

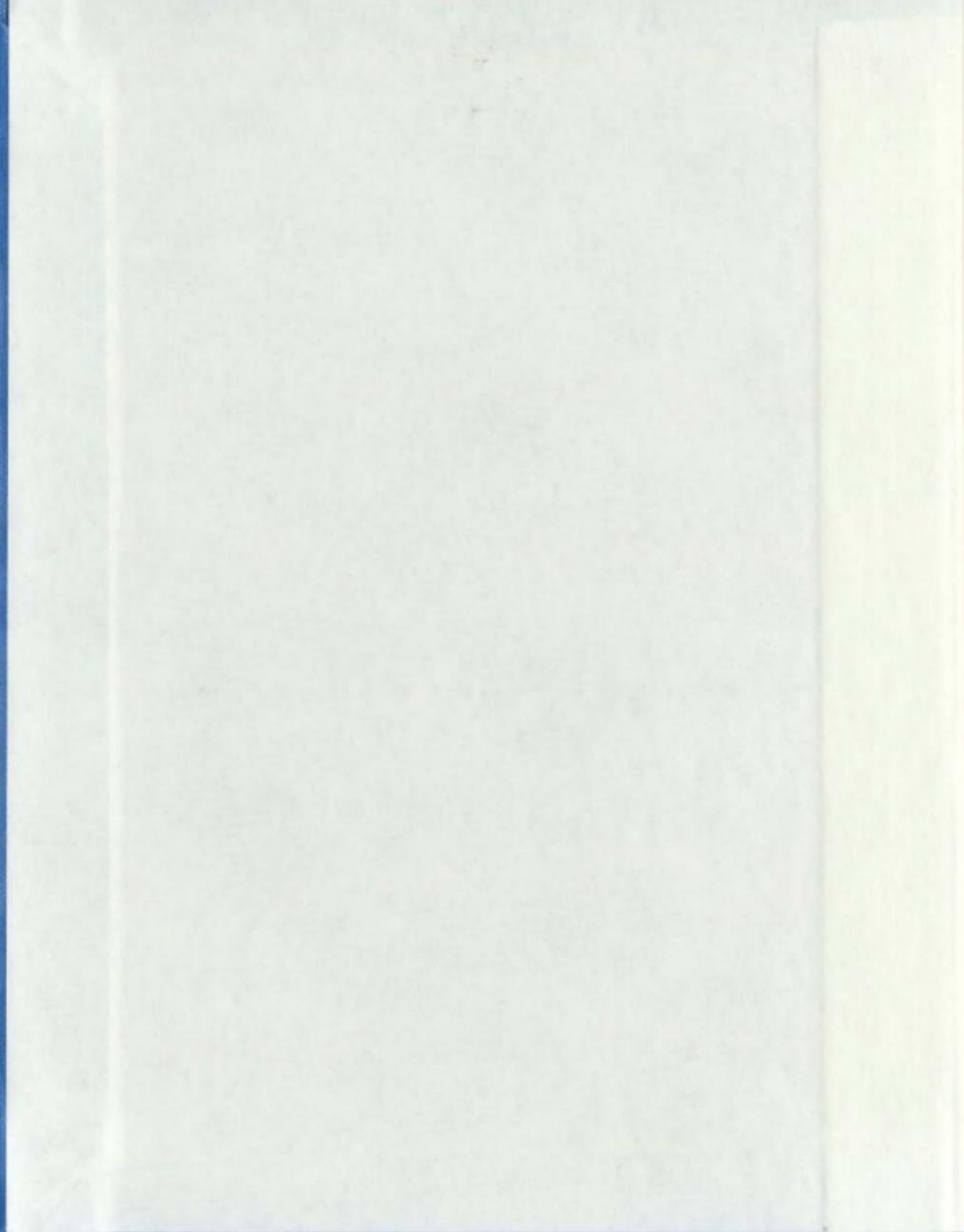
VOICES OUTSIDE LAW:
CANADA'S JUSTICE SYSTEM IN THE LIVES OF
SURVIVORS AND VICTIMS OF SEXUAL VIOLENCE

CENTRE FOR NEWFOUNDLAND STUDIES

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RAMONA ROBERTS



**Voices Outside Law:
Canada's Justice System in the Lives of Survivors and Victims of Sexual Violence**

by

Ramona Roberts

**A thesis submitted to the
School of Graduate Studies
in partial fulfilment of the
requirements for the degree of
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Abstract

This study examines the experiences of survivors and victims of sexual violence with the Canadian criminal justice system. The existing literature about the laws and the legal processing of sexual violence indicates that most cases of sexual violence are not reported, and that few of those reported end in conviction. The literature addressing the emotional impact of sexual violence on survivors, and the process of healing, indicates that legal proceedings are not seen by most survivors or therapists as a positive or even safe experience for survivors.

Eight people who self-identified as survivors and/or victims of sexual violence participated in unstructured personal interviews. Grounded theory methodology was used to identify three main ways in which the criminal justice processing of sexual violence was felt to be hurtful to these survivors and victims: denial of victims' experiences of abuse, blaming of victims for having been abused, and violation of victims' privacy and autonomy. Participants' experiences and/ or fears of each of these injuries are described. The relationship between these experiences and the initial harms to respondents from sexual violence are also explored. Discussion focuses on the roles of abusers, societal responses to victims and Canada's laws on sexual violence in creating and aggravating the injuries common to survivors and victims. Some possible recommendations for improving victims' and survivors' perceptions and experiences of the criminal justice process are addressed. However, the most pressing need is for a widespread consultation of survivors and victims, to expand on the findings from this sample.

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Chapter One — Introduction

Why isn't the Canadian criminal justice system used or trusted by most survivors or victims¹ of sexual violence? What does "the system" mean to victims and survivors?

Sexual violence affects a huge number of Canadians directly, as victims and survivors. The Toronto Women's Safety Project found that two out of every three women² interviewed had experienced "some form of unwanted or intrusive sexual experience." These included rape, attempted rape, incest and other child sexual abuse, among other forms of unwanted sexual touch or exposure.³ The Newfoundland and Labrador Provincial Strategy Against Violence estimates that half of all women and a

¹ In recognition of the different ways in which people who have been sexually violated choose to identify ourselves and our experiences, and our right to make this choice, I have used the common terms "survivor" and "victim" interchangeably in this work — except where individuals have specifically identified themselves. A fuller discussion of these terms is made in Chapter 3 ("Naming Ourselves").

² These figures come from surveys interviewing people identified as women and/or men. There is no way to know to what degree people who identify as neither gender, or both genders, are included, or how transsexual people have been categorized — according to genetic sex or gender identity. Research specifically on how transgendered Canadians experience violence would be a valuable contribution to this discourse; transgendered people are targeted, as a population, by hate crimes, and probably among the least likely to fit the molds of gender-based support services for victims and survivors. The upcoming results of the First National Lesbian Gay and Bisexual Survey, taken in 1998, may shed some public light on these realities.

³ Canadian Panel on Violence Against Women (CPVAW), Changing the Landscape: Ending Violence — Achieving Equality (Final Report, The Canadian Panel on Violence Against Women) Ottawa: Minister of Supply and Services Canada, 1993, Appendix A.

third of all men have experienced “unwanted sexual acts.”⁴ The government of Newfoundland and Labrador acknowledges that at least one in four women experiences sexual assault in her lifetime.⁵

The Toronto Women’s Safety Project found that women were most likely to be assaulted by men (in 96 percent of reports), and by men known to them; 81 percent of the sexual assaults reported to the Project were perpetrated by men known to the women. 38 percent of sexual assaults against women over 16 years of age were perpetrated by husbands, common-law husbands or boyfriends, and 31 percent by men who were dates and/or acquaintances.⁶

People with disabilities experience an even higher frequency of sexual abuse. The DisAbled Women’s Network (DAWN) estimates that over two-thirds of the one million Canadian women with disabilities were physically and/or sexually assaulted before they even reached puberty.⁷ It is predicted that 83 percent of women with disabilities will be

⁴ Provincial Strategy Against Violence and Citizen’s Crime Prevention Association of Newfoundland and Labrador, “Together Against Violence.” (pamphlet)

⁵ Government of Newfoundland and Labrador, Women’s Policy Office, “A Woman’s Guide to Surviving Sexual Assault.” St. John’s: Women’s Policy Office, 1991.

⁶ CPVAW, 1993, Appendix A (“The Women’s Safety Project”), p. A7.

⁷ DAWN, Women With Disabilities: Physical and Sexual Assault, Toronto: DAWN, 1994 in Day, 1995, p. 23.

sexually assaulted in their lifetime.⁸ In particular, 81 percent of psychiatric inpatients, male and female, are “victimized by sexual assault.”⁹ Ticoll notes that violence against people with disabilities occurs “in the context of systemic discrimination against people with disabilities,” and that common abusers are family members and care-givers.¹⁰

Survivors with disabilities may be even less likely or able to report sexual violence than able-bodied women, for some of the same reasons that they can be more vulnerable to violence; contributing factors identified in the literature include negative public attitudes toward disability, power imbalances between people with disabilities and those they depend on for care, especially in institutions, the socialization of people with disabilities to be compliant, and the perceived lack of credibility of people with disabilities when they report or disclose abuse. In addition, the process of reporting is inaccessible to many victims with disabilities, due to barriers like physically inaccessible services or the absence of interpreters, and the lack of training or protocols for police officers in responding to the possibly different needs or communication of victims with mental disabilities.¹¹

⁸ Miriam Ticoll and L’Institut Roeher Institute for the National Clearinghouse on Family Violence, Violence and People With Disabilities: A Review of the Literature. Ottawa: Ministry of Supply and Services, 1994, p. 16.

⁹ Ticoll, 1994, p. 16.

¹⁰ Ticoll, 1994, p. v.

¹¹ Ticoll, 1994, and, 1997.

Sexual violence against Aboriginal women, men and children is also both prevalent and underacknowledged.¹² As the Canadian Panel on Violence Against Women (CPVAW) notes, “there is a serious lack of research on Aboriginal women, particularly Metis, Status and non-Status women not residing on reserves and elderly women, who are victims of violence and abuse.” The Ontario Native Women’s Association found that 8 out of 10 Aboriginal women studied had personally experienced violence, and that 57 percent of those women had been sexually abused.

It is recognized in the literature that sexual violence against Aboriginal people takes place in a context of systemic racism and attempted genocide on the part of a white-dominated Canadian government and non-Aboriginal society. The forced internment of Aboriginal children in residential schools, described as “brutal institutions where physical and sexual abuse, substandard conditions and inadequate care were endemic,”¹³ was the policy of Canadian government for more than one hundred years. The impact of this attempt to destroy Aboriginal cultures and societies has been described as similar to a nuclear explosion, “with the blast damaging some more directly than others, but with fall-

¹² Ontario Native Women’s Association, “Breaking Free,” in *Perception*, Vol. 15, No. 4, cited in CPVAW, 1993, and Miawpukek Human services Consulting, [Finding Our Way: Supporting Families in Crisis](#), Conne River Reserve, Micmac Territory, NF: Miawpukek Mi’kamamwey Mawi’omi/Council of the Conne River Micmacs, 1993.

¹³ M-J Milloy, “Stolen Children,” in *Hour*, January 29, 1998.

out and nuclear winter affecting everyone.”¹⁴

Racist views of Aboriginal women as sexually promiscuous, as less sensitive, or even as animals, promote the attitude that Aboriginal women are available for the sexual use of white men.¹⁵ Racism and sexism, prevalent within law enforcement and social services and even women's shelters¹⁶ lead to indifference toward violence against Aboriginal survivors, whose calls to police may be ignored, and whose very experiences of abuse have been used against them as examples of the supposed sickness of their Aboriginal "cultures".¹⁷ The initiatives of various Aboriginal communities to develop community-based Aboriginal-run services for victims and abusers have often received little or no government funding, leaving many Aboriginal survivors, victims and abusers with nowhere to turn for real help.¹⁸

Sexual violence can have a profound impact on our lives. Survivors and victims

¹⁴ Cariboo Tribal Council, "Faith Misplaced: Lasting Effects of Abuse in a First Nations Community," in *Canadian Journal of Native Education*, Vol. 18, No. 2, cited in CPVAW, 1993, p. 176.

¹⁵ CPVAW, 1993, Ellen Bass and Louise Thornton, *I Never Told Anyone* and Thornton, 1991, and Mary Crow Dog, *Lakota Woman*. New York, NY: Grove Weidenfeld, 1990.

¹⁶ CPVAW, 1993, Chapter 15.

¹⁷ Teresa Nahanee, "Sexual Assault of Inuit Females: A Comment on 'Cultural Bias'," 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.

¹⁸ CPVAW, 1993, pp.166-167.

have described the effects of sexual violence as “devastating”, or as “tearing up my existence.” The healing literature on sexual violence identifies shame, self-hate, Post-Traumatic Stress Disorder as common effects among of sexual violation. These effects, as well as those of physical injuries, can last for years after sexual abuse, affecting survivors’ physical, emotional, social and financial well-being.¹⁹

Not all of us survive. It is estimated that each week in Canada, two women are killed by their male sexual partners. Children, too, are killed by those who sexually abuse them. And many survivors and victims of sexual violence have killed themselves when they could no longer live with the effects of the abuse.²⁰

Sexual violence, in many forms, is against the law in Canada. The Criminal Code defines “sexual assault” as “an act of unwanted touching,” in which “the nature of the assault, objectively, violates the complainant’s sexual integrity.”²¹ The Criminal Code also prohibits specific forms of sexual violence perpetrated by adults against children

¹⁹ Diana E.H., Russell, The Secret Trauma: Incest in the Lives of Girls and Women. New York: BasicBooks, 1986., Judith Lewis Herman, Trauma and Recovery: The aftermath of violence—from domestic abuse to political terror. BasicBooks, 1992, Tanis Day, The Health-Related Costs of Violence Against Women in Canada: The Tip of the Iceberg. London, ON: Centre For Research on Violence Against Women and Children, 1995.

²⁰ For discussion and support on survivors and suicidal feelings, see especially Ellen Bass and Laura Davis, The Courage to Heal: A Guide for Women Survivors of Child Sexual Abuse. New York, NY: HarperCollins, 1994, pp. 212-213, 436.

²¹ Criminal Code of Canada, s. 271, excerpted in Anita Szabo et al, An Investigative Guide for Sexual Offences. Ottawa: Royal Canadian Mounted Police, 1997.

(sexual interference), and by adults in a position of trust or authority over minors (sexual exploitation). In these cases, as in cases in which complainants were threatened, the law recognizes that victims can be pressured or manipulated into agreeing to sexual activity where they are not in a position to meaningfully consent to it; in these cases, it is not a defence to argue that the victim consented.²²

The laws and processing of sexual violence have been significantly improved since the early 1980s, largely in response to the concerns of victims, survivors and our advocates. Prior to 1983, "rape" was defined in terms of heterosexual penetration, rather than the violation of sexual integrity, denying any injury to women which was not directly related to penetration. (The abuse of men was covered under separate offences.) Even this concern with nonconsensual vaginal penetration was not focused on the injury to the victim as much as on her husband and her marriage; until 1983, rape was defined as sexual intercourse by a male "with a female person who is not his wife."²³ With the reforms to the law on sexual violence passed in 1983 (Bill C-127), this legal entitlement of men to rape their wives was eliminated, and the primary criteria shifted from the sexual "purity" of women (or sole penetration rights of husbands) to the protection of bodily integrity. Changes to the processing of sexual assault complaints have also added some

²² *Criminal Code of Canada*, ss. 151, 153 and 150 (1.2), excerpted in Szabo et al, 1997.

²³ Maria Los, "The Struggle to Redefine Rape in the Early 1980s," in Roberts and Mohr, 1994, p. 48.

protections for victims as complainants in the criminal justice process, such as the 1992 “Rape Shield” law (Bill C-49), restricting the use of a complainant’s sexual history as evidence in a sexual assault trial.

Survivors and victims of sexual violence are encouraged to report these (and other) crimes to the police, initiating the processing of the crime by the criminal justice system. Publicly distributed literature produced by our provincial and federal governments explain the law on sexual assault, and the various stages of processing of a sexual assault complaint through the institutions most of us know collectively as “the legal (or justice) system”: reporting to the police and the police investigation, testifying in court, the sentencing and appeal processes. This literature also emphasizes some important rights and protections for survivors during the process. Survivors may bring a support person along when reporting the crime. In some provinces, Victim Services programs offer accompaniment and/or counselling to victims during legal proceedings. To protect our privacy, victims can request a no-publication order, forbidding the media from identifying the victim. In most cases, since 1992, a survivor’s sexual history may not be brought up in court. And the fact that a victim previously consented to sexual activity with the person who assaulted her does not mean that the perpetrator cannot be charged.²⁴

²⁴ All points paraphrased from Government of Newfoundland and Labrador, Women’s Policy Office, 1991 and Government of Newfoundland and Labrador, Department of Justice, “Victim Services: Helping Victims of Crime in Newfoundland & Labrador.”(pamphlet)

The process of reporting and testifying will be hard, the Newfoundland government's information pamphlets warn us. But, we are reminded, "sexual assault is a crime and a social problem," and that "an understanding friend or relative, or a rape crisis worker, can provide support throughout the procedure."²⁵

Even with these more inclusive laws against sexual violence, provisions to protect our privacy, support services and information -- and admonishments to "come forward" and help to fight against the social problem of violence -- the majority of survivors and victims still do not attempt to approach the legal system. It is estimated that only 6 to 10 percent of sexual assaults in Canada are reported to police.²⁶ Within survivors' groups, women's groups and other support services for survivors and victims, "the system" is widely and strongly understood to be a dangerous place for victims and survivors. Many lawyers, therapists and crisis line workers warn survivors and victims against reporting, or at least urge careful consideration of the strength it will take.²⁷ Bass and Davis, authors of The Courage to Heal, a guide for women survivors of child sexual abuse, warn survivors considering reporting:

²⁵ Government of Newfoundland and Labrador, Women's Policy Office, 1991, p. 12.

²⁶ Megan Ellis, Surviving Procedures After A Sexual Assault (Third ed.) Vancouver: press gang publishers, 1988. p. 22., Violence Against Women Survey, Statistics Canada, 1993, cited in Julian V. Roberts, Criminal Justice Processing of Sexual Assault Cases. Ottawa: Statistics Canada, 1994.

²⁷ Mary Rogan, "Judgement call," in *Chatelaine*, October 1998, Jane Doe (Memorial University Women's Studies Speakers' Series) 1998, Ellis, 1988.

[I]t is important to recognize that the legal arena has become a battleground...if you go to court today, you will be entering the legal system at a time when your memories (and your therapist) are likely to be attacked by expert witnesses for the defence, when the media may challenge your credibility, and when your perpetrator may fight back vigorously, claiming that he has been falsely accused...Each survivor must weigh his or her decision carefully, with full consciousness of the risks and challenges involved, the likely impact on the process of healing, and a realistic understanding of what can and cannot be achieved through the law.²⁸

Survivors and victims who have reported, even those whose abusers have been found guilty and sentenced to jail, describe their experiences of the system as “months of torment,”²⁹ and, by now a catch-phrase among survivors and our supporters, as “another rape.”³⁰

The prevalent view among survivors and victims of the system as the source of “another rape” suggest that while important changes to the law and the system have

²⁸ Bass and Davis, 1994, p. 320.

²⁹ Susan Pederson, “No longer his daughter,” in *homemaker's*, January/February 1997, p. 16.

³⁰ Migael Scherer, Still Loved by the Sun: A Rape Survivor's Journal. New York: Simon & Schuster, 1992.

removed some barriers to our participation, survivors and victims have other reasons to fear, and avoid, the process. To many of us, these reasons are obvious — part of what “everybody knows” about how sexual abuse and our society’s responses to it work. But whether it is because the problems with having to tell police and a court about our experiences of sexual violation are so obvious that we see no need to spell them out, or because, perhaps, we are afraid that those who do not intuitively know will not understand, survivors, victims, and the literature on sexual violence in general, have rarely put what “everybody knows” into words. Faced with intimidating and impersonal legal terms, and laws mostly written by men, perhaps many of us *don’t* have words. Perhaps, as Jean-Francois Lyotard describes in his theory of conflicting languages, survivors’ and victims’ experiences of the system are inexpressible in the language of the laws on sexual violence. As Lyotard explains about survivors of Auschwitz, who cannot fully communicate what happened there to those who don’t know, “human beings endowed with language were placed in a situation such that none of them is now able to tell about it.”³¹ Lyotard theorizes a system of power through language, in which only those beliefs about reality which are compatible with the other premises of the dominant discourse can be expressed within that discourse. Statements which are incompatible with the dominant discourse are part of a language which no one can speak, and which cannot

³¹ Jean-Francois Lyotard, translated by Georges van Den Abbeele, The Differend: Phrases in Dispute. Minneapolis: University of Minnesota Press, 1988, p. 3.

fully be translated. As a result, the suppressed beliefs are silenced by a lack of words —
-- the realities they express are unspeakable.

In this study, I asked survivors and victims to speak into this particular silence, bringing together realities of living with sexual abuse, healing needs, and the effects of the law and the legal system on survivors' lives. As my basic question, I asked, "How has the Canadian legal system affected you as a survivor/victim?" Eight people chose to share some of their experiences of, and feelings about, the system with me in unstructured personal interviews. We started with this question, and the interviews took different directions, following the answers in each participant's story. Using a grounded-theory approach, I tried to hear and articulate their lived experiences of the system, developing a theory of the system from the realities I heard from participants, rather than simply building on previous assumptions about the meaning of sexual violence to survivors, or what victims might want or expect from the system. I tried to be ready to listen for new words.

Each participant expressed strong feelings about the process as she had experienced it, including anger and disappointment, fear, distrust and disgust. Their stories showed clearly that there is another side to the story of sexual abuse and the justice system, which is ignored in the law. In these stories, the process profoundly fails the victims and survivors, as well as the perpetrators and their future victims, of sexual abuses the law names as crimes. The system in itself was hurtful or threatening to

participants, in ways which substantiate the summary descriptions of the process as "another rape." Perhaps most hurtful of all, many participants felt that no one was listening. For many, this study presented a long-awaited opportunity: to be asked, as a survivor or victim, how well the legal system worked, and what should be done.

I have tried to listen, to hear, and to present these survivors' and victims' stories, along with their and my recommendations for change, honestly and with respect. I hope that I have done them some justice. If I have, it is only the beginning of what they, and the rest of us, deserve.

Chapter Two — Literature Review

The diverse body of work on sexual violence provides, for the most part, only indirect views of what the justice system means for survivors and victims of violence — most of what “everybody knows” about reporting has not been documented and published from survivors’ and victims’ points of view. Those writing in professional capacities on sexual violence, including many survivors and victims, have generally staked their claim to valid knowledge about violence and the legal process on their research, their experience and/or their training. Few make any claim to any knowledge arising from personal experience or feeling. Further, while there is a growing wealth of poetry and personal narratives in which survivors and victims *do* speak as such, few writers have extensively described the legal process as a meaningful component of their recovery.

As a result, this rich and crucial body of literature still has a hole where survivors’ and victims’ knowledge, as survivors and victims, belongs — a hole which is only slowly becoming filled, and whose filling may transform everything else we know about sexual violence, the legal process and justice.

The discourse on sexual violence has prepared the ground for an interdisciplinary voicing of survivors’ and victims’ perspectives on the criminal justice system. Research on the legal status and societal prevalence of sexual violence in Canada, as well as international research on the psychological impact of sexual violence, has provided

ground on which many of us can stand as we name the problem as our problem and probe further into its meaning.

Those who have written on the meaning of Canada's laws and legal process in the struggle to end violence have produced crucial works documenting the rates of reporting and non-reporting, of complaints being investigated or closed, prosecuted or dropped, of abusers being convicted or acquitted, sentenced or slapped on the wrist. Researchers like Roberts and Mohr³², Muzychka,³³ and others have shown, with statistics in law-enforcement terms, that there is a problem with Canada's response to sexual violence. Journalists like Judy Steed³⁴ and the makers of *The Boys of St Vincent's*³⁵ have made the statistical realities accessible, in human faces and voices, to the Canadian public.

Those who have written on the realities of living with and surviving sexual violence have articulated for us that the pain is real, complicated and human. Therapists and other healing professionals, like Herman, Bass and Davis and Kondora³⁶ have offered

³² Roberts and Mohr, 1994.

³³ Martha Muzychka, *Beyond Reasonable Doubt: The Influence of Victim Stereotypes and Social Biases on Police Response to Women's Complaints of Sexual Assault*. St John's: The Provincial Advisory Council on the Status of Women Newfoundland and Labrador, 1991.

³⁴ Judy Steed, *Our Little Secret: Confronting Child Sexual Abuse in Canada*. Toronto: Vintage Canada, 1995.

³⁵ A CBC two-part series, depicting the impact of sexual abuse at a fictional boys' orphanage, over several decades. Released on CBC TV in the fall of 1993.

³⁶ Herman, 1992, Bass and Davis, 1994, L.L. Kondora, "Living the coming of memories: an interpretive phenomenological study of women surviving childhood sexual

supportive frameworks for belief, healing and recovery from violence. They have told healers and clients alike that survivors and victims are not crazy. Most compelling and courageous of all, survivors and victims like Judith Katz,³⁷ Sylvia Fraser,³⁸ Elly Danica,³⁹ Beckylane,⁴⁰ and countless other writers, poets, artists and washroom-wall-writers have told us that we are not alone.

The discourse on sexual violence is still dominated by professional voices, discussing survivors as patients, witnesses or masses, with little space given to the voices of survivors and victims writing of our own or shared experiences as survivors or victims. When we hear survivors' stories, they come, predominantly, from those with the most power to speak; stories of abuse and healing come from those of us who feel safest to come forward, and most invited by interested presses. Most of these survivors' stories, particularly those published in earlier decades, come from white women, survivors and victims who are heterosexual or assumed to be, and from survivors with access to literacy

abuse," in *Health Care for Women International*, Vol. 16, No. 1, 1995.

³⁷ Judy H. Katz, No Fairy Godmothers, No Magic Wands: The Healing Process After Rape. Saratoga, CA: R&E Publishers, 1984.

38 Fraser, Sylvia, My Father's House: A Memoir of Incest and Healing. New York: Harper and Row, 1987.

39 Danica, Elly, Don't. A Woman's Word. Pittsburgh: Cleis Press, 1988.

40 Beckylane, Where the Rivers Join: A Personal Account of Healing from Ritual Abuse. Vancouver: Press Gang, 1996.

and publication. Speaking out takes courage for anyone; speaking out through publication takes literacy, time, money, and a publisher's interest (or even more money).

The discourse also reflects the hierarchy of believability among those no one wants to believe; survivors and victims who were sexually abused by women and survivors of ritual abuse are still close to invisible in the research, self-help and personal narrative components of the discourse on sexual violence. Works like those of Oksane⁴¹, Becklyane⁴² and Goobie⁴³ and special sidebars and chapters on abuse by women or ritual abuse in Bass and Davis⁴⁴ and the report of the Canadian Panel on Violence Against Women⁴⁵, are notable exceptions, no doubt eagerly gathered and cherished by many isolated survivors. Male survivors are often excluded completely from discussions of sexual assault, though increasingly represented by recent works exclusively for or about abused men.⁴⁶

⁴¹ Chrystyne Oksane, Safe Passage to Healing: A Guide for Survivors of Ritual Abuse. New York: HarperCollins, 1994.

⁴² Becklyane, 1996.

⁴³ Goobie, Beth, The Only-Good Heart. Toronto: Pedlar Press, 1998.

⁴⁴ Bass and Davis, 1994, pp. 398-405, 549-50 (abuse by women), 428-35, 518-22, 552-54 (ritual abuse).

⁴⁵ CPVAW, 1993, pp. 45-47.

⁴⁶ See, for instance, Richie J. McMullen, Male Rape: breaking the silence on the last taboo. London:GMP Publishers, 1990; or David Island and Patrick Letellier, Men Who Beat the Men Who Love Them: Battered Gay Men and Domestic Violence. New York, NY: Harrington Park Press, 1991.

These voices on violence are also voices under fire. The discourse on sexual violence is accompanied by an ongoing "backlash" discourse, dedicated to minimizing, trivializing or denying the realities of sexual violence in Canada -- with, as we will see, considerable success in undermining belief of, and legal support for, survivors.

Approaches have included attacking the realities of victims and survivors in general, accusing therapists in general of implanting or manipulating survivors' memories of sexual abuse, and distorting the truth about sexual violence through racist, classist and homophobic prejudice. In some cases, public opinion, policymakers and even judges have been swayed by this general denial of violence and of victims. Studying, speaking and writing of sexual violence in Canada are still necessary as resistance, as defenses of survivors' and victims' realities and rights, as proof, extracted over and over, that there is a problem.

The message we hear about sexual violence, from each voice in the literature, is that the law and the legal system are not generally very helpful for survivors and victims dealing with sexual violence.

Too Few "Successful" Cases: the law's response to sexual assault

Discussions of the processing of sexual assault cases through the criminal process tell us that from the criminal justice perspective, Canada's response to sexual violence has improved in the last fifteen years. Although most of us still are not using them, the new "sexual assault" laws adopted in 1983 allowed more survivors and victims to report abuse. Julian V. Roberts found "a significant increase" in reports of sexual crimes to the police following the 1983 reforms; the total number of reports doubled between 1982 and 1988.⁴⁷ He suggests that some of the increase may be due to the reporting of crimes that were previously excluded from the Criminal Code (such as sexual aggression of any kind by one's husband), or increases only in the reporting of abuse against children. However, Roberts concludes, a large part of the rise in reporting is likely the result of changed attitudes toward reporting among adult victims, as a result of the new laws.⁴⁸

However, while the 1983 reforms opened the door for more victims and survivors to make complaints, as with the old laws, few of the new sexual assault cases ended in conviction.

As had happened with rape complaints, many sexual assault cases were screened out of the process by police as "unfounded" (complaints dismissed by the police where

⁴⁷ Roberts, 1994, p. 18.

⁴⁸ Julian V. Roberts and Michelle C. Grossman, "An Analysis of Police Statistics," in Roberts and Mohr, 1994, p. 73.

they conclude that no crime was committed). Los notes that in the first five years following the changes to the law, the rate of “unfounded” cases remained unchanged from the previous rate for rape cases, at a national average of 14 percent of sexual assaults reported.⁴⁹ This is double the rate at which complaints of assault (violent crimes at the same levels of seriousness as sexual assaults, but not seen as sexual in character) were screened out. The Royal Newfoundland Constabulary Association cites an estimated 2 percent rate of false claims of sexual assault, “comparable to the false claims for any other crime.”⁵⁰ This difference in treatment stayed constant for at least ten years: from 1983 to 1992.⁵¹ The main result of the rise in reporting, Los writes, is that “many more complainants now face suspicion, rejections and the stigma of being branded false accusers.”⁵²

Of those complaints which are deemed “founded,” less than half may ultimately be forwarded by police for prosecution. In addition to the 14 percent of complaints dismissed as “unfounded,” 43 percent of complaints are otherwise filtered out of the system without charges being laid. Overall, this is similar to the rate for assault cases.⁵³ Sexual assault

⁴⁹ Los, in Roberts and Mohr, 1994, p. 38.

⁵⁰ Royal Newfoundland Constabulary Association, 1992 Sexual Abuse and Domestic Violence Awareness Guide. St. John's: Royal Newfoundland Constabulary Association, 1992. p. 133.

⁵¹ Roberts, 1994, p. 27.

⁵² Los, in Roberts and Mohr, 1994, pp. 38-39.

⁵³ Roberts, 1994, pp. 25-26.

cases are filtered out before prosecution for several reasons: Roberts found that police were unable to lay a charge in 27 percent of cases; DuMont and Myhr found a similar rate of cases remaining unsolved three years after they were reported; Roberts found that another 16% of cases were “cleared otherwise” than by charges being laid, including cases in which the suspect was already serving a sentence or had left the country. (The designation as “cleared otherwise”, Roberts notes, means that “from the point of view of the criminal justice system, the case has been resolved, although without the laying of a charge.”) This category may include cases which are closed when victims withdraw from the process. These outcomes are not identified in Roberts’ national survey of police statistics. In their study of 187 victims in Metro Toronto, DuMont and Myhr found a 6 percent withdrawal rate among victims who had reported.⁵⁴ Overall, Roberts found that 57 percent of sexual assault reports were filtered out of the system before prosecution.

Of the cases which are forwarded for prosecution, many do not end in conviction. While there is little information on the rate of convictions across Canada⁵⁵, studies of various urban jurisdictions have suggested that less than two-thirds of sexual assault cases

⁵⁴ Janice Dumont and Terri L. Myhr, “So Few Convictions: The role of client-related characteristics in the legal processing of sexual assaults” (Draft document, Centre For Research in Women’s Health, University of Toronto, 1999), p. 12.

⁵⁵ As Roberts Notes, national statistics on conviction rates were not available, unlike those of complaints made to police and of police response (which are recorded in the Uniform Crime Registry (UCR)). So findings from various cities do not constitute a national rate of convictions in sexual assault cases, or how rates vary from province to province. (Roberts, 1994).

are successfully prosecuted. Clark and Hepworth found that the rate of conviction in sexual assault cases did not significantly increase following the 1983 reforms. The average rate of conviction in cases prosecuted for the six cities they studied was 60.1 percent.⁵⁶ In their study of Toronto cases, Dumont and Myhr found that only 38 percent of cases prosecuted resulted in convictions.⁵⁷

From this legal perspective, the processing of sexual assault cases has been improved by the 1983 legal reforms, but still produces a low rate of successfully completed cases against abusers. These statistics tell us that for anyone who has been sexually violated, reporting to the police is unlikely to result in their “case” being prosecuted, or, if prosecuted, to end in the abuser’s conviction. They do not tell us how the processing of the case, or any of its outcomes, will affect the victim or survivor of the crime.

The discussion of the legal processing of sexual assault presents sexual violence as a crime to be processed. “Sexual assault” is a category of illegal actions, to which the state must respond, when formally notified, through its designated process. The effectiveness or inadequacies of the state’s response to the problem are measured by the success of its process in identifying, proving and punishing these crimes — in the numbers of complaints, investigations, prosecutions, convictions and sentences. These

⁵⁶ Scott Clark and Dorothy Hepworth, “Effects of Reform Legislation on the Processing of Sexual Assault Cases,” in Roberts and Mohr, 1994, p. 127.

⁵⁷ Dumont and Myhr, 1999 (draft document), p. 12.

measures of “sexual assault” tell us a great deal about how the legal treatment of the crime compares (often unfavourably) to others. They tell us that sexual assaults are often not correctly identified as crimes, dismissed as unfounded at a higher rate than other crimes of comparable legal seriousness. They tell us that many sexual assaults are not successfully proven in court. And they tell us that proven sexual assaults may not necessarily be meaningfully or effectively punished.

However, the understanding of sexual violence provided by the legal discussion does not tell us anything about what these measurements, successes and failures alike, might mean for the victims of the crimes being processed. The definitions of sexual offences are based on specific acts, which are deemed to be against the public interest, presumably because they are somehow harmful to society. How the victim experienced these acts is almost irrelevant, as long as the victim chooses, for some reason, to report them and begin the processing of the “crime.”

Alberta Provincial Court Judge Gary C. Cioni articulates the separation of survivors’ experiences of sexual violence from the legal concepts of sexual offences, as a necessary element of the law. Writing in *Vis-a-Vis*, a national newsletter on family violence, he acknowledges that commenting in such a forum is in itself “a kind of ‘Mission Impossible’” for a judge, whose view of domestic violence must be limited to “a test of reasonable doubt.” “Wife battering cases,” he writes, “are essentially no different from other cases.” While “the trial process is...straightforward,” Cioni acknowledges that

family violence cases can involve "particular problems such as the reluctance of wives to testify." For Cioni, this isn't a concern to be addressed by the law, but rather belongs to the "healing" side of the response to sexual violence: "Judges can do little about that. Support groups have to do a lot."⁵⁸

Crown Prosecutor "Karen" writes that her role in the legal system effectively silenced her as a victim of sexual violence; in order to work effectively in the system, speaking its language, she needed to appear distanced from the traumatic realities of her abuse experience. Above all, she could not be perceived as a victim by her colleagues:

How could I see my own assault case through the courts, in front of police officers and officials I call upon as witnesses in my work? How could I be accepted by other lawyers, who are supposed to be my equals, after they saw me in the witness box [as a victim]?⁵⁹

Not surprisingly, the legal perspective presented in the literature cannot offer a complete explanation of survivors' and victims' reluctance to enter the legal process as survivors and victims. While the legal perspective offers some useful measurements of the system's performance in responding to sexual violence, these discouraging odds alone

58 Judge Gary Cioni, "The view from the bench," in *Vis-a-vis*, Vol. 8, No. 1, 1990.

59 Karen and Michelle, "Victim's Viewpoint: Two views of the system," in *Vis-a-vis*, Vol. 8, No. 2, 1990, p. 9.

don't explain why the majority of survivors and victims never approach the system at all. The conventional wisdom that the abuser will "get off scot free" is perhaps the most researched aspect of what "everybody knows" about sexual violence and the system. But survivors and victims clearly base decisions about reporting on more factors than the odds of a possible conviction — if it were really that simple, many more of us would report, taking our chances on winning. After all, many of us buy lottery tickets, with far worse odds. From what little we hear about the legal system in the lives of survivors, engaging with the legal process is not a simple question of the chances of a conviction — the process itself is a problem.

Too Much at Stake: the costs to victims of reporting

Victims, survivors and our therapists and advocates take for granted that our decisions about reporting violence have high personal stakes for each of us. The October 1998 “Chatelaine Controversy” feature framed the question of reporting childhood sexual abuse as one of a difficult personal decision for victims, with serious implications for victims’ emotional health. Reporter Mary Rogan presented one survivor’s experience with the court system as “a cautionary tale”, quoting the survivor, rape crisis counselors, therapists and lawyers warning that the system is not a likely source of justice of victims. Rogan tells readers of Canada’s top women’s magazine that “where the system we have mingles with the complex needs of survivors, there is fertile ground for disappointment and pain.”⁶⁰

Judy Steed, a feature writer for the Toronto Star, has added faces and feelings to what “everybody knows” about the system. In Our Little Secret, Steed presents a complex picture of child sexual abuse in Canada, based on extensive interviews with survivors, police officers, child protection workers and doctors. In a chapter titled “Incest Survivors Go to Court,” Steed follows the journey of four women, the three McNall sisters (Jill, Julie and Joy) and their childhood friend, Constance, through the process of reporting and testifying against the man who abused them all as children — Donald

⁶⁰ Rogan, 1998, p. 70.

McNall, Jill, Julie and Joy's father.

Steed describes the experience of hearing the details of the abuse enumerated, denied and debated in the courtroom as “at once nauseating and liberating” for the McNall sisters and Constance. She details Donald McNall’s attempts to deny the abuse, claiming it never happened, that it didn’t happen as often or as severely as reported, and to dismiss the abuse as “mutual sexual stimulation,” adding that “the phrase made [the victims] gag.” We read that the most difficult part for Constance, who had not seen her abuser in years, was the terror of seeing him again across the courtroom. And we hear that the court process can take control of a victim’s life — and drag on for years:

“Your life is on hold,” Jill says, “you’re counting down the days to the next court appearance, you’re stressed out, you’re terrified of the offender in ways that might seem irrational, but he’s out on bail and you’ve experienced his rage.”⁶¹

Steed observes that the justice system is just not designed to show concern for the victims:

The criminal justice system has an inherent structural blind spot concerning victims because the system was designed with only two parties in mind: the state

⁶¹ Steed, 1995, p. 204.

and the accused. The victim has no right to counsel, no right to legal aid and no right to address the court. The Canadian Charter of Rights and Freedoms, the highest law in the land, governs criminal procedures; its focus is on granting rights to, and protecting, people charged with criminal offences. There are no such protections for victims.⁶²

Jane Doe, a rape survivor and 10-year veteran of the legal process, would agree. Doe was one of the more victorious survivors we have seen, in legal terms; she actually saw her abuser apprehended, charged and convicted, and went on to win a precedent-setting lawsuit against the Metro Toronto Police for their failure to warn women about this known serial rapist. Yet Jane Doe described the process as "stripping her naked", and literally warns other women who have been raped to stay out of court.⁶³

What protections do victims and survivors need? We know from the statistics on reporting and legal processing of sexual violence that the system doesn't offer many survivors or victims what we are looking for. And we know from work like Steed's and Rogan's that victims who use the system are likely to be hurt. But in order to create a system which can truly protect and serve survivors and victims, we need to articulate what it is about the system that injures, and why the system hurts us where it does.

⁶² Steed, 1995, p. 201.

⁶³ Kim Pittaway, "Who is Jane Doe?", in *Chatelaine*, January, 1999, and Jane Doe, speaking at Memorial University of Newfoundland, Fall 1998.

Violence as Harm to Victims: the healing discourse

Part of the answer can be found in an understanding of some of the ways that sexual violence injures survivors and victims. The “healing” literature, presenting survivors’, victims’ and therapists’ articulations of the impact of sexual abuse, offers many of these answers. In naming the many and particular injuries survivors and victims may be living, the “healing” literature offers us a way to identify the harms of sexual violence — and perhaps also the harms of the legal process.

The work of feminist doctors, therapists, crisis counsellors and others who work with survivors and victims of sexual violence offers a growing understanding of the potential traumatic effects of sexual violence on survivors. This diverse body of work articulates the impact of sexual violence from disciplines which have previously been among the most effective sources of denial, like psychiatry and psychology, now redirected and critiqued by feminists. And it includes voices in newer traditions, such as self-help literature arising from feminist and other consciousness-raising movements. And perhaps most strikingly, this body of “healing” literature includes an increasing volume of works by or featuring self-identified survivors and victims of sexual violence.

The predominant message of this literature, spoken in some way by every contributor, is that *sexual violence really hurts*. And the hurt does not necessarily go away.

Judith Lewis Herman, a psychiatrist noted for her work on psychological trauma as a result of incest, domestic abuse and political terror, articulates the impact of events like these as injuries far beyond those of immediate distress or physical injury. Rather, being violated injures a victim's *safety* in the world in which she lives, and in herself:

Traumatic events destroy the victim's fundamental assumptions about the safety of the world, the positive value of the self and the meaningful order of creation. The rape survivor Alice Sebold testifies to this loss of security: "When I was raped, I lost my virginity and almost lost my life. I also discarded certain assumptions I had held about how the world worked and how safe I was."⁶⁴

Herman notes that rape survivors (and presumably survivors of other equally traumatic sexual assaults) have especially high levels of persistent post-traumatic stress disorder, similar to levels found among war veterans, and victims of hostage-takings and kidnappings. This is not surprising, she says, given that the very nature of rape is to traumatize the victim. In its essential element, Herman writes, rape is:

the physical, psychological and moral violation of the person....The purpose of the rapist is to terrorize, dominate and humiliate his victim, to render her utterly

⁶⁴ Herman, 1992, p. 51.

helpless. Thus rape, by its nature is intentionally designed to produce psychological trauma."⁶⁵

Bass and Davis, authors of The Courage to Heal, one of the most well-known and comprehensive guides for adult survivors of child sexual abuse, describe the common impact of child sexual abuse as similarly extensive:

It permeates everything: your sense of self, your intimate relationships, your sexuality, your parenting, your work life, even your sanity. Everywhere you look, you see its effects."⁶⁶

These injuries can include the effects of shame and self-blame in response to abuse, often for years, including low self-esteem and self-actualization, vulnerability to subsequent abuse, and self-destructive behaviour like addictions, self-mutilation and suicide.⁶⁷ And where even self-hate is not enough to make incomprehensible trauma make sense, victims may need to deny or repress the abuse, desperately constructing new

⁶⁵ Herman, 1992, pp. 57-58.

⁶⁶ Bass and Davis, 1994, p. 37.

⁶⁷ Bass and Davis, 1994.

realities and divisions within our own minds.⁶⁸ For some of us, the injuries of abuse include the impact, often life-long, of repression and remembering on mental health and personal functioning.

Survivors and victims need a way to understand the trauma that has been done to us. As Herman describes, sexual assault not only renders the victim helplessly unsafe to protect herself, but also calls into question all of her beliefs about the safety of the world around her. Herman regards this “disconnection” as a primary effect of psychological trauma -- when none of one’s trusted people or beliefs can stop or change traumatic events, a victim can no longer rely on or trust her relationships to the world.⁶⁹

And so victims need help building a new understanding of the world, which must now include an explanation for the violence. But in a society which has encouraged denial and victim-blaming at almost every turn, survivors and victims may face repeated challenges to our efforts to understand and rebuild after sexual abuse. When this happens, the literature tells us, survivors and victims must use the psychological tools available to respond to the trauma -- guilt and denial.

Virtually every work addressing the emotional impact of sexual violence on victims mentions feelings of shame, guilt and self-blame as a common response. Bass and Davis found that survivors of child sexual abuse often struggle with feelings of guilt and

⁶⁸ Herman, 1992, Carol Poston and Karen Lison, Reclaiming Our Lives: Hope for Adult Survivors of Incest. Toronto: Little, Brown and Co., 1989.

⁶⁹ Herman, 1992, pp. 51-52.

shame over being abused, even as adults.

Victims often believe that they are to blame for being sexually abused. Many adult survivors continue to hold this belief. Although large numbers of children and adolescents are abused, it is never the fault of any of them. Yet there are many reasons why survivors assume that blame.

Some survivors were told explicitly that it was their fault. The abuser said: "You're a bad, nasty, dirty girl. That's why I'm doing this." "You really want this to happen. I know you do." "You're such a sexy little girl. I just can't help myself."

You were punished when someone did find out. If you said anything, you may have been told you made up horrible lies. Or the subject was never discussed, giving you the message that it was too terrible to talk about.⁷⁰

Judy Katz, a rape crisis counsellor and rape survivor, found that feelings of guilt and shame were also common responses for women to sexual assault in their adult lives. She describes her own reaction to being raped, after years of telling other women that rape was not their fault:

⁷⁰ Bass and Davis, 1994, p. 115.

I still didn't believe that this could happen to me. Somehow I felt that I could avoid being raped. I started wondering if perhaps I had in some way set up this rape. I then felt ashamed with myself for internalizing this myth about rape. In so many ways I was trying to deny what had actually taken place. I had been raped... I kept on repeating, "If only I had not left my window open...If only I had taken a second floor apartment."...[my friend] reassured me that I was not to blame. Cognitively, I knew she was right, but emotionally I continued to feel that I might have been able to do something else to avoid the rape.⁷¹

The healing literature tells us that this self-blame can be profoundly destructive to our healing, our sense of ourselves, and our very survival. But, as Bass and Davis explain, it can also meet a crucial need, where there is nothing else to help us.

It is a stark and terrifying realization for a child to see how vulnerable and powerless she actually is. Thinking that you were bad, that you had some influence on how you were treated, gave a sense of control, though illusory. And perceiving yourself as bad allowed for the future possibility that you could become good, and thus things could improve.⁷²

⁷¹ Katz, 1984, p. 10.

⁷² Bass and Davis, 1994, p. 116.

Herman describes the function of self-blame among adults in traumatic situations as similar:

Guilt may be understood as an attempt to draw some useful lesson from disaster and to regain some sense of power and control. To imagine that one could have done better may be more tolerable than to face the reality of utter helplessness.⁷³

But even guilt and self-hate may not be an option, when a victim is facing a reality too difficult to accept. Bass and Davis explain that when the world around the abused child (and later the adult) is unwilling to see what is happening, a survivor herself may no longer be able to believe in the abuse.

When you've spent your life denying the reality of your abuse, when you don't want it to be true, or when your family repeatedly calls you crazy or a liar, it can be hard to stay clear in the knowledge that you were abused....

The recent surge of public attacks on survivors' credibility has made

⁷³ Herman, 1992, p. 53-54.

believing it happened more difficult for some survivors.⁷⁴

Many researchers have found links between psychological trauma, including child sexual abuse, and dissociative disorders like depression and multiple personality disorder.⁷⁵ Herman characterizes these “disorders” as rational coping responses for traumatized people, particularly children, where the only way to get away from the reality of being powerless and unsafe is to alter one’s own reality.

The child victim prefers to believe that the abuse did not occur. In the service of this wish, she tries to keep the abuse a secret from herself. The means she has at her disposal are frank denial, voluntary suppression of thoughts, and a legion of dissociative reactions...They may learn to ignore severe pain, to hide their memories in complex amnesias, to alter their sense of time, place or person, and to induce hallucinations or possession states.⁷⁶

In contrast to the language of the legal literature, the healing literature focuses

⁷⁴ Bass and Davis, 1994, p. 96.

⁷⁵ Herman, 1992, Poston and Lison, 1989, Bass and Davis, 1994, Euan Bear with Peter Dimock, Adults Molested as Children: A Survivor’s Manual for Women & Men. Orwell, VT: Safer Society Press, 1988.

⁷⁶ Herman, 1992, p. 102.

almost exclusively on how survivors experience sexual violence and its aftermath. Sexual violence is defined, in the healing literature, according to how it feels to victims: as violation or invasion, of a sexual character. The specific behaviours addressed in the healing literature as sexual violence include both physical and verbal forms of abuse, and both overt and subtle violence. Actions are identified as sexual violence primarily by the way in which the victims experienced them.

Healing v. the Legal Process

For the most part, the language of the healing literature either disregards or rejects the language of the legal process. Focussed on psychological and emotional recovery from the injuries of sexual violence, therapists and survivors writing the healing discourse allude only in passing to the possible role of legal proceedings in a survivor's healing process. Many therapists discourage victims from reporting, emphasizing that the legal process can be painful and disappointing -- a hindrance to healing.⁷⁷ In survivors' and victims' personal narratives, the questioning of reporting is often not even mentioned, as if it never occurred to the writers to consider legal action as a step toward recovery.

Bass and Davis come closest to acknowledging the apparent gap between the legal language of sexual offences and the healing language of survivors' and victims'

77 Rogan, 1998, Bass and Davis, 1994,

experiences. Rather than try to merge these two spheres, they emphasize their separation, rejecting the legal language and process where it denies the healing language: “legal principles do not apply to healing.”⁷⁸

The gap between these two understandings of sexual violence is such that most of us can only think in the terms of one view at a time. Whether we are legal researchers counting the outcomes of “cases,” Crown Prosecutors whose work in the legal sphere makes it impossible to identify openly as a victim, or survivors and therapists working to validate survivors’ and victims’ fledgling understandings of sexual violence in their lives, it seems almost impossible to bridge the divide -- as if, as victims and survivors have said metaphorically of lawyers and judges in the process, they really do speak a different language.

Jean-Francois Lyotard might argue that they do. Lyotard analyses the creation and interaction of languages as a tool of dominance, a means of preventing realities outside the language from being spoken or understood. Lyotard examines the unit of the phrase as the beginning of a language. He argues that phrases are made possible or foreclosed (expressible only as silence), linked and understood according to complex rules governing their linkage, which he calls phrase regimens. These phrase regimens operate within phrase universes, which include other compatible phrases, certain addressors and

⁷⁸ Bass and Davis, 1994, p. 505. Bass and Davis refer here to survivors’ personal healing and self-care choices, outside the legal sphere. Legal principles do, Bass and Davis, state clearly, apply in a court of law.

addressees of phrases and certain possible senses of phrases.

Lyotard claims that there are as many phrase universes as there are phrases, but through phrases which link others together, larger universes, or genres of discourse, exist. These larger universes each include a set of rules for judging other phrases about reality, and certain "stakes", or strategies of winning over other genres of discourse.

Within any phrase universe, any new phrase is expressible if it can be linked to existing phrases according to the rules for linkage of the governing phrase regimen(s). Where a phrase cannot be linked in this fashion, it can only be expressed as silence within that phrase universe. Phrases cannot, for Lyotard, be translated or transcribed from one phrase universe to another -- only linked, if the two universes are compatible.

Phrase regimens in different genres often come into conflict. Because phrases cannot be translated between genres, encounters between phrase regimens of different genres produce "differends:" situations of conflict between two regimens or sets of phrases in which there is no common standard by which to judge between them. Any attempt to judge according to an accepted standard will necessarily silence at least one of the two sets of phrases.

This is more than just giving greater weight to one of the two accounts of reality; for Lyotard, the injustice of judging a differend lies not in which phrase wins out, but in the silencing of the phrase which is rendered inexpressible. The silenced phrase is not simply discredited, but is denied, and then the denial is obliterated, in the erasure of the

differend itself. The winning regimen or genre becomes the basis for judgement of all phrases and future differends, and thus it becomes the discourse in use. Any phrase about reality which cannot be expressed in this discourse is silenced, and the silence itself is denied.

As an example of the problem with judging differends, Lyotard raises the silencing of survivors of Auschwitz — an experience which is in some ways unspeakable, indescribable to those who have not been there:

Human beings endowed with language were placed in a situation such that none of them is now able to tell about it...This is what a wrong would be: a damage accompanied by the loss of means to prove the damage.⁷⁹

For many survivors and victims of sexual violence, this scenario may sound very familiar: the damages of sexual violence cannot fully be described to police or in court. The language of the law against sexual offences and the language of survivors and victims describing what our experiences of violence mean to our lives are far apart. And when survivors and victims engage with the system, the language of the law is the only one we may effectively speak.

If we understand the different sets of meanings and goals expressed by survivors

⁷⁹ Lyotard, 1988, pp. 3-5.

and victims in general and by the law as a differend, then survivors' and victims' criticisms of the justice system, and our silences, must be taken seriously as a suppressed discourse. Within the rules of the legal discourse, the dominant framework for naming and judgement of sexual violations, the victim is characterized as a source of information which the system can process, the fuel for a "case." Her experiences, feelings and needs, are expressible only as evidence, in a legal context, or as silence.

The healing literature tells us that there is another story under the silences in the legal language, the meanings of sexual violation, survival and healing which victims cannot articulate in court. If we want our legal system to respond to sexual violence in a way that has a positive meaning for survivors and victims, or at least to find out why most of us avoid the present system, we need a new discourse. We need a language we can speak of sexual violence and justice and law, in which survivors and victims can name our experiences as part of the whole story. We need to ask survivors and victims, *as* survivors and victims, about the legal system and the law.

Before turning to the search for these silenced stories, it is necessary to recognize some of the specific voices, both within and outside the formal legal process, which have taken survivors' and victims' places. While the language of the law excludes survivors' realities to the point that, as Lyotard describes, the exclusion itself becomes invisible, the legal processing of sexual offences and the healing is also shaped by a third set of understandings of sexual violence: the language of denial.

The Discourse of Denial

A quick look through Canada's newspapers shows us a Canada in which neither sexual violence nor the inadequacies of the court system really matter — or even exist. Through a range of tactics, powerful voices in Canadian society, with the support of ordinary citizens, accused and even convicted abusers, tell us that Canada does not have to take sexual violence seriously. The premises of sexism, racism, homophobia, victim-blaming and feminist-bashing have all been developed into phrases of doubt, dismissal and denial of sexual violence.

Canadians have denied the sexual abuse of children by denying the validity of victims' memories. Following in the wake of increased reporting of sexual abuse in the late 80s, abusers and their supporters have fought back through the highly successful fabrication of a concept: "false memory syndrome ."

The language of the "false memory" argument⁸⁰ wraps adult survivors' and victims' experiences of childhood sexual abuse and recovered memories in a theory that

⁸⁰ Pamela and Peter Freyd founded the False Memory Syndrome Foundation in Pennsylvania in 1990, following their daughter's accusation that Peter Freyd had sexually abused her. The group's claim, that victims' and survivors' memories of childhood sexual abuse are often fabrications implanted by their therapists, and their followers, have spread far into Canadian society. FMSF members have been invited to speak at Canadian universities, and FMSF chapters have been formed in British Columbia, Manitoba, Ontario and Quebec. (False Memory Syndrome Foundation web page (advicom.net/~fitz/fmsf/fmsf-news), Lyn Cockburn, "Backlash and False Memory," in *Herizons*, Vol. 10, No. 1, 1996, Bass and Davis, 1994.)

they are understandable illusions, implanted in victims' memories by unscrupulous therapists. The "false memory" approach situates survivors and their beliefs that they were abused as honest, even realistic, but incorrect. Rather than attack the validity of specific survivors' specific memories, the "false memory" theory is aimed at undermining the credibility of abuse memories in general. Phrases like "the recovered memory movement," "retractors" (referring to individuals who have retracted their earlier statements that they have been abused) and "victims of memory," imply a reality of manipulation behind victims' memories of abuse, injury to innocent people as a result, and the chance for victims to find a more comfortable reality which includes no abuse history.

To the extent that the language of "false memory" has entered into the language of the law, the experiences of child sexual abuse survivors, even as expressed in legal terms, have been rendered increasingly suspect.

The RCMP Investigative Guide for Sexual Offences includes "information" for police officers on the possibility that adults reporting childhood sexual abuse may be prompted by "False Memory Syndrome". Officers are admonished to look out for traits attributed to "False Memory Syndrome", even as the authors acknowledge that there is no research to support the "syndrome's" existence.⁸¹ The language of "false memory" may also be increasingly incorporated into the legal discourse at the trial level; the Supreme Court ruled in December of 1995 that complainants' therapy records may be admissible as

⁸¹ Szabo et al., 1997, p. 60.

evidence in sexual assault cases, opening the door to defence claims of “false memory syndrome” to undermine the credibility of victims’ memories in court⁸²

The legal and healing discourses on violence within adult relationships are similarly challenged, by a related theory of violence as malicious fabrication. The language of “women’s revenge” presents allegations of violence (including sexual attacks) committed by men against women as exaggerations or fabrications used to take advantage of men. The “revenge” language presents women who complain of abuse by male partners as manipulators of a legal system which favours women.

Eva Saira articulates this perspective on women’s naming of violence, in April 1999 letter to *Maclean’s*. She argues that the legal system sets up men as targets of women’s viciousness — if she wants to, a woman can, she contended, “at any given moment, pick up the phone and allege that [her husband] abused her.” Following this easy (and, it is implied, unfounded) step, Saira claims a woman can have it all: “There is no need for proof — most provinces have a zero-tolerance policy in effect, which means that the man is arrested without questions. If she did that, she would likely be rewarded with sole custody and generous child support payments. There would also be spousal support.”⁸³

⁸² R. v. O’Connor, Supreme Court decision, December 1995. From *The Supreme Court of Canada* (www.droit.umontreal.ca/doc/csc-scc), provided by the Supreme Court of Canada and the Centre de Recherche en Droit Public, Université de Montréal.

⁸³ “The Mail”, *Maclean’s* April 12, 1999. P. A4.

The 1998 hearings of the Special Committee on Custody and Access received many submissions in the language of “women’s revenge, in divorce and custody proceedings. Phrases like “father’s rights” and “divorce war veterans” situated men as victims, and women as malicious instigators, of widespread tactics of false accusations of abuse.⁸⁴ In their findings on the need for a new divorce Act, the Special Committee on Child Custody and Access situated the very possibility of domestic violence as a “controversial” topic, emphasizing the disagreement among presenters about the severity of the problem, and about whether men or women are more commonly responsible.⁸⁵

The law’s definitions of what counts as sexual assault are also narrowed by a more limited, informal concept of what makes a “real” victim. Martha Muzychka’s study of RCMP and Royal Newfoundland Constabulary files on sexual assault reports found that police response to women reporting sexual assault was guided by a very narrow set of expectations defining “real” victims.

Muzychka found that police were less likely to believe reports of sexual assault from single mothers, married women, or women who came from what is seen as a lower socio-economic class. Reports from complainants who were seen as mentally disabled were also less likely than others to result in charges, and elicited remarks such as, “[The

⁸⁴ Penni Mitchell, “Divorced Mothers, Courts Stand Accused”, in *Herizons*, Summer 1998, pp. 7-10.

⁸⁵ Special Joint Committee on Child Custody and Access, “For the Sake of the Children: Report of the Special Joint Committee on Child Custody and Access.” Ottawa: Parliament of Canada, December 1998, Chapter 5, section D.

complainant] does not appear to be a very intelligent person, and I don't feel that she would be a very credible witness in court."⁸⁶

Renzetti found that lesbian victims of abuse by partners were also less likely to be taken seriously by police. The majority of the 100 victims and survivors she interviewed found the police to be of "little or help". One woman called for help only to have the police call her a "queer devil", and tell her that she deserved trouble for being a lesbian.⁸⁷

Muzychka also found that police were also less likely to believe that a sexual assault had taken place when the complainant had been intoxicated or using drugs at the time of the assault.⁸⁸

The unofficial concept of the "model" or "real" victim" affects how both the legal language and the healing language are applied to survivors and victims. Narrow perceptions of "real" victims' circumstances (as straight, middle class, non-disabled, single and sober) may limit police officers' applications of the legal definitions of sexual offences to the experiences of many or most victims, and possibly how victims and survivors view ourselves.

In addition to denials of victims through the claims of the "real victim" standard, survivors' and victims' voices may be silenced by claims, in authoritative voices, that

⁸⁶ Muzychka, 1991, pp. 27-28.

⁸⁷ Claire M. Renzetti, Violent Betrayal: Partner Abuse in Lesbian Relationships. Newbury Park, CA: Sage Publications, 1992, p.79.

⁸⁸ Muzychka, 1991, pp. 20-22.

while certain aggressive sexual behaviours occur in Canadian society, they do not really matter. Such claims dismiss violence with a variety of excuses, all with a similar theme: that what happened should not be seen as a problem.

Survivors' and victims' naming of sexual violence is silenced when the concepts of incest or partner abuse are presented as humorous possibilities. Survivors and victims of incest may be particularly likely to see the abuse portrayed as "kinky" sex, rather than violence. One Canadian university newspaper sent this message clearly to survivors of child sexual abuse, presenting sex between adults and children as "kinky" rather than inherently abusive. In its special Sex Issue, released at Valentine's Day, *The McGill Daily* presented readers with a "sex quiz," by which they could calculate their "score" of sexual experience and skill. Participants scored "points" based on their answers to each question, with a high score as the implied indicator of impressive sexual experience. One question assigned experience "points" based on the reader's age of first sexual experience -- with increasing points for each year under the age of puberty. Another question assigned points for having "done it with a family member."⁸⁹ On prime-time TV, the teenage characters of "Dawson's Creek" completed a similar quiz, pausing on the "family member" question to laughingly relegate the possibility of incest to the bizarre norms of a "Southern (US)-style" quiz.⁹⁰

⁸⁹ *The McGill Daily*, Sex Issue, February, 1994.

⁹⁰ Dawson's Creek, episode aired on CTV in fall 1998.

We also frequently hear violence against women presented as equally funny behaviour. For former St. John's Mayor John Murphy, as for many, domestic violence is so clearly understood to be a joke that it is an acceptable subject for amusing guests. During Murphy's term in office, *The Evening Telegram* reported that the mayor "may have gotten carried away" while describing the benefits of life in St. John's to a national conference in the city.

"We don't have a real bad crime rate," he said. "Well, the odd fellow shoots his girlfriend, *which is understandable*, but you can go out at night without too much trouble" There was loud laughter at the mayor's comment.⁹¹

Murphy later defended his comments as his way of "illustrating that we are a crime-free city," emphasizing that he had intended a humorous speech, and "anyway, they all seemed to like it."⁹²

Muzychka found that the language of sexual violence as a joke had an influential presence in police evaluations of women's reports of sexual assault. In some cases, police closed files because they felt that complainants were overreacting to behaviour which was not really serious. They used the language of the "joke" even in their questioning of

⁹¹ *The Evening Telegram*, September 18, 1997. (Italics mine)

⁹² *The Evening Telegram*, September 18, 1997.

alleged assailants: "The police asked alleged offenders in one file, 'Did you sexually assault (the woman) or was it more of a joke?' Not surprisingly, the men, taking their cues from the question, replied that their actions were intended as a joke."⁹³ This incident and others were characterized by police as "nothing more than a prank," as "blown out of proportion," or as "a joke gone wrong."⁹⁴

Victims' experiences are further silenced when sexual violence is, all too commonly, dismissed or diminished as "normal for those people"-- when the legal meaning of the crime is mediated by a racist understanding of the victim's and/or abuser's behaviour and "culture." As Teresa Nahanee notes in her discussion of the sexual assault of Inuit women, racist and sexist stereotypes of women of certain races and cultures as promiscuous or less emotionally sensitive, and therefore less traumatized by assault, pervade the history of the white justice system. One result of this attitude among judges in the North has been that very few abusers convicted of assaulting Inuit women have spent more than two years in prison.⁹⁵ Judge Michel Bourassa publicly characterized the typical sexual assault case in the Northwest Territories (of which most residents are Aboriginal) as occurring

⁹³ Muzychka, 1991, p. 26.

⁹⁴ Muzychka, 1991, pp. 25-26.

⁹⁵ Nahanee in Roberts and Mohr, 1994, p.195-196.

...when the woman is drunk and passed out. A man comes along and sees a pair of hips and helps himself...That contrasts sharply to the cases I dealt with before (in southern Canada) of the dainty co-ed who gets jumped from behind.⁹⁶

Hiding the reality of sexual violence behind racist branding makes the criminal justice process an even more hostile environment for survivors and victims within racial minorities. As numerous women of colour told the CPVAW panel, the legal system poses an inherent threat to Canadians of colour :“it is deadly the way police react in communities of colour.”⁹⁷ Systemic racism in Canadian society, pervasive to every area, including the legal system, means that reporting violence puts victims and survivors of colour at risk for further attack. It can also mean turning abusive men of colour in to a brutally racist system. As women told the CPVAW panel, this leaves victims within communities of colour in a violent trap: “We can bring down the violence of the police on our men’s

⁹⁶ Excerpt from *The Edmonton Journal*, December 1989, cited in Nahanee, in Roberts and Mohr, 1994, p. 194. More recently, a 1998 sentencing decision by Quebec Judge Monique Dubreuil brought a similar racist dismissal of sexual violence to national attention. Judge Dubreuil sentenced two Haitian men convicted of sexually assaulting a woman to 18-month community sentences rather than jail time, on the grounds that their violent behaviour, and lack of regret, was simply part of their [Haitian] “cultural context, particularly with regards to relationships with women,” rather than “a veritable problem.” (Ogochuckwu Okpala, “Judgement Calls: Rape trial demonstrates obvious prejudice,” in *The McGill Daily*, February 9, 1998.)

⁹⁷ CPVAW, 1993.

heads, or we can suffer silently.”⁹⁸

The prevalence of racist myths in Canadian legal and social discourses on sexual violence can also distort or silence the voices of survivors and victims of colour within minority communities. As Melba Wilson, author of Crossing the Boundary: Black Women Survive Incest, describes, the discourse of racism situates individual members of a minority group as “representatives of their race/culture”, such that any individual’s actions, actions, particularly if they bear out a racist myth about the group, may be attributed to *every* member of that race/culture). And this may foster an internal silence on problems:

Incest, though common, is not the norm in our communities. From all that I can find out, it occurs about as commonly in black communities as it does in all other cultures and communities. But we do not talk about it. In part, because we don’t really know how to, and in part because we learn from an early age that we’re not supposed to “put our business out in the street.” As a black woman who has grown up in the shadow of racism, I am well aware of the costs of letting our defences down in terms of white people taking advantage of our weaknesses which may become apparent as a result.⁹⁹

⁹⁸ CPVAW, 1993, p. 81.

⁹⁹ Melba Wilson, Crossing the Boundary: Black Women Survive Incest. London: Virago Press, 1993, p. 9.

Queer victims¹⁰⁰, as a group, may find their expressions of violent experiences regulated by a similar force of group preservation. As with other minority groups, any negative behaviour by a perceived queer may be attributed to the whole group. Incidents of sexual violence involving perpetrators and victims of the same sex are often classified as "gay sex" cases, with no distinction drawn between the sexual assault of one man by another and mutually consensual sex between gay men. Convicted child abuser Graham James used this prejudice to his advantage at his parole hearing, attributing his behaviour to "unfulfilled homosexual desires."¹⁰¹ He received day parole, and queers received another well-publicized round of suspicion, as *Globe and Mail* reporter David Roberts quoted at length from James' speech, without challenging his linking of child-molesting with homosexuality (by, for instance, quoting a representative from any queer group in response to James' remarks).

In the face of such prejudices, many Canadian queers may feel pressure from within queer communities to keep abuses by queers out of the public eye. Renzetti found this to be a strong pressure among lesbian survivors of partner abuse in the United States: 34 percent cited a wish to "protect the ideal of the lesbian nation" among their reasons for

100 I have used the term "queer" to refer to lesbian, bisexual, gay, transgendered, and other persons who fall outside the heterosexual and traditionally-gendered social norm. Recognizing that this is not the term with which all of us identify, I have chosen it because it appears to be the most inclusive term of those in use.

¹⁰¹ David Roberts, "Coach offers apology for sexual abuses and gets day parole," in *The Globe and Mail*, October 22, 1998.

staying in an abusive relationship.¹⁰²

In addition to denials of sexual violence in the languages of false memory, narrow criteria for “real victims,” racist or homophobic dismissals or “humour” telling us it’s “understandable,” survivors’ and victims’ stories are denied in the language of blame.

Victim blaming may be the most familiar and feared part of what “everybody knows” happens to victims who tell. It is conventional wisdom among feminists that a woman who says she was raped will not be believed if people can find anything in her actions to blame instead. Victim-blaming questions such as “What were you wearing?” and “Why were you out so late at night?” have become wry catch-phrases within women’s groups when discussing the system.

Though these accusations may have become cliches among feminists, they are not necessarily outdated among judges. Judge John McClung offered perhaps the most notorious recent example, discounting a victim’s statement that she had been raped at a job interview with the observation that she hadn’t arrived at the interview wearing “a bonnet and crinolines.” He concluded that despite her testimony that she had refused the rapist’s advances repeatedly, her behaviour and presence in her prospective employer’s trailer constituted an “implied consent” to sexual activity; she wasn’t raped.¹⁰³ The case went all

¹⁰² Renzetti, 1992, p. 79.

¹⁰³ *R. v. Ewanchuk*, Supreme Court decision, February 25, 1999. From *The Supreme Court of Canada* (www.droit.umontreal.ca/doc/csc-scc), provided by the Supreme Court of Canada and the Centre de Recherche en Droit Public, Université de Montréal.

the way to the Supreme Court, re-opening the question of what constitutes consent to sexual activity. The Supreme Court ultimately ruled unanimously that there is no such defence as "implied consent" in Canadian law. While Judge McClung's decision was ultimately overturned, he achieved a national profile following his comments, including a half-page personal profile in *The Globe and Mail*, titled "The stormy life and times of Judge McClung." The writer lauded McClung's "deep personal feeling, frustration and in-your-face challenges to Canada's top judges" and his "highly accomplished life," while speculating sympathetically, noting his "tragic childhood" and "burning ambition to make good", as to why the judge may have "s-napped."¹⁰⁴ This attention to the judge as a heroic personality maintains his blaming language as authoritative, if currently not in favour. The victim, a 17-year-old who was raped at a job interview, remains anonymous and unheard.

Similarly, if a victim benefits in any way from a sexual association with her abuser, she may be treated as virtually "unrapable," her acceptance of benefits (such as pay for previous consensual services as a sex worker) treated similarly to marriage under the pre-1983 laws, as irrevocable consent. This may be especially true for immigrant women, as in the 1993 response to a 13-year-old Filipina victim who was raped by her 50-year-old Canadian husband and blamed for "asking for it." The judge conceded that the rapist may have acted wrongly, but challenged the victim's complaint on the grounds that he found

¹⁰⁴ Mahoney, Jill and Sean Fine, "The stormy life and times of Judge McClung," in *The Globe and Mail*, March 6, 1999.

her motives for marrying the man “questionable”.¹⁰⁵ Because she was able to immigrate to Canada under her husband’s sponsorship, she was accused of exploiting him when she reported abuse.

In addition to upholding dangerous applications of the law, the language of victim-blaming sends the message to victims and survivors that only the “model” victims among us, with no “blameable” features or actions, can truly be violated. The rest of us must look to our own actions, inactions, and very selves for the reasons we are responsible. And, as the healing literature describes, most of us already do look within for this blame.

Survivors’ and victims’ experiences of the system’s response to sexual violence are silenced many times over. In the formal legal language of sexual offences, and in the dominant social languages (and, as we’ve seen, too often the unofficial language of the legal processing of sexual offences) of denial, survivors’ and victims’ experiences of sexual violence and of the system’s response, are expressible only as silence. The law frames sexual violence as acts which, once reported and investigated, may constitute an offence against the public interest. Abusers, their supporters, and public figures, present complaints of sexual violence as products of “false memory,” as deliberate lies or exaggerations made for “revenge,” as rare occurrences in highly specific scenarios involving “real victims,” as normal, even funny behaviour, or as merely the typical behaviour among “those people” in a given minority group.

¹⁰⁵ *The McGill Daily, 1993*

The healing literature frames sexual violence as an experience that matters, first and foremost, to the victim. It includes an understanding of violation, of trauma and of healing. However, the healing literature, including survivors' personal narratives, makes almost no mention of the legal system beyond a fairly general warning against expecting healing, safety, or even a survivable experience from a legal process.

How do survivors and victims, faced with all of these discouraging or silencing discussions of sexual violence, articulate our experiences of sexual violence and of the law as we understand them? If we take seriously the idea that the language of the law renders much of survivors' and victims' stories unspeakable, then articulating our experiences of the legal process seems to require a new language, or conceptual framework, in which both the law and survivors' and victims' realities can be expressed.

To construct the pieces of this new framework, we need the stories of victims and survivors, speaking, as victims and survivors, on sexual violence, healing, and the meaning, to their lives, of the legal process.

Chapter 3--Research Methodology

The purpose of this research project was to articulate an understanding of survivors and victims' experiences of the legal processing of sexual assault. Although the literature on sexual violence indicates that this legal process is often unsatisfactory for victims, such that most of us avoid it entirely, there are very few detailed discussions of the problems victims experience or anticipate in the criminal justice process.

When I began formulating a study into why the justice system seemed so hurtful or useless for survivors, I expected to find a large body of literature articulating exactly how the legal process hurts or fails victims and survivors. I wanted to study the gap I perceived between the language of the law and the system and the language of survivors' and victims' realities as we'd expressed them. I had felt this gap when I asked about my own legal options as a survivor, when I was sitting in a courtroom listening to my friend testify about being raped, and when I read legal writing on sexual assault and the processing of victims. I wanted to explore the gap, or difference, by comparing writing by governments and officers of the court to writing by survivors and victims about court.

I did not realize, until I started looking, that survivors' and victims' side of the story had never really been told. There was very little literature that I could describe as the voices of survivors, speaking as survivors, on the legal process. Even though "everybody knows," at least in feminist circles, that the process is hard on victims and that most of us

do not even consider reporting, the reasons why it is hard or impossible aren't something we've spelled out publicly.

I developed this project in order to fill in a small part of the silence on the victims' and survivors' side of the story. I decided to ask some victims and survivors to explain how they felt about the legal system, and what role it had played in their own experiences of abuse and recovery.

Who "Counts": Believing Survivors and Victims

Once I had decided to ask survivors and victims about their experiences of the legal process, I faced the challenge of seeking out and listening to people whose stories of sexual violence had likely been silenced or denied, by at least some of the voices around us. The literature tells us survivors and victims often receive negative responses from those we tell about the abuse we have experienced, including friends and family as well as police officers and judges. It also tells us that some survivors and victims are more likely to report sexual violence than others.

My project was essentially a study of the constraints and fears which prevent survivors from reporting violence, and which make the legal process painful or even untenable for many who do report. The challenge, for me as a researcher, was to avoid, as much as possible, replicating these experiences in my own research process. If I wanted

survivors and victims to share with me what they could not express to police officers or a court, or what they felt that the legal system could not hear, I had to make my project a different kind of forum from that provided by the legal system.

With this aim, I based my research on the principle of respecting survivors' self-identification as survivors. I wanted to hear how people felt about the legal process — I did not need to know exactly what had happened, or to decide for myself how bad it was, or how sure *I* was that it had happened as described. I believed, and participants' descriptions affirmed, that one of the ways in which the justice system is intimidating or impossible for survivors and victims is simply that it defines what counts as sexual violence for us. Victims' experiences are divided into criminal and acceptable parts, and into provable and unprovable parts. As with many of the other people victims may tell about the violence, the system imposes an outside assessment of what happened and how bad it was.

Such an outside assessment of survivors' stories, however well or poorly reached, is arguably the necessary role of a criminal justice system. However, given that most victims and survivors apparently choose to avoid this form of judgement of our experiences, and that many of those who do report are likely to be dissatisfied with the results of these judgements, I felt that deliberately judging either the truth of the seriousness of survivors' stories would be harmful to my research project, on both theoretical and practical grounds. On the theoretical level, such judging was incompatible with the fundamental

assumption of the project: that something, as yet only vaguely defined, about the way the justice system works, is profoundly hurtful to survivors and victims. To impose a standard of credibility, even one developed by a feminist survivor, on the stories victims and survivors share with me, would mean assuming that nothing about this process of external assessment was part of the problem. There is no reason to believe this, and some reason to believe the opposite -- that fear of being disbelieved is a common reason for survivors and victims to avoid reporting.¹⁰⁶ As a result, on a practical level, it is unlikely that many survivors or victims would be willing to participate in a project which involved being questioned and judged by a stranger about their experiences of sexual violence. I certainly would not consider it myself.

Respecting victims' self-identification as victims meant that I did not obtain, or look for, outside "proof" of participants' stories. The concern was raised, that I could, therefore, be given a false statement about sexual violence. It is, indeed, possible, if unlikely, that someone might approach a study like this one (which would appear to offer little benefit from a false accusation) with an untrue story. Whenever we believe people we run this risk. In the case of believing people about sexual violence, public concern over this risk has perhaps reached an unusual height; as Lynn Cockburn observes of the backlash against child sexual abuse survivors:

¹⁰⁶ See, for instance, Rita Gunn and Candice Minch, Sexual Assault: The Dilemma of Disclosure, the Question of Conviction. Winnipeg: University of Manitoba Press, 1988, CPVAW, 1993, Bass and Davis, 1994.

"[T]he repressed memory debate singles out sexual abuse...War veterans, once referred to as having "shell shock," are now referred to as victims of Post Traumatic Stress Disorder. Their flashbacks, or sudden memories are not questioned or condemned."¹⁰⁷

Similarly, the 1995 O'Connor decision subjected sexual assault complainants to greater scrutiny in court than defendants, in a ruling that complainants' therapy records must be available for use by the defence (though not by the prosecution, if they support a complainants' testimony), while accused persons cannot be forced to disclose personal records.¹⁰⁸

We do not need to absolutely refute the possibility of false claims of abuse in order to choose belief over suspicion. Even supposing that some very small percentage of allegations of abuse are either inaccurate or deliberately falsified, it is still the case that a very large number of people *are* victims or survivors of sexual violence. It is also true that, probably due in large part to the special skepticism surrounding complaints of sexual abuse, many victims and survivors have not told their stories in any public forum. If creating a safe forum for the voices of survivors and victims, in a qualitative research study, requires the risk of taking a false statement seriously too, then that small risk is also

¹⁰⁷ Cockburn, 1996, p. 27.

¹⁰⁸ Karen Busby, "New Rape Shield Needed," in *Herizons*, Vol. 9. No. 1, 1995, pp. 6-7.

a necessary risk. The alternative is to simply replicate a potentially damaging aspect of the legal process, to the detriment of both the feasibility and the usefulness of the research project.

What Counts: Defining Sexual Violence

Working from the premise that many survivors and victims have been told, in some way, that our experiences of sexual violence did not really “count,” I tried to make my definition of sexual violence as clearly inclusive as possible. While the legal definition of sexual assault is very broad, it is clearly a legal definition — potentially intimidating to survivors and victims who fear being told that their experiences don’t matter. In my own experience in survivors’ groups and services, I have frequently heard people describe experiences which are clearly covered by the legal definition of sexual assault, but then add, “but it wasn’t like a sexual assault.”

One reason for this may be that “sexual assault” is still identified with “rape,” the most well-known of the offences replaced by “sexual assault” in the 1983 reforms. Another reason might be that victims and survivors feel pressure to dismiss or diminish what happened to us, or that we do so in order to lessen the potential hurt if the listener dismisses the experience. Or perhaps some victims and survivors were hurt by forms of violence which really are not covered by the legal definitions of sexual offences.

In order to make the study accessible to as many survivors and victims of sexual violence as possible, I defined “sexual violence” as “any unwanted sexual act.” This is consistent with the paraphrased definition of “sexual assault” used by the Newfoundland government in its legal information pamphlets for victims (“when one person forces sexual activity, including kissing, fondling, intercourse, oral sex, or anal sex on another”¹⁰⁹). I also listed some examples of different forms of abuse this would include, naming violence experienced as children or as adults, violence by family, spouses (including same-sex partners), acquaintances, strangers or others. I specified that acts of sexual violence with racist, homophobic or other hate-based motivations were also included.

Listening to survivors and victims also means recognizing that people of every sex, gender, race, class, ability and sexually orientation experience sexual violence. In a society in which each of these characteristics locate us, in almost every interaction, in either a dominant or subordinate social position, survivors' experiences of ourselves, of being targeted and violated, and of our relationships to the legal process, are shaped by all of these aspects of who we are. So far, in the majority of the discourse around sexual violence, the most widely recognized factor has been the role of sex and sexism in violence – often, though not always, accompanied by discussion of how factors such as race and class impact on women's experiences of sexism and violence. Feminist researchers have articulated violence against women as the effect and the weapon of

¹⁰⁹ Government of Newfoundland and Labrador, Women's Policy Office, 1991, p. 1.

sexism, linking the sexist assumptions and power imbalances which allow and encourage men's violation of women and those which deny women victims recourse through our legal system.

Naming violence as a weapon of sexism is crucial. But if sexism is positioned as the fundamental truth about sexual violence, then we risk silencing victims for whom sexism is a small, if any, part of their stories. Male survivors, victims who feel most victimized by the racism of their abusers, or of the system, and survivors who were vulnerable because of their disabilities or their economic dependence on an abuser should not have to distort their experiences to fit a model of violence which is only about sexism. This is another form of fragmentation and denial.

To respond with respect to survivors' needs, and to respond with the fullest justice to crimes of sexual violence, as researchers, supporters and institutions, we have to be able to hear how, for each survivor, the crime really hurt. Whatever role this understanding plays in our responses, whether we are conducting research, working on a crisis line, preparing a lawsuit or sentencing for an offender, our responses will be more effective if we can hear the survivor's naming of the crime, along with the other namings, in other discourses. Listening to survivors and victims means not only reaching out to survivors and victims of all experiences, backgrounds and identities, but also being willing to hear a range of meanings of violence in survivors' lives.

As a researcher asking a broad question about survivors' and victims' experiences of

the legal system, I felt strongly that for this project, at this point in our gathering of survivors' voices on the system, both men and women should be invited to participate. While men and women no doubt experience sexual violence, community responses, and the legal system very differently, the differences may be no greater than those among women survivors of different identities. With very little research available on the meaning of the legal system to any survivors or victims, it is perhaps too early to say where the most important lines of difference among survivors' experiences of the system lie. The purpose of this project was to articulate an understanding of the legal system as experienced by survivors and victims of sexual violence. Eliminating *any* adult victims' or survivors' voices from the picture would only limit the validity and usefulness of the picture I produced. As a researcher, I would also send the message to an entire class of survivors and victims in Canada, who use or don't use the same system, that they just don't count.

Listening to survivors and victims about the system means hearing voices that no court will ever hear. Since I was working from the concern that the criminal justice system might not be adequately serving survivors, and already aware that most of us do not report, it was clear that nonreporting does not mean that victims' experiences don't matter, or that victims were not strongly affected -- only that abusers are going free. I am among those who have not reported; I know that this is not because what happened didn't matter.

It would be hard to say who is less well served by the justice system: survivors who never report, or survivors who do. To understand how survivors and victims experience

the system, it seemed equally important to hear from those who had chosen not to engage with the justice system, or been rejected by it, as from those who had actually undergone an entire criminal proceeding against their abusers. Because the minority of victims who report sexual violence are the ones who get "counted" in the statistics and in public recognition, I felt it was crucial to specify that for my project, deciding not to report was an equally valid experience of the justice system. So I also emphasized, on my poster, that the invitation included both victims who had reported the abuse and victims who had not.

I think that this was an important decision. Most of the survivors and victims who participated had had some degree of involvement with the criminal justice process, though only one had been all the way through a trial. Those who had had less or no experience of the system often prefaced their personal feelings about reporting or about justice with a qualifier that they "didn't know much about the system," as if this made their feelings or needs less valid. And even those who had spent a great deal of time and energy in the system often hesitated in their descriptions to question their own understanding of the technical aspects of the system and the law. Part of my role as an interviewer was to emphasize that participants' feelings about the system were the real subject of my research, and to (subtly) affirm as needed that participants were qualified, absolutely and uniquely, for this project -- to comment on the system as it had affected them. I think that affirming this qualification on my poster was a good start, and may have even gained some participants who might otherwise have assumed they were not included.

What Violence Means: Naming Ourselves (and each other) as Survivors and Victims

I have chosen to use two terms, "survivor" and "victim," to refer to people who have been sexually violated. These are the only terms I have encountered, in conversations with others who have been violated, in sexual assault centres and women's groups, and in the literature on sexual violence.

There are many reasons why people who have been sexually violated name ourselves as abuse victims, survivors, or both. For some of us, being called a victim freezes us in the moment(s) of the abuse, reducing our entire lives and identities to that of having been powerless. The term "survivor" feels more empowering because it recognizes that we *have* lived past being victimized, and that we have lives which include, but are not solely defined by, surviving.

For others, the term "survivor" is seen as an evasion of the truth that we were victimized, or as a pressure to have "moved on" from feeling the effects of victimization, as if these effects are all over. "Victim" feels like a more honest description of what was done to us, and how it still affects us.

Some people go from identifying as a victim during and shortly after the abuse to feeling like a survivor as they gain a sense of recovery.

All of these views are reflected in the literature. Both "victim" and "survivor" have been promoted as the one appropriate term, for different political reasons. In each case,

some people have had their identities dismissed as "wrong".

As a researcher and as a feminist, I will not choose a single term to assign to other people's lives. The aim of this project is to articulate some of realities of the legal system in the lives of people who have been sexually violated -- as we live/d them. This aim is not met by defining the terms which participants may use to describe their experiences.

In discussing each participant's account, I have used the terms, if any, used by that person. Everywhere else, I've used the terms' "victim" and "survivor" interchangeably -- it seemed like the best compromise.

Reaching Out Honestly as a Researcher

In attempting to explore this area of silence around violence and the legal process, I had to ask others to lend their time, their stories and their trust to me. I realized that there was no way for me, as a researcher, to reciprocate this gift, or eliminate the risks involved for participants in trusting a stranger with painful stories. What I could do, though, was try to be as clear as possible about what I was asking -- including who I am, and what I planned to do with the research.

In my advertisement for participants (Appendix A), I took care to identify myself clearly as a white woman, as a survivor, and as a graduate student who would gain a Master's degree from this project.

I identified myself as white and female because I expected these two attributes to be among the most significant to potential participants in deciding whether or not they might feel safe with a stranger -- although for different reasons. I identified myself as a woman because I expected this to answer many participants' first question about me. Most of the survivors and victims I had known or read had made it clear that they felt far less comfortable discussing their experiences of violence with men. These included some male survivors, and some survivors of abuse by women, among a majority of women abused by men. I expected that identifying myself as a woman would mean that more people would consider participating.

I identified myself as white for a less direct form of reassurance. I expected that most people reading the poster would assume that I was white; in the predominantly white city of St John's, whiteness is commonly assumed, unless one indicates otherwise. As Peggy McIntosh describes, white people do not see whiteness as a racial identity -- rather, "whites are taught to think of their lives as morally neutral, normative and average."¹¹⁰ The question of "race" arises for most white people when a non-white person or population comes up in discussion.

As noted earlier, we can see this normalization of whiteness in many mainstream discussions of sexual violence, in which white people involved are described merely as

¹¹⁰ Peggy McIntosh, "White Privilege: Unpacking the Invisible Knapsack," in *Independent School*, Winter, 1990, p.31.

abusers, victims, or families, while non-white abusers, victims, and families are characterized by race and/or culture as prone to abuse.

I hoped that identifying myself as white would serve to counter some of readers' possible assumptions of whiteness as an invisible non-race. I wanted to show that I know I'm white, and that whiteness, like racism, is something to be acknowledged. I also wanted to acknowledge that for people of colour reading an invitation to discuss a personal topic with a stranger, it is reasonable to want to know that stranger's race.

There are other identifiers which might have been similarly helpful to some potential participants, which I did not include. I did not, for instance, indicate either that I am a queer researcher, even though this probably would have made the project seem much safer to queer victims or survivors considering participating. (I did specify, in my definition of sexual violence, that abuse by same-sex partners and abuse with homophobic motivations were included.)

This choice was partly one of self-protection, and partly an accommodation of possible homophobia among readers. As a somewhat publicly known queer in the St John's area, with an uncommon first name, I knew that identifying myself as a queer and as a survivor on the same poster could mean that strangers who knew of me, by name or by sight, as a queer activist would also know that I am a survivor. This was more personal information than I wanted to give to the very general and possibly homophobic audience of the television and newspaper coverage of my queer activism -- particularly since the poster

offered my phone number and email address. In order to prevent either my survivor status or my willingness to meet with strangers from being used as a weapon by homophobes, I left my queer identity off the poster. Unlike my membership in the dominant racial group, I felt that my minority sexual identity was not something potential participants had a right to know (even though some may have needed to know).

As a white person, I belong to a dominant social group with a long and ongoing history of ignorance, disrespect and violence toward every other (nonwhite) group. This puts me in a potential position of advantage over participants which I must acknowledge and challenge. Although most readers would likely assume I am white, given no indication otherwise, as a white person, it is my responsibility both to challenge this assumption of whiteness and to recognize that my whiteness may make an important difference to participants' trust in me as a researcher, and willingness to share their stories. As a queer, on the other hand, I am a member of a historically targeted sexual minority. This puts me at a potential position of disadvantage to participants. Unlike my whiteness, my queerness does not place me at a possible advantage over potential participants, contributing to the inequality of the researcher-participant relationship. Instead, it places me at a possible disadvantage and danger.

By allowing readers to assume, as most probably would, that I am not queer, my advertising failed to challenge this heterosexism (the assumption that everyone, unless proven otherwise, is heterosexual) as strongly as the racist assumption of normalized

whiteness. This is a dilemma which many queers face repeatedly, as we attempt to balance our challenges to heterosexism with our safety needs in a homophobic world. I hope that I have compensated somewhat for this failure with my specific inclusion of queer realities in my definition of violence and in my invitation to participants.

In addition to my own safety concerns, I also left out my queer identity so as to be sure of gaining sufficient participants in a homophobic society; I was concerned that identifying myself as queer would lose me more participants than I might gain. I had no sense of how much response I would receive, and I did not want to risk alienating heterosexual survivors and victims who might feel uncomfortable with the prospect of meeting an openly queer person, especially in a semi-private setting.

I don't know if I was right about this. No one expressed any homophobic opinions during their interviews, and two people, when I asked, described their sexual identities as "queer" or as "heterosexual or bisexual." However, the only person who volunteered that she was queer, or mentioned it as a factor in her experiences, was someone who had met me earlier in an all-queer context.

I also gave no indication of my able-bodied status, allowing myself to be identified, by default, as nondisabled. I am still not sure that this was an appropriate choice -- it is not the one I made about being identified as white by default, and it may have lost me participants. My reasoning was that I should avoid a lengthy list of identifiers, which could make my poster seem too "academic" or even "politically correct" to potential participants,

who might then reject the project as too rigid, bureaucratic, or politically demanding. This was the same reason I minimized my connection to Women's Studies, once again trying to avoid deterring conservative participants at the risk of deterring minority participants.

As with the "queer" question, I tried to welcome survivors and victims with disabilities, and indicate my willingness to hear the meaning of disability and marginalization to survivors' experiences, by specifically issuing the invitation to "survivors of all abilities."

I chose to make it clear in my advertising, and in my thesis, that I myself am a survivor of sexual violence.

I feel strongly that no one has the obligation to "come out" in all situations as a victim or survivor of sexual abuse. But openly identifying as a victim and/or survivor, where and when one can, is in itself a challenge to the widespread silencing and shaming of survivors. I feel, therefore, that openly identifying myself as a survivor, because I can, is deeply consistent with the aims and motivation of my research. For myself, it is another act, like my own healing and recovery and my research, by which I chip at the silence and the shame. For participants and other victims and survivors who read my poster, I intended it as a message of solidarity, as well as a way of showing myself in opposition to denial.

In addition, I hoped that indicating that I am a survivor would underscore my message that participating would include "No judgement, no pressure."

My advertisement, and this study as a whole, were approved by the Memorial

University Arts Research Ethics Review Committee.

Advertising for Participants

My advertising process was a passive one; I made the information publicly available, within my means and perceived need, and waited for people to contact me.

I advertised by distributing my posters both directly (by posting them in public places myself) and indirectly (through community organizations) around the St. John's area, and indirectly around the province.

In the St. John's area, I put up posters in locations where I thought I could reach the broadest possible audience, in places like laundromats, malls, hospitals, movie theatres, and public bulletin boards. I posted one advertisement on the Memorial University (St. John's) campus (at the Women's Resource Centre).

I sent my poster, with an explanatory letter and a copy of my Arts Ethics Review Committee approval, to a range of community organizations, asking them to make it available, as appropriate, to members of their organizations and wider communities. I chose organizations which might be most likely to serve survivors and victims as survivors and victims: I sent posters to women's groups, to a survivor's group, a forum on violence and justice, and two residential recovery programs. As well, I chose organizations whose clientele were particularly underrepresented in the literature, like aboriginal community

groups, lesbian and gay community groups, the provincial AIDS Committee, and the Association for New Canadians -- recognizing that readers might overlap with the groups on the first list.

Later, I ran a condensed version of the advertisement as a classified ad in *The Evening Telegram* for one week.

The most common way that survivors and victims who chose to participate in my research had learned about the project were through women's centres, where my posters drew three participants. Two participants had learned of the project informally through me, and two through the newspaper ad. One participant had found the project through a poster in a St. John's mall.

With all potential participants, I avoided any appearance of "recruiting" for my study. I tried to be clear about what was involved in the project, and maintain a neutral tone toward potential participants' decision-making process. I encouraged people to take the time they felt they needed to decide, emphasizing that there was no need to commit on the spot. I also added that it was fine to support my research without becoming personally involved, recognizing that victims and survivors might feel a personal pressure to participate to make sure that the project went ahead. In the end, just over half of the people who contacted me decided to give an interview.

I realized later that I had limited access to my advertising by not circulating my poster, except in the *Evening Telegram* ad, in prisons, nursing homes, or other institutions

whose residents might not circulate in public spaces. I regret that as a result I did not offer many survivors and victims the option of giving their voices to this project, and encourage anyone planning a similar project to learn from my omission and consequent loss. I offer my apologies to survivors and victims who were excluded by my limitations; they deserve better.

Choosing the Sample

My invitation was opened to anyone identifying as a survivor or victim of sexual violence, with two stipulations: first, that participants must presently be age 18 or over; and second, that participants must have already either a) finished with any legal process in which they had been involved related to sexual violence in their lives or b) decided not to report the violence.

These two stipulations were on ethical and legal grounds. As an adult interviewing survivors and victims under the age of 18, I would not be able to offer them a possible relationship between equals (insofar as an interviewer-interviewee relationship may be made equal). Nor do I have training in any particular capacity as a responsible **unequal** confidante -- I am not a teacher, a counselor or a parent.

In addition, I would not be able to offer minors the same degree of confidentiality about their personal experiences as those over 18; the law requires anyone who knows

about sexual abuse occurring against a minor to report it, with or without the victim's consent. Because of my lack of training as an adult interviewer of minors, and because of the conflict between my concerns and commitments as a researcher and my legal obligations to minors facing abuse, I felt that I could not ethically include minors as participants in my research.

Even with adults, there was always the possibility that I would have to break confidentiality-- a participant might have disclosed a suspicion or knowledge that a child was being abused. At least, in this case, I would not have the obligation to report abuse against a participant herself, forcing someone who had confided in me into the hands of the system as an "alleged victim".

I was also aware that since I was advertising myself as a researcher in the area of sexual violence and the legal system, people might either ask me for, or construe any of my comments as, advice. In order to avoid any possibility of inadvertently influencing survivors' or victims' decisions about reporting, I chose not to discuss the system with anyone who was trying to decide whether to report, or who was currently engaged in the legal process. For this reason, I stipulated that any legal process related to sexual violence in which participants had been involved must be over (completed, withdrawn or otherwise ended) before they contacted me.

When I began my modest advertising campaign, I had very little sense of how much response to expect. I had planned to select a sample of respondents from among those who

called, choosing a group with a range of different identities, backgrounds and experiences of violence and of the system. I planned to do this by interviewing each caller briefly, to explain the project and ask basic questions about their backgrounds and identities, the nature of the experiences they were interested in sharing, and the extent to which they had been involved with the system.

I should have tried it out on myself. In my first conversation with a potential participant, after going over some of the basics of the project, I followed my interview plan and asked the caller if she would feel comfortable describing a bit of her background and experience.

She said no, and made it clear to me that in asking her to share personal details about herself and her life, over the phone, with a stranger who might or might not call back to hear more, I was asking for an unreasonable amount of trust.

She was right. Despite all of my care to make the advertisement and the actual interviews as safe and respectful to participants as possible, I had planned a seriously disrespectful approach to selecting participants. Not unlike police officers taking a victim's report, I had disregarded the value and the cost of a survivor's contribution in making the initial call. When someone generously offers to consider sharing a painful personal story with you for your research, they don't deserve to be probed about themselves and their experiences and then put on hold pending your evaluation, however well-meant.

After consulting with my supervisor, I changed my plan and committed to

interviewing as many people as necessary in the order that they contacted me. The eight people who decided, after we talked, to go ahead with the interview, comprise the sample.

Why Interviews

I felt that personal interviews were the best method for this project, both ethically and as a means of gathering the best data. A live conversation allows a researcher the most sensitivity and flexibility to make participating as safe as possible for each individual participant -- within the parameters of my role as a researcher. Unlike a written questionnaire, I felt I could more quickly gauge what style and subject matter seem acceptable to an individual participant, and change my approach (and apologize) promptly as necessary.

A conversation also offers participants more control over when and how my research enters their lives (unlike a mail questionnaire, which is unpredictable in its arrival and open-ended as to its departure.)

Conversations also seemed likely to produce better data, since it is generally easier to move from topic to topic, raise new questions, and, for most, express feelings and experiences for which it may be hard to find the perfect words. Talking gives people a chance to search for the right words, and shows where words were hard to find. Part of listening to survivors and victims means listening for the unspeakable, the unresolved and

the previously unspoken parts of people's experiences. What survivors and victims can't say, or what conflicts we feel in trying to define our experiences, are at least as important as the parts that are easily named and known.

But listening also means respecting individual survivors' and victims' comfort levels in telling their stories. In planning this project, I had committed to accepting written accounts from survivors or victims who wanted to be included but who did not feel comfortable with an interview. While one participant chose to send me a written piece to accompany her interview, no one chose to send only a written account.

The Interview Process

Listening to survivors and victims means listening to their stories as they tell them. The main methodological thread running through all of the interviews is that of participants choosing how to tell their stories.

Interviews can be problematic in themselves for many survivors and victims, for the same reasons that most of us do not report. I knew that some survivors and victims had experienced questioning about the violence they had endured as a brutal emotional attack. And I knew that many victims and survivors, like myself, were aware that this could happen if we reported. Indeed, a number of participants listed being questioned about their experiences as an aspect of reporting that they wanted to avoid.

I tried very hard to give participants the power to shape both the content and the structure of the interviews. I emphasized in the ads for the study that participants would be able to control the content ("you decide what you're willing to discuss"). And when I spoke with potential participants, I stressed that interviews would not be interrogations, often explicitly stating that I hoped it would be very different from being on the witness stand.

I felt that no specific interview script could be as effective as building each interview with the participant, based on each participant's needs. I developed a list of open-ended questions on participants' feelings about different aspects of the legal system (Appendix C), which were approved by the Arts Ethics Review Committee. These questions asked participants to comment on their relationships to the system, rather than asking them to describe their experiences of sexual violence. I felt that this was a crucial aspect of respect for victims' ownership of their experiences -- unlike the demands of the legal process, in which victims are demanded over and over to "say what happened."

With the exception of one phone interview, interviews took place in community centres. The Women's Resource Centre at MUN and the St John's Status of Women Council Women's Centre both generously allowed me to use a private room for interviews, and participants chose the location they preferred. One interview, in Montreal, took place at a student queer centre. The interviews took place in either the day or the evening, according to participants' choices (though these were somewhat constrained by the availability of the interview spaces, one of which was only available in the evening). Participants arranged

their own travel to the interviews. Several participants raised difficulties with getting to the interview locations, either with the cost or the unavailability of transportation. In one case, I reimbursed a participant for bus fare to and from the interview. In a second case, a participant and I arranged a phone interview.

I began each interview by reading over the consent form (Appendix B) with participants, confirming that the participant understood each point, and emphasizing that it would be all right for the participant to choose not to answer any question, and to stop the interview at any time. Participants then signed the consent forms, to indicate that they understood and consented to the nature of their involvement in the project, (including consent to record the interview) and my commitments to them (including the confidentiality of their identities, the tapes and the transcripts of their interviews.)

Then I asked each participant how she would like to go through the interview. I also (with the exception of the one phone interview) made my list of possible questions available for the participant to look over (in most cases I was able to provide a second copy). I felt that this was an important detail in minimizing the power imbalance between interviewer and interviewee -- unlike cross-examination scenarios, in which the element of surprise, and the display of notes and documents which the witness does not have, can be effective intimidation tactics. It also provided participants some opportunity to decide in advance which questions they felt comfortable answering, which I hoped would be less difficult than declining to answer a question already asked.

Participants chose a variety of ways to give their interviews. Most of the interviews took the form of conversations on the general topic of violence and recovery, to which I added specific questions about the legal process, based on my question list. Most of these participants started by telling me their experiences of sexual violence, and then referred to the questions afterward.

Others were more highly structured. One participant read and answered every question on my list and then ended the interview. Another drafted an outline of the points she wanted to discuss before the interview, and drew her statements from it. Another participant wrote me a letter several months after the interview, expanding on some of the topics we had covered in the interview.

The ways in which participants chose to share their experiences seemed to depend on their motivations for giving an interview, their personal speaking styles, and their comfort levels with me. Participants who said they had just begun to address the effects of sexual violence in their own lives, or whose main reason for giving the interview was to help me with research they saw as important, gave relatively unstructured interviews. Those who had been waiting for an opportunity to make a statement about the system tended to give more structured, though not necessarily less painful, interviews.

Sharing the Research Process

In order to make my process as safe and respectful to participants as possible, I emphasized in my advertising, on the consent form, and at the end of the interview that participants had the right to see how I had written up their stories before I submitted my thesis. I also offered participants copies of interview tapes and interview transcripts; one of the most literal ways in which the legal process takes ownership of a victim's experience is that victims can be required to pay for transcripts of their own testimony. I wanted to be more respectful of the true owners of the stories they shared with me, and to demonstrate my willingness to be accountable for how I used them.

Not everyone wanted to see transcripts or my presentation of their stories. One participant asked for copies of her tapes, and one for a transcript.

More were interested in reading my write-up; of the five participants I was able to contact after completing my data chapter, four asked for a copy.

While I felt that opening my writing process to participants' feedback would also make both the process and my findings more valid as a feminist study, the benefits to my research were a secondary priority to the rights of participants. First and foremost, I offered copies of my findings to participants, as I had offered tapes and transcripts, in respect for victims' and survivors' rights to retain influence over what happens to their stories. And I felt that as part of this respect, it was equally important to avoid pressuring participants to engage further with my project. Since a number of participants had said during the interviews that they felt that research like mine was very important to the rights of victims

or survivors, and even mentioned this as a reason for participating, it seemed possible that my sharing of the findings might be interpreted as a request for possibly painful reading and editorial assistance, in the name of the cause. I tried to make it clear that if participants had any comments they wished to share, and especially if they had concerns or complaints, I would be listening. But I also took care to emphasize that participants had no obligation to comment, or even to read my findings. In my letter to participants who said they'd like a copy of the findings (when I called them), I emphasized that they had already made a huge contribution -- that they had made this project possible.

Although the importance of such transparency to the integrity of a feminist research project is clear, there is also an obvious potential cost. Sharing my findings with participants meant calling them, in some cases well over a year after the interview, and inserting myself and my project back into their lives unexpectedly. However brief our conversation, my call imposed the experiences they had shared and the reality that they had shared them with a stranger for other strangers to read, onto their days. I regret this aspect of keeping my earlier commitments to participants -- as necessary and "feminist" an intrusion it may have been, it was still an intrusion, and that still matters.

Framing Respondents' Stories: Grounded Theory

In many cases, researchers develop their research questions, data-gathering

processes, and approaches to data analysis from assumptions, based on what they already know, of what kinds of answers they will find. They can choose systems for categorizing the data, planning what things they will need to count, what tools they will need to analyze their findings, using concepts and predictions already in place. For this project, there were few useful concepts already in place -- the problems which I was trying to identify were, I believed, largely unnamed.

Without a comprehensive background of survivors' evaluations of the legal system, I had no basis, beyond my own observations, for predicting what meanings the legal system might hold for the victims and survivors I would interview. What would participants define as the most meaningful effects of sexual violence on their lives? How would they define justice? Would they even want any kind of recourse through the law?

To leave participants real room to define their experiences as they lived them, I chose to combine open-ended interviews with a "grounded theory" approach to analyzing participants' stories. Grounded theory is a qualitative research technique used where the researcher's goal is to identify and explain basic social or psychological processes.¹¹¹ To construct a new understanding of a basic social reality, one that may well have been assumed or ignored in previous research, the researcher tries to minimize the role that previous assumptions about this reality play in her analysis of the data. Grounded theory

¹¹¹ Glaser and Strauss, 1967, and Ann Carolyn Carpan, Learning to Live With Endometriosis: A Grounded Theory Study. St John's: Memorial University of Newfoundland (Master's in Women's Studies Thesis), 1996.

researchers acknowledge that one of their research goals is simply to *find* the categories or questions by which to organize the data into a theory about the reality it expresses. Researchers look to their data for the framework to explain it, looking not only at what lived experiences participants describe, but how research participants themselves construct their understandings of the world.¹¹²

In grounded theory research, the researcher looks for definitions, patterns and conflicts within the data itself to develop the structure of her analysis. So, for instance, rather than beginning with a complete set of categories into which to place victims' various responses to sexual violence, a researcher using a grounded theory approach would begin the analysis by examining the interview transcripts to see what themes are repeated or contradicted by the participants. As she observes a pattern among victims' responses to abuse, the researcher notes these and then goes over all of the transcripts again, searching for examples of this newly derived concept.

Of course, the patterns identified in the data will be the ones which are visible to the researcher herself. Concepts do not simply emerge, fully and definitively formed, from the qualitative data. Any researcher's perceptions of realities expressed in her data are shaped in part by her own conceptual understanding of the subject matter, including the frameworks imposed by her expectations, her own language and experience of the subject, and her previous research. A grounded theory researcher tries to both recognize and

¹¹² Kirby and McKenna, 1989, pp. 94-96.

minimize the influence of her own preformed conceptualization of her subject, through a conscious commitment to developing her analytical framework from the ways in which participants frame their lived experiences. The researcher can also minimize the limits her own conceptualization imposes on her analysis by expanding her own framework through a prior, and continuous, review of the literature. The more familiar and fluent the researcher is with a range of perspectives on her subject, the fewer barriers her own understanding will raise to the “worlds” constructed by others.

In this project, the concepts which emerged most decisively in my readings of the interview transcripts were not related to the legal concepts in which the system is usually described (like the legal definition of sexual assault, the stages of reporting and possible outcomes), but rather to feelings inspired by participants’ experiences and perceptions of the legal system.

Some of this framework of survivors’ experiences of the legal system overlapped with the basic concepts of the healing literature about sexual violence. (Like denial, guilt and other feelings common to victims, or the roles of being believed, and of abuse being acknowledged in survivors’ processes of healing). However, the themes of participants’ stories were unique in that they linked feelings about sexual violence and healing in their lives to feelings about justice and injustice, protection, recognition and the role of the criminal justice system in their lives. In discussing their personal responses to violence, the responses of those around them, and the responses, anticipated or experienced, of the

criminal justice system, respondents articulated their experiences and needs in terms of violation, denial versus validation, shame versus understanding it wasn't their fault, and helplessness versus power. I have used these themes to frame their stories as eight people's lived experience of the system's treatment of survivors.

Writing Victims' Stories: Language

Part of listening to survivors and victims means writing the realities participants shared in a language which is both respectful to and compatible with their own language in telling. In my effort to write this project with respect for participants, I have deviated in two ways from the traditional formalities of language observed in the writing of a thesis.

First, I have chosen to use a slightly less formal tone in my own writing, in order to make it less formally distant from the voices of my research participants. Participants expressed themselves in different voices, including different degrees of formality, different forms of grammar and different expressions. In general, their language was much less formal than the language I have used in my writing. I have not attempted to adopt their forms of expression, or to match them in their informality; I recognize that the sort of informal mode of expression commonly used in conversation is not the most effective style for an academic paper. I also acknowledge the important difference between using a sufficiently formal style to locate a work in an academic context and using formality to

create unnecessary distance between an academic work and the informal expression with which most of us live and share the stories of our lives.

In the interviews which provided the data for this project, participants and I spoke informally. While they are quoted here as they spoke then, I, as the researcher, have expressed myself much more formally, creating a difference between our voices which is not only one of style, but of authority. The purpose of formal language, in academic work, is not merely to make the work stylistically familiar to the academic reader, or consistent with other work – it is a means of gaining authority.

In Forms of Writing, an academic handbook, Stewart and Kowler explain that the problem with “inappropriately informal language” in academic writing is that ‘you undermine your authority as a writer.’¹¹³ While I do not wish to undermine my authority as a writer, I am aware that my authority, insofar as it comes from my formal style, comes from *not sounding like my participants*. Since participants’ lived realities are the basis for my own analysis, I do not wish to undermine the authority of their expressions in order to (arguably) advance my own by unnecessarily widening the inherent inequities of the researcher-participant relationship.

To minimize this distance between the expressions of participants and my own voice as researcher, I have chosen to use what seems like a minimum degree of formal language,

¹¹³ Kay L. Stewart and Marian E. Kowler, Forms of Writing: A Brief Guide and Handbook. Scarborough: Prentice-Hall, 1991, p. 113.

in an attempt to achieve both academic authority and readability and minimum distance of position between participants and researchers. With the help of my supervisors, I have made a number of changes from the original, much less formal, writing of this work, achieving what I hope to be a better and more consistent balance of formal and informal language.

Whose Stories Are Told: The Sample

Eight people chose to share their experiences with me, in interviews ranging in length from 20 minutes to 3 hours. Another seven people (four men and three women) responded to the ad for the study, but did not decide to give interviews.

Seven of the respondents are women. One respondent is a transgendered person, identifying as biologically female, but not with the feminine gender.

The respondents range in age from 21 to 56, with half in their twenties.

The majority of participants identified as white; 6 people identified themselves as white, and one as Indian. One person did not want to give identifying information.

One person identified as a lesbian, one as bisexual or heterosexual and five as heterosexual. One person did not want to give identifying information.

Half of the participants referred to some experience of disability in their lives. One person has a psychiatric disability, and one person a chronic physical disability, while

two others referred to disabling conditions in their lives resulting from abuse.

Four people described their class background as lower class. Two others identified as having a middle to upper class background. I was unable to obtain this information from two participants; I did not ask about class background during the interviews, and was unable to reach them later.

In every case, the participants described abuse by people known to them. In two cases, the perpetrators were husbands. Three were people in a position of trust and authority over the participants; one participant was abused by a babysitter, another by a counsellor, and a third by a teacher. And three participants were abused by people they knew informally and casually: one by a neighbour, one by a classmate and one by casual acquaintances.

All of the perpetrators mentioned were men or boys. And while only the one person of colour participating mentioned that her abuser had been white, none of the other participants mentioned the race of their abusers.

Some of the least discussed forms of sexual violence remained undiscussed among these victims and survivors. None of the participants told me about any experiences of abuse by women, incest, or ritual abuse. And none told me about abuse by a same-sex partner, by an abuser sharing the victim's minority community or identity, abuse within an institution, or abuse by a person with influence over their immigration status.

It is sad but not surprising that no survivors or victims spoke to me about these most

hidden forms of abuse. Whether those who participated chose not to, or were unable to share their experiences of these forms of abuse, or whether none of the victims and survivors of these forms of violence chose to speak about it to a stranger, their experiences are not directly described in the small picture I have framed of victims' and survivors' experiences.

This picture was always a small one, capturing some part of the lives of eight people. I have tried, through a grounded theory approach and a commitment to equal acknowledgement of everyone's experiences, to keep the frame as wide as the picture could fit -- not narrowed by an exclusive definition of who counts as a victim or what counts as abuse. But there are holes in the picture itself.

The absence of male survivors, and of aboriginal survivors of any gender, are two of the most obvious holes. Unlike some groups of which there are very few members in Newfoundland, where almost all of the participants found the study, it is likely that a number of aboriginal survivors or victims did see my ad, though none chose to give an interview (though they may have been among those who called). And it is highly unlikely, even without making assumptions about the men who called but didn't participate, that no male survivors at all saw the ad. It was advertised in the province's main newspaper, posted in public spaces used by people of all genders, and in both men's and women's public washrooms around the city. If we believe the statistics that around one in six men are abused at some point in their lives, then a great number of men should have been exposed

to the ad. Given recent disclosures about abuse of boys in institutional settings alone in Newfoundland (such as the Mount Cashel orphanage, the Whitbourne Boys' Home, etc.), it is sadly unlikely that Newfoundland is an exception from these statistics.¹¹⁴

The absence of many kinds of stories of sexual violence leaves another hole in the picture. Without any survivors' or victims' stories of incest, of ritual abuse, of abuse by women, by same-sex partners, by other members of the same minority group or community, by husbands or employers controlling their victims' immigration status, and of other violent realities which our society and our system most desperately do not want (or want prejudicially) to believe, our pictures of violence and survival cannot name the whole problem. And our limited knowledge cannot find the whole solutions.

These are holes in this picture, which other researchers must find a way, safely and slowly, to turn into a space which survivors' and victims' voices can fill. Until then, we can all work toward that goal by naming and remembering the holes. I have tried to do so. For all the survivors and victims who do not find their lives anywhere in this picture, I can only say that you belong here too.

¹¹⁴ Sean Fine, "Mount Cashel hearings revive the past for men haunted by painful memories," in *The Globe and Mail*, November 13, 1989. Philip Lee, "Now more than 20 Mount Cashel boys planning to sue," in *The Express*, August 5, 1990.

Chapter Four – Research Findings

All of the survivors and victims who shared their stories with me had been strongly affected by at least one experience of sexual violence. Although their experiences with the legal system varied, all of these survivors and victims felt dissatisfied with the justice system as they'd experienced it.

In every case, the survivors and victims who spoke to me had known the person or people who violated them. The perpetrators were casual acquaintances, classmates and neighbours. They were counsellors, teachers and babysitters. And they were husbands.

None of these survivors and victims turned to the legal system immediately after they had been assaulted.

The respondents' experiences of violence and of the justice system took place in several different provinces, including British Columbia, Nova Scotia and Newfoundland.

Respondents' Experiences of Sexual Violence

Josephine¹¹⁵, 27, was raped by two men after a party at the men's house, 7 years ago. The men had met Josephine and her friend at a bar, and invited them back to their house.

¹¹⁵ Josephine, S., Willow, Sandi, Reid, and Susan are identified by pseudonyms which they chose. Marilyn is identified by a pseudonym which I chose. Bonnie chose to be identified by her own first name.

After Josephine had fallen asleep in a spare bed, in a room where a third roommate was sleeping, the two men raped her, one after the other.

Next thing I know, this guy comes into the room and starts crawlin' all over me. I was practically asleep and he came and just sort of rudely woke me up. And I told him no, go away, what're you doing? I didn't even know who he was, I couldn't even see his face, it was dark. I was freaking out.

And the guy in the other bed woke up. I said, "Will you help me?" And he said, "My dear, there's nothin' I can do for ya". And he just turned over and went to sleep!

I couldn't do anything, I was pinned...

When he was finished, he left, and I was just sort of curled up in the bed there. And not five seconds later, his friend came in. And he said, "If you move, I'm gonna beat the shit out of you".

The one thing that made me like, not even panic, like I totally stopped and just said, OK, go numb, was when he said, "I'm just gonna stick it up your ass if you don't shut up." I just went weak, I just wanted to throw up.

...When the second guy left the room, I didn't do anything. I acted as if it was a bad dream -- I just went back to sleep in this strange bed.

In the morning, when Josephine got up, her friend, the rapists, and some roommates she hadn't met were all in the living room. She and her friend called a cab, and left.

And nobody talked about anything, it was like it never happened. To this day, myself and [my friend] have never talked about the whole experience, ever. We're best friends, and I still never brought it up to her.

I kinda get angry about it sometimes, thinking, "Why didn't you help me?" I mean, the apartment wasn't that big. She had to know they were somewhere. But, you know, she was passed out, whatever.

For a long time, I just buried it, you know, never talked about it, never did anything about it.

Josephine never considered reporting the rapes to the police.

The thought of ever pressing charges never entered my mind, because as far as I was concerned, I shouldn't have been there to begin with -- it was stupid of me to go back to these guys' house.

You know, I'm feminist and all this, and I know that's wrong, I shouldn't think that way but you can't help it -- when it's you...

And I think that would be the point they would argue in court, you know? I

think they'd say, "Why were you there to begin with? What were you asking for?" I think they would tear that apart...

I didn't have an answer for why I was there, you know? That's why I didn't report it, cause that question would come up, and I'd say "Oh, I was drunk at a party". I never had an answer for why I was there, other than that.

Seven years later, Josephine feels that she made the right decision about reporting.

Looking back, I'm glad I didn't report it. Because I think if I had woke up the next day and went "Oh my God, I'm going off to the police", they probably would've tore me apart. I probably wouldn't be able to talk about it now. It's bad enough I waited this long to come forward, but I think I probably would be torn apart even more if I went through that...

It took me this long to come to those terms where I'm almost on strong ground to say, "Yes, it happened to me, and I'm not ashamed of it."

Josephine described herself as having been "a victim first," who had then taken "a long time to become a survivor."

S., 21, was sexually harassed and beaten repeatedly by a classmate when she was in

junior high. S. didn't feel like there was anyone she could turn to for help, at home or at school. She didn't feel comfortable telling her parents about the sexual harassment.

Maybe my parents never meant it to be this way, but they also never made it very comfortable for me to go and talk to them. It could have gone against me, in the sense that rather than dealing with "Why did that person do that to me?" it would be more like "Well, why did I go there?" This did happen to me once.

And many things in an Indian household especially are very much kept under the rugs...You know these things are not spoken about, you know these things are not done.

Just recently my mother was saying to me, when I said something about how, you know, I've been beaten up by people and whatnot...My mother's like "Oh, what is it with you? You're always saying stuff about how you got beaten up and this and that, but you never say anything to me... We were there, you could have gone in and said this."

I said, "I couldn't say anything to you, how could I go up to you and say this?" You know, how, all of a sudden when something like this happens can the kid be expected to go to their parents, when they've known all along that they're not supposed to talk about these things?

It's a closed environment that way.

At school, where the harassment was taking place, S. couldn't talk to anyone either. A boy in S.' class regularly taunted her with sexual comments, beat her, and assaulted her sexually. Classmates saw her being attacked, and no one spoke out.

This guy, he just grabbed me one day and pushed me up against a locker, like lifted me up...he pushed me against the locker then my head bashed against it kind of thing. Well, not very much, not very hard, but..He went and he lifted up my sweatshirt so he could see my breasts..

And there were people that were around there, but nothing got done.

Without a way to voice her problem at school or at home, S. resigned herself to the threat of being attacked.

I tried to do whatever I could to avoid it, but I couldn't. It was just inevitable. And so it's like once he starts beating me, I just had to let it go. Almost like, "Just let him finish beating me up and then he'll go away". I mean, it's a sad thing to say, but that was true.

Eventually, the school responded to the violence, when S was forced to report an

incident.

He tried to beat me up near Torbay Road Mall...right up in back of it, like the hilly part of it. That's where he knocked me down and tripped me up and did whatever to me...the back of my pants had been made dirty from the mud I was basically thrust against. So I had to get a different pair of pants, I couldn't very well sit down in class with that. That is the only reason I had even gone to complain in the office, really..So I was kind of forced to report that, right?

And then what happened was, because this guy was notorious for having done so many things beforehand..it was almost like, he did one more bad thing he was going to be suspended. So what happened was [the principal] said, "OK, well we're gonna give you detention", you know, blablabla. And the guy didn't show up for detention, so that was it, he was suspended.

I know the principal wanted to expel him, but unfortunately he hadn't , you know, "done enough" - like according to the books, you know - to get him expelled.

Not only was her attacker minimally punished, but some of her schoolmates criticized S. for complaining at all.

Once he got suspended, I remember some of the people in my class

saying, "See, this is what happens when you complain," you know, "Why'd you have to go and get him suspended?"... So I can almost see why even if somebody wanted to complain, and they were well-meaning, they couldn't... It was the peer pressure thing, right? This is what I think is the real problem now.

More recently, when S. was sexually harassed in her workplace, she faced the same pressures, and the same silence.

I really felt like I couldn't do very much about it. I don't know so much if it was because of the legal system or whether it was the circumstances surrounding my environment overall. I had my parents to think of... I don't know how much the legal system could've helped or impeded me, really.

Like Josephine, S. doesn't see the legal system as a possible source of help in dealing with the sexual violence she faces. For S., one of the big problems is privacy:

Telling the police means so many more legal entanglements and bureaucracy...It's almost like the minute you tell them you've lost your privacy, in many regards. So what if the general public doesn't know? Your family members are gonna come to know.

Because of this, S. has never considered going to the police for help with any situation that might arise. And right now, as when she was in junior high, she still feels she has nowhere to turn.

I really feel like I can go nowhere, if I'm to get harassed again. As long as I'm around here, I can't do very much...

Even though my brother would be fairly supportive, I feel a kind of shame in speaking to him on this matter. I know he's a bit more realistic about these things, but I would feel great shame even telling him...

Around here, I don't think I could talk to anybody, really.

Willow, a 30-year-old woman with schizophrenia, has been sexually abused more than once by a person in a position of trust. She was abused by a Christian Brother, and "nothing was ever done about it, because there was no evidence". She shared more with me about a second period of sexual abuse -- this time by a counselor who was supposed to be helping her deal with the previous abuse. At first, the abuse was disguised as a part of Willow's therapy sessions.

He used to get me to masturbate for him and that. And I thought it was part of my therapy, right? I'm already in therapy, he's my counselor.

...[When] I hesitated, the guy said, "Willow, I'm married. There's nothing I haven't seen before". So then I proceeded to lift my blouse and show him what the Christian Brother done to me...

There was no boundaries between us, and that was the big thing, right? He broke down all of the boundaries between us.

This counselor also assaulted Willow repeatedly in his car.

He would pick me up in his car - like go down the street looking for me, right? And he'd pick me up and he'd take me places, secluded places, and he'd give me back massages.

And he'd say, "Willow, don't tell anybody we're seeing each other, cause the next thing you know this whole town'll have us in bed together. If I wanted to have sex with you, I would've done it a long time ago."

...The latest sexual assault, like he took me up on Quidi Vidi gut. And he said, "Willow, lift up your blouse, let's see what you got." And I said to myself, "I don't like this." So I lifted my blouse, he saw what I had, he said — I could've sworn he had an erection, and he said, "Oh Willow, I didn't know your boobs were so big."

And then he, then he — See, I was wearing an old pair of leggings that day, right? And there were holes in the crotch. Cause when you're on social assistance,

you can't really afford to do your dirty laundry very often...I'm a clean person, but I try to spare my clothes. But these were an old pair of leggings, right, but they were clean, right? I should've worn my dress that day, but that might've been worse. Because I mean, he put his finger in the hole, in the crotch there, right, and said "I'm not doing anything bad to you now, Willow"...Then he put his fingers inside my leggings, and I screamed.

And that's when it hit me like a bowl of hot water in the face: "This is wrong. He's been leading me on all along".

And then he patted me on the head and he said, "Don't tell anyone, Willow. I love my family".

Looking back, Willow is more able to see how her counselor's behaviour was manipulative.

He hoodwinked me, is what it was... I think he misrepresented the nature of the act to me. He knew I had a disability... He preys on young women with disabilities and poor women.

When Willow decided to report the abuse, a year later, she found that having a disability also meant she wasn't seen as a believable victim.

I kind of knew when it happened, you know, that I wasn't going to have much credibility because I have schizophrenia, right? I mean, it's nothing for any shyster lawyer to say "Well, you know, she's delusional, she's probably in love with this man, she wants to break up his marriage. She has sexual fantasies about guys in positions of power," that type of thing, right?

And the police made it clear to me that my schizophrenia wasn't gonna hold up in court...There was a really nice constable took my statement, but then he warned me that my schizophrenia would come out in court, right? I mean, I would be put through hell.

Willow didn't regret not going to court, but she felt strongly that the system needed to change the way it handled complaints like hers, because, as she pointed out, "Disabled women are among the most sexually assaulted, the most abused members of our society."

Willow also wanted her abuser to be punished. She believed that he had abused other women, and said she was still "hoping and prayin' that someone will come forward."

Sandi, 21, who grew up in rural BC, was sexually abused as a child, by a babysitter. She repressed her memories of the abuse for a long time.

I didn't tell anyone exactly what had happened to me until I was about fifteen

years old. When I finally did bring it up, it was after a major flashback, after seeing my abuser. And everything came up for me.

I ended up in this counsellor's office, and I ended up telling her, the first adult, about what had happened to me as a child. And her response was that she was going to have to go to the police with this information.

It scared me off, and I didn't see her again. And I actually went back into sort of withdrawal for another couple of years. Until the issues came up again.

When Sandi began to deal with her memories, she had to struggle with a feeling that she couldn't "prove" what had happened to her.

I really wish I would have wrote thing down as much as possible. I feel as though that would've been a huge part of somehow proving that this happened to me. Like as soon as I started remembering, oh I should've wrote down the date, and I should've you know, wrote extensive things about who I talked to , and what they said and what I said, and...

I feel this sense of, "Well, I should've remembered, you know? I should've remembered not only the incident for all those years, but I should've told someone, I should've documented things officially." I deal with feelings of guilt about that sometimes.

Eventually, while preparing to leave the country for a year, Sandi decided to try to document what she could with the police in her town. Her contact with the police felt very unsafe:

I walked into the police detachment and I said "I need to tell you something. I don't want to tell you everything now, and I'm not ready to turn this into a big deal. I just wanna open a file". You know, just have this on record.

I was taken into a back room which was just horrible and frightening and disgusting. One bare table and two chairs, and it smelt like piss. It was a really angry room to be in, there were swear words scratched on the table. I did not feel safe...I basically just wanted to get my name down and my abuser's name down and then leave. And just come back when I wanted to.

And I remember filling out the form, and I really felt alone. I felt so alone when I was doing that.

Sandi left the country for a year. Soon after she came back, she moved to Vancouver, leaving her police report behind. In Vancouver, Sandi began looking for a counselor to help her continue dealing with her abuse. She couldn't afford to pay for counselling, so she tried to apply for government help, through the Criminal Injury Compensation program. This process made her feel more alone than ever.

I got this form, and um, I remember just reading it and crying, and just feeling really angry...They were lumping together like, "Have you had your car stolen?" and you know, "What were the injuries accrued? Emotional, comma, financial, comma, whatever, whatever."

And I just felt like, wait a second, it's not a matter of someone breaking into my house, for Christ's sake, like this isn't, this isn't the form for me. I don't fit here." I got the sense of not fitting and not knowing what to write down. And feeling like as soon as I started writing I'd be incriminated, for having written anything.

...As soon as I got that form from the government I was just, felt frozen... And I avoided it for a long time, I was very afraid of it.

When Sandi began reading sections of the Criminal Code dealing with sexual violence, she felt again that she just "didn't fit", this time because she couldn't remember all of the details by which offenses are categorized in the Criminal Code.

I felt like I couldn't fit in. I couldn't fit into what they had set out for me. What they had listed and how they had worded it. I mean, for Christ's sake, I had issues about memory...

I had very specific memories about the incident itself, to a certain point, and then there was blackness. I don't remember after that... There were other things I was

foggy on: when did it take place, how old was he? We were trying to figure out how old he was by just what little we knew, what we could find out from people...

It's sort of like these images I have of students running up to a board to see if they've passed an exam — is their name on the list or us their name not on the list? Yeah, an exam...It does feel like an examination.

After she had begun to deal with her childhood abuse experience, Sandi was sexually harassed in a movie theatre. This time, she was able to defend herself.

It was almost as if he symbolically became the previous abuser, and I was not gonna let him get away. And I chased him out into the lobby...

I just felt a sense of power, like, you know, "I've got you, you slimy jerk," you know. But in a sense I, I felt like shit, you know, "I know this isn't what I want. I know there's a bigger one out there... and I can't corner him like this."

Sandi caught the man and called the police. This time, she felt supported by them.

This really great woman cop came into the office and I was given a space in the theatre...She was so receptive, she was really into my needs, she's like "What do you need right now?", you know, "Do you want your parents to be here?" ...She was

just so receptive, and it was great to have her there.

Although she felt empowered by confronting the harasser and calling the police, Sandi was still hesitant to go further in the legal process. She was afraid of losing control.

Once I handed that documentation over...once I gave that to them it was out of my hands. And I would lose control completely. And I would be a commodity for them to use...

And I was ready to leave the country. And I thought, "I can't because like, I'm leaving the country and that's important to me right now, I wanna get on with my life." So I left the country... Came back, contacted the police and I was told my case had expired, like a loaf of bread. That I had left the country and [the case's expiry] was my fault.

Sandi decided later not to pursue pressing charges against her first abuser. Before deciding, she'd called the police in her hometown to find out her options. The person she spoke to wasn't encouraging.

She told me how they were understaffed, underpaid, bla bla bla, and that basically I shouldn't even bother for a year, because they wouldn't get to it anyways.

And that, she said "I hate to say this, but to be honest with you, these cases aren't treated well." I mean here's someone in the system, basically saying, "think twice about this."...

I kind of felt scared and silenced, like "Great, well, that's it. It's over." You know, nothing more to be done.

Sandi, like Willow, is finished with the justice system, without seeing her abusers punished.

Marilyn, a 56-year-old mother of five, shared two incidents which occurred during her marriage and separation from her husband -- a context which Marilyn described as "very, very messy".

[My husband] was raised in a family where his father was a minister, and his mother was a high school dropout... Very very passive, dominated, you know, in a fundamentalist religious setting... She was just his little echo, whatever he said she would say back.

And I think, as time went on, that's where my husband was really coming from. And as time went on, he got more and more conservative...

I didn't get the divorce, as it finally turned out... He got the divorce. We were

separated for a year and a half, or two. Got back together again. Here, it's still even much deeper than all that -- I'm not telling you everything.

I had to stay in the family again... to take care of my kids. Because he's not that good of a parent, and there was still...There was abuse occurring.

Marilyn told me first about an incident which happened after she and her husband were separated, which she had only begun to think about around the time we talked.

[It] happened as like a um, almost like a rape. But it was my, my ex-husband. It's very complicated, because we'd been separated and so forth. And ah, then... You know, we met, or I went to see him, or knew he was going past, or something like this. And um, I tried to talk to him, and then ended up in, in this kind of a thing. When we had been separated for quite a while, actually.

...[It] was a very poor kind of ah, connection, and a tremendously hurtful thing... [It] was like this gave him sort of more of a way to be ah, much more dominant. And not listening to me, at all. Like, if I was there, I was just there... Which had never happened before, not like that...

And then he got up and said this didn't mean we were getting back together.

Marilyn didn't initially identify this incident as violence. Oddly enough, the first

suggestion of this possibility came from her husband, after he'd told his lawyer about it.

[H]e told me that his lawyer had told him now that that would leave him vulnerable if I wanted to use this incident in court, as, um, cruelty...

I really didn't see it in that context at the time. But his lawyer told him that I could've definitely used it. Which put a spin on it that I might not have really connected up, had it not been that he did tell me that quite soon.

Overwhelmed by the separation, divorce and custody proceedings, Marilyn still wasn't ready to deal with what had happened.

I had so many other things to deal with. I didn't really struggle with that until much later. And try to put that into perspective at all...The issue with my children was much more overwhelming than even what happened, how it affected me.

An earlier incident, during her marriage, was easier for Marilyn to define.

My husband did assault me, and hit me with a stick. And that was a very bad situation. And ah...I went to a physician and had pictures taken of my bruises, it was very serious...But it's hooked into, again, what I was doing with my kids.

I kind of flipped out, and grabbed something that was there, which ended up being a ski pole, that had been hanging on the wall... And I really went out of line...

And I, uh, hit my boy who was twelve. I was trying to get him ready for a music festival, and he just, you know, really drove me around the bend...It's a long process of layering. Of where things don't work, so you adjust and you try harder and harder to make the family work.

And ah, that was really unfortunate, because I was punished for that... [My husband] was outside and came in. And he took the stick away from me and beat me with it.

And that definitely was an assault. Now, I did not charge him with assault, because, out of that incident, he reported me as being abusive to my son. So it was extremely complicated. And, trying to make the family work for so long, I was not really centred...

He never saw what he did to me as bad. He saw it as teaching me a lesson, letting me know how it felt...

But when he did that, I felt he was totally snapped...Now that's definitely violence, definitely violence.

Marilyn tried to find help in her community to deal with her husband's behaviour. But through the end of her marriage, the separation and divorce, and prolonged custody

battle, she felt very alone.

I was raised in a family where, you know, if you got in any trouble it must've been your fault... I mean, any getting a speeding ticket, or getting pulled over by the policeman because you didn't have your seat-belt on or something would just -- oh, my parents would just faint! God lived in the courthouse, or at the bank... I had no support behind me for getting in the predicament that I did.

The community around her in St John's offered little support for Marilyn or her children.

[W]hen we went to talk to anybody, or do anything, they flipped right out. Plus, nobody could deal with it. Plus, they had no perception of it. I mean, you know what happened with the Mount Cashel kids. Just nobody wanted to deal with that at the time, no matter what these kids said. They went to the police, they went to Social Services, they went to everybody. And nobody would deal with it. And that's kind of where I was too, right around that time period.

And the community just wouldn't deal with anything like that. So it was all your fault, you know?

Then, my ex-husband is an associate professor. So of course he had his status,

you know?...It was just easier to paint me as the problem, right?

...And [my social worker] told me later that my ex-husband, through his lawyer, had the Waterford connection ready. They were gonna come out and just simply take me to put me in there... And [my social worker] stopped it.

And when I would tell any of my women friends -- and certain feminists-- they just, they were, you know, flabbergasted. And were terrified, and I could tell.

Marilyn lost the fight for custody of her children, who were given over to her husband. As she described, when faced with stories of violent behaviour by both parents, the court chose to believe that one was innocent, and one guilty; her family's situation was "so messy, and awful, that it was just easier for people to look at him and discard me." And so the system failed the whole family.

Reid,¹¹⁶ 23, is the only person in this study to have gone through the justice system as a minor. The process began for her when her teacher's sexual relationship with her was reported to the police. Before that, Reid hadn't thought of what had happened to her as wrong:

¹¹⁶ Reid did not want the province in which the experiences she described took place to be identified.

When I was fourteen, and I was in junior high, there was this teacher, Alan¹¹⁷, who was really attractive. All the girls really liked him, and all the guys idolized him. And he had coached me in gymnastics for grade eight and grade nine. And then at the end of grade nine, we had developed ah, an intimate relationship. Not sexual, but definitely intimate. And then, yeah, at the end of grade nine we started sleeping together. And then he went away for the summer, and while he was gone I decided that this was too confusing — I had to lie to my mom, saying where I was, and it just got very confusing. So when he came back, I told him that I didn't want to be together anymore. So that was fine. Throughout the next year, we continued to talk as friends.

At the time, I didn't feel particularly screwed up by the experience.

Two years later, I told my mother what had happened. She became very upset, and went to speak to a psychologist, and told him everything that had happened. And then when she was done, he said, "Well, you realize I have to report this, because your daughter was a minor."

Therefore, the state took over...

I don't know if my Mom knew or not, before she spoke to the psychologist, whether or not — At one point, she told me "No, I didn't know that he was going to have to report it", and then later she said, "Of course I knew". So I'm not sure.

¹¹⁷ Reid's abuser is described under a pseudonym, at Reid's request.

Regardless, I don't blame her for anything. But anyway, it was not of my will that it was reported.

Once the police were called, Reid lost all feeling of control. She didn't really know what was happening:

I don't remember anybody deciding that it was important that the victim should know anything about the legal system. I don't remember anyone really laying out for me what was going on.

Then Reid lost her privacy.

One of the parts that was the worst was that [Alan] started telling people who the girl was! The media couldn't print my name or anything. But as soon as he was charged he started telling people, and it was a small enough city that people talked. And as well, teachers had suspected that we were sleeping together when I was at the school. So as soon as they knew he was being charged, with such and such in this time period, they knew it was me.

Which is another thing that was really stupid — that they knew and they didn't say anything. That the whole thing could've been avoided.

Soon everyone around Reid knew that she was "the girl" in the case -- and she became a target of public disapproval.

I was blamed for it, as the little slut that wrecked that poor teacher's career. And he was the nice guy that finished last. There was some support in the community, but mostly I just heard bad things. I heard really awful stories about myself that weren't true. I actually didn't go to school for the last month of grade eleven because it got so bad...It went on for a long time. It's only been the last couple of years that I can go back to my home city and not feel like everybody's staring at me and talking.

All of that could've been avoided if he had been told that he could not give my name... The media couldn't tell people. I don't know why he was allowed to give names.

While Reid was struggling to cope with the rumours and blame, she received yet another blow, this time from Alan's union.

The Teachers' Federation decided that the fact that he was charged criminally wasn't enough. They had to have their own trial to see if they should take away his

teaching license.

I had to sit in their version of a courtroom, in front of people I didn't know, in front of *him*, and talk about penetration and things like that. I think that's hard enough for any woman, let alone a sixteen-year-old!

One of the hardest parts was that once again, Reid didn't have any say in what happened to her.

I had no control. The morning of the Teachers' Federation trial was the day after my boyfriend's graduation. I knew I was going to his graduation party — I didn't want to have to get up at six o'clock in the morning, drive all the way [to the city] to be at this trial.

So, being sixteen, I thought, "Well, they'll just change it." So I phoned the lawyer, and told him . And he kind of laughed, and said in a kind but assertive voice, "Reid, that's out of the question." So it was very clear to me that I had no control over this. They were not, in any way, going to accommodate whatever wishes I might have had.

The same way that Alan took from me what he wanted, never questioning what was good for me, so did the Teachers' Federation take what they wanted. I was just supposed to follow along like a good girl.

Bonnie, 37, was married for eight years to an abusive man, in Nova Scotia. She moved from Newfoundland to a rural Nova Scotia community to live with her husband, once they got married. It was only after they were married that her husband became abusive.

People don't know, unless they're in that situation, that it just, it starts out fine. You marry somebody and they're nice as can be, and just after you got married, they switch, they turn around.

He got me away from all my friends, all my family, everybody that I know. And he just started changing overnight. And what can you do?

First it was just little things. And he'd say, "Oh, I'm sorry." And if you didn't want to have sex, he'd beat you around the head, and go ahead and rape you anyway.

It starts so slow, and then it just keeps on you, saying "Oh, you're so fat, you're so stupid, you're a stupid Newf," you're this, you're that. No one else would want you, so it's just as well for you to stay in that situation.

I didn't get married until I was twenty-eight. And I figured, oh wow, marriage was forever. Stupid, I know.

During the marriage, Bonnie experienced numerous physical injuries from abuse, including five miscarriages she attributes to being beaten during pregnancy. When she

needed medical help, she drove herself to the hospital. It was during one of these trips that Bonnie had her first contact with the legal system.

When I went to the hospital one time with my ribs broke, the nurse took me into the room and she said, "I've had enough of this, you're being abused". The police were on their way.

They came in, and they talked to me, they told me that there was a place in Halifax that I could go to if I wanted to. And that they could make arrangements, they'd call the police near me. But I just got them to bandage up my ribs and I went on home.

Bonnie didn't see reporting the abuse as an option. Like Reid, she lived in a small community, where word traveled fast.

It was such a small community, everybody knows everybody. And the police were friends of his family. And I was like, well, what am I supposed to do here? What am I supposed to say? It'll all get back to his family, and then his mother'll say, "Oh, she's a liar, she's this, she's that.."

You know, I was always trying to second-guess, and I was always afraid, as soon as I went home, that he'd beat me again. Especially if he found out the police

were there.

Bonnie reached the decision to leave the marriage after spending several months at home in Newfoundland, on her doctor's orders.

My doctor and everybody knew I was being abused...I was going to have a major operation on my bowel. And they didn't think that I would be able to handle it unless I went home and relaxed for a couple of months.

So I had to take a leave from work, and I came home here, and relaxed. And I decided well, I'm better than this, I deserve better than this. I'm going to get out of it.

After moving back to Newfoundland, Bonnie consulted a lawyer about pressing charges against her husband. She was soon discouraged from going to court.

I went and saw a lawyer, and they said, "Well, you know, this is going to be hard to prove."

And I said, "How's it gonna be hard to prove?" I said, "All the records are at the hospital. They will release the records. And the police have been at the house, two or three times. There's proof of that."

But, you know, he said I would've had to have been on the stand. And I would've been drilled and drilled and drilled. And my whole life would've been brought up...

He said it was so overwhelming to go and try to do it, that he thought I didn't have the strength to do it. And I didn't.

No charges were ever laid against Bonnie's exhusband. At one point, Bonnie's lawyer used the threat of charges to ensure her husband's cooperation in the divorce process. In this last struggle against her husband, Bonnie felt that the legal system was on her side:

He wouldn't pay his lawyer's fees, so that the divorce wouldn't go through, because his lawyer wouldn't put it through until he paid.

So then I had to go through Legal Aid in Nova Scotia, and they put an injunction into the courts to get the lawyer to release the papers. And my lawyer had gone to [my ex-husband's] lawyer and told him, if you don't release the papers, she is going to put him in court and testify of all the abuse, you know, everything that he had done to me.

Cause they had a copy of just thirteen things that he did to me, and when the lawyer took them, both he and his secretary were both crying.

And as soon as the judge got the papers, he knew me, and he passed them right away. [My ex-husband] had been sent a summons to appear in court, and I didn't have to appear in court.

In that case, they really helped me.

Bonnie's divorce became final just before we talked, two years after she started the process. Now she's living on her own in Newfoundland, and trying to "get on with life". Just before the interview, she'd had her second date since she was married. It's not easy for Bonnie to trust people, especially men, but she's working on it.

You've got to try not to think that every man is like the person that you were with. Actually, I really think, I really thought for a long time, why would anybody be nice to me, you know...But I'm starting, I have realized that I do deserve it...You gotta try, and if you can't, you just try again. You just keep on trying.

[Surviving abuse] makes us stronger for surviving anything. I don't think there's anything now I wouldn't survive.

However, Bonnie faces another challenge to her survival. Apparently as a result of an unusual medical condition, she has developed tumors in her bowel, her stomach, her back and her head which doctors attribute to her husband's beatings. She is now unable to

work, and may need more surgeries.

I've got a brain surgeon, a neurosurgeon, a back surgeon. I've got an orthopedic surgeon, a bowel surgeon...Every six months I have to get the light to look at my throat and one up my bum. To see how big the tumours are getting now, against my bowel. It's from being beat up...

When I get bad news from the doctors, of course I sit down and cry, and I say why me, what did I ever do to deserve this? You know, but I say, well, you gotta get on with your life.

...The doctors told me I wasn't gonna make it to be thirty-seven. I turned thirty-seven in February.

Susan, 27, was sexually abused as a child, by a neighbour. He used to stop Susan on her way to or from school in St. John's, on a regular basis.

I used to take a shortcut, and this person would be there waitin' for me, and...And if he wasn't there in the morning on my way to school, he'd be there in the evening...Either way, you know, he got me, and it used to happen like two or three times a week. You know? If he didn't get me in the morning he'd get me in the afternoon on my way home from school...I'd try to avoid him, but sometimes, you

know, it couldn't be helped.

Susan told her mother about the abuse, soon after it started, when she was seven or eight years old. When Susan's mother confronted the abuser, he denied it, and Susan's mother believed him.

He said, "No, my dear, I wouldn't hurt your girls for the world." And you know, that was it.

The abuse continued for years, and had a profound effect on Susan's growing up:

Even though physically I was a child, emotionally and mentally I was an adult... I can't remember ever being a child. Like I look at pictures at home and I said, "That's not me." Even though the picture that's there is a picture of me, around the time that I was being abused.

Susan's behaviour also changed as the abuse went on.

There's a lot of strange things that used to happen as I was growing up and going through elementary school and junior high...I used to get in a lot of trouble in

junior high, it was my second year, in grade eight, and even in grade seven. I was always hanging around with the wrong people. It was like my attitude changed, like I didn't care anymore. What's the worst that could happen? You know, me being sent to the principal's office. You know, gettin' strapped. You know, getting detention or bein' suspended for two days -- that was nothing! That was just -- you know, I've been through worse. You know, so I just really didn't care.

Susan was also hospitalized twice in her late teens, for "nervous breakdowns." She has seen so many psychiatrists that she has "lost count." When we spoke, she had recently been diagnosed with post-traumatic stress disorder, as a result of the abuse.

After her failed attempt to get help when she was eight, Susan kept the abuse a secret for years, even through her breakdowns. She never forgot it, but she pushed it to the back of her mind. "It was always on the back burner, just simmerin', just waitin' to be, you know, caught fire or something. Like fat, just simmerin' away there, and then all of a sudden it's so hot that it catches fire. And that's what happened."

Susan's need to deal with the abuse "caught fire" when disclosures about sexual abuse at the now notorious Mount Cashel orphanage became public. She was on the mainland studying journalism at the time, so when the story broke, it was constantly being followed and discussed around her. And this was more than Susan could stand.

Everywhere I looked, where I was in broadcasting, there was no way to escape it, and I had to deal with it...I just had to leave school and come home...

Like everywhere you turned around, the media was, you know, Mount Cashel this or Mount Cashel that, whether you turned the radio on, or the TV, or you know, just in passing by, you know, having a coffee or something. At the donut store someone'd make a comment about Mount Cashel...I would keep everything to myself, said, "If only they knew," right?

Susan finally left school and came home to St. John's. Soon afterward, she told her sister, and then her mother again, about the abuse. This time, she was believed, but no one knew what to do next. Susan's mother called their family doctor for help and advice.

After that, we all seen the family doctor [to] get advice. And he said yes, to report it to the police, but to think about it, that it's not a very light decision...He said, if he is charged, you gotta go to preliminary hearings, you know, just the basic idea. And he told me not to get my hopes up and stuff like that. You know, because the justice system works in mysterious ways.

Susan made her decision quickly; she didn't want to wait until she could change her mind and back out of reporting. "The next day, I was like, "While I'm on the topic, I may

as well do something about it, cause maybe next week or next month I'll say no, I don't wanna do it."

When the case went to trial, there were four charges against Susan's abuser. Susan testified at the preliminary hearing, and at the trial. Throughout both hearings, including cross-examination, she never changed any detail of her testimony. In the end, however, the judge disregarded all of Susan's testimony, because of a contradiction between hers and her mother's. Susan testified that most of the abuse had occurred when Susan was walking to or from school, which she did almost every day. Susan's mother testified that her children had been driven to school every day. She told Susan later that she hadn't really understood the question, when she was being cross-examined.

She [Susan's mother] said, "Susan, I was so confused that," she said, "I didn't know what to do." You know, like I mean, that's not such a light topic. You know, and sometimes you get caught up in feelings and emotions and you don't know what you're sayin' half the time.

Susan's mother later realized that she had been mistaken, and Susan's sister confirmed it, but it was too late. The abuser was acquitted of all four charges. Susan was devastated.

I remember when this person...was acquitted of all four charges, first thing I did was I left the building. And there's a wall going down to Water St, from Duckworth St. to Water St. And I punched that wall, brick wall, as hard as I could, I was so angry. I didn't know how else to vent my anger. I mean, I could've, could've went over and strangled him. But that wouldn't do any good. So I just left. I just, I didn't know what to do, I just left and I punched the wall as hard as I could.

And then I was gone for a couple of hours and no one could find me. And then I finally did go home...And I just went downstairs, never said nothin' to anybody.

And my aunt came downstairs to my room. I was gettin' my pills ready. I had them all lined up, I took the covers off and I was gettin' them ready. And she took them. And I was cryin', bawling, doing it all, and I said, "This is the only way out. The only way out..."

I was expecting at least he'd be found [guilty] on one charge, anyway.

When we talked, Susan was still struggling not to give up. "I feel tormented and everything, like there's no help there for me, and I just feel helpless and hopeless, and like... I don't deserve to live."

One new hope had just appeared; another person had made a complaint against Susan's abuser. She said that while she wouldn't want to testify again, she'd go down to

watch another abuse trial. “Just to let him know that I didn’t forget about it. You know, stare him down.”

In the meantime, Susan was hanging on, trying to “think positive”, and live “one day at a time”.

Respondents’ Experiences of the Justice System

Each of the survivors and victims who spoke to me had expressed disappointment with the legal system as an option for dealing with sexual violence. They described inhibitions, discouragements and failures at many different points in the system’s response.

Naming the Violence

Before even considering reporting the violence that they’d experienced to the police, each of these survivors and victims had had to struggle with the question of whether or not they really had been the victim of a crime. Calling what happened a crime was not easy.

For many of the respondents, these doubts came directly from the source of violence. Willow, Marilyn, Susan, Reid and Bonnie were all told, during their experiences of abuse, that they were in some way responsible for what happened to them. This affected how they

themselves saw what happened.

The most common experience among these survivors and victims was not for their abusers to deny that the violence happened, but for abusers to deny that it was *violence*. For Willow, Marilyn, Susan and Reid, the perpetrator had presented what happened as something both people had done together — rather than something that one person had imposed on the other. Each of these respondents, in different ways, seemed to have believed what they were told.

Willow's therapist presented his earlier abuse of power as therapy. Although Willow was uncomfortable with some of his demands, she complied, because she trusted that as her therapist, he could only be suggesting activities that would help her: "I thought it was part of my therapy. He's my counselor."

Later, when he began to assault her in his car, Willow's abuser described this activity as "seeing each other", and begged Willow not to tell his wife. He told her that he wanted to "keep seeing her" on the only day that he didn't assault her after picking her up.

When I got in the car with him, nothing happened. He was right nice to me, and he said he wanted to see me every now and then, right? I think he told me, though, not to go phonin' him at his house, because his wife might get suspicious. Told me not to phone him in the nighttime, his wife had a day job.

He re-earned my trust.

Marilyn's husband made a similar statement, suggesting that what had really happened was a mutually consensual sexual encounter between two former lovers. At the end of the incident, "he got up and said this didn't mean we were getting back together." Marilyn is still unsure whether or not she defines the incident as a rape.

Susan's abuser made her feel like she, an eight-year old, had initiated the abuse. She was already confused about what was happening, and whether or not something was wrong.

This person was saying, 'Don't tell anybody! This is our little secret.' And the way he said it, he didn't threaten to hurt me or anything. But the way he said it was like it was all my doing, he never had no part in it. I was the one that was doin' it to him, you know?

...I didn't know what was goin' on with me. You know, I didn't know if this was normal, or does this happen to everybody else...

To add to Susan's feeling of complicity, her abuser gave her money after molesting her.

I think the reason he gave me money was because my family wasn't, well, my family was low-income. You know, my father worked as a security guard, that was the last job he had before he died. Before that he worked as a taxi driver, so he really

didn't get paid a lot. So we didn't have a lot of money for things. We never got anything new. Everything was either hand-me-downs or second-hand. This one time that we got new skidoo boots, we were all so excited, sloshing around in the snow and right proud of our new boots...We never ever got new clothes.

And he knew that. He knew that. And that's why he used to give me money.

Reid, too, saw herself as a participant, rather than as a victim, in her abuser's behaviour. When Reid's teacher began a sexual relationship with her, Reid, 14, believed that she was consenting to a mutual and equal relationship. Even after her teacher was charged with breach of trust, Reid wasn't sure that he had done anything harmful to her. And when her community turned against her for "seducing" her teacher, Reid felt their blame as if she had actually initiated their sexual encounters:

I felt like, "Well, my best friend Kim wouldn't have slept with him, Paula wouldn't have slept with him, but I slept with him. I must be a slut."

It was only later, when this teacher was caught on a trip with a group of female students in another province, in violation of his suspension from teaching, that Reid began to question the nature of their "relationship":

I had some ridiculous romantic notion that I was special, and that's why this happened between him and I. And then to find out that he had snuck his way back into teaching, and was potentially in the position to do it again, then all of a sudden that took away any specialness that I felt....Then I was angry.

Bonnie's abusive husband also made her doubt that what he was doing was actually wrong. He didn't deny that he was hurting her, but planted doubts on a deeper level; he made her feel that she just didn't deserve any better. His abusive behaviour started with humiliation and verbal insults, the kind of abuse that, as Bonnie said, "starts slow", and gradually wears down a person's sense of self-worth. "No one else would want you, so it's just as well for you to stay in that situation." Bonnie stayed in the marriage for eight years.

While many of the respondents felt complicit in, or deserving of, abuse, some felt clearer that what had happened to them was wrong -- but not very important. Both Marilyn and S. discounted their experiences as not very "serious", comparing them to other situations which they felt "counted" more as sexual violence.

Marilyn ranked her own experiences of violence, giving heavier weight by far to the experience which involved physical assault with a weapon. She described the first incident she related, as "almost like a rape", but "complicated" to define. And when she described the second incident, in which her husband beat her with a stick, she repeatedly emphasized that she considered *this* one to be "violence. Definitely violence."

In a similar vein, S. began her interview with a warning that her experiences weren't of the "worst" kind:

My situations haven't really been as concrete as say, what many other people may go through, right, and I know for a fact there are people who have gone through far worse than, you know, what I have gone through...

And some respondents had trouble naming what happened as a crime because their association of the crime to themselves was tenuous. Josephine and Sandi both considered what had been done to them to be a crime, when they were able to consider it at all. Although they knew that they had been abused, they could not always connect this knowledge to their present lives.

Sandi said, of her experience of child sexual abuse, "I haven't got it all figured out, and I sometimes forget even though I know." When Josephine heard about the study, she didn't even think of herself.

I didn't automatically associate myself with your study. I saw [your poster] and I thought, "Gee, I know somebody who could participate in that study. My friend has this happen to her, she could be a great person for that study."... Even though I was raped, I put it on to my friends. I'm still pointing the finger, you know? At

somebody else.

For Sandi, naming her experience was hard, even after she remembered, because she didn't have the words she needed. None of the information she gathered, including the Criminal Code, gave her a name for the particular form of abuse she'd experienced.

The term Sandi finally found was "digital rape". And finding it made a big difference :

The first time I actually heard the term "digital rape" was from my counselor. I'd never come across that term before, because even the way rape is portrayed is very like, penile-vaginal. Either that or it's used metaphorically, like "the rape of the world", or you know, "the crops were raped", or whatever.

And so for me it was nice, actually comforting that I found some terminology that I felt like, "that's basically it".

For these survivors and victims, there were a number of different challenges to their simply naming what had happened, to themselves, as a crime. Uncertainty about whether they had participated in the violence, or whether they had any right not to be treated violently, about whether the violation mattered, or their own acknowledgement of the experience made naming what happened as sexual violence, even within their own minds, a

complex and often tenuous act.

In addition to the struggle to name what happened as a crime to themselves, most of these survivors and victims found resistance when they tried to talk about the violence to the world around them.

Most of the respondents had tried to find some kind of support as survivors and victims within their environments; they looked to friends, family, community service providers or local media for validation and help. They were met with disbelief, silence and/or blame.

Among the most common fears these survivors and victims experienced following sexual abuse was the fear that people they told would not believe them. This fear guided Susan, Willow, S., and Bonnie in their decisions, at various times, not to speak to friends or family about the abuse. Susan and Marilyn found their fears were proven right: when they told, the people around them didn't want to believe them. Disbelief, and the fear of it, had lasting effects on respondents' safety and sense of support.

When Susan first told about the abuse, as a child, her abuser swore to Susan's mother that he had never touched Susan. Her mother believed him, and the matter was closed.

...You know, that was it. I mean, back then you'd believe an adult more than you'd believe a child — you know, “Oh , they're just makin' that up”, and whatever.

My mother said, "What was I supposed to do? I confronted him and he said no, he wouldn't hurt my girls for the world."

The abuse continued for years, and Susan never told anyone else. Even after Susan became an adult, and the abuse had ended, she was reluctant to reach out again. "I wanted to come forward for a long time", she said, "but I was afraid to. I didn't think anyone would believe me."

Other respondents weren't able to tell anyone, because they didn't feel that there was anyone around them who would listen.

S. never did tell her parents about most of the harassment she faced -- because for her and her family, it just wasn't something to be talked about. She sees this attitude as part of her family's Indian culture: "In an Indian household, you gotta keep quiet about everything that goes on, not even just [violence].. Many things don't get discussed as openly." S. feels that this is reinforced within Newfoundland's small Indian community, in part because it is a small minority in the province.

I think the minute an Indian woman goes and speaks out her mind about any sexual harassment or discrimination, I can just see all the tongues wagging, all the people that'll be ready to drag you down...

Maybe it's because they're also in a smaller place. There aren't that many of

us, so maybe that's another thing that would make them feel inhibited about being more open anyways.

S. also finds it difficult to talk to anyone outside the Indian community about her experiences, because there is so much of her life that outsiders wouldn't easily understand.

When I try to get counselling, I guess I also run into the cultural problem. Because while people can be quite sympathetic, when you're counselling somebody, you need to get an overall picture of what that person's going through, to help them. When you're talking to somebody who's from a completely different background, and you're not aware of that person's culture, it's gonna take you that much longer. They may not understand, you know, why are my parents acting in a given way? Or why is my community a given way?

It would be so much more difficult for them to understand, so it's almost like you gotta explain that.

The attitudes within her family and her Indian community, and the lack of cultural awareness among outsiders means that for the moment, S. has no comfortable place to speak about her experiences of violence. She said that she expected things to stay this way until she moved away from Newfoundland.

Marilyn's friendship network was equally unreceptive. Like the "closed environment" S. described, Marilyn's generally white middle-class community, based around her church, was not a place where you could talk about sexual violence. Marilyn described this social circle, which she shared with her husband, as:

...a social setting where people are perfectly OK, they're chatting and their life is pleasant...And they know you're in pain, and so on. But after a month or so, they don't want to hear about it! And so you're really required to play a role and be fine. Those people are not people that get divorced!

When Marilyn went to her local women's centre for help, she found, again, that people didn't want to believe her.

I think they thought I was a hysteric, or maybe a little bit off. People didn't really know what to think. Most people, when I told them much of what happened -- and I could never tell it all -- just thought it was so horrific, they just -- Like I'm saying, no one could really deal with it.

Like Marilyn, Willow feels that the prevailing attitudes of her abuser's middle and upper class social network -- that "people like that" don't commit sexual assault -- put her

at a disadvantage. Her abuser is a born-again Christian, wealthy and prominent within his church. A poor woman with a mental disability, Willow suspects that her abuser preys on other women who, like her, are in a vulnerable social position.

He lives in a big house in a bigshot neighbourhood. He preys on young women with disabilities and poor women, that type of thing.

Although Willow went to the police to report the assaults, she didn't confront her abuser, or tell anyone who knows him about the abuse.

Like Willow, Bonnie feared that if her husband's family heard that she had complained about the abuse, they would take his side, telling everyone "she's a liar." To prevent this further attack on her, Bonnie had to forgo reporting the abuse to the police -- friends of her husband's family.

Most of the survivors and victims in this study were not believed when they told the people around them about the abuse they'd experienced -- or they kept silent to avoid disbelief. But for several people, the prevailing response, or the one they feared, was blame. Instead of being told that the abuse couldn't have happened, or that abuse in general did not occur, Josephine, Reid and, in one context, S. heard a different message -- that abuse was the victim's own fault. Like disbelief, this message of blame had a profound impact on the respondents' understanding of what happened, and on their options for

getting help.

Josephine didn't tell anyone about the rapes for years afterward, because she didn't think people would be supportive. Although she eventually told two trusted people about what happened, she doesn't plan to tell many more. She expected, and still expects, that the people around her would blame her for being raped -- questioning her behaviour that night, and choices afterward.

They'd ask you why you didn't report it, they'd ask you why you were there in the first place. You know, those are the two questions I don't feel comfortable answering. Because there is no answer other than "I was there, it happened." You don't need to ask why, I was just there, OK?

Reid's experience, after people found out what had happened to her, was much like the reaction Josephine feared. People blamed her for her teacher's behaviour, and it hurt. Reid said several times during her interview that neither the violence she experienced nor the two separate inquiries into the incidents hurt her as much as her community's response.

When I hear the word "high school", that's what I think about...I don't think about wonderful parties and dances and things like that. I think about everyone talking about me, and everyone calling me a slut. And I can tell you, one hundred

percent sure, that the fact that everyone talked about it...the consequences of that were far worse, left way more scars, than did the experience in the first place, as well as the trial.

Intellectually, I could say "These are idiots, these are people who don't know. I didn't do anything wrong." But in terms of really heart and soul, what I felt? I felt like a slut. I felt like I did do something wrong. I felt like, "Well, my best friend Kim wouldn't have slept with him, Paula wouldn't have slept with him, but I slept with him. I must be a slut."

And I think I internalized that. So I started acting like one. I completely rebelled, and I became this angry little thing that swore constantly, hated everybody. And I started sleeping around like crazy. And I engaged in all kinds of self-destructive behaviour, from smoking all kinds of pot to not going to work.

While Reid was angry that the courts had not prevented the perpetrator from identifying her as the complainant, she was not surprised by the reaction once people found out.

I was blamed for it, because of the way our culture views male and female sexuality...The myths of our society are so powerful that even women themselves believe that female sexuality is dangerous to mankind.

S., who was also blamed by her peers when her abuser was punished, shares this opinion.

It's almost like you can't blame the legal system when your society's screwed up...I mean, one of my friends, she got raped by four guys, while she was in junior high. And then when she tried to bring it up, the teachers were like "Yeah, well it's your fault for looking pretty".

At the same time, as an Indian woman, S. has found that in some contexts, her peers are very ready to see her as a victim of sexual violence. Although they stood by and ignored a white boy assaulting her, and blamed her when he was punished, S.' peers, like the dominant white North American culture in general, have been much more willing to believe in violence against women as a prevalent problem within *Indian* culture:

There is that brand[ing] of eastern culture that goes on. You know, "Oh yeah, it's India, land of female infanticide". "Don't they treat your women really badly?" You know, this type of thing. You get a good bit of that.

My brother had to deal with it last year, among some of his friends. They started asking, How do you treat your sister, like do you have this really paternalistic attitude, are you really demanding with her?" It was just assumed right away that he

treated me badly. And they wouldn't really listen to him.

I'm like, "Excuse, me, but have you watched a Hollywood film lately?"

S. feels that this racist stereotyping is an additional motivation for Indian communities in North America to maintain silence about abuse.

People in the community itself will start saying stuff about that person who goes and complains, like "Oh here, this is another fine way to bring us down in the community. That whole idea is like "This is why our culture gets put down all the time." So you will, you know, probably feel a bit more inhibited about saying certain things.

In North America, I can sort of see it being easier to say a white person did something than if an Indian person did it.

When we talked about telling people about sexual violence, most of these survivors and victims spoke of not being believed, being told it was their fault, or of not having anyone they could talk to about it. But several people also had some positive experiences with people they told.

Josephine told a friend, and then her boyfriend, that she'd been raped, years after it happened. Each person's reaction was instrumental in her coming to terms with the rapes

for herself.

The first guy I told, a real good friend of mine, all he did was listen. He didn't judge me, he didn't say "what?" or "when?" or "repeat that." He just listened, and it was so comforting. And I never felt judged. He just listened, and said, "it's okay, it's okay."

And the second time, I told my boyfriend, and he was totally enraged. He was like "Well God, why do you think it was your fault?" I guess he served the role of, you know, making me realize that okay, it's not my fault.

So yeah, support is important.

Bonnie and Sandi both found support through counsellors. Bonnie attended an intensive day therapy program at Lemarchant House, a publicly funded treatment centre in St. John's. The program helped her "not to be passive anymore" -- Bonnie developed her self-esteem, learned self-defence, and was able to talk to a counselor, and work through traumatic memories of her husband's abuse.

One memory stands out for Bonnie, of a time when she really needed support, and got it.

One day there was a guy there doin' woodworking, hammering in legs. And it

sounded like a shotgun going off to me. I just turned around and I walked upstairs. I didn't know what I was doin', until my counselor came up after me and started to talk to me, and he said, "What's wrong?" I said, "That just brought back a memory, that I had buried in my head, of my husband chasing me up the meadow of our house, shooting a gun off at me, a twelve-gauge shotgun." And he took me upstairs to my other counselor...

It was just so wonderful to have them there to be able to help me cope with it. Cause I had buried it for so long. Until you can cope, you bury it.

Sandi had trouble finding a counselor who could help her. She didn't have much money to pay a counselor, and knew that a counsellor who was hostile to queers, or who wasn't informed about sexual abuse, wouldn't be of any help.

First I started off at the school, they had a huge waiting list. I wasn't sure if their counsellors were queer-positive, I wasn't sure if they were versed in survivor issues. And I had a big issue with just, you know, being at school, at classes, and then walking into the office, you know. The fear of someone seeing you go in, and wanting some privacy.

After a really frustrating process, I found a therapist whose secretary basically outed her to me. I was really pushing, you know, "Is this person queer-positive?".

And the secretary just said, “Well, she’s a lesbian, does that help?” And I was like “Yes! Get me in there!” She was at the YMCA, and sliding scale, and I walked into the office and I just knew this was it. I felt really comfortable and safe. There was tons of literature everywhere, and posters, things I had never seen before, about where I was coming from as a survivor.

Sandi also found a survivor’s group, through a women’s centre in her town, which made a huge difference.

The women’s centre is where I met other survivors for the first time, out survivors. And we were able to vent our anger together and talk about how we felt as survivors in this country, and the system. And we compared notes and stories, on how we had been treated or mistreated or not treated at all. It was really empowering. And I think that that is one good example why women’s centres are so important, is that they do provide a safe space, usually, for people to come and share these stories for the first time.

Among the survivors and victims in this study, support from the people around them was unusual, and not necessarily the response they expected. Almost everyone had experienced a negative attitude from someone they told, or decided against telling, about

the abuse. But for those who found it, support from friends, family or counsellors made a substantial difference to their ability to deal with their experiences of violence.

Telling Authority

The police or the process of making a police report, represented another obstacle for many of these survivors and victims. Both Josephine and S., the two respondents who chose to completely avoid the legal system, said that they wanted to avoid dealing with the police. They envisioned reporting as a process of insensitive questioning and cold bureaucracy.

For those respondents who did have encounters with the police, the process was often insensitive, uncaring, or downright hostile to their needs.

Josephine wanted to avoid the police station itself, which she pictured as an intimidating environment, as much as the insensitive questioning she expected. For her, “even so much as seeing a uniform would be intimidating”, let alone “this cold police station with uniforms and guns at their side...”

S. pictured a similarly “cold” atmosphere, dominated by a bureaucratic approach which ignores the feelings of the person going through it.

I don't think I could call the police. I just don't think I could deal with them...

You can't just go through this bureaucratic questioning. I mean somebody's gone through so many things, and they start trying to take medical reports and things like that, after all of that! I realize why they would do it, but my God, when people are questioning you left and right and then you have to go for a medical report and everything... It seems almost cruel in some ways. I really don't know how people who've gone through it have been able to. I think there needs to be more compassion in there somehow.

For those who did deal with the police, Josephine's and S.' images of the process might not seem far off the mark. Willow, Sandi, Reid, Bonnie and Susan all spoke with the police about their experiences of sexual violence. While they each had different experiences, no one found it easy.

When Susan reported her abuser to the police, the hardest part was actually *saying*, in specific detail, what he had done to her.

I couldn't name the parts of the body. I just said "here" or "there" or whatever, but the police officer had to know exactly what I was talking about. He said he needed to have the right words in order for this to proceed further. So I had to name the different parts of the body, and I found that really hard. I managed to bring up a word here and there, and it took about five hours.

For Sandi, part of the problem with calling the police was the image she had of what the police were for, and cared about -- a list that didn't include her fears for her safety. When she found out that her abuser was now living in the same town, and was a friend of her cousin, she was afraid. She felt, though, that she had no way to explain her fears to the police.

I wasn't sure if I should call the police. You know, would it even matter, calling the police and saying "Well, you know, I'm kind of afraid, but I don't really know if anything's gonna happen, I don't really know if he knows I know..."

I also felt like I didn't have the right language. I mean, when you watch TV shows, people who are dealing with the police are like, they have a mission, they know what they want. It's almost like they have a script. Well, they do have a script, for Christ's sake! You know?

It seems like there are certain categories you're gonna fit into. "This happened to you. We're gonna take these measures. These steps." And I just felt like I don't even barely, I'm trying to figure out what happened to me.

When Sandi did make a report about the childhood abuse, she found the police station itself was a hostile environment. She felt unsafe in the "horrible, frightening and disgusting" room where they took her to give her statement, and left very soon, feeling

“very alone.”

Bonnie received mixed reactions from the police. She saw police officers, always male, several times, in two provinces, following violence or threats by her husband. On one occasion, described earlier, when a nurse called the police to see Bonnie at the hospital, the officers encouraged her to use police and shelter services to escape from her husband. Another time, when Bonnie’s husband had raped her, they didn’t take it seriously at all. “There was one cop: ‘Well, he’s your husband, you’re supposed to have sex with him!’.” Bonnie never suggested pressing charges against her husband, and the police didn’t either.

Willow seemed to have had the most positive interaction with the police. Unlike Bonnie’s experience, Willow felt that the police believed her -- even though they discouraged her from pursuing charges against her abuser, because of her schizophrenia.

The RNC believes me, but it’s just a matter of gettin’ the evidence...

There was a really nice constable took my statement, but then he warned me that my schizophrenia would come up in court. It wasn’t really positive, but he did the best he could do, right? It was as good as what I could expect, I mean the RNC were good to me. And I do have schizophrenia, and let’s face it, the RNC face people with schizophrenia every day. But I think the RNC knows I’m tryin’ to make something of myself now.

When I asked how reporting could be handled in an ideal system, all of the respondents had suggestions for improving police response. These covered most aspects of the process, including the location, the sex of the officers, the nature of the questioning, and who could be questioned on the survivor's behalf.

Josephine, Reid, Susan, Sandi and Bonnie all emphasized the difference that dealing with female officers, and lawyers, would make to their sense of safety. As Reid put it, "if you have to talk about penetration and, you know, a sexual act, you don't wanna be sitting with a guy talking about it!" Sandi agreed: "I was just not wanting to talk to a man about this."

Josephine felt strongly that reports should be handled away from the other business and formal atmosphere of the police station. Equally importantly, the interviewing officers should make the interview safer by showing respect and a willingness to believe the victim.

Of course they're gonna ask you questions. So I think the most important thing is that they go in there with an open mind, you can sort of feel that they're respecting you.

S. questioned the fundamental structuring of the process around the direct testimony of the victim. She felt that asking victims to speak directly to strangers about the painful and intimate details of sexual violation was an unnecessary stress. She proposed instead

that the victim tell the details to a trusted friend or family member, who could then convey them, at least initially to the police, “so if the victim doesn’t feel like they can go and call the police directly, then if they have someone, say guidance counsellors or social workers or even loved ones through whom they can speak, that would make a big difference.”

Going to Court

When we talked about the court process itself, many respondents expressed similar fears or experiences of a hostile environment.

As with talking to the police, most respondents said that it would be difficult or impossible for them to talk publicly about the abuse, and to answer detailed questions about the most personally painful aspects of the abuse. Reid described being questioned about her experience - which, unlike other respondents, she saw as consensual at the time she was questioned - as “possibly the most intrusive experience I have ever had.”

Even worse, for many respondents, was that in court, they would face questions from someone who *definitely* wouldn't believe them -- the abuser's lawyer. Many respondents feared that this would be a hurtful attack on their memories, their motives, and even their mental competence.

When Sandi started to write about the abuse, she imagined every word of her statement being used against her in court.

I started filling out pages and pages of what I thought the damages were to me. And it was really empowering, but I thought, "I don't wanna give this to them! There's no way I'm gonna give this away!" This makes me so vulnerable, to hand this over. Once again, it's down to having every word scrutinized: "What exactly did you mean on page 2 when you used the word 'sort of'? Does that mean it sort of *didn't happen*?" All these fears were going through my head.

Willow believed that the defence would not even need her statement about the abuse -- her medical records as a mental patient would be enough to discredit her completely. "It's nothing for any old shyster lawyer to say, 'she's delusional, she's probably in love with this guy...'"

Even if Willow's credibility wasn't completely undermined by her schizophrenia, her medical records contain other information that can be used against her. Willow's sexual fantasies, including violent scenarios, are also on record.

I gotta be honest with you, my fantasies include bondage, right? It's in my medical record about my real fantasies - something out of Bastard Out of Carolina¹¹⁸... It's very common among women who have been sexually

¹¹⁸ Dorothy Allison, 1992. A novel whose main character faces sexual abuse as a young girl, which is intensely portrayed.

assaulted...¹¹⁹

The RNC would see my records, say, "Yeah, she had sexual fantasies about being raped by this guy"... And let's face it, this guy got money. He can hire any old shyster lawyer to make me look like an old whore.

Susan, who went through the entire trial process, said that "if I had it to do over again, I wouldn't." Compared to the struggle Susan faces to stay alive and cope with post-traumatic stress disorder and the other effects of the abuse on her life, she found taking the stand "ten times harder... I mean, it's hard enough livin' your life every day, tryin' to deal with your abuse, but when you're actually tellin' the story, you're reliving everything that ever happened to you."

Susan was stunned when, after testifying at the preliminary hearing and two days on the stand at the trial, all of her painful testimony was invalidated by one mistaken recollection on the part of her mother.

The judge said he had no doubt that this person abused me, but he had to

¹¹⁹ When she read the draft of this chapter, Willow wanted to add that while sexual fantasies about violence are common among survivors and victims of sexual violence, they do not indicate that a survivor or victim has feelings of love or attraction for the abuser, or that a victim wanted to be abused. Bass and Davis, and the Royal Newfoundland Constabulary Association, among others, also make this point (Bass and Davis, 1994, pp. 271-74, 425-426; RNC, 1992, p. 135).

acquit him because my mother's testimony contradicted mine...

I don't think the justice system really pays attention to the victim. They don't take into account, you know, how serious these crimes are -- you know, how could someone make up a story like that? Over the years, my story still hasn't changed. And it won't change. Because what happened to me happened to me.

Sandi was afraid that her own story might be similarly discounted. The rise of the "false memory syndrome" movement, and the ongoing conflict over the validity of survivors' recovered memories of abuse, made her cautious about subjecting her memories to any public judgement.

All of a sudden abuse became a term you would hear in the media...the word "abuse" was out there, like "Yes, there are some things that are definitely not OK"...these articles started coming forward, and there was all sorts of backlash, and false memory coming up...I felt like, "I know I fit in here somewhere, but I'm taking two steps back from this, because it's like stepping into the line of fire.

For others, testifying meant opening themselves to being blamed for the abuse. When Josephine thought about testifying in court about being raped, she expected that her behaviour and choices that night would be attacked.

As much as they have the right to ask, and need to know the story, I always assume that they try to trace it back to the victim. They'd look for fault in me as to why it happened, and try to blame me. That's the image I have of what would happen. There'd be millions of questions to try to find a flaw in my story, or something wrong with my actions.

And then it goes back to "Well, there was something wrong -- I shouldn't have been there!" I was really drunk, and if I'd had a bit of sense that night I probably would've said no, I'm not going back to this party. I think that was my mistake, as much as I didn't ask to be raped or anything.

...If it was like in the movies, where this stranger breaks into your house and you know, jumps into bed with you, well I mean of course I would've been totally outraged, would've immediately reported it. But because I was in their house, because I had been drinking, I'm sure they would've kept throwing me questions as to why I was there.

And Bonnie, whose lawyer described the process to her, pictured a similar scenario, in which she would be "on trial":

You're put there, and it's like they're blaming you. And you did nothing. It's like it would be my fault, and I'd have to prove why I let him beat me, why I let him

rape me, lower me to something lower than human, lower than a dog.

Perhaps worst of all, for many respondents, their abusers would be present through all of these questions and attacks. Josephine, Bonnie and Willow all knew that they could never testify in front of their abusers.

Bonnie still becomes afraid when she sees a man who resembles her ex-husband. She doesn't want to be anywhere near him ever again, and said that she would never press charges if it meant going to court, "because even just being in the same room with him now, I would freak."

Josephine too, would feel threatened if her abusers were "even in the same building". She didn't think she could ever testify about the rapes with them listening: "It'd be too nerve-racking. I'd feel like they were just jeering at me."

And Willow felt that her abuser could make her feel assaulted all over again, by leering at her in the courtroom, reminding her that he knows the intimate details of her life.

I daresay I wouldn't be able to face this guy in court, because he'd probably give me one funny look...Probably give me a sexy look, then he'd say something about the guy I was in love with years ago, right? And whisper something to his defence attorney, about my fantasies and that.

For Reid, who did have to talk about the abuse at a hearing with the abuser present, his presence was one of the worst parts of the process.

I felt like I was the one doing this to him... I felt like I was looking him in the face as I was stabbing a dagger in him...

And the other part of it is, that it just, it, I'm not sure if I can articulate this, but here's the man that I had sex with, that was being charged, that was charged criminally, and it wasn't enough that I had to open my closet for everybody. But to have to do it in front of him too? And to talk, fairly publicly about sexual acts that occurred between him and I, in front of, you know, in front of him! That was humiliating. That was yucky, that sucked. So there were two aspects of it, humiliation and the feeling that I was hurting him by doing this.

Overall, these survivors and victims saw the court process as yet another situation in which they had little or no control over what happened to them.

For Reid, the whole process was outside her understanding or control. No one told her what was going on, or asked how she felt about it. She described her involvement as "being pulled by invisible strings."

Sandi also found that the system had offered her no consideration for the impact of a trial on her life.

I called the police branch in my hometown and said, "look, I've been in there, I've opened this, I wanna know what the status is. Where is it? Have you done anything with it, or you know, what are my options?"...

She basically confirmed my file, said "Yeah, if you come in here and give us all that you wanna say about this, then it will be out of your hands to a certain extent, and you could be subpoenaed at any point." And at that point I'm living across the country. She's like, "And not only that, but it could be a year until we get to it."

Susan said that the court process was like another round of abuse.

[A]fter being in the courts and everything, you feel, feel victimized over again. You know, out of control, you can't control anything, like, the decision's in someone else's hands and all you can do is tell your story. Really. And everything's left to the system.

Marilyn described the process of reporting, seeking legal advice and community support, as an emotionally fragmenting experience.

When you talk to these people, you give a little part of yourself to them. The only part that they kind of can work with. And somebody else you give another part

of yourself. And it was just horrible...You're shattered, you're fragmented.

Getting Justice

In addition to the hurts of being questioned and attacked on the points where they were most vulnerable, the presence of the abuser and the lack of control, many respondents identified another serious problem with the legal process -- that even if a victim could get through the trial, no "justice" would be done.

When I asked these victims and survivors to describe justice as they saw it, they described a range of different outcomes. They shared one element in common: none of them felt that they had received justice through the legal system.

Most respondents felt that justice would only be served if their abusers came to realize that what they did was wrong, and changed their behaviour. In addition, many wanted them to be punished. And for some, it was equally important to have the courts, and society, acknowledge that the abuse had happened and that it was wrong.

Willow and Susan would have felt some sense of justice if their abusers went to jail. Willow saw jail as a place where her abuser would be punished, because "down in the pen, they don't put up with men who sexually abuse disabled women with disabilities, right? So they'd put him in PC." If he was isolated in protective custody, hated by the men around him, Willow thought that her abuser might think about his actions, and realize that "just

because he got lots of money and he's a born-again Christian don't make him God."

Susan would have been satisfied if her abuser had been found guilty on even one charge.

There was four charges, against him, and four of the charges were serious, you know. And I figured even if he was found guilty on one, I'd be happy. If he was found guilty on all of them, I'd be like on cloud nine. Like I don't know if this is because I want to get back at him, like if it's revenge for like --Like I want to punish him for what he's done to me. Like he's really screwed my life up...

You know, when I took my abuser to court, it felt right to me, because you know, he was finally, I thought, would get what he rightfully deserved, and that's you know, to spend time in prison. Because when you're in prison, there's not much else for you to do but think. So like, I mean, if this person's in jail, he's just locked in, I mean, he's probably to think to himself the reason why he's in there, and what he did...

Bonnie felt that there was only one way that her abuser could learn how wrong his behaviour was, and the justice system would not do it.

Justice isn't supposed to be able to do what I want done! I'd like for

somebody to beat him and rape him, like I was. Over and over and over and over again. Just so he'd know what it'd feel like. That would be justice for me, yes.

Second best, Bonnie said, would be if her ex-husband was charged with the abuse, but only if it could happen without her having to go to court.

Josephine also felt that the system doesn't adequately punish rapists. She said that even if the legal process was changed so that it felt safer for her to report and testify, she still wouldn't bother, because "they would probably get probation or somethin', a tap on the wrist. And they'd never feel like I felt that night, so there'd be no payback for them, as far as I'm concerned."

Josephine would have liked her abusers to serve jail time, but also to be made to see that what they did was wrong. Jail time alone wouldn't be enough:

They gotta learn it was wrong, you know? They should have to go to classes or something, and be, they should be told that you know, it's wrong and that they have to learn why it's wrong.

Because they probably didn't -- These two guys, I mean, they probably felt like they had the right. I was at their house, I was a piece of furniture for them, they could just go on in and take over. I mean they're obviously, they obviously did it, so I don't think they were thinking the next day, 'Oh gee, that was awful, I shouldn't

have done it.”

I mean, even the guy in the room -- “There’s nothin’ I can do”? Oh, I see! This happened before or something, did it? This is something you accept around here, right?...That whole thing of “this is my right”, I mean you have to, they have to learn that that’s not their right, you know? I wonder if they’ve done it to anybody else...Because, hey, it happened to me, I’m sure they could’ve done it to others.

And I don’t think sittin’ in jail would change that behaviour.

Reid, whose abuser did serve jail time, felt the same way. She felt that the minor sentence that her abuser received, along with the loss of his teaching license, was enough of a punishment for his crime. But she was angry that he wasn’t also given any kind of mandatory therapy, to try to change his behaviour. She felt that the court missed the real problem.

Three weeks, and he loses his teaching license, and that’s it! That’s how they dealt with the guy, a guy who had clearly demonstrated that there was something emotionally wrong with him. He wasn’t forced to see a counselor. He just spent his three weeks in jail and lost his license and kaput, they were done... Those three weeks solved nothing.

Reid's abuser was later caught teaching in another province, at a school that had not checked his references. He was caught by a fluke; while driving a bus full of female students on a field trip, he was pulled over for speeding.

For S. too, changing the perpetrator's behaviour was a big part of justice. She didn't feel that abusers necessarily need to be punished for punishment's sake, as long as their behaviour changed. She ran into the boy who had abused her, years later. She found that he had changed his attitudes and behaviour toward women, and wished him no further punishment.

Marilyn couldn't imagine any justice, for women, coming out of the present system. She described the entrenched misogyny among lawyers, judges, and counsellors in the Newfoundland system as "such a deep cesspool that, you know, you could drown in it."

None of these survivors and victims felt that they were able to receive justice through the legal system. When it failed them, several respondents had considered taking the law into their own hands.

When Sandi gave up on getting justice through the system, she thought about a number of ways to create justice for herself outside the law. In the end, she had to give up the idea in order to put her own safety and healing first.

I went through a really strong couple of months fantasizing about taking the law into my own hands. And what that would mean, and um, I thought about various

things, everything from like, causing, you know, creating violent acts to happen myself, or confrontation. And I came across that term "confrontation" in the survivors' guide, whatever it's called, Courage to Heal. I started exploring the idea of confrontation outside the legal system and what that would mean...

I thought of all sorts of things, I thought of calling, I thought of showing up at his house. I talked to my parents about these sort of fantasies, or these desires I had, and they were very supportive. Actually, they said, "Look, we feel very disempowered too. And if you want to have some sort of confrontation we'll be there with you, whether it's going, showing up at his house or whatever."

So that was good, but at the same time, I was, I was paralyzed. I was frightened, like I thought, "Well, that's all fine and dandy, but then who's gonna guarantee my safety the week afterwards?" You know? So is it worth it, it that even worth it? You know, and as far as I was concerned, this guy was a maniac. Like he was not mentally sane. And could commit violent acts.

Sandi was also concerned about legal repercussions of taking the law into her own hands.

I asked the Legal Aid person, and they laughed with me on this, like, "Yeah, because then...he could turn around and like, file a complaint against you! You'd

have to be really careful", she told me explicitly, "You would have to be extremely careful about how you went around this." You know, you can't -- On one hand, this Courage to Heal book says all these glorified stories about how women march into their abuser's workplace and scream it in their face. But the reality is something completely different. I mean, I was afraid, on the other hand, of his turning around and like slapping me with assault charges or something like that, you know?

Now that Susan's abuser has been completely acquitted, she feels that "the only thing that would be justice for me would be vigilante justice." Unlike Sandi, Susan accepted that this would jeopardize her safety and freedom. It was something she considered when she was feeling self-destructive.

I told my doctor, you know, I felt so bad like lately. I told him, you know, I wouldn't have to think about it twice. It's hard for me to get a gun. Or anybody, really. I mean, you know, you gotta be registered and all this. But it's not too hard for me to get a couple dollars worth of gas and a lighter. You know. I've thought about that...I'd like him to suffer. And I'd be there watchin'.

[Going to jail] wouldn't've been an option cause I would have killed myself too. It would've been a murder-suicide. That's the only way I'd do it.

A Better System

The deepest and most urgently needed changes these survivors and victims identified centred around the need for survivors and victims to have more control over what happened to them in the criminal justice process, and for the system to feel safer for survivors and victims.

Reid, who testified as a minor, would have felt safer if those in charge had seemed to care more about her needs.

Even something as simple as asking “Are you OK with this?” or “How do you feel about this, do you need anything?” I think that something as simple as this - merely giving the victim as space to express their thoughts and wishes -- would have given me more of a sense of agency.

Another very simple way to help prevent the experience from spiralling out of a victim's control, she added, was to make a realistic effort to protect victims' privacy. The defendant, as well as the media, should be forbidden by law to name the complainant. Otherwise, Reid emphasized, in a small community, restricting the media is “like putting a lid on a bucket with a hole in it!”

Susan felt that she should have had some input into the handling of her abuser's

case, particularly how the case was prosecuted. As the complainant, it was all out of her hands.

It's like once the victims go to court, they don't have rights...I wanted to appeal the decision, but -- I mean, I got nothin' to lose, you know, I mean this person was found not guilty on all charges, so I had nothing to lose. But I had everything to gain. You know. And [the Crown Prosecutor] decided it wasn't a good idea, that there was no new evidence or whatever.

And he made the decision, which is the worst thing. I mean, you got no control, I mean you're just assigned a Crown Prosecutor, you don't decide who's gonna handle the case.

Because at the time I wanted, I think it's Cathy Knox? I think she's the one that dealt with the Mount Cashel. And that's who I wanted, cause I feel more comfortable with her, with a female anyway... But the person I had, I mean, he was a male, and...And like I still don't understand why he didn't want to appeal it. You know? At least he could apply to appeal it, you know, but he never even bothered.

These survivors and victims also felt that the legal system should become a safer place for victims and survivors. Though most thought this was unlikely, they felt that a better legal system would place more limits on the ways victims could be made to feel

vulnerable and afraid in court.

First, several respondents questioned the need for victims to appear in court at all, and suggested that they could testify on video, and the video could be shown in court so that, as Josephine said, “you wouldn’t have to be even in the room to talk about it.”

And if you did have to appear in court, Josephine added, court could be made into a much safer environment.

I would hope that you could be in a quiet room with the other lawyer, not up on a stand, and not in front of all these witnesses and people, and have a chat. And sure, he’s gonna ask tough questions, and try to break your story, but I would hope it would be in a safe environment. I think it should be in a smaller room, off to the side somewhere with a couch, not up on a stand in this big hearing, you know? Because for me, I already felt like I was singled out, and I don’t think I’d want any more spotlights on me after that.

Susan suggested that the court provide victims with advocates or support people just for them.

They should have something related to the court that deals specifically with abuse issues. You know, cause it’s not easy telling your story up on the stand. And

you need someone. Even if your family's not there to support you, you need somebody there.

In addition to these changes to the courtroom environment, respondents agreed that victims should not have to testify in front of their abuser(s). As Bonnie said, "How do they expect somebody to go and face this person in a courtroom, when they have beat you and they have raped you and they have humiliated you?"

Many respondents urged for changes to how a survivor's credibility can be questioned in court. Susan felt that it shouldn't be so easy to "disprove" a victim's testimony on the grounds of minor inconsistencies or missing pieces of the story. She felt that the court should take the difficulty victims and others face in remembering and testifying into account.

The judge said he had no doubt that this person abused me, but he had to acquit him because my mother's testimony contradicted mine. But he did say he believed me!

I think the law has to be changed, when it comes to personal injuries, especially emotional. You know, because some people can't think straight, or they can't remember everything. They need to understand what a victim goes through in order to come to the point there, at that moment.

Marilyn also mentioned the difficulty of recounting a painful story in what the court would consider a complete and accurate manner. Because in the telling, she said, "You're shattered, you're fragmented...When you tell your story, you know, you can't think of everything. And chronology gets turned around..."

Willow felt that there should be more limits on how a victim's mental health history can be used against her in court.

I think there should be clamps put on defence, unscrupulous defence attorneys who get paid big to make the victim look bad...I think if the medical records say that "she's a credible witness" and that "her disability does not negate her credibility" you know, then they should be admitted. But like having these medical records say "Oh yeah, she's had sexual fantasies about this guy" and all this...

In addition to safety and credibility, some respondents emphasized the importance of simply being acknowledged as important contributors to the process of justice. For Reid,

What would have made it a much more tolerable -- not pleasurable or even pleasant, but tolerable -- experience, would have been if somehow I had been given the sense... that this was for me! That this was for me, and all the young girls in the

future. You know. And that they wanted to hear my side, and that what I had to say was important. It wasn't just evidence.

Susan, too, called for a more humane treatment of victims:

I'd like to see the court system handle these cases delicately. You know? Like it seems like it's just a business...And it's not there to help either the victim nor the accused, I don't think. Especially the victim.

Overall, these survivors and victims wanted the legal system to become a process that would recognize and respond to their needs. Most of their points centred around making the process less brutal for complainants: offering safer contexts for reporting and testifying, offering complainants more control over the process, and simply treating complainants and their stories with respect and a willingness to believe.

Respondents wanted a system they saw as cold, bureaucratic, disbelieving and victimizing to be transformed into a process that was open to them and their stories. A system in which, perhaps, justice could be served.

Chapter Five -- Analysis

Sexual violence renders us profoundly unsafe. Being violated tells us that we are not in control of what happens to us, that we can be used by others and what we want does not matter. As the healing literature articulates, being violated tells us that the world is not the way we thought it was.

As respondents described, violation shows victims we are powerless objects, “a piece of furniture” for others to use or destroy at will. It tells us that we deserve it, that we have no more rights than “something lower than a dog.” It tells us we can’t count on being free or happy, and that we “don’t deserve to live.”

Survivors and victims in this study described the impact of sexual violence in these ways. They described being helpless to prevent physical violation; they were pinned, they were smaller and younger, they were taken by surprise. In several situations, the abusers had weapons, or threatened worse violations if their victims didn’t comply.

They described being terrified and powerless.

They described being humiliated and ashamed, and not wanting anyone to know. They described being degraded and deceived, feeling that they were bad people who had somehow brought the abuse upon themselves.

They described feeling “disgusting” and “lower than a dog.” They described feeling

guilty, and being blamed, even vilified, by the people around them.

They described having no way to understand or speak about what was done to them. In relating their experiences, many of these survivors and victims emphasized, often more heavily than the abuse itself, the injuries of not being believed, and of not being able to believe themselves, about the violence.

They described being discredited, and staying silent because they knew no one would believe them. They described being treated as crazy, and feeling crazy, because they had no other name for post-traumatic stress symptoms, or because no one else saw what they saw happening.

In each person's case, life after the violence was not the same. Many had had to struggle to understand what had happened as violence, and to name it out loud.

Sandi and Susan had to wait years to be able to affirm that the abuse had even happened, Sandi needing to forget the abuse altogether, and Susan silenced by denial from the adults around her.

S. couldn't talk about what had happened to her because she didn't have a way to speak about it, or someone to hear.

For Willow, Marilyn and Bonnie, the challenge was to believe that what had happened was wrong, despite abusers, community and internalized messages insisting that this was normal, or that perhaps the victim was simply crazy.

For Josephine and Reid, understanding and healing were weighed down by guilt and

blame. Josephine struggled silently with her feelings of guilt and responsibility for being raped, while Reid was forced into blaming herself by recriminations from her entire community.

In their efforts to survive, to reach safety and to respond to the violence in their lives, none of these victims and survivors felt that the legal system had been very helpful. Some had avoided the system completely; others had tried to use the system and found it failed them. Each respondent emphasized, in her own way, that the system was not a safe place. And the most hurtful aspects they identified within the process were strikingly similar to the hurts of sexual violence itself.

Respondents' concerns about the process seemed to cluster around two ways in which sexual violence makes victims vulnerable. Their naming of what happened as a crime was often shaky, complicated by feelings of shame, confusion and guilt. They were afraid of having this naming shaken further by denial or dismissal by authorities, or had already been hurt by the system's disbelief.

They also expressed concerns that the procedures for complainants could be in themselves intimidating, intrusive and disempowering for survivors and victims.

Naming and Denial

For these survivors and victims, saying that they had been sexually violated was not

an easy or obvious response to the sexual abuse they experienced. None had responded immediately to the abuse by saying, even to themselves, this treatment of them was wrong, or that the perpetrator had committed a crime. Rather, they had repressed their awareness of what had happened. They had dismissed what was happening as part of a normal marriage, a healthy relationship, or a legitimate therapy session. For almost every respondent, naming the crime came later, and as a struggle against their own denial, guilt or shame. As the healing literature described, these survivors and victims faced these barriers to naming the violence from within and outside themselves.

Disbelief comes at survivors from all angles. We internalize disbelief, often because our abusers have told us that nothing happened. Like Willow, we may be "hoodwinked" by abusers, especially those in a position of professional power over us, who manipulate us with confusion and lies about their intentions and behaviour. Or, like Susan, we may tell about the abuse, and find that the people around us simply believe the abuser over the victim, especially an adult over a child.

We internalize disbelief when, as for Marilyn, our families or communities maintain that "people like us" are not abusers, or don't get abused. (These attitudes can contribute to more than one pattern of abuse, if, as in Marilyn's case, a victim of abuse is also behaving abusively.) We internalize disbelief when, as for S., such possibilities are just not discussed. We internalize disbelief because people tell us that what happened to us is no big deal, or even that it is "normal." Like Reid, we may not understand that we are not in a

position to truly consent to what's happening -- that the situation is not as equal as it looks. Or, like Bonnie, we may be psychologically beaten into believing that there isn't any abuse that we do not deserve.

We internalize disbelief because we hear from the media, from our peers and mentors and even from judges, that people, especially women, who say they have been sexually assaulted are likely to be lying. Like Josephine, we already know, right after an assault, that we can't simply tell people what happened; the painful truth is something we have to prove. And, as with Josephine, we may instantly know a number of counts against us if we try. We internalize disbelief, especially when abused as children, because our lives depend on it. Like Sandi and Susan, we may need to repress some or all awareness of abuse, until a time comes, even decades later, when it is safe to know what happened. And for those of us who are abused again as adults, the effects of early abuse may make it that much harder to count what happened this time as a crime.

Finally, we internalize disbelief because when or even before we remember that we have been abused, the False Memory Syndrome Foundation is there waiting, with loud attacks on the validity of any victim's memories. Faced with such denial, many of us, like Sandi, withdraw from "the line of fire."

For these survivors and victims and others, as the healing literature affirms, part of the injury of sexual abuse is a disbelief in our own perceptions of reality, and in our own rights as people.

Survivors and victims need the belief and concern of others. We need to have our perceptions that we were violated and that this was wrong — which may have taken us years to acknowledge ourselves — validated by others. As respondents emphasized, this recognition, more than anything else, would feel like justice. This was the justice that respondents who chose to report, like Willow and Susan, were seeking from the system, and the justice that others wished they could find. They needed more than anything to be believed. Instead, the system offered another round of damaging denial — this one with all the official authority of the state.

The survivors and victims in this study confirmed "common knowledge" that we are seldom believed in the justice system — and that the system's denial can be profoundly hurtful. Most respondents felt strongly that they had not been, or would not have been, believed about their experiences of violence. For Josephine and Marilyn, who chose to stay away from the system, one major reason was that they were afraid no one would believe them. Sandi took years to approach the system because she could not believe herself. She still struggles to stay strong in her knowledge of what happened, not to "forget even though I know." Willow, who decided to report her abuser to the police, was told that although the officers believed that she'd been assaulted, *she* was not credible enough to make a court case worthwhile. She had suspected this would happen before she reported, knowing that because she has schizophrenia, her credibility was "shot." Bonnie was warned away by her own lawyer, who told her that by the system's standards, she didn't necessarily have "proof"

that she had been abused. Earlier, police had dismissed her complaint of sexual assault, telling her that she was "supposed to have sex" with her husband. And Susan, who went through the entire trial process, got the same message from the judge; he told her that he believed that the defendant had abused her, but that her testimony wasn't credible enough (due to the contradiction between Susan's and her mother's) to justify finding her abuser guilty.

Respondents were clear that disbelief from the system was as hurtful as the denial they'd experienced as part of the abuse itself. For some, the message received from the system was almost identical to the message they had heard from their abusers: that the abuse hadn't really happened, that the abuse was just a normal part of marriage, that perhaps the victim was just confused or delusional about what had happened. And it hurt them in the same psychological place.

The system perpetuates denial against victims when victims are told, as Bonnie was, that what their abusers are doing is a "normal" and private affair. Like many survivors who are abused by their partners, Bonnie felt, for most of her marriage, that she deserved the many abuses her husband heaped on her. Her husband's attacks on her self-esteem, coupled with her feeling that "marriage was forever," made it easier for her to believe that the abuse was just what happened in a marriage than to articulate that her husband was doing something to her that was wrong and that she didn't deserve. And so she endured -- and only barely survived -- eight years of violence before she was able to leave.

The system reinforced this message of denial. When Bonnie did turn to the police, she got the same message that she heard at home: "He's your husband -- you're supposed to have sex with him." Bonnie had attempted to name being raped as violence; the police officer dismissed it as normal sex between a husband and wife. And Bonnie went home.

Like Bonnie, many others who are abused by partners and spouses have been convinced that the abuse was normal or fair. The CPVAW Report acknowledges that for many women facing domestic violence, the possibility of leaving becomes as terrifying as that of staying, as the abuse comes to seem "inevitable." The cumulative effects of abuse "undermine a woman's self-confidence, courage, self-esteem and volition." As one woman told the panel, the deepest hurt of abuse can be that it no longer seems like anything is wrong:

The real damage is to your understanding of yourself as a human being. I believed there was something fundamentally flawed, that I was missing something that other women who weren't being abused had.¹²⁰

Thus, for many survivors, as for Bonnie, naming the abuse as abuse is the greatest challenge of all in the struggle for survival.

As with Bonnie, other survivors of abusive relationships have encountered denial

¹²⁰ CPVAW, 1993, p. 35.

and even mockery from police. Women survivors and victims speaking to the cross-country Canadian Panel on Violence Against Women repeatedly told of police officers telling them that their cases were not serious, accusing them of wanting charges "out of revenge," and just refusing to lay charges.¹²¹

The attitude that violence in a marriage is not a public concern has a long history in Canada, where until 1983, rape was defined as forcible intercourse by a man with a woman other than his wife.¹²² Women who were abused by their husbands simply could not name what happened to them as a crime; the law denied their naming completely. As then-Justice Minister Pierre Trudeau said in 1967, "the state has no business in the nation's bedrooms."¹²³ Given as an argument for decriminalizing homosexuality (which the Trudeau government effected in 1969), the underlying division of the public concern from citizens' private business clearly places all perceived sexual behaviour between partners outside the public concern. The most compelling justification available was not that homosexuality wasn't wrong, or that it wasn't hurting anyone, but simply that it was about what happened between sexual partners. Like anything else in the bedrooms of the nation, the state had no business interfering.

The literature is clear that despite groundbreaking changes in the law, many

¹²¹ CPVAW, 1993, pp. 215- 216.

¹²² Roberts and Mohr, 1994.

¹²³ Steele, Scott, "Coming Out," in *Maclean's*, May 16, 1994, p. 41.

Canadians still view problems within a marriage or partnership as private business. Women in the CPVAW survey had been told by religious leaders, family members and friends that they shouldn't complain about their partners' abusive behaviour. Often, they were told instead to change their own behaviour to make the marriage work.¹²⁴ Above all, they were told it was no one else's business. As former St. John's Mayor John Murphy demonstrated in 1997, violence in relationships is still not only private, but funny business. By distinguishing the "understandable" behaviour of men who shoot their girlfriends, from "real crime" in St. John's, Murphy both maintained the separation of the "bedroom" from the sphere of public concern, and presented murder in the bedroom as a permissible and amusing private habit.

Police response seems to reflect this view that domestic violence is not a public problem. In Newfoundland, a 1993 study found that ten years after police officers were directed to lay charges in domestic assault cases, less than 25% of RCMP officers and less than 5% of the Royal Newfoundland Constabulary mentioned the policy as a factor influencing their decision to lay charges. About 45% of both forces reported having received no training on the charging directive.¹²⁵

Women who do call the police, like Bonnie, may or may not receive any recognition that their partners' abuse is, at least potentially, a crime. The possibility that their naming

¹²⁴ CPVAW, 1993.

¹²⁵ Lacey and Women's Policy Office, 1993.

will be validated, because the law provides for it, is a significant difference in victims' options from the total denial prior to 1983. But the separation of "bedroom" behaviour from the sphere of public concern still limits our naming of the problem, among police officers, communities and families, and often, as with Bonnie, within victims themselves.

As a result of messages from many directions suggesting that they deserve abuse, either because they provoke it, or simply as part of their relationships, the way out for survivors and victims of abusive partners will remain longer and harder than it has to be. Some will never make it — about 150 are known to have been killed in Canada each year by their male partners.¹²⁶

This is the impact of denial.

The system perpetuates denial against survivors when survivors who report are disqualified as complainants simply because they have mental disabilities. The system perpetuates prejudice against disabled people, especially disabled women, by giving them up as "non-credible." Police and prosecutors accommodate (and probably often echo) the perceived prejudices of judges and juries when they screen out victims whose disabilities make them less respected, less understood and less believable in an ableist society.¹²⁷

Many mentally disabled victims *are* less believable, in the system and in the society

¹²⁶ New information on violence in same-sex relationships may be forthcoming in the results of the First National Survey of Lesbians, Gay Men and Bisexuals in Canada, to be released in 1999.

¹²⁷ CPVAW, 1993, p. 67.

which produced this system. As James Robb notes, the dominant attitude toward people with disabilities in general "has fluctuated from the hostile to the paternalistic."¹²⁸ One need only ride a public bus past a mental hospital to witness the level of overt discomfort and hostility the nondisabled public feel toward those seen as "crazy" or "sickos." The RCMP Investigative Guide suggests that part of being "crazy", for women, is to make false allegations of sexual offences. Officers are also warned that conditions such as "difficulties in their personal lives" or "a history of mental and emotional problems" are common traits among females who make false allegations.¹²⁹ Valenti-Hein and Schwartz list among the myths about mental retardation that people with mental retardation are "childlike, generally incompetent and stupid by nature." In addition to other social disadvantages people with mental retardation face as a result of these negative stereotypes, these myths "constrain their participation as witnesses in the legal system and serve to devalue crimes against them."¹³⁰ And as Kelly Scott found, in her study of women with physical disabilities in post-secondary education, the nondisabled public often do not even distinguish between

¹²⁸ James C. Robb, "The Dilemma of the Mentally Disabled Sexual Abuse Victim," in *Developmental Disabilities Bulletin*, Vol. 18, No. 2, 1990, p. 1.

¹²⁹ Szabo et al, 1997, p. 66.

¹³⁰ Denise C. Valenti-Hein and Linda D. Schwartz, "Witness Competency in People with Mental Retardation: Implications for Prosecution of Sexual Abuse," in *Sexuality and Disability*, Vol 11, No. 4, 1993, p. 291.

physical and mental disabilities, “associating physical disability with mental incapacity.”¹³¹

Walter Coles, an RCMP officer, notes that the Canada Evidence Act equates a witness “whose mental capacity is challenged” with a child under 14. In either case, the Act requires an inquiry to determine “whether the person understands the nature of an oath” and “whether the person is able to communicate the evidence.”¹³² As Coles observes, this section allows the defence to attack the credibility of any mentally disabled person, or a physically disabled person who cannot communicate in a conventional manner¹³³. In a society in which disabled people in general are discredited as intelligent or individual persons, it is easy to see how the simple fact that an alleged victim has a disability, however relevant or tangential to her capacity to give evidence, may be a useful tool for the defense.

In many cases, police and prosecutors themselves are not able to understand or even hear the experiences of disabled victims because they lack the education, experience or resources to really listen. Researchers have commonly found that disabled women facing violence often have nowhere to turn; neither transition houses nor police stations had the necessary physical structures, services or training in place to make their services truly accessible to all. In particular, the Roeher Institute points to the “absence of protocols

¹³¹ Kelly Scott, “Women, Disability and Education Research Project,” in *Canadian Woman Studies*, Vol. 13, No. 4, 1993, p. 94.

¹³² Walter Coles, “Sexual Abuse of Persons With Disabilities: A Law Enforcement Perspective,” in *Developmental Disabilities Bulletin*, Vol. 18, No. 2, 1990, p. 37.

¹³³ Coles, 1990, p. 37-38.

relating to handling complaints concerning victims with disabilities.” From getting up the steps to finding a sign-language interpreter to telling one’s story to someone who doesn’t understand how a particular mental disability may (or may not!) shape differences in how a person communicates, the response to the needs of a mentally and/or physically disabled victim depend on “individual police knowledge about what steps to be taken and who to turn to for assistance.”¹³⁴

The RCMP Investigative Guide briefly mentions the different needs of some victims with disabilities, within the category of interviews deserving “special consideration,” for which there is no specific protocol. Officers are advised to call in “appropriate professionals” as needed. How to decide when this is needed, and who to call, is left to the officer’s potentially uninformed judgement.¹³⁵ In a society in which most disabled people are treated as second-class citizens, this will never be enough.

It is no wonder, then, that people with disabilities remain especially vulnerable to violence; surely abusers know, as Willow suggested that her abusive therapist knew, that they don’t have to worry about victims telling. Even if their victims name the abuse to themselves, they probably will not be taken seriously – if they even have access to the process. It is also no surprise that most victims with disabilities are unlikely to try to

¹³⁴ Roeher Institute, 1993, in Ticoll, 1994, pp. 42-43.

¹³⁵ Szabo et al, 1997, “Basic Case Management”, p. 38. Examples include individuals who “are mentally challenged, have cerebral palsy, are deaf, mute and/or blind, speak a different language” and “will not talk freely.”

approach the police , anticipating, as the Ontario Women's Directorate, CPVAW and others have found, that they won't be heard as credible victims.¹³⁶

In its perpetuation of prejudice against the disabled, the system has silenced Willow even more effectively than her abuser. Willow struggled to name her therapist's behaviour as abuse, resisting his power to make her feel confused and crazy. And she succeeded, recognizing that he had manipulated her, and that her feelings that something was wrong were right.

When she took this knowledge to the system, the system told her that she *was* crazy, or at least too potentially crazy for anything she said to be believable. The system could not send a clearer, more sweeping message of denial; whatever is done to her, and however clearly, consistently and courageously she tells it, Willow will never be "credible" enough to be worth the court's time. Willow's voice, like the voices of many other victims with various disabilities, will never count. And unless someone more "credible" witnesses or complains of abuse by the same person, abusers who prey on disabled women like Willow will be free to find more victims -- victims who can never fully name abuse in their own voices.

This is the impact of the system's denial.

The system perpetuates denial of survivors and victims when police officers, lawyers and judges are allowed to maintain and perpetuate racist and homophobic assumptions.

¹³⁶ Ontario Women's Directorate, 1993, in Ticoll, 1994, CPVAW, 1993, Chapter 7.

These attitudes show when excuses are made for abusers based on their alleged "cultural influences" or "preference." They show as well when members of the system minimize or dismiss violence on the grounds of supposed racial and/or sexual characteristics of the victims.

Needless to say, victims and survivors thus dismissed receive no validation from the system that something wrong was done to them. Minority victims of abuse may be doubly silenced: by the system's hostility, and, as S. described, by pressure from within the targeted community not to voice problems that could "bring us down." As a result, huge numbers of survivors and victims in Canada will never come near the system because they expect to be disqualified or attacked again because of who they are. Their abusers will go free and may continue abusing.

The system perpetuates the denial victims face when victims and others testifying about abuse are held to an unreasonable standard of accuracy -- under fire. Respondents had a strong sense, whether they had been to court or not, that if they went to court they would be "drilled and drilled and drilled" by the abuser(s)' lawyer, questioned about every aspect of their lives in an effort to catch them in a lie, and that their stories of abuse would be discounted.

Indeed, the case against a sexual abuser, from the decision to investigate to the decision to charge to the ultimate ruling on the abuser's guilt, depends primarily on the credibility of the victim. In most sexual assault cases, unlike many other kinds of crimes,

the victim's statement is the only "evidence" against the abuser. If the victim doesn't seem sufficiently credible, by the system's standards, the system does not have to take her "case" to court. If the police do not believe the victim, they can close their investigation. Further, if, as with Willow, the police do not expect the court to believe a victim, they can recommend against laying charges to the Crown. (Victims like Willow are then told, at the same time, that the police believe them, and that there is no "evidence" of what happened to them.)

Added to the current societal willingness to disbelieve survivors on almost any grounds, this system sets up virtually *any* aspect of a survivor's certainty, memory and even character as a profitable target for defence lawyers. Some specific areas, like the victim's sexual history, are restricted.¹³⁷ The Supreme Court has ruled that a victim's past sexual behaviour is not an acceptable defense, in itself, to sexual assault. Therefore, the defense may only ask about a victim's sexual history if he has successfully argued to the judge that unusual circumstances make it relevant.

Almost every other aspect of a victim's life is fair game for questioning, and any uncertainty casts doubt on the victim. As a result, victims must undergo a highly personal

¹³⁷ The 1992 'Rape Shield' law (Bill C-49) amended the Criminal Code so that in sexual assault cases, a complainant's sexual history may not be used by the defense to suggest that the complainant was more likely to have consented to the alleged assault, or that she is less worthy of belief. If defense lawyers want to raise some aspect of the complainant's sexual history on some other grounds, they must prove to the judge that it is relevant to the trial and worth the invasion of the complainant's privacy rights. (Bill C-49, reproduced in Roberts and Mohr, 1994.)

quiz about their own lives, under the abuser's eye and with official belief or denial at stake.

Belinda Lyons evokes the possible breadth and brutality of such questioning in her poem "so we're going to court again." She describes the rapist's lawyer

gruelin'
about my father
my mother
my high school
my friends
my degree
n the french fries i had for lunch
yes or no
did you or did you not
go to the pharmacy on january fourth 1990?¹³⁸

Susan, too, was cross-examined at a preliminary hearing and at trial, and said with pride that "I never once changed my story." But her clarity of memory and strength under cross-examination weren't enough to counteract an inconsistency between her mother's

¹³⁸ Belinda Lyons, "so we're going to court again," in June Jordan's *Poetry for the People, No Voice, No Choice, No Country: Is This What We Want?*. Berkeley, CA: Poetry for the People, University of California Berkeley, 1996.

testimony and her own. For the judge, the possibility that Susan's mother had simply forgotten how her children had gotten home from school more than a decade earlier (a detail which had been unimportant to her at the time), but that Susan had remembered it correctly because it had been a factor in the abuse, was insufficient explanation for an inconsistency between witnesses. Her mother's inaccuracy made Susan's testimony suspect, and her story was deemed insufficient grounds to convict her abuser. Susan's naming of the abuse she had suffered was given no more weight than her mother's recollection of a perceived minor detail of Susan's life at the time of the abuse. This ruling was devastating for Susan; it was the final and official refusal to acknowledge the abuse that had affected almost her entire life. This was the last in a series of rejections Susan faced when she tried to say that something was wrong.

When Susan's abuser first began to molest her, when she was eight years old, she was confused about whether his behaviour was normal or wrong. He preyed on her confusion, giving her money to make her feel complicit, and encouraging her to keep "their" little secret. It worked; Susan hid the money and kept the secret. She believed him that the abuse was "all my doing."

When Susan decided to get help, she told her mother about the abuse, expecting her to make it stop. But when her abuser denied it, her mother believed him and the abuse continued for years. Again, Susan got the message that nothing was wrong with what was being done to her.

The third time Susan tried to name the abuse came in her twenties, after teenage years of self-destructive behaviour and several nervous breakdowns, and after the world around her had begun talking about child sexual abuse as a result of the public disclosures about abuse at Mount Cashel. This time, her family believed her, and she pushed herself toward the system right away. Susan went to court hoping that her abuser would be found guilty on even one of the four charges against him, that he would finally "get what he rightfully deserved," and, she hoped, think about what he'd done. Instead, she was told that as convincing as her testimony was, it just was not good enough "evidence" to convict someone. Once again, Susan had named the abuse and it didn't matter. She went home and tried to kill herself -- after all of her failed efforts to name the abuse and be validated, this felt like "the only way out" of the suffering the abuse had caused.

This is the power of the system's denial.

It is not surprising that survivors and victims avoid the system's disbelief. In addition to the awareness that reporting is unlikely to lead to the outcomes we need (like a sentence or rehabilitation for the abuser(s)), many survivors and victims just can't handle any more disbelief.

The system also perpetuates denial when convicted abusers are given meaningless punishments. In the criminal justice process, a judge (or judge and jury) makes two judgements of the alleged abuser's behavior: whether or not he committed the crime(s) in question, and what punishment the crime(s) merit. For most of the survivors and victims in

this study, both the conviction and the punishment of the abuser were important goals. They felt that if their abusers were convicted, the judge would be sending an important message to both the survivor and the abuser, validating the survivor's naming of the abuse as a crime. An acquittal sent the opposite message: the victim's naming of the abuse was denied again.

Many of the survivors and victims in this study felt an equally strong need to see their abusers punished in a way that was meaningful to both survivors and abusers. While their views on appropriate penalties varied from retributive rape to non-punitive counselling and education, they all had the same goal: for the abuser to learn that what he had done was wrong.

This might be seen as the ultimate validation of a survivor's naming of her abuse as a crime; not only is she supported in her own efforts to reconstruct her understanding of the world in a self-positive light, as Herman describes, but the person responsible for shattering her previous understanding of her safety is himself made to accept the survivor's naming of the crime. In this view, it is understandable that many survivors hope, however fruitlessly, for their abusers to acknowledge their crimes as crimes; short of undoing their abuse, this is the closest an abuser could come to countering the injuries of violation, disempowerment, denial and blame. It is perhaps not surprising that two of the seven respondents whose abusers were not punished had considered taking the law into their own hands, forcing their abusers to be negatively affected by their crimes -- through being

powerlessness, if not through remorse.

Conversely, many respondents saw abusers' lack of remorse as perhaps the greatest invalidation of their naming of the abuse. Josephine said she would never go to court because she didn't expect her rapists to receive a real punishment, one that would change their view that "they had the right" to rape. Reid, whose understanding of what happened as abuse came long after her abuser's conviction, began to feel that she'd been used when she heard that he had been found, in violation of a court order, in a position to abuse again. It didn't bother Reid that her abuser had only been sentenced to three weeks in jail, but she was hurt and angry that no measures were taken to change his willingness to exploit young girls. Because nothing changed his attitude, she said, "those three weeks solved nothing." In this case, the system named an abuser's behaviour as wrong, but without any accompanying pressure for him to change. In this response, the system failed Reid, her abuser, and, with the contributing failure by an incautious employer, another entire school full of his potential victims.

Finally, the system fails victims by its denial where victims are also abusers. Although they were not involved in a criminal justice process, Marilyn and her children were affected by a different form of denial in a custody proceeding: the court's choosing to believe one of two allegedly abusive parents. Both Marilyn and her husband had behaved abusively during their marriage: Marilyn toward her child and Marilyn's husband toward her. Married women who hit their children, and allege abuse by husbands are very far from

the characteristics of the “model victim” Muzychka described among Newfoundland police. It seems possible that this view also undermines the credibility of women like Marilyn in related legal proceedings, if their situations are excluded from a narrow perception of “real” victims and “real” offenders. As Marilyn said, “in the end it was just easier to decide that I was the crazy one.”

As Marilyn said, her situation was “messy.” If the system had believed both Marilyn and her husband about abuse, perhaps neither would have gotten full and unsupervised custody of their children. By treating one party as innocent and the other (perhaps not incidentally the woman) as “crazy,” the decision failed the whole family. Marilyn’s children were left in the custody of one of their two abusive parents, with no recognition of this abuse.

In a society which offers only limited recognitions of any form of abuse within white middle-class families, legal responses to situations in which a victim has also been abusive may be a particular challenge. When Marilyn’s family went through custody proceedings in the 1980s, she felt about every aspect of her situation that “nobody knew what to do with it.”

Since then, the laws on sexual violence have changed, and new charging policies have been implemented to deal with domestic violence in general. But there is still little recognition that victims of abuse, or even women in general, may be abusive. The 1997 RCMP Investigative Guide for Sexual Offences acknowledges the possibility, advising

“special consideration” for cases in which alleged victims “are offenders themselves.” But as with its other “special” categories of victims, there is no protocol, only the suggestion to seek outside assistance.¹³⁹ Other families in situations similar to Marilyn’s may fare no better.

Naming and Guilt

The system also perpetuates another of abusers’ most harmful messages to victims: that the abuse is their own fault.

Many survivors and victims are painfully vulnerable to blame about the abuse we have suffered. As the healing literature describes, feelings of self-blame may reach survivors both from within, as a coping response to violation, and from abusers, family and community. With the addition of authoritative voices like those of judges, police officers, and even some psychologists blaming victims, it is almost impossible not to capitulate to the question of our own guilt. As Josephine, said, “you can’t help it-- when it’s you.”

Josephine, like many other survivors, had to struggle with feeling that it was at least partly her fault that she was raped. Intellectually, she knew, as a feminist, that rape was not the victim’s fault, but she still felt that she’d been “stupid” to go back to the rapists’ house. She was afraid that anyone she told about the rapes would agree that her actions had

¹³⁹ Szabo et al, 1997, p. 38.

brought about the rapes — especially the police. While Josephine felt that the men who raped her had committed a crime, and should be punished, she also knew that hearing anyone question her actions or suggest she was to blame would “tear me apart.” Her own feelings of guilt made her too vulnerable to being blamed by others.

Josephine is far from alone in feeling guilty. Most survivors and victims blame ourselves in some way, at some point, for the violence we experienced.¹⁴⁰ As Bass and Davis point out, the alternative, admitting that we were unable to avoid being vulnerable and being violated, can be even more painful.¹⁴¹ And as Josephine articulated, “knowing better” — having heard, and believed strongly about others, that sexual assault is not a victim’s fault — does not make the guilt and shame go away. Josephine is only now starting to feel that she is “almost on strong ground to say “Yes, it happened to me, and I’m not ashamed.” She never will risk the blame of a police officer or a lawyer in court.

Josephine is also far from alone in her decision to shield herself from further blame; fear of being blamed keeps many survivors and victims away from the police. Gunn and

¹⁴⁰ As noted earlier, the guilt and shame common to survivors is acknowledged in virtually every work created to help survivors, from self-help books for survivors, to personal stories by victims and survivors to manuals for crisis-line volunteers, nurses, doctors and therapists, to the information pamphlets produced by women’s groups, victim services and police, to some police manuals on sexual abuse. See, for example, Government of Newfoundland, Women’s Policy Office, 1991, Royal Newfoundland Constabulary Association, 1992, Bass and Davis 1994, Oksane, 1996.

141 Bass and Davis, 1994.

Minch found, in their survey of victims' use of the Manitoba justice system, that among victims who hadn't reported, 69 percent had strong feelings of guilt about the assault.¹⁴²

If survivors and victims do not feel guilty following an assault, shame and self-blame can be instilled in us after the fact by those around us. As with Reid, who was ostracized by her town as a "little slut" when her teacher was charged with sexually exploiting her, this blame can hurt as deeply as the original abuse. For Reid, being blamed by her community made her blame herself as she never had before, sending her into a streak of self-destructive choices. She said clearly that the consequences of being publicly condemned as a "slut" had "left way more scars than did the experience in the first place."

The system also exacerbates survivors and victims' feelings of guilt. As Josephine anticipated, survivors who report will face questions about their behaviour, including what they had expected to happen, what they had said, whether they had resisted and how, and whether they had been drinking or on drugs.¹⁴³ In court, the survivor will face questions aimed directly at her most ashamed and guilt feelings, as the defence tries to discredit the

¹⁴² Gunn and Minch, 1988, p. 39.

¹⁴³ The RCMP Investigative Guide for Sexual Offenses notes in its "acquaintance sexual assault" module that among other characteristics, victims "feel guilty and embarrassed about the assault," and that "public bias against victims occurs when there is a victim-assailant relationship." (Szabo et al, 1997, "Acquaintance Sexual Assault," pp. 2, 23.) There is no direction for officers to respond to a victim's feelings of guilt, or to take it into account in the wording of questions. One exception stands out, however: a model script for interviewing victims of acquaintance sexual assault (one of several such models) includes an officer saying to the victim, "it wasn't your fault." (Szabo et al, 1997, "Acquaintance Sexual Assault," p. 11.

survivor's memory of events, or to suggest that she had actually consented to the abuse. As we have seen, she may well be struggling to answer these attacks in front of a judge who has already decided, like Judge McClung, that most victims "ask for" sexual violence.

If victims are already struggling, as most of us must, at some point, with shame and guilt over the abuse, this new onslaught may be more than we can survive. Probably, as Gunn and Minch's findings suggest, many of us know it, and, like Josephine, we never report. We can't handle any more blame.

A "Cold" Process

Respondents repeatedly described the legal process as "cold" -- treating victims as "cases," without taking our feelings or needs into account. By dehumanizing the victim, negating her personal privacy, causing her to relive the violence repeatedly and taking control of the entire experience, many functions of the justice system repeat, or threaten to repeat, invasions that survivors have already experienced at the hands of our abusers.

Another Dehumanization

Like sexual violation, the legal system dehumanizes victims. Respondents described being treated as "evidence", or as "made out of stone" — anything but as human beings

who are there in response to a traumatic experience. The process includes no recognition that *sexual violence hurts* -- that any "case" is one which almost automatically entails a "complainant" who has been deeply traumatized.

As Sandi related, the process of describing the injuries of abuse can be degrading, when a survivor has to argue the very concept that sexual violence is uniquely painful:

I just remember reading [the Victim Compensation form] and crying....they were lumping together like, "Have you had your car stolen?" and you know, "What were the injuries accrued? Emotional, comma, financial, comma, whatever, whatever..."

And I just felt like, wait a second, it's not a matter of someone breaking into my house, for Christ's sake. This isn't the form for me.

In many ways, the system's approach to victims reporting sexual assault isn't very different from the way it processes most other crimes. Whether a victim is reporting a stolen car or a sexual assault, the steps to follow, and the principles guiding them are essentially the same. The victim must contact the police, give a statement and answer questions, and wait to see what the police and the Crown decide about charges. If charges are laid, the victim will testify in court about what happened, and be cross-examined by the accused's lawyer. The accused, of course, will be present for this testimony. The judge or jury will decide whether they think the accused is guilty of the crime. If they decide the

accused is guilty, the judge will decide on a sentence.

The problem, as survivors and victims have articulated over and over, is that for the victim, sexual assault is not like car theft, or even like other kinds of violent crime. And as Susan said, "they need to understand what a victim goes through in order to come [to court]."

The rules of the system (and often the people who enforce them) do *not* seem to recognize what victims go through. In its basic design, the process, just like an abuser, functions without regard for survivors' and victims' needs. Survivors and victims in the system are simply not treated as if they have been hurt. As if they have, as they stated, been sexually violated. As if it hurts.

Respondents identified a number of ways in they felt that the system ignores victims' needs. As they explained, this disregard for their needs and realities as victims hurt them, and in some cases deterred them completely from the process.

The system ignores survivors' needs when survivors are given no choice about who will hear our stories. Almost every respondent felt strongly that victims should have a choice whether to tell their stories to a man or a woman. The absence of this choice was a frequent safety concern among both respondents who had reported and those who hadn't. Sandi, Bonnie, Reid, Susan, Josephine and Marilyn all felt that survivors should be able to choose to speak to female or male police officers and prosecutors; they all felt that they personally would be more comfortable with women, and, most significantly, that women

would be more likely to understand what they were going through.

The chance to talk to women meant a great deal to these survivors' and victims' feeling of safety in the system. Whether they were describing the positive impact, like Sandi remembering the "really great woman cop" who stood out as "so receptive" and "really into my needs," or the negative, like Susan's feeling that a woman prosecutor might have fought harder to convict her abuser, they all emphasized the genders of the people they dealt with as an important part of their stories.

S. felt that survivors should not be asked to tell their stories to strangers of any gender. For S., if she ever decided to report abuse, the prospect of telling a painful personal experience directly to any stranger would be too harsh, an "almost cruel" treatment. She suggested that victims be able to choose a trusted friend or counselor to hear and pass on her statement, and to relay questions and answers between the victim and police.

Other victims and survivors have expressed this need for the people to whom they tell their stories to "get it": to be able to trust somewhat that the people hearing your story understand where it hurts. For most of the survivors and victims in this study, the gender of an officer alone made an important difference in their level of trust. Many women of colour and aboriginal women told the CPVAW survey that one reason they avoided the system was the likelihood of having to tell their stories to white, probably male, officers.¹⁴⁴

For some of these survivors and victims, safety may mean simply speaking to

¹⁴⁴ CPVAW, 1993, pp. 81-82, 85, 213.

someone they expect to be able to relate to their situation, as someone who may have been victimized in the same way, or who faces the same kinds of prejudice. For most, safety concerns about talking to police seemed to centre around avoiding those whom they felt would be unsympathetic, even potentially abusive. They expressed their safety needs as *not* wanting to talk to a man, or to a white person.

Many police forces have made efforts to train officers to a greater awareness and sensitivity about sexual violence, sexism, racism, and other realities of marginalized populations. If officers going through these programs become more aware and able to express greater sensitivity toward victims, the victims who report sexual violence will no doubt benefit. But for many, the change that would truly make reporting safer would be to have access to officers who don't feel (and often rightly) like potential abusers by virtue of their race or sex, or by their prejudices. Respondents said clearly, and their voices are echoed in this by other survivors and victims, that in order to feel safe reporting, they need to be telling their stories to someone they might be able to trust, as well as someone who can really hear.

Further, the system ignores survivors' needs in making most survivors come to a police station to access the system. For many survivors and victims, a police station feels like anything but a safe environment for painful disclosures. Josephine envisioned the police station as "intimidating," in that it would be full of guns and uniforms. She felt the same way about courtrooms, and said that any kind of formal setting would make it harder

and scarier to talk about being raped. S. too felt that the "cold" atmosphere of a police station would make everything harder.

Sandi, who started a report at her local police detachment, did feel completely unsafe there. She was both intimidated and repelled by the room to which she was sent, which she described as "angry" and "disgusting." She left quickly, and never went back.

Even for those of us with the least historical reason to fear or distrust the police, a police station is not necessarily a safe setting. Just stepping into a police station makes us aware of our unequal power in the face of uniformed, possibly armed, and most of all, officially legitimated, authority. Like our abusers, police officers can physically overpower or intimidate most of us. They have the power to confine, control, and even kill civilians with very little immediate censure. This power confronts us when we come to disclose -- and probably relive -- some of our most disempowering experiences. The result may be one more reason why many survivors and victims do not feel safe to report abuse, and why, like Josephine, we "don't see it as a healing process."

Police may be able to reduce the trauma involved in reporting with simple steps to minimize victims' sense of being overpowered. As participants suggested, conducting the interviews as much as possible outside the police station, or making rooms available which feel less impersonal, institutional and multi-purpose¹⁴⁵ (less, as Sandi suggested, like

145 Some police forces already acknowledge these safety needs. The RCMP Investigative Guide currently encourages the use, where available, of "soft rooms" designed for interviewing children and sexual assault victims, ideally with a separate entrance and

holding cells), would make a subtle but important difference.

Respondents did not object simply to the authority of police officers; they sought, or might have sought, under safer conditions, the power of the formal complaint process. They were concerned about being surrounded by guns and uniforms, to being left in rooms full of graffiti and piss, to an "angry" environment.

The system also ignores victim's needs when it forces survivors and victims into a room with our abusers again.

The image of the abuser(s) had a strong and immediate impact on respondents' sense of safety and self-belief. In many cases, respondents became upset or "creeped out" during the interview, just imagining seeing the abuser again, let alone in court. Many felt that they would not be able to testify about the abuse in the abuser(s)' presence. Willow and Josephine both knew that their abusers could undermine them with a look -- they would be humiliated and derailed by them "jeering", or giving seductive signals. Reid, who had been questioned in detail about her teacher's sexual exploitation in the teacher's presence, found it utterly "yucky" and "humiliating." And Bonnie avoided court in part because she was simply afraid to be in the same room as her ex-husband again -- for any reason.

It is hardly surprising that seeing those who perpetrated traumatic attacks on us ranks high among the "triggers" that return survivors and victims to the trauma, even after years. Who can make us feel afraid, ashamed, guilty or confused like those who

waiting room apart from other police activities. (Szabo et al, 1997.)

traumatized us in the first place? Whatever responses we experienced in ourselves or from others, the "accused" is the original source -- the one who made a choice, backed by power, to violate. Survivors and victims have every reason to feel unsafe testifying with the abuser(s) present.

First of all, abusers are just plain dangerous. For survivors like Bonnie, whose daily life was dominated for years by fear of her husband, there may be no way to feel safe in the abuser's presence.

Second, abusers are manipulative and can maintain psychological power over their victims long after their physical or institutional hold is over. For victims and survivors like Willow, whose abuser gained intimate knowledge of her life and feelings, and used it to confuse her about the abuse, "one funny look" across the courtroom can tear a victim's security and determination apart. Many, like Josephine, also sense that their abusers have no remorse, and may even be proud or smug about what they've done. To describe the abuse inflicted on her by the men who raped her, while they listened and "jeered" at her telling, would give them still more power over her. Once again, they would gain access, against her will, to her privacy, and enjoy her pain and vulnerability.

For survivors like Reid, who did not feel violated by what happened at the time, having to testify about sexual exploitation in front of the exploiter constitutes a special kind of invasion. Just having the person present while describing details of what seems like part of one's "sex life" with him, can make an already intrusive experience even more "yucky"

and humiliating.

For all of these reasons and others, talking about the abuse is even more challenging, painful, and humiliating for victims if we must do it with abusers watching. Most of these effects of the abuser(s)' presence are very similar to the psychological harm of the abuse itself, as both the healing literature and these respondents described it.

The system acknowledges this, in a limited way, as a difficulty for child complainants. Provisions for child witnesses in sexual abuse cases include many of the measures respondents in this study suggested to help all sexual abuse victims in court. Children may, if prosecutors successfully argue for it, be allowed to testify behind a screen so that they can't see the accused, or from another room via closed-circuit television. Section 486 (2.1) of the *Criminal Code* permits a judge to authorize screens or closed-circuit television when it is deemed "necessary to obtain a full and candid account" from the child complainant.¹⁴⁶ Lawyer Jacqueline Castel explains that this provision is meant to protect both the quality of the child's testimony and the child himself. She describes the potential harm to child complainants as very similar to Bonnie's, Willow's and Josephine's fears:

Often the child has been locked into a secretive threatening relationship in which she was a helpless victim, and the feelings of victimization frequently have

¹⁴⁶ *Criminal Code of Canada*, s. 486 (2.1)

not been resolved by the time the child faces the perpetrator across the courtroom. In this situation, the fear and helplessness previously experienced are immediately recreated, inhibiting the child when giving evidence and/or prompting the child to retract her allegations.¹⁴⁷

In response to concerns about the impact of s.486 (2.1) on the rights of the accused, Castel argues that the provision of screens, when necessary to obtain "full and candid" evidence, constitutes little if any impairment of defendants' rights; witnesses still testify under oath and are subject to cross-examination. Rather, she argues, the provision of a screen simply prevents the child's fear of facing the accused from diminishing her own credibility and testimony.

Moreover, Castel argues, if there is a "minimal" infringement of defendants' rights, it does not outweigh "the importance of the object."¹⁴⁸ The object of allowing these protections is the public interest: The state has a compelling interest in prosecuting child sex abuse cases. The incidence of child sexual abuse is strikingly high.¹⁴⁹ The law recognizes this compelling interest, and the need to reduce the trauma of testifying so that

147 Jacqueline Castel, "The Use of Screens and Closed-circuit Television in the Prosecution of Child Sexual Abuse Cases: Necessary Protection for Children or a Violation of the Rights of the Accused?" in *Canadian Journal of Family Law*, Vol. 10, 1992, p. 297.

148 Castel, 1992, p. 300.

149 Castel, 1992, p. 299.

child victims will be willing and able to take the stand and effectively name their abuse experiences.

However, the state does not recognize any similar need to encourage or protect adult complainants' stories. If adult survivors and victims are terrified of our abusers, have been helpless and threatened, we must simply pull ourselves together -- or stay out of court.

The healing literature is clear that Bonnie, Willow and Josephine are not alone in their fears, or their decision to avoid testifying. If the state has a similar interest in prosecuting sexual assaults against adults, it is worth considering the possible value of similar provisions to s.486 (2.1) for adult victims. It seems, from respondents' contributions to this study, that the fears that keep child complainants out of court or undermine their credibility are not unique to child victims. And for some adult survivors and victims, screens or closed-circuit television seemed like a good idea.

It may be that more adult survivors and victims would report sexual violence if they could testify without the risk of seeing our abusers. A useful next step from this qualitative study would be a widespread survey of survivors and victims, on their feelings about testifying and what difference provisions like s.486 (2.1) might make to their ability to name the crime in court.

Another Invasion of Privacy

Like sexual violence, the legal process crosses the boundaries of victims' privacy. For most survivors and victims, what happened is private and painful. The impact of sexual violence on our bodies and feelings are often raw and personal wounds. It can be hard to show these wounds to others. Like most survivors and victims, respondents found that just talking about abuse was painful. For several respondents, the interview was one of the first times they had talked about it.

Almost every respondent emphasized that talking about the abuse to a police officer, or to a court, would be, or had been, painful. For Josephine, just knowing that "there'd be all these questions" was enough to know that she couldn't handle reporting. She was unable to tell anyone, even close friends, for years. S., too, felt that she could not bring up her private feelings of fear or humiliation to anyone -- least of all to the impersonal "bureaucracy" of a police response.

Susan found describing the details of her abuse to the detective a painful process, particularly when she had to name the intimate parts of her body that the abuser had violated. Telling her story then, and again at the preliminary hearing and at the trial, was the hardest part, for Susan, of all of the ways the abuse had affected her life, because "when you're actually tellin' the story, you're reliving everything that ever happened to you."

As respondents described, telling anyone about what happened is a risk. Exposing these most raw and intimate injuries to the scrutiny and perhaps uninformed prodding of strangers makes one terribly vulnerable, once again, to the actions of others. Telling opens

us to being injured again in the same place, by the intrusion, manipulation or denial of the listener. Sandi expressed this most clearly, describing her decision not to submit the lengthy account she had written, painfully, of all the damages to her life caused by abuse. She said "There's no way I'm gonna give this away! This makes me so vulnerable...to having every word scrutinized."

As feminist therapists acknowledge (along with our own common sense), it can be painful to talk about traumatic experiences like sexual assault, even to a trusted therapist or loved one. To speak to a stranger, then, can be impossible -- we have no way to know how they understand sexual violence or its aftermath, how they see us as people and as victims or survivors, whether they know at all how much of our injured selves we are placing in their hands.

This vulnerability is what the system asks of us, casually and without any promise of an understanding or careful response. It requires victims to place every detail of our injuries into strange hands, and to do so in person, over and over. As Marilyn described, victims must give away every "little of piece of yourself," just as it was taken by the abuser(s).

Defense lawyers for abusers know this vulnerability in victims, and that emphasizing their access to victims' private lives can be a successful intimidation tactic. Criminal lawyer Michael Adelman praised the strategy of going after victims' private lives and records as one of the easiest ways to defend a client accused of sexual assault. "Whack complainants hard at the preliminary inquiry," he advised colleagues at a 1988 legal

conference. "Attack [her] with all you've got so that she will say, 'I'm not coming back.'"¹⁵⁰ The threat of such intrusions alone may indeed discourage many victims from continuing to trial.

Respondents who expressed concerns about privacy accepted that police questions about the details of a victim's abuse experience were necessary. For Sandi and Josephine, this necessity made reporting too unsafe for them. Others, like Reid and Susan, who went through this questioning, emphasized that having to answer in detail about what happened was painfully intrusive. The trauma of this intrusion was a main theme in their stories about the process.

While they didn't see any way to eliminate intrusive questioning from the legal process, respondents felt that the loss of privacy could feel less threatening to victims if victims felt that they could trust the questioners to treat them humanely. As Josephine put it, "Of course they're gonna ask you questions. So I think the most important thing is that...you can sort of feel that they're respecting you."

The problem with questioning may be less with the actual requirement to tell a private story than with the low level of trust victims and survivors feel toward the legal system in general. When we know that a victim's story of being violated can be dismissed by police as "nothing," rejected because of prejudice against the teller of the story, or discounted by others' mistakes, many of us may conclude that the system as a whole cannot

¹⁵⁰ Busby, 1995, p. 6.

be trusted with some of our most vulnerable points.

At its best, the process is necessarily intrusive. When the system seems more trustworthy and potentially worthwhile to survivors and victims, more of us may decide to entrust our stories to its scrutinies.

Losing Control

Finally, the system reproduces the trauma of sexual assault by leaving victims essentially powerless within the process. As every single respondent emphasized in some way, turning to the system means that survivors and victims lose control over their lives and their experiences.

After the initial decision to report, every aspect of a victim's experience of the system is outside her control. The environment and atmosphere in which she must tell her story, the officers assigned to hear her and their attitudes, as well as the subsequent decisions by police and prosecutors to prioritize, postpone, or dismiss the case, and when, how and in front of whom she must appear in court, will all be determined by the system. The victim is not likely to be asked for her approval or consent, and she'll be lucky if she is told anything at all. Many survivors and victims, like Reid, are not told clearly what's happening. Indeed, Reid may have been lucky to meet with the prosecutor at all before going to court; several women addressing the CPVAW panel described going to court

without the prosecutor having even introduced himself.¹⁵¹ The prosecutors in question did not acknowledge this as a potential detriment to either their cases or their complainants.

CPVAW also found that it was common for prosecutors to make decisions and deals affecting the charging and sentencing of the abuser, including plea bargains and even the abuser's *release on bail*, without consulting victims. Likewise, court dates, delays and last-minute changes are handled without necessarily consulting the victim. Survivors and victims are pulled through it all, as Reid described, by the "invisible strings" of other people's priorities. Respondents were emphatic that this loss of control hurt them deeply, far beyond inconvenience or even the consequences of poor decisions by those in charge.

Reid directly compared the way she was treated as a witness to the way her teacher sexually exploited her; the system, she said, took what it wanted from her, "the same way that Alan took from me what he wanted, never questioning what was good for me." Susan too, felt "victimized all over again" by the way the system took over: "You can't control anything, the decision's in someone else's hands." And Sandi, who was able to anticipate the way the system would take over, knew that she had to stay away from the system to heal. Other survivors and victims also describe this powerlessness at the mercy of the system as one of the most hurtful parts of the process.

Jane Doe, a survivor of rape and of a 10-year legal process¹⁵², adamantly discourages

¹⁵¹ CPVAW, 1993, p. 219.

¹⁵² It should be noted that Jane Doe's participation in the civil justice system was also a complex battle with the criminal justice system; Jane Doe brought suit against the

survivors and victims from going near the system, unless we have some special means of keeping our power. In a speech at Memorial University in 1998, she bluntly warned her audience that the process is "hell" for victims. She urged survivors or victims considering reporting to go in with our own lawyers, to assert our own interests into the process.

Jane Doe was able to take some of her power back from the system by suing the police, for discriminating against her and other women by failing to warn anyone about her rapist. The lawsuit gave her a chance to "stand up and make noise"¹⁵³ about being used as "rape-bait" by the police. However, she emphasized, this challenge to the system wasn't any kind of step toward her own healing and empowerment. Rather, she launched the suit as a political attack on the system, using her own injuries at the hands of the rapist and the police as tools in this larger struggle.

Even with her own lawyer, the support of feminists across the country, and the prospect of winning new rights for survivors and victims everywhere, Doe was still profoundly hurt by both the criminal and civil processes. She told a Memorial University audience that she had survived the emotional trauma of the process only behind the shield of her political motivation -- and by taking antidepressants for years.

Metro Toronto Police for failing to warn her and other women about the serial rapist who became her abuser. The suit addressed both the right of citizens to sue a police force at all and the inherent sexism behind the police disbelief of women who had been raped previously, and their choice not to warn other women. So although it was a civil suit, Doe's challenge was fundamentally both against and about the criminal justice system.

¹⁵³ Pittaway, 1999.

For most survivors, even this dubious source of empowerment is out of reach. Few of us can afford our own lawyers -- assuming we could find or even conceive of a lawyer we could trust as an advocate. More often, survivors and victims have to rely, like Susan, on "whoever they give you", and the decisions they make. And so, like Susan, survivors and victims end up with only the power to quietly break our hands against the courthouse wall.

The "Second Rape" Spelled Out

To these survivors and victims, the system was profoundly unsafe -- in many of the same ways as the harms of sexual violence. They were threatened and hurt by the system's reinforcement of the denial which they faced as part of the violence itself, from abusers, from themselves, and from those around them when they told, when the system told them that they, or their abuse, didn't matter.

They were threatened and hurt by the system's reinforcement of the shame they felt as part of the sexual violence itself, when the system told them that victims should be able and willing to prove that what happened wasn't their fault. Some avoided the system in fear of being further blamed and shamed.

They were threatened and hurt by its lack of regard for victims' feelings, privacy or right to control over their lives. In these regards, some compared it directly to the acts and effects of abusers, describing the system as "taking whatever it wanted," as "shattering" to

the self, and as "victimizing all over again."

As a result, respondents experienced many different elements of the system as elements of another victimization. Not only did the system hurt these survivors and victims, it hurt them in the places they'd already been hurt. In its purported role of redressing the harms of sexual violence, the criminal justice system perpetuates many of these harms. In its psychological effects, the system truly threatens survivors and victims with "another rape."

Survivors' and victims' experiences of the criminal justice system need to be taken into account by those who make the laws. If the prosecution and deterrence of abusers is indeed a state interest, then lawmakers should be concerned with how survivors and victims currently perceive and experience the criminal justice process.

First, if sexual violence is regarded as harmful to its victims, (and the law recognizes it as a serious offense against the person), the state should also be concerned that the processing of sexual assault cases may be similarly harmful to victims, in both the nature and degree of harm. While some of the harmful elements of the process may be unavoidable, it is surely preferable to minimize the ways in which the system replicates the injuries of an act regarded as a serious crime.

Second, the harms to victims in the process impair the effectiveness of the justice system's response to sexual violence. Victims' distrust and fear of the harms of the process deter most of us from reporting. Others are discouraged from reporting because they don't

expect the system to effectively punish abusers if convicted. Of those who do report, many are dismissed on grounds which are not related to the probable truth of their claim.

These deterrents and denials both threaten and revictimize survivors, and protect abusers. Survivors and victims who avoid the system and those who are rejected or denied by the system all see our abusers go free. And abusers see that they can get away with abuse, perhaps again and again.

In order to be as effective as possible in its role in deterring and punishing sex offenders, the criminal justice process must become a less dangerous experience for victims and survivors. While the law cannot, on its own, eliminate the prevalence and acceptance of sexual assault or its corollary, the silencing of victims' naming of the crimes against us, it has a crucial role, which is presently limited by its unattractiveness to most survivors. To change this, survivors' and victims' experiences of the process must be taken seriously.

It is not enough merely to note that coming forward can be hard, or to accept that most survivors and victims will not decide to report. Nor is it enough simply to upgrade the effectiveness of the system as it currently functions. Recent improvements like Victim Services programs offering information and accompaniment for complainants, mandatory charging policies in domestic disputes, and legal changes removing time limits on reporting, have made the system more accessible, at least in theory, to many victims and survivors. Less lenient sentencing of sex offenders, combined with effective approaches to rehabilitation, would affect both complainants' sense of security and actual safety, and our

understanding as a society of the seriousness of these crimes. The new perception that abusers might be meaningfully punished could make the hurts of reporting and testifying worthwhile for more victims who have not used the system. However, even these valuable changes cannot necessarily make the system safe enough for many survivors and victims; those who report would still risk the same elements of revictimization, even with a court companion in the audience, or a greater chance of a guilty verdict.

Legal changes and victim-support initiatives in the last fifteen years have removed or at least lowered many of the barriers to victims' participation in the criminal justice process. In response, the number of victims and survivors approaching the system has risen to a somewhat larger minority.

One of the next steps in making the process more effective must be to address survivors' and victims' safety and accessibility concerns more fully.

Survivors and victims do not need to be comforted or befriended by the people we meet through the criminal justice process. Respondents in this study did not seem to need or expect the process to be made painless for them, or to privilege their needs over presently recognized principles of justice, such as the rules of evidence-gathering, the requirement that victims testify under oath, or the rights of defendants to defence. What they wanted was the chance to name what had happened to them to the authorities, with the possibility that their abusers would be punished and made to see that the abuse had been wrong. They needed the process to be a safe enough forum for them to participate without extensive

traumatic effects, or at least with the minimum of revictimization.

Making the criminal justice process safer for many survivors and victims of sexual violence may well be feasible with few fundamental changes to the principles underlying the process. If taking survivors' and victims' needs into account means some challenges to these principles (such as the nature of the defendant's rights to defense), the purpose of the laws on sexual violence may even be better served.

Chapter Six -- Conclusion

Why don't survivors and victims of sexual violence use or trust the justice system? Survivors and victims in this study made it clear that they had had strong reasons to avoid the system, and that these reasons came from being survivors and victims. In their namings of the hurts of sexual violence and their experiences of the justice system, they told of violation, denial, shame and injustice. These were the hurts of sexual violence, and the wounds that the system would reopen --- and cut deeper.

For most, having been sexually violated in itself, made the process by which they were supposed to report it a dangerous one. Respondents described the hurts of sexual violence in their lives in many of the same ways presented in the healing literature. The nature of the acts was often traumatic, rendering victims helpless to prevent physical violation, terrified, humiliated. The nature of the violence could also be confusing, leaving victims with no way to understand or speak about what was done to them, often feeling that they had somehow brought the abuse upon themselves. For each person, life after the violence was not the same.

Sexual violence had made them feel ashamed. They described feeling "disgusting" and "lower than a dog." They described feeling guilt and shame that wouldn't go away, even when they knew, intellectually, that they were not to blame for having being violated. Many kept the violence a secret to avoid being blamed by others ---and in Reid's case,

when others did find out, her town's reaction against her was everything that others may have feared, everything that we expect, hearing the victim-blaming voices in our newspapers, our courtrooms and our washroom walls.

Sexual violence had rendered respondents silent. Many had to struggle to understand what had happened as violence, and to name it out loud. Several forgot, or put the abuse "on the back burner," for years. Many stayed silent because they knew no one would believe them. As Lyotard described, in the silencing of Auschwitz survivors, they were hurt both by the "damage" of violence and by the silence itself – the "loss of the means to prove that damage."¹⁵⁴ Like the survivors that Lyotard describes, respondents often found that their experiences and feelings were hard or impossible to express; as Sandi put it, they didn't have the same "script" as the authorities. And as with the wrong Lyotard identifies to survivors whose discourses are suppressed by the differend between Auschwitz survivors' stories and a public who couldn't or wouldn't hear them, these survivors and victims were *hurt* by the silences which denied their realities.

All of these injuries shaped respondents' decisions about reporting the violence. They feared, or found, that the system's treatment of victims included the same kinds of hurts as those they were carrying from the violence itself. Before reporting, respondents feared that they would feel violated by the process, that they would be blamed for what happened and above all, that no one would believe them. They had to decide how much

154 Lyotard, 1983, p. 5.

they could take — whether to protect themselves, to risk the hurt to pursue justice against the abuser, or even to push themselves into reporting, before fear could turn them away.

Respondents faced the possibility of hearing, from police and in court, the messages of the abuse itself — that the abuse didn't matter, that it didn't even happen. Or that they didn't matter. The system denies victims when we are told that what our abusers did to us is just "normal" behaviour. The system denies and intimidates survivors when we are held to an unreasonable standard of accuracy on the witness stand, when we are allowed to be "whacked hard" by defense, "grueled" about our lives until we make a mistake about "the french fries I had for lunch ." Or until we say we're not coming back. The system denies and deters victims when victims with disabilities are seen as losing propositions because of anticipated prejudice, or because they are never given a chance to talk to someone who knows how to hear them — and is listening. The system denies and deters survivors and victims when police officers, lawyers and judges still express racist and homophobic assumptions about abusers, victims and violence.

As respondents described, the system threatens to deny victims' realities at many stages of the process. These denials effectively deterred or delayed many respondents' reporting. As these survivors and victims explained, denial hurts.

Respondents were also intimidated by the threat of being blamed by the system. Many victims have to struggle with shame and guilt about being violated, even before we hear messages from others that victims are to blame. The possibility that reporting means

opening a new channel of blame may make it just too dangerous for many survivors and victims. As respondents described, being blamed, by anyone, can leave us “torn apart” as badly as by abuse itself.

Before being “grueled,” in court, or seeing their abusers acquitted, respondents faced the possibility of feeling violated all over again in the reporting, answering intrusive questions, probably from men, in an intimidating and “cold” environment. Once victims give our stories to the system, we lose control over what happens to them and in some ways, to ourselves. Whether the case gets to court is out of our hands. And if it does, we have to tell it all again, this time under the abuser(s)’ eyes. As respondents explained, this can be too much additional helplessness and invasion to take.

Survivors and victims in this study spoke about the system with pain and fear. They described a system whose realities are nowhere in the statistics — a system which, both in its rules and its applications, discourages, hurts, and fails survivors of sexual violence. They felt that the system as a whole neither understood nor considered victims’ and survivors’ realities. And they felt that no one, among lawmakers or officers of the court, was listening.

We need to listen to survivors and victims. Survivors and victims know why we don’t go to the police, why we drop out of proceedings, why we fail as witnesses, why we won’t report next time, and why we urge others to stay away. Survivors’ and victims’ stories explain the statistics of the system’s ineffective response to sexual violence.

Survivors and victims know what would make the system safer. These eight

respondents articulated suggestions for change to almost every level of policy, from police interview protocols and training to the Canada Evidence Act. Some of these recommendations have far-reaching implications for how certain principles of justice (like defendants' Charter rights) are interpreted; others focus on simple changes of law enforcement as it is presently carried out. None demand, as policymakers perhaps fear, that the system become a predominantly victim-oriented one, that due process be replaced by unconditional belief of survivors, or that victims' comfort be guaranteed. Contrary to suggestions I received from concerned nonfeminists during my research, these survivors and victims did not want a process biased toward victims, or a process focused solely on victims' healing. They wanted a process which was possible for them to use, which threatened only a bearable amount of pain. And they wanted a chance to tell what they knew about the system and survivors to someone who was listening.

These survivors' and victims' visions of a safer process may come far closer than any other approach to acknowledging and bridging the gap between victims' and survivors' healing struggles and the legal response to sexual violence in Canada. They do not privilege the neglected discourse of survivors' and victims' concerns over other principles and purposes of justice; in the language of the "differend," their proposals do not simply reverse the hierarchy of the differend by replacing the legal perspective with the healing perspective is the dominant discourse. Rather, respondents' suggestions approach the principles of justice and the design of the legal process with a crucial understanding, not

easily expressible from the legal perspective, of the crime of sexual violence, its aftermath and the impact of the complainants' role in the system. And they have challenged the differend between the legal and healing perspectives, asking over and over again why the system's functions and victims' needs must be so often incompatible.

In order to be as effective as possible in its role in deterring and punishing sex offenders, the criminal justice process must become a less dangerous experience for victims and survivors. While the law cannot, on its own, eliminate the prevalence and acceptance of sexual assault or its corollary, the silencing of victims' naming of the crimes against us, it has a crucial role in preventing abusers from offending further, and in naming sexual violence as a serious crime. This role is presently limited by its unattractiveness to most survivors. To change this, survivors' and victims' experiences of the process must be taken seriously.

A useful next step from this qualitative study would be a widespread survey of survivors and victims. The concerns raised by respondents, and their suggestions for change, might make a useful partial framework for surveying large numbers of survivors and victims. However, given the limitations of the sample's representativeness, and the potential harm to survivors and victims who find themselves continually outside the frame, more qualitative research in the grounded-theory tradition is also needed, to keep broadening the picture of survivors and victims and sexual violence, in more survivors' and victims' voices. Survivors' and victims' voices need not always be voices outside law.

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Appendix A
Advertisement for Participants

Attn: Adult Survivors/Victims of Sexual Violence:

How has the Canadian legal system affected you as a survivor/victim?

If you have

- been involved in a legal process (regarding the violence you experienced) which is now over
- or**
- decided not to report the violence

and are comfortable discussing it,

I (a white female survivor and graduate student) would like to hear about your feelings about the legal system. This study will be my Master's thesis.

What's Involved?

A brief, initial conversation or correspondence, an in-depth interview, in person or by phone, and at least one follow-up. **You decide what you're willing to discuss. No judgement, no pressure.**

I'll send you my write-up of your interview for feedback before it's submitted, You will have the option to be **anonymous** or choose your pseudonym.

- For this study, sexual violence refers to any unwanted sexual act. This includes violence experienced as children or as adults, abuse by family, spouses (including same-sex), acquaintances, strangers or others. This includes sexual violence with racist, homophobic or other hate-based motivations. Survivors and victims of both sexes and all races, sizes, cultures and abilities are invited to participate.

Appendix B
Consent Form

I have agreed to be interviewed by Ramona Roberts as a participant in her research for her MWS thesis. She has explained to me that this may involve several personal interviews, on the general subject of my experience(s) of sexual violence and the justice system. I understand that I am free not to answer any given question, to add comments which are not covered by her questions, and to pause or end the interview if I feel too uncomfortable to continue.

I understand that sections of my interviews may be published in Ramona's thesis, and that I have the right to request that a pseudonym, my first name or initials only, or no name be used. I understand that I have the right to read and comment on Ramona's work before it is published.

I consent to the recording of my interviews, for Ramona's thesis research only. I understand that I have the right to have the tape returned to me or destroyed when Ramona's thesis is completed.

I recognize that Ramona is not a counsellor or legal adviser, and that she cannot offer advice on responding to my abuse experiences, or counselling throughout my recovery.

Signed

Date

Appendix C
Interview Questions

Thank you for agreeing to participate in this interview. Here is a list of questions I thought we might go over. If there's anything you think is missing, please feel free to bring it up.

What you bring up about your experiences is up to you.

Interview Questions

How has the legal system affected you as a survivor/victim?

(What has your involvement with it been, how do you feel about it?)

How did you make your initial decision about being involved with the system?

How did you become aware of the legal system as an option for responding to sexual violence? What were your impressions?

Are there any specific things that might have made it possible for you to report?

Would you design a process for victims/survivors differently? How?

How do you feel about your decision now?

How would you advise another victim/survivor?

