not be seen as a victim. (Female, 28)*

*If the court does convict Ms Jones, I don't think they will give her a harsh sentence because abuse of boys by women is less harmful. (Male, 20)*

These responses are further evidence of a persistent sexual double standard with women's sexuality existing only as an 'extrapolation of male desire', since 'Western culture ... contains only one sexuality, the masculine'.<sup>21</sup> Thus, it is likely that the male student is not seen as a victim who has been manipulated, but rather as a developing individual who is acting upon his sexual urges. This conforms with a community perspective of active male sexuality as 'not only admirable but as a reflection of virility'.<sup>22</sup>

### **Conclusion: Possible effects of such gendered attitudes in the court**

The survey indicated that there appears to be some gendered views about sexual misconduct between a teacher and a student. The results show that sexual relations between a female teacher and a male student are less likely to be constructed as rape. The difference in perception of the misconduct is associated with perceptual differences in culpability and harm depending upon the sex of the teacher and the student with female teachers seen as less responsible and female students as experiencing greater harm.

Previous studies have shown that the sexual assault courtroom is not a space inured from the rest of the community.

Like the victims, and their family and friends, the ears of the legal system are not immune to the muffling and distorting power of mythology; after all its practitioners and its culture are not isolated from the rest of the society... In fact, both female sexuality and gendered temperament are mirrored in how women are embodied in the law of rape. Passive, emotional, weak, mercurial, nurturing and obedient are undoubtedly parts of the masculocentric 'reasonable' woman.<sup>23</sup>

Judgments though do not contain 'the machinations of thought to provide how judges necessarily arrived

21. Patricia Easteal, *Balancing the Scales* (1998) 9.

22. Patricia Easteal, *Less Than Equal: Women and the Australian Legal System* (2001) 122.

23. *Ibid* 126–127.

at their findings'.<sup>24</sup> Therefore, it may be difficult to see how their beliefs about gender and sexuality impact on sentences but there is evidence that they do. For example one study, which looked at sentencing in a sample of sexual assault matters, found:

... preliminary support for previous findings of an apparent link between dominant negative stereotypes and sentencing that results from the process and decision-making behind sentencing as being subject to judicial discretion, as well as judges who are subject to influence by rape and sexual assault mythology.<sup>25</sup>

As Eastale and Gani conclude too from their analysis of sentencing in partner rape cases, judicial comments do sometimes reflect myths about 'real' rape, which for some judicial officers are 'unconscious and are not therefore explicitly articulated as a part of their decision-making reasoning'.<sup>26</sup>

Gender issues may result too from the sentencing principles themselves. Some argue that as long as the effect of the crime on the victim is taken into account, problems will arise. For example, the Director of the Northern Territory Legal Aid Commission states:

I don't consider that one offender should be treated more leniently than another because his victim is more resilient or too distressed to participate in the provision of a victim impact statement. Persons convicted of these types of offense (sic) should be sentenced on the basis of the circumstances attended to the commission of the offence and on the acceptance by Judges of the extreme seriousness of sexual assaults.<sup>27</sup>

This present study demonstrates though that the impact of the crime on the student was an important factor in respondents' evaluation of the crime's seriousness. A common thread that ran through many of the responses was that the male student had not been victimised by the sexual relationship with his female teacher. This perception allows for the dismissal of sexual abuse between women and boys as being a 'benign form of sexual education or experimentation'.<sup>28</sup> Indeed, the male students may not see themselves as victims in the context of their socialisation into gender roles and cultural expectations.<sup>29</sup> The male student in *R v Ellis*<sup>30</sup> thus 'vociferously and repeatedly rejected the moniker of "victim" and its association of harm or negative consequences'.<sup>31</sup> This fits within a social paradigm where the male body is seen as 'impenetrable' and males are encouraged to not demonstrate their vulnerability.<sup>32</sup> Furthermore, the cultural acceptance of sexual intercourse with older women can make it difficult for the male student to recognise his own victimisation. As one male survey respondent wrote: 'What boy wouldn't want to sleep with an attractive older woman! If I was able to seduce one of my teachers I would be way more sexually confident!'

Apparently then, to some extent, the sexual double standard is alive and well in Australia. Male sexuality, at least occasionally, is seen as irrepressible or at best difficult to control. From this perspective, a male student who defines sexual activity with his female teacher as rape and reports it is contradicting expected norms of masculinity. And there are both

implicit (cognition and beliefs) and explicit (sentencing principles) ways in which such views of sexuality can permeate the court and affect judicial weighting of perpetrator culpability, victim harm and their construction of the offence as criminal with the possible result that female teachers are sentenced more leniently.

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24. Jessica Kennedy, Patricia Eastale and S Caroline Taylor, 'Rape Mythology and the Criminal Justice System: A Pilot Study of Sexual Assault Sentencing in Victoria' (2009) 23 *ACSSA Aware* 22.

25. *Ibid* 21.

26. Patricia Eastale and Miriam Gani, 'Sexual Assault by Male Partners: A Study of Sentencing Variables' (2005) 9 *Southern Cross University Law Review* 70.

27. Senate Standing Committee on Legal and Constitutional Affairs, Parliament of the Commonwealth of Australia, *Gender Bias and the Judiciary* (1994) 4.8.

28. Levine, above n 1.

29. Greetje Timmerman, 'Sexual Harassment of Adolescents Perpetrated by Teachers and by Peers: An exploration of the Dynamics of Power, Culture, and Gender in Secondary Schools' (2003) 48(5-6) *Sex Roles*, 231-244.

30. *R v Ellis* (2004) VCC 64-78.

31. Steven Angelides, 'Sexual offences against "children" and the question of judicial gender bias' (2008) 23(57) *Australian Feminist Studies*, 363.

32. Levine, above n 1.