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Nina Funnell

Bri Lee

Saxon Mullins

Jonathan Crowe
Bond University

Nick James
Bond University

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Survivors Speak: How the Criminal Justice System Responds to Sexual Violence

NINA FUNNELL, BRI LEE AND SAXON MULLINS
(WITH JONATHAN CROWE* AND NICK JAMES**)

Studies show that one in five Australian women has been sexually assaulted in her lifetime. How well does our criminal justice system deal with this problem? Three prominent survivors of sexual violence—Nina Funnell, Bri Lee and Saxon Mullins—shared their experiences with the legal system at a panel discussion hosted by the Faculty of Law at Bond University on 6 June 2019. The panellists discussed the three main stages in the process—police, prosecutions and the courts—and reflected upon the challenges they encountered in their cases, as well as offering suggestions for reform. The panel was chaired by Professor Jonathan Crowe of Bond University and introduced by Professor Nick James, Executive Dean of the Faculty of Law. This is an edited transcript of the discussion.

NICK JAMES

Good evening everybody. My name is Professor Nick James. I'm the Executive Dean of the Faculty of Law here at Bond University. It's my very great pleasure to welcome you to Bond University and welcome you to the Faculty of Law Twilight Seminar Series. I'd like to begin by formally acknowledging the traditional owners and custodians of the land upon which we're gathered, the people of the Yugambah language group, and on your behalf I pay our collective respects to the elders past, present and emerging. As a community of law teachers and legal scholars the Faculty of Law is, of course, interested in the relationship between law and justice. We study and we teach our students about the way in which the laws can be used to promote and achieve justice and we also look at the ways the law can sometimes be used to frustrate justice.

In an ideal world law and justice are, of course, aligned. The law serves to fulfil the community's expectations about the ways in which we should respond to behaviour by members of the community that leads to harm to others. The law should discourage that sort of behaviour and when that sort of behaviour does occur the law should respond by, when appropriate, punishing that behaviour and awarding recompense to the victims of that behaviour. That's in an ideal world. But we don't live in an ideal world. The law sometimes fails to discourage harmful behaviour. When that

* Professor of Law, Bond University.

** Professor and Executive Dean, Faculty of Law, Bond University.

harmful behaviour occurs the law sometimes fails to punish the offender and sometimes it fails to award appropriate recompense to the victims of the behaviour. When that happens, it falls to activists, to lawyers, to legal scholars to try to do something about it.

As legal scholars, sometimes we write insightful journal articles that critique the law, articles that are read by other legal scholars. Sometimes we participate and contribute to efforts to reform the law, to change the legislation. Then, sometimes the most courageous and articulate of us actually lead efforts to repair the law when it lets us down. I'm very proud tonight that this event has been organised by one such courageous and articulate legal scholar, who I am proud to say is a member of the Faculty of Law. Ladies and Gentlemen, please welcome Professor Jon Crowe.

JONATHAN CROWE

Well, thank you very much, Nick, for that very supportive introduction. My name is Jonathan Crowe, I'm a Professor of Law here at Bond University. It is my great pleasure and privilege this evening to chair this tremendous panel. I'm going to make some very brief introductory remarks before formally introducing our panellists for this evening's discussion. But, before we proceed further, I'd like to first acknowledge that the subject matter of our panel tonight may be confronting or bring up painful memories for some people and so it's important that we all realise that everyone is free to get up and move around the space or out of the room as it feels comfortable for you. If tonight's discussion brings up issues for you and you would like to obtain further support, I encourage you to take advantage of the twenty-four hour counselling services offered by Lifeline on 131 114 or 1-800-RESPECT on 1-800-737 732. Both these services also have online chat functions on their websites. We also have information available here tonight on the on-campus and local counselling services, including the Gold Coast Centre Against Sexual Violence, who have a representative here this evening. Free legal advice for survivors is also available by contacting Women's Legal Service Queensland, who have a telephone helpline and an online chat function. I also want to foreshadow that we'll have time for a question and answer with the speakers at the end of tonight's event, but I'd like to ask you all to please bear in mind that, although some of you may have personal stories to tell which are relevant to our subject matter tonight, this is a public forum and it may not be the most appropriate or safest place to do so.

Our topic tonight is how the criminal justice system responds to sexual violence and this is a very pressing issue that is of broad importance for all segments of our community. Studies consistently show that around one in five Australian women has been sexually assaulted in her lifetime.¹ However, studies also consistently show that fewer than twenty per cent of rapes are ever reported to the police and only a small proportion of those

¹ Australian Bureau of Statistics, *Personal Safety Survey 2005* (ABS, 2006) 11.

reports ever result in a criminal conviction.² It's therefore very important that we ask ourselves how survivors of sexual violence can be better supported at all stages of the criminal justice process. The legal framework for rape and sexual assault is, of course, one part of this picture. To take a comparative perspective, the definition of rape in Queensland is relatively progressive by world standards. In many countries around the world it's still the case, for example, that a man can't be convicted of raping his wife or that only violent sexual assaults are recognised by the criminal justice system. Queensland fares relatively well in the way that it defines free and voluntary consent for the purposes of rape law as well as the range of factors, like intimidation and fraud, that are recognised as vitiating consent for legal purposes.³ However, there is still areas of the criminal law framework in dire need of reform.

Some of you may be aware that Bri Lee and I have been involved in a public campaign to reform the mistake of fact defence in Queensland rape law, which received some coverage just this morning in *The Courier-Mail* and the *Gold Coast Bulletin*.⁴ Essentially, this defence means that defendants can argue in court that even if the complainant didn't consent to sex with them, they mistakenly believed that she did.⁵ Almost every other state in Australia has already narrowed the scope of this defence, as it applies to rape and sexual assault charges, but Queensland continues to lag behind. If you'd like more information about this issue, I'd encourage you to visit the website that Bri and I have put together to share our research, which is at consentlawqld.com. Legal reform, however, is only one part of the overall picture and there are broader cultural issues that also need to be discussed. So, one of the aims of tonight's panel is to broaden this discussion to encompass the three main components of the criminal justice process, namely police, prosecutions and the courts, and it's also crucial that survivor's voices are placed at the forefront of this broader discussion. There are many disincentives that survivors of sexual violence face in coming forward with their stories, but there is no substitute for hearing from someone who knows what it is actually like to be a complainant negotiating the multiple stages of the criminal justice process.

With this in mind it's a great honour and a privilege for me to introduce our panellists this evening, who have volunteered to speak with us about their experiences. Bri Lee is a writer, editor and women's rights activist. She is the author of the acclaimed memoir, *Eggshell Skull*,⁶ which is an extraordinary book that I strongly recommend to all of you in the audience. She spent a year as a Judge's Associate for the District Court of Queensland

² Ibid 8.

³ For discussion, see Jonathan Crowe and Lara Sveinsson, 'Intimidation, Consent and the Role of Holistic Judgments in Australian Rape Law' (2017) 42 *University of Western Australia Law Review* 136; Jonathan Crowe, 'Fraud and Consent in Australian Rape Law' (2014) 38 *Criminal Law Journal* 236.

⁴ Natasha Bitá, 'Fight to Fix Loophole in Rape Law', *The Courier-Mail* (6 June 2019) 9; 'Fight to Fix Rape Law', *Gold Coast Bulletin* (6 June 2019) 6.

⁵ *Criminal Code 1899* (Qld) s 24.

⁶ Bri Lee, *Eggshell Skull* (Allen and Unwin, 2018).

and is qualified to practice law but chooses not to do so. Nina Funnell is a freelance journalist, anti-sexual assault advocate and author. In 2017, she won the Walkley Our Watch Award for Best Journalism Campaign of the Year and the United Nations Australia Media Award for her reporting on sexual violence in university communities. She sits on the Our Watch Media Advisory Group, the Board of the National Children's and Youth Law Centre and is a Director of End Rape on Campus Australia. Saxon Mullins is an anti-violence advocate and a recipient of the Australian Human Rights Commission's 2018 Young Person's Human Rights Medal. Her public advocacy triggered a wide-ranging review into the definition of consent under New South Wales sexual assault laws to better protect survivors of sexual violence. Ladies and gentlemen, please give a warm welcome to our panel.

As I said, what we're going to do in tonight's discussion is work our way through the three main stages of the criminal justice process. We're going to talk first about the police and about the prosecution process and then the courtroom. I'd like to start by inviting each of our panellists, but I'll start with you, Bri, if you would be willing to perhaps talk to us about your experience with the police and any improvements or reforms that you think could be made.

BRI LEE

Thank you very much and thank you for that wonderful introduction, Jonathan. Anyone who has read or knows anything about my book would know that my actual first introduction to the police was the fact that I was the daughter of a police officer in Queensland. My father did general duties for three years and then went into prosecution for the QPS.⁷ Certainly, when I was growing up, I had put an image of justice up on a pedestal. In our house, things were right or they were wrong and baddies got put in jail and good cops were good cops. Then, by the time I was a Judge's Associate and certainly by the time I decided to make a complaint, a formal police complaint, against the man who had offended against me, my father had, by that stage, retired from active duties because he'd turned sixty. The real, sort of, collision of worlds for me happened when I went to the police station to make my first formal complaint.

My experience with the police, as a complainant, was sort of painful because my investigation took two years, which of course is massively short compared to what a lot of survivors have to go through, and I had very, sort of, high expectations for how I would be dealt with because I thought that all cops were like my dad. There is no doubt in my mind that because I came to that police station and to those individual officers and they knew that I was the daughter of an old cop, so there was that sense of comradery or allegiance there, but also that I'm a well-educated white woman who is not afraid to be assertive or to follow-up with phone calls. English is my first language. All of those structural privileges, but also that

⁷ Queensland Police Service.

I was a lawyer. There is no doubt in my mind that from the Queensland Police Service I got the red carpet treatment and when I think about how many times they dropped the ball or behaved in what I now can see clearly as an inappropriate way with me, it makes me shudder to think of how the regular survivor has to go through that experience. There are examples I give in the book of where I think the police dropped the ball and there are actually worse ones that I didn't put in there because I didn't want that investigating officer to lose his job, which is just ... it is what it is.

Since doing research, after my own matter finished, it has just become clearer and clearer to me that when you walk into a police station or you call up to make a complaint you are playing Russian roulette in terms of whether you have a cop who believes and respects you, or a cop that would like to believe and respect you but is, sort of, just undertrained and under resourced on that given night, or you get a really wonderful cop or you get a cop that actually is a misogynist. Because, in my opinion, in the Queensland Police Service there is not sufficient organisation-wide training and resourcing because it's simply not enough of a priority. It's really not fair that you can have survived something so serious and devastating and just going to the police station is a lottery. I guess that would be my first idea for reform; in places like Victoria they have SOCIT⁸ where they have an entire branch of the police service that is specifically trained and resourced to deal with sex crime. That is both cases like mine, which are historical child sex offences, and other cases that are adult sexual assault complaints, because so many of the structural issues are very similar; these are like private crimes. There's no so-called 'hard evidence' the way people or jurors expect to see it. All that kind of thing. The expectations we have around the way survivors can or can't talk or trauma responses—they're trained in all that kind of stuff and Queensland just doesn't have anything even remotely close to as good as what's in Victoria. That's what makes it particularly frustrating. It would be so much easier for Queensland to improve because we wouldn't have to reinvent the wheel. So, that was my experience certainly with that stage of police.

SAXON MULLINS

I had a similarly lucky experience with the police in my matter as well, but also because I complained, I went to the police the next day, I didn't have a lot of time to think about what I could be walking into and I think that actually if I had had a chance to, sort of, go, 'Well, if I go to the police what am I going to be met with?', I may not have, because I do know a lot of cases where they are met with disbelief or just outright rudeness. But, I just was very lucky in that the detective that took on my case was just fantastic. She believed me straight away and just really pushed for the right evidence and the right basically everything. I mean even when you are lucky and you don't have a negative experience with the police, it's obviously not fun. I remember when I did have a chance to think about it, I was at Kings Cross

⁸ Sexual Offences and Child Abuse Investigation Teams.

Police Station and I was giving my statement. He went to go print it out and the printer was three rooms away because it was 1997 apparently. It was just the slowest process in the world. I'm sitting in this tiny, little room, down three flights of stairs at Kings Cross Police Station, which I didn't even know it was possible, and giving my statement to this police officer who was very lovely but was a forty-something year old man and he's typing one fingered into a computer that was older than me. I was just like, 'There is surely a better way to do this. I'm recounting something that happened not twenty-four hours ago that was the most horrific thing I've ever been through and I'm also in *The Office*.' It was just ... yeah. That part was not great. I agree in that I think all police officers should go through training so that they have the right skills and the right communication to deal with this kind of really horrible personal thing, but also maybe just how they take statements, or where you actually are sitting. I was in a waiting room with other people who were coming to get their police checks and things like that. Yeah, just kind of simple things like that. Just thinking about what this person is going through while they're sitting in your waiting room with a bunch of other people. That's another thing that I definitely thought about a lot.

NINA FUNNELL

Hi. So, my name is Nina and I'm going to kind of talk about this from two perspectives. So, one is from my personal perspective, having been through the experience of reporting from police, but then also from the perspective of a journalist who now I pretty much exclusively report on violence against women. I've had the privilege of working with a lot of women, who are incredibly brave, and I've been privy to a number of their experiences. I guess that's given me an added level of awareness. The first thing that I would say is that my own response of reporting to police was very, very poor in terms of what I experienced, but that some women I've spoken to and men have had very good experiences. But, that lack of consistency in and of itself is problematic because when you have been sexually assaulted the nature of sexual assault is that robs you of power and control and certainty. So, if you're up against a system where, as Bri said, it's kind of Russian roulette—you don't know what level of professionalism or service provision you're going to encounter—that creates anxiety, which in turn amplifies trauma, which in turn makes the whole process more difficult.

I'm just going to put a bit of a trigger warning that I am going to talk a little bit about my story because it's important for the context to understand why I received the treatment that I received. So, I was twenty-three, I was a university student at Sydney University, I was travelling home on the day of my honours presentation and I was attacked by a random individual who I'd never seen before, held at blade point, taken into a park, told I was going to be killed. I was bashed, strangled and he attempted to rape me before I fought back. I was indecently sexually assaulted and I fled calling the police. This happened a few hundred metres from my home and I was running home, on the phone to the police, saying, 'My name's Nina Funnell.

I live at blah, blah, blah, blah, blah. This is what has just happened to me.' I knew I had to deliver that information clearly. At the time, one of my things had come off in the attack, he'd torn my necklace from my throat, but I was clear in what I was saying, because I knew I had to be. What happened was the person who took the call hung up on me. So, I was, for I believed, running for my life and that he may still be coming after me and I was abandoned. That sense of abandonment is not something I've ever recovered from, if I'm honest. I called the police back straight away and said, 'I've just been cut-off. My name is Nina Funnell,' and I went through exactly what I had just said. They said, 'No. No. We've got you in the system. Someone's coming,' and hung up again.

I made it home and the police arrived soon after. They took me back to the park where it happened. Sniffer dogs were brought; there was a number of people who descended on the scene. I was taken to the police station and the first thing they asked me was did I want someone present? I made the decision that I didn't, because my mum was interstate on business and I knew that my dad would probably not handle this well. I knew what I had to do to get through making a statement and I knew that I didn't have the capacity to also contain his emotions or to placate and soothe him. I realised that if somebody I loved was in the room with me, I probably would have self-censored some of the more graphic details in order to protect their feelings. What that meant was I went through the process alone. Now, the detective that they brought in that night was actually quite good. She was a specialist sexual assault detective and I can say that one of the things that I've reflected on is what a difference having that professional training means. There were little things. Like when she had to ask me a question, she would explain why she had to ask that question before she asked it. So, before she asked me the question, 'Have you been drinking alcohol and if so how much?' She explained, 'The question I'm going to ask you may seem offensive, it may seem like I'm blaming, I want you to know I'm not, but this is why I have to ask the question.' Then, she asked it. Just taking that little bit of time and care, was a really good thing.

I guess where my experience began to turn bad was in the days after where I was asked to come back to the station. Because it was a random assault, I was asked to go through big books of images and so on as well as mugshots. That was a profoundly unsettling experience because I was told that those people were convicted sex offenders in my area. So, if I didn't already feel really unsafe, I surely did looking at all these images. As I was doing that, in the background, there were two police officers having a conversation and one of the comments was, 'The problem is women don't understand the risks that they put themselves in.' I can tell you that all I heard was the first half of that sentence, 'The problem is women ...' I think when you've been sexually assaulted, of all the survivors I've worked with as a journalist, those who want to tell their stories overwhelmingly want to tell their stories because they want it to prevent it from happening to somebody else. Almost all are motivated by altruistic reasons, but when I asked them, 'Why do you want to tell your story?', that's what they say.

When I ask them, 'What are you afraid of?', overwhelmingly they say they are terrified that they will not be believed or they will be blamed for the violence that they've experienced. If you think about what happened to me, it actually fits the media narrative. We know that overwhelmingly sexual assault is perpetrated by people known to victims. Very rarely, does it involve physical violence or physical injury. I had those ticks, like, stranger danger, physical injury, evidence that this has happened. In many ways I was stacked up to get a good response. I was believed to some extent, but I also felt blamed.

What happened next, after that, was because my background and training is journalism and because I was suddenly finding myself in a system that I didn't understand—again, if you think about the nature of sexual violence it happens in an asymmetrical power relationship and then you find yourself against a system that you don't understand. It feels like you're being reinscribed within another asymmetrical power diode. And so I did what I knew; I knew media. Five weeks after my assault, I turned around and I broke my own story in the *Sydney Morning Herald*.⁹ Then, the next day I did an interview with Lisa Wilkinson and then I received a phone call from the police. I was told they were very disappointed in me and that what I'd done was not particularly helpful. I thought, 'Well, helpful for whom?' If this was what was helpful for me, because it was my sense of reclaiming of a sense of control and ownership over what happened to me and it was the very first time that I felt that maybe I was reclaiming something, maybe that was helpful. What happened after that was, to cut a very long story short, four months passed and I still hadn't received any information about the DNA testing that had been provided that night. I guess from my perspective those four months every single day I was like, 'Is today the day I get the phone call? Is today the day they're going to call me and say we've got him? Is today the day they're going to call me and say we've nothing there was no evidence?'

The emotional rollercoaster that I went through, every day, in those four months was exhausting. I was suffering nightmares, flashbacks, all of the stuff that we know is associated with PTSD and I was at one moment allowing myself to hope and then the next moment going, 'No. Don't get your hopes up.' After four months, I actually physically couldn't ... physically I was burnt out and I couldn't handle it anymore. So, I wrote a press release saying that the DNA had still not been tested, that this guy didn't just represent a threat to me; he represented a threat to any woman in the community, the assault happened to have occurred opposite a girls' high school as well (I pointed that out) and Channel 7 led with it as the lead story that night. Literally overnight, the New South Wales Premier stepped in and ordered in my case to be tested. They found male DNA and I spoke the next day and I said, 'Well, that's fantastic for me, because now I've got an answer, but that just means that every other person in that queue has

⁹ Nina Funnell, 'This Man Attacked Me But I am Not Afraid', *Sydney Morning Herald* (2 July 2007) <<https://www.smh.com.au/national/this-man-attacked-me-but-i-am-not-afraid-20070702-gdqiqr.html>>.

been bumped down one spot in that queue. What this teaches us is that the squeaky wheel gets the grease and the fact that I'm incredibly privileged because I have access to the media, because I'm not ashamed to speak out about what happened to me means that I'm ... I'm still being expected to advocate for my own justice here, but I'm getting that treatment whereas other people are not.'

I guess I've spent a lot of time now reflecting on what would have made this system better. Based on others that I've spoken to, there are a few things. The first is clear communication; radio silence is absolutely killer. The second thing I would say is that at all points anyone who encounters a victim/survivor at any point in the criminal justice system needs to actively and consistently reflect on the power disparity between them and the victim/survivor. Because if you're not constantly reflecting on that power imbalance you will, without even meaning to, accidentally make it worse. The other thing is really basic stuff. I do a lot of work now through End Rape on Campus with survivors in university communities with really simple stuff. Like knowing that if you're going to make a police report that you can call ahead and ask to meet a sexual assault detective, so they're not rocking up at the front desk with randoms standing around saying, 'I need to report something.' And the person at the front desk going, 'What do you need to report?' Then, looking around going, 'Ah, a sexual assault.' And clear signposting about, 'Here is how we will communicate with you. Here is when we will communicate with you.' Managing expectations from the beginning. All of that would have really helped. But I guess the biggest one is doing a lot more training with the police so that there is a consistent level of service provision tackling attitudes. Like victim blaming attitudes, shaming attitudes. I guess those are some of the things that I would probably say are most important in terms of minimising the risk of re-traumatisation.

JONATHAN CROWE

Bri, is there anything you want to add?

BRI LEE

Just in terms of specific training my understanding, which is quite recent from having spoken to someone from Queensland Police, is that there is an optional program for officers to put their hand up if they want to take it, which is a fortnight of specialist training. But, the problem you have, obviously with something like that that is so opt-in, is that the people who are inclined to be sympathetic or empathetic to these issues are the people who opt-in. Then, the people who are the problem don't. So, in my opinion, it's a very easy way for the service to look like they have that training available without actually tackling the lack of consistency. Also, I had the same problem where I had a dude that, we call it the 'hunt and peck', where it was like tap, tap, tap when I was doing my statement, which sounds like a little thing, but actually when he's like, 'Oh, stop, stop, stop, stop. Yeah

and then where did he put his hand?' It's like the most horrific thing that's ever happened to you and you have to repeat yourself two, three, four times and it's not even the first time you've told that officer your story. It's just that time that you happen to be sitting there in front of a keyboard and then he can't figure out how to format his Word document and he can't touch type. It's actually incredibly upsetting because all of these little pragmatic issues build and build and build and you get this clear picture that you are not a priority for that system, because if people like you were a priority it would be resourced.

SAXON MULLINS

Also, to add to the typing, this is kind of funny now, but wasn't then. He had misspelt a word ... the word 'Ow.' I had said the word, 'Ow.' And he typed it as, 'Oh.' So, in the trial they said, 'Why did you say "oh"?' Like, 'Ohhh.' And I was like, 'Oh, no. I said "ow", not "ohhh".'

NINA FUNNELL

One thing I am aware that has been done with some police is an activity run by Rape Crisis Centres. Where they've had training and they've asked police to write down on a piece of paper your deepest, darkest secret and then come up to the front and give it to us. Of course they're all sitting there going like, 'What?'

BRI LEE

Fuck no!

NINA FUNNELL

Yeah. Then they say we're doing this because every time you ask a sexual assault survivor to tell you their story, that is what you're asking them. They don't know what you're going to do with that information, where that information is going to go, how it will be handled, how safe that information is. So, keep that in mind. I think that those kinds of empathy building activities are really useful. The other thing that I just wanted to say, and this is a little bit off the wall and a bit random but go with me, is one of ... I've also reflected on what would have been useful for me in my particular set of circumstances in reporting, because a lot of survivors that I've spoken to say that same thing. Having a loved one present would be really good but they also have conflicted feelings, and guilt even, about how that would make a loved one feel.

SAXON MULLINS

I regret taking my dad to the station even though I didn't let him in the room. As soon as I got there, when you just described how you were worried

about feeling about your dad, I was like, 'Oh, my God. That was exactly the same.'

NINA FUNNELL

So, a couple of years ago I went over to America and they have this program over there called Court Support Dogs. Basically, Court Support Dogs are animals that are trained, right from birth, to remain calm under very stressful situations. Particularly children, but anyone who has experienced sexual assault when they report to the police, where the Court Dog Programs are available, they have the option to have the facility dog with them. The idea is that the dog stays with them throughout the entire process. So, not just in the first interview, but they attend court and what they've found is that there's a range of really, really obvious benefits. I can just see why it's so good because I know that for me, personally, having a dog there, I grew up with dogs, would have meant that I had something to hold onto and to get comfort from, but I wouldn't have felt the need to self-censor what I had to say. What they've found in America is that children in particular will say to the police officers, 'I'm too ashamed to tell you what's happened to me, but I can tell the dog.' They'll then film them disclosing to the dog what's happened. We know that what makes really good sexual assault counsellors are counsellors who have good hearing, they're non-judgmental and they have unlimited positive regard for the client. If you look at dogs, they're really good listeners, they're non-judgmental and they've got unlimited, boundless love for the client. But, more than that, there's actually a scientific basis for it.

Essentially, when the dogs go to court, in particular, they're actually trained to go into the witness box and they fall asleep at the victim's feet and if you've grown up with dogs you'll know that they tend to have better hearing than us, so they are our sentinels. They're the first to bark if there's danger outside or the postman is coming. The corollary is if a dog is snoring soundly at your feet it subconsciously reassures you that everything is calm, safe and in control. What they've found is that victims are able to give much clearer evidence, their evidence is more reliable, they're also finding that more perpetrators, particularly paedophiles, are changing their pleas to guilty pleas once they see the video of the child disclosing to the dog, because they realise how articulate children can be. I mean there's a whole host of other benefits, in terms of the police, vicarious trauma levels go down, everybody in court is nicer to each other when there is a dog in the courtroom, but also the dogs enjoy their work.

Even one of the other benefits that I thought was really interesting was that in cases where you've got domestic violence, if a mother and her children are going to a police station where there is a facility dog, that is a court support dog, they are more likely to stay engaged with the process and they are more likely to see that process through to completion, because the children develop a relationship with the dog. So, suddenly it's not, 'We've got to go to the police station,' or, 'We've got to go to court.' It's, 'Oh, we're off to see Astro the court dog today.' So, they've found that it's

got a range of benefits in terms of the legal outcomes but it's also got a bunch of psychological benefits.

In Australia, we recently got our first Court Support Dog, and I've been doing some of her media campaign for her pro bono.¹⁰ I can also highly recommend the Court Support Dog Conference in America. You go there and there's like two hundred dogs in their vests. When they walk into the courtroom they even bow to the Judge. But, on a serious note, I think the point that I'm trying to make, that's one strong example, but if we think creatively and if we think, 'How does trauma operate? How does it impact on individuals?', and we think outside the box about what an empathetic system might look like that responds to the needs, which are quite complex needs, of individuals, I think that that's where we start to see some pretty inventive solutions and I'm quite excited about how, in the Australian context, we might start exploring some of those more imaginative different ways of approaching old problems.

JONATHAN CROWE

I think maybe we might move now to the next stage in the process. I think a lot of people probably don't realise that it's not a case of going to the police and then going straight into a courtroom; there's a whole waiting game that occurs in between dealing with the Prosecution Service. So, I wonder, Bri, if you'd like to speak about that.

BRI LEE

Absolutely. That's been really interesting for me as well, touring the book, and I have very much enjoyed audience question time on my book tour. I've done countless events now. It is the case for both people who ask me questions after events who aren't familiar with the law and people who write me e-mails about being survivors or having tried to go through the court system in their state themselves, who actually did not realise, because of course why would you until you go through it yourself or if you have a family member who is in the profession, that the police are not the same people as the prosecutors. Certainly, in Queensland, for me, the process of being handed from the police to the prosecution meant feeling like I had absolutely no point of contact. While my matter was with the DPP¹¹ I cycled through three victim liaison officers. Every time my matter got a new victim liaison officer I would just get a letter a mail two weeks later. I would call them to introduce myself and also to say, 'What's happening with my matter?' Every time I called them, they had lost important information about me and about how I wanted to be kept informed. Also, I had to tell every single victim liaison officer that 'I was a Judge's Associate

¹⁰ Nina Funnell, 'The Dogs Helping Women and Children Through the Trauma of Abuse', *Mamamia* (19 August 2015) <<https://www.mamamia.com.au/courthouse-dogs/>>; Nina Funnell, 'Meet Australia's First Ever Dog Specially Trained to Comfort Victims of Abuse in Court', *Mamamia* (25 June 2016) <<https://www.mamamia.com.au/court-support-dog/>>.

¹¹ Director of Public Prosecutions.

in the year of 2015 and so you need to keep that in mind. If this ever gets court listing dates, this was the Judge I was associate to; you need to flag it with the entire system to make sure that at no point in time does my matter come into contact with anyone who I worked with,' because that's exactly the kind of loophole that I knew this guy's defence team would jump at the chance to say that my matter had a conflict of interest. Every time I got a new victim liaison officer, they just didn't have any record of that information on my file. So, for me, the prosecution stage was just like another stage of people who just dropped the ball, even though they probably treated me a lot better than many.

Then, since my matter has been finalised in doing a lot of research and stuff with Jonathan but also with the book, every time I've done any kind of advocacy or speaking opportunity we get quite a lot of anecdotal information about survivors being pressured—and I don't use that word lightly. Some of them have been seriously, and some of them more lightly, pressured to go along with plea deals. We have no good data on this, but anecdotally I've lost count of how many times, for example, there will be an indictment that lists multiple accounts of physical violence and then one or two counts of sexual violence. Frequently, defendants will offer to plead guilty to the physical violence if the DPP agrees to drop the allegations of sexual violence. And then what happens is ... the prosecutors don't even have to consult. They don't have to consult with the complainant before making a decision about what to do with that indictment. Now that I've been on the side of realising that the prosecutors in my case could just do any deal they wanted without asking me, this feels terrifying even though mine's finished now.

I went on Radio National with a woman who had been put in a room at like 4:00pm on a Friday and shown the evidence that would be shown to the courtroom if she really wanted to proceed, and they were pressuring her to take the plea deal that was only to the physical violence not to any of the sexual offences. Her perspective was, 'I wouldn't have even cared about going to the cops for the physical violence. I'm here because he sexually assaulted me really seriously.' It wouldn't feel right to her to have that left off the indictment. That was the whole point. She said, 'Can I take some time to think about this?' And they said, 'No. We need your answer now.' They showed her photos. She had physical injuries in her groin area and so they were photographs that had been taken for evidence that were obviously extremely exposing and they put those on the table in front of her and said, 'This will be shown to the whole courtroom, including him, if you proceed with this.' Basically, she just got this really messed up experience of being really hard-core pressured to take a plea deal. We don't have data on plea deals and that's something that I think is really troubling and, again, I think is simply an example of under resourcing because it's so much easier for everybody involved if they just take the plea deal. It's very alarming and frustrating.

SAXON MULLINS

Yeah. I also found it a bit of a confusing experience once you're passed from the police to the prosecutors because, as I said, the detective who held my case was so amazing and she actually came to a lot of my meetings with the DPP. She was a wonderful person and very empathetic and to move from that to someone who just goes, 'So, this is going to happen and this is going to happen and that's going to happen. We'll tell you or we won't tell you. That's pretty much it.' I would kind of have to stress I'm not ... I wasn't, I am now, I wasn't a very assertive person, so I didn't want to have to say, 'Can you tell me everything about my case, because it's my case.' But, as you're labelled as a witness in the court proceedings, they don't have to tell you anything. I remember I changed prosecutors. I met the first prosecutor twice and then I came in for a third meeting and they were like, 'Oh, by the way it's a different prosecutor.' I was like, 'I could have been told that. It's an e-mail.' So, it's just about empathy. Just training people to remember that, once again, this person is having to relay these awful things to you or is facing the prospect of having to face their perpetrator. You just have to keep that in mind. It's like, yeah it's their job. They're just going to work and they're like, 'It's Monday. I've got to meet this girl and then do this other thing.' But, it was my whole life, so I wasn't thinking about anything else. So, 'For the twenty minutes you meet me could you pretend you're also not thinking about something else,' was basically my thoughts. I think that's my biggest take away from all of it. It's just be kind and be thoughtful going through.

There are a couple of times where I would feel a bit more comfortable with the prosecutor. I'd be saying something. They'd ask me a question or whatever; I'd be saying something and they were like, 'Make sure you don't say that in court; that sounds bad.' I was like, 'We're not in court. We're having a chat. Why are we so hostile with each other? I thought we were just having like a talk.' So that sort of thing I really did not enjoy.

JONATHAN CROWE

I think we're beginning to get a sense why such a small proportion of cases ever ends up in the courtroom, but of course the courtroom is the final stage, in a sense, of the criminal justice process. I wonder, Bri, if you would like to talk to us about that?

BRI LEE

Hmmm. It's funny sometimes people think I have a conflict of interest about the legal system because I'm a survivor, but actually the shit I saw every day working as a Judge's Associate in the District Court is the thing that really made me angry about our system. So, I worked for a Judge that did almost exclusively criminal law and at a District Court level that means sex crime; both child sex crime and adult sex crime. We went all around the state; all sex crime, all of the towns. What was most shocking was just how similar all of it was. Something I think about a lot, if anyone has read

my book, I think about Jessica a lot. This line she said, that will haunt me forever. She was not a very good witness in terms of how effective she was at being a complainant in her rape case. She was sort of a little bit combative, she became quite confused, she was clearly extremely anxious the whole time. Defence did a pretty good job cross examining her on what mental health medication she was taking. Really, a lot of the things that I consider unethical in terms of what is allowed in cross examination. Towards the end of the trial, she said just to the courtroom generally, something like, 'I'm sorry. I don't think I'm coming across very well. This is the most public speaking I've ever had to do.' I've been doing debating club since primary school and I've grown up in an environment where people encourage me to use my words and use my voice and where people respect my thoughts on things at home at the dinner table and then at school, and at high school and at university. The thought that she would even classify giving evidence in her rape trial as public speaking, just, all of the socioeconomic inequality that statement represented really, for me, exemplifies the fundamental problems with the way we run trials, which also goes to how we allow juries to be selected in Queensland.

You're still allowed eight pre-emptive challenges by both prosecution and defence and they can stack juries. I was on Radio National with Jacqueline Horan, who is one of Australia's leading academics on juries in particular.¹² She was saying that juries, when they were first conceptualised, had to be twelve land-owning men of good character who knew the defendant. So, the thought that we have juries the way we do now because that's the way they've always been is a complete farce. As soon as we accept that, we can think about what juries might look like if we got them right. So, in Queensland you're still allowed eight pre-emptive challenges. Jacqueline's research indicated that the defence uses a lot of theirs quite often and the prosecution rarely uses theirs. In Victoria, for example, they've decreased it to, I think, six just so that the defence don't have as much of an opportunity to stack juries.¹³ In the United Kingdom, where we sort of got our system from, they've abolished pre-emptive challenges altogether.¹⁴

When jurors' names get called out of the barrel often, as was my experience, the defence would try to get rid of women and young people if consent was an issue in a sex trial. They were allowed so many challenges and then often women, when given the opportunity, would put their hand up and ask the Judge to excuse them from jury duty because they themselves had experienced or survived some kind of sexual trauma and did not want to sit in a trial. To which my Judge, of course, said, 'Yes. You are excused. No public reason need be given.' But, then, of course, the subsequent implication, which is that the corresponding number of offenders are chosen at random for jury duty and end up on juries, is shocking. Just how nobody checks their privilege when they walk into

¹² See, for example, Jacqueline Horan, *Juries in the 21st Century* (Federation Press, 2012).

¹³ *Juries Act 2000* (Vic) s 39(1)(a).

¹⁴ *Criminal Justice Act 1988* (UK) s 118(1).

courtrooms. We're all still very ableist. We're all still very racist. We're even predisposed to think that good looking people are more good and honest and that how articulate you are is a measure of how reliable your evidence is, but what we know from the statistics is that people from marginalised backgrounds are more likely to be targeted. There are so many issues with the system the way it is now that are just on show at a sex crime trial.

NINA FUNNELL

In my case, the DNA has never matched, so I have never had my day in court. It's something that I have thought about often; what that would be like, would I go through with it? I guess there's a bunch of things that I think. And I'm reminded of the quote by Judith Herman, who is one of the world's leading experts on trauma, who has said that if you set out to deliberately design a system to re-traumatise people, sexual assault survivors, it would look very much like our court system.¹⁵ We know that as sexual assault survivors every time we have to tell our story it can be re-traumatising. So, if you think about Bri and Saxon's stories and the number of hands that they went through, that's somebody new that they have to tell their story to over and over. We know that the number one thing that impacts on a person's capacity to recover following sexual assaults is the attitudes that they encounter on first disclosure. When people are believed and they are supported, that automatically contributes towards healing. Yet our system is adversarial. When a person is being cross-examined they are inherently not being believed.

When I was in high school in science class we were taught about the fight or flight response, which is in response to a stressor people will either run away, flee or fight. Obviously, now we talk about the fight, flight or freeze response and we know that a very significant proportion of sexual assault survivors freeze in response to danger.¹⁶ I mean if you ever go on safari and you see a lion, the first thing that they'll tell you is that if you see a lion you freeze. It's been a core part of human survival. Most people if they see a snake in the wild they will freeze. We freeze all the time in response to danger and yet in a sexual assault scenario that's very poorly understood by juries. There was a freeze component in my own assault, which people find difficult to understand.

The other thing that I would really comment on is that a lot of people who have experienced trauma know that it affects their memory. One of my counsellors explained it to me like this. She said, 'Nina, imagine that your memory is like a filing cabinet system where each minute or moment

¹⁵ Judith Herman, *Trauma and Recovery* (Basic Books, 1992) 72.

¹⁶ S D Suarez and G G Gallup, 'Tonic Immobility as a Response to Rape in Humans: A Theoretical Note' (1979) 29 *Psychological Record* 315; G C Mezey and P J Taylor, 'Psychological Reactions of Women who Have Been Raped: A Descriptive and Comparative Study' (1988) 152 *British Journal of Psychiatry* 330; G Galliano, L M Noble, L A Travis and C Puechl, 'Victim Reactions during Rape/Sexual Assault: A Preliminary Study of the Immobility Response and its Correlates' (1993) 8 *Journal of Interpersonal Violence* 109.

is a file in the system. A traumatic event effectively empties all of the folders onto the floor, messes them around, picks them up and shoves them back in. Some of those files will get lost; others will get out of order.' And the fact that there are particular blanks in my memory of what happened during my actual assault isn't evidence that I'm lying. It's evidence that I've sustained a traumatic injury. Yet one of things that I've written in the past is that it's very frustrating that I would be referred to as a witness of my own assault, because I wasn't sitting outside my own body watching this happen to me like an audience member; I was living it. It was embodied; it hurt. It was painful. I wasn't a witness, but also I would be classified as an unreliable witness because I had been drinking, because my memories aren't all there, because I wasn't a virgin at the time; you know all of these things. I would probably be asked what I was wearing and all those other completely irrelevant things which are aimed at discrediting survivors.

What we know is that if we have a system which is about prosecuting the victims in a way, in terms of cross examining them and picking them apart and looking for discrepancies in their stories (and we were talking about this before) then that exacerbates trauma. So, when I'm working with victim/survivors these days a lot of them are looking to tell their stories. I mean we've been running a campaign down in Tasmania so I'll just tell this story quickly. In 2017, I was contacted by a rape survivor in Tasmania who wanted to tell her story in full. Her perpetrator was convicted and found guilty and had gone to jail. As we went to run her story, our lawyer stepped in and said, 'Actually, there's this bizarre law. Section 194K of the *Evidence Act* says that no media outlet is allowed to reveal the name of a sexual assault survivor even with her consent.'¹⁷ We were like, 'This is absolutely absurd.' So, we've been campaigning to change the law down there.¹⁸ One of the things that's been really interesting in that campaign is that a lot of survivors have spoken to me and said, 'I look at my options of going to the police, whether I may or may not be believed, they may or may not refer it to the prosecution, it may or may not go to court, if it does go to court I may or may not get a conviction and even if I get a conviction that's no guarantee that there will be any jail sentence either. Or my other option is, I can talk to the media.' That has certain other benefits. But, in Tasmania, if you've been to trial, you can't tell your story publicly. It shouldn't be an ultimatum. It shouldn't be one or the other. It's a bizarre system.

I guess the thing that I would encourage people to reflect on is that the system itself, as it currently stands, doesn't necessarily recognise the human element of trauma and the way in which it operates almost feels as though it's intended to exacerbate trauma. So, it's not surprising that increasingly some survivors are just saying, 'The risk and the cost of doing this is too much for me.' I don't say that to deter people from pursuing that as an option; I say it to motivate change because essentially, as Bri said, we have inherited an inherently patriarchal system that was ... if we redesigned it

¹⁷ *Evidence Act 2001* (Tas) s 194K.

¹⁸ Nina Funnell, 'Fourteen Reasons for Change', *The Mercury* (4 May 2019) 24.

from ground up, what would it look like? I think we would have to start with an acknowledgement that sexual assault is a gendered crime. It disproportionately impacts on women. We started with an acknowledgement of country and I think it's important that in any sexual assault discussion we acknowledge that sexual assault disproportionately impacts on Indigenous communities. It disproportionately impacts on LGBTI¹⁹ survivors; those survivors are less likely to report to the police because the police themselves are often a highly heteronormative community. It disproportionately impacts on individuals with disability. We know all of these things and I think that we really need to look at what it would mean if we redesigned the criminal justice system with those communities in mind. How would it look different?

Just one other thing. I do a lot of work within university communities and sexual assault survivors. One of the most common questions that I get asked, from people who are not survivors, is why wouldn't they just go to the police? Why wouldn't a student just go to the police? I have to explain, well, even if they did go to the police, even if they were believed, even if it did go to court, even if they did get a conviction, we're talking two years minimum. Meanwhile, that student has to go to class on Monday and if their offender is in their tutorial, how is that impacting on their educational experience? A lot of the survivors I work with, in universities, they want really basic things. They want to move tutorials, they want to be believed, they want better access to support services. I raise this because I said my assault happened on the day of my honours presentation. The next day I told my supervisor and she happened to be on the board of the Rape Crisis Centre. She called me in tears and she just said, 'Nina, I'm so sorry that this has happened to you. Whatever you need, you've got it.' I did need things. I did need to go part-time to finish off and it was because I had my department's support that I graduated with first class honours. That difference was the difference between me graduating or not.

Within those communities, within universities, international students are one of the most vulnerable groups. I've worked with a number of international students. Keep in mind they are in a new country where they don't necessarily understand the police or judicial system. English may not be, not only not their first language, it might be their second, third or even fourth language. They are tens and thousands of kilometres from their family and support systems. I've supported international students who have gone to the police and been told, 'You're not going to be here in a year's time; there's no point.' You think about the kinds of barriers that they face. I think in any of these discussions, we need to talk about what are the barriers, what are the systemic barriers, and how do we address them right from the initial police situation all the way through to the court?

I'll hand over to Saxon now because she can talk a lot more about the court system.

¹⁹ Lesbian, Gay, Bisexual, Transgender and Intersex.

SAXON MULLINS

It's bad. Yeah. I think my court experience was the most damaging, mentally, part of the whole thing for me. I mean going to the police is hard and going through all the prosecutorial stuff is difficult, but the court proceedings were so awful. I get asked a lot, was it worth it? And I genuinely don't have an answer. I really don't, because I don't know if it was. There was two trials and two appeals. For the first trial we had a jury. There are two options when you go to trial. So, you can go sit in the court in the witness box or you can be in a room at the Downing Centre in Sydney, you can be in a room in the court behind the Downing Centre and via video link, so you don't have to see the defendant or anyone else who is in there, it just shows you the Judge or the lawyer. I was very strongly advised to sit in the witness box. They said it was more personable and juries were more likely to believe you if you were sitting right there. So, I did that and it was so awful. It was so awful because I mean I'm sitting from here to Jon away from the person who I'm literally describing has assaulted me to twelve strangers and I did have a court support officer sitting in the room. That was the only ... I would have much preferred a dog. But, that was the only thing. I think they are really important done well. I think they are really important. It was just even a face to look at. To be like, 'Okay. I can tell my story. I don't want to look at this prosecutor I don't know. I don't want to look at the Judge. I don't want to look at his lawyer. I want to look at this person I've met three weeks ago, but that's fine.'

Sitting in the witness box was very difficult but was advised. The cross examination ... the advice I was given before I went to trial was that you answer the question you are asked. Like the defence wants you to expand so they can kind of pick apart your story. There was a couple of moments, again funny now but not then, where the defence said, 'I put it to you that that is isn't true. I put it to you that you're upset about something else and that you weren't assaulted.' I was like, 'Okay.' Then, we just sat in silence and he was like, 'Do you agree?' I was like, 'No, but I agree that you're putting it to me.' I was like I totally didn't even understand that was a question. I was so far out of my depth and it was just so scary. Once again, I'm retelling this story of this awful thing that happened to me. As soon as I got on the witness stand I had the person, who brings you into court, whoever that person ...

BRI LEE

The bailiff.

SAXON MULLINS

Yeah. The bailiff. She was about to open the door and I was like, 'Can you tell me what to do?' She was like, 'What do you mean?' I was like, 'Do I just walk up there? I don't know what I'm supposed to do.' She was very nice. She told me you have to bow when you walk in and then she's going

to give me the ... I sat down and they said, 'Can you state your name for the record?' I'm like tears streaming down my face. All I'm saying is my name. I was like just so petrified. In the second trial, we were in a civil courtroom, not a criminal courtroom, because they'd run out of them. So, a civil courtroom is much, much smaller. He's not in the defendant box, I'm not in the witness box, I'm sitting on a chair and he's sitting on a chair in front of me. That's as close as we were. I'm again having to ... I didn't have to retell the whole thing; they played my audio from the first trial. That was even worse. For the second trial the courtroom wasn't locked, so anyone could kind of come in during my testimony because it wasn't the full testimony. It was packed. But, again with the DPP kind of being not great at communicating, I knew that they were going to replay the audio from the first trial, so that I wouldn't have to go in. I had asked them will there be any journalists there who can go in and listen to it? They were like, 'No. No. It's closed like as if you were there.' So, I was around at court while they were playing it, but obviously not in court. I went home and looked on my phone and on the *Sydney Morning Herald* is a piece where someone is describing what my face what looks like as I describe my assault. I was like, 'How do they know that?' They had actually played a video ... I didn't know they had a video. I thought it was an audio. They had a video of the previous trial of me giving evidence and journalists were allowed in to watch it; it was not a closed court. So, one of the worst moments of the second trial for me was that kind of shock of something that I had specifically asked about and, even if I hadn't, something you really should tell me that people will be able to see you giving evidence, whether or not it's you on this day right now, but it's still you giving evidence.

For the second trial, it was Judge alone. They decided they couldn't find a jury in Sydney who had not heard of this case so they did a Judge alone trial and the Judge did not believe me at all. Just when she gave her judgement she only mentioned things that he had said, so she went totally from his account. Called me unreliable, because I had used the word 'think' in my first statement and said, 'No. I definitely said that,' in my second statement, so she found my whole statement to be unreliable. As she giving her judgement, when we were all sitting in this room, I'm here, the police officer is there and he is there. We come in and the Judge was forty-five minutes late and we were in the civil court again. The civil court doesn't have somewhere where they can take you directly to jail so usually that means this person is not going to be found guilty. So, she started her judgement by saying, 'Now, just because we're in the civil court that does not mean I'm not going to find him guilty. I could very easily get someone to come and we could put him in a car; it makes no difference. This doesn't have any impact on the judgement.' She ultimately acquitted him, so I don't know why she had to put up this charade of saying, 'Well, we could if we wanted to,' and during the whole judgement she went point by point, 'Well, this for and this against.' So, you never knew which way she was going to swing until she actually said, 'I find the defendant not guilty of this offence.' For a reason totally unknown to me she did that. A lot of Judges will just

say it right at the end, but you could say it upfront, so that I don't have to sit through five hours of you describing my assault in your own words and how you didn't believe my account, just to find him not guilty.

The particular Judge I had was not great in that she was forty-five minutes late. She took a two and a half hour lunch, because she wanted to finish right at five o'clock and no earlier, and no matter which way you look at that obviously that's not great for me because I'm having to sit in this tiny room with ... but even if you looked at it from his perspective. If he's not guilty of this, which she believes that he is not, he is waiting for his life to be, you know, what his future is going to be so both of us are waiting to hear this really important information about our lives and she's taking a two hour lunch, because she doesn't want to finish at three o'clock and get another case. Yeah. I think, for me, the court process was so much more traumatising than it needed to be and it was a lot to do with the lack of communication from the DPP and just small things like putting us in a civil court when you could just wait until another one is free. I don't want to sit two rows away from the person I'm accusing of this crime. So, it's just small ... well, I wouldn't call that a small thing, but it's just things like that that it's just thinking ... just empathy. Just what would they want if they were in this situation—and you wouldn't want that.

JONATHAN CROWE

So, we have some time, in a moment, for questions from the audience, but before we do that I just wanted to give our panellists an opportunity if there's anything you would like to add before we move to that stage?

BRI LEE

I just want to say my matter was two counts and the first was, sort of, more likely to succeed than the second for various random, finicky legal reasons. My knowledge of the system was that I knew that if he got found guilty of one and not guilty of the other that he would appeal it because of inconsistent verdicts and that appeal point has a high chance of success. I remember when we were waiting for the jury to bring their verdict I was like, 'If it's inconsistent verdicts and he appeals it, I don't know if I could do this again.' And, Saxon, the fact that you went back for round two is like, you're a fucking gladiator. I don't think I could have done that and mine didn't have nearly as much eyeballs or shit show cycling around it, so you're amazing.

JONATHAN CROWE

We have enough time left for a few questions from the audience. Now, I'd just like to recognise again at this stage, as I said before, tonight's discussion may have brought up personal issues for some of you, but please bear in mind that unfortunately now is the time for questions rather than telling personal stories. Please don't hesitate to reach out to the counselling services I mentioned earlier or to consult the information we have available

to find the best person to help you work through those stories. So, I think we have a microphone that's going to go around if anyone has a question from the floor.

QUESTION FROM THE AUDIENCE

Thank you, ladies, for your stories. I agree with you, I think it was you who said about the freeze response. I think all three of you talked about your parents. So, if you're that teenager or young adult who has been assaulted, facing the parents is quite a difficult thing for the parents. They are the ones that tend to freeze. My question to you is, as lawyers and there's a room full of lawyers, if we're going to change the system, because it's kind of stuck, if the offender is innocent until proven guilty then the victim is therefore guilty until proven innocent. I was wondering if as well as having counsellors, it was time that the victim also had a lawyer present at the proceedings of being interviewed because we have a lot of lawyers now and the police stations perhaps if they had a lawyer there ... because not everybody likes dogs (no offence!) But, parents freeze and that's a fact. Anybody who has been through trauma knows that that's how it is. You do get parents, who come forth, but a lot of them do freeze and they're speechless; they don't know what to say. So, my solution or my empathy as you would put it—and I'm very old—I think it's time that lawyers were present in police stations so that when the questions are being asked they have a support team. Not just a counsellor, but an actual legal support team who tells you and explains to you how the law is going to go for you so that you can actually make that decision, in that moment, as to whether you want to proceed or not. So, that's my question to you.

BRI LEE

Julie Sarkozi from Women's Legal Service Queensland speaks about this really articulately and I'll try and do my best to repeat, which is that it's a fundamental problem about the adversarial system that the defence counsel work for their client and the prosecutors work for the court. It means that there is just this weird vacuum where actually nobody is there for the complainant. Like what Nina was saying where they refer to you as a witness, there's just this lack of acknowledgement of the very real and fundamental stakes and how involved the complainant is and that the complainant is as involved as the defendant. So, other places, like overseas, even if it's not necessarily a lawyer, will have some kind of advocate who has legal training. I think it's a very interesting and, exciting is probably not the best word for it, but it's an exciting question. Because, I know in my matter as well, for example, the defendant's first line that he told his lawyers to tell the police was that he remembered being ten years old when it happened, which was, yeah, ridiculous. Then, obviously at a later date they went back and re-read my statement and I had made it clear that it must have been after XYZ date and so they were like, 'Oh, actually no. He remembers he was twelve.' I remember, at that moment, being like, 'Oh, I

know he said he was ten because that has ramifications for Queensland's age when you can ... like the minimum possible age when you can be considered criminally culpable. Now, I know he said it's twelve because that's the next age bracket at which you can be considered criminally culpable and each age bracket has a different onus for the prosecution to prove.'²⁰ I know why he said all that, but I don't have a lawyer and I don't think this cop, who has been dealing with my matter for twelve months, has a fucking clue that that's why he's done that stuff. I had nobody who was sitting there sniffing a rat. Whereas, anything I did, every subsequent statement you make that has any tiny inconsistency has the defence team sniffing for things that they can use. I think it would be a wonderful idea to have people who are lawyers for complainants. If anyone currently working in the legal profession has an issue with everyone being represented, then I think they need to ask serious questions about how much faith they have in legal professionals, which would be a really interesting conversation to have.

NINA FUNNELL

I could not agree more. I think that when you are a victim/survivor you are playing a game where you don't know the rules. Having somebody in the room, sitting next to you, who knows the rules, would at least begin to approach an even playing field. One of my take aways ... there were many take aways I should say from Bri's book. But, for me I was like here is a young woman, who is incredibly intelligent, articulate, who has a law degree, who ... I didn't even know what a courtroom looked like other than what I'd seen on *Law and Order*. That's not a joke, like, I'd never stepped foot in one before I did some court reporting. So, here is someone who knows all that and yet who still feels that this system is opaque, difficult to navigate and the odds are stacked against her. So, what does that mean for those of us don't have law degrees, who don't ... so, I think it's a brilliant idea. I've spoken to many, many, many survivors who have said that they didn't realise that there was ... they thought that the prosecutor was their lawyer. They didn't realise that they were a witness for them ... So, I think that that would be an excellent start.

QUESTION FROM THE AUDIENCE

Hi. I'm just wondering, somebody who is about to go and actually go into court as a complainant, the victim, what advice would you give to that person that would help them either emotionally get through it or look out for any dangers that might happen from a legal perspective even?

SAXON MULLINS

That's really tough because, as I said, I still don't know that this was my best idea I've ever had, but I think one thing I would suggest is to definitely

²⁰ *Criminal Code 1899* (Qld) s 29.

be pushy. The DPP, I have crap talked them a bit here, but they're not against you. They're not working against you. So, use them, e-mail them, ask them for information, make sure that you are on the forefront of whatever is happening and you're allowed to ask as many questions as you need to ask. There's no such thing as a stupid question. So, just making sure. I think you do have to take an unnecessary ... well what should be unnecessary amount of ownership in that you have to make yourself comfortable, because they're not going to make sure that you're all right. So, that's why you need to kind of ask those questions and get that information that you want to make sure you feel like this is your case. I think, for me, that would have helped. I wasn't quite as pushy as I think I might be now and so that's why I was the back foot. Not that that's my fault, but that was part of the reason why I was on the back foot a little bit on some of the information. Whereas, not that you should have to do this, but at the moment you probably do have to do this, going and saying, 'Will this be happening? Will that be happening? What should I do in the event of this?' If you have a court support officer or a witness liaison officer definitely lean on them as much as you need to; that's what they're for. That was really helpful for me. Like we've mentioned, I didn't want a family member there or anything, but you can kind of malleable that to whatever you feel comfortable with. So, yeah, I think that would be my advice; just kind of take those steps to make yourself as comfortable as you can be and making sure you have all the information you think you need.

BRI LEE

I think the only way I can answer that question, just because everybody's experience is so unique, is to just think of what I would tell myself if I could go back in time. All I would say is to just respect that what you are about to do is possibly the most terrifying thing in your life and to even get to that point has required such sustained bravery, to not apologise for however you happen to respond to those days of your life, to not apologise if you do find you need time off afterwards, if you need to go underground or if you bounce back surprisingly quick and then feel weird about that. You have just done something that is remarkable regardless of the outcome. To fight for yourself in a system that is stacked against you, no matter the outcome, is something to be immensely proud of and to not take any shit from anyone who tells you otherwise.

JONATHAN CROWE

So, we have time for one more question.

QUESTION FROM THE AUDIENCE

Hi. Thank you for sharing your stories. I just wanted to ask because I recently found out that in the Queensland police you can file a report online

and then report sexual assault or abuse anonymously.²¹ I was wondering if that would have changed anything for you or what do you think of that kind of system, instead of talking directly to a police officer?

BRI LEE

I didn't even know that existed and will now look into it. Thank you. Briefly, for me personally I still would have done everything I did because for me it was all about making sure ... because mine was a historical matter, like twenty years ago, and the man who offended against me was still enjoying the trust and love of our family and friendship network. So, it wasn't so much about ... it was very much about him and making sure that people knew what he had done. So, to have an anonymous complaint would not have achieved what I really was hoping would happen.

NINA FUNNELL

It's difficult for me to reflect on my own case and so on, but what I would say in New South Wales we have a thing called SARO, which is a Sexual Assault Reporting Option, which allows people to make anonymous reports by filling out I think it's about a fourteen page form.²² I think that anything that gives survivors more options is a good thing, because every survivor is different. There is no one size fits all. For some people, just knowing that somewhere in the world their story has been written is what they need. I just wanted to say something to the woman who asked before what advice would you give. Whenever I'm working with victim/survivors, I will always say there are things that we can control; there are things that we can't control. Sometimes getting through each day is about focusing on the little things in that day that we can control. We maybe can't control the court outcome; we can't control the questions that are going to be asked. But sometimes it's things like remembering to eat breakfast. You know people who are on anti-anxiety medication, remembering to take their pills. Making little deliberate choices in their day that get them through that day and that they can say, 'I took ownership of that. I took control of that.' I know that that sounds minor, but sometimes the nature of sexual assault is that it strips us of control. Sometimes it's about realising there are little things in our lives that we do still have control over and honouring each of those little things and just that can be a form of healing. But, yeah, the SARO thing I think it works for some people and if it gives an extra option for some people, that's a good thing.

²¹ Queensland Police, *Alternative Reporting Options*
<<https://www.police.qld.gov.au/programs/adultassault/altReportOpt.htm>>.

²² New South Wales Police, *Sexual Assault Reporting Option*
<https://www.police.nsw.gov.au/crime/sex_crimes/adult_sexual_assault/sexual_assault_categories/saro>.

SAXON MULLINS

Yeah. Yeah. I absolutely agree with that. For myself, I don't think I would have gone that route. Just because for my healing it really was about reclaiming myself. So, I think removing myself from that narrative would have kind of negatively impacted me, but I absolutely agree with Nina that just the more options that are available absolutely the better.

BRI LEE

The other good thing that would be great about that is that a huge problem, which shouldn't be a problem, in the legal process is delays in reporting. So, what we know of trauma is that people can and often do take ages after an incident has occurred until they feel comfortable telling anyone what happened, let alone telling the police. Something that would be great about something like that, is if you had an avenue where people could go online, even if it is anonymous, and quite soon or as soon as possible after an incident document what had happened to them while their memory is fresh and for the system to log that. If it then took them six months, twelve months, however long until they felt ready to physically go in, at least then they could point and say that quite quickly after it happened they did lodge an official document that was with the police from that time. That is something that has potentially wonderful follow on effects.

NINA FUNNELL

The other thing that I just wanted to mention about SARO is that I have, in a journalism hat, spoken to the New South Wales police and said, 'Has the SARO option led to any convictions?' And it had. Particularly, in historical paedophilia cases. One of the interesting things about that and also in America they have a mobile phone app in universities called Callisto. Where students who want to make anonymous reports can make an anonymous report, which is held in escrow, and if they name an offender and then another victim names the exact same offender and there is a match within the system, then those victims will be notified that there is another person who has named the same accused. The reason why they have that is because a lot of survivors will be on the fence about whether or not they want to make a formal police report, but once they know that they're not the only one, they are highly motivated to make a police report. For a couple of reasons. Firstly, because their self-doubt has been addressed—you're not insane, you didn't remember it wrong, he might have told you the next day or gas lit or sent a text message saying, 'That was a great time. Let's do it again.' All of that stuff that we know that offenders do to undermine a person's sense of reality. So, that's the first thing is that they realise that their memory is not wrong. The second thing it does is let them know this person is a repeat offender and that's very motivating for people to want to go through with reporting to the police, because they want to prevent it from happening to other people. So, having those anonymous

options where people can give partial information and then there is a possibility that it could then progress to something has led to convictions in other jurisdictions. That's just something to be aware of.

JONATHAN CROWE

Ladies and gentlemen, thank you for coming along this evening and being part of this discussion. Please thank our amazing, inspirational panel.