

## **The Song Remains the Same: Sexual Assault Myths in Canada**

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For over 30 years, feminists, politicians, jurists, lawyers and academics have worked on eradicating the myths and stereotypes that surround sexual assault crimes in Canada. The 1982 reformation of the rape laws was emblematic of that project, as the legal construction of rape was redefined to make it easier for women to report and easier for the Crown to prosecute these crimes. However, it is evident that merely rewording criminal code legislation has not been enough to increase reporting or conviction rates for sexual assault. Instead, myths and stereotype continue to structure cultural discourse. In other words, the songs about sexual assault remain for the most part the same in Canada. I contend that as long as these songs remain popular in Canada, victims will not seek justice and justice will not be served.

This paper explores some of the societal factors that prevent women from reporting sexual assault crimes -- those songs that tell women to stay silent about their victimization. First, I look at how sexual assault stereotypes have both been contested and reinforced by Supreme Court decisions since 1982, paying careful attention to the stereotypes about consent. Second, I examine the cultural scripts regarding sexual assault that remain dominant in Canada twenty years after reforms have been initiated. Finally, I interrogate how sexual assault crimes are depicted in English Canada's national newspapers in the year 2002.

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<sup>1</sup> I would like to thank Linda Trimble, Sandy Hager and Byron Sheldrick for their invaluable assistance.

In doing so, I demonstrate the pervasiveness of sexual assault myths in both legal, cultural and media discourse.

For many feminists, the reformation of Canada's rape laws was an important project. Prior to the 1982 amendments, the legal construction of rape placed considerable importance on a woman's sexual history and her credibility as a victim. The introduction of Bill C-127 in 1982 attempted to change that. The government hoped that the new sexual assault laws would increase the number of sexual assaults reported to police, increase the victim's confidence in the criminal justice system, increase the efficiency of police processing in sexual assault cases and finally increase the proportion of cases that result in a prosecution.<sup>2</sup>

Like society in general, feminists view the court process and legal discourse as extensions of the nuanced patriarchal state and like any other crime, sexual assault is "socially constructed."<sup>3</sup> Sexual assault crimes are adjudicated in what has been considered a predominantly male domain and the legal construction of sexual assault. As Maria Łoś points out, it has been shaped by ideological and cultural perceptions and assumptions that are shared predominantly by men. Indeed, because law is based on precedent, one could argue that the interests of men rather than women are addressed by the resultant legal definitions. In other words, current cases are based on the outcomes of previously determined cases and consequently laws that benefit men are reinforced over time, much like a song in the top-40.

Moreover, law, like science and to some degree journalism, is wrapped up in terms that denote impartiality and objectivity, with the goal of law the discernment

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<sup>2</sup> Julian V. Roberts and Robert J. Gebotys, "Evaluating Criminal Justice Legislation: Effects of Rape Reform in Canada" in Julian V. Roberts and Joe Hudson, eds., *Evaluating Justice: Canadian Policies and Programs* (Toronto: Thompson Educational Publishing, 1993) 155 at 155.

<sup>3</sup> Maria Łoś "The Struggle to Redefine Rape in the Early 1980s" in Julian V. Roberts and Renate M. Mohr. eds. *Confronting Sexual Assault: A Decade of Legal and Social Change*. (Toronto: University of Toronto Press, 1994) 20.

of truth. As Carol Smart points out, if we accept that law with its truth claims “is indivisible from the exercise of power, we can see that law exercises power not simply in its material effects (judgements) but also in its ability to disqualify other knowledges and experiences.”<sup>4</sup> Thus, women’s experiences of sexual assault and coercion must be reinterpreted to fit within the legal frame and their voices are silenced further.

Further, when law privileges a rather narrow definition of truth claims it creates artificial binaries. Indeed, the practise of law is premised on an artificial binary. Either the defence wins or the Crown does. The outcome of a trial does not allow for uncertainty, despite the fact that the accounts of the events heard at trial may indeed lack certainty and clarity. For example, when a person is found not guilty, it does not necessarily mean that he or she is innocent; it merely means that there was not enough evidence to convict the individual with proof beyond a reasonable doubt. The defence lawyers, however, still counts that as a win and the Crown will view it as a loss. Smart suggests that linking the binary system of logic to legal claims of truth is “inappropriate to the ‘ambiguity’ of rape.”<sup>5</sup>

When you examine the history of sexual assault decisions, it becomes clear that the Supreme Court of Canada has had to make the ambiguity of rape conform to legal discourse. At times it has been successful; at times it has not. At times it has contested the songs regarding sexual assault and at times it has reinforced them. To understand how law has worked both for and against women, it is important to examine the reformation of Canada’s rape laws in 1982 with the move to change the Criminal Code. In August of 1982, Canada’s then Justice Minister Jean Chrétien introduced Bill C-127 in the House of Commons. The bill amended Canada’s Criminal Code and set out to reform the definition of sexual offences as well as the treatment of sexual assault cases by the criminal justice system. Prior to the 1982 amendments, sexual crimes were defined specifically

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<sup>4</sup> Carol Smart, *Feminism and the Power of Law*. (London: Routledge, 1989) 11.

<sup>5</sup> Carol Smart, *Feminism and the Power of Law*. (London: Routledge, 1989) 33.

as crimes against women only. In the eyes of the law, men could not be raped. As well, married women could not charge their own husbands with rape. Rape itself was viewed only as the penetration of the vagina by a penis. If an object other than a penis was used, it was not considered rape. Moreover, the way rape was legally constructed placed an importance on the victim's sexual history and credibility rather than on the perpetrator's guilt. The application of rape laws had "unique procedural and evidentiary standards" that had to be met.<sup>6</sup> These included the need for the victim to provide evidence that would corroborate that a rape took place. These evidentiary standards were not in place for things like robbery. Finally, the rape complaint had to be recent in order for it to be considered in court.

Bill C-127 led to a degendering of sexual assault crimes in Canada. This gender neutrality was how the new law could maintain the equality rights guaranteed in the *Charter of Rights and Freedoms*. Second, Bill C-127 clarified that consent obtained by fear of force would not be considered consent. Third, the legislation required "judges to instruct juries to consider the reasonableness of any grounds for belief by the accused that the complainant consented to the assault."<sup>7</sup> Fourth, Bill C-127 created a three-tier definition of sexual assault crime. The first level covered "everything from touching to forced sexual intercourse with a minimum of violence."<sup>8</sup> The next level concerned sexual assaults that involved weapons, threats, or bodily harm. The last level was aggravated sexual assault and incorporated crimes where the victim was injured. The new legislation meant that corroboration was not required for a conviction and that the doctrine of recent complaint no longer applied. Finally, the complainant's sexual history with the accused could no longer be used, except in limited mitigating circumstances and spousal immunity in sexual assault cases was eliminated. Overall, these

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<sup>6</sup> University of Manitoba, "Report on the impact of the 1983 Sexual Assault Legislation in Lethbridge, Alberta" University of Manitoba Research 1988a. 1.

<sup>7</sup> *House of Commons Debates*, XVII at 20039 (Hon. Jean Chrétien).

<sup>8</sup> *House of Commons Debates*, XVII at 20039 (Hon. Jean Chrétien).

changes broadened what constituted sexual assault and moved away from rape being defined only as penetration of a vagina by a penis to include a range of sexual violence.

In 1991, Canada's sexual assault reform faced its first major test and the resultant Supreme Court of Canada decision vastly changed the face of the legislation and set off a fireball of protests. The Supreme Court of Canada in ruling on *R. v. Seaboyer* (hereafter *Seaboyer*) and *R. v. Gayme* (hereafter *Gayme*) struck down the so-called rape shield provision of the Criminal Code for sexual assault. The rape shield provision for the Criminal Code referred to two sections – Section 276 which prevented evidence information about the sexual history of the complainant with any person other than the accused and Section 277 which declared admissible evidence of sexual reputation for the purpose of undermining the credibility of the complainant.

Attorneys in *Seaboyer* and *Gayme* submitted to the Supreme Court of Canada that these subsections of the Criminal Code contravened the *Charter of Rights and Freedoms* and prevented them from mounting a full defence of the accusations against their client. They argued specifically that these sections prevented them from challenging the complainant's reputation and also prevented them from supporting a defence of "honest but mistaken belief in consent." The Supreme Court ruled that the Criminal Code section that allowed for a blanket exclusion of evidence was flawed. The purpose of this section in the Criminal Code was to abolish the "outmoded, sexist-based use of sexual conduct evidence", but the Supreme Court determined that it "overshoots the mark and renders inadmissible evidence which may be essential to the presentation of legitimate defences and hence to a fair trial."<sup>9</sup> Madam Justice Beverly McLachlin said that the evidence of the complainant's sexual history with other men or with the accused may be necessary to support a defence of honest but mistaken belief in consent.

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<sup>9</sup> *R. v. Seaboyer; R. v. Gayme*. [1991] 2 S.C.R. 577 at 582.

Many feminists saw the Supreme Court decision in *Seaboyer* and *Gayme* as potentially dangerous. In essence, the decision “to admit or exclude evidence of past sexual history would no longer be constrained by the Criminal Code, but would instead be left largely to the discretion of individual trial judges.”<sup>10</sup> For many feminists like Margaret Davies the adjudication of law in cases like *Seaboyer* and *Gayme* continued to be “constructed around a masculine subject”.

Leaving trial judges with the power to exclude or include evidence on sexual history privileged the male voice. Further, this idea of the mistaken belief in consent also illustrates what Smart calls the ambiguity of rape and in many ways it continues the songs about sexual assault: that women are supposed to say no when they really mean yes and that sexual assault is all about mixed romantic signals and the mistaken beliefs of men.

As a result of the Supreme Court decision, Parliament went back to the drawing board in 1992 to write a new bill that would govern sexual character evidence in sexual assault laws. It introduced Bill C-49 as a way to minimize the number of occasions in which a complainant’s sexual character could be brought up in a sexual assault trial. For many feminists and politicians the enactment of Bill C-49 was viewed as a victory providing the courts with a new rape shield law that would help women. However for some feminists, the legislation was flawed. The definitional boundaries of consent provided a list of what would vitiate consent, but did not provide a list of what constituted consent.<sup>11</sup> Some feminists argued that under C-49, there was no room for “the concept of submission in the dichotomy of consent/non-consent.”<sup>12</sup> That is because law only allows for one

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<sup>10</sup> Renate M. Mohr and Julian V. Roberts “Sexual Assault in Canada: Recent Developments” in Julian V. Roberts and Renate M. Mohr eds. *Confronting Sexual Assault: A Decade of Legal and Social Change* (Toronto: University of Toronto Press, 1994) 10.

<sup>11</sup> Patricia Kazan “Sexual Assault and the Problem of Consent” in Stanley G. French et. al. eds. *Violence Against Women: Philosophical Perspectives* (Ithaca: Cornell University Press, 1998) 27.

<sup>12</sup> Carol Smart *Feminism and the Power of Law* (New York: Routledge, 1989) 34.

truth. A woman may submit because she is afraid for her life, her job or the safety of her children but it is submission and that is viewed as consent.

In 1995, Canada's sexual assault legislation was tested again at the Supreme Court. In *R. v. Park* (hereafter *Park*), the Supreme Court ruled on the issue of mistaken belief defence in sexual assault trials. Daryl Park was convicted in an Alberta court, but that conviction was overturned in the Alberta Court of Appeal. The case was then sent to the Supreme Court of Canada. According to the Supreme Court, Park and the victim had had one date and they had discussed birth control and the fact as a born-again Christian, she did not believe in pre-marital sex. The night of the incident, the accused called the complainant to come over to her house and she greeted him at the door wearing only a bathrobe. According to the complainant's testimony

she resisted actively, both verbally and physically, but he was stronger. She described in considerable detail the assault. Feeling his weight atop her, she had a flashback to a previous traumatic experience and went into "shock". The next thing she remembered, he was pulling his penis out of her and ejaculating on her stomach. She fled to the bathroom, needing to vomit. He dressed and kissed her goodbye on the cheek as he left.<sup>13</sup>

The accused, meanwhile testified that the complainant was an active participant in the sexual activity and "when things began to get 'hot', he prematurely ejaculated on her stomach."<sup>14</sup> He testified that no intercourse took place and at trial, his defence was that "the complainant consented to the sexual activity or, in the alternative, that he had an honest but mistaken belief that she was consenting."<sup>15</sup> He was convicted, but the Alberta Court of Appeal set aside the conviction. The Court of Appeal ruled that the trial judge erred by not putting "the mistaken belief defence to the jury. The Supreme Court ruled that the conviction should be restored."<sup>16</sup>

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<sup>13</sup> *R. v. Park* [1995] 2 S.C.R. 836 at 844 and 845.

<sup>14</sup> *R. v. Park* [1995] 2 S.C.R. 836 at 845.

<sup>15</sup> *R. v. Park* [1995] 2 S.C.R. 836 at 837.

<sup>16</sup> *R. v. Park* [1995] 2 S.C.R. 836 at 837.

In this decision, the Court determined that there must be an “air of reality” to support a mistaken belief in consent. Writing for the majority, Madame Justice L’Heureux-Dubé outlined the cases in which mistaken belief in consent could be used in sexual assault cases. From a practical perspective, L’Heureux-Dubé wrote that there should only be two principle considerations in a discussion regarding mistaken consent. First, what the complainant communicated; and second, the evidence that explained how the accused understood that consent. Once again, the issue of consent was viewed through the lens of the male perpetrator rather than the female victim, thus supporting Smart’s assertion that the nature of law disqualifies women’s experiences and knowledge.<sup>17</sup> This decision creates an artificial binary of he said, she said, with the privileging of the accused’s version of events. Put another way, no one has ever argued in a court of law that because a woman was carrying her purse, her robber felt she was consenting to be robbed, but in sexual assault cases, the accused has that ability to explain how he understood consent.

In February 1999, the Supreme Court of Canada was once again called upon to define consent in sexual assault cases. In *R. v. Ewanchuk*, the court was asked to rule on the concept of implied consent. This case was significant in that it finally clarified the issue of consent and built upon earlier assertions put forward by defence of mistaken belief in *Park*. In June 1994, 44-year old Steve Ewanchuk interviewed a 17-year old woman for a sales clerk position in a trailer parked in a shopping mall parking lot in Edmonton. According to the Alberta Court of Appeal, during the two-and-a-half-hour interview, Ewanchuk made several sexual advances toward the woman. She said no to each of those advances and when she told the accused she wanted to leave, the interview was completed and the pair walked out of the trailer.<sup>18</sup> The 17-year old subsequently filed charges with police and Ewanchuk was acquitted of sexual assault in provincial court. The Crown appealed the case to the Alberta Court of Appeal.

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<sup>17</sup> Carol Smart *Feminism and the Power of Law* (London: Routledge, 1989) 11.

<sup>18</sup> *R. v. Ewanchuk* (1998), 57 Alta.L.R. (3d) 235 (Alta. COA).

In the 1998 Alberta Court of Appeal decision, Judges John McClung and Robert Foisy dismissed the appeal, suggesting that “[c]onsent may be implied or expressed, and clearly this was a case of implied consent.”<sup>19</sup> Judge McClung wrote that

Ewanchuk’s advances to the complainant were far less criminal than hormonal. In a less litigious age going too far in the boyfriend’s car was better dealt with on-site -- a well-chosen expletive, a slap in the face, or, if necessary, a well-directed knee. What this accused tried to initiate hardly qualifies him for the lasting stigma of a conviction for sexual assault.<sup>20</sup>

Chief Justice Catherine Fraser disagreed, writing that Canada’s sexual assault laws were supposed to “protect women from the inappropriate use of stereotypical assumptions about women in cases of sexual assault.”<sup>21</sup> The Crown appealed the case to the Supreme Court of Canada and on February 25, 1999, the Supreme Court determined that the trial judge in the Ewanchuk case made errors of law. At the centre of the case was the definition of consent in Canadian law. The unanimous decision was that the issue of implied consent does not exist in law. Justice Major wrote that the accused

knew that the complainant was not consenting before each encounter. The trial judge ought to have considered whether anything occurred between the communication of non-consent and the subsequent sexual touching, which the accused could have honestly believed constituted consent. The trial record conclusively establishes that the accused’s persistent and increasingly serious advances constituted a sexual assault for which he had no defence.<sup>22</sup>

By relying on an artificial binary of what constitutes consent and what does not, what the victim does *not* do may well be construed as consent. This was in essence how the defence built its case in *Ewanchuk*. The victim said no, but she did not attempt to leave the trailer; she did not scream; she did not appear

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<sup>19</sup> *R. v. Ewanchuk* (1998), 57 Alta.L.R. (3d) 236 (Alta. COA).

<sup>20</sup> *R. v. Ewanchuk* (1998), 57 Alta.L.R. (3d) 250 (Alta. COA).

<sup>21</sup> *R. v. Ewanchuk* (1998), 57 Alta.L.R. (3d) 268 (Alta. COA)

<sup>22</sup> *R. v. Ewanchuk* [1999], 1 S.C.R. 330 at 334.

scared. Yet, the defence put forth that the accused believed she was consenting, even when she repeatedly said no. This is an example of how the male voice is privileged in legal discourse while the victim's is silenced. It seems remarkable that it took more than 10 years for the Supreme Court of Canada to make the affirmation that no actually means no in sexual assault cases. It is even more remarkable that the decision was resoundingly denounced as feminist posturing.

Finally, in the year 2000, the Supreme Court was once again called upon to rule on Canada's rape shield law in *R. v. Darrach* (hereafter called *Darrach*). Andrew Scott Darrach and the complainant had worked together and at one point had been in a relationship. Despite the break-up of that relationship, they remained friendly and continued to see each other casually, as they lived close to one another. At one point, the accused asked to borrow money from the complainant and after meeting him to repay the loan, the accused and the complainant walked back to her apartment, where he sexually assaulted her.<sup>23</sup>

The trial in the Ontario Provincial Court lasted over a year. In a strategy reminiscent of the *Seaboyer* and *Gayme* defence, Darrach's lawyer argued that the rape shield legislation violated the accused's *Charter* rights. He also attempted to introduce the complainant's sexual history. The trial judge refused ruling that the accused failed to provide a link between the complainant's sexual history and his defence of a mistaken belief of consent. Darrach was sentenced to nine months in prison. The case was appealed to the Ontario Court of Appeal, which upheld the trial judge's findings. It was then argued before the Supreme Court of Canada.<sup>24</sup>

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<sup>23</sup> Pamela Cross "Defining the use of sexual history: What does *Darrach* mean for us?" (December 2000), online: Ontario Women's Justice Network <http://www.owjn.org>.

<sup>24</sup> Pamela Cross "Defining the use of sexual history: What does *Darrach* mean for us?" (December 2000), online: Ontario Women's Justice Network <http://www.owjn.org>.

The Supreme Court of Canada in a unanimous ruling written by Justice Charles Gonthier dismissed the appeal. Almost ten years after the decision in *Seaboyer and Gayme*, the Supreme Court of Canada arguably closed the circle on discussions involving consent – at least for now.

As this truncated overview of Supreme Court decisions indicates, despite legislator's attempts to reform sexual assault laws in order to rid them of myths and stereotypes, these songs continue. There has been considerable discussion about the issue of consent in sexual assault jurisprudence and the song that played over and over again is based on the stereotypical notion that once women have said yes, they cannot say no or that when women say no, they are really saying yes. Supreme Court jurists have had to weigh the victim's right to security of person and privacy against the accused's right to a fair trial and often, it is the accused's right that has had primacy. The artificial binaries created by those legal tensions and the privileging of the accused's rights over the victim's have been the starting point for many feminists' critique of law.

There is also considerable evidence that indicates the songs about sexual assault have had a negative impact on reporting rates. According to Statistics Canada the rate of sexual offences reported to police declined by 36% between 1993 and 2002. Victimization surveys indicate that sexual assault crimes remain underreported and if reported to police, sexual offences are less likely than other violent offences to be considered by police as founded and it is less likely that a report will result in charges laid against a suspect. Clearly, the belief that merely changing the laws will facilitate a change in attitudes has not been realized.

In 2002 there were over 27-thousand sexual assault crimes reported to police and there is considerable evidence that suggests this represents only about 10% of the crimes committed in Canada in that year.<sup>25</sup> Victimization surveys indicated

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<sup>25</sup> Statistics Canada, *Sexual Offences in Canada* (Juristat) Rebecca Kong, Holly Johnson, Sara Beattie, and Andrea Cardillo (Ottawa: Catalogue no. 85-002-XIE, Vol. 23, No. 6) at 4.

that 39% of women have reported being sexually assaulted since age 16.<sup>26</sup> It becomes clear then that with nearly one in four Canadian women indicating that they have experienced sexual assault at some point in their life, this is an important issue for women and for men who love women. What are the other factors that may prevent women from disclosing their incidents of sexual violence to police?

In one notable Canadian study, Rita Gunn and Candice Minch attempted to assess the cultural scripts or scripts that would influence a victim's decision to report a sexual assault to police. They determined that the victims were more likely to report assaults to police if they blamed the assailant rather than themselves for the attack. They were also more likely to contact police if the first person they told about the assault was supportive. Moreover, a report was more likely to be made if the victim had no personal history of sexual or physical violence in her past, if the assailant was a stranger, if there were visible injuries as a result of the attack or if the victim resisted vigorously, thus providing evidence of a struggle.<sup>27</sup>

Demographic factors also had an impact on the reporting rates. The likelihood of reporting a rape increased with age. As well, women who had professional occupations were also more likely to report the crime. Other studies have indicated that race also has an impact on the victim's willingness to come forward. Indeed, for some aboriginal women, "the justice system may pose a greater threat to her sense of security than the actual crime."<sup>28</sup>

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<sup>26</sup> Helen Johnson *Dangerous Domains: Violence Against Women in Canada*. (Toronto: Nelson Canada, 1996) 50.

<sup>27</sup> Rita Gunn and Candace Minch, *Sexual Assault: The Dilemma of Disclosure, the Question of Conviction*. (Winnipeg: University of Manitoba Press, 1988) 51.

<sup>28</sup> Canadian Panel on Violence Against Women *Final Report of the Canadian Panel on Violence Against Women* [Ottawa: Government of Canada, 1993] at 168.

Research also suggests that “the more blame a victim attributes to herself, the less likely she is to report a sexual assault to the police.”<sup>29</sup> Thus, it could be argued then that women who have been sexually assaulted believe their own cultural scripts regarding sexual assault and judge their victimization against these stereotypes. In other words, the songs about sexual assault have become a cultural discourse that is inherent in women’s evaluation of their victimization.

It is only natural that the discourse about sexual assault that is inherent in society and law is replicated in the media. Journalists do not live in a bubble; they are part of the society in which they work and they report on the legal decisions that may contain societal myths and stereotypes about sexual assault. By using content analysis, I examine how sexual assaults are portrayed in the public square of Canadian news and I argue that rather than contesting these myths, they enforce them. In other words, I look at how the songs about sexual assault remain the same in English Canadian newspapers. To that end, I examined the news coverage of sexual assault in English Canada’s two national newspapers: the *Globe and Mail* and the *National Post* in the year 2002. These newspapers are important because as national newspapers, they set the agenda for news in Canada.<sup>30</sup> I chose to study the year 2002 because it marks the twentieth anniversary of the move to implement changes to Canada’s sexual assault legislation. Moreover, Statistics Canada released substantive statistical information regarding sexual assault crimes for the year 2002. This allowed me to compare the statistics to the media coverage in the same year. To conduct this research, I used the database Factiva through the University of Alberta library. Factiva is a web-accessed database that is made available on a subscription basis to libraries. I selected stories that had rape or sexual assault as a topic in

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<sup>29</sup> Rita Gunn and Candace Minch, *Sexual Assault: The Dilemma of Disclosure, the Question of Conviction*. (Winnipeg: University of Manitoba Press, 1988) 39.

<sup>30</sup> David Taras *The Newsmakers: The Media’s Influence on Canadian Politics* [Toronto: Nelson, 1990] at 88. While Taras referred only to the *Globe and Mail* in his analysis, his rationale for considering the *Globe* to be a standard bearer certainly holds true for the *National Post*.

over 50% of the story. I then coded each of these stories to determine what if any sexual assault myths were depicted in the news coverage.<sup>31</sup>

My coding categories were originally based on the myths outlined in Helen Benedict's groundbreaking book: *Virgin or Vamp* and then updated and refined to fit the Canadian context. The following are the most pervasive myths contained in the *National Post* and the *Globe and Mail* in 2002.

### **Agenda Setting Myths**

The first two myths depicted are myths that resulted from the agenda setting function of the newspapers. Agenda setting is how the media define what the top issues are: which stories become top stories in the newspaper and which are downplayed or simply left out. Priming refers to the effects of emphasizing certain stories or framing issues and actors in a certain way. Agenda setting and priming influence public opinion in a number of ways. By deciding which issues it will cover, "the media set the public agenda, which in turn influences the importance citizens ascribe to reported issues."<sup>32</sup> Second, by giving primacy to one issue over another the media actively influence how people evaluate events and the people involved in those events.<sup>33</sup> The effect is subtler than propaganda, but nevertheless important, as research suggests that just by paying attention to a subject, the media can alter the public's perspective about what people believe is important in their lives and what is not.<sup>34</sup>

### **Song #1 – The myth that sexual assault crimes are not important**

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<sup>31</sup> Using the equation of number of questions in agreement divided by number of questions in agreement plus number of questions in disagreement, I determined the intercoder reliability of the content analysis to be 78.8%, well within the acceptable range.

<sup>32</sup> Navid Terkildsen and Fran Schnell "How Media Frames Move Public Opinion: An analysis of the Women's Movement" *Political Research Quarterly* [Vol. 50 No. 4, December 1997] 880.

<sup>33</sup> Navid Terkildsen and Fran Schnell "How Media Frames Move Public Opinion: An analysis of the Women's Movement" *Political Research Quarterly* [Vol. 50 No. 4, December 1997] 880.

<sup>34</sup> Thomas E. Nelson, Rosalee A. Clawson and Zoe M. Oxley "Media Framing of a Civil Liberties Conflict and Its Effect on Tolerance" *American Political Science Review* [Vol. 91 No. 3, September 1997] 567.

The first myth that English Canada's newspapers reinforce through their agenda setting function is the song that sexual assault crimes are not important. In total, there were 325 stories that dealt with sexual assault. The *National Post* wrote 170 stories, while the *Globe and Mail* wrote 155. Of those stories, 211 occurred in Canada, while 109 occurred outside of Canada. There were three stories that did not have a location in which the story occurred.

The fact that few sexual assault crimes actually make it into the daily national newspapers indicates that from an agenda setting perspective information regarding sexual assault is a low priority for both newspapers. This supports an earlier assertion by Chris McCormick that "sexual assaults seldom appear in the news in numbers that reflect their true incidence, and those that do appear are often not reflective of reality."<sup>35</sup> As McCormick points out, the media tends to over report other types of crime in particular crimes committed by youth, yet "sexual assault suffers a media silence."<sup>36</sup> Indeed, as I stated earlier, 2002 statistics indicate that in Canada, 27-thousand ninety-four sexual assault crimes were reported to police. In the *Post* and the *Globe*, we heard only about a fraction of those reports. In the *Post*, stories that talked about a police investigation of a sexual assault or that an arrest had been made in Canada made the news only 51 times (.19% of the sexual assaults that occurred in Canada in 2002). The *Globe* spent a little more time on the topic, reporting an investigation or an arrest in Canada 54 times (.2% of the overall sexual assaults that occurred in Canada in 2002). It's not clear here where the attrition occurs – if the police are not providing the relevant information to the newspapers or if the newspapers simply are not interested in reporting the crime. But there is enough variety in the cases that are covered by the newspapers to indicate that at least some of the information is being made available to the newspapers, but not all stories are being followed.

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<sup>35</sup> Chris McCormick, *Constructing Danger: the mis/representation of crime in the news* (Halifax, Fernwood Publishing, 1995) at 29.

<sup>36</sup> Chris McCormick, *Constructing Danger: the mis/representation of crime in the news* (Halifax, Fernwood Publishing, 1995) at 28.

Few of the stories that dealt with sexual assault were deemed important enough to make the front page in either newspaper. A story regarding sexual assault ran only once on the front page of the *Post*. It was a story about the gang-rape of a teenaged girl in Pakistan.<sup>37</sup> The *Globe* ran a story about sexual assault on the front page four times. The first was a story regarding the sexual assault charges against Prime Minister Chrétien's son.<sup>38</sup> The second was the announcement that charges had been laid against Robin Sharpe in connection with a 20-year old crime.<sup>39</sup> Sharpe had come to some prominence because of his constitutional battle over Canada's child pornography laws. The third front-page story in the *Globe* dealt with the conviction of a BC man who sexually assaulted and killed his 10-year old neighbour.<sup>40</sup> The fourth story outlined the arrest of several prominent businessmen in Quebec for their involvement in a child prostitution scandal.<sup>41</sup> Thus, the news values that made these stories important stories for both newspapers seems to be stories that depicted drama (the gang-rape of a woman in Pakistan) or potential scandal (the Prime Minister's son being charged with a crime or high-profile Quebec businessmen involved in a prostitution ring), were considered especially news worthy by the *Globe and Mail* and the *National Post* and important enough to be put on the front page.

## **Song #2 – The myth about the female perpetrator and the male victim**

The second myth about sexual assault contained in English Canadian newspapers is the myth that over represents the female perpetrator and also over represents the male victim. In 2002, 97% of the people charged with sexual

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<sup>37</sup> Stewart Bell "Boy's walk with upper caste girl led to trial and punishment" *The National Post* (04 July 2002), A01.

<sup>38</sup> Jill Mahoney "Mother says daughter told not to go to PM's son's flat" *The Globe and Mail* (29 July 2002) A1.

<sup>39</sup> Robert Matas "Pornographer Sharpe accused of sex assault" *The Globe and Mail* (27 August 2002) A1.

<sup>40</sup> Robert Matas "Ertmode gets life for murdering little girl" *The Globe and Mail* (30 August 2002) A1.

<sup>41</sup> Rheel Seguin "Prostitution scandal hits Quebec City luminaries" *The Globe and Mail* (19 December 2002) A1.

assault were men.<sup>42</sup> In its coverage of sexual assault crimes in 2002, the *National Post* under represented the male perpetrator and over represented the female perpetrator. In fact, statistically, the *National Post* was more likely to run a story with a female perpetrator than the *Globe and Mail* ( $p < .01$ ). However, the male perpetrator was still the norm for both papers. 87.4% of the *Post*'s stories had a male perpetrator (139 stories) compared to 95.9% of the *Globe*'s stories (140 stories). Moreover, according to Statistics Canada, compared to other violent crimes, females are more likely to be victimized than males. Eighty-five percent of the victims of sexual assault who report their crimes to police are female.<sup>43</sup> Both newspapers in 2002 over represented male victims in their coverage of sexual assault crimes. Sexual assault stories with male victims made up 23.5% of the overall stories in both papers, with the *Post* running stories with male victims in 28.9% of its coverage. The male victim made up 17.3% of the *Globe*'s coverage. There were only 20 stories (7%) that had both male and female victims.

The *Post*'s over representation of the female perpetrator (and its slightly higher representation of the male victim) can be explained by its coverage of the Laura Scalter trial. Laura Scalter was an Ontario elementary school teacher who was charged with sexually assaulting a 13-year old male student.<sup>44</sup> Her trial began in June and ended with her acquittal in July. The *Post* ran 13 stories on her trial and her hearing before the Ontario College of Teachers in November that reinstated her teaching license.<sup>45</sup> By comparison, the *Globe* ran only one story. Again, this underlines the reliance of the media on the news values surrounding novelty. The Scalter case is a clear example of the dog-bites-man story and its novelty reinforces the song about male victimization by female perpetrators. The

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<sup>42</sup> Statistics Canada, *Sexual Offences in Canada* (Juristat) Rebecca Kong, Holly Johnson, Sara Beattie, and Andrea Cardillo (Ottawa: Catalogue no. 85-002-XIE, Vol. 23, No. 6) at 7.

<sup>43</sup> Statistics Canada, *Sexual Offences in Canada* (Juristat) Rebecca Kong, Holly Johnson, Sara Beattie, and Andrea Cardillo (Ottawa: Catalogue no. 85-002-XIE, Vol. 23, No. 6) at 7.

<sup>44</sup> Francine Dube "Teacher sent letters to other pupils, trial told: Accused in sex assault" *National Post* (26 June 2002) A18.

<sup>45</sup> "West to East: Ontario: Teacher reprimanded but free to return to classroom" *National Post* (30 November 2002) A09.

overemphasis on the female perpetrator in violent crimes in general, provides us with a “skewed sense of how much female violence there is in comparison to male violence.”<sup>46</sup> Potentially, it creates a common sense notion that women are just as violent as men if only because that is what the newspapers tell us is the case.

### **Framing Rape Myths**

The focus of the first two myths was as a result of the agenda setting function of newspapers. The ways in which newspapers framed sexual assault reflected the remainder of the myths. News stories can be covered from many different angles. Framing refers to how the newspaper “defines and constructs” a news story like sexual assault.<sup>47</sup>

According to Janice DuMont and Deborah Parnis, rape myths can be defined as “prejudicial, stereotyped, or false beliefs about rape, rape victims and rapists.”<sup>48</sup> Initially, I used the rape myths outlined in Helen Benedict’s *Virgin or Vamp* but as the coding continued I refined the coding categories and added others. Sexual assault myths or stereotypes were found in more than half of the newspaper coverage. In the *National Post*, 61.3% of the stories regarding sexual assault contained myths (103 stories) while in the *Globe*, 60.1% of the stories (92 stories) contained myths. There appeared to be no statistical significance between the presence of rape myths and newspaper and the gender of the reporter did not appear to make a difference in the likelihood to report sexual assault crimes using rape myths.

### **Song #3 – The myth that rape is just sex**

The first rape myth coded for was the myth that sexual assault is sex. Helen Benedict calls this the “most powerful myth about rape” in that it “ignores the fact

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<sup>46</sup> Jennie Ruby “Man bites Dog!” *Off Our Backs* [Vol. 11. Issue 30, December 2000] at 12.

<sup>47</sup> Tom Nelson, et. al. “Media Framing of a Civil Liberties Conflict and Its Effect on Tolerance” *American Political Science Review* [Vol. 91 No. 3, September 1997] at 567.

<sup>48</sup> Janice DuMont and Deborah Parnis , “Judging Women: the pernicious effects of rape mythology” (1999) 19 *Canadian Women’s Studies* at 102.

that rape is a physical act.”<sup>49</sup> I conflated this myth with the second Benedict myth that the “assailant is motivated by lust”<sup>50</sup> because the lust mythology is as Benedict explained a natural extension of rape as sex. Stories that were coded as having this myth represented sexual assault as an inherently sexual act. It described sexual assault as intercourse, partying, or diminished its violent aspects by calling it groping or luring. This myth was used in 18.7% of the stories printed in the *Post* and the *Globe* in 2002 (60 stories). The *Post* used it in 22% of its stories (37 stories).

In the *Post*, examples of stories that treated sexual assault as merely sex or lust include a story about a Calgary priest who was asked to resign his position because of his conviction for the sexual assault of a 16-year old boy. In this report, the sexual assault is referred to as “fooling around” and the priest is described as being “sexually attracted to teenage boys.”<sup>51</sup> In a commentary by George Jonas about Gerald Regan’s sexual assault investigations, the allegations against Regan are called “copping a feel” or “stealing a kiss”.<sup>52</sup> In one particularly disturbing case, a Toronto man accused of sexually abusing a young boy is described as only engaging in “explicit sexual activity” with the child.<sup>53</sup>

The *Globe* appeared to use the “sexual assault as sex or lust” myth less frequently. This myth appeared in only about 15% of its news coverage (23 stories) and the examples were arguably subtler. In one *Globe* story, the sexual assault of a 13-year old Winnipeg girl by a 22-year-old man was referred to

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<sup>49</sup> Helen Benedict *Virgin or Vamp: How the press covers sex crimes* (New York: Oxford University Press, 1992) 14.

<sup>50</sup> Helen Benedict *Virgin or Vamp: How the press covers sex crimes* (New York: Oxford University Press, 1992) 14.

<sup>51</sup> Robert Remington “Calgary parish split as pedophile priest revealed: Forgiveness advised” *National Post* (04 February 2002) A02.

<sup>52</sup> George Jonas “Regan a victim of matriarchal justice” *National Post* (18 February 2002) A16.

<sup>53</sup> Shannon Karl “Man accused in bizarre child sex abuse case ordered to U.S.” *National Post* (02 May 2002) A15.

merely as “sexual activity.”<sup>54</sup> In another story, a man convicted of sexual assault was described as a “wealthy playboy” who would pick up 12-year old prostitutes for “partying.”<sup>55</sup>

As Benedict points out “rape is one of the most traumatic events that can happen to a person.”<sup>56</sup> Calling it sexual activity, fooling around or partying diminishes this fact. In particular, in the case of the 25-year old Toronto man who sexual assaulted the 8-year-old boy calling the abuse merely “explicit sexual activity” and the allegations “bizarre and graphic” completely ignores the terror the child must have been going through at the time of the assault.<sup>57</sup> Further, suggesting that sexual assault that occurs without penetration is merely “copping a feel” or “stealing a kiss”<sup>58</sup> relies on the outdated definition of rape as only penetration of the vagina by a penis. It also suggests that sexual assault is somehow driven by lust and ignores the fact that sexual assault is a form of degradation, domination, and punishment.<sup>59</sup> More importantly, portraying men as being “helplessly controlled by their overwhelming sexual impulses” ignores that “rape is an act of violence *not* an act of sex.”<sup>60</sup> The fact that sexual assault is still being viewed as a sexual act suggests that legislative efforts to emphasize the assaultive aspects of the crime have failed. Indeed, the song that rape is sex remains extremely pervasive.

#### **Song #4 – The myth that the perpetrator is crazy**

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<sup>54</sup> Krista Foss “Winnipeg man among first charged with Internet luring” *Globe and Mail* (14 September 02) A9.

<sup>55</sup> Robert Matas “‘Kiddie stroll’ popularity remains high, activist says” *Globe and Mail* (06 February 2002) A8.

<sup>56</sup> Helen Benedict *Virgin or Vamp: How the press covers sex crimes* (New York: Oxford University Press, 1992) 14.

<sup>57</sup> Shannon Karl “Man accused in bizarre child sex abuse case ordered to U.S.” *National Post* (02 May 2002) A15.

<sup>58</sup> George Jonas “Regan a victim of matriarchal justice” *National Post* (18 February 2002) A16.

<sup>59</sup> Helen Benedict *Virgin or Vamp: How the press covers sex crimes* (New York: Oxford University Press, 1992) 15.

<sup>60</sup> Patricia N. Donat and John D’Emilio, “A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change” (1992) 9 *Journal of Social Issues* 14.

The sexual assault myth that the perpetrator is crazy or out of control is another myth that was prevalent in both the *National Post* and the *Globe and Mail*. As Benedict outlines, the image of the rapist as “perverted, ugly, seedy, or insane contradicts the hot-blooded sex myth.”<sup>61</sup> Stories that were viewed as containing this myth talked about the perpetrator as being out of control, crazy, deranged or in need of psychiatric help. Based on these criteria, this myth was used in close to 7 percent of the stories in both newspapers: in 7.7% of the *Post* stories (13 stories) and 5.9% of the *Globe* reports (9 stories).

In the *Post*, the portrayal of the sexual offender as crazy included a Court of Appeal decision to uphold a conditional sentence on a pedophile diagnosed with a “bipolar disorder and schizophrenia”.<sup>62</sup> Another story called a man who indiscriminately walked up to people and kissed them the “crazy kisser”.<sup>63</sup> Yet another story in the *Post* talked about a “rare medical disorder that causes people to commit violent sexual acts while sound asleep.”<sup>64</sup> An in-depth article regarding the treatment of priests framed their sexual violence as an outcome of immaturity and psychological underdevelopment.<sup>65</sup>

In the *Globe*, stories that relied on the “perpetrator is crazy myth” included a man who raped a woman, stabbed her twice and slashed her throat who expressed his remorse by claiming he was “out of control.”<sup>66</sup> In another story, a man called “Ontario’s most notorious convicted pedophiles” is also described as a “fellow who needs treatment” in a quotation from his defence lawyer.<sup>67</sup> Finally, the ex-

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<sup>61</sup> Helen Benedict *Virgin or Vamp: How the press covers sex crimes* (New York: Oxford University Press, 1992) 15.

<sup>62</sup> Sara Schmidt “Court upholds shorter term for pedophile: 30 days for repeat offender” *National Post* (11 January 2002) A05.

<sup>63</sup> “Toronto Police nab ‘crazy kisser’ suspect” *National Post* (24 January 2002) A07.

<sup>64</sup> Mary Vallis “Brain ‘hiccups’ blamed for violent sex while asleep” *National Post* (28 March 2002) A04.

<sup>65</sup> Sarah Schmidt “Religious rehab: At a private facility near Toronto, some of North America’s most notorious sexual offenders – members of the Catholic clergy – have sought treatment” *National Post* (06 April 2002) B01.

<sup>66</sup> “Man gets nine years for violent sexual assault” *Globe and Mail* (18 May 2002) A21.

<sup>67</sup> Gay Abbate “Pedophile hopes to move to BC” *Globe and Mail* (19 June 2002) A7.

wife of a convicted rapist described her husband as going “out of control” when sexually aroused.<sup>68</sup>

While the reporters themselves may not be making the evaluation that the perpetrator is crazy, their decision to cover these stories and to frame them in this manner, suggests that “normal” men do not rape women and children; instead, the rapist is perverted or crazy or out of control. Yet, as Benedict points out “the majority of rapists usually have normal psychological profiles compared to other criminals”.<sup>69</sup> Moreover, by choosing to highlight the angle of mental illness, the report depicts the perpetrator this way reduces “the rapist’s responsibility for his actions since he was considered unable to control his pathological impulses.”<sup>70</sup>

### **Song #5 – The myth that innocent men are being accused of rape**

Another rape myth that I determined was quite prominent in both the *National Post* and the *Globe and Mail* was the myth that innocent men are being accused of sexual assault. This myth appeared in 11.2% of the stories in both papers. The *Post* featured it in 11.3% of its stories (19 stories) and the *Globe* had it in 11.1% of its stories (17 stories). Stories coded as containing this myth included coverage of not guilty findings and DNA exoneration of those prosecuted for sexual assault. I am not suggesting that the media are being irresponsible for publishing these outcomes. Indeed, statistically convictions for “sexual offences were lower as compared to other violent offences. Conviction rates have risen for all types of sexual offences, but have remained steady for other violent offences since 1995/96.”<sup>71</sup> However, I am suggesting that there is some distortion in how not guilty findings are depicted. Attrition in the cases covered

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<sup>68</sup> Kirk Makin “Top court orders new trial for man accused of rape” *Globe and Mail* (22 June 2002) A12.

<sup>69</sup> Helen Benedict *Virgin or Vamp: How the press covers sex crimes* (New York: Oxford University Press, 1992) 15.

<sup>70</sup> Patricia N. Donat and John D’Emilio, “A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change” (1992) 9 *Journal of Social Issues* 11.

<sup>71</sup> Statistics Canada, *Sexual Offences in Canada* (Juristat) Rebecca Kong, Holly Johnson, Sara Beattie, and Andrea Cardillo (Ottawa: Catalogue no. 85-002-XIE, Vol. 23, No. 6) at 9.

by the newspapers contributes to a skewed understanding of sexual assault in Canada. First, both newspapers covered only a miniscule percentage of sexual assault crimes that occurred in Canada in 2002. Then, it covered even a smaller percentage of trials from beginning to end. For instance, the *National Post* followed only two sexual assault trials from beginning to end and both of those trials resulted in a not guilty finding. To its credit, the *Globe* covered significantly more trial outcomes, including trials that ended with guilty findings; however, their coverage in no way reflected the more than 7-thousand court cases that involved sexual assault in Canada in 2001/2002.<sup>72</sup> As a result, news stories again under represent the outcome of the trial process in sexual assault crimes, while over representing not guilty findings.

Perhaps the best example of this type of myth comes from the coverage in both newspapers of the Gerald Regan case. Regan was the former Nova Scotia premier who had been accused of a number of sexual assaults. The Supreme Court of Canada overturned a lower court decision to stay 9 charges on the basis of improprieties that “violated Mr. Regan’s right to a fair trial.”<sup>73</sup> Regan had earlier been acquitted on 8 counts of rape, attempted rape, indecent assault and unlawful confinement involving incidents that dated back to the 1950s.<sup>74</sup> In the *Post*, the Supreme Court is described as being “deeply divided” over the decision, with dissenters “portraying Mr. Regan as the victim of a witch hunt.”<sup>75</sup>

In April, the Nova Scotia Crown Prosecutor made the decision to stop the prosecution in the Regan case. This time, it was Regan’s lawyer who suggested

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<sup>72</sup> Statistics Canada, *Sexual Offences in Canada* (Juristat) Rebecca Kong, Holly Johnson, Sara Beattie, and Andrea Cardillo (Ottawa: Catalogue no. 85-002-XIE, Vol. 23, No. 6) at 21.

<sup>73</sup> Luiza Chwialkowska “Supreme Court of Canada: Former premier may be tried on 9 sex charges, court rules: Prosecutorial impropriety not serious enough to stay charges” *National Post* (15 February 2002) A06.

<sup>74</sup> Luiza Chwialkowska “Supreme Court of Canada: Former premier may be tried on 9 sex charges, court rules: Prosecutorial impropriety not serious enough to stay charges” *National Post* (15 February 2002) A06.

<sup>75</sup> Luiza Chwialkowska “Supreme Court of Canada: Former premier may be tried on 9 sex charges, court rules: Prosecutorial impropriety not serious enough to stay charges” *National Post* (15 February 2002) A06.

the Regan had been the “subject of a witch hunt.”<sup>76</sup> Regan was quoted as saying, “I’m not guilty of these charges and never was.”<sup>77</sup>

The *Globe* also relied on the innocent man myth in its coverage of Regan. In its coverage of the Supreme Court decision, the *Globe* wrote that one of the dissenters Supreme Court of Canada Justice Ian Binnie suggested “any well informed person would conclude that Mr. Regan was pursued ‘not so much for what he has done, as for who he is’.”<sup>78</sup> In a pointed comment by Ian Hunter published on February 27, 2002, “feminist orthodoxy” is blamed for Regan’s prosecution. Hunter suggests: “Mr. Regan was from a different era, when unwarranted indiscretions led to a slap on the fact, not to relentless state prosecution. Is it fair to apply, retroactively, the standards of this era to the conduct of a previous one?”<sup>79</sup> In the coverage in the *Post* and the *Globe*, it becomes clear that Regan is portrayed as a man who was being prosecuted because of his political past, not for any wrongdoing on his part.

### **Song #6 – The myth that the victim provoked their attack**

Another popular sexual assault myth in the *National Post* and the *Globe and Mail* suggests that the victim provoked the rape either through his or her behaviour or dress. Benedict talked about this myth as an extension of the myth that rape is sexual and that women provoke their perpetrators because of what they look like or how they dress.<sup>80</sup> I extended this myth to include stories that talk about what the victim was doing prior to the attack. For instance, did the story suggest that

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<sup>76</sup> Richard Foot “Crown drops case against Gerald Regan: Indecent assault charges: Reluctant witness prompt prosecutors t end pursuit of former N.S. premier” *National Post* (18 April 2002) A03.

<sup>77</sup> Richard Foot “Crown drops case against Gerald Regan: Indecent assault charges: Reluctant witness prompt prosecutors t end pursuit of former N.S. premier” *National Post* (18 April 2002) A03.

<sup>78</sup> Kirk Makin “Top court revives charges against Regan Ruling exposes sharp division among justices as majority decides ex-premier should face sexual-assault allegations” *Globe and Mail* (15 February 2002) A3.

<sup>79</sup> Ian Hunter “Even nasty men deserve a fair trial” *Globe and Mail* (27 February 2002) A17.

<sup>80</sup> Helen Benedict *Virgin or Vamp: How the press covers sex crimes* (New York: Oxford University Press, 1992) 16.

the victim had been drinking or was out late at night? These were coded under this myth because I see them as victim blaming, particularly when they coincide with police warning against those types of behaviours. Put another way, we seldom read that a mugging victim was drinking prior to being robbed and we never hear police warning men not to be out late at night when they may be more likely to be mugged. However, this is the type of discourse inherent in this myth.

In 2002, the victim provoking sexual assault myth was used in 10% of the stories on sexual assault. The *National Post* used the myth in 7.7% of its stories (13 stories), while the *Globe* used it in 12.4% of its stories (12.4%). Five of the *Post* stories and 6 of the *Globe* stories referred to the victim drinking prior to the sexual assault. Three of the *Globe* stories also featured police warnings about victims' behaviour. In one story, police warned women to "not walk alone in secluded areas."<sup>81</sup> In another story, police cautioned parents and caregivers to "be vigilant in street-proofing children."<sup>82</sup> In yet another story, police warned women "never to leave their drinks unattended at social events" because of the use of date-rape drugs.<sup>83</sup>

Victim blaming was not merely the domain of the police however. In a *Post* story that detailed the sexual assault of an 11-year-old girl, it was the victim's mother who invoked this myth. The girl had been sexually assaulted by a 33-year-old man she had met after chatting with him on the Internet. In the October 16<sup>th</sup> story, the mother is quoted as saying:

"I told her not to go into chat rooms. She still did," said her mother. "Things may happen, people go there and pretend to be other people. I told her not to give out her name or phone number. There are a lot of sick people out there."<sup>84</sup>

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<sup>81</sup> Allan Woods "Victim of sexual assault had infectious disease" *Globe and Mail* (22 July 2002) A12.

<sup>82</sup> "Peel police warn of Brampton pedophile" *Globe and Mail* (25 April 2002) A24.

<sup>83</sup> Andre Picard "Quebec girl gang raped, police suspect drink spiked" *Globe and Mail* (14 October 2002) A2.

<sup>84</sup> Susanne Hiller "Computer of suspect in sex assault of girl, 11, seized" *National Post* (16 October 2002) A19.

The mother of the victim who pressed charges against Michel Chrétien also perpetuated the victim blaming myth in a story that appeared in the *Globe* on July 29, 2002. In it, she was quoted as saying:

“I warned them, I just said, ‘Don’t get drunk there. If you’re going there I can’t stop you, you know, be together, don’t get drunk, leave there, know what you’re doing,’ and it just happened...”<sup>85</sup>

Chrétien had been charged after an 18-year-old told police that he had sexually assaulted her in his Yellowknife apartment.<sup>86</sup>

As Benedict argues, victim blaming punishes women who in anyway deviate from socially acceptable gender roles. So-called good girls do not get drunk, they do not expose themselves to danger by leaving their drinks unattended or being out late at night, and they do not chat on the internet with strangers. This focus on the victim’s responsibility rather than on the perpetrator’s responsibility supports the contention that the media act as social controlling agents. Women are shown how to act and are warned of the “unpleasant results of ignoring their advice.”<sup>87</sup> News stories on rape “keep women nervous and they keep us in or proper place – subordinate and submissive to men.”<sup>88</sup> When women are raped, they pay the ultimate price for ignoring society’s gender roles.

### **Song #7 – The myth that women have nothing to say about sexual assault**

The final song about sexual assault is that women have nothing to say about sexual assault. In news discourse, “the most important or relevant information is put in the most prominent position.”<sup>89</sup> Thus in the news pyramid, the first person quoted as a source in a newspaper is important. His or her information is

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<sup>85</sup> Jill Mahoney “Mother says daughter told not to go to PM’s son’s flat” *Globe and Mail* (29 July 2002) A1.

<sup>86</sup> Jill Mahoney “Mother says daughter told not to go to PM’s son’s flat” *Globe and Mail* (29 July 2002) A1.

<sup>87</sup> Kath Davies, Julianne Dickey and Teresa Stratford, “Introduction” Kath Davies, Julianne Dickey and Teresa Stratford, eds., *Writings on Women and the Media* (London: The Women’s Press, 1987) 1 at 4.

<sup>88</sup> Geraldine Finn “Taking Gender into account in the ‘Theatre of Terror’: Violence, Media and the Maintenance of Male Dominance” (1989/1990) 3 C.J.W.L. 387.

<sup>89</sup> Teun A. van Dijk *News as Discourse* (Hillsdale: Lawrence Erlbaum Associates, 1988) at 43.

considered important and in essence, it can be used to frame the story, while those quoted afterwards are put into the position of refuting or supporting the original claims.

Overall, in the 2002 coverage of sexual assault crimes in the *Post* and the *Globe*, the law and order frame is supported to a large degree by their reliance on criminal justice sources. According to Steven Chermak, the media “obtain story information from criminal justice sources because they are conveniently accessible.”<sup>90</sup> Chermak contends that this influences how crimes are presented overall, because criminal justice organizations, particularly the police, are interested in promoting justice and thus, they will attempt to control “the selection and production of news images” that present the justice system in a positive manner. The police “appear often in the news and most police stories reflect positively on police performance.”<sup>91</sup> Indeed, police were the most frequently quoted source in both newspapers in 2002. The police were the first source quoted in almost a quarter of the news stories about sexual assault (23.6%). Judges were the first source quoted in 11.8% of the news stories overall. The Crown Prosecutor or District Attorney was a news source in 10.2% of the stories, while defence lawyers were given little opportunity to participate.

Defence sources made up only 4.1% of the sources used in both papers. The *Post* used a defence attorney as its first source only once, while the *Globe* relied on the defence as a first source 9 times (7.3%). What is particularly interesting however, is the number of times the victim’s voice is the first source in these news stories. The victim, the Crown Prosecutor (who ostensibly speaks on behalf of the victim), the victim’s family, or a victim’s spokesgroup were used as first sources in 26% of the newspaper stories (64 stories). In the *Post* these were

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<sup>90</sup> Steven M. Chermak, “Police, Court and Corrections in the Media” in Frankie Y. Bailey and Donna C. Hale, eds., *Popular Culture, Crime and Justice* (Belmont: West Wadsworth Publishing, 1998) 87 at 89.

<sup>91</sup> Steven M. Chermak, “Police, Court and Corrections in the Media” in Frankie Y. Bailey and Donna C. Hale, eds., *Popular Culture, Crime and Justice* (Belmont: West Wadsworth Publishing, 1998) 87 at 90.

the first sources quoted 27.6% of the time (34 stories) and in the *Globe* they were the first sources quoted 24.9% of the time (30 stories).

By comparison, the perpetrator and his or her defence lawyer are quoted first only 14.2% of the time in both papers (35 stories). The *Post* quoted the defence or the perpetrator first in only 12.2% of the stories (15) while the *Globe* quoted them in 16.3% of the stories (20 stories). This certainly suggests that both papers provided the victim or his or her spokesperson to have the victim's version of the events heard in the news.

For the most part, however, news about sexual assault is told in a male's voice. Men were the first source in both newspapers 75.3% of the time. They were the second source 70.4% of the time. This finding supports earlier work done MediaWatch, a Canadian not-for-profit feminist organization interested in monitoring Canadian media. In a 1998 study, MediaWatch determined that women were news sources in only about 20% of the stories monitored and reporters in only about 22% of the news stories.<sup>92</sup> By analyzing who is speaking and who is writing, it becomes clear that the issue of sexual assault, a crime that affects women more often than men is written about by predominantly male reporters and talked about by predominantly male sources.

There is however good news. The victim or the Crown Prosecutor (who ostensibly speaks on behalf of the victim) was one of the top five most common sources in these news stories. The Crown Prosecutor or District Attorney was quoted first in 10% of the stories with a source (25 stories) -- 8.8% of the stories in the *Post* (11 stories) and 11.2% of the stories in the *Globe* (14 stories). This ties in with the number of times the perpetrator is quoted -- also at 10% (25 stories). The victim is the first source quoted in 9.2% of the newspaper stories

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<sup>92</sup> MediaWatch, "Women Strike Out," online: MediaWatch <http://www.mediawatch.ca/research/strikeout/> at 4.

with a source (23 stories) – 8.8% in the *Post* (11 stories) and 9.6% in the *Globe* (12 stories).

As McCormick suggests, giving the Crown’s voice primacy over the victim’s voice privileges the “authoritative perspective.”<sup>93</sup> However, the fact that the Crown and the victim were in the top five sources quoted is heartening, particularly given a study by Geraldine Finn in 1990 that indicated that the media tend to focus on the defence rather than on the prosecution in covering rape trials.<sup>94</sup> It is not clear if this signals a new trend by journalists in the media coverage of sexual assault trials or if the Crown or the victims have in recent years made a concerted effort to grant media interviews. Again, more investigation is required.

## **Conclusion**

This research suggests that despite the reformations to the criminal code aimed at increasing a victim’s confidence in the judicial system, those who have been sexually victimized for the most part remain silent. Further, by reviewing significant Supreme Court of Canada rulings regarding sexual assault, it becomes clear that legal discourse is not immune from the reliance on sexual assault myths regarding women’s consent. Finally, the cultural and legal discourses regarding sexual assault are further entrenched by the media’s distortion in their depiction of the crime. It becomes clear then that the songs about sexual assault that exist in our society, the songs about sexual assault that exist in our legal system and the songs about sexual assault that exist in our media are more powerful than the work done by feminists in eradicating those myths. Instead, the song about sexual assault remains very much the same.

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<sup>93</sup> Chris McCormick *Constructing Danger: the mis/representation of crime in the news* [Halifax: Fernwood Publishing, 1995] at 31.

<sup>94</sup> Geraldine Finn “Taking Gender into Account in the ‘Theatre of Terror’: Violence, Media, and the Maintenance of Male Dominance” in *CJWL* [Vol. 3. No 2 1989-1990] at 386.

