

# A Fair Trial

## Race and the Retrial of Kelly Ellard

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*Cet article se penche sur le discours médiatique et légal dans le meurtre de Reena Virk et du procès du co-accusé Kelly M. Ellard. D'après une enquête sur les textes sur la violence des filles, sur la dichotomie entre les bonnes et les mauvaises filles, sur les histoires et discours coloniaux de la fémininité blanche, l'auteure assure que la race est occultée en même temps qu'elle façonne la compréhension de ce cas dans un effort pour le résoudre légalement.*

On November 14, 1997, Reena Virk, a young South Asian woman aged fourteen, was attacked by seven young women and one young man under a bridge in Saanich, a suburb of Victoria, British Columbia named after the Indigenous peoples for whom that territory is ancestral. Shortly after the initial attack witnessed by twenty or more youth, a second fatal assault was committed by Warren Glowatski, then age 16, and allegedly Kelly Ellard, then age 15, both of whom also participated in the first assault. Reena's parents reported her missing when she did not return home; however, none of the witnesses to the first attack came forward. Reena Virk's naked body was found eight days after her death in the Gorge Waterway. The autopsy report found extensive "internal injuries to her back and abdomen that were consistent with being kicked and stomped" (Meissner A6). Although Dr. Gray who conducted the autopsy testified it was likely Reena would have died from these injuries and/or brain swelling caused by the first and second assaults, drowning was stated as the official cause of death.<sup>1</sup>

On the night that Reena Virk was murdered she was lured to the Gorge Waterway by two young women identified as N.C.,<sup>2</sup> who accused Virk of stealing her phone book, and M.P.G., who claimed that Virk had sex with her boyfriend. Both women planned to confront Virk and although at that time Kelly Ellard was N.C.'s close friend, neither she nor Warren Glowatski had met Reena Virk before the evening of November 14, 1997.

Socially constructed difference—i.e. race, gender, sexu-

ality, class etc.—has been addressed by scholars writing about this case (Barron and Lacombe; Batacharya 2004; Bhandar; Chakalalak; Jiwani 2002b). However, in mainstream media accounts difference has been defined primarily as Reena Virk's failed attempts to fit in to her peer group:

Reena Virk, like many fourteen-year-old girls, had a hard time fitting in where she grew up, in her case the middle-class suburb of Saanich on the outskirts of Victoria, B.C. It didn't help that she was slightly overweight and the dark-skinned child of immigrants who were not well-to-do (Purvis 68).

In this description Reena is "like many fourteen-year-old girls" as well as not like them. Difference here is defined as individual characteristics (e.g. overweight, dark-skinned, not well-to-do) rather than produced through inequitable social relations of power and equated with inferiority. Similarly, other media accounts (Pearson; Vobejda and Perlstein) obscure racial and gendered difference to portray Reena and her attackers as equally the victims and perpetrators of "youth" or "girl" violence rather than implicated in complex and interlocking social hierarchies.

To date there have been five trials for the assault and murder of Reena Virk. In April/May 1998, six young women were charged and convicted of assault causing bodily harm. In June of the following year Warren Glowatski was found guilty of murder. Co-accused Kelly Marie Ellard has had three trials (March 2000, June 2004, and April 2005). Having attended both the first and the third Ellard trials, I observed how the sheer number of witnesses, police statements, court transcripts, and the length of time that has passed since Reena Virk was murdered has contributed to the fact that three trials have been held in an attempt to bring resolution to the murder charge against Kelly Ellard. However, racism,

and other relations of power also complicate this case. Keeping in mind that each trial was several weeks in length and occurred over a five year period, I attempt to tease out how race and gender figure in a few examples of the legal discourse and protocol, and media representations.

Youth deviancy and girl violence are dominant narratives relied upon to explain this murder. Ironically, the narrative of girl violence is precisely what obscures the context of this murder—one that is shaped by the erased histories and legacies of colonialism and racism endemic to settler societies such as Canada.

### Colonial Violence

The accusations of sexual transgression made against Reena Virk, the inquisition and guilty verdict arrived at by her attackers, and the brutality of her punishment, echo colonial histories and legacies that target Indigenous women and women of colour for violence— violence shaped by the interdependent contexts of white supremacy and heteronormativity. In her book *On the Edge of Empire: Gender, Race and the making of British Columbia 1849-1871*, Canadian historian Adele Perry investigates how First Nations women were targeted by colonial authorities as a threat to the white settlement of the then colony of British Columbia. At a time when the Indigenous population greatly outnumbered settlers, sexual relationships between white male settlers and First Nations women were vehemently discouraged. White men were called upon to renounce alliances with Native women as well as homosocial and homosexual alliances with other men. Colonial elites and administrators offered them a “respectable” Victorian alternative—marriageable white female immigrants brought to the colonies as servants and workers. Legal measures served to dissolve settler/Native unions or coerce families into marriages that divested Indigenous women of their rights and status. This latter strategy has been identified as central to colonial policies of genocide of First Nations peoples in government documents such as the *Royal Commission on Aboriginal Peoples* and in the work of Indigenous activists through initiatives such as the Sisters in Spirit campaign to address the murders and disappearances of hundreds of Indigenous women in Canada.<sup>3</sup>

Perry documents how colonial constructions of white women as the cure for the social ill of miscegenation and male homosocial and homosexual alliances elevated these women to valued partners in imperialism. Although not all white women chose to fulfill this promise, or had access to the privileges of an ideal imperial heterosexual alliance, those that could and chose to access Victorian respectability did so in a context where white supremacy positioned Native women as the counterpoint to white settler femininity. Said differently, white femininity was defined as the opposite of racist definitions of First Na-

tions women as uncivilized, promiscuous, and as prostitutes (Razack 2002).

Indigenous women and women of colour are vulnerable to violence from imperial subjects, both men and women, within contexts of colonialism and white supremacy. In British Columbia great effort was made to establish racial purity and deter sexual relations between white men and specifically First Nations women. Controlling sexual relations in the colonies is a common feature of colonial rule in Africa, Asia as well as in settler societies and diasporas (Stoler; Mama; Rafael; Yegenoglu; Bhattacharya; Handa; West). While recognizing the problems of conflating nineteenth century colonial British Columbia with the late twentieth century Canadian province, we can nevertheless trace present day social relations and legacies back to earlier white settler colonialism. One such inheritance is the construction of hegemonic femininity in a colonial settler context.

Hegemonic femininity defined as white, able-bodied, middle and upper class, heterosexual and helpers to men in building the nation, deeply informs the construct of the universal girl often characterized as the fairer sex, dependant of patriarchy without agency or subjectivity. While feminist responses to sexist gender constructions have highlighted women’s agency in resisting patriarchy, white women’s role in imperialism is not only defined by penalties but also privileges and power. Addressing white women’s dominance is difficult because doing so highlights how they like white men, wield racial power. To acknowledge this threatens to reveal white supremacy and patriarchy and the ways they function symbiotically. Within a feminist framework it also threatens to weaken claims for justice regarding patriarchal violence. For, as Mary Louise Fellows and Sherene Razack observe, women must race to a position of innocence or risk invalidation of their claims for justice and equity (1998).

The murder of Reena Virk needs to be placed in the larger context of Canada both historically and with respect to current social relations. Research into the experiences of young South Asian women continue to demonstrate the prevalence of racialization that is gendered, classed and sexualized (Handa; Rajiva 2006, 2004). Being placed in racial and sexual hierarchies is as prominent now as it has been in the past for white, Indigenous and other racialized women. Furthermore, racial, class and sexual hierarchies are still with us today and they profoundly shape violence against women (Bannerji; Jiwani 2002a).

### Girl Violence

The narrative of “girl violence” echoes historical discourses of moral panics concerned with heteronormativity and white citizenship (Adams; Cahn; Handa). Hegemonic white femininity figures prominently in moral panics because what is at stake are gender, racial, sexual and class status quos and hierarchies. It secures patriarchy and white

supremacy by way of heroic masculinity aimed at the “protection” (meaning control) of white girls and women.

In previous work (Batacharya 2000, 2004), I have discussed how the murder of Reena Virk has been represented in the legal discourse of the trials, academia, and the media as an example of girl violence said to indicate a rising trend of violence among girls and women. This claim is highly contested by anti-racist and feminist criminologists and researchers as statistically unsubstantiated and part of a backlash against the feminist movement (Pate 2002a, 2002b, 1997; Jiwani 2002a, 2000, Alder and

sexuality and class deviance who are trying to frame Ellard out of spite and/or use her as a scapegoat and way to evade punishment for their acts of violence against Reena Virk. At Ellard’s first trial, the Crown also focused on girl deviance in their prosecution strategy. This approach backfired in terms of legal protocol when the first verdict was appealed and the Crown found to be in error in their cross examination of Ellard. The good vs. bad girl binary was also observable in the rescue comments and empathy expressed by Judge Morrison who saw Ellard on the good girl end of the spectrum (Bhandar). Crown attorney

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Worrall 2004).<sup>4</sup> Patriarchal explanations of violent or “bad” girls suggest that the advancements gained in feminist movements have given girls and women too much power, socializing them closer to a masculine gender identity in which violence is acceptable and normal. In other words, backlash explanations accuse feminism of misleading girls and women away from normative gender roles of daughter, wife and mother and call for more stringent controls over girls and women (Barron and Lacombe).

Gender-centric feminist rebuttals to backlash theories that neglect to address power relations among women suggest that girls and women enact violence as a result of, or in resistance to, patriarchal violence (Artz). What is often missing from this explanation is a theorization of how women and girls can, and have expressed dominance through racial and sexual violence.

The narrative of girl violence hinges on the idea that girls and women are inherently non-violent. That is, girls and women that meet the requirements of hegemonic femininity—i.e., white, middle-class, heterosexual, able-bodied—are in fact the “fairer” sex. Those that do not meet these criteria are categorized as racial and sexual deviants. When girls and women who fall within the parameters of hegemonic femininity are violent, they are cast as failed women or social deviants rather than implicated in relations of power as social actors. Thus, the good vs. bad girl dichotomy effaces women’s agency, for if they are good they are passive and if they are bad they are possessed.

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Catherine Murray, who led the prosecution for the second and third trials, avoided this binary; however, similar to the first trial, Crown witnesses have been consistently cross examined along lines of delinquency and culpability based on failure to meet the requirements of white, middle-class respectability (Bhandar).

In addition to the legal discourse, the media has portrayed Ellard in a sensationalist manner that certainly echoes historical moral panics about youth and girl deviancy threatening to destabilize a white settler nation. During my attendance at the first and most recent trial, I observed that in many respects Ellard has become a national warning for what can happen when girls from apparently good families, living in good neighbourhoods, run with the wrong crowd.

### **Racial Violence**

Kelly Ellard was tried and found guilty in March 2000. Her counsel immediately appealed and successfully won a retrial by citing how the Crown had improperly questioned Ellard by asking her to explain why many of her peers testified that she had confessed and boasted about killing Reena Virk. The first retrial (June 2004) concluded as a mistrial with eleven jurors finding Ellard guilty and one woman, often described as weeping in the courtroom, arriving at the opposite verdict. Ellard has been portrayed both as a bad girl and gang member as well as to quote Judge Morrison, the woman who presided over Ellard’s first trial, a “person who loves animals, had positive and caring relationships with her family and friends, and posed a low risk to society in general” (Jiwani 2000: 1). Morrison also stated in her final judgment that Ellard was in no way motivated by racism, a claim that was surprising given that no evidence had

been presented at the trial arguing for or against racism as a motive (Bhandar; Jiwani 2000).

Racism as a factor in the violence committed against Reena Virk has been mostly absent from the media and certainly not part of the legal arguments. Instead, this crime has been attributed to youth deviance, a much more convenient explanation and one that does not implicate the nation as a structured by systems of oppression.

The fact that two of the young women charged in the initial assault on Reena Virk were youth of colour has even been used to support the claim that racism was not a factor in this crime. One newspaper article read “police have ruled out racism as a motive, noting that some of the accused are also non-white.” (Purvis 68). This was one of the few times that racism was mentioned in mainstream media reports and done so to pre-empt any consideration of racism based on the presence of people of colour in the violent confrontation.

Sherene Razack addresses violence by racially subordinate subjects in her research on the murder of 16-year old Shidane Abukar Arone, a Somali youth tortured to death on March 16, 1993 by Canadian soldiers in Somalia during what was euphemistically named a peacekeeping mission. Two of the soldiers involved and/or witness to the torture and murder were Master Corporal Clayton Matchee and Private Kyle Brown both of Cree ancestry. Razack proposes a framework for understanding men of colour involved in racist violence that does not dismiss white supremacy as the underpinning element. She writes:

Joining the nation ... requires that men actively perform a hegemonic masculinity in the service of the nation. This masculine ideal includes engaging in acts of racial domination. The ideal man is one who is both superior to both women and racial minorities. For racial minority men, joining the nation requires, then, both forgetting racial violence and engaging in racial violence. (2004: 90)

Without exception the women charged in the assault on Reena Virk who testified at Ellard’s trials were themselves particularly vulnerable to violence. One young white woman charged in the initial assault on Virk witnessed the murder of her father by her mother and mother’s boyfriend as a child. She testified as a Crown witness at her mother’s trial and Attorney Brooks who defended her mother was also Ellard’s counsel. This young woman was forced to undergo cross-examination by Brooks at Ellard’s first trial in March 2000. Others charged with the assault were also involved in the foster care and criminal justice systems as children and youth and all had histories of poverty, abandonment, and violence—a correlation amply demonstrated in research on young women and criminalization (Pate 2002a, 2002b; Alder and Worrall).

Two of those charged in the assault were young women of colour, one of whom is M.P.G. who Ellard’s defence

has suggested was Glowatski’s murder accomplice. Listening to the testimonies and cross-examinations of these young women it became clear that they were in constant negotiation with the violence of their past and present. However, if we reduce their participation in the assault on Reena Virk to traumatic re-enactments of the violence they have experienced in their own lives, we miss what Razack’s (2004) analysis of hegemonic masculinity suggests—i.e., that marginalized men bid for power by performing racial violence alongside racially dominant men. Similarly, the women who participated in the violence against Reena Virk participated in an act of domination through violence that was racist by virtue of the context in which it took place. If we take racism, patriarchy, white supremacy, and the legacy of colonization as foundational to Canadian society and the power relations that structure it, all of those who participated in the assault and murder of Reena Virk, white and non-white, male and female, engaged in an act of racial and gendered violence.

### **“This is Victoria. Nobody Gets Murdered in Victoria”**

At the first trial a video-tape recording made at the time of Ellard’s arrest was presented to the judge by the Crown as evidence. In it Ellard was informed that a recording was being made and the camera was visible to her. The video was not admitted as evidence after the judge ruled that the interviewing officer, Sgt. Ross Poulton of the Saanich Police, had not adhered to the *Young Offenders Act* by properly explaining her rights and failing to cease interviewing when Ellard requested access to a phone to contact her mother.<sup>5</sup>

Although the tape was not presented to the jury, I examine it as another aspect of the legal protocol regarding this case i.e.—the police investigation of the murder of Reena Virk. The jury never saw the tape but the court observers did and after the jury was sequestered to deliberate a verdict the tape was discussed in media reports.

In the *Globe and Mail* article titled, “Tape paints unflattering picture of Virk suspect,” Dene Moore writes:

In a videotaped interview with police that the jury did not get to see, Kelly Ellard complained that she was embarrassed to be arrested and asked if she would be done in time to “get back with my friends.” (A8)

Moore goes on to describe the contents of the tape in which she observes Ellard yawning and changing her story several times as she was questioned by Sgt. Poulton. As the interview progressed she admitted to witnessing the initial attack on Reena Virk but claimed not to be involved. In terms of her non-involvement she stated, “I didn’t have anything against her.” Later, Ellard admits to punching Reena in the face as a means of protecting N.C. who

initiated the assault on Virk by stubbing a lit cigarette on Reena's forehead.

I noted several other statements that highlight race, class, and gendered dynamics in the interview. At different points in the video, Ellard makes claims of surprise and disbelief that she could be considered a suspect in the murder of Reena Virk. At one point she says to Sgt. Poulton, "I'm a girl. I never thought girls get arrested for murder. It's not very ladylike." Sgt. Poulton replies "You don't strike me as someone who is concerned about being very ladylike." In this exchange, ladylike behaviour de-

At Ms. Ellard's trial, her lawyers noted often that their client had no prior criminal record. But she was no angel. She had been arrested along with N.C., G.O., and C.K., for attacking a girl in August 1997, in an eerie foreshadowing of the attack on Reena. The girls lured the victim to a remote spot, beat her and tried to set her hair afire. Ms. Ellard was never charged but the others were convicted. (A18)

Armstrong's description of this event and Ellard as "no angel" follows another passage in which she describes

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finer innocence as much as the opposite—culpability. Being "ladylike" is a Victorian construct that Ellard draws on to exclude her from involvement in this crime. She conveys her disbelief that she could be a suspect in the murder of Reena Virk along the lines that ladies don't do certain things, murder being one of them. In the good and bad girl dichotomy she tries to represent herself clearly on the side of innocence and Sgt. Poulton's rebuttal is to call into question her claim to "ladyhood" or, in other words, her claim to normative universal girlhood. This underpins his suspicion and guides his interview strategy.

Poulton approaches Ellard as a bad girl. By doing so, other questions pertaining to issues such as racism are not considered. Furthermore, by looking for deviance rather than dominance, Sgt. Poulton not only violated legal protocol by interrogating rather than questioning Ellard but he also ignored power relations that implicate himself and larger social structures. For example, his age and gender privilege is as much a factor in the interview as his shared racial location with Ellard that may have inhibited his ability to perceive racism as a factor in this murder. An individualizing pathology like that of bad girl narratives accomplishes this. It could be argued that in this case, Poulton's concern with deviance led him to focus on extracting a confession rather than gathering other important evidence such as a video tape that would be admissible in court.

Later in this video, Ellard's disbelief that she could be arrested and charged with murder is coupled with demands to be released. At one point Ellard is alone in the interview room with her mother, Susan Pakos. When Pakos mentions another assault that Ellard was implicated in, she cautions her mother to be quiet. The previous assault is described by Jane Armstrong of the *Globe and Mail*:

N.C. as the pretty popular leader of an inner circle based on loyalty. Being pretty and popular hinge on criteria associated with the currency of whiteness, thinness, and showing dominance, among other things. When N.C. is described as the leader of an inner circle, social hierarchy is inevitably at play. Reena was not only excluded from this inner circle, but she constitutes its other. In this respect the cigarette burn to her forehead delivered by N.C. can be interpreted as a racial act, symbolic branding as well as punishment for transgressing the boundaries of the inner circle. It is not a matter of whether Ellard is "no angel", rather, how was she and the other women located in the social relations contextualizing the assault and murder of Reena Virk?

In the article, Armstrong further comments that:

Most of the girls in the group attended Shoreline Junior Community Secondary School, situated in the Victoria suburb of Esquimalt and within walking distance of several starkly different neighbourhoods. Comfortable middle-class homes line the Gorge waterway, which is spanned by the Craigflower Bridge. A large public housing complex lies to the north of the School and a naval base and native reserve are both nearby. (A18)

The Craigflower Bridge where Reena Virk was assaulted and murdered is at the intersection where the suburbs of View Royal, Saanich and Esquimalt meet. The colonial history of this space is one of violence—the violent seizure of Indigenous peoples' lands and means of livelihood as well as the current manifestations of colonial violence against Esquimalt, Saanich and other First Nations peoples signaled by the Esquimalt Reserve and neighbouring military naval base. However, in Kelly Ellard's interview with Sgt. Poulton

she pleads her innocence by stating, "This is Victoria. Nobody gets murdered in Victoria." Ellard's claim that as a girl she could not possibly partake in murder is echoed in her description of Victoria as place where violence does not occur. This is far from reality. The contradictions underlying the façade of Victoria as a quiet tea town is just as problematic as the idea that white girls are incapable of violence although both were repeatedly mentioned in the media as equally shocking.

It is somewhat surprising that greater care was not taken by Sgt. Poulton to ensure that the video would be admissible evidence. Perhaps he felt it more effective to try and find evidence of unladylike behavior and provoke a confession rather than focusing on *Young Offenders Act* protocol and properly documenting her verbal statements of her whereabouts and other details about what she saw or admitted to participating in. All of this could have been done in the presence of Ellard's mother, in fact much of what Ellard did admit to took place when her mother was present.

In this video, Ellard's interactions with her mother are also worth noting. When Sgt. Poulton leaves the room Ellard demands that her mother take her home. She exclaims, "You own me. You are my mother. You can say I want to take her home." The demand to be taken home as the property of her mother is an interesting request that requires Pakos stake her claim over her daughter—a claim Ellard hopes will trump any made by the police or justice system by charging her with murder. Ellard repeatedly asks to be put under house arrest, a request that will eventually be granted when she is deemed a low risk to society (Bhandar). Later her defence team will portray her as naive and unversed in the judicial system, a claim that is curious given her familiarity with conditions pertaining to house arrest, her previous arrest in August 1997, and her friendships with young women involved with the criminal justice system.

Responding to Ellard's request to go home her mother says, "You will get on the phone with all your friends" indicating at the very least that she feels this would not be helpful to the situation. Pakos then adds, "Don't say anything to my family." This could be about not wanting to worry her family, elicit their criticism or tarnish the family image. Whether the issue is family reputation, ladylike behaviour, the belief that violence does not happen in Victoria, or Ellard's hope that her parent's ownership of her could mediate the murder charge against her, the interview with Sgt. Poulton was replete with comments from all present about what it means to be a middle-class white girl charged with murder. Furthermore, the videotape foreshadowed how Ellard's case would unfold in the courts and in the media.

### **Vancouver March 2005**

At the most recent trial in Vancouver I again observed how race, gender, sexuality, and class figure prominently in this

case. As with past defence strategies, presenting Ellard as a respectable girl, who fell prey to degenerates who murdered Reena Virk and were now trying to frame her for it, relied heavily on challenging the credibility of Crown witnesses in cross examination.

The defence proposition at every trial has been that M.P.G. and N.C., both of whom have criminal records, murdered Reena with the help of Warren Glowatski. In all three trials Ellard's counsel has suggested a romantic loyalty between M.P.G. and Glowatski along with a conspiracy of allegiance based on gang affiliation involving many of the youth charged in or witness to this crime. N.C., a young white woman, has never testified at any of Ellard's trials leaving M.P.G., a young black woman, as the focus of the defence in their strategy to implicate an alternative culprit. At this recent trial the defence presented new evidence suggesting Glowatski had another motive to lie and implicate Ellard as his accomplice. A defence witness who spent time in prison with Glowatski testified that Glowatski confessed to framing Ellard because she would not have sex with him. He also testified that Glowatski said there were two girls who helped him murder Virk and Ellard was not one of them. This witness, a repeat sex offender with a history of making alibi calls to the RCMP after his assaults on women, told the court that Glowatski was spurned and wanted revenge against Ellard.

Glowatski was cross examined about his previous involvement in violence, gang membership and the violence against Reena Virk that he confessed to participating in. The defence also questioned Glowatski as to whether or not he sexually assaulted Virk the night she was murdered; however, this could not be corroborated nor refuted by the autopsy report or the coroner, Dr. Gray.

Ellard did not testify in the third trial. She was present but silent throughout. There was another silent presence in the court room: Reena Virk. Her presence was felt in the deeply disturbing testimonies of witnesses and in the presence of her family and friends attending yet another legal process in the wake of her murder.

The only point at which the jury would have to acknowledge the fact that Reena Virk was a young South Asian woman was in viewing the autopsy photos of her body. Then it would be impossible to avoid the fact that Reena was a brown-skinned girl and that the person on trial and convicted co-accused were white.

Ellard's defence counsel requested that the autopsy photos be omitted from the trial arguing that since the histories of the jurors were unknown, the photos could traumatize and trigger individual memories of abuse causing unconscious prejudice against the defendant.

The fact that this request was made at the same time that Justice Robert Bauman was asked to issue a court order to have Ellard's make-up and hair products returned to her in the detention center where she was being held, highlighted the issue of visual representation in the trial.

Ellard had been in custody since February 2004 after

she and another woman were charged with assault causing bodily harm to a 58-year-old woman in New Westminster. The Crown, requested more information about why Ellard was not permitted her personal toiletries and it was revealed that she had brought contraband items, unmarked medication, an under-wire bra and unauthorized make-up into the prison. When these things were removed she allegedly assaulted two guards.<sup>6</sup> The Crown reported that Ellard had access to a toothbrush and toothpaste, shampoo, and a hair dryer to which the defence responded that she also needed hair mousse in order to look her best for the jury. I'm not suggesting that Ellard should not have access to make-up and hair mousse, but the pairing these requests back to back in the courtroom was striking. The defence argued for the removal of the autopsy photos while simultaneously debating the importance of Ellard's appearance. Putting Ellard's best face forward and removing Virk's face altogether at the very least indicated the importance of image and visual representation in the defence strategy.

The Crown argued for the inclusion of the autopsy photos as corroborating the testimony of the coroner and witnesses, noting that the 14 photos were a good deal less than the 125 shown at the first trial and the 23 presented at the second trial. They also noted that when jurors were selected they were informed that this trial would be a murder trial. Thus, viewing autopsy photos as evidence would be required and expected of them. The defence suggestion that the photos could be prejudicial assumes that the jurors were ill qualified to handle the evidence presented to them. However, I also argue that the photos threatened to disrupt the defence portrayal of their client by raising issues of difference in the trial that were not advantageous to their case.

Justice Bauman ruled that the autopsy photos would be submitted to the jury and a court order was issued to have Ellard's hair products returned to her.

Whether it was the autopsy photos of Reena Virk, Ellard's cosmetics, or the cross examinations of M.P.G., Warren Glowatski and other witnesses; race and gender continued to figure in constructions of respectability, innocence and culpability. Since social relations of power can be traced in the legal discourse and media accounts of this case but were rarely if ever acknowledged, it is perhaps not surprising that three trials have been held in the attempt to resolve the murder charge against Kelly Ellard. It is as if the failure to address social hierarchies and context has haunted this case from the start and continues to confound both the legal process and mainstream understandings of this crime.

## Conclusion

*Under the Bridge*, written by Rebecca Godfrey, along with a *Dateline* special on NBC (October 3, 2005), indicate that attempts to explain the murder of Reena Virk con-

tinue to centre on girl deviancy or victim-hood. Godfrey's book is based on her interviews with those charged and witness to the Virk murder. The theme of the book is one of spontaneous combustion: "It was like a bunch of flammable kids and someone lit a match" (Godfrey, *Dateline* Oct. 3, 2005). Her investigation of the Virk murder suggests that it took place within a context of chaos rather than social relations based on racial, gendered and sexual hierarchies.

With the release of *Karla*,<sup>7</sup> a film about serial murders committed by Karla Homolka and Paul Bernardo, it would not be surprising if film rights to Godfrey's book have been sought after. The spectacle of violent women and girls combined with an absence of critical analysis of power relations among them, has long been a feature of patriarchal and white supremacist narratives of female deviance.

After the verdict was delivered at Ellard's third trial, her counsel indicated they would launch another appeal calling for a fourth trial. The appeal was filed August 2005 and on July 24, 2006 Ellard's lawyer, Peter Wilson, attended court to explain why finalizing the appeal is taking longer than expected. He was quoted in the *Vancouver Sun* saying, "I expect the appeal will go ahead" (Hainsworth).

Addressing racism in the courts has been very difficult in cases involving racial violence against Indigenous peoples and people of colour (Razack 2004, 2002, 1998). The legal system has similarly been a problematic venue for seeking justice in the case of the murder of Reena Virk. Keeping this in mind I've approached the trials of Kelly Ellard less from an investment in the legal process to produce justice but rather by examining how legal strategies have been deployed to produce truth – truth about what could and could not have happened. By moving away from a character assessment of Ellard and instead acknowledging racism as a factor in this case, this paper questions not only the idea of universal girlhood, and all of the race and gender constructions it hinges on, but also the prevailing concept of the Canadian nation-state as an equitable space untarnished by a colonial past and present. By attributing this crime to notions of deviant femininity or bad girls who fail to conform to class, race and gender norms, the power relations between Reena Virk and her attackers have for the most part been avoided and obscured. Legal discourse and media coverage regarding this case provide ample examples of this. While racial and gendered narratives may not have been explicitly addressed, they are nonetheless present and play a central part in dominant understandings of this crime.

We may want to question all together why when young people, or in this case young women, are involved in violence it is detached from understandings of systemic everyday violence. White youth or girlhood secure a specific understanding of dominant society in that the acts of violence they commit deeply disturb social ideals of

innocence and respectability. When white youth commit acts of violence this disturbance is even more difficult to explain away as it is the children of respectable citizens that are perpetrating violence raising questions about the violence that runs through every aspect of society.

After three trials clearly the passage of time has taken a toll. Witnesses have died, experienced mental illness, disappeared and forgotten what they said, saw or did. This combined with Defence strategies of positioning Ellard as a good girl in contrast to deviant Crown witnesses blurs evidence with social narratives. While the evidence may seem to be deteriorating, time will tell if the narrative of girl violence and the dichotomy between good and bad girls prevails. Although the last jury found Ellard guilty, should another trial be held, race and gender and other social relations will continue to shape legal proceedings and media representations of this case. The question is not if racism is a factor, but how it is a factor – how it shaped the context in which the murder of Reena Virk occurred and social responses to it during the past nine years.

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<sup>1</sup>Testimony given on March 10, 2005 by Dr. Gray at the murder trial of Kelly M. Ellard.

<sup>2</sup>Pursuant to the *Youth Criminal Justice Act*, minors charged with a criminal offense can not be publicly identified.

<sup>3</sup>The Sisters in Spirit Campaign was launched by the Native Women's Association to raise awareness about the alarmingly high rates of violence against Aboriginal women in Canada with particular attention to racialized and/or sexualized violence. See website: <http://www.sistersinspirit.ca/enghome.htm>

<sup>4</sup>See the FREDa Centre for Research on Violence Against Women and Children website for Canadian statistics on girls and violence: <http://www.harbour.sfu.ca/freda/articles/stat2.htm>

<sup>5</sup>Brenna Bhandar examines the videotape and the first trial of Kelly Ellard in detail. She argues that while the tape was rightly ruled as inadmissible by Judge Morrison, its contents contradict her assessment of Ellard as low risk and naïve about the legal system. Bhandar furthermore argues that race, gender, class, ability, and sexuality played a central role in the approaches taken by the Crown, Defence and Judge Morrison at Ellard's first trial.

<sup>6</sup>Keeping in mind that charges of assault are often made against the public and imprisoned persons when they

resist police harassment. Ellard could have been unaware of contraband restrictions or willing to risk an attempt at bringing contraband into the prison.

<sup>7</sup>Karla Homolka and serial rapist Paul Bernardo murdered Homolka's youngest sister Tammy (December 1990), Leslie Mahaffy (June 1991) and Kristen French (April 1992). Their trials were high profile in Ontario and the release of the film has been highly controversial.

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## JOCELYNE DUBOIS

### REPRODUCTION

I visit my pregnant sister and we eat in her living room in front of her aquarium full of neons & she lifts her hand-made dress to display her round naked belly & I watch & I take a bit of lettuce while she pokes & slides her fingers along her belly drawing invisible shapes of her unborn child & she takes my hand & holds it under her hand & over her belly — my other hand pokes lettuce with a fork & we sketch with one hand & eat with the other but I lose my appetite & when I leave I leave hungry.

*Jocelyne Dubois short stories have appeared in The Dalhousie Review, Exile, and forthcoming in Transition.*