

Judging Women

The Pernicious Effects of

BY JANICE DU MONT AND DEBORAH PARNIS

Les mythes reliés au viol nous donnent une vision erronée des réactions de la société et des institutions envers les femmes victimes de viol. Inspirées des recherches en littérature centrées autour de la nature et de l'incidence de ces mythes, les auteures examinent leur omniprésence dans le cas R. c. Ewan-chuck et les réactions du public face à la Cour suprême du Canada qui a renversé la décision de la Cour d'appel.

We live in a culture characterized by both pervasive violence against women and a mistrust of those who have been violated. For many women, the horrifying experience of having been raped¹ may be compounded by a criminal justice system which responds with suspicion and disbelief. In reality, the woman who has been sexually assaulted frequently finds that both she and the accused are being judged. At the heart of this systemic bias is a long tradition of rape myths that have permeated not only the legal system, but that are pervasive in society. Here we review some of the key research literature centred around the nature and prevalence of these broadly held myths. We highlight the ongoing magnitude of this problem through an examination of *R. v. Ewan-chuk* (1998) and the response of Alberta's Appeal Court Justice John McClung to a side judgment by Madam Justice Claire L'Heureux-Dubé to a Supreme Court of Canada ruling which overturned his decision in this case. His response and the ensuing public debate reveal that rape myths may be the tip of the iceberg with respect to broader negative attitudes toward women. We argue that measures be taken to eliminate gender-based stere-

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otyping within the criminal justice system *and* in society.

How rape myths hurt women

Rape myths underlie and fuel violence against women and inform the negative societal reactions to those who have been sexually assaulted (Ward 1995; see also Briere, Malamuth, and Check; Brownmiller; Torrey; Weis and Borges). Defined as "prejudicial, stereotyped, or false beliefs about rape, rape victims and rapists" (Burt 1980, 217), these myths serve to trivialize, justify, and deny sexual assault (Burt 1991; Lonsway and Fitzgerald). Some common myths include:

women mean "yes" when they say "no"; women are "asking for it" when they wear provocative clothes, go to bars alone, or simply walk down the street at night; only virgins can be raped; women are vengeful, bitter crea-

tures "out to get men"; if a woman says "yes" once, there is no reason to believe her "no" the next time; women who "tease" men deserve to be raped; the majority of women who are raped are promiscuous or have bad reputations; a woman who goes to the home of a man on the first date implies she is willing to have sex; women cry rape to cover up an illegitimate pregnancy; a man is justified in forcing sex on a woman who makes him sexually excited; a man is entitled to sex if he buys a woman dinner; [and] women derive pleasure from victimization. (Torrey 1015)

Rape myths perpetuate the belief that women are responsible for their own victimizations (Burt 1980; Kopper).

These false beliefs and negative stereotypes about rape and women who are raped are pernicious and widespread (Giacopassi and Dull). They have been linked to the likelihood of labelling rape "rape" (Burt and Albin; Norris and Cubbins), stereotyped expectations of women's behaviour (Burt 1980; Check and Malamuth; Costin; Truman, Tokar and Fische), stereotyped notions of male sexuality (Cowan and Quinton), sexual conservatism (Check and Malamuth), beliefs that sexual relationships are inherently adversarial (Burt 1980; Caron and Carter; Check and Malamuth; Quackenbush; Ward 1988), the acceptance of interpersonal violence (Burt 1980; Check and Malamuth; Quackenbush), the self-reported likelihood of raping (Bohner, *et al.*;

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Briere and Malamuth; Check and Malamuth; Quakenbush), self-reported sexual aggression (Koss, Leonard, Beezley, and Oros; Muehlenhard and Linton), and higher rates of reported sexual assault (Muir, Lonsway, and Payne). In experimental situations, these beliefs have been associated with an unwillingness to convict an assailant of rape (Burt and Albin) and to sentence offenders strictly (Quackenbush). Martha Burt (1980) found that more than 50 per cent of the 598 Minnesota residents whom she surveyed endorsed rape myths regarding the woman's moral character and her propensity to lie. Of 122 West Virginian adolescents aged 14 to 19 surveyed by Ruth Kershner, over half strongly agreed that some women fantasize about being raped (52 per cent) and provoke men into sexually assaulting them (53 per cent).

The questioning of women's credibility within the criminal justice system

A woman known legally as Jane Doe was sexually assaulted on August 24, 1986. She was the fifth victim of a serial rapist who stalked women within a five-block radius of inner-city Toronto. She sued the local Board of Commissioners of Police, alleging that the police had used her as "bait" to apprehend the perpetrator. After 11 years of litigation, she was awarded \$220,000 in damages on July 3, 1998. Ontario Court Justice Madam Jean MacFarland concluded at that time that "the police failed utterly in the duty of care they owed Ms. [Doe]" (*Jane Doe v.*

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Toronto [Metropolitan] Commissioners of Police para 174). She stated,

[the] investigation and the failure to warn in particular, was motivated and informed by the adherence to rape myths as well as sexist stereotypical reasoning about rape, about women and about women who are raped. (*Jane Doe v. Toronto [Metropolitan] Commissioners of Police* para 162)

Although feminists like Susan Brownmiller have been writing about this problem for years, few research studies have systematically examined law enforcement and legal personnel views on rape. Of those that have, many are dated, and some findings may be not be generalizable to Canada as they have drawn largely on small samples and American data. Nonetheless, their results indicate that some police, prosecutors, and judges hold the same negative atti-

tudes and stereotypes that also pervade society.

John LeDoux and Robert Hazelwood surveyed 2,170 police officers in the United States about their attitudes and beliefs toward rape and reported that overall these officers viewed rape as a serious crime and were generally sympathetic to women who had been sexually assaulted. However, at the same time, the respondents agreed with a psychopathological view of rapists as sexually frustrated and out of control. Furthermore, they tended to believe that women provoke rape by dressing or behaving seductively. Appearance, previous sexual contact with the assailant, and age were factors they agreed influenced the legal resolution of rape cases.

Examining American police officers' definitions of rape, Rebecca Campbell and Camille Johnston found that 51 per cent of the 91 officers surveyed gave definitions of rape heavily influenced by rape myths. Their examples included:

Sometimes a guy can't stop himself. He gets egged on by the girl. Rape must involve force—and that's *really* rare; [and]

Men taking what women really want at that moment but decide they didn't the next morning when they sober up. (268)

Among this group, sexual assaults that did not conform to the stereotypical rape scenario (e.g., an armed stranger leaping out of the bushes at night) were discounted. Beyond their difficulties regarding the veracity of women raped by acquaintances, these

officers had the least positive views of women and were most accepting of interpersonal violence.

Research findings have suggested that women police may also share some of the same negative perceptions about rape and women who are raped. David Lester, Fred Gronau and Kenneth Wondrack compared attitudes toward rape in female college students and female police recruits. They found that the recruits were more likely than the students to believe that women provoke rape and should resist an assailant vigorously. They were also more likely to view rape as a sex crime and to believe that women with good reputations do not get raped. Neither group of women tended to agree that rape was a crime of power.

There is evidence to suggest that prosecutors have also been considerably concerned with assessing the credibility of the sexually assaulted woman. In a study of prosecutorial decision-making (Law Enforcement Assistance Administration), 145 American prosecutor-respondents stated that the use of physical force, injury to the raped woman, her resistance and promptness of report, and proof of penetration were important in securing a conviction. The authors noted that force and injury "[were] ... related to the credibility of the victim, ... [and were not] necessary elements of the crime" (19). In fact, prosecutors reported that they sometimes requested that the woman take a lie detector test.

Eighteen prosecutors in Winnipeg were similarly queried about the factors required for conviction (Gunn and Minch). The use of physical force or a weapon, injury to the raped woman, and the interpersonal context of the offence were among the top five factors ranked. In fact, 17 of the prosecutors stated that one of the difficulties in securing a guilty verdict was the perceived credibility of the woman who had been sexually assaulted. As well, concerns about her veracity included references to her lifestyle and per-

sonal characteristics.

In a larger study, Lisa Frohmann examined the prosecutorial rejections of sexual assault cases over a two-year period (1989 to 1990) in two California jurisdictions. After observing over 300 case screenings and interviewing the investigating officers and prosecuting district attorneys in-

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involved in those cases, she reported that negative stereotypes and false beliefs about women who had been raped were used to discount sexual assault complaints or determine the cases as being unconvictable. Women with "criminal connections," whose stories were inconsistent, who did not report immediately to the police or appear upset during the interview, and who continued to see the assailant after the assault were more likely to have their cases screened out of the legal system by prosecutors.

Carol Bohmer examined judicial attitudes toward raped women with seemingly similar results. Her interviews with 38 Philadelphia judges in 1971 revealed that "their central orientation in trying rape cases [was] to evaluate the credibility of the victim's allegation that forcible rape ... [had] occurred" (304). These judges tended to rank cases by the level of credibility ascribed to the woman. A complainant was perceived as "genuine" (i.e., assaulted by a stranger in a

park at knife point), "asking for it" (e.g., met the assailant in a bar), or simply "vindictive" (i.e., wasn't raped or the sex was consensual). They also placed significant weight on circumstantial evidence during rape trials. This evidence included whether the woman was willing to cooperate, her reason for filing the complaint, and the promptness of her report.

Hubert Feild investigated the attitudes toward rape of 1,448 American police, citizens, rape crisis counsellors, and rapists. Overall, police officers were more similar to rapists than crisis counsellors with respect to their attitudes toward the etiology of rape and raped women. The law enforcement officers and rapists tended to agree that rape is a crime of sexual passion not power, that sexual offenders are mentally ill, and that women who have been raped are somehow less desirable. These officers were also the group most likely to believe that women may precipitate rape by how they dress and behave.

In a similar study, Shirley Feldman-Summers and Gayle Palmer examined the attitudes toward rape of 83 American police officers, prosecutors and judges and compared them to rape crisis centre employees. The authors found that the law enforcement and legal professionals were more likely than the rape crisis workers to endorse rape myth-laden statements about the causes (e.g. women dress seductively and say "no" when they mean "yes") and prevention of rape (e.g., women should change the way they behave). They were also more likely than the social service personnel to believe a complaint was false. The authors found no differences between the groups regarding what constituted a "real" rape. A report was believed to be false if a woman was not injured, did not report the assault promptly, was unwilling to take a lie detector test, had engaged in pre- or extra-marital sex, knew the assailant, accompanied him willingly, or gave more than one account of the offence.

More recently, Colleen Ward (1988, 1995) surveyed the attitudes toward rape of 510 police officers, doctors, lawyers, and counsellors in Singapore. All four professional groups endorsed a wide range of rape myths. More than 70 per cent of the overall sample agreed that women provoke rape by how they dress. Nevertheless, the police held the most stereotypical negative views of raped women. More than 50 per cent of these officers agreed that accusations of rape by bar girls, dance hostesses and prostitutes should be viewed with suspicion; many women claim rape if they have consented to sexual relations but changed their minds afterwards; the extent of a woman's resistance should be the major factor in determining if a rape has occurred, [and]; a healthy woman can successfully resist rape if she really tries.²

Ward and other social scientists have argued that the acceptance of rape myths by law enforcement and legal professionals prejudices the treatment of women within the judicial system (e.g., Bohmer and Blumberg; Edwards; Mack; Schwendinger and Schwendinger; Torrey; Weis and Borges). Indeed, many studies suggest that a sexually assaulted woman may be "twice traumatized" (e.g., Bohmer and Blumberg; Busby; Hendricks; Renner and Parriag). Her veracity may be challenged both during the police investigation and the prosecution (LaFree; Robin). Later, "she becomes the focus of the trial, and it is her actions, not those of the alleged offender, that are dissected and debated" (Andrias 3). The results of a recent Alberta Court of Appeal ruling are illustrative.

How some judges judge women: the case of Mr. Justice John McClung

On February 13, 1998, Mr. Justice John McClung of the Alberta Court of Appeal upheld a lower court's acquittal in a sexual assault case. His decision, which was later

appealed to the Supreme Court of Canada, sparked a frenzied media reaction and a spate of controversy and public debate. It is clear evidence of the persistence of rape myths at a senior level of the criminal justice system.

On a summer evening in 1994, Steve Brian Ewanchuk, who had pre-

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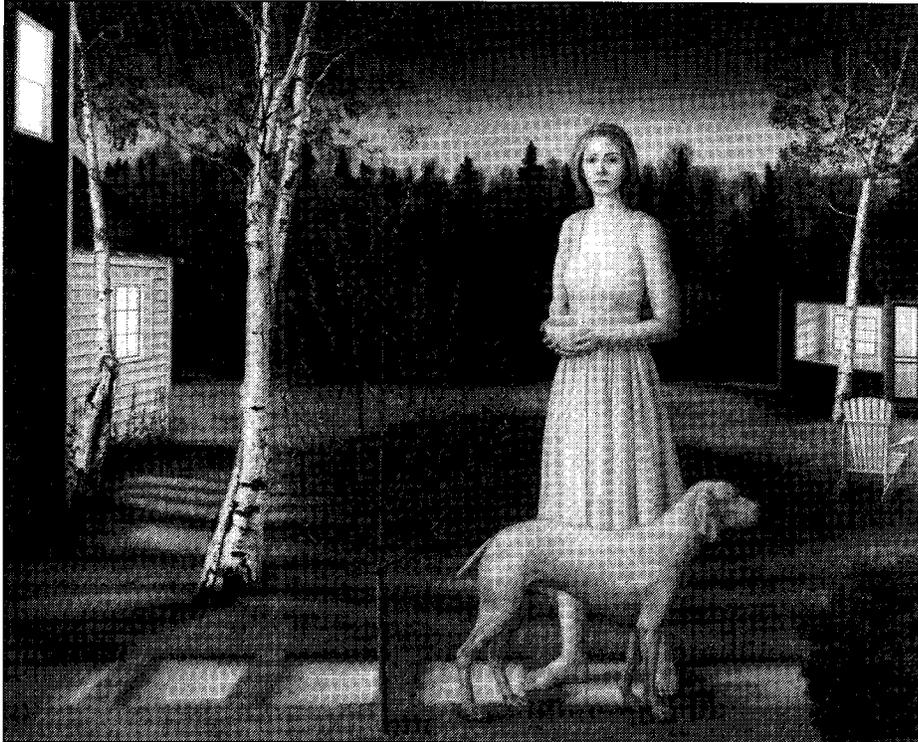
viously been convicted of three rapes, sexually assaulted a 17-year-old girl after what was ostensibly a job interview for a position in his woodworking business. Following the interview in Mr. Ewanchuk's van, which was parked outside an Alberta mall, he asked the woman if she would like to see a sample of his work in the attached trailer, to which she agreed. Once in the trailer, Mr. Ewanchuk proceeded to initiate

a number of incidents involving touching each progressively more intimate than the previous, notwithstanding the fact that the complainant plainly said "no" on each occasion. He stopped his advances on each occasion when she said "no" but persisted shortly after with an even more serious advance. Any compliance by the complainant was done out of fear and the conversation that occurred between them clearly indicated

that the accused knew that the complainant was afraid and certainly not a willing participant. (*R. v. Ewanchuk*)

Following the incident, the young woman contacted the police and Mr. Ewanchuk was charged with sexual assault. He was acquitted, however, by an Alberta trial judge who accepted the defence of "implied consent," concluding that despite the fact the sexually assaulted woman had clearly stated that she did not want Mr. Ewanchuk to touch her and that she submitted to the sexual activity only out of fear that resistance would provoke a more violent reaction from him, the accused's perception of the complainant was that she had been agreeable to his increasing advances. This acquittal was upheld in the provincial Court of Appeal where it was concluded that the Crown had failed to prove that the "accused posed the requisite criminal intent" (*R. v. Ewanchuk* 1999, para. 18) and that "the onus [was] not on the accused to prove implied consent ... [but] on the Crown to prove beyond a reasonable doubt that there was an absence of consent" (qtd. in "A Touch is Just a Touch" 14).

Although the ruling was problematic in legal terms, it was Mr. Justice McClung's attack on the character and behaviour of the sexually assaulted woman that revealed biases rooted in rape myths. He commented on her clothing: "the complainant did not present herself ... [to the accused] in a bonnet and crinolines" (qtd. in *R. v. Ewanchuk*, para. 88); her past sexual history and her lifestyle: "she was the mother of a six-month old baby and ... along with her boyfriend, she shared an apartment with another couple" (qtd. in *R. v. Ewanchuk*, para. 88); and the way in which she reacted to both the perpetrator and the assault: "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



Valerie Palmer, "Olvera," oil on linen, 48" x 60", 1994.
 Courtesy of Nancy Poole's Studio, Toronto, Ontario. Photo: Tom Moore

well-directed knee" (qtd. in *R. v. Ewanchuk* 1999, para. 93). He also described Mr. Ewanchuk's behaviour as an expression "of romantic intentions ... far less criminal than hormonal" (qtd. in *R. v. Ewanchuk* 1999, para. 90, 92). Furthermore, he was quoted later as saying that the complainant "was not lost on her way home from the nunnery" (qtd. in Saunders A4).

Both the acquittal and Mr. Justice McClung's statements elicited a strong response from the Supreme Court, which unanimously reversed the Alberta Court of Appeal's decision and stipulated a conviction. Writing on behalf of the other eight judges, Mr. Justice John Major stated that "the trial judge relied on the defence of implied consent ... a mistake of law as no such defence is available in ... Canada" (*R. v. Ewanchuk* 1999, para. 1). The Court's decision firmly upheld the principle of "no-means-no." Furthermore, in a side judgment, Madame Justice Claire L'Heureux-Dubé sharply criticized Mr. Justice McClung's ruling.

This case is not about consent,

since none was given. It is about myths and stereotypes ... that any woman could successfully resist a rapist if she really wished to; that the sexually experienced do not suffer harms when raped; ... that women often deserve to be raped on account of their conduct, dress, and demeanor. (*R. v. Ewanchuk* 1999, para. 8)

Mr. Justice McClung took this judgment personally and launched a scathing and highly personal attack on Madame Justice L'Heureux-Dubé. In a letter published by the *National Post*, he implied that the Supreme Court judge was responsible for the high rate of male suicide in her home province of Quebec (McClung). Although his words stunned many in the legal community and the public, he found a sympathetic constituency among those who saw this highly publicized confrontation as an opportunity to challenge both legal definitions of sexual assault and the experiences of sexually assaulted women, and to attack feminists and women in general.

In identifying the Court's deci-

sion as a feminist ruling, defence lawyer Alan Gold told the *Toronto Star* that Madame Justice L'Heureux-Dubé's judgment "turns (human sexuality) into a business-like formalistic affair where everything must be absolutely clear" (qtd. in Hoy A19) ... "and 'puts complainants on a pedestal' by absolving them of any responsibility for their conduct" (Hoy A19). Toronto lawyer Edward Greenspan asserted that L'Heureux-Dubé was "intemperate, showed a lack of balance, and a terrible lack of judgment" and incorrectly claimed that she had called McClung "the male chauvinist pig of the century ... [and the] ultimate sexist jerk" (qtd. in Kozinski). Perhaps the *coup de grâce*, Barbara Amiel's column in the *National Post*, equated feminists with communists and fascists and argued that L'Heureux-Dubé's judgments were "relentlessly anti-male, illiberal and anti-equality" and implied that she was herself a "victim' ... [and as a] high-achieving wom[an] ... living beyond her intellectual means" (Amiel). We believe that comments such as these may reflect the pervasiveness of negative attitudes toward women in Canada. It remains to be seen if Mr. Justice McClung's words and actions have inadvertently served a valuable function by bringing these negative attitudes to the fore, where they may be clearly and decisively rebutted.

Conclusions

Numerous changes have been made to the sexual assault legislation in Canada since the early 1980s. Many of these were designed to eliminate biases in the legal system that worked against women who had been raped. Their partial success is evident in the Supreme Court's ruling on the *Ewanchuk* case which has established a benchmark precedent for the future. Nevertheless, attitudes such as those expressed by Mr. Justice McClung, Mr. Greenspan, and Mr. Gold suggest that our criminal justice system remains replete with

anti-woman sentiment. Perhaps Quebec Court Justice Mr. Denys Dionne's comment in 1989 best exemplifies this bias: "rules are like women, made to be violated" (qtd. in Picard A4).

Clearly, there is still need for progressive change in the criminal justice system. Some have suggested that the use of expert educational testimony in courtrooms would help dispel the common misconceptions surrounding rape for jurors (e.g., Tetreault). Exposure to the same information for lawyers and judges could also be effective in reducing harmful attitudes toward women (Andrias), as could training programs that include modules on rape mythology.³ Furthermore, there is a dearth of Canadian research studies which document the myriad ways that rape myths shape the legal response to women who are raped.

On a societal level, it remains incumbent upon us all to address the prejudicial views of these women. Studies have shown that the tolerance of rape is linked to stereotypical expectations of women's behaviour, beliefs that sexual relationships are inherently adversarial, and the acceptance of interpersonal violence (Burt 1980). Because these attitudes may be acquired at a very young age (e.g., Kershner), we believe that a long-term strategy to address and prevent violence must be to strengthen and extend community- and school-based educational campaigns aimed at eradicating gender-based stereotyping and inequities. There is evidence to suggest that educational programs can change negative attitudes toward women who are sexually assaulted (Ward 1995); the commitment for change need only be there.

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¹We use the terms "rape" and "sexual assault" interchangeably throughout this paper.

²Items from the "Attitudes Toward Rape Victims Scale" (Ward 1995, 60).

³The effectiveness of any educational initiatives must be periodically evaluated.

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MARINA TRUDEAU

Sexually Abused

My childhood was taken away from me.
At a young age of ten
I was sexually abused.
The next four years
It kept happening over again.
I was too scared to cry,
Too ashamed to tell someone.
Too sore to even move,
For fear the pain would get worse.
For years I lived with the pain
Of being sexually abused.
I drank myself to alcoholism,
I overdosed on pills.
I was in a coma for two days,
For I could not handle my secret of being sexually abused.
My life was ruined so many years ago.
Ten years of counselling pulled me through,
It took me thirty years of recovery.
Mother dearest, you were not there when I was abused.
But when I finally told you
We shed so many tears.
I try so hard to pick up the pieces of my life.
I have quit drinking
So I can start my life all over again.
Someday the pain will go away,
Then I will be able to find happiness.
For I know, there is a man out there for me.
Hopefully, he will be kind and understanding.
My life was no bed of roses
But, I can learn to love again.

Marina Trudeau is an Aboriginal woman from Wikwemikong First Nation. She is the mother of six beautiful girls. Her poetry was published by the National Library of Poetry in 1995.