

# INCEST: FROM TABOO TO INSULT

**Dr S. Caroline Taylor**

Dr S. Caroline Taylor is a Senior Research Fellow at the University of Ballarat. She is widely recognised as a leading expert in the area of sexual violence against children and adults. In this article she explains why the term 'incest' is inappropriate and misleading, and the horrific implications of its continued use, particularly within a legal context. Dr Taylor's groundbreaking work has been used to improve professional sensitivity and understanding of associated trauma issues for child and adult survivors of sexual violence. Her work has also influenced law reform in Victoria and police education across Australia.

**Q. When is rape not rape?  
A. When the offender is your father.**

I have long argued that the term 'incest', used to describe the rape and sexual assault of children and young adults by a family member, is a grossly inappropriate and misleading term.<sup>1</sup>

Indeed to express my disapproval of this word, whenever I must refer to the term in print or verbal form, I preface its use by citing my resistance to it. And when used in print form I use inverted commas to demonstrate my disapproval of the term. I prefer to name such abuse for what it is: rape and sexual assault. In some contexts I use intrafamilial rape and intrafamilial sexual assault. The intrafamilial terminology is used to denote the seriousness of this form of sexual violence, and the level of betrayal and entrapment involved for a child.<sup>2</sup>

Second wave feminism brought with it a powerful indictment on the patriarchal and masculinist structure of society as a whole and the social institutions that govern and influence society. Feminist activism at this time exposed the reality and extent of sexual violence against

women and children. Feminist speak outs were invaluable as a tool for shattering the silence around child sex abuse in the family. Feminists frequently articulated and located this abuse under the rubric of 'incest'. It may well be argued that using this term at that time was powerful since so much psychiatric, legal and sociological text declared 'incest' against children as rare, and furthermore as an easily fabricated story by unstable and provocative girl children. To declare 'incest' real and a common criminal act was indeed powerful, and enabled survivors everywhere to reclaim their truth, their voice and for so many, a chance of recovery.<sup>3</sup>

Notwithstanding this, there were second wave feminists like Elizabeth Ward who recognised the term was inappropriate and indeed masked the reality of what was actually being done to girl children in particular. Ward argued that the term 'incest' merely described the lineal connection between the offender and victim rather than what was actually being done to the victim.<sup>4</sup> In published articles I have extended the analysis on the use of the term 'incest' to demonstrate that its application is damaging to victim/survivors on a range of levels. Moreover, the term serves to mask a proper understanding of this type of sexual violence to the point that it negates the protection and just responses for survivors.<sup>5</sup>

In *Court Licensed Abuse* I demonstrated that legal trials involving allegations of

1 See for example: Taylor, S. C. (2004) *Court Licensed Abuse*. New York: Peter Lang; Taylor, S.C. (2001a) *The Legal Construction of Victim/Survivors in Intrafamilial Rape Trials in the Country Court of Victoria, Australia in 1995*. PhD Thesis, School of Behavioural and Social Sciences and Humanities, University of Ballarat; Taylor, S. C. (2001b) 'A Rose By Any Other Word Does Not Necessarily Make It Merely Another Rose.' In *Utter Silence: Voicing the Unspeakable*. Mills, A. & Smith, J. (Eds) New York: Peter Lang, pp 211-221; Taylor, S. C. (1997) 'Betrayal of the Innocents.' *Australian Journal of Women Against Violence*, 3, pp 31-37; Taylor, S. C. (1996) 'The False Construction of Intrafamilial Rape Complainants in County Court Trials in Victoria.' *Proceedings 2nd National Conference: Balancing the Scales: the law and sexual assault*. Perth, Western Australia, June 19-21.

2 See especially Taylor, (1997) *op. cit.*

3 Taylor, 2001b *op.cit.*: 221

4 Ward, E. (1984) *Father-Daughter Rape*. London: Women's Press.

5 Refer to references in footnote 1.

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intrafamilial rape and sexual assault were a site where masculinist views about 'incest' were played out with negative and harmful consequences for victim/survivors. Even a verdict of guilt did not save many survivors from having judicial comments locating them as partially culpable, and comments dismissing claims of emotional harm. A feature across all the trials was the legal parlance denoting that 'incest' was 'consensual' and that child victims were 'equally guilty' as soon as the act occurred. Judges and lawyers were apt to describe the sexual abuse as an 'affair'; 'a lustful inclination'; 'guilty passion' and a 'sexual relationship'. This proactive legal discourse clearly demonstrated that 'incest' was linked with complicity, and caused less harm to the child than other forms of abuse. In many cases the non-offending mother even received the blame.

There is the unmistakable concept that in 'incest' the father at least violates his own property, rather than the child property of another male. Charlotte Mitra, in her UK study of sentencing, remarks that intrafamilial sexual abuse cases highlighted how cases of child 'incest' were treated differently in terms of locating blame with the child, minimising emotional harm and most often ignoring physical violence perpetrated against the child in the commission of the crimes.<sup>6</sup> Mitra cites one judge commenting 'were it not for the fact the girl was your daughter this could have been a serious case...'<sup>7</sup>

It is clear that legal discourse read like a text book reading of early masculinist literature on 'incest'. 'Incest' and its language of complicity and culpability make invisible the violation of the child and the physical violence that is very often connected to such abuse.<sup>8</sup> Indeed I have come across several criminology texts and databases that locate 'incest' as a 'victimless crime' and 'crime without victims'.<sup>9</sup>

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6 Mitra, C. (1987) 'Judicial Discourse in Father-Daughter Incest Appeal Cases' *International Journal of the Sociology of Law*. 15, pp 121-148.

7 *Ibid*: 132

8 Clear examples are provided in my work referenced in this article as well as the work of Charlotte Mitra, *ibid*.

9 Taylor, (2001b) *op. cit.*: 221.

There was resistance to the term from survivors in these trials. In one case, after complaints from the defence barrister, the survivor was threatened with contempt of court charges if they did not refrain from using the term *rape* when they described repeated acts of sexual penetration by their father. In a discussion between the trial judge and defence lawyer the judge declared that since 'incest was consensual' it could not therefore be rape, and so the survivor was wrong to make such a claim. To add insult to injury the defence barrister added that using the term *rape* suggested some kind of violence was used! Two other cases from the same sample involved legal discussions involving the inappropriateness of survivors or police using the term *rape* in 'incest' trials.<sup>10</sup>

'Incest' is a term used to describe sexual relations between near kin. It is a term often associated with anthropologists to denote consensual sexual activity between near kin which may also produce offspring. It is an indefensible term to describe the sexual predation and abuse of children and young people by an adult who is either the parent or other close relative. Most societies have strong social mores against incest and the philosophy underpinning laws against incest is to prevent offspring being born to near kin. Religions hold fast to the same principles. The taboo nature of the word and the associated heavy stigma condemn intrafamilial rape victim/survivors to greater social stigma than most other sexual abuse victim/survivors.

### 'Forbidden Love': The Deaves Case

Recently in Australia the media sensationally highlighted a case of father-daughter incest under the heading of 'Forbidden Love'. From the very outset, the journalists generally promoted the couple and their family as 'picture perfect'. I recall seeing the headlines and thinking that so many academic books and journals have used this very heading to talk about children disclosing horrendous sexual abuse by their fathers and step-fathers. It reminded me also that pornography is

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10 See *Court Licensed Abuse* for detailed examples, discussion and analysis.

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very much devoted to producing 'incest' literature under the same heading. And it reminded me of media reports on so many other cases of intrafamilial sexual abuse reported under the rubric of 'incest'.

The case in question that grabbed the country's, and indeed the world's attention, was of John and Jennifer Deaves from South Australia. The story was aired on an April 2008 program of *Sixty Minutes*. John and Jennifer Deaves are father and daughter. He is aged 61 and she is 39. They told *Sixty Minutes* they had sparse and sporadic contact through much of Jennifer's life after her father divorced her mother and remarried twice more. Soon after, family members disputed the claim of isolated contact, suggesting instead that Jennifer stayed with her father and his second wife on various occasions as a teenager and as an adult.

Jennifer was married with children of her own and claims that when her own marriage ended she turned to her father for support. It was then they developed a sexual attraction, moved in together and produced two of their own children. The first child died soon after birth. Their second child lives with them along with Jennifer's other two children from her previous marriage. Living as husband and wife, they told the interviewing journalist that they loved each other and viewed their relationship as normal. They rejected concerns that the children from Jennifer's previous marriage and the child born from their union might suffer stigma and identity confusion. *Sixty Minutes* did not reveal to viewers that their infant daughter was in fact their second child. The first, a boy, died of congenital heart disease at just four days old. The reason for withholding this information is not known but it was a glaring omission, especially as the interviewer commented to viewers that children born of incest are 'six times more likely to die at birth'. In presenting their infant daughter to viewers John Deaves declared that their infant daughter was 'a normal healthy child' with no 'defects', as though such a claim somehow neutralised moral opposition.

More distressing still was the fact that Jennifer's nine-year-old son and 14-year-old daughter from her previous marriage were interviewed for the program. It seems no-one considered the ethics of such an action nor the potential consequences for these children having their identity and their mother and grandfather's relationship spilled out to the nation and their local community. And it gets worse. The children were asked their views on the relationship. The children did not express any objection. Are we surprised? For eight years of their short lives this has been the living arrangement and do we honestly expect them to be open and frank about such a situation they are living in as dependent children?

Only weeks before the program aired on *Sixty Minutes* the couple were each convicted in the South Australian District Court on two counts of 'incest' with the other. John Deaves, when breaking the news to his third wife that he was leaving her for his daughter, declared that he'd enjoyed 'the best sex he'd ever had' with his daughter. Jennifer made it clear on television that they were both 'consenting' adults. Again it is as though such a claim neutralised the morality and ethics of the relationship.

After the story went to air a media frenzy ensued along with public opinion spilling over in letters to the editor and online blogs. It was clear that a significant proportion of letter writers and radio callback listeners were repulsed and outraged at both the couple and *Sixty Minutes* for what many believed was gratuitous television for a supposedly serious journalism segment.

There were calls from the community and politicians for the infant, and the other children, to be removed from the care of John and Jennifer Deaves. At the same time there were counter claims that there had to be proof of abusive or neglectful parenting before any such action could be taken.

A scan of the internet shows just how quickly this story circulated around the world, and the various news mediums,

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website blogs and sites not only reported the *Sixty Minutes* program but associated Australian media turned the story into a parody. Several sites dedicated to sexualised and salacious stories and pictures parodied the Deaves case with written spoofs, some accompanied by near pornographic pictures. Blog sites around the globe were a frenzy of activity with messages condemning the Deaves while others suggested a 'live and let live' attitude. Others referred to biblical texts and Christian charity with yet others poking fun at the story. As both disturbing and interesting as these sites are I want to move on to draw out a brief analysis of my views and media interaction with this story.

I said at the start that I have long campaigned for the removal of the term 'incest' to describe the rape and sexual assault of children within the family unit. 'Incest' in its true anthropological meaning of inbreeding and/or consenting sex between near kin is a different story. This is not to say the Deaves case necessarily fits the latter either. As further media scrutiny demonstrated, it was not accurate that Jennifer Deaves had virtually no contact with her biological father prior to their first sexual encounter. As a parent, it is inexcusable for John Deaves to view his daughter as a potential sexual partner, regardless of whether the adult daughter consented. We don't know whether there was any grooming involved by John Deaves on those occasions when he met his daughter through her teens and as a young adult. Their claim that no-one is being harmed by their conduct is simply not true and regardless, cannot ever be accepted as a caveat for acceptance and support of their conduct.

But I want to focus on the issues I raised from this story, notwithstanding my personal disgust at the story and my views about the clear moral and legal obligations of the father in this case.

*Sixty Minutes* titled the story 'Forbidden Love'. I recall thinking how many academic texts on intrafamilial child sexual abuse under the rubric of 'incest'

discussed the rape of girl children as an 'affair' and 'forbidden' love. I thought of judicial comments about 'guilty passion' and 'guilty lust' and how the semantics of these terms conjured similar ideas of mutual consent. Yet all the latter terms are describing sexual abuse of children as young as five. The term 'incest' is used as a blanket statement to cover anthropological understandings of sexual contact between near kin and inbreeding, as well as to cover the rape and sexual violence inflicted on children of all ages.

In 1999 the Federal Model Criminal Code sought submissions on the legislation concerning sexual offences, one of them was the crime of 'incest'. I wrote a submission. I also wrote a submission to the 2004 Victorian Law Reform Commission's (VLRC) Inquiry into Sexual Offence Procedure and Law. Despite being on the Advisory Committee I wanted to make clear in a submission my views on why 'incest' was not appropriate and indeed inadequate. In the case of the Model Criminal Code there was a huge outcry, especially from the legal establishment, that the offence of 'incest' would be removed. So it remained. I remember thinking that those who so violently disagreed were missing any understanding of the philosophy underpinning the argument. It was not about removing 'incest' as an illegal sexual relationship – it was about recognising appropriately that children sexually abused by a parent or other relative were *not consenting* to sexual intercourse.

In the case of the VLRC report, once again the outcry drowned out any hope of reason. And in both cases, lawyers came forth to advise that as 'incest' was consensual, it could never be viewed as rape. Thus it was inappropriate to alter the criminal code. So what are they really saying?

### **Children of a Lesser Law: debating 'incest' on ABC PM Radio**

On April 9 and 10 of this year I was approached to do interviews for ABC PM radio regarding the Deaves case. In the first interview I discussed the Deaves case and then focused the discussion around

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the inappropriateness of the term ‘incest’ and its confusing and inappropriate use to describe both consensual sex and the sexual abuse of children in the family unit. I provided telling examples from trials I have researched on intrafamilial sexual abuse and the legal approach and understanding that enabled a legal discourse that located children and young adults as culpable to varying degrees. This same legal discourse disregarded and at times dismissed the emotional and psychological suffering of victims. Furthermore it regarded the offending as less serious because the ‘community’ were not harmed as the abuse occurred in the family unit. This was legal parlance that often described the abuse as ‘illicit’ sexual activities, ‘guilty lust’, a ‘sexual relationship’, ‘guilty passion’, and the legal outrage expressed when a victim/survivor dared described the acts as rape.

The President of the NSW Law Society Hugh Macken was asked to give a response to my claims. Providing no empirical data or reference to other research, he declared my position untenable, suggesting the current laws are adequate on the basis that: ‘Incest whilst illegal is a consenting sexual relationship – rape is not’ he said ‘Consent is a defence to an allegation of sexual assault. Consent is not a defence to an allegation of incest. They are quite distinct.’<sup>11</sup>

For me this statement was not new, but it was most telling. The legal fall-back position is that ‘incest’ is *not* rape and never can be rape because ‘incest’, according to law and legal understanding is consensual. So if we accept this logic then all children sexually abused by a parent or relative are consenting purely on the basis that the proximity and lineal relationship to the offender makes it so. This statement reflects the mindset I have sought to challenge and debate with lawyers, law reform commissions and professionals over the past 12 years. It is frustrating in the extreme.

Ossified in social attitudes and codified in law the term and meaning of ‘incest’ has

created what William Blake referred to as ‘mind forged manacles’ that blind us to reason and change.

Within 24 hours the ABC interview had generated so much debate, and raised the ire of lawyers, that I was contacted with a request for a second interview. This was mainly to reaffirm my stance and to demonstrate that my stance was underpinned by researched evidence. The President of the NSW Law Society meanwhile provided nothing but a data set of one, to denounce my stance. His claim was that in his opinion, there was no discrepancy with how ‘incest’ was used. He declared further that since charges of child sex abuse were not necessarily prosecuted under the charge of ‘incest’ per se, then there was no such judicial or legal attitude that ‘incest’ was consensual. This then allows it to be viewed as less serious than child abuse committed by a non-family member. Really? I asked what evidence base supported this claim. The silence was deafening.

Let us now look at the actual legislation. The current criminal code regarding incest allows for victims aged 18 years and over to be co-charged equally as an offender. Step-parents are included under this code in recognition of *loco parentis*. I have documented several ‘incest’ trials where girl children, abused from childhood into early adulthood have been subject to legal discussion by all sides of the bench and bar table about their ‘equal culpability’ and ‘guilt’ for the abusive acts they allege were done to them. This is on the basis that ‘incest’ is consensual, and thus as an adult of legal age, they may be co-charged with the father or other relative for taking part in an act of ‘incest’. In two cases, lawyers raised the prospect of the victim/survivor being formally charged!

Based on this understanding, I highlighted that the reference to the Deaves case as one of consenting incest, regardless of my own personal beliefs, demonstrated society and the law’s confusion about the application of the term. In addition, many survivors have reported to me their distress at having the term ‘incest’ used to describe

<sup>11</sup> <http://www.abc.net.au/news/stories/2008/04/09/2212512.htm>

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their experience of rape and sexual assault in childhood, and did not adequately reflect what they experienced. Survivors have talked about how others have labelled their experience as 'incest' and even corrected their statement under pressure by listeners who have disputed their language of rape and child abuse, and transmuted it to 'incest'. In my professional capacity I have had other professionals debate and even argue strongly that 'incest' is not rape. I asked a conference audience one day 'why should I use your language to describe my experience?' It is important for survivors to reclaim the language of their experience without others correcting them or stigmatising them.

I expressed my concern on the ABC PM show that the Deaves case was capable of reinforcing all the negative stereotypes about intrafamilial sexual abuse because it was understood under the rubric of 'incest'. A brief scan of blog sites supported such a view. A couple of sites noted the Deaves case directed the web user directly to pornographic sites dedicated to 'father-daughter incest' with stories of girls willingly consenting to all manner of sexual contact with their 'daddy'. Another site took me to the *New York Times*<sup>12</sup> featuring an article claiming that the Deaves case in Australia was responsible for many 'incest' survivors coming forward to discuss the 'incest' perpetrated upon them as small children. So once again, survivor stories of childhood sexual violence were detailed under the heading of 'incest'.

Interestingly I found an entire blog site dedicated to my interviews on ABC PM (though many people got my surname wrong).<sup>13</sup> I scrolled through the pages upon pages of comments. It was heartening to see that the vast majority were supportive of the material I presented on air with many expressing horror at how 'incest' was transmuted in the courtroom via trials of intrafamilial child sexual abuse. It was some comfort to see perspectives alter when people understood the inappropriateness of the term and how it

is used to further denigrate and punish survivors. I also received a phone call from a Professor of Law at a major Australian university, expressing support, and recognising the inability or unwillingness of the law to grasp this concept. It is a reasonable contention that when an institution is threatened by a change that in turn threatens a particular powerful knowledge and practice, then there is value in not understanding.

It is incredibly frustrating much of the debate on 'incest' as opposed to intrafamilial rape is led by intellectual blindness and the most narrow of parameters. The distinction, as pointed out by Hugh Macken, is as ridiculous as it is untenable. Judicial comment previously has acknowledged that 'incest' ought to be rightly called 'father-daughter rape' given the knowledge gained by some judiciary through these cases.<sup>14</sup>

Survivor activists alone cannot take on the burden of shifting grossly inappropriate and inadequate terminology to describe sexual violence inflicted on children within a family setting. We are robbing innocent victims not just of their voice and their experience but we are guilty of transmuting their trauma and suffering through a patriarchal filter that fuels the type of stigma, myth and stereotype that saturates the 'incest' victim/survivor. I know of no other crime where the victim's experience and their capacity to express that experience is delineated by terminology that negates their innocence, negates their experience and seeks to undermine their dignity and recovery.

It is most unjust to situate the sexual violation of children and young adults within the paradigm of a 'relationship', albeit an illicit one. A belief that 'incest' is consensual and thus not rape, because rape involves non-consent, adds insult to injury for child and adult survivors. If we are serious about nurturing the rights of women and children and nurturing their protection from sexual violence and their recovery and healing, it is paramount that we are explicit in ensuring that our language equals their experience.

<sup>12</sup> *New York Times*. Online, June 14, 2008.

<sup>13</sup> The site in question is 'The Bartlett Diaries', though this website is currently not accessible as it is under maintenance.

<sup>14</sup> See Taylor, 2001a & 2001b; *op.cit.*

## References

- ABC News, (2008) Incest law overhaul needed [www.abc.net.au/news/stories/2008/04/09/2212512.htm](http://www.abc.net.au/news/stories/2008/04/09/2212512.htm)
- Mitra, C. (1987) 'Judicial Discourse in Father-Daughter Incest Appeal Cases' *International Journal of the Sociology of Law*. 15, pp 121-148.
- Taylor, S. C. (1996) 'The False Construction of Intrafamilial Rape Complainants in County Court Trials in Victoria.' *Proceedings 2nd National Conference: Balancing the Scales: the law and sexual assault*. Perth, Western Australia, June 19-21.
- Taylor, S. C. (1997) 'Betrayal of the Innocents.' *Australian Journal of Women Against Violence*, 3, pp 31-37
- Taylor, S.C. (2001a) The Legal Construction of Victim/Survivors in Intrafamilial Rape Trials in the Country Court of Victoria, Australia in 1995. PhD Thesis, School of Behavioural and Social Sciences and Humanities, University of Ballarat
- Taylor, S. C. (2001b) 'A Rose By Any Other Word Does Not Necessarily Make It Merely Another Rose.' In *Utter Silence: Voicing the Unspeakable*. Mills, A. & Smith, J. (eds) New York: Peter Lang, pp 211-221
- Taylor, S. C. (2004a) *Court Licensed Abuse*. New York: Peter Lang
- Taylor, S. C. (2004b) *Surviving the Legal System: A Handbook for Adult and Child Sexual Assault Survivors and Their Supporters* (2004) Melbourne: Coulomb
- The Bartlett Diaries <http://andrewbartlett.com/blog/>
- Ward, E. (1984) *Father-Daughter Rape*. London: Women's Press.

**Dr Taylor has founded an organisation 'children of phoenix' which provides financial support and mentoring assistance for child and adult survivors of childhood sexual abuse to maintain links with education or re-access education as adults.**

# Family Violence Protection Bill

Deputy Premier and Attorney-General Mr Rob Hulls recently introduced the new Family Violence Protection Bill into the Parliament of Victoria. The Bill repeals the Crimes (Family Violence) Act 1987 however, it remains in force for the purposes of stalking intervention orders between non-family members. This is an interim arrangement until the law relating to stalking intervention orders can be reviewed and if necessary, new legislation introduced. The Bill is now available on the Parliamentary website, with the second reading speech that explains some of the key features of the Bill.

## Bill

[http://www.legislation.vic.gov.au/domino/Web\\_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/1EB0E49F67879E93CA25747300235B7E/\\$FILE/561093bi1.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/1EB0E49F67879E93CA25747300235B7E/$FILE/561093bi1.pdf)

## Second reading

<http://www.parliament.vic.gov.au/downloadhansard/pdf/Assembly/Feb-Jun%202008/Assembly%20Feb-Jun%202008%20Daily%2026%20June%202008.pdf>