Investigating Gender Bias and Sentencing Disparity: A Case Study Analysis of the Paul Bernardo - Karla Homolka Case

by

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Abstract

This thesis is a case study analysis of the Paul Bernardo - Karla Homolka case. It explores the effect gender has upon the sentences individuals receive from the Canadian justice system by attempting to establish the significance of gender in the Bernardo-Homolka case, thereby corroborating the existence of gender bias in Canadian courts. Test theories, developed from a review of academic viewpoints developed to explain the sentences women receive from the legal system, are utilized as lenses through which a case study analysis on the available data about women's historical experiences and Karla Homolka's experience is conducted. It concludes that gender was found to have a significant impact upon Karla Homolka's sentence, but that problems encountered in the police investigation and the need for her cooperation to successfully prosecute Paul Bernardo superseded its importance. This thesis replicates past studies, it demonstrates gender's significance, but is not able to provide irrefutable proof that it biases sentencing outcomes.

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CHAPTER ONE: INTRODUCTION

"Why does the assertion that there is gender bias in the law and the legal system create such controversy?"[1]

Karla Homolka began qualifying for day-passes from Kingston's Prison for Women on January 6, 1997 and is eligible for parole in a few months time. Her ex-husband, Paul Bernardo, continues to serve a life sentence for murder as well as an indefinite sentence as a "dangerous offender" [2] in a Kingston penitentiary - two radically different outcomes for two individuals that the evidence indicates were equally involved in the heinous crimes that were committed against Tammy Homolka, Leslie Mahaffy and Kristen French. Although Paul Bernardo was also found guilty of a multitude of sexual assaults, it remains puzzling, and to some incomprehensible, that his ex-wife may lose only a maximum of twelve years from her life after being involved in the extinguishing of the lives of three young women. The events that are occurring in the aftermath of one of the largest and most controversial criminal cases in Canada perpetuate the persistent perceptions by the public and in the media about the character and impartiality of the justice system. The nature of the case, and the controversies that continue to surround it, have prompted the publishing of several books about the case, two governmental reviews critiquing the investigations and the utilization of plea-bargains, and a myriad of newspaper articles and television reports which continue to make their presence known to

the public, even though the case concluded in early November of 1995.[3] Why does the Paul Bernardo-Karla Homolka case continue to merit such attention?

Perhaps this case has attained such public attention and outrage because of the manner in which disparate sentences are often portrayed in the media. Such portrayals usually focus on selective information on specific cases; for example, the mitigating factors in judges' decisions tend to be missing from media reports. Aside from the obvious heinous nature of the crimes, the most common example stirring public outrage and debate in this case is the portrayal of women as singled out by the system specifically due to gender[4], i.e.; that the criminal justice system is biased or sexist. The most obvious cases which in the past have highlighted this sexism include The Attorney General of Canada v. Lavell (1974)[5] and the Lovelace case (1980)[6]. In these two cases, Canadian courts ruled that First Nations women who married non-Aboriginals lost their status, but First Nations men who did so kept their status (in fact status was extended to include their non-Aboriginal wives). Lavell appealed to the Supreme Court of Canada, but the decision went against her.[7] Lovelace took her grievance to the United Nations Human Rights Committee who intervened on her behalf, resulting in Bill C-31[8]. Bill C-31 was designed to enable First Nations women who had lost their status to regain their status as Indians

and as band members. Although these two cases were embedded in issues of race and specific governmental legislation, such as the Indian Act, they are poignant examples of disparity in the courts on the basis of gender. On the other hand are cases such as the recent R. v. Theberge[9], wherein Mr. Justice Jean Bienvenue made derogatory remarks about women, comparing them to Nazis[10]. There was an inquiry into Bienvenue's conduct and he voluntarily stepped down from his judicial position.[11] This example serves as an illustration of the seemingly apparent existence of a "fine line" which demarcates the limits by which judges' personal views on gender and race are allowed to infringe upon the decisions made within the criminal justice system.

Perhaps this case has become a focal point of interest due to the increasing amount of work that is being undertaken to study gender bias, also known as sex discrimination and sexual subordination.[12]. In order to begin a discussion about the issues surrounding gender and sentencing in the criminal justice system, it is necessary to define gender bias.

Gender bias includes

> the exclusion of women because they are women, the improper use of incorrect and unchosen stereotypes, the use of double standards, the use of a male-defined norm, the failure to incorporate or be sensitive to the perspectives of women, being gender blind to gender specific realities, and using sexist language[13].

The following working definition of gender bias is utilized in this thesis. One of

the reasons it was selected is because it is currently in widespread use[14]. The popularity of this definition is possibly due to its very straightforward operationalization of the term, which renders it quite user-friendly for researcher:

> "Gender bias refers to attitudes and behaviors on the part of the participants in the justice system that are based on or reflect: (1) sex stereotypes about the proper "roles" and "true natures" of women and men; (2) cultural assumptions about the relative worth of men and women; and (3) myths and misconceptions about the social and economic realities encountered by both sexes. Gender bias is also found in (4) behaviors that impose a greater burden on one sex than on the other."[15]

This definition was chosen because it is open and flexible. It was designed to function as a checklist, outlining for the researcher the general categories under which occurrences or passages of gender bias can be identified. It is open in the sense that its categories are quite broad and that it does not attempt to claim that it is exhaustive. It is flexible in terms of allowing the researcher to determine if and / or when an instance of gender bias has transpired, and it leaves to the researcher to define what behaviors or attitudes are biased in a particular context, i.e.; certain turns of phrase may not generally be seen as being biased, but due to the context or situation in which they were expressed, the researcher may interpret them as being such. Therefore, on the basis of these identified categories of gender bias, this definition can be utilized in my research as providing guidelines for the presence of gender-biased activity or influence on the plea bargaining

process and ultimately the sentences imposed by the judges.

The argument that the law is biased or discriminatory on the basis of gender is not new, it can be traced back, in terms of formal government action and documentation of the phenomenon, to 1970 when the Royal Commission on the Status of Women issued its report.[16] This Commission was developed by the government in 1967 in response to pressures exerted by women's groups. It issued its report three years later, after holding lengthy public hearings and having received five hundred briefs and one thousand letters of opinion.[17] The members of this commission were charged with the task of inquiring into the status of women and to ensure equal opportunities for women and men in all aspects of Canadian society.[18] The Commission researched women's status in a multitude of areas, including participation in public life, education, the criminal law, and the Canadian economy.[19] Research was carried out through the study of existing material as well as conducting new research where applicable and the commissioning of forty special studies. The Commission's report presented one hundred and sixty-seven recommendations, many of which overestimated the goodwill of the government and the possibility of attaining gender equality via the elimination of overt legislative differentiation on the basis of sex. According to Boyd and Sheehy, the Report nonetheless benefited Canadian feminists by

forcing them to articulate a coherent response to its publication.[20] The Report was quite popular, and as a result increased public awareness of feminist issues. It is purported to be a "founding document of contemporary Canadian feminism"[21], due to its wide circulation, even though the majority of its proposals were never enacted and many of the issues it identified have been redefined.

Since the 1970 Status of Women Report, numerous groups concerned with equality in the law have emerged and worked to ensure that equality is preserved in such areas as decisions made by the Supreme Court of Canada.[22] These groups have identified the problem of sentencing disparity as being one of the major issues that should be addressed, arguing that

> in any contemporary proposals for reform of the Canadian criminal justice system, and this concern [was] given new impetus by the advent of the Charter, which might well be interpreted in such a manner as to render excessive sentencing disparity unconstitutional[23].

This call to address sentencing disparity stemmed in part from the arrival of the Canadian Charter of Rights and Freedoms which guarantees equality before the law, regardless of gender, under section 15. It has been, and continues to be, argued that while equality may be what has been posited formally, it is questionable whether substantive equality is what is practiced when criminal laws are applied. By the late 1980s and early 1990s, this

emergence and development of equality-concerned groups and associations had begun to attract the consideration of governments, judges, and the legal profession who in turn began to focus on the issue of gender bias.[24] In fact, by 1991 there were four provincial committees in British Columbia[25] and two national groups[26] examining the existence of gender bias in the courts and the legal profession, with the majority of the research being undertaken by members of the legal community.

While the work that has been accomplished and reported by a multitude of government committees and interested groups clearly indicates progress in the search for answers and solutions to the gender bias issue, the ensuing data has been problematic due to the tendency for research to be carried out by lawyers who do not necessarily have a background in social scientific research. As a result, the research conducted by lawyers may not record such pertinent facts as the number of cases examined, due to a failure to acknowledge the importance of such information. However, the idea of leaving the research to social scientists is not necessarily the solution, due to the fact that not all social scientists who undertake such research are well-versed in the law and may therefore make incorrect assumptions about law or may ignore legally relevant variables. Thus, in an attempt to overcome the limitations of a solely legal or solely social scientific

investigation of the issue of gender bias, a multidisciplinary approach needs to be undertaken. Such an approach is what is proposed in this thesis which combines law, sociology, and to a lesser extent, psychology.

The idea that there is gender bias in the courts directly challenges the common, although not necessarily accurate, belief that the law is a neutral entity separated from and uninfluenced by mainstream society.[27] As a result, asserting that there is gender bias in the law challenges most people's basic assumptions about the role of law, the nature of the legal system, the status of women in society and the equality and fairness of forms of social organization. Gender bias is an important issue to examine, particularly with respect to the law and the legal system rather than as a component or result of women's larger inequality. It is a significant area of study because if bias on the basis of gender is found within a system that is touted to be nonpolitical and socially neutral, its presence subsequently demands acknowledgment that the current social structure of its existence is deeply dysfunctional. This acknowledgment would furthermore require that actions be taken to rectify the roots of that dysfunction. Being able to demonstrate that gender bias had an effect or influence upon a case within the criminal justice system, be it an exclusive impact or in conjunction with other pertinent factors, is proof enough that the system is

susceptible to the structural and operational biases that operate within our more political and socially-swayed societal institutions. Therefore, the assertion that there is gender bias in the law and the legal system creates controversy because it calls into question the nonpartisan, apolitical nature of the system, as well as the "entrenched and surprisingly durable mythologies"[28] that gender bias in law simply does not exist.

For the purposes of this thesis, sentencing was chosen as the area of focus because it is perceived as being concrete, measurable evidence of the punishment, at least in terms of imprisonment, that an individual receives within the system. Sentencing is the point where everything involved in the court case comes to a conclusion; it represents a decision based upon consideration of the factors addressed throughout the trial, including the attributes of the accused. It is acknowledged, however, that there are few Canadian sentencing statistics and that the impact of a sentence is difficult to measure.[29] Nonetheless, sentencing was selected to be the area of focus for this thesis due to the amount of public outcry surrounding the sentences received by Karla Homolka and Paul Bernardo, particularly with respect to whether or not justice was meted out in the Canadian criminal justice system. It is important to note that this thesis is not concerned with statistics nor with the impact of the sentences received by Paul Bernardo and Karla

Homolka, rather the fact that each received a different sentence for crimes that they committed as a couple is at issue.

The case of Paul Bernardo-Karla Homolka was chosen as the focal point of the ensuing examination of gender bias for several important reasons. First and foremost, it is a case where two individuals of similar socioeconomic, racial and ethnic background, but who differ in gender, were allegedly equally involved in a series of heinous crimes, yet received very different sentences from the courts. This is significant because it allows for a narrowing of focus from race, class and gender to one of gender in particular, without having to attempt to find comparable cases or having to compare cases which potentially possess differing influential and causal factors that affected the sentences received. Minimizing the number of varying factors between similarly accused individuals is important because it assists in filtering out other variables which may arguably affect judicial sentences that are handed down. It also facilitates consideration of the various major factors that specifically affected the outcomes of the trials and the sentences that were handed down to Paul Bernardo and Karla Homolka. In turn, it expedites devoting attention to each of these factors individually as well as in terms of how gender potentially may have had an impact both on those other major factors and the influence they carried.

Secondly, the Bernardo-Homolka case was chosen because it is quite unusual; it is one of the few extremely violent, couple-perpetrated series of criminal activities that has occurred in Canada and as such it has captured and continues to hold the attention of both the media and general public. This case spans the course of approximately eight years, from May 4, 1987 to November 3, 1995, at which time Paul Bernardo was sentenced to an indefinite sentence as a dangerous offender, and it still surfaces in the newspaper or on the television to date. The amount of information and the complexities that emerged throughout this time period warrant exclusive attention in order to fully grasp everything that was involved and transpired. Thirdly, because of its unique nature, the case offers Canadian researchers an opportunity to further study a phenomenon that has not been open to a substantial amount of examination in the past in this country.

The unique nature of this case should not result in the imposition of limited generalizability, however, because the focus of this thesis is on locating gender bias, not upon the specific criminal atrocities that have been perpetrated. The unique nature of this case is beneficial. It is an advantageous case to research because many other potentially relevant factors are minimized, allowing for a narrower focus. Yet its uniqueness does not make the findings exclusive to this case because, as argued previously, finding an influence

of gender in any criminal case subsequently points to a need to reassess the current justice system. Finally, although such matters are beyond the scope of this thesis, this case is worthy of concentrated attention and research because the issues which underlie what transpired in the course of the investigation and sentencing of the individuals found guilty of monstrous criminal offenses are crucially important in terms of developing theories to explain the rationale that motivated the offenders, of developing profiles which will assist in the recognition and classification of similar offenders, and in generating and / or revising existing investigational procedures and training. In summation, it is possible to make progress towards gender equality by "thinking analytically and experimentally"[30] about gender and its effect on the sentences offenders receive in the criminal justice system.

In order to assist in determining the potential existence of gender bias in sentencing practices within the legal system, this thesis proposes to study whether the degree to which the gender of an individual charged and tried of a criminal offense affects the prison sentences they receive when two individuals are brought to court for the same crimes. The main objective of this thesis will be to explore the extent to which gender as a sociological factor affected and / or influenced the treatment and sentences Karla Homolka and Paul Bernardo received from the criminal justice system. This examination

will also incorporate an assessment of the extent to which technical methods of investigation and specific court practices, such as plea-bargaining and the suspension of a judicial proceeding, played a role in the differential treatment and sentences received by the two parties. These factors will be addressed at a later point in this dissertation. This dissertation asks the following question - to what extent did gender affect the sentences that were handed down by the Canadian criminal justice system to Karla Homolka and Paul Bernardo? How significant was the effect of gender, particularly in comparison to the extent that technical methods in investigation and specific court practices had an influence, upon the sentences handed down to these two individuals? It is my thesis that gender was given significant consideration with respect to the sentences meted out to Paul Bernardo and especially Karla Homolka. However, I contend that gender was superseded in importance by the investigational problems experienced throughout the case and the "necessary evils" (the plea bargain) practiced by the Crown in order to ensure that Paul Bernardo was prosecuted and convicted.

At first glance, it may appear as though this thesis was conducted under the assumption that the sentences of Paul Bernardo and Karla Homolka were taken at face value. This is not the case, the sentences were considered in light of previous research that

has been conducted on sentencing disparity and plea-bargaining. According to the Report of the Canadian Sentencing Commission (1987), it would be wrong to suggest that there is a perceived crisis in sentencing, however it would also be wrong to suggest that sentencing is a process without problems. There is minimal public knowledge about sentencing, yet there is never a shortage of public outcry as to the severity of sentences that are handed down. It is further argued that public knowledge and acceptance of the criminal justice system is critical in order for justice to be seen as being carried out. Much of the public's ignorance about sentencing stems from the disparity that exists between sentences that are handed down by the courts for offenses, whether the disparity is real or perceived, warranted or unwarranted. One of the problems associated with attempting to study sentencing disparity is the fact that it may not be deemed to be a problem by those who work within the legal system.[31]

One of the basic difficulties entailed in attempting to study the justice system in Canada is that there is no method available to determine in a systematic, up-to-date and accessible manner, on a continuing basis, what kinds of sentences are being handed down.[32] Therefore, it is not possible to determine an overall pattern or picture of the sentencing practices in Canada. In addition to this problem is the lack of systematically

organized detailed information on recent similar cases. This lack of organized information on the types of sentences being handed down and on details regarding similar cases, in the face of over 1,000 decision-makers handing down sentences for over three hundred different offenses in the Criminal Code, results in sentencing disparity simply due to the impossibility of consistency without a system of formal guidance. At present, judges act independently because there are no formal "standards" against which to assess a sentence, and there is a lack of sentencing information available to judges in their determination of sentence, the obvious result is variation in sentences.[33] The question remains as to what amount of variation or sentencing disparity is warranted and what is unwarranted. Even if different sentences were given to essentially identical cases, there is no method in the current sentencing structure to evaluate which, if any, of the sentences is appropriate.[34]

Part and parcel of the issue of sentencing disparity is the standard of social justice. Renner and Warner emphasize that the "justice process should be the means to a socially "just" resolution of the conflict between the legitimate interest of the public in being protected against criminal behavior and the rights and freedoms of the individual".[35] That is to say, that "social regulation should apply equally to all persons"[36] without exception on the basis of personal attributes and that "the administration of such regulation be uniform

and fair"[37]. However, their Halifax study revealed that this does not occur, rather "the courts officially make criminals out of those persons selectively brought before them", particularly those who are poor and socially marginal.[38] They conclude by arguing for reforms to the judicial process which do not differentiate on the basis of individual attributes, asserting that more attention be paid to the actual crimes that are being committed by all social classes. This coincides with research by Mohr, who proposes that the role of gender in shaping decision-making is key in understanding the sentencing process.[39] These personal attributes are argued to affect the attitudes and perceptions of the decision-makers in Canadian courts, thereby causing unwarranted disparity in the sentences handed down. Regardless of the causes cited for disparity in the sentencing practices of the Canadian judiciary, all sources reviewed state that reforms need to be major and need to account for rather than ignore gender, race and social class differences.[40]

For the purposes of this thesis, sentencing disparity refers simply to the different sentences received by two individuals in similar circumstances who jointly perpetrated a series of crimes. The causes of this disparity are investigated at a later point in this thesis. It is important to take the apparent disparity of the sentences received by Karla Homolka

and Paul Bernardo into consideration because the sentencing is the point at which disparity becomes most visible. It is the sentence, not all the factors which led up to it, that the public is generally privy to and is most able to comprehend. Granted the sentences arrived at in the Bernardo-Homolka case were based on a great number of complexities, however these were not all made public knowledge and those that were, were not necessarily fully understood nor accepted as being indicative of "true justice". As will become evident from the research that was reviewed in this thesis and from the analysis that was conducted upon the Bernardo-Homolka case, it was not possible to determine whether or to what extent the disparity in sentences resulted from Karla Homolka's gender or from her role as an informant. It is concluded that the disparate sentences received by these two individuals were due to a multitude of factors, Karla's gender and informant role being only two pieces of the puzzle.

Also at issue is the plea-bargain process in which Karla Homolka was involved, as opposed to the formal criminal trial complete with mandatory sentences that Paul Bernardo experienced. According to Verdun-Jones and Hatch, "plea bargaining is neither legislatively sanctioned nor prohibited in Canada".[41] It is an informal process that has the potential to "undermine the relationship between the seriousness of the actual criminal

behavior and its reflection in a criminal offense or in a sentencing disposition".[42] The plea bargain is not defined in the Criminal Code, however it has been defined by the Law Reform Commission of Canada as "any agreement by the accused to plead guilty in return for the promise of some benefit".[43] According to Verdun-Jones and Hatch, however, the term plea bargain actually refers to "a wide diversity of activities which occur among actors in the court system".[44] It can be distinguished in terms of three activities: charge bargaining, sentence bargaining, and fact bargaining. Each of type of bargaining may occur at different stages in the criminal justice process. For the purposes of this thesis, sentence bargaining is of most interest because it is the process in which Karla Homolka's lawyer and the Crown Attorney engaged. Sentence bargaining refers to an agreement by the accused to plead guilty in return for "the promise of a certain sentence recommendation by the Crown", or "a promise not to appeal against sentence imposed at trial".[45]

The practice of plea-bargaining is widespread in the Canadian justice system; it is estimated that between 80 and 90 % of criminal cases are disposed of by means of guilty pleas and that "full trials are the exception, not the rule".[46] Plea-bargaining is believed by both members of, and individuals processed by, the legal system to have a significant impact upon the sentencing process as well as on the sentences that are imposed.[47]

Plea-bargaining often occurs during pre-trial disclosures, whereby defense and Crown counsel meet together in an informal setting and discuss evidence and other procedural matters.[48] It is a meeting in which assessments are made about the strength of each side's case. It gives the side with the "weaker" case an opportunity to negotiate a plea bargain.[49] "Another factor that influences plea-bargaining is the common law principle of *res judicata*, wherein an offender can only be convicted of one offense arising out of a single incident"[50], but more than one charge can be laid against the offender. The ability of the police to lay multiple charges in relation to a single incident is an important condition which facilitates plea-bargaining.[51] Warner and Renner argue that this process of pleading guilty in return for the promise of some benefit relegates the criminal justice system to the role of bureaucracy, as opposed to an adversarial process, because the courts come to operate in such as way as to "process cases as efficiently as possible while insulating court personnel from public scrutiny".[52]

In the case of Paul Bernardo and Karla Homolka, a plea-bargain was entered into by the Crown and Karla Homolka for the benefit of both parties. The Crown negotiated with the defense lawyer in order to ensure a successful prosecution of Paul Bernardo on the basis of the information that only Karla Homolka was able to provide, due to a lack of

alternative sources of solid evidence. Karla Homolka entered into the plea-bargain in order to escape an extremely long prison sentence and prosecution for the death of her sister, Tammy Homolka, and her involvement in numerous sexual assaults. Negotiations commenced after Karla Homolka suffered a horrendous beating from Paul Bernardo, but a plea-bargain was not finalized until after her extended stay in hospital for psychiatric assessment. In return for her information and role as a witness at Paul Bernardo's trial, Karla Homolka received a reduced sentence of twelve years for manslaughter. Further details about the case and the sentences each individual received are discussed in later chapters.

In light of the above discussions on sentencing disparity and plea-bargaining, it becomes possible to delineate the viability of comparing two sentences, which at first glance appear akin to comparing apples and oranges. The case study analysis which was undertaken in this thesis recognizes the distinction between the manner in which each of the accused was processed, but argues that comparability is not limited because the sentences were only one of several significant components of the Bernardo-Homolka case. In actuality, the sentences served two main purposes in this thesis, first, they were the catalyst which initiated this investigation and second, they were the point at which

discussion surrounding gender bias and sentencing disparity was concluded, i.e.; the impact of the sentences was beyond the scope of this thesis. The focal point of this thesis was to investigate the impact of gender and its potential biases, in line with several other relevant factors, upon the processes that led up to the sentences that the couple received for their joint engagement in several heinous crimes. The focus of this thesis is upon the treatment that Karla Homolka received, due to the amount of controversy and public outcry that resulted from her plea-bargain, utilizing her partner in crime in order to establish particular points and as a point of reference in order to clarify explanations.

Following this introduction, the thesis is divided into six chapters dealing with methodology, theory, history, case background, case analysis, and a conclusion. The subsequent chapter on methodology delineates the specific questions that were researched in this thesis, and the actions that were undertaken to carry out the necessary research to formulate answers to these queries. As well, chapter two outlines the means by which the data were analyzed in terms of the thesis statement and explains the rationale and justifications for the decisions made throughout the research and analysis phases of the thesis. A thorough discussion of the means by which answers to the research question were obtained is also included, specifically by engaging in a literature review of the

sources of data that were selected and utilized to examine the Bernardo-Homolka case and the factors that influenced the sentencing outcomes received by each accused individual, as well as a discussion of the strengths and weaknesses of the research conducted in this thesis.

Chapter three discusses the theoretical perspectives that have become the most prominent in studies of gender and the legal system. In particular, attention is devoted to those that concentrate on bias stemming from one's biological sex and the existence of disparate sentences which may be linked to that characteristic. This chapter covers a broad range of theories that have been introduced in this subject area, including those that have been proposed by Lombroso, Thomas, Freud, to Smart, MacKinnon and Greenwood. Three "test theories" are developed from the aforementioned perspectives, and are further used as lenses through which the remainder of the thesis is viewed and analyzed. The strengths and weaknesses of each test theory are discussed, and each is also judged in terms of its potential to explain what transpired in the Bernardo-Homolka case and the subsequent sentencing. Discussion is also engaged with respect to quantitative and qualitative research that has been done by social scientists on this topic. Included in this chapter is a review and critique of solutions that have been proposed to rectify or to at

least revise the effect gender is presumed to have upon the current legal system. These proposed solutions are assessed in terms of the feasibility and practicality of their implementation into the criminal justice system.

In chapter four, discussion turns to an historical review of how accused females and female offenders have been treated in the Canadian legal system in the late nineteenth and early twentieth centuries. Due to an apparent gap in historical legal research, leading to an obvious lack of reference sources necessary for a thorough analysis, homicide is not the only criminal offense that is broached. Included in this chapter are the issues of infanticide, prostitution and the regulation of sexuality, the now-defunct rape law, domestic violence, and capital punishment. It is proposed that a detailed investigation into the basic tenets of each topic, including how historiographers have generally dealt with these subjects, will result in a more comprehensive picture of the particulars relating to murder and the sentences women received in this time period.

When the subject of murder is approached, substantial weight is given to the work of Carolyn Strange and her analysis of chivalry in the murder trials of two young women in Toronto. Her research is given such attention because it is rare to find research dealing with murder, women as the accused, the issue of chivalry and the way that the Canadian

courts arrived at sentence. All of the above subjects are discussed in accordance with the test theories that are outlined in chapter three. The purpose of chapters three and four is to provide a foundation for the investigation and interpretation of the proposed Bernardo-Homolka case study.

Chapter five provides the background to the case of Paul Bernardo and Karla Homolka. Information is presented on the criminal activities that were engaged in, and the investigation that was undertaken to capture the culprits. As well, the procedures that were followed when Karla Homolka came forward to negotiate her sentence in return for information, and the sentences that were handed down to both individuals, are recapped. Throughout the chapter, certain aspects of the facts are highlighted in anticipation of the analysis that is executed in chapter six.

Chapter six is the actual analysis of the case of Paul Bernardo and Karla Homolka. Discussion centers around the issue of what factors had an impact upon the sentences received by the couple, as well as the role and extent, if any, gender played in the judgments passed down by the judges who presided over their trials. In addition to gender, several other factors were given specific attention, including the psychological assessments undergone by Karla Homolka and the significance that was placed upon them

during her trial. Attention was also given to the problems that were experienced by the police forces that had joined together in an effort to apprehend the suspects who operated beyond jurisdictional police boundaries. In addition, the difficulties that occurred when evidence and suspect samples were tested at the Centre of Forensic Sciences, and the issue of Jane Doe and how the assaults against her were dealt with by the legal system were addressed. Furthermore, the role of the media and the impact it had on the investigation and the affect it had upon public perceptions of justice were subject to discussion. Finally, the effect that problems with the management and organization of evidence and information by police had on both the investigation itself and the deal that was struck with Karla Homolka rounds out the analysis of the factors considered to impact upon the sentences the couple received.

In the concluding chapter, the information that has been examined in preceding chapters is summarized for the reader. On the basis of the analysis in chapter six, possibilities for further research are suggested and briefly discussed. Lastly, proposals for reforming the criminal justice system and the effects the factors discussed in chapter six have on the current legal system are submitted for consideration.

Endnotes: Chapter One

1. Martin, S. "Proving Gender Bias in the Law and the Legal System". Investigating Gender Bias: Law, Courts, and the Legal Profession (Brockman, J., and D. Chunn, (ed.).), 1993, p.19.

2. The dangerous offender designation is for the "Scarborough Rapes", not for the murders of Tammy Homolka, Leslie Mahaffy, and Kristen French.

3. The books, governmental reviews, newspaper articles and television reports that have resulted from this case are discussed in further detail in chapter two.

4. Gender is recognized as being a complex construction, i.e., it possesses diverse facets that are impacted by and are interpreted differently when considered in conjunction with: race, age, socioeconomic status, religion, ethnicity, nationality, etceteras, or any combination thereof. However, for the purpose of this thesis, gender is given a simple construction. It is defined in this thesis as essentially being: the biologically discernible distinctions of sex, without consideration being given to additive, influential factors, due to the similarities found between the two offenders being studied.

5. Dickason, O. Canada's First Nations: A History of Founding Peoples From Earliest Times, 1992, p.499, n.45.

6. Comeau, P., and A. Santin. The First Canadians: A Profile of Canada's Native People Today, 1995, p.46.

7. Dickason, supra note 2 at 499, n.45.

8. Boldt, M. Surviving as Indians: The Challenges of Self-Government, 1993, p.208.

9. Inquiry Committee. Report to the Canadian Judicial Council by the Inquiry Committee Appointed under Subsection 63 (1) of the Judges Act to Conduct a Public Inquiry into

the Conduct of Mr. Justice Jean Bienvenue of the Superior Court of Quebec in R. v. Theberge, 1996.

10. Mr. Justice Bienvenue stated the following with respect to women and Nazis:

> "It has always been said, and correctly so, that when women - - whom I have always considered the noblest beings in creation and the noblest of the two sexes of the human race - - it is said that when women ascend the scales of virtue, they reach higher than men, and I have always believed this. But it is also said, and this too I believe, that when they decide to degrade themselves, they sink to depths to which even the vilest man could not sink.
>
> Alas, you [Tracy Theberge] are indeed in the image of those women so famous in history. The Delilahs, the Salomes, Charlotte Tardif, Mata Hari and how many others who have been a sad part of our history and have debased the profile of women.
>
> You [Tracy Theberge] are one of them, and you are the clearest living example of them that I have seen.
>
> At the Auschwitz-Birkenau concentration camp in Poland, which I once visited horror-stricken, even the Nazis did not eliminate millions of Jews in a painful or bloody manner. They died in gas chambers without suffering." (Ibid., pp.8-9.)

11. Ibid., p.3

12. Brockman, J., and D. Chunn. "Gender Bias in Law and the Social Sciences". Investigating Gender Bias: Law, Courts, and the Legal Profession, (Brockman, J., and D. Chunn, (ed.).), 1993, p.3.

13. Martin, supra note 1 at 24.

14. See for example: Brockman, J., and D. Chunn, (ed.). Investigating Gender Bias: Law, Courts, and the Legal Profession, 1993, p.50; The Law Society

of British Columbia. Gender Equality in the Justice System: A Report of the Law Society of British Columbia Gender Bias Committee, Volume One, 1992, pp.1-2; and Federal / Provincial / Territorial Working Group of Attorneys General Officials on Gender Equality in the Canadian Justice System. Gender Equality in the Canadian Justice System: Background Papers: Gender Bias in the Courts (Ontario - Northwest Territories), 1992, p.2.

15. Wikler, N. "Researching Gender Bias in the Courts: Problems and Prospects" in Investigating Gender Bias: Law, Courts, and the Legal Profession (Brockman, J., and D. Chunn, (ed.).), 1993, p.50.

16. Boyd, S., and E. Sheehy. "Feminist Perspectives on Law: Canadian Theory and Practice", Canadian Journal of Women and the Law, Vol.2, 1986, p.3.

17. Ibid., p.3.

18. Report of the Royal Commission on the Status of Women in Canada, 1970, p.ix.

19. Please refer to the Report of the Royal Commission on the Status of Women in Canada, for a complete list of all the areas of life in Canadian society which the Commission was charged with investigating.

20. Boyd and Sheehy, supra note 17 at 4.

21. Hosek, C. "Women and the Constitutional Process", in And No One Cheered, (Banting, K., and R. Simeon, (ed.).), 1983, p.281.

22. For example: The National Association of Women and the Law which was formed in 1975; and the Women's Legal Education Action Fund (L.E.A.F.) which formed in 1985.

23. Griffiths, C., and S. Verdun-Jones. Canadian Criminal Justice, 1989, p.334.

24. See for example: Wilson, Madame Justice B. "Will Women Judges Really Make a

Difference", Osgoode Hall Law Journal, Vol.28, 1990. pp.507-522.

25. The British Columbian provincial committees at the time were: The Law Society of British Columbia's Gender Bias Committee, 1991; The British Columbia Superior Courts' Gender Bias Committee, 1991; The British Columbia Provincial Courts' Gender Bias Committee, 1991; and The Law Society of British Columbia's Subcommittee on Women in the Legal Profession, 1991.

26. The federal committees at the time were: The Federal / Provincial / Territorial Working Group on Gender Equality in the Canadian Judicial System, 1992; and The Canadian Bar Association's Task Force on Gender Equality, 1992.

27. Martin, supra note 1 at 19.

28. Martin, supra note 1 at 19.

29. See for example: Hatch, A., and K. Faith. "The Female Offender in Canada: A Statistical Profile". Canadian Journal of Women and the Law, vol.3, 1989-90, pp. 432-456.

30. Wilson, J. Thinking About Crime, Third edition, 1985, p.9.

31. Canadian Sentencing Commission. Sentencing Reform: A Canadian Approach - A Report of the Canadian Sentencing Commission, 1987, p.55.

32. Ibid., p.60.

33. Ibid., p.62.

34. Ibid., p.62.

35. Renner, K., and A. Warner. "The Standard of Social Justice Applied to an Evaluation of Criminal Cases Appearing Before Halifax Courts". Dimensions of Criminal Law, (Pickard, T., and P. Goldman), 1992, p.103.

36. Verdun-Jones, S., and A. Hatch. "Plea Bargaining and Sentencing Guidelines". Dimensions in Criminal Law, 1992, p.35.

37. Ibid., p.35.

38. Renner and Warner supra note 35 at 111-112.

39. Mohr, R. "Sentencing as a Gendered Process: Results of a Consultation". Canadian Journal of Criminology, 1990, p.480.

40. See for example: Canadian Sentencing Commission. Sentencing Reform: A Canadian Approach - A Report of the Canadian Sentencing Commission, 1987, pp.51-86; Mohr, R. "Sentencing as a Gendered Process: Results of a Consultation". Canadian Journal of Criminology, 1990, pp.479-485; and Pickard, T., and P. Goldman. Dimensions of Criminal Law, 1992, pp. 32-45, 103-113.

41. Verdun-Jones, S., and A. Hatch. "Plea Bargaining and Sentencing Guidelines". Dimensions in Criminal Law, Working Copy, (Pickard, T., and P. Goldman), 1992, p.35.

42. Canadian Sentencing Commission, supra note 31 at 403.

43. Ibid., p.404.

44. Ibid., p.404.

45. Ibid., p.404.

46. Refer to Canadian Sentencing Commission. Sentencing Reform: A Canadian Approach - A Report of the Canadian Sentencing Commission, 1987, p.406; and Pickard, T., and P. Goldman. Dimensions in Criminal Law, 1992, p.33.

47. Verdun-Jones and Hatch, supra note 36 at 36.

48. Canadian Sentencing Commission, supra note 31 at 406.

49. Verdun-Jones and Hatch, supra note 36 at 36.

50. Verdun-Jones and Hatch, supra note 38 at 36.

51. Ibid., p.36.

52. Warner, A., and K. Renner. "The Bureaucratic and Adversary Models of the Criminal Courts: The Criminal Sentencing Process". Dimensions of Criminal Law, (Pickard, T., and P. Goldman), 1992, p.40.

CHAPTER TWO: METHODOLOGICAL CONSIDERATIONS

> "Speaking out against gender bias is not itself "bias", but the legally mandated and morally compelling pursuit of equality"[1]

This thesis is concerned with examining gender bias in law as a distinct issue. It stems from a desire to tackle the popular perception that the legal system is somehow either removed from or above the politics of other public institutions. It also is concerned with addressing the persistent public reluctance to acknowledge that the current criminal justice system is flawed. It is also concerned with the applicability of the findings from the case study analysis undertaken in this thesis to developing gender equality-based reforms, and the practicality of considering the results for the implementation of needed revisions to the Canadian legal system. Motivation to study the topic of gender bias and sentencing disparities is derived from a pragmatic, empirical derivation, rather than from a theoretical origin.

The process through which evidence was gathered to demonstrate the thesis was a multidisciplinary approach based on a case study analysis, utilizing examples from history and literature and, finally, interpreting the information through the test theories that are established in chapter three by means of a critical perspective. There appears to be a gap in this research area, perhaps stemming from women's historical exclusion as a subject for examination, especially with respect to analyzing sentences handed down in cases of

murder. The tendency seems to be to examine the role of gender in areas such as personal injury compensation, child sexual abuse, child custody, and the legal profession itself.[2] The books and articles which have addressed the problem of gender bias in sentencing have tended to focus on historical occurrences[3], or to evaluate it using statistical means over a wide spectrum of criminal offenses[4]. This researcher, with a background in sociology and psychology, has an opportunity as a graduate student in "legal studies" to study a recent Canadian case involving couple-perpetrated crimes. It is hoped that such a study will contribute to the existing literature and knowledge pertaining to gender and its effects on the legal system.

Prior to engaging in a discussion about methodology, it is important to briefly review the theories which were tested in this study because no research method can claim to be theory-free. Implicitly or explicitly, researchers rely on values, assumptions, and personal views of how the world works, which are informal theories, when attempting to conduct research. This reliance influences research questions, hypotheses, the interpretation of data and the conclusions that are drawn from the data. Theory that has been developed regarding female offenders and the rationale behind the sentences they receive was used in this thesis to develop three general "test theories". These three test

theories were in turn utilized as lenses through which both historical cases and the Bernardo-Homolka case were explored, as a means to establish which theory seems to "fit" most accurately or to best be able to explain the role of gender in sentencing decisions. Conducting research from a "best fit" perspective allows a researcher to apply each test theory to the case at hand and, via a progression through the events of the case, determine which test theory offers the most truthful and logical explanation for the sentences that resulted.

Issues Surrounding the Study of Gender Bias

i): Legal Research Versus Social Science

In order to fill the gap in the existing body of knowledge in this area, and to examine the effects of gender on the sentencing of serious criminal offenses, the case analysis method that has been adopted is associated with the social sciences and to an extent with the generally accepted method of legal analysis. This represents a departure from most traditional methods, which have relied to a large extent on statistical analyses and comparing reviewed cases.[5] A sizable amount of the research, particularly in terms of governmental studies[6], has been undertaken by people in the legal profession, particularly lawyers, which has resulted in methodological difficulties due to lawyers being "trained to

look for what is relevant to their case or issue, and to ignore the rest as irrelevant"[7]. It is directed towards practical ends in order to resolve disputes in a predictable and consistent fashion.[8] However, such an approach does not tend to illuminate the broader context. Social scientists, on the other hand, may miss important variables due to assumptions made about the nature and role of law in society as well as dismissing variables which might be considered relevant from a legal perspective.[9] Research on gender bias needs to be an interdisciplinary enterprise because "both legal and social scientific perspectives and research techniques are needed to adequately investigate the problem"[10]. Amalgamating the perspectives and methodologies from both law and the social sciences will ensure that important data is not ignored or left unaddressed, while ensuring that variables considered relevant from either group are identified and explored.

While a study of this sort is required to consider the methods favored by both lawyers and social scientists, a critical study of the Bernardo-Homolka case must not be trapped within the constraints of either type of research, rather it needs to combine the strengths of each and integrate them - as proposed in this thesis. By adopting a broad, skeptical means of inquiry, it becomes possible to rigorously question the reasons and motivations behind the decisions made throughout the case of Karla Homolka and Paul

Bernardo. An obvious point from which to initiate a more skeptical and analytical approach is to examine the treatment of women within the criminal justice system historically. Such a method of inquiry brings to light past precedents and patterns, and it also provides a springboard from which current cases can be analyzed. A broader scope of inquiry also allows the researcher to observe and understand how sentences are decided upon and the information that influences sentencing decisions.

Historical methods obviously have limitations, which are discussed in chapter four, and the researcher must be wary when examining such material as it largely reflects the view of those in a position to write and record the history of the day. As well, it must be acknowledged that the historians who produced the information draw upon personal theories and assumptions as they interpret the past and fill in the missing gaps to provide a coherent accounting. Additionally, the historical records may also be affected by the present concerns and ideologies of the researcher. For this study, history is the first sphere in which the effect of gender on the sentencing of women is studied through the lens of "test theories" that are developed in chapter three. The subsequent step embraces an analysis of the Bernardo-Homolka case on the basis of the theoretical-historical foundation generated in chapters three and four.

ii): The Study of Gender Bias - Problems and Considerations

Since one objective of research on gender bias is to document for skeptical members of the judicial and legal professions that bias does exist, concern about the kind of data that will be most convincing looms large in investigations.[11] The problem is that no one can agree on what is sufficient evidence or what counts as demonstrating or explaining the existence of gender bias. In the majority of research studies which attempt to account for gender bias, particularly those dealing with sentencing, emphasis has been placed upon the weight and importance of empirically obtained statistical data in relation to quantifying and documenting its existence and nature. While numbers are helpful in monitoring and evaluating change, and describing the distribution of gender biased behaviors within and among groups, they are not able to yield evidence as to how it is perceived and experienced by individuals. The inclusion of qualitative data tends to result in a much greater understanding about gender bias and its effects on people, however there exists a general undervaluing of this type of data on the basis that it is "subjective", and is therefore somehow "unscientific". What is therefore required is an amalgamation of both approaches whereby the information that results is corroborated by both "hard" and "soft" data. Nonetheless, if one source of evidence, be it a case study or "the numbers",

reveals that gender bias can be seen to exist within an institution that has been developed to safeguard concepts like equality, fairness, impartiality and objectivity, it should be proof enough that this subject warrants study.

In addition to the problem cited above, difficulties in promoting the study of gender bias are owed also in part to the quarters instigating the discussion. In considering the social context in which proof is proffered, who is making the case is very important.[12] For many years it has been mostly women who have been talking about the negative and prejudicial effects of gender bias in law and the legal system - this led it to be seen as a "women's issue" rather than a structural flaw in the system itself. Women are basically viewed, and subsequently dismissed, as a politically motivated interest group seeking special treatment. This strategy of attempting to marginalize the claims of women as purely personal and political fails to acknowledge that in the "so-called battle of the sexes", men have always been as personally and politically interested in maintaining their privileged position as women have been in changing it.[13] By relegating the issue to the realm of a "special interest group" improperly seeking influence, the attitude of the legal institution tends to be that the judicial members are doing women a favor by listening, but will be undermining justice if they act on what they hear. As more influential people of

both genders come forward to study the problem, it comes to be viewed as warranting examination.

A third and final general problem that needs to be addressed with respect to studying gender bias is the challenge of convincing members of the legal system that this is an existing phenomenon that warrants study. In the legal system, a case is analyzed for its logic, reasoning, internal consistency, its conformity with precedent, its tone, its result and those legal and policy implications which flow from that outcome. Until recently, it was rare for a case or body of law to be examined for its sensitivity to the life experience, perspective and social understanding of a disadvantaged group.[14] Within the adversarial system, the procedural rules necessitate that if someone presents the view that gender bias exists, another is required to argue that there is no bias at all. This focus derives, at least in part, from the strictures and structures of the legal method. The complex nature of gender bias demands a multidisciplinary approach be undertaken in order to prove its existence, such as was undertaken by Justice L'Heureux-Dube in her dissent to the majority decision in R. v. Seaboyer (1991) taking into consideration the mythologies and stereotypes that abound about victims of sexual assault.[15]

Just as gender bias requires a multidisciplinary angle when being studied, so too

does the reasoning behind differential sentencing of men and women need to be broadened to include peripheral gender factors, not just gender as a single conclusive variable. That is to say, gender may affect sentencing decisions because society's morals and values with respect to men and women in some way influence all the factors that are involved in sentencing decisions. Numerous factors outside of gender can be seen to affect sentencing disparity: the nature of the Criminal Code which allots wide-ranging discretionary powers to the judiciary; the number of sentencing alternatives available to judges; the penal philosophies of individual judges; the policies and practices developed in the courtroom; and the environment of the courtroom itself.[16] While these factors may appear independent of gender, all of these factors are influenced by the beliefs, morals, expectations, and values one possesses with respect to gender when they are applied to sentencing, because it is an individual or a group of twelve individuals who arrives at a decision. For example, a judge who holds strong moral values about the evils of drinking and driving may sentence those who come into his court under such a charge to the fullest extent possible under the Criminal Code.

For this study, the sources of evidence used were unfortunately extremely limited due to the lack of information that has been made available about the Bernardo-Homolka

case. Sources included journalistic accounts, books, the Galligan report[17], the Campbell report[18], and excerpts from Karla Homolka's psychological assessments and trial. Unfortunately each of these sources possesses barriers which must to be acknowledged and if possible overcome, in order to conduct a case study analysis on the case of Karla Homolka and Paul Bernardo.

Newspaper accounts of this case are available to the researcher in mountainous quantities. Unfortunately this source of data is weakened by the impetus that encouraged their proliferation, i.e.; these accounts were written with the intention of boosting newspaper sales, to promote the opinions of those who wrote and published the articles, and were very selective in terms of the events and people who were the focus of the articles. As well, newspaper accounts are not the best source for information due to evolving opinions with respect to some of the individuals involved in the Bernardo-Homolka case. For example, Leslie Mahaffy went from being a rather promiscuous runaway in the early stories covering her disappearance, to being an attractive young woman who lived a "flower child" lifestyle.[19] This material was basically relied upon as a resource whereby the information found in books could be corroborated and supported.

The books that have been published about Karla Homolka and Paul Bernardo were also limited in terms of their usefulness in conducting a case study analysis. There have been three major books published since the case was concluded. These consist mainly of a chronology and summary of the events that transpired in in Scarborough and St. Catharines, Ontario. Two of these tomes were written by newspaper journalists, the other by a crime writer. Each of these accounts requires consideration with respect to potential limitations and weaknesses. Deadly Innocence: The True Story of Paul Bernardo, Karla Homolka, and the Schoolgirl Murders by Scott Burnside and Alan Cairns, who work for the Toronto Sun, is perhaps the strongest of the three accounts to rely on due to its accuracy in relating the facts of the case, particularly with respect to its being consistent with the governmental recounting, and because it has also been used as a reference in numerous other publications on the case. It is also likely the best reference source for two additional reasons: (1) it was written by two individuals who were constantly present throughout the unfolding of the case; and (2) it was not subjected to police investigation, unlike Lethal Marriage: The Unspeakable Crimes of Paul Bernardo and Karla Homolka, written by Nick Pron. These factors are important because they add credibility to the book as an information resource. However, it is acknowledged that the

book's journalistic origin forces it to suffer the same limitations as the newspaper accounts that were published. Having to rely on journalistic accounts, rather than academically based articles, hampered the collection of information to the extent that politically and economically motivated factors underlying the manner in which the case was presented had to be acknowledged and filtered out when looking for gender bias evidence. Again, this resource was used mainly to supplement and validate information presented in other data sources. Contact was established with Mr. Burnside, a co-author of the aforementioned book, early in the research phase of this thesis. He provided this researcher with a copy of the book as well as a copy of the Campbell report. Mr. Burnside was very helpful in suggesting other sources to investigate for this case study analysis.

Lethal Marriage: The Unspeakable Crimes of Paul Bernardo and Karla Homolka by Nick Pron, who writes for the Toronto Star, is a second book that was utilized as a data source for this study. Just as Burnside and Cairn's book is limited by its journalistic bent, so too is Pron's book. In addition, Pron's book was relied on to a lesser extent in this thesis due to it being the subject of a police investigation. Pron's book was accused, by a former jury member of the Paul Bernardo murder trial, of containing fabrications

regarding the events on the videotapes of the rapes and of suggesting that Kristen French enjoyed a sex act performed on her by Karla Homolka.[20] Pron's book was also reviewed by the Ontario Provincial Police to see if it violated Canada's pornography laws.[21] The review was undertaken after Leslie Mahaffy's mother lodged a complaint about the book, stating that it contained over 100 inaccuracies and a distorted description of the videotapes that were shown to the jury. Due to its questionable credibility and sensationalist nature, Pron's book was used sparingly in this thesis and only where it was supported by information from other references.

Invisible Darkness: The Strange Case of Paul Bernardo and Karla Homolka by Stephen Williams, an independent author, is the third book to enter the public market that reviews the chronology of the Bernardo-Homolka case. Unlike the other two book references, Williams' book is not journalistic in nature. Rather, his book focuses more upon the incredible coincidences and mistakes that allowed the couple to elude detection, the characters and backgrounds of the two offenders, and portrays Karla Homolka as being at least as sadistic and twisted as Paul Bernardo instead of promoting the idea that she was a victim of an abusive partner. However, due to its quest for "sale-ability" rather than academic contributions, this book suffers limitations quite similar to the

aforementioned journalistically based resources. This has been a source with which other data were compared and substantiated.

A fourth book that has been published is Karla's Web: A Cultural Investigation of the Mahaffy-French Murders by Frank Davey, a professor at the University of Western Ontario. Unlike the other literary efforts that have been published about Karla Homolka and Paul Bernardo, this book deviates from being a chronological review and concentrates on the reasons why this murder case received so much public attention, and the effects it had on justice, journalism, and the future of Canadian sovereignty. Davey argues that all of Canada's present difficulties - "management of the economy, preservation of social programmes, the recurrent Quebec crisis"[22] - are symptoms of the threat of rapidly growing global enterprises that are basically beyond any national authority. He argues that the judicial and media developments in the Bernardo-Homolka case, which he considers prime examples of "the threat", urge Canadian attention to issues of sovereignty and democracy. It also differs greatly from the other sources as it is written from an academically based viewpoint. The biggest limitation of this book was its focus on specific issues, thereby limiting its application in terms of reviewing this case, many issues that are dealt with in the book are beyond the scope of this thesis. While Davey presents many

interesting and controversial conclusions about broad social issues surrounding this case, his book does not address the issue of gender bias. This book was utilized as a resource to explain and provide a more comprehensive picture of the periphery surrounding the crimes committed by Paul Bernardo and Karla Homolka.

In addition to the myriad of newspaper articles and the books which have been published on the Bernardo-Homolka case, two government-initiated reports were produced. The first to be presented was the Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka, which was written by The Honorable Patrick Galligan, Q.C.. This report discussed the appropriateness of the plea arrangement entered into by Crown counsel with Karla Homolka; the appropriateness of the process by which possible charges against Karla Homolka arising out of the Jane Doe assaults was handled; and the appropriateness or feasibility of pursuing further charges against Karla Homolka for her part in the deaths of Leslie Mahaffy and Kristen French and sexual assault of Jane Doe.[23] This report also contained excerpts from Karla Homolka's psychological assessments and her trial. It was relied upon heavily for this thesis, due to the amount of explicitly gender-related information it contains. Despite receiving heavy criticism from the media for being a whitewashed recounting of the appropriateness of the

decisions made by the Crown with respect to Karla Homolka, this report provided a great deal of information which would otherwise have been inaccessible. It has been accused of being a whitewashed report due to its unanimous, unqualified support of the actions of the Crown. Galligan's conclusions aside, the detailed chronology he provided along with trial and assessment excerpts proved invaluable to presenting a background chapter on this case and to engaging in a meaningful analysis of the role of gender in the sentencing decisions which were reached. Without this report, this case analysis would have been greatly lacking, particularly in terms of having the capability of detailing the underlying views held by the defense, Crown and judge regarding the role Karla Homolka played in the criminal atrocities which were perpetrated, and the sentence sought and awarded.

The second report to be released was the Bernardo Investigation Review: Report of Mr. Justice Archie Campbell. This report has also received a good deal of criticism from the media for being a whitewashed critique of the investigation which was carried out in the Bernardo-Homolka case. This report also suffers from the label of being whitewashed because it continually diverts blame away from the police forces and the manner in which the investigation was conducted and focuses blame upon the absence of an efficient system of information management. A review of the report would appear to

sustain these criticisms as time and again Campbell dismisses police errors by arguing that a computerized central information management system would have solved everything. It becomes apparent, however, that internal politics, intra-force competition, and sometimes simple poor judgment or the failure to follow up processes once they were initiated are more to blame for problems in the investigation than information management alone, though the latter did play a significant role. These criticisms are pursued further in chapters six and seven.

Case Study Analysis Outline

i): The Empirical Data

The data utilized in this thesis were collected over the course of 1993 to 1997 inclusive, in both Calgary and Ottawa. The most prevalent information was gathered from Canadian newspapers and magazines (for a complete listing of the sources consulted please refer to the bibliography). Information was also gathered in the form of nonfiction books that were published and released for public consumption, the majority of which became available in 1995 and 1996. Contact was made with Scott Burnside at the Toronto Sun in the Autumn of 1996. Mr. Burnside co-authored Deadly Innocence: The True Story of Paul Bernardo, Karla Homolka, and the Schoolgirl Murders and at that

time was a reporter for the Toronto Sun. He provided this researcher with a copy of his book, copies of several newspaper articles, and a disk copy of the Campbell report. Following receipt of the Campbell report, a copy of the Galligan report was acquired from Access Ontario. The Galligan report contained reproduced primary data excerpts of Karla Homolka's psychological assessments and her trial. Only one academic source of research on the Bernardo-Homolka case was located in Ottawa. Unfortunately, it addressed issues surrounding the publication ban of Karla Homolka's case and therefore was used only to locate additional newspaper articles.

Over the course of 1995 to 1997, journal articles, published and unpublished academic written works on gender, the legal system, with special attention being given to items focusing on sentencing, and bias or discrimination were collected. Preference was given to resources which studied Canada, however information from the United States of America, the United Kingdom and Australia were consulted in light of the similarities in criminal justice systems. The references and bibliographies of the initial sources located were used to identify and collect additional sources of information. The majority of the information that was found was published in the 1970s and 1980s, current data pertaining to the area being investigated is lacking. Most current academic research appears to have

moved towards examining bias as experienced by the victim, or to addressing either alternate aspects of the criminal justice system, or bias on the basis of other influential variables, such as race and socioeconomic status. Theories ranging from those of Lombroso and Freud to Smart and Strange were accrued and examined. The relevant data was analyzed, compared and subsequently categorized into one of three theoretical positions on the treatment that men and women receive from the criminal legal system were identified. These positions are discussed in detail in chapter three. These three patterns of thought were utilized in this thesis as "test theories", i.e., they were set up as hypotheses and tested on both historical data and the Bernardo-Homolka case to discover which was the most accurate. Further details regarding the testing process will be addressed at a later point in this chapter.

In addition to the empirical and theoretical data that was amassed, information on the treatment of female offenders in the late nineteenth and early twentieth centuries was also gathered for this thesis throughout 1995 and 1996. This specific historical time period was chosen because it is an era known for the presence of chivalry. Information was collected on a variety of areas of crime due to the extremely small amount available on female murderers. Data focused on Canadian accounts, with minor reference to the

American situation of the time. The crimes examined and the conclusions drawn can be found in chapter four.

ii): The Development of Test Theories

Following the accumulation and examination of the theoretical sources of information that had been collected, each piece of data was identified and subsequently classified on the basis of its tenets. It became apparent while studying the patterns present in each resource that there were three basic schools of thought about how the legal system treats women and men. The three schools of thought that developed were: (1) the legal system treats women more leniently than their male counterparts; (2) the legal system treats women more harshly than men; and (3) the treatment that men and women receive from the legal system is based on factors that operate either entirely separate from, or in conjunction with, gender. The identification of these three general positions led to the idea that they could be tested by analyzing the historical experiences of women at the hands of the Canadian criminal justice system, as well as by looking for the presence of gender and how it affected the differential sentences received in the Bernardo-Homolka case.

A case study analysis was implemented to examine the effects of gender on the sentences women have historically received for a variety of criminal offenses. The test

theories that are discussed in chapter three were used as lenses through which experiences were viewed. A "best fit" technique, as discussed above, was implemented to discover which test theory was the most logical and appropriate explanation of the sentences women received. The lenses were utilized in chapter four in areas where women were both victims and offenders in order to develop a more comprehensive view of how women and men were treated during the time period under consideration. Conclusions drawn from the findings in all areas investigated in this chapter and in conjunction with chapters three and five were used to establish a foundation for the case study analysis of the Bernardo-Homolka case in chapter six.

iii): Analysis of the Case of Paul Bernardo and Karla Homolka

A case study method of analysis was also conducted on the Bernardo-Homolka case. The three test theories were again utilized as lenses through which the events that led to the sentence Karla Homolka received from the courts were analyzed. The data which related specifically to Paul Bernardo were used mainly as points of both reference and comparison. This researcher examined the Bernardo-Homolka case looking for patterns whereby gender could be seen to affect the decisions and actions of the individuals involved. For example, analysis focused on discovering patterns whereby

gender was explicitly referred to in terms of distinguishing males from females, where stereotypical labels were given to individuals, and where the burden of blame was placed more heavily on one individual than the other. This method was chosen because it was proposed that an in-depth study would reveal more than the traditional studies that have been carried out on gender bias. It was also selected because it facilitates evaluation of what transpired in the case, rather than reducing the complexity of the events into an either / or situation.

Case study research methods allow the researcher to gather a large amount of information on one or a few cases, to go into greater depth, and to get more detail on the cases that are examined. The researcher can gain an intimate familiarity with the data due to the amount of information in which he or she finds him- or herself immersed. It is a method whereby the researcher looks for patterns in the lives, actions, and words of people in the context of the overall case as a whole.[24] A case study is an empirical inquiry that:

> investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used.[25]

The case study research approach is more complex than it appears because the researcher can enlist single- and multiple-case studies and can include, and even be limited

to, quantitative evidence. However, as noted earlier in this chapter, there are potential problems with limiting gender bias studies to "numbers-based" proof. Case studies have a distinctive place in evaluation research. The most important application of such a method is to explain the causal links in real-life interactions that are too complex for other research strategies. It can also be applied to describe the real-life context in which an interaction has occurred. Furthermore it can be utilized to explore situations in which the interaction being evaluated has no clear, single set of outcomes.[26]

There are numerous potential shortcomings and weaknesses to case study analysis, not the least of which is the concern that has been raised over the lack of rigor of this type of research. In many instances, this type of research has been subject to sloppiness, and has allowed equivocal evidence or biased views to influence the direction of the findings and conclusions. What is often forgotten is that bias can also enter into the conduct of experiments and in using other research strategies, such as designing survey questionnaires or in conducting historical research.[27] As with nearly every other possible research method that can be employed, the researcher carrying out the case study analysis will always carry certain values and premises which will affect perceptions and interpretations of findings. It is impossible to divest oneself of conceptual baggage, as research cannot be conducted in

a vacuum. A researcher may possess many feelings and opinions on the topic under investigation, however a sound methodological scope should assist in approaching and maximizing objectivity.

A second concern is that case studies provide very little basis for generalization. Case studies are generalizable to theoretical propositions, not to populations or universes. However, the goal of such studies is to expand and generalize theories, not to enumerate frequencies. For example, the case study analysis conducted in this thesis is an attempt to clarify and infer support for theoretical propositions that have been developed in the field of gender bias in the law. It is hoped that providing evidence of gender bias in operation will give rise to further testing of gender bias in the legal system as well as in other social institutions.

A third frequent concern is that case study analyses require too much time and result in massive, unreadable documents. This is not necessarily the case, as many are a form of inquiry that do not depend solely on ethnographic or participant observation data, rather they can be completed in a reasonable amount of time without leaving the library or the telephone, depending upon the topic being studied.[28] In this thesis, it was disappointing, although not too surprising, that there is extremely limited information,

particularly in the form of primary data, available for evaluation. Nonetheless, the time investment is worthwhile, if the outcome is solid, and reliable evidence which supports the hypotheses of this thesis or which clarifies the issue in focus result.

Reviews of cases are often criticized as being "too selective, subjective, open to manipulation, and incomplete to stand as adequate proof of gender bias in law and the legal system"[29]. Even when a case review is limited to a particular subject area, gaining access to the cases themselves is often a major problem. It is important to recognize, nonetheless, that a case review is the standard and otherwise accepted method of legal and social scientific analysis. A review of the content of any social science or law journal will substantiate the centrality of this type of methodology to mainstream legal scholarship.[30] As with other research methods, the problems that are perceived in case study analyses can be minimized or overcome by good research skills, sound analysis and coherent argument. It is proposed in this study that the drawbacks of the case study analysis method can be minimized by supplementing it with a discussion of relevant history and a brief examination of several quantitatively-based studies that researchers have conducted in the area of gender bias and the law.

Endnotes: Chapter Two

1. Martin, S. "Proving Gender Bias in the Law and the Legal System". Investigating Gender Bias: Law, Courts, and the Legal Profession. (Brockman, J., and D. Chunn, (ed.).), 1993, p.36.

2. See for example: Brockman, J., and D. Chunn, (ed.). Investigating Gender Bias: Law, Courts, and the Legal Profession, 1993.

3. See for example: Jones, A. Women Who Kill, second edition, 1996; and Strange, C. "Wounded Womanhood and Dead Men: Chivalry and the Trials of Clara Ford and Carrie Davies". Gender Conflicts: New Essays in Women's History, 1992.

4. See for example: Hagan, J., and N. O'Donnel. "Sexual Stereotyping and Judicial Sentencing: A Legal Test of the Sociological Wisdom", Canadian Journal of Sociology, 3(3), 1978; Lyons, A., and P. Hunt. "The Effects of Gender on Sentencing: A Case Study of the Dublin Metropolitan Area District Court", in Whose Law & Order? Aspects of Crime and Social Control in Irish Society, (Tonmlinson, M., Varley, T., and C. McCullough, (ed.).), 1988; and Zingraff, M., and R. Thomson. "Differential Sentencing of Women and Men in the U.S.A.", International Journal of the Sociology of Law, 12, 1984.

5. Martin, supra note 1 at 32-33.

6. See for example: The Law Society of British Columbia. Gender Equality in the Justice System: A Report of the Law Society of British Columbia Gender Bias Committee - Volumes One and Two, 1992; and Federal /Provincial/Territorial Working Group of Attorneys General Officials on Gender Equality in the Canadian Justice System. Gender Bias in the Courts (Ontario - Northwest Territories), 1992.

7. Brockman, J., and D. Chunn. "Gender Bias in Law and the Social Sciences". Investigating Gender Bias: Law, Courts, and the Legal Profession, (Brockman, J., and D. Chunn, (ed.).), 1993, p.13.

8. Sullivan, J. "Policing Poverty: The Rhetoric and Realities of Drug Enforcement". M.A. Thesis, 1996, p.35.

9. Brockman and Chunn, supra note 8 at 13.

10. Wikler, N. "Researching Gender Bias in the Courts: Problems and Prospects". Investigating Gender Bias: Law, Courts, and the Legal Profession, (Brockman, J., and D. Chunn, (ed.).), 1993, p.52.

11. Ibid., p.54.

12. Martin, supra note 1 at 27.

13. Ibid., p.27.

14. Ibid., p.30.

15. Majury, D. "Seaboyer and Gayme. A Study in Inequality". Confronting Sexual Assault: A Decade of Legal and Social Change. (Roberts, J., and R. Mohr, (ed.).), 1994, p.273.

16. Griffiths, C., and S. Verdun-Jones. Criminal Justice in Canada: An Introductory Text, 1980, pp.188-189.

17. Galligan, P. Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka, 1996.

18. Campbell, Mr. Justice A. Bernardo Investigation Review: Report of Mr. Justice Archie Campbell, 1996.

19. Davey, F. Karla's Web: A Cultural Investigation of the Mahaffy-French Murders, 1994, pp.30-31.

20. "Juror Says Bernardo Book Riddled with Errors", The Ottawa Citizen, 21 November, 1996, p. A3.

21. "Police to Decide if Book About Bernardo is Porn", The Ottawa Citizen, 22 November, 1996, p.A4.

22. Davey, supra note 19 at 6.

23. Galligan, supra note 17 at 2.

24. Neuman, W. Social Research Methods: Qualitative and Quantitative Approaches, second edition, 1994, p.321.

25. Yin, R. Case Study Research: Design and Methods, 1989, p.23.

26. Ibid., p.25.

27. Ibid., p.21.

28. Ibid., p.22.

29. Martin, supra note 1 at 32.

30. Ibid., p.33.

CHAPTER THREE: THEORETICAL PERSPECTIVES ON GENDER AND SENTENCING

The objective of this chapter is to investigate the purported existence of neutrality within the criminal justice system by analyzing how perceived disparities in the sentencing between men and women historically, have been explained theoretically. Three major theories have traditionally been posited to account for sentencing disparity on the basis of gender: the instigative female offender, the sexualized female offender, and the protected female offender.[1] While there has been a good deal of research undertaken since this typology was established and subsequently reviewed, the theories presented are still valid models although more recent literature is still attempting to debunk them.[2] All three are based on characterizations of the female which have influenced the perpetuation and survival of the "chivalric" proposition; i.e., that the system is not a neutral, upholder of justice; rather when women are present within its institutions, particularly in the criminal courts, it is the accused's attributes and behavior in light of stereotypical social expectations, such as the good mother or the bad prostitute, which play a role in how punishment is decided, be it leniently or harshly. The leniency or harshness of the punishment depends partly upon the extent to which the accused's behavior deviates from socially expected behavior. It also is dependent upon the seriousness of the offense.

The instigative female offender is portrayed as being a manipulative con artist who entices male criminals into carrying out crimes for her. According to this model, the woman uses her sex as a way to manipulate men, as a condition of the realization of her other wishes. The female's role within this theory is to remain in the background and let "her man" take the risks by playing the more active role.[3] Under this framework, Cavan has also alluded to the possibility that much of the man's involvement is for the woman, for example to support or entertain her.[4]

The general chivalric theme in this theory is that the woman sees to it that she is protected in the criminal justice system by allowing the man to "take the rap". Similar to the male-dominated justice system, the male-dominated world of crime also supposedly protects the female from exposing herself to too much risk. This is essentially a very sexist view of female criminality in that the woman's behavior is only explained in relation to the man.[5] It is quite obvious that this theory would be classified as extremely gender biased, as it operates on an assumption that there are "proper" roles for men and women, and assumes that men are "worth" more than women; i.e., that they dominate all social spheres and are capable of acting within them, whereas women need to "con" someone else to act for them. It is also assumes that only men can handle the burden of "taking the rap".

This view fails to acknowledge the economic and / or social reasons which might motivate a female to engage in criminal behavior. That is to say, it fails to consider all of the potentially relevant factors which may underlie a female's criminal actions, factors that may not simply be tied to her gender. For example, it does not consider her employment status, her income, or whether or not the crime is based on a need to provide for dependents. It seems to simply revolve around the idea that a woman engages in crime solely in order to get something she desires without getting her hands "too dirty". More recent feminist work has taken a huge leap away from this depiction of the female offender. Carol Smart for example, insists that women's criminal actions be taken seriously and that the male biases integral to criminological theory be redressed.[6] Mary Greenwood argues that a theory should be developed which recognizes assumptions about gender, that analyses for men and women cannot be the same due to the differences each experiences in the sexual division of labour.[7]

A second characterization of female criminals that supports the notion of chivalric sentencing is that of the sexualized female offender. The sexualized female perspective depicts women as turning to crime for purely sexual reasons regardless of whether or not the crime itself is a sex offense. That is to say, female criminal behavior is explained in

sexual terms which include such notions as penis envy, female promiscuity, and the physiological inferiority of women.[8] This theory evaluates female crime not only by sexist standards, but in terms of morality as well. It postulates that women need to be encouraged to adhere to their traditional sex-role, which has been set out for them by society.[9] Thus the female offender must be treated leniently in order to facilitate domestication, or harshly due to the transgressive nature of her offense. This theory would obviously be defined as extremely gender-biased as it bluntly sets out the inferiority of women to men, and proposes that there are proper, necessarily traditional, social roles for males and females. As well, this perspective sets out an assumption that women, unlike men, must be made to adhere more stringently to acceptable social roles and that they must face heavier sanctions for deviating from those roles.

Theorists who support this sexualized view of female criminality include Lombroso, Pollak, and Freud. All three of these writers[10] posit that women have a poorly developed sense of justice, that is to say, that moral issues such as justice are beyond women's understanding because women are essentially childlike - their moral sense is deficient.[11] Women, when categorized under this characterization, are also viewed as being too concerned with issues such as penis envy.[12] In addition, women are deemed to

be incapable of the intelligence required to recognize the adult and male nature of the moral code[13]. In comparison with the male offender, the sexualized female offender is more often dealt with by the criminal justice system in a fashion that reinforces the double standard of sexual morality, i.e., the system has a convenient rationalization for sentencing females more harshly when the transgression seriously deviates from expected behavior - particularly with respect to sexual conduct, without having to account for the disparities. This suggests that the sexualized female offender is more often punished because of moral rather than legal violations. Recent feminist research focusing on issues of morality and social expectations, such as that undertaken by Smart and Eaton, calls for a move towards examining the assumptions of the courts and lawmakers about women's sexuality and women's place in society.[14] This type of research would likely shed more light on the issue of sentencing disparities, they argue, because many of the methods which are chosen to study gender bias in the courts, particularly in terms of "differential treatment", miss the subtle processes by which gender divisions are likely to be reproduced in court.[15] In addition, it should be noted that Catharine MacKinnon, along with many feminists, continues to argue as one of the central critiques in her theory that there is a power differential between males and females and that women are victims of, and are subjected

to, domination from men.[16]

The third traditional characterization of female criminals is the one that is most frequently referred to as a reason for women receiving chivalrous treatment within the justice system. This characterization is based upon the premise that females require protection. The idea of protection is often cited as being behind the harsher sentences women receive in comparison to men.[17] This in itself is questionable, as women do not uniformly receive harsher sentences than their male counterparts.[18] The primary tenet behind this theory is that the purpose underlying the paternalistic treatment is to protect women from themselves, i.e., from human needs and motivations, which the biased court system easily translates into sex-based motivations. For example, women who disengage from their expected maternal roles and participate in child abandonment and assault tend to receive longer sentences than do men convicted of the same offenses.[19] This theory is rife with gender bias as well, as it promotes the idea of proper roles for men and women, and assumes that women are more in need of punishment for legal transgressions for their own "welfare". This approach assumes thereby that women are inferior to men, as men do not seem to need to be protected from themselves save in isolated cases.

Essentially these three characterizations can be separated into two schools of

thought on how women defendants are treated by the criminal justice system. The first school of thought postulates that women receive preferential treatment, which in operational terms means that they are more likely to receive milder sentences than men when convicted because the system takes a chivalrous or paternalistic approach to female offenders.[20] The other school of thought proposes that judges are more punitive towards female offenders because there is a greater discrepancy between their behavior and the behavior expected of women,[21] such as females who are charged with physical assault. The judges sentence more harshly in an effort to compensate for the female's stumble from societal expectations, i.e., the sentence will give her time to re-orient herself to her proper social role. It is important to note however, that both of these schools of thought promote a paternalistic or chivalric theme, even though they view the differential treatment of women as resulting in opposite consequences. At the same time however, such categories of thought are very limited in their scope as gender bias is only "allowed" to function either in favor of females or against them; i.e., it is apparently assumed that gender bias affects sentencing decisions in a uniform, unidirectional manner. This is problematic because it changes gender bias from a variable to a constant, one that has yet to be proven. It also fails to consider that other factors, for example, how evidence is collected

and presented or the impact of witness testimonies, may have as great as or a potentially larger impact on the sentences handed down than the gender of the accused per se.

In the studies on gender bias and its role in sentencing disparity, a third school of thought has been introduced. This school posits that if variations do exist in the sentences handed down to men and women, the variation is due to legally relevant variables, not to bias or discrimination.[22] This third school merits considerable attention because it does not limit the decisions made by human beings within the criminal justice system to parameters defined by gender attributes and stereotypes. This school, rather, allows for other potentially pertinent factors, such as a lack of communication or cooperation between law enforcement agencies investigating potentially connected cases, mismanagement of evidence, or the experience and success of an accused's lawyer, either in conjunction with or separate from gender, to be included in explaining the sentences males and females receive. As well, unlike the two aforementioned schools, this school of thought does not seem to automatically assume that there exist "male values" and "female values" which inherently impact upon the sentences received by men and women. Members of this school of thought include Zingraff and Thomson, and Lyons and Hunt.[23] The research of these individuals is discussed below. This school of thought has the greater potential to account

for the sentences that were handed down to Paul Bernardo and Karla Homolka because it allows for the consideration of other possible factors, whether in addition to the effect of gender or separately, as explanatory of differing sentences.

Data from research studies that have compared these three schools of thought on the bases of quantitative research methods have produced inconclusive results. For example, numerous studies, such as the one carried out by Hagan and O'Donnel, have obtained results that document the leniency of sentences received by women.[24] At the same time, they qualify this finding by reporting that the numbers generated are not statistically significant and that further research is required in order to prove the existence of chivalry as a causal factor in any sentence that women receive. It is questionable whether gender biased or chivalrous issues would be found by running further statistical tests on multitudes of cases. This is arguably an inadequate research method because it is not able to measure the subtle nuances or ways in which gender sometimes manifests itself in the process of arriving at a judicial sentence. For example, the research converts such complex variables as race and gender into unidimensional, numerical values and depends on an analysis of chi-square values to determine statistical significance.[25] Research would benefit more from methods such as a case analysis wherein gender issues can be studied in

depth, with the potential for patterns to arise through the analysis and comparison of numerous similar cases.

Lyons and Hunt also found that, in terms of the main effect of gender, females are treated more leniently.[26] They engaged in a statistical analysis of the data and reported that although differences are apparent in the treatment of men and women, the findings are not statistically significant.[27] They add to this conclusion the condition that the factors they used in conjunction with gender (level of crime, previous criminal record) served to better explain the sentencing of males. They conclude that there may be female gender-specific variables such as marital status, family background and parenthood, which may play a more significant role with respect to female sentencing, yet were not able to explain why this might be the case.[28] While this may be true, it is far too limiting to restrict gender research to quantifiable factors because it does not account for the complexities inherent in variables such as gender. It is curious that researchers continue to claim that gender bias exists within our system even though the methods that have been applied to study the problem have not been successful in proving its existence. Possibly this is due to the perpetual treatment of gender as a simple quantifiable phenomenon. It is also interesting that researchers insist on reproducing studies, with only minimal changes, such as altering

or replacing one variable, in the hope that these methodologies will eventually reveal a conclusive answer. It should be obvious that gender is far too subtle to be captured through a quantitative examination of a multitude of cases, each containing its own unique features and events. What is necessary is to start by proving that gender affects one case because once proof is minimally established the the existence of gender bias must be acknowledged.. Establishing such proof would be particularly useful in a case where a male and female suspect with similar attributes could be examined because it would eliminate some potential intervening factors. Finding a gender effect in one case should be proof enough that it exists and that the system therefore requires further inspection, because if it exists in one case it is most likely to also exist in others.

Zingraff and Thomson report that women receive favorable sentences relative to men for felony offenses (with the exception of forgery) however, when comparisons are made with respect to misdemeanors, women receive similar sentences to those received by males.[29] They conducted a multiple classification analysis and drew conclusions from statistical results. In conclusion, they note that this does not prove the existence of gender bias, rather it points to the significance of the extent of discretion that can be applied to serious offenses as opposed to lesser offenses. This is problematic because the phrase

"extent of discretion" is precisely a port of entry for, or simply another word hinting at, gender discrimination. Be this as it may, it must be duly noted that the existence of gender bias may lead to, or provide a point of entry for, discretion or vice versa; i.e., a woman with small children who commits a felony may be sentenced to a shorter prison sentence, at the judge's discretion, than her male counterpart due to that judge's belief that long-term separation between mother and children would be too disruptive to their upbringing. They also observe that differential sentence lengths seem to be related to the "fit" between an offender's sex and gender role characteristics of the criminal behavior. For example, according to Kratcoski, delinquent boys are less likely to be referred to welfare agencies and tend to serve a shorter detention period than do delinquent girls, even though the proportion of boys engaging in delinquent activities is greater than that of girls.[30] Again this is another example of researchers minimizing gender from a complex social factor into a numerical variable.

In addition to the research noted above is the finding of many studies that females who commit crimes that have traditionally been viewed as "feminine", such as shoplifting, are treated less harshly than women who engage in "unnatural" crimes, such as assault. Along this same line, males are treated less harshly for "masculine" crimes, like mugging,

than males who engage in stereotypically feminine crimes, such as prostitution.[31] It appears as though there is not only a gender bias in terms of the sex of the offender, but also in terms of the type of crime committed. Those who engage in "gender-appropriate" criminal behavior are subjected to more lenient punishments than those who engage in criminal behavior that is viewed as being in conflict with the offender's gender. Does this mean that the expectations and attitudes of the current dominant social class penetrate into Canadian justice institutions even further than is apparent on the surface? Does this mean that engaging in "gender-appropriate" criminal activities is acceptable and in some sense encouraged by the legal system? This conclusion is problematic, however, because it forces stereotypical gender labels upon certain types of crime without considering other potentially significant factors, such as socioeconomic status and employment status. These other variables might possibly be able to give a more complete accounting of choice of criminal offense by women than simply gender, and thereby assist in explaining the sentences that are subsequently received by women.

In addition, there is a problem with all of the studies presented in this paper, in so far as they all fail to come up with a definite answer with respect to whether sentencing is truly affected by one's gender or not - essentially we are offered extremely tentative

answers to our question. Perhaps this hesitancy to firmly describe and define the effect of gender on sentencing stems from the use of research methods that are not able to capture the way in which gender operates. The majority of studies that have been undertaken previously in the area of gender bias have tended to be done using large scale statistical analyses. Perhaps the use of this method has allowed the pervasive existence of gender bias to slip by without being acknowledged, perhaps that would account for the inconclusive results from many studies. Possibly gender bias has eluded detection because it is not amenable to study via statistics, but rather requires more qualitative or multidisciplinary methods to uncover its effects. Perchance statistics are not sophisticated enough to pinpoint gender effects and time would be better spent exploring cases individually instead of en masse. It is possible that gender as an influencing variable in sentencing in the criminal justice system simply is not "statistic-friendly". Perhaps this tentativeness stems from a wariness to take a strong stance or to explain such a politically charged issue as gender bias existing in a system popularly hailed for its "neutrality" and "maintenance of justice". Or maybe the development of a reliable, proficient methodology for studying the effect of gender on sentencing is extremely difficult to accomplish. Most likely it is a combination of the points raised above that have allowed gender bias to

remain elusive. The extant research points to the need to continue examining the construct of gender bias. There are certainly claims that it exists, and theories have been postulated to explain why it exists; there have been numerous proposals offered on how to correct the problem, and yet when it comes down to isolating the effect of gender bias, hard evidence remains elusive and answers are presented hesitantly and with major qualifications. Perhaps the focus of questioning should instead be turned to why sexism, like racism, is said not to exist in Canadian society and is therefore unlikely to exist in our criminal justice system, which reflects our society.

Many factors other than gender have been proposed by theorists to account for differential sentencing, such as one's level of "public respectability", the threat the crime poses to society[32], and the number of women who have previously been convicted for the crime in question.[33] How do we measure or quantify one's level of "public respectability"? Do not all crimes pose a threat to society, thereby resulting in their being labeled crimes in the first place? And what relevance should the number of people who have been convicted on the same charge have on the sentence an accused will receive when, in all likelihood, there are important factors that set individual cases apart?

In summation, the research has yet to come to any solid, indisputable conclusions

regarding the impact of gender on sentencing procedures, therefore more research is required. Statistics alone do not appear to be "doing the job". Therefore, the research that needs to be undertaken obviously needs to "break new ground" and move away from a focus upon statistical analysis to explore methods that allow for more in depth and probing investigation. Qualitative case analysis offers such a potential new ground. If gender bias could be proven through a deep, highly concentrated and carefully constructed analysis of a single criminal case, or by examining the sentences received by a man and a woman being tried for crimes which they committed together, then that would at least be a starting block for future research. It would also provide a basis from which amending proposals could be formulated. The potential for such a result is the methodological foundation for the study being undertaken in this thesis.

Despite the fact that concrete evidence has yet to be produced to support claims that gender bias does exist within, and influence the workings of, the current criminal justice system, some theorists have forged ahead with the assumption that evidence is forthcoming. They have surged ahead to discuss what changes should be wrought on the legal system to account for gender bias. Though beyond the scope of this thesis, these proposals warrant consideration because they seem indicative of the direction in which

research is turning. These reform proposals are also worth attention because they may inspire new angles for developing methodologies to study the issue of gender bias. In response to the claim that gender bias exists in the criminal justice system, four equality strategies have been proposed by Sheehy to rectify gender bias: strict identical treatment, identical treatment with biological exceptions, treatment according to all differences, and the subordination principle.[34]

The first proposed theory, that of strict equal treatment, is a liberal or egalitarian approach. It denies that there are any important, immutable differences between the genders, and is based on the idea that if real equality of opportunity exists, females will come to gain equal footing with their male counterparts in the social, political and economic spheres.[35] This theory promotes the elimination of legal or other distinctions between men and women and calls for gender-neutrality - strict identical treatment of both sexes. The positive aspects of this model are its simplicity, its consistency, and its clear applicability to numerous issues. For example, previous precedents would be applicable to all cases regardless of the accused's gender, but only in terms of their relevance to the criminal offense. It is highly implausible that such a means of applying precedents is possible because it brings to light the questions of whether gender or any other unique

attributes and circumstances experienced by the accused, such as ethnicity or socioeconomic status, can truly be separated from, and therefore be made totally irrelevant with respect to, an individual's actions. Is it possible to sterilize a court case by removing all of the potentially pertinent circumstantial aspects of a crime and arrive at a just decision? By what means could one hope to employ such a method and still maintain that justice is being served? This theory is also limited in that it assumes the continued existence of the current social structure and therefore evaluates equal treatment by prevailing norms and values.[36] Without even considering the question of being able to separate an individual's socially-defined characteristics from his or her actions, is the implementation of a "new" system within a social structure based upon norms and values which were originally developed by a specific, select and, as the evidence would suggest, biased group of individuals possible; would it not simply repeat the long-established patterns of said social structure?

The problem with this proposition is that these norms have been strongly influenced to a large extent by a society which for many centuries has been dominated by white, Christian, middle class, older men; a society in which females have been historically viewed as inferior and have been oppressed to a considerable degree. Thus it is assumed

that women can only advance and attain equality by mimicking male patterns and values, which alludes to women's failure to succeed being equivalent to proof of female's inferiority. A second disadvantage is that the paradigm has nothing to offer when there is no analogous male experience by which equality can be evaluated, for example the issues of pregnancy and abortion.[37] It also fails to consider that issues for which there is no analogous male experience may still have a valid, though potentially different, impact on males than on females. However, this rests on the contentious assumption that there are "male values" and "female values". This relates back to the idea that certain attributes, social spheres and activities belong to one sex or the other. For example, the idea that a man's proper place is in the public sphere, working, discussing politics and policies, whereas a woman's proper place is in the private sphere at home, raising children and tending to household duties. Certainly such a solution is ludicrous as it simply calls for a repeat of past experiences, a regression from attaining equality rather than a means to secure fair and equal treatment.

The second proposed model, identical treatment with biological exceptions, uses many of the same tenets as the approach described above. The difference lies in the attention that is given to acknowledging women's actual and invariable biological

differences - pregnancy and lactation - and to requiring that the different social and economic needs generated by these functions be addressed to the extent that men are comparably situated, that is by allotting the same value to the differing social and economic requirements.[38] The advantage of this theory is its focus on producing short-term, equal results for females, such as accepting important immutable differences and providing equality of opportunity by giving women equal footing in social, political and economic spheres even though the situation of women tends to be different from men. A second positive attribute is the limit placed on the bases for differential treatment are clearly identified, in so far as there are limited to acknowledging inherent biological differences and their subsequent effects on socioeconomic requirements. The major limitation of this approach is that it hides the pervasiveness of sexism in that it does nothing to alter the women's disadvantaged position in society.[39] Nevertheless, it is again evident that an underlying assumption of differentiated value systems for males and females permeates this proposed solution to gender bias; i.e., that we require one set of rules for dealing with women and another separate set for dealing with men.

The third paradigm that has been proposed is that of treatment according to all differences. This model asserts that since women are different from men, physically,

psychologically, socially, politically and economically, all policies and laws must be designed to take these differences into account, which would eventually result in substantive equality for females.[40] There is no assumption that these differences will or will not disappear over time, instead it acknowledges both positive and negative differences. The most positive attribute of this theory is its accounting for all the ways that females are disadvantaged. However, recognition is not equivalent to change, and may thereby reinforce or do little to rectify inequality. For example, acknowledging that women are paid less in the workforce does not automatically change the amount of money that women receive, it merely points out that this is an area where they are not equal. This has the potential to become an assumed and expected reality, as acknowledgment does not provide any real impetus to amend the situation.

The last general model that has been proposed to promote equality is that of the subordination principle. This model defines women's inequality in terms of subordination to men rather than differences between the two sexes.[41] The assessment of whether a practice, policy or law subordinates females is made with regard to its historical origins, its social and economic effects, and its real meaning as understood by women. It is a model that proposes affirmative action to eliminate female's subordinate status. An

advantage of this paradigm is its avoidance of legal definitions of those differences which are "valid" bases for sentencing disparities, focusing instead on how women have experienced the effects of such practices. Another strength of this theory is that it is general enough to be able to encompass the previously discussed models as possible solutions to subordinating laws and policies.[42] The basis on which this model has been developed however, is problematic because it raises the question as to whether or not women's subordination to men is due to the differences between the sexes and is therefore an effect, rather than a separate "cause", of inequality.

A second major limitation to this approach is its potential for perversion by decision-makers who refuse to acknowledge the subordinating effects of certain practices, such as unequal pay for equal work, or keeping women out of higher management due to the belief that women cannot effectively handle adversity and stress situations. More serious still, is the presumption of a unitary "women's experience", the idea that it is possible to amalgamate the unique experiences and situations of every woman and develop policies that will be responsive and applicable to all women as a group. Many feminist theorists, particularly standpoint theorists such as Nancy Hartsock[43] or Mari Matsuda[44], would hotly contest the possibility and subsequent plausibility of such an undertaking.

While all four of the aforementioned theories have their strengths and weaknesses, their introduction to the criminal justice system as potential positive reform strategies has generally met with intransigence. This reluctance arguably stems in part from the fact that the majority of positions within the judicial system are occupied by older, white males who embody traditional social mores and values. The general apathy that these proposals receive from criminal justice system stems from the distance that decision-makers have from them - they have trouble relating to these ideas because they do not impact upon the decision-makers directly. Another possible reason behind the apathy of decision-makers may stem from the perception that proposed changes, such as those discussed above, are threatening. This apathy seems absurd, however, because it suggests that people are only able to relate to things that they experience directly and that they are incapable of accepting and adapting to change.

This general apathy is a problem one encounters when attempting to research gender bias because if those who make the decisions do not see it either as a problem or as an area worth investigating, then ever-important funding will in all likelihood be nonexistent and results that are obtained unlikely to have any impact upon the current system. Unfortunately, this is but one of the problems one encounters when attempting to

research gender bias. Other problems relating to the study of gender bias include: the type of evidence that counts as proof, the importance of who presents the problem for public scrutiny, and the challenge of convincing the judicial system that the issue exists and merits study.

In conclusion, when examining gender bias and its relation to sentencing disparity, it is not too surprising that the evidence tends to be tentative, with many caveats attached, such as those relating to the statistical significance of some findings. This is supported by the fact that society has been experiencing a concentrated clamor towards equality by marginalized groups for many years, but has yet to attain it. As a result it is reasonable to expect that the data which is available reflects the confusing and conflicting notions of gender equality present in society. These notions range from the antiquated belief that women are, on the basis of biology, inherently inferior to man; to the belief that sufficient progress has been made; to the belief advocated by many feminists that much more change is necessary. Society does not possess a unified view as to the equality and differences of the sexes. While it has formally adopted the viewpoint that equality is accorded by the Charter, when the law is put into practice it is subject to human bias as it is humans who employ the law.

Even if we hypothesize that the law can be applied in a neutral fashion to both men and women, we would still find bias because the justice system which has been developed over time has been based upon the views, morals, values and beliefs of men. If women did not help make, apply, or interpret the law, it should come as no surprise that many laws fail to represent their perspectives or adequately protect their interests. It is hoped that their present involvement will help to rectify this failure. Existing legal principles, procedures and norms are fundamentally exclusionary because, being largely defined by males, they largely ignore injustices to females.[45] The implications which can be drawn from women's historical exclusion from public office, political participation and legal protection form the foundation of gender bias in law, its application and the legal system. They lay the basis for the assertion that more gender inclusive norms of justice are required, not only to conform to the guarantees in the Charter, but to narrow the gap between our ideals of freedom, fairness, justice and equality, and legal formulations.

Endnotes: Chapter Three

1. Anderson, E. "The "Chivalrous" Treatment of the Female Offender in the Arms of the Criminal Justice System: A Review of the Literature". Social Problems, Vol. 23, No. 3, 1976, p.350.

2. See for example: Smart, C. Law, Crime and Sexuality: Essays in Feminism, 1995, Adelberg, E., and C. Currie, (ed.). In Conflict with the Law: Women and the Canadian Justice System, 1993.

3. Anderson, supra note 1 at 350.

4. Cavan, R. Criminology, 1962, p.32.

5. Anderson, supra note 1 at 352.

6. Smart, C. Women, Crime and Criminology: A Feminist Critique, 1976, Introduction, pp.xiii - xv.

7. Gavigan, S. "Women's Crime: New Perspectives and Old Theories" in In Conflict with the Law: Women and the Canadian Justice System, Adelberg, E., and C. Currie, (ed.)., 1993, p.225.

8. Klein, D. "The Etiology of Female Crime: A Review of the Literature". Issues in Criminology, 8 (Fall), 1973, p.5.

9. Anderson, supra note 1 at 353.

10. Ibid., p.353.

11. Gavigan, supra note 7 at 217.

12. Anderson, supra note 1 at 353.

13. Ibid., p.353.

14. Gavigan, supra note 7 at 221.

15. Ibid., p.221.

16. MacKinnon, C. "Frances Biddle's Little Sister: Pornography, Civil Rights, and Speech". Feminism Unmodified: Discourses on Life and Law, 1987, p. 166.

17. Anderson, supra note 1 at 354.

18. See for example: Boritch, H. "Gender and Criminal Court Outcomes: An Historical Analysis". Criminology, vol.30 (3), 1992, pp.293-325. Her findings report a pattern of more lenient outcomes for female offenders. See also: The Report of the Royal Commission on the Status of Women in Canada, 1970, p.377.

19. Zingraff, M., and R. Thomson. "Differential Sentencing of Women and Men in the U.S.A.". International Journal of the Sociology of Law, 12, 1984, p.410.

20. Simon, R. Women and Crime, 1975, p.49.

21. Ibid., p.52.

22. Zingraff and Thomson, supra note 17 at 403.

23. See for example: Zingraff, M., and R. Thomson. "Differential Sentencing of Women and Men in the U.S.A.". International Journal of the Sociology of Law, 12, 1984, pp. 401-413; and Lyons, A., and P. Hunt. "The Effects of Gender on Sentencing: A Case Study of the Dublin Metropolitan Area District Court". Whose Law & Order? Aspects of Crime and Social Control in Irish Society, (Tomlinson, M., Varley, T., and C. McCullagh, (ed.).), 1988. pp.129-142.

24. Hagan, J., and N. O'Donnel. "Sexual Stereotyping and Judicial Sentencing: A Legal Test of the Sociological Wisdom". Canadian Journal of Sociology, 3(3), 1978, p.309.

25. Ibid., pp.314-317.

26. Lyons, A., and P. Hunt. "The Effects of Gender on Sentencing: A Case Study of the Dublin Metropolitan Area District Court". Whose Law and Order? Aspects of Crime and Social Control in Irish Society, Tomlinson, M., Varley, T., and C. McCullagh, (ed.), 1988, p.137.

27. Ibid., p.137.

28. Ibid., p.138.

29. Zingraff and Thomson, supra note 17 at 408.

30. Kratcoski, P. "Differential Treatment of Delinquent Boys and Girls in Juvenile Court". Child Welfare, 53 (January), 1974, pp. 20. See also: Boyle, C., et al. A Feminist Review of Criminal Law, 1985, pp.143-145.

31. Edwards, S. Women on Trial, 1984, p.162.

32. Crites, L. The Female Offender, 1976, p.41.

33. Boyle, C., et al. A Feminist Review of Criminal Law, 1985, p.141.

34. Sheehy, E. "Personal Autonomy and the Criminal Law: Emerging Issues for Women". The Hidden Gender of Law, Graycar, R., and J. Morgan, (ed.), 1990, p.40.

35. Ibid., p.40.

36. Ibid., p.40.

37. Ibid., p.41.

38. Ibid., p.41.

39. Ibid., p.41.

40. Ibid., p.41.

41. Ibid., p.42.

42. Ibid., p.42.

43. Hartsock, N. "The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Materialism". Feminism and Methodology, (Harding, S. (ed.).), 1987, pp.157-180.

44. Matsuda, M. "Looking to the Bottom: Critical Legal Studies and Reparations". Harvard Civil Rights - Civil Liberties Law Review, 1987, Vol.22, pp.323-399.

45. Martin, S. "Proving Gender Bias in the Law and Legal System". Investigating Gender Bias: Law, Courts, and the Legal Profession, (Brockman, J., and D. Chunn, (ed.).), 1993, p. 23.

CHAPTER FOUR: HISTORICAL BACKGROUND ON WOMEN AND SENTENCING IN THE LATE NINETEENTH-CENTURY IN CANADA

The objective of this chapter is to examine what has occurred historically to women involved in the Canadian legal system in order to help clarify and explain the events that took place in the Paul Bernardo - Karla Homolka case. This period was focused upon in particular because it has been identified as a time of chivalry, thereby allowing the researcher to observe obvious examples of chivalry being practiced. Such an examination provides an historical foundation from which the current experiences of Karla Homolka can be analyzed.

The study of law by means of history is a technique one can implement to see how people experience the law at a given point in time. Such a procedure gives insights into where laws originate, the circumstances surrounding their development and how they are applied. As with any type of approach, the historical method has its limitations, primarily that of limited objectivity: select available evidence was recorded by a specific group of people. One of the major consequences of this limitation is that the recording of history, generally by upper-class men, has resulted in large gaps in the recounting of evidence. In order to achieve a more comprehensive version of what has transpired, one has to incorporate theory, which may add further distortions and biases to the evidence or it may clarify things. One of the most obvious gaps in legal history has been the exclusion of the

experiences of women. It is the purpose of this chapter to explore how women accused of murder were sentenced and whether the dominant attitudes of the day held by middle class society, such as a revived interest in chivalry, affected the decisions made by the courts.

Attempting to study the sentencing trends for female murderers in the late nineteenth- century has proven to be extremely difficult and ultimately unsatisfying. The reason underlying my frustration is the absence of information; apparently the majority of legal historians have either overlooked or chosen to ignore this subject area. The most general reason cited for the lack of information on female criminals is the low quantity of women being processed by the legal system. Whether or not this has ever been a valid reason for neglecting the topic is questionable, and it becomes increasingly less convincing as ever larger numbers of women are swept into the criminal justice system. In addition, those few scholars who have ventured into the field tend to deal only with extraordinary cases or with cases where women used specific methods to commit murder. For example, Carolyn Strange examines the homicide cases of Clara Ford and Carrie Davies, however these two women did not conform to the stereotypical feminine ideal of the time.[1] Ann Jones analyzes case histories in this time period that are concerned specifically with women who used poison to murder their victims.[2] This provides an historical basis,

however modern cases need to be analyzed to determine if gender bias is still being practiced.

As a means to combat the lack of available resources, an attempt will be made to analyze the sentencing issue by examining several other topics that were being disputed during this time period, specifically: infanticide, rape law and the regulation of sexuality, prostitution, domestic violence, and capital punishment. Through an investigation into the basic tenets of each issue, including how historiographers have generally dealt with these subjects, it is proposed that a more comprehensive picture of the particulars relating to murder sentencing will emerge. Following an analysis of these topics, a tentative summation of how the presented evidence applies to an investigation of sentencing female murderers will be attempted. In order to begin such an analysis, a definition of chivalry and a brief look at the approaches legal historians have taken with respect to this concept, particularly in relation to female criminality, are required.

The notion of chivalry is tied up with the traditional conceptions of men doing things for women. It is also related to the constructs of paternalism and sexism. A typical illustration of a chivalrous deed being performed is a man hastening ahead to open a door for a woman.[3] Today however, this practice is often viewed as being a gender-neutral

courtesy as opposed to a chivalrous action. The term chivalry implies that attitudes toward female lawbreakers may account for disparate processing in the criminal justice system, i.e., women may profit from the conviction that males "just don't treat ladies badly"[4] and thereby receive lenient sentences.

In the nineteenth and early twentieth centuries, chivalry was used as a guide for gentlemanly conduct - gentlemen affirmed their status by protecting the defenceless.[5] The chivalric code decreed contrasting roles for men and women: men were to be valiant and decisive, whereas chastity and submissiveness were expected of women.[6] The chivalric code can be traced back to European medieval times, whereby the conduct of a knight was based upon his duty to protect his inferiors and to uphold honor. Traces of this code are still present today, in that males are still viewed as the protectors and breadwinners of society and women as family caretakers.

Most criminological theory, from the late nineteenth to the mid-twentieth century, has supported the rather whiggish notion that women are treated leniently in the criminal justice system, that is when they have bothered to acknowledge women at all. Theorists of this school include Cesare Lombroso, W.I. Thomas and Otto Pollak, who refined the theory that women eluded their rightful share of discipline because their sex buffered

them from the full brunt of the law.[7] Pollak, for example, contended that female conviction rates were spuriously low because men were more forgiving of women than of malefactors of their own sex.[8] This is contradictory, however, because such traditional whiggish supposition is based upon the theoretical assumptions that law is neutral and that all people equal before the law. This ties in with the theoretical discussion with respect to women being sexualized offenders.

New legal historians, most notably feminist theorists, have tended to be comparatively close-mouthed about chivalry. Feminists have been more eager to portray women, even those who clearly had committed a crime, as victims in the patriarchal system of injustice.[9] For example, those who do address the question of chivalry offer a variety of theories to explain male lenience, ranging from its nonexistence on the basis of quantitative research[10], to those who argue it is a privilege given to white, middle class women who conform to the dominant social ideals[11]. Still others argue that the standards set by the ruling class are unattainable and the women who are convicted as offenders cannot or refuse to follow these rules in order to curry favor from the predominantly male justice system[12]; while finally there are those who argue that the ideological substrata of chivalry damages all women, even if some receive the benefits of lenient judgement[13]. The

problem with basing one's argument on quantitative research is that numbers alone often are not adequate sources for sufficiently explaining or supporting theoretical claims. Explaining chivalry as a privilege given to a select few, or as being based upon impossible standards, is not able to explain how every woman who came into contact with the courts was exonerated. For example, it is not able to explain how Clara Ford and Carrie Davies, whose cases are discussed at length later in this chapter, were vindicated, even though they were poor, self-confessed murderers, one a "mulatto woman". Feminists need to reassess their theories to account for the motivations behind judicial decisions, as well as the significance of factors like race and class in decisions that may on the surface appear to only be related to the effects of gender.[14]

Carolyn Strange, one of the very few legal historians who looks specifically at sentencing female murderers, has developed a theory which postulates that:

> Chivalric justice perpetuates female and male stereotypes since it upholds equally the ideal of feminine frailty and masculine heroism; at the same time, it reaffirms the class and race privilege of the men who wield the power to protect and the option to pardon.[15]

This hypothesis seems to be the most compelling because it does not try to reduce the complex problem of sentencing disparity to a single biological factor; i.e., it acknowledges

that it is not simply the physical attributes of women and men that are the basis for the existence of gender bias in the courts, rather it is also perpetuated by privilege held by white, middle to upper class men who have power over how the system operates.

While the sentencing of female murderers in general has not received much attention from historians, the closely related topic of infanticide has been researched to a considerably greater extent. The most notable legal historian who has addressed the debates surrounding women who murdered their children is Constance Backhouse. From the sources examined for this chapter, it was found that the study of infanticide in the Western world has been dominated by new legal historians. Backhouse, along with Faith, O'Donovan and Duffin, propose that the popular acceptance of infanticide in the late nineteenth-century may have been connected to the ineffectiveness or unavailability of alternate methods of fertility control; when circumstances made raising a child impossible, "infanticide was adopted as a last resort".[16]

The general consensus of those who have researched nineteenth century infanticide is that the officials of the criminal justice system tended to deal very leniently with the women brought before them. All four of the aforementioned historians posit that the clemency of the courts resulted from a combination of factors. In addition to leniency

stemming from insufficient means of birth control and the economic overburdening single mothers faced, it is argued that laws relating to infanticide functioned primarily in a symbolic capacity. As society had not as yet been able to develop other ways of dealing with unwanted children, punitive efforts at deterrence were employed - not so much as a means to save infants, but as a way to discourage sexual immorality.[17] Medical authorities accorded infants little status, especially those born to single women,[18] and sometimes even referred to them as being almost subhuman. This attitude permeated society and resulted in rather complacent reactions towards infant deaths.[19]

The final factor put forth by these historians is that the courts were lenient because they acknowledged that the crimes were generally being committed by poor, lower class, unmarried women who had been seduced or raped and were desperate to avoid social ostracism and unemployment.[20] O'Donovan deviates at this point to argue that an additional reason for leniency by the courts stemmed from the juries, who resented having to pass a death sentence they knew would not be carried out.[21] Another possible reason that can be put forth to help explain court leniency is the fact that the laws in pre- / mid-nineteenth century were quite rigidly defined, all felonies were capital offenses, carrying with them a penalty of death.

Overall, the evidence suggests that on the basis of the available resources, the criminal justice system acquitted women, and even pardoned many who had confessed to their crimes, because it was influenced by the attitudes held by the powerful middle class in nineteenth century society. While infanticide has come to be seen as a monstrous crime in present Western society, this practice continues to occur in some Eastern societies.[22] It becomes quite evident that in sentencing women charged with infanticide, it was not merely their gender which determined harshness or leniency, rather a multitude of factors, some exclusive of gender, were brought to bear upon the decisions made by the courts when trying such cases. The inclusion of numerous factors adds support to the third school of thought that was promoted in chapter three, in so far as gender is not seen as the exhaustive explanatory factor for the sentences that women received, rather political and social attitudes arguably were as, if not more important than gender when sentencing decisions were made in infanticide cases. Things are presently much different, new forms of birth control, abortion, and social attitudes about human relationships have altered how this crime is perceived.

A second topic that will shed light on the concepts of chivalry and the sentencing of women is that of the rape laws of Canada during the late 1800s and the subject of the

regulation of sexuality. Even though in rape cases women are usually the victims and not the offenders, this is an important area to consider because it helps to further illustrate how chivalry operated as a form of social control during this time period.

As with research on infanticide, the recounting of evidence with respect to rape laws has been done mainly by new legal historians, particularly feminist theorists. While this subject's relevance to murder sentencing is not as strong as that of infanticide, it does demonstrate the importance placed on conforming to the chivalric ideals of the time period. The major themes that can be gleaned from studies based on Canada in the nineteenth-century focus on the shift from women as the property of their husbands or fathers to the protection of women's rights regarding their own sexual integrity.[23] There is extensive published information about society's attitudes towards the 'foreign element'[24], the need to protect young women from sexual activity[25] and the influence of English law on how Canadian rape laws evolved[26].

The argument that emerges which is most relevant to the sentencing of female murderers relates to the attitude taken by the criminal justice system with respect to the reputations of the women who took their cases to court. Chaste women and respectable men were the surest candidates for credibility, however exceptions to this general pattern

were not uncommon.[27] Overall, women who were raped could expect little sympathy from the criminal courts. The criminal justice system tended to be highly skeptical about the rape cases that were brought before them and carefully analyzed every detail of both the complainant's and defendant's backgrounds.[28] Analyzing the history of Canadian rape law in this time frame also highlights the impact of the views society held with respect to class, race and gender.

According to Strange, almost all of the men convicted of rape were drawn from the working poor or the unemployed, yet the majority of men who were acquitted occupied the higher classes. As well, cultural codes of ethnicity and race made all Black and non-British groups automatically suspect both as perpetrators and genuine victims.[29] According to Backhouse, in order to be viewed favorably by the courts, women had to put up extraordinary resistance in the face of force and violence. In addition, a woman also had to personify the epitome of chastity because it was believed that sexual impropriety was linked to untruthfulness.[30] In some rape cases, women were not even recognized as being victims if they did not fit the dominant social ideals of womanhood. By looking at rape law, and to a lesser extent the regulation of sexuality, it becomes apparent that people, in particular women, were expected to conform to the chivalric

ideals of gender-appropriate behavior. This topic gives an illustration of the importance placed upon acting out the roles prescribed by the dominant middle class society, regardless of which side of the law a white woman happens to find herself. What we find here is that gender is one of several very significant factors, but it is not the exhaustive explanatory factor in rape cases, not for the female victims nor for the accused men. What becomes apparent is that in some cases, such as where the suspect is non-British, race superseded gender in terms of importance and the societal expectations of the dominant middle class. It is important to note that the nature of gender inherently influences other relevant factors - it is arguably impossible to ignore the fact that gender effects one's status, both socially and economically. The inclusion of factors such as race, socioeconomic status, cultural ethnicity, and employment status as important elements that were considered in these court cases promotes the school of thought in the previous chapter which attempts to extend the possible cause of bias in the courts from the single variable of gender - allowing for a more complex explanation for the conceivable actuality of bias within the sentences handed down by the justice system.

Today, Canada has laws that deal with sexual assault as opposed to rape, however victims of these crimes are still forced to face myths and stereotypes in the courts. It is

hoped that with judgments, such as that arrived at in Seaboyer[31], that these misconceptions will soon cease to exist. As well, two recent changes to the Criminal Code addressing specifically the use of prior sexual history evidence and access to victims' personal records (i.e., counseling) by the defense in sexual assault cases have emerged in an effort to redress the imbalance faced by victims in such cases.

A third area of research that provides insights into the functioning of chivalry, with respect to sentencing, are the debates surrounding prostitution in the 1800s. As with rape law, most of the evidence available on prostitution seems to be based on the views of new legal historians, feminists in particular. In this period of Canadian history and continuing to present day, prostitution was not a rigidly uniform occupation; i.e., not every female who entered into the profession did so for the same reasons, nor did they necessarily entertain the same clientele.

According to Backhouse, women generally entered into prostitution for two main reasons: first, out of necessity and secondly, as a means of empowerment.[32] Many prostitutes were poor, overworked, disease-laden alcoholics who constantly were harassed by police. This was especially accurate with respect to prostitutes whose race, ethnicity, or religion deviated from the societal norm which thereby exposed them to the

rampant hostilities of a discriminatory social and legal system.[33] Others treated prostitution as a 'steppingstone': a means to achieve financial security and status, though they were arguably in a minority.

By the end of the nineteenth-century, prostitution had been singled out by moral reformers as the most reprehensible social evil in Canada. Apparently, reformers could not agree about how it should be treated: some called for harsh legal punishments, some argued it was a sign of mental illness, and some reasoned that you needed to distinguish between those who were 'fallen women' needing to be saved and those who were 'true sinners' before deciding on a course of action.[34] The prostitution issue was perceived contradictorily by the criminal justice system; i.e., while judges appeared to believe in the legal regulation of sexuality, they also considered prostitution as something of a 'necessary social evil', required to oblige male sexual needs.[35]

This paradoxical view has been criticized as being too reductionist because it fails to acknowledge that prostitution is swamped with issues of power and that the concept is a social construction.[36] That is to say, this view reduces the actions and behaviors of men and women to simply being based on biological needs and urges. If men are slaves to their hormones and the need for sexual gratification, it is questionable as to how "highly valued

male-Enlightenment concepts such as free choice, reason, and self-control"[37] were ever developed. The other major theme brought out in the literature is the complexity of separating public and private morality. As O'Donovan points out:

> "On the one hand family, home and domesticity constituted the private place in which those female virtues of chastity and moral purity were upheld and respected. On the other hand the private sphere was that of male sexual license. In the public sphere politicians laid down high standards of public morality; the public was also the place of prostitution, vice on the streets, crime."[38]

This was resolved by imposing the private, domestic, "womanly" values on all, both public and private, through the moral purity movement. This explicates how the chivalric code was utilized to attempt to control prostitution and resulted in harsher penalties being handed down to offenders and their clients. As well, it alludes, through the politically incited need for increased public morality, to the establishment of institutions of religious reform, like the Magdalene Asylum in Toronto.[39] Institutions of religious reform were organized by middle class women to provide alternatives to lock-up in a criminal jail. It was proposed by the charitable organizations who developed such asylums that prostitution could be eliminated through rehabilitation as opposed to punishment. The idea being promoted by middle class women was that prostitutes were lacking morally due to deficiencies in religious instructions, a problem which the newly developed centres could correct. Problems arose, however, due to the majority of charitable reformers being

Protestant while most of the prostitutes were of Roman Catholic faith.[40] What is also interesting is that no attempt was made to reform the male clients that these women entertained. The Contagious Diseases Act was also enacted between 1865 and 1870 in an attempt to regulate prostitution, however the legislation was biased in that it only pertained to women.[41] The Act was developed after the lack of success both criminal laws and charitable organizations had in halting prostitution became apparent. This Act acknowledged that prostitution was unstoppable and altered its focus towards control and regulation of the trade. This piece of legislation allowed police to detain suspected prostitutes for medical examination. Those women found to be infected with venereal disease were subjected to up to three months confinement in a certified hospital.[41] The intent of the legislation was apparently to prevent the spread of venereal disease to military personnel, yet no attempt was made to detain men who might have been infected as this was viewed as unpopular with the soldiers.[42] Furthermore, detention and treatment were forced upon infected women even though no effective medical therapy existed at this time. The legislation expired without being enacted due to a lack of certified institutions. This piece of legislation was obviously biased towards women, as only women could be detained, examined and subsequently confined for several months, whereas men could not

even be subjected to detainment or examination.

Overall, this section has demonstrated that those women who did not conform to the roles set out within the dominant values of the middle class' chivalric code had to be sanctioned and reformed. This further demonstrates how a society's basic set of norms impact upon the criminal justice system. While gender was clearly an issue, particularly in light of accepted female behavior, it is important to recognize that social class played a large role in the development of these laws as most prostitutes were from the lower classes, again pointing to a more complex set of causal factors that operate in conjunction with gender, rather than gender alone as being at the root of biased laws. It is obvious, however, that these factors are linked together as one's gender tends to permeate and influence both personal attributes and public perceptions of said attributes. Prostitution continues to thrive today and its legalization is currently being debated.

The issue of domestic violence is also an important area to examine because it is often a precursor to homicide perpetrated by females. One problem with this topic however, is that evidence is lacking: the amount of work written on abuse is roughly equivalent to that on the sentencing of female murderers. A second and even larger problem is that the available evidence appears to expose the system as being biased in

favor of men.[43] Backhouse provides some information regarding wife battering by incorporating it within discussions of divorce and separation.

According to Backhouse, extreme instances of wife battering often elicited community intervention during the late 1800s.[44] The homes of family and friends served as informal shelters whereby counseling and 'peace-keeping' duties were fulfilled by the people who took in a victim of abuse. Civil actions for alimony could be undertaken by battered wives or by someone in their household, generally a male family member. Alimony provided some legal authorization for separation as well as established whether or not spousal support was to be given by the husband.[45] An order of alimony removed a woman from an abusive relationship, it did not however, allow for either party to remarry. This derived from the socially held notion that marriage was eternally binding and indissoluble.

Most judges tended to deny women protection from brutal mistreatment and chose to side with the husbands. Backhouse contends that judges were horrified not by the cruelty itself, but rather by the fact that it was being made public knowledge.[46] The judges had a tendency to side with the husbands due to the definition of the institution of marriage in that time frame. During this period, husbands were expected to wield all of the

power and could behave as they desired, setting their wives' work agendas, deciding for them when they could come and go, as well as with whom they could socialize.[47] The law's perspective on marriage was hierarchical and patriarchal, whereby men were treated more leniently than women with respect to adultery. "The relative inaccessibility of divorce, geographically, economically, and socially, locked many women into inequitable and sometimes abusive family structures."[48]

O'Donovan posits that a husband's right to confine and even chastise his spouse was not outmoded until the late nineteenth century.[49] As well, the law contained no provisions dealing with marital violence until 1876. The criminal justice system argued that wife battering was a subject best kept in the private sphere and that the law had no right interfering in people's marriages.

The issue of domestic violence embodying a court bias in favor of men warrants further study. While the initial reaction to the available facts is that this topic has nothing to do with chivalry, it requires taking a second look, but this time from the perspective of the chivalrous men who lived during this era. Marriage, during this time period, involved the identity of the wife being legally absorbed into that of her husband; i.e., the man became the only recognized person in the marriage. "In return for virtually uncontested

dominance inside the marriage, husbands were legally liable for their wives' debts, torts, and contracts."[50] Therefore, it was believed that because a man had to answer for his wife's misbehavior, he should possess legally sanctioned power to restrain her, by domestic chastisement, within 'reasonable' bounds. When the court was forced to deal with wife battering, it tended to carefully probe for evidence about the battered wife's behavior or character, speculating that her shortcomings might excuse her husband's violence. Fortunately, this is no longer the case and the problem has been shifted to the proper party, that being the male who inflicts the violence and abuse. There is also an important link here, as in many, if not most, murder cases involving women as the accused, there is some evidence to show that they committed their crimes in the context of domestic violence - they kill their abusive partner as a desperate measure.[51] Contemporary examples of decisions made in favor of women who murder in an act of self-defense include R. v. Whynot(1983)[52] and R. v. Lavallee(1990)[53]. In Whynot, the defendant killed her abusive common law husband after an extended period of escalating violence and abuse. At trial Whynot was acquitted, but the acquittal was overturned in the Court of Appeal due to the lack of evidence indicating that an impending assault was certain. The court held that self-defense was only available where there was an actual

assault, imminent peril of death or grievous injury needed to be proven.. As a result of this ruling on self-defense a new trial was ordered. Whynot pleaded guilty to manslaughter and was sentenced to one year imprisonment. In Lavallee, the defendant shot and killed her common law husband as he was leaving her bedroom. At trial, evidence revealed that Lavallee had been subjected to violence and abuse throughout her relationship with the deceased. This is a landmark case in Canadian jurisprudence because the court allowed testimony regarding "battered woman's syndrome". By permitting such testimony, the defense of self-defense was expanded to include battered women. The court rejected the conclusion that had been reached in the Court of Appeal at Whynot's trial. The court concluded that as long as a woman had an honest and reasonable belief that her life was in danger, she was entitled to act in self-defense.[53] Presently, the precedent set in Lavallee still stands and was even brought to bear at Karla Homolka's trial.

Again gender bias is obviously present, but arguably the judges' reluctance to hear cases of domestic abuse may have also been affected by the socioeconomic status of the accused, or possibly due to an unwillingness to disrupt the status quo by questioning the rights of a husband within the institution of marriage. It is unlikely that gender on its own accurately explains the situation at hand because it is inherently and implicitly tied to the

factors offered immediately above.

The final topic that connects with chivalry is somewhat dissociated from the general thrust of this chapter, in that it addresses how female lawbreakers have been dealt with by the legal system generally. The concept of capital punishment will be focused upon, within a brief analysis of the problems associated with punishing women who broke the law. As with several of the previously discussed topics, information pertaining to women and capital punishment is almost nonexistent, what is available has been researched by Carolyn Strange.[54] Generally, the treatment of female offenders throughout Canadian history has been characterized by a good deal of ambivalence, uncertainty, and a lack of uniformity.

According to Carrigan, women were expected to be both the models and the guardians of all that was proper and virtuous in society. In contrast, men were believed to possess a much more base nature and consequently could not be expected to adhere to the same standards of conduct.[55] Within this framework, a paradox existed with respect to female offenders: on the one hand, those who transgressed were quickly denounced, not only had they sinned, they had also betrayed their sex and threatened the moral order of the community; on the other hand, women were pure, genteel, the weaker sex, and above

all wives and mothers. As a consequence, the men who presided over the criminal justice system found it difficult to deal with female offenders.

According to Strange, "the rarity of women's capital convictions lent notoriety to female murderers that far outweighed their limited numbers".[56] Women who were condemned were big news, not only because they were convicted killers, but also because they deviated from the classical profile of a murderer. Even more importantly, female killers were newsworthy because they did not conform to the prevailing expectations of feminine passivity.[57]

Women were more likely than their male counterparts to receive pardons because they tended to commit crimes, such as property offenses and infanticide, that were perceived by society as presenting very little threat to the community. Strange proposes however, that the perception of women as lesser threats needs to be explored further when applied to the post-Confederation era, when women who murdered adults were virtually the only female offenders sentenced to death.[58] Strange identifies culturally defined expectations of appropriate gender roles as appearing to have been at the root of gender biased justice.[59] What is evident once again is that the attitudes held by dominant society during the late 1800's influenced the sentences women received for their crimes. However,

it is unlikely that gender was the only factor which impacted upon the sentences women received compared to that of men, as mentioned above, women were more likely to engage in crimes that were not seen as being threatening to society. This fact adds weight to the third school of thought discussed in chapter three, as type of crime committed, though working in conjunction with gender, increases the complexity of judging how gender bias operates, if at all, in the criminal justice system.

Essentially, what this group of analyses has done is provide evidence that the ideals held by the dominant class in any society at a particular time do have an enormous impact upon the legal system generally, and on sentencing in particular. What is found in each of the areas that have been explored is a patriarchal view which promotes the idea that women are weaker, more virtuous, and in need of protection, and whose proper role is in the home. Also evidenced when looking at the experiences of women in the criminal justice system is that women who did not adhere to the stereotype promoted by the powerful in society were marginalized, suffered more severe punishments when found guilty, and often were not viewed as being victims in cases where abuse or rape was evident. The very few available sources of literature which specifically address the sentencing of female murderers serve to further reinforce this general conclusion. What is

also found, nonetheless, is that gender did not have an exclusive role in the reasoning underpinning the sentencing decisions or policies that were made by the court system, this supports the notion that while gender is a significant factor worth considering generally, it is inextricably tied with other relevant factors such as race, socioeconomic status, ethnicity, and the ensuing societal views and expectations that are promoted by the current dominant class that accompany such factors. As well, other relevant external factors also require consideration, such as the politics of the day and the personal moral standards and beliefs of those who define and are employed in the Canadian justice institutions.

Strange's article, for example, examines the cases of two lower class women who were acquitted of murder, even though they had confessed, based on the impact of the chivalric arguments that their lawyers employed.[60] Clara Ford was a mulatto seamstress who, by her own admission, shot and killed a wealthy white youth in Toronto, 1894.[61] She was in her early thirties when she was arrested for the murder of Frank Westwood and was rumored to have been married once, but had lived on her own for many years prior to committing the crime. Ford lived above a "negro restaurant"[62] in the center of Toronto's black community, where evidence in connection with the shooting death was found. Apparently Ford disguised herself by dressing as a man, went to Westwood's home and

when the youth came to the door she shot him twice, then fled the scene.[63] She confessed after being questioned for several hours, claiming that she had killed Westwood because he had previously taken liberties with her and had insulted her. She did not report that incident previously because she believed that it was no use for a "woman of her color to go to the police for justice"[64].

Regardless of her "checkered" past, which included having a "moody temper" and being subject to outbursts, a taste for "raw meat" and being able to "hop a fast moving streetcar", Ford was not judged on the same standards as a white person[65] because of the racist ideologies held by dominant society at the time. Her behaviors upheld her contemporaries' assumptions about the inferiority of blacks. At the same time, her status as an illegitimate child was deemed to render it understandable (in the eyes of the court) that she would have developed a strong aversion to men out of shame and disgrace.[66] At her trial, the prosecution had most of the evidence stacked against her, but were not willing to suggest that her actions were based on revenge against an upstanding member of the white community. The crown presented an unprecedented number of witnesses, thirty-three in all, including members and friends of the victim.[67] The defense put Ford on the stand, where she held the courtroom's interest with her dramatic recounting of the

events in question. She was found not guilty and walked out of court a free woman.[68]

The case of Clara Ford is particularly interesting because it illuminates the perceptions society possessed with respect to gender and race. Both of these factors were viewed through a chivalrous lens and what emerged was a highly biased picture. The gender issue followed along the same lines as discussed in this chapter's previous analyses; i.e., women were seen as being pure, chaste, innocent, honorable and submissive, weak, yet ready to protect their chastity at any cost.[69] In the Ford case, however, the importance of gender was overridden by that of race. Society held a hierarchical view of the world's races, whereby blacks were believed to be more closely linked to animals than to humans.[70] It is also important to note that chivalry was also manipulated by lawyers, for example by taking on the cases of women of low social station for free, it was used as a means to gain status and enhance one's reputation.

The second case that Strange examines is that of Carrie Davies, a teenage British immigrant who worked as a house servant. Davies was tried after confessing to killing her master, Charles Massey; like Ford, she walked away from the trial a free woman.[71] The Masseys had a reputation as being pillars of Toronto's elite, but Charles fell short of the ideal as he liked fast cars and pretty women.[72] Massey behaved with propriety towards

Davies until the rest of the family went out of town one weekend. Davies testified that he became drunk and made lewd remarks to her. The following day however, he tried to kiss her and wrestled her onto a bed.[73] Davies related her troubles to her sister and brother-in-law who advised that she return to the household but be cautious. Fearing that Massey would succeed in disgracing her, she took a revolver from the house and shot him as he came up the walk to his home.[74] She confessed without trying to escape or deny her crime and public support for her rose immediately following her first court appearance.

Davies was presented in court as the "picture of working-class respectability"[75] and Massey as the "prototype of the wealthy cad"[76]. Davies was judged to be virtuous because of her shyness and her apparel was dowdy and sensible. Unlike the Ford case, Davies was presented as possessing all of the qualities of an innocent maiden and it was argued that she murdered Massey in order to preserve her upright background, unsullied character, and chastity at any cost.[77] However, the defense also played up her British background, turning the trial into a patriotic exercise, utilizing the strong patriotism being expressed by Torontonians in the early months of the war, after all how could the public abandon a "young British girl in need".[78] After only a few minutes of deliberation the jury came back with a verdict of not guilty and Davies was free to go.

Both of these cases as presented by Strange support the existence of bias working within the system, however it is important to note that while the defendants' gender played a role in the sentences they received, there were other prominent factors involved. In the Ford case, much weight was placed upon judging the accused's actions in terms of how they "fit" with what was expected of blacks during the time period. In the Davies case, her lawyer manipulated the strong feelings of patriotism that had surfaced at that time in conjunction with the war. Therefore these two cases tend to support the third school of thought that was discussed in the previous chapter, as the court decisions were not affected by gender alone.

As a second example, a section in Jones' book discusses poisoning as a form of homicide used by women in the nineteenth century.[79] The problem with this book is that it analyzes American cases, while there are arguably strong parallels in Canadian and American experiences, two basic factors make the generalizability of the conclusions drawn in Jones' book to Canadian women's experiences questionable. First, is the fact that during the time period under study, the United States had liberated itself from Britain whereas Canada remained under the British Monarchy. Second, there is the fact that in the United States, each state drafts its own laws regarding the prosecution and punishment of

criminals while in Canada the Criminal Code is universally applies to all provinces. These facts in mind, the findings in Jones's book still merit consideration due to the lack of research information currently available regarding Canadian women's experiences.

Jones argues that alleged poisoning became the crime of the nineteenth century and that acquittal for lack of motive became almost routine.[80] She further states that murder by poison was particularly feared because there was no way to predict its coming nor to defend against it. Poisoning was associated with women in this time period.[81] According to Jones, masculine ambivalence - "the fear of female vengeance *and* the compulsion to overlook it"[82] - meant that a woman who pretended to have no motive was likely to be found not guilty by the courts. However, in order to enjoy such leniency, the woman accused was required to need protection, i.e.; had to preserve and present a social innocence. Jones presents the notion that as long as the woman who had poisoned her victim, usually her husband, did not attempt to "alter the current status quo" she was treated with leniency and chivalry by the criminal justice system in return for her continued support of the present state of affairs. Reformists and feminists were seen as "unnatural" women and were thereby subjected to the severity of the legal system. Jones' supports her position by offering numerous case examples, illustrating the attributes of those found

both guilty and innocent. Jones argues that it was the attitudes of men of the dominant social class that played a major role in the legal system. She concludes that gender was not the only factor that effected the sentences handed to women, but that the treatment received by women within the criminal justice system also depended upon the message that the dominant middle class males were trying to present to the public. This coincides with the third school of thought proposed in chapter three, as relevant factors appear to work in conjunction with, due to the inescapable permeation of gender into most other attributes, gender resulting in the sentences that were received.

In conclusion, this chapter has shown that the Canadian legal system of the late 1800s was heavily influenced by the notions held by the dominant middle class. In particular, chivalry can be seen as having permeated the courts, affecting how legal officials perceived and judged issues. It is arguable however, that it was not the only factor to affect the perceptions and judgments made about court issues. This point has been illustrated in discussions of infanticide, rape law and the regulation of sexuality, prostitution, domestic violence, capital punishment, and murder. Chapter Four, in conjunction with the previous theoretical chapter, provides a foundation from which the Bernardo-Homolka case can be critically analyzed. Though there have been some obvious

changes to Canadian laws with respect to some of the areas dealt with in this chapter, the influence of gender on the sentences women receive continues to be a source of debate. The following two chapters attempt to determine if gender as an influential factor was present in the Bernardo-Homolka case. An attempt is also made to determine if gender biased the perceptions of those involved in the investigation and prosecution with respect to how the accuseds were perceived and processed. Chapter five provides an overview of the case and chapter six is an analysis of the Bernardo-Homolka case which examines whether chivalrous or gender biased notions still exist and affect the Canadian legal system.

Endnotes: Chapter Four

1. Strange, Carolyn. "Wounded Womanhood and Dead Men: Chivalry and the Trials of Clara Ford and Carrie Davies". Gender Conflicts: New Essays in Women's History (Iacovetta and Valverde, eds.), 1992, p.149.

2. Jones, Ann. Women Who Kill, 1980, pp.102-128.

3. Williams III, Frank, and Marilyn McShane, eds. Criminological Theory, 2nd edition, 1994, p.231.

4. Ibid., p.232.

5. Strange, supra note 1 at 152.

6. Ibid., p.152.

7. Ibid., p.150.

8. Ibid., p.150.

9. Ibid., p.151.

10. See for example: Smart, C., Women, Crime and Criminology: A Feminist Critique, 1976; Nagel, I., et al., "Sex Differences in the Processing of Criminal Defendants", in Women and the Law: A Social Historical Perspective, Vol.1: Women and the Criminal Law, D. Weisberg, (ed.), 1982; and Beattie, J., Crime and the Courts in England, 1600-1800, 1986.

11. See for example: Hartman, M., Victorian Murderesses: The True History of Thirteen Respectable French and English Women, 1977; Jones, A., Women who Kill, 1980; and Heidensohn, F., Women and Crime, 1985.

12. Bardsley, B., Flowers in Hell: An Investigation into Women and Crime, 1987, p.143.

13. See for example: Edwards, S., Gender, Sex and the Law, 1985; and Allen, H., "Rendering Them Harmless: The Professional Portrayal of Women Charged with Serious Violent Crimes", in Gender, Crime and Justice, Carlen, P., and A. Worrall, (ed.), 1987.

14. Strange, supra note 1 at 151.

15. Ibid., p.151.

16. Backhouse, Constance. "Desperate Women and Compassionate Courts: Infanticide in Nineteenth-Century Canada". University of Toronto Law Journal, Vol.34, No.4, 1984, p.447. See also: Backhouse, Constance. "Infanticide" Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada, 1991, pp.112-139.

17. Faith, Karlene. Unruly Women: Politics of Confinement and Resistance, 1993, p.34.

18. Duffin, Jacalyn. Langstaff: A Medical Life, 1993, p.207.

19. Faith, supra note 17 at 34.

20. Backhouse, supra note 16 at 477.

21. O'Donovan, Katherine. Sexual Divisions in Law, 1985, p.95.

22. See for example: Hartmann, B. "China - 'Gold Babies' and Disappearing Girls", in Reproductive Rights and Wrongs, 1995, pp.157-170.

23. Backhouse, Constance. "Nineteenth-Century Canadian Rape Law, 1800-92". Essays in the History of Canadian Law, Volume II, (Flaherty, ed.), 1983, p.208.

24. Strange, Carolyn. "Patriarchy Modified: The Criminal Prosecution of Rape in York County, Ontario, 1880-1930". Essays in the History of Canadian Law, Volume V, (Phillips et al, eds.),1981, p.229.

25. Parker, Graham. "The Legal Regulation of Sexual Activity and the Protection of Females". Osgoode Hall Law Journal, Vol.21, No.2, 1983, p.187.

26. Backhouse, supra note 23 at 201-213.

27. Strange, supra note 24 at 229.

28. Backhouse, Constance. "Rape". Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada, 1991, p.111.

29. Strange, supra note 24 at 210.

30. Backhouse, supra note 28 at 97.

31. R. v. Seaboyer (1991), S.C.J. No.62; 2 S.C.R. 577.

32. Backhouse, Constance. "Prostitution". Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada, 1991, p.228.

33. Ibid., p.228.

34. Faith, supra note 17 at 25, 27.

35. Ibid., p.28.

36. O'Donovan, supra note 21 at 101.

37. Faith, supra note 17 at 29.

38. O'Donovan, supra note 21 at 29.

39. Backhouse, supra note 31 at 234, 236.

40. Ibid., p.234.

41. Ibid., p.235.

42. Ibid., p.235.

43. Ibid., p.235.

44. Backhouse, Constance. "Divorce and Separation". Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada, 1991, p.169.

45. Ibid., p.171.

46. Ibid., p.177.

47. Ibid., p.176.

48. Ibid., pp.198, 199.

49. O'Donovan, supra note 21 at 122.

50. Backhouse, supra note 40, p.178.

51. See for example: Jones, A. Women Who Kill, Second edition, 1996, pp.63-139.

52. R. v. Whynot (1983), 9 C.C.C. 449 (N.S.C.A.).

53. R. v. Lavallee(1990), 1 S.C.R. 852.

54. Martineau, D. "Implications of Lavallee v. R. for Other Criminal Law Doctrines" in "A Forum on Lavallee v. R.: Women and Self-Defence", University of British Columbia Law Review, Vol.25, 1991, 23 at 25.

55. See for example: Strange, C. The Politics of Punishment: The Death Penalty in Canada, 1867-1976, 1992.

56. Carrigan, D. Owen. Crime and Punishment in Canada: A History, 1991, pp.440, 441.

57. Strange, supra note 51 at 16.

58. Ibid., p.16.

59. Ibid., p.16.

60. Ibid., p.16.

61. Strange, supra note 1 at 149-188.

62. Ibid., p.149.

63. Ibid., p.154.

64. Ibid., p.155.

65. Ibid., p.155.

66. Ibid., p.158.

67. Ibid., p.160.

68. Ibid., p.166.

69. Ibid., p.149.

70. Ibid., p.172-173.

71. Ibid., p.159.

72. Ibid., p.149.

73. Ibid., p.155.

74. Ibid., p.155.

75. Ibid., p.155.

76. Ibid., p.160.

77. Ibid., p.160.

78. Ibid., p.173.

79. Ibid.,p.171.

80. Jones, supra note 2 at 102-128.

81. Ibid., p.102.

82. Ibid., p.103.

CHAPTER FIVE: A REVIEW OF THE PAUL BERNARDO - KARLA HOMOLKA CASE

> " In the summer of 1995, the jarring contents of the Bernardo-Homolka saga spilled out for the first time in a Toronto courtroom. The news media knew a stunning story when it saw one, and the public found itself wallowing in every morsel of minutiae. People quickly divided into two camps. The clear majority surrendered to the barrage, clinging to each account with horror and amazement. A minority assiduously attempted to shade their eyes from the goings on.... To watch, recoil and analyze is human. The day will hopefully not be soon upon us that we are so satiated we lose our capacity to both gape and grapple with the question of how fellow human beings could carry out such acts of depravity."[1]

In order attempt to grapple with the question of how a young, middle-class, married couple was able to carry out and conceal heinous criminal activities under the guise of "normal, everyday life", it is necessary to briefly recount the events that culminated in Karla Homolka being sentenced, by means of a plea bargain, to twelve (12) years in Kingston's prison for women and in Paul Bernardo being sentenced as a dangerous offender to an indefinite prison term in the Prison for Men at Kingston.

Karla Homolka was born on May 4, 1970. She grew up in St. Catharines, Ontario in a supportive and middle-class family.[2] The eldest of three daughters, Karla was noted by friends as being one of the most popular, prettiest and smartest girls in school.[3] Scoring a high intelligence quotient of 131, she was an honor student until she began to let her grades slip in high school, opting instead to focus her attention on boys.[4] Karla seemed to become more erratic as high school progressed, with observable mood swings, attempts at

suicide, punk-style clothing and rebellious acts against her parents, such as a plane trip to Kansas to see her then-boyfriend.[5] During her grade twelve year, Karla attended school part-time and worked full-time at a pet store.[6] It was at a pet shop convention in Scarborough, in October, 1987 that the seventeen year old first met Paul Bernardo.

Paul Bernardo was born on August 27, 1964. The youngest of three children, Paul grew up in Scarborough, Ontario in a middle class family.[7] He was noted to be a happy, handsome, popular child, who spent more time at his friends' houses than at his own, as his parents were known to frequently argue. At the age of ten, Paul learned that his father had been charged with assaulting a young girl; it is argued that he began to hate his father at this point.[8] At sixteen Paul was very popular, though an average student, and was known to brag about himself. It was around this time that he first got caught as a "Peeping Tom".[9] It was also at this age that he was confronted by his mother who informed him that his real father was not Kenneth Bernardo, but a man with whom she had had an affair. As a consequence of learning about his true heritage, he began to hate his mother. Psychiatrists have speculated that it was then that Paul began to hate society and became angry with women in general.[10]

Besides his taste for voyeurism, Paul developed sexual interests in pornography,

particularly videos of a sadistic nature, including acts such as coprophilia and urophilia. At nineteen, Paul began to explore his sexual imagination by engaging in acts with his sixteen year old girlfriend. He became progressively more violent and began humiliating and degrading her throughout the course of their relationship, this behavior ultimately led to their break up.[11] His girlfriend did not report Paul's behavior to anyone. While going to university to become an accountant, Paul supplemented his income by smuggling cigarettes across the border, and selling them in strip clubs.[12] He began to concentrate more on his physical appearance than anything else and learned how to fight by taking self-defense classes.[13]

A few months prior to meeting Karla, Paul committed two sexual assaults, both involved physical abuse, and in both the victim was forced to verbally degrade herself. During the second assault he also threatened his victim with a knife, he tied her belt around her neck and bound her to a fence.[14] He was twenty-three years old when he met Karla at the pet shop convention; within hours of meeting they began their sexual relationship.[15] Karla invited Paul to a party at her home the following weekend.

Paul became a regular visitor at the Homolka household, spending many weekends there. His first impressions were quite positive, he was considerate and very attentive to

Karla and showed her parents respect.[16] The couple spent many evenings out to dinner, the movies or engaging in social activities with Karla's friends. As their relationship progressed, Paul continued to sexually assault women in the Scarborough area. He raped a fifteen year old girl on the evening of December 16, 1987, grabbing her off the sidewalk at knife point, he raped and beat her over the course of an hour.[17] Several days later on the 23rd, Paul raped a seventeen year old female who was walking home from the bus, again he used a knife, beat her and brutally raped her. In addition, the victim reported that he used his knife as a means to rape her.[18] In all of his attacks to this point as well as all of those that were to follow, Paul would take his victims' identification and threaten to return and harm or kill them and their families if they ever reported his crimes to the police.

Paul's exemplary treatment of Karla lasted until Christmas, at which time he gave her expensive gifts, such as a gold chain. Soon after however, his treatment began to change subtly and gradually.[19] Paul began to tell her what to wear, how to style her hair, where she could go, whom she should associate with; he also began encouraging her to drink increasing amounts of alcohol. It was at this time that he also began to change the nature of their sexual relationship, involving her in acts in which she degraded herself, the central focus being his gratification.[20]

On April 18, 1988, Paul raped a seventeen year old young woman. This offense followed the same pattern as previous assaults, however he also admitted to his victim that he had been following her prior to the rape.[21] He was becoming progressively more violent with each rape, in this incident he pulled so hard on the victim's left arm that he broke it. Paul assaulted his next victim on May 30, 1988, this time it was in Mississauga rather than Scarborough. He grabbed the eighteen year old female off the street and dragged her to a wooded area where he raped her, threatened her, beat her, stole her clothing, tied her up and then left. In addition to multiple scratches and abrasions, later evidence from a medical examination also indicated that Paul had raped this victim by using a twig as bark-like material was recovered.[22]

As spring turned into summer in 1988, Paul began pressuring Karla into having anal intercourse, threatening her when she would attempt to refuse. He gave her a dog chain choke collar and had her wear it when they engaged in sexual activities, sometimes pulling so tightly that she could not breathe.[23] It was during this time period that Paul began to take Polaroid photos of their sexual activities. According to Karla's testimony, Paul began beating her during the summer of 1988, apologizing to her on the first occasion.[24] Karla testified that she felt guilty about the incident and thought that she had

brought it upon herself by arguing with him.[25] Paul physically beat her on three occasions over the course of the summer. He also began calling her degrading names, first privately, later publicly. Paul then began ordering Karla to refer to herself by these names.

Paul raped again in Scarborough on November 16, 1988, following the same pattern as his previous attacks.[26] He attacked his next victim on December 27, 1988. He followed his victim home and knocked her to the ground in her own driveway. The victim fought back and screamed loud enough that neighbors came to their doors. One neighbor chased Paul, but Paul was able to outrun him and escape.[27]

Karla testified that Paul became increasingly critical of her and would yell and scream at her throughout their relationship, however they continued to plan their marriage over the course of 1989.[28]

On August 15, 1989, Paul raped another young female. He stalked this one prior to attacking her one night as she was returning home from work. He grabbed her off the sidewalk as she was walking home from her bus stop, he threatened her with a knife, forced her to the ground and announced to her that he was the "Scarborough rapist".[29] He beat her, brutally raped her, threatened her, and forced her to verbally degrade herself and tell him about her intimate relations with her boyfriend. He removed a ring given to her by

her boyfriend and threw it away as well as taking her identification.[30] He bound her hands and feet and then left, only to return shortly thereafter. He assaulted her again and tried to rape her with a twig, finally he stopped and left for good. The ordeal lasted two hours.[31] Also during the summer of 1989, Karla met Jane Doe, a thirteen year old who frequented the pet store where she worked. Two years later, they would see a great deal of one another.[32]

On November 21, 1989, Paul sexually assaulted a fifteen year old female in North York. The rape followed his usual pattern of violence, threats, degradation and bondage.

In early December of 1989, Karla began working at the Martindale Animal Clinic in St. Catharines as an animal health technician.[33] It was while employed by this clinic that she learned about drugs and anesthetics used to prepare animals for surgery. Paul raped again on December 22. He grabbed a nineteen year old woman in the garage of her apartment building, raped her, threatened her, stole her clothing, promised he would return in a few days and then left the scene.[34] Two days later, Paul and Karla announced their engagement and fixed a wedding date for June 29, 1991.

Karla testified that by the spring of 1990, Paul was calling her his sex slave and that she was referring to herself as such.[35] She stated that she would do whatever he

wanted her to do, whenever he requested it of her. If she refused, he would either verbally abuse her, threaten her or physically strike her. In her statements to the police and in her court testimony, she related in considerable detail an "ever increasing cycle of physical and psychological violence toward her which wore her down so much that she became more and more subject to his control"[36].

On May 26, 1990, Paul attacked and raped his twelfth acknowledged victim. He assailed a nineteen year old woman as she walked home from the bus. Paul threatened her and cut her along the line of her jaw.[37] He carried her to a nearby schoolyard, bound her with twine and raped her. As he was leaving, he told her to count to fifty and that if she moved before finishing, he would return and kill her. He left but returned and raped her again. Again he pretended to leave but returned. He physically abused her and stole her identification and finally left for good.[38]

Karla testified that by the autumn of 1990, Paul's abuse of her was "increasing in its intensity and frequency".[39] She did not report his abuse. He began to make threats of violence against her family. Karla stated that "notwithstanding her fear of him, she continued to love him.[40]

In the course of the Metro Police investigation of the Scarborough rapist, a

composite likeness of the offender was developed. This composite began appearing in the Toronto press on May 28, 1990;[41] it bore a striking resemblance to Paul Bernardo. As a result of a tip received by police regarding the resemblance between the composite and Paul, as well as some additional information that the police had obtained about him, the police decided to interview him as a possible suspect in the rapes. Paul was interviewed on November 20, 1990 at the police headquarters in Toronto. He informed police that he was engaged to Karla Homolka and planned to move to St. Catharines to live with her.[42] When the police inquired as to where he had been on May 26, 1990, at the time of the of the most recent rape, Paul said that he could not remember, but thought that he had probably been with Karla. He voluntarily provided hair, blood and saliva samples to the police.[43] That evening he drove to St. Catharines and related his interview experience to Karla. She testified that he assured her that he was not the rapist, but was concerned that a mistake might occur when the forensic tests were being carried out and he would consequently be mistakenly identified.[44]

According to Karla's court testimony, Paul began making bizarre suggestions to her over the course of the spring, summer and autumn of 1990. He started telling her that he wanted to have sex slaves available to him, girls that would be brought to the Homolka

household for him. He also began asking Karla to pretend that she was her younger sister, Tammy, while they were having intimate relations. At the time, Tammy resided at the Homolka residence and was fifteen years old.[45] Karla also related in her testimony that some time in the fall of 1990 Paul began suggesting that he wanted to have sex with Tammy. Karla attested that she was in total opposition to the suggestion, but was subjected to violence and threats against both herself and her family.[46] She stated that she had been of the understanding that if she acquiesced and assisted him with his plan to drug Tammy and rape her, that the violence and threats would cease. She further articulated that Paul instructed her to obtain the necessary drugs from work, Karla acquired Halcion to put Tammy to sleep and Halothane to keep her unconscious during the assault.[47]

On December 23, 1990, Paul was over at the Homolka household for a visit. During the afternoon he told Karla that he wanted Tammy that night as an early Christmas present. Karla told the courts that she begged him not to assault Tammy but he insisted.[48] After supper, Paul, Karla and Tammy withdrew to the recreation room to watch videos. Alcoholic drinks were served. Paul put Halcion in Tammy's beverage and Karla served it to her. The rest of the Homolka family retired to bed, leaving the three watching their movie. Tammy was given more drug-laced drinks and eventually passed out. Paul

removed her clothes and Karla put Halothane on a cloth and held it to her little sister's face while Paul raped her.[49] Karla attested that Paul forced her to commit sexual acts on Tammy and that following her participation he raped Tammy again. Karla and Paul videotaped a majority of the sexual activity that transpired that evening. Shortly after Paul had finished his assault Tammy vomited and ceased to breathe. Attempts at artificial respiration by the couple were unsuccessful, so Karla phoned 911. She and Paul dressed Tammy, moved her into her bedroom, flushed the Halcion down the toilet and hid the remaining Halothane. An ambulance arrived and took Tammy to hospital, however she did not survive the ordeal.[50]

Karla and Paul reported to the police that Tammy had simply vomited after having a few alcoholic beverages and had stopped breathing. They did not disclose the true details of Tammy's death to the police and they concealed or destroyed any evidence which might have revealed the truth. The death was ruled to be accidental, even though no certain cause of death was stipulated by the coroner, and the investigation was closed.[51] After Tammy's death, Paul remained at the Homolka household until a few weeks later, approximately the middle of January, 1991, when Karla's parents asked him to leave so the family could grieve in private. Paul was outraged and vowed never to return to their

home.[52] He stayed in motels throughout St. Catharines for a short time and eventually rented a house at 57 Bayview Drive in Port Dalhousie, adjacent to St. Catharines.[53] Shortly after moving in Karla joined him, and Paul resumed his cigarette smuggling activities and earned his living from the sale of his contraband merchandise. Paul continued these activities until his arrest and incarceration in February of 1993.[54]

Not long after the death of Tammy Homolka, Paul instructed Karla to replace the Halcion which she had disposed of on the night of Tammy's death. She did as instructed. Karla told the courts that she felt "totally trapped after Tammy's death and became more and more subject to Paul's domination"[55]. She said that the verbal and physical abuse increased, both in frequency and severity, and that Paul had added to his litany a constant threat to expose her part in her little sister's death.[56] Karla told the court that by this time she felt that she had to do whatever Paul told her to do, that she had no choice. In the meantime, the couple progressed with their wedding plans and Karla maintained the appearance that all was well, she did this both verbally and in writing to her friends.[57] She even went so far as to write a scathing letter to one friend, criticizing her parents for the amount of time they were spending in grieving for Tammy and about the financial restrictions they wanted to impose upon her wedding.[58]

On April 6, 1991, Paul raped his next victim on Henley Island. The fourteen year old girl was grabbed from behind and dragged to a secluded area where he raped, threatened and degraded her. He took her jacket and left with the threat that if she reported him, he would come back and kill her.[59]

According to Karla's testimony, Paul demanded that she bring young girls to their house on Bayview Drive do that he could develop sexual liaisons with them.[60] In the spring of 1991, Karla invited two teenage girls to the house, one of them was Jane Doe, who was now fifteen. Jane Doe became a companion of Paul and Karla's, frequently visiting them in their home. There were three discrete episodes of reprehensible conduct by the couple towards Jane Doe. Portions of these sexual assaults were videotaped. The first episode was when Karla invited her to the house on Bayview Drive with the knowledge that Paul intended to have sexual relations with Jane.[61] The second was a sexual assault which Paul and Karla perpetrated upon Jane Doe during the night of June 7-8, 1991.[62] On that night, Jane was drugged, anesthetized and sexually assaulted by both Paul and Karla. The third event will be discussed later on in this chapter as it fits in with the chronological review.

On June 15, 1991, in the early hours of the morning, Paul was prowling in a residential area in Burlington when he came upon Leslie Mahaffy near her home. He

abducted her, blindfolded her and brought to his home on Bayview Drive.[63] Leslie was raped and beaten by Paul and forced to perform a number of other sexual acts with the couple. Portions of these activities were videotaped by Paul and Karla. On June 16, 1991, the couple drugged Leslie and following two attempts Paul succeeded in strangling her to death with an electrical cord.[64] Karla sat back and did nothing to help Leslie as Paul murdered her. The next day he dismembered her body with a chainsaw and encased its parts in concrete. Paul and Karla carried the concrete blocks to nearby Lake Gibson and threw them into the water. Karla meticulously cleaned the house in an effort to eliminate all traces of their crimes.[65]

Two weeks later, on June 29, 1991, Paul and Karla were married. They flew to Hawaii for their honeymoon. Paul informed Karla on their wedding night that he was indeed the Scarborough rapist.[66] On the day of the wedding, the level of Lake Gibson was lowered and the concrete blocks containing the remains of Leslie Mahaffy appeared. A missing persons case quickly became a murder investigation. A joint task force composed of members of the Niagara Regional Police and the Halton Regional Police was formed to conduct the investigation. The investigation was led by Inspector Vincent Bevan of the Niagara Police.[67] It came to be known as the Green Ribbon Task Force, after a ribbon

campaign started by the school the Kristen French had attended prior to her abduction. The atrocities committed against Kristen French will be discussed in detail at a later point in this chapter. The impact of this joint task force upon the investigation and the sentences received by Karla and Paul will be discussed further in chapter six.

As mentioned previously in this chapter, there were three episodes of assault that involved Jane Doe. The third incident occurred on August 10, 1991, when Jane Doe was visiting the couple at their Bayview Drive home. On this occasion Jane Doe was again drugged and sexually assaulted by Paul and Karla. Apparently Jane Doe reacted as Tammy Homolka had to the drugs she was given, she vomited and seemed to stop breathing. Karla phoned 911, but the couple was able to resuscitate her so the emergency call for an ambulance was canceled shortly thereafter.[68] In late August, Jane Doe also took a trip with Paul and Karla to Toronto, at which time Paul began making sexual overtures to her. She was involved in a number of sexual acts during that trip. In December, 1992, she ended her relationship with Paul and Karla after she refused to have sexual intercourse with Paul.[69]

Karla testified that between August, 1991 and April, 1992 Paul's violence toward her and abuse of her continued unabated.[70] She said that she was often required to

accompany him on trips in his car, acting as a cover for him while he watched and stalked women. Karla went on to describe occasions where Paul would follow women home and watch them through their windows as they prepared for bed.[71] On at least one occasion he videotaped these events. Karla also stated that Paul talked about planning to kidnap one of the women he stalked, as well he began expressing to her his desire to get a place in the country with a "soundproof dungeon where he could take girls and use them as sex slaves"[72].

On Holy Thursday, April 16, 1992, fifteen year old Kristen French was walking home from school. While making her way across a church parking lot, she was abducted by Paul and Karla and taken to 57 Bayview Drive.[73] She was lured to their car when Karla got out and asked her for directions, showing her a map of Toronto.[74] At the house on Bayview Drive, Kristen was repeatedly raped, beaten, forced to degrade herself and compelled to engage in other sexual acts with Paul and Karla.[75] Much of that activity was videotaped by the couple. On at least two occasions during Kristen's captivity, Paul left the house to buy food and rent videos. Notwithstanding the opportunities implicit in these moments, Karla did not assist nor permit Kristen to escape.[76] On Easter Sunday, April 19, Paul strangled Kristen, then he and Karla washed the body to remove potential evidence.

That night the couple took the body to a rarely used country road near Burlington and dumped it off in the ditch. Upon returning home, Karla meticulously cleaned the house in order to eliminate all traces of the crimes.[77] Kristen's body was discovered on April 30, 1992.

According to Karla's testimony and related support for her assertions, it is evident that the rest of 1992 saw her subjected to continuous and unrelenting abuse at the hands of her husband. In June, she left him to go back to her parents, but returned when he threatened to expose her role in their crimes.[78] "If her evidence is truthful, there can be no doubt that Paul's treatment of her through the last half of 1992 is nothing short of a horror story."[79]

In early January, 1993, Paul beat Karla severely, including blows from a flashlight and a puncture wound above her right knee caused by a screwdriver.[80] On January 5th, at the insistence of her coworkers, Karla's mother and sister removed her from 57 Bayview Drive and took her to a hospital. According to her court testimony, Karla looked for the incriminating videotapes before she left the house, but was unable to locate them.[81] A medical examination performed at the hospital revealed that she had suffered serious injuries. Her beating was reported to police and Karla gave them a statement. As a result,

a charge of assault was laid against Paul who was arrested and then released on bail.[82] Karla revealed nothing to the police at that time about matters other than the beating and made no attempt to contact them later to reveal any information about the heinous criminal activities in which she had taken part. On January 9, 1993, she was released from hospital and went to stay with relatives in Brampton.[83] Shortly after her arrival in Brampton, she contacted Legal Aid, then retained a lawyer to start divorce proceedings. At that point, neither she nor Paul were suspects in the French and Mahaffy murder cases.[84]

On February 1, 1993 the Centre of Forensic Sciences advised the Metro Police that there was a preliminary DNA match between the bodily samples given to them by Paul on November 20, 1990 and the bodily substances connected to three of the Scarborough rapes.[85] The tests carried out by the Centre of Forensic Sciences during the course of the rape and murder investigations will be discussed in further detail in the next chapter. The Metro Police put Paul under surveillance and learned that he had separated from Karla. On February 4, 1993, the police department contacted Karla through her parents , expressing an interest in interviewing her.[86] On February 5, 1993, Karla contacted the Metro Police department and agreed to meet with them at her relatives' residence on

the evening of February 9, 1993. On the same date, the Metro Police invited Inspector Bevan to attend a meeting at police headquarters in Toronto on February 8, 1993.[87]

On February 8, 1993, Inspector Bevan traveled to Toronto and met with a number of officers involved in the Scarborough rapist investigation. As a result of the information exchange that took place, Paul became a suspect in the Mahaffy and French murders.[88] The following evening Metro Police interviewed Karla at the home of her aunt and uncle. Karla revealed to the police some background information regarding her life and relationship with Paul as well as about the abuse to which she had been subjected, however she did not give them any information about the murders.[89] When the police left, she told her aunt about her involvement in them and the next day she met and retained George Walker, a prominent criminal lawyer in Niagara Falls.[90] Her first meeting with George Walker led to a number of discussions and meetings between George Walker and the Crown.

On February 12, 1993, George Walker met with Ray Houlahan, the Crown Attorney for the Regional Municipality of Niagara Falls, and related to the Crown that he had been consulted by Karla and that she could provide pertinent information regarding the Mahaffy and French murders.[91] In return for that information, George Walker

requested immunity for Karla's complicity in those events. Ray Houlahan did not have the authority to make such a deal, therefore George Walker was put in touch with Murray Segal, the Director of the Crown Law Office - Criminal, and a meeting was set up for February 14, 1993.[92] In the meantime, Murray Segal briefed himself on the case and learned that the investigation had been ongoing for a substantial amount of time, that there was no hard evidence against any suspect, and concluded that public safety was in jeopardy so long as the person(s) responsible for them remained at large.

At the February 14 meeting, George Walker sought total immunity for Karla in return for her cooperation, however the Crown was not prepared to consider it in this case. Nonetheless, each side agreed, on a without prejudice basis, that the information given to George Walker by Karla should be disclosed so that it could be assessed by the Crown and police.[93]

According to Patrick Galligan's report, Karla fully described her participation in the deaths of her sister, Leslie Mahaffy and Kristen French, in addition to the events which surrounded them, since her first disclosures through her lawyer. Galligan states that although Karla contended from the first that she was, in effect, forced by Paul to engage in the things that she did, that she never once attempted to deny her role or evade her

complicity in those attrocities.[94] Karla gave hundreds of hours of interviews to the police and Crown Attorneys and disclosed fundamental facts from the very beginning, including substantial additional detail of the crimes. Karla also revealed that Paul had confessed to being the Scarborough rapist and that he had committed many more rapes than those the police had attributed to the Scarborough rapist. Karla furthermore revealed to the Crown that she had looked for the incriminating videotapes before she vacated 57 Bayview Drive, but was unable to locate them. Murray Segal then met with police and a consensus was reached that Karla had in fact been involved in the murders and that she did have invaluable information that would greatly assist the investigation.[95] On February 17, 1993, Paul was arrested on charges relating to the Scarborough rapes and the murders of Leslie Mahaffy and Kristen French, however charges relating to the rapes were actually laid two days later, and the murder charges were not actually laid until several months later.[96] Paul was never released from custody. On February 19, 1993 search warrants were issued and the police began to search 57 Bayview Drive for evidence.

Upon reaching this consensus with the police, Murray Segal re-contacted George Walker and negotiations as to how Karla would be dealt with by the justice system began. To put the situation bluntly, on the one hand, Karla had something to sell which the police

needed desperately: her cooperation. On the other hand, Karla knew that she was in a precarious situation and she was not in a bargaining position to hold out for too high a price. The problem facing the negotiators in late February, 1993 was to find a resolution which would ensure Karla's cooperation, but which would also satisfy the court that such a resolution was in the public interest.[97] There was also the pressing issue of the danger which Paul presented to Canadian society. The police knew from the information collected by the Scarborough rapes investigation, the character profile given to them by Special Agent G.O. McCrary of the Federal Bureau of Investigation, in addition to what Karla had revealed, that Paul was a highly dangerous man.[98] Prior to coming to a conclusion as to how to proceed with Karla, negotiations were suspended and she underwent a psychological assessment at Northwestern General Hospital in Toronto. The assessment which began March 5, 1993, was to last only a week or two, however Karla was not discharged until April 23, 1993. The assessment will be discussed in further detail in chapter six.

After the negotiations were suspended, the Crown's case against Karla gained considerable strength as a result of the continuing police investigation, including potential witness testimony from her coworkers and information from her aunt and uncle.[99]

Unfortunately by the end of April, the case against Paul for murder had not advanced at all. Evidence had continued to accumulate in the Scarborough rape cases, however and more DNA matches implicating him had been established. Seventy-one days of search warrants for 57 Bayview Drive had not resulted in recovery of the videotapes and the evidence which had been collected had yet to undergo scientific testing.[100] On May 6, 1993, however it has been established that Paul's lawyer, acting on Paul's behalf, entered 57 Bayview Drive, located the videotapes and removed them. The Crown and the police then faced a serious dilemma: they had a strong case against Karla, but needed her evidence and cooperation in order to prosecute Paul for the murders of Leslie Mahaffy and Kristen French. The Crown and George Walker met on April 30, 1993 to conclude their negotiations. They came to the understanding that in order to ensure Karla's cooperation and to secure her testimony against Paul, she would not plead guilty to murder charges.

On May 5, the Crown advised George Walker that on the basis of the evidence that had been reviewed, Karla was liable for first degree murder in relation to the murder of Kristen French, second degree murder in the death of Leslie Mahaffy, and that the evidence also substantiated charges of abduction, aggravated sexual assault, confinement

and offering an indignity to a human body.[101] Murray Segal, on behalf of the Crown, stated that unless a resolution agreement was settled, the Crown intended to jointly charge Karla and Paul with all offenses. George Walker was given until May 12, 1993, to discuss the resolution agreement with Karla and come to a decision, otherwise she would be arrested, taken into custody and formally charged with all of the offenses. The Crown was prepared to agree to a resolution agreement which would involve "pleas of guilty to two counts manslaughter and a joint submission that the total sentence be one of twelve years comprised of two terms of twelve years to be served concurrently".[102] As well, if entered into, the resolution agreement would bring forth the circumstances surrounding Tammy Homolka's death before the trial judge as an aggravating circumstance.

On May 14, 1993, Karla and the Crown entered into an agreement that she would plead guilty to two charges of manslaughter in the deaths of Leslie Mahaffy and Kristen French, and that a joint recommendation would be made to the court that she be sentenced to a concurrent sentence of twelve years. In return, she would cooperate with the authorities and testify against Paul.[103] Further discussion of the plea bargain will be pursued in the following chapter.

On May 18, 1993, formal charges of murder and related offenses were laid against

Paul, and Karla was charged with manslaughter. Karla appeared in court, waived her right to a preliminary hearing, was committed for trial and released on bail pending trial.[104] She appeared in the Ontario Court of Justice (General Division) at St. Catharines on July 6, 1993 for her trial. She pleaded guilty to the charges, was sentenced in accordance with the resolution agreement, and has been serving her sentence since that time.[105] A discussion of her trial will be undertaken in greater detail in chapter six.

Two sets of charges were brought against Paul: the murder and related charges involving Leslie Mahaffy and Kristen French in St. Catharines, and the Scarborough rapes and all other sexual offenses which did not involve Leslie Mahaffy or Kristen French in Scarborough.[106] Due to the fact that charges arose in two different judicial districts, there were organizational as well as other difficulties which came to light in the prosecution of the two cases. Therefore, in the summer of 1993, the Ministry of the Attorney General established a committee of senior Crown officials to provide direction and guidance to the two prosecuting teams.[107] During the fall of 1993 and the winter of 1994, the sexual assault and murder investigations continued as preparation was being undertaken for the preliminary hearing set for April 4, 1994. In the meantime, the prosecutors applied to the Attorney General for a preferred indictment on the murder and related charges. The

application was granted on March 30, 1994, this eliminated the need for a preliminary hearing. A second application was made for the sexual assault charges and was granted on May 2, 1994.[108]

On May 4, 1994, the trial of Paul Bernardo on murder and related charges began, he pleaded not guilty.[109] Delays occurred due to the trial being adjourned throughout the spring and summer as the judge needed to deal with matters relating to the jury before it was impaneled. On September 12, 1994, Paul's lawyers asked the court to be removed as his counsel, their request was granted. The reasons behind this request apparently were with regard to Paul Murray's possession of the incriminating videotapes, which he had yet to hand over to the authorities. The police, through wiretaps, were aware of the tapes being in Murray's possession, but by turning them over to the authorities he knew he might be called as a witness at Paul Bernardo's trial. By turning the tapes over to the courts, Murray had no choice but to resign from the case.[110] This caused further delays as Paul's new counsel required time to complete prior commitments and prepare for his case.

On September 22, 1994, the police were given the videotapes which had been removed from 57 Bayview Drive on May 6, 1993. After completing preliminary work on the videotapes, the police reviewed them in detail on September 28. Further investigation

was undertaken from information present on the tapes, however no other charges were laid against either Paul or Karla.[111] During the fall and winter, the place of the trial was moved from St. Catharines to Toronto and Paul was remanded to a psychiatric facility for assessment at the request of the defense. On January 9, 1995, the Crown and the police held a meeting to discuss the need to further investigate the events surrounding the case of Jane Doe. Approximately one month later, the Crown contacted Karla's lawyer and advised him that the police might seek advice as to possible criminal charges against Karla respecting Jane Doe.[112] Karla was subsequently interviewed regarding Jane Doe on January 20, she was even shown a portion of an incriminating videotape.

On February 6, 1995, Crown counsel for the sexual assault charges resigned. Between March 20 and March 23, 1995, Paul's new counsel inquired into the potential private prosecution of Karla on the Jane Doe incidents. It was decided on May 18, 1995, that Karla would not be charged respecting the offenses committed against Jane Doe. This decision will be further discussed in the next chapter.

On May 1, 1995, the process of jury selection began, following which the trial continued throughout the spring and summer. Between June 19 and July 14, 1995, Karla testified against Paul at his trial. On September 1, 1995, Paul was found "guilty of two

charges of first degree murder and all of the charges associated with the abductions and murders of Leslie Mahaffy and Kristen French"[113]. He was sentenced to life imprisonment without eligibility for parole for twenty-five years. On November 3, 1995, Paul was judged to be a dangerous offender and was sentenced to detainment within a penitentiary for an indefinite period of time.

What becomes evident throughout this recounting of the case and sentences received by Paul and Karla is that there were several influential factors in addition to gender which likely impacted upon the disparate sentences. Thus having outlined the events that occurred during the cases of Paul Bernardo and Karla Homolka, as well as having sketched the court proceedings leading up to the sentences each received, it is now possible to move on to discuss the various factors highlighted throughout the above chapter and the effects that they had upon the sentences received.

Endnotes: Chapter Five

1. Makin, K. "Introduction", in Invisible Darkness: The Strange Case of Paul Bernardo and Karla Homolka, S. Williams, 1996.

2. Pron, N. Lethal Marriage: The Unspeakable Crimes of Paul Bernardo and Karla Homolka, 1995, p.23.

3. Ibid., p.40.

4. Ibid., p.40.

5. Burnside, S., and A. Cairns. Deadly Innocence: The True Story of Paul Bernardo, Karla Homolka, and the Schoolgirl Murders, 1995, p.121.

6. Ibid., p.118.

7. Ibid., p.63.

8. Pron, supra note 2 at 56.

9. Ibid., pp.60-61.

10. Ibid., p.63.

11. Ibid., pp.67-70. See also Galligan, P. Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka, 1996, pp.18-20.

12. Pron, supra note 2 at 78-79.

13. Ibid., pp.71-72.

14. Galligan, P. Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka, 1996, p.20.

15. Ibid., p.21.

16. Ibid., p.21.

17. Ibid., p.22.

18. Ibid., p.22-23.

19. Pron, supra note 2 at 103. See also Galligan, supra note 14 at 23.

20. Galligan, supra note 14 at 23-24.

21. Ibid., p.24. See also Burnside and Cairns, supra note 5 at 149.

22. Galligan, supra note 14 at 25.

23. Burnside and Cairns, supra note 5 at 133. See also Galligan, supra note 14 at 25.

24. Galligan, supra note 14 at 26.

25. Ibid., p.26.

26. Ibid., pp.26-27. See also Pron, supra note 2 at 119.

27. Ibid., p.27.

28. Ibid., p.27.

29. Ibid., pp.8-10.

30. Ibid., p.9.

31. Ibid., p.10.

32. Ibid., p.28.

33. Burnside and Cairns, supra note 5 at 167.

34. Galligan, supra note 14 at 29.

35. Ibid., pp.29-30.

36. Ibid., p.30.

37. Ibid., p.30.

38. Ibid., p.31.

39. Ibid., p.31.

40. Ibid., p.31.

41. Pron, supra note 2 at 141-142.

42. Galligan, supra note 14 at 33.

43. Ibid., p.33.

44. Ibid., p.33.

45. Pron, supra note 2 at 144.

46. Galligan, supra note 14 at 34.

47. Ibid., p.34.

48. Ibid., p.34.

49. Williams, supra note 1 at 131-132.

50. Burnside and Cairns, supra note 5 at 181-182.

51. Galligan, supra note 14 at 35.

52. Burnside and Cairns, supra note 5 at 195.

53. Galligan, supra note 14 at 35.

54. Ibid., p.36.

55. Ibid., p.36.

56. Ibid., p.36. See also Pron, supra note 2 at 181.

57. Burnside and Cairns, supra note 5 at 196.

58. Pron, supra note 2 at 197-198.

59. Galligan, supra note 14 at 37.

60. Ibid., p.37.

61. Ibid., p.123.

62. Ibid., p.123.

63. Ibid., p.38.

64. Williams, supra note 1 at 190-191.

65. Galligan, supra note 14 at 38.

66. Ibid., p.38.

67. Ibid., p.39.

68. Pron, supra note 2 at 311-312.

69. Galligan, supra note 14 at 124-125.

70. Ibid., p.39.

71. Ibid., p.39.

72. Ibid., p.40.

73. Williams, supra note 1 at 242-243.

74. Pron, supra note 2 at 322.

75. Galligan, supra note 14 at 40.

76. Ibid., p.40.

77. Ibid., p.40.

78. Ibid., p.41.

79. Ibid., p.41.

80. Ibid., p.42.

81. Ibid., p.41.

82. Ibid., p.43.

83. Burnside and Cairns, supra note 5 at 292.

84. Galligan, supra note 14 at 43.

85. Ibid., p.43.

86. Pron, supra note 2 at 436.

87. Galligan, supra note 14 at 44.

88. Ibid., p.44.

89. Ibid., p.44.

90. Pron, supra note 2 at 440.

91. Galligan, supra note 14 at 56.

92. Ibid., p.56.

93. Ibid., p. 57.

94. Ibid., p.58.

95. Ibid., p.61.

96. Ibid., p.45.

97. Ibid., p.63.

98. Ibid., p.63.

99. Ibid., p.75.

100. Ibid., p.76.

101. Ibid., p.86.

102. Ibid., pp.86-87.

103. Ibid., p.89.

104. Ibid., p.96.

105. Ibid., p.101.

106. Pron, supra note 2 at 456.

107. Galligan, supra note 14 at 48.

108. Ibid., p.49.

109. Ibid., p.49.

110. Pron, supra note 2 at 479.

111. Galligan, supra note 14 at 50.

112. Ibid., p.238.

113. Ibid., p.51.

CHAPTER SIX: AN ANALYSIS OF THE CASE OF PAUL BERNARDO AND KARLA HOMOLKA

Having attempted to grapple with the course of events that led to Karla Homolka receiving a prison sentence of twelve years and to Paul Bernardo serving an indefinite sentence, it is now possible to analyze and discuss the highlighted aspects from chapter five. It is the objective of this chapter to determine how, or if, they impacted upon the disparate sentences received by each individual. What became evident through an examination of the events that occurred throughout this case is that it was possible to observe the presence of gender, yet it was not possible to target nor explain exactly the manner in which it affected the sentences that these individuals received. This analysis was able to replicate the findings of previous studies, but was not able to either proceed beyond their conclusions or give any real clarification with respect to how gender operates as an influential factor. Studying the data available on this case was frustrating, due both to the lack of information procurable for analysis and to the inability to extract amounts of evidence on gender's influence from the resources that were obtained.

In chapter three, several schools of thought were introduced with respect to how the legal system is theorized to be affected by gender. In particular, it has been suggested that the female offender tends to be viewed in one of three ways, as an instigative offender, as a sexualized offender, or as a protected offender. As further noted in the third

chapter of this thesis, these three characterizations essentially present two schools of thought on how women defendants are handled by the criminal justice system. It is postulated that female criminals are either subjected to preferential treatment, specifically in terms of shorter sentences, or they receive more punitive sanctions than their male counterparts. Both of these schools promote the idea of a chivalrous or paternalistic legal system, regardless of their differing views as to the consequences of said system. These two schools were found lacking in the theoretical discussion undertaken in this thesis due to their overly simplistic design: the system is alleged to hand down either harsher or more lenient sentences merely on the basis of gender, without sufficient consideration of potential intervening variables or factors which exert a stronger influence on sentencing decisions. Examples of such factors include race, socioeconomic status, as well as previous criminal record and the seriousness of the offense. These factors need to be considered in conjunction with gender because the ablility to isolate gender from these other factors is highly questionable, thereby suggesting that gender has a compelling influence within these factors and as a result is an extremely complex variable. A third school of thought discussed in chapter three, posited that if variations do exist in the sentences handed down to men and women, that these are due to legally relevant

variables, not to bias or discrimination. It is this school which was determined to be most likely to explain the sentences that resulted in the Bernardo-Homolka case because it does not limit the decisions made by judges strictly to bias, rather it allows for the consideration of factors external to the offender to effect sentences, either in conjunction with or to the exclusion of gender.

In reviewing the manner in which the police investigated the crimes of Paul Bernardo and Karla Homolka and the way in which the Crown handled the legal proceedings that were taken against the couple, it becomes obvious that more than gender affected the sentences that each defendant received. This is also made clear in the Campbell[1] and the Galligan[2] inquiries that were carried out for the Ontario Crown Attorney Office. However, gender is not a variable which can simply be dismissed, it is a factor that is inescapable in a case which revolves around sexual assault and murder, two criminal offenses that obviously and inextricably are firmly bound up with issues of gender. A review of the investigation, psychological assessments undergone by Karla Homolka, and excerpts from her trial all indicate that her gender did have a significant influence on the formal consequences she has experienced for the crimes she committed. In review, Karla was involved in the sexual assaults and murders of Tammy Homolka, Leslie

Mahaffy and Kristen French, the assaults on Jane Doe, as well as abduction, confinement, and offering an indignity to a human body. It is these events, viewed through the definitional lens of gender bias that was introduced earlier in this thesis, that will be examined in this chapter.

A common theme which runs throughout the books that have been published on the case of Paul Bernardo and Karla Homolka is the belief that Karla's gender played a major role in the differential sentences that the couple received.[3] However, there is little, if any discussion as to the manner in which the influence of gender manifested itself and what is offered to support this belief is the position that gender's influence is so obvious that it does not warrant discussion, i.e.; the presence and influence of gender is assumed to be self-explanatory. In contrast, in the Galligan report, there is a noted lack of any connection being made between Karla's gender and the punishment she received for her role in the heinous criminal activities that were carried out. Nonetheless, it becomes evident through a review of the psychological assessments that Karla Homolka underwent and her plea-bargained trial, that gender in conjunction with several other relevant factors, influenced how she was dealt with by the criminal justice system. It is necessary to examine the findings of the psychological assessments because it was the diagnostic

reports that resulted from her hospitalization that came to have a significant impact upon her trial and subsequent sentence, as well as her testimony at Paul Bernardo's trial.

Gender as an Influential Factor

Attention will first be devoted to Karla Homolka's psychological assessments as these had a significant bearing on decisions made with respect to the plea-bargain and at her trial.[4] Karla Homolka was admitted to Northwestern General Hospital in Toronto on March 5, 1993 under the advisement of her lawyer, George Walker.[5] Karla's hospital admission occurred at an interesting point in the case's proceedings. She was hospitalized after she had disclosed her involvement in the murders of Kristen French, Leslie Mahaffy, Tammy Homolka, and following the disclosure that Paul Bernardo was the Scarborough rapist and that he possessed incriminating videotapes. The information Karla revealed was released to police and reviewed on a pre-judicial basis. The point at which Karla Homolka entered the hospital for evaluation is interesting because it happened prior to her lawyer finalizing the negotiations with the Crown Attorney with respect to a possible resolution agreement, or plea-bargain. The psychological evaluation was initially supposed to only last a week or two, at which time police investigations would continue and the police would be free to pursue such charges as their investigation justified. The hospitalization

turned out to be much longer than anticipated due the the diagnoses reached by her doctors; Karla was not released until April 23, 1993.[6]

While hospitalized, Karla was under the care of Dr. Hans Arndt, a psychiatrist. Dr. Arndt had Karla undergo consultation with Dr. Andrew Malcolm, an extensively experienced forensic psychiatrist, and also by Dr. Alan Long, a clinical psychologist who administered psychological tests.[7] All three doctors were unanimous in their diagnosis of Karla Homolka. At the point of admission into hospital, Karla was diagnosed by Dr. Arndt as suffering from reactive depression (dysthymia), and post traumatic stress disorder. Diagnoses were arrived through the use of the American Psychiatric Association's Diagnostic Manual, D.S.M. III-R.[8] Dr. Arndt went so far as to compare Karla's experiences, since her first acquaintance with Paul Bernardo, to the "experiences of concentration camp survivors"[9]. Karla was further diagnosed as not having any psychotic nor any personality disorders. She was assessed as not showing any instability, impulsiveness or inappropriateness. She was diagnosed as being anxious and depressed, suffering from sleep disturbances, low energy level, low self-esteem, a diminished ability to make difficult decisions, and a "marked feeling of hopelessness"[10]. Additionally, Karla was found to have suffered from factors that constitute psychological torture as defined by

Amnesty International[11], these factors include: social isolation, exhaustion, monopolization of perception, threats of death, humiliation and denial of power, as well as the administration of drugs or alcohol to diminish self-control.[12] Dr. Arndt noted in his diagnosis that these same variables are found in virtually all cases of wife abuse. In particular, Karla displayed "learned helplessness", according to Dr. Arndt, which is known to be seen in women who have been subjected to constant abuse.[13] In his opinion, Karla was "subjected to repeated sadistic sexual attacks. She was humiliated, beaten, tied up and raped over a period of years."[14]

Dr. Long concluded in his report that the personality tests completed by Karla Homolka indicated a "very depressed and emotionally withdrawn person suffering from severe remorse for her participation in illegal acts"[15]. Furthermore, Karla was assessed as suffering from and requiring treatment for the effects of severe prolonged exposure to her husband's sadistic acts and the atmosphere he created. In Dr. Long's opinion, Karla was sufficiently

> hoodwinked and intimidated by Paul Bernardo that she found herself in a compromising position as a result of a sequence of experiences with him that escalated in the intenseness of their deviousness and severity[16].

However, Dr. Long qualifies this statement by positing that she was technically sound of mind and free of any disease of the mind of sufficient severity to cloud her awareness or to

cause her to be unaware of the nature and quality of her actions. He postulated that she "was a *victim herself* and in serious need of continued psychiatric care"[17] (Italics added).

As well, two other psychiatrists and two other psychologists, according to the Galligan Report, all diagnosed Karla Homolka as suffering from post traumatic stress disorder. Three of them stated that it resulted from spousal abuse.[18] Karla was also judged by Dr. Arndt, Dr. Long, and Dr. Malcolm as having memory problems, possibly attributable to "emotional anaesthesia".[19] Dr. Brown, Karla Homolka's treating psychiatrist at Kingston's Prison for Women, concurred in his initial diagnosis that she was experiencing reactive depression and post traumatic stress disorder.[20] Karla Homolka was found by Dr. Walker and Dr. Ewing, whose work was referred to in R. v. Lavallee, as fitting all of the criteria for battered woman's syndrome.[21]

What becomes evident in the review of the psychological assessments which were carried out on Karla Homolka is that the psychiatrists and psychologists labeled her as a victim, fitting all of the criteria of an abused wife, with the exception that she did not choose to retaliate against Paul Bernardo by killing him. There is the biased view that Karla was able to be "hoodwinked and intimidated" by her husband. The position that this view is biased is raised because the phrase brings forth the notion that she is not able or

intelligent enough to recognize what was happening to her throughout the course of her relationship, or that she was not capable of objectively evaluating the situation and then extricating herself from it. The notion that she was simply deceived, though cognizant of the moral ramifications of her actions, is highly questionable, particularly in light of her rather high intelligence quotient.

Perhaps the depiction of Karla Homolka as being a *victim herself* was the only logical and rational way in which her psychological and psychiatric evaluators could possibly begin to understand and explain the events in which she participated. It is highly improbable, though granted not impossible, that a man in the same position as Karla Homolka would be labeled a victim. In fact Paul Bernardo was also subjected to a psychological assessment, during the fall and winter of 1994, and was found to be a sexual psychopath with sadistic tendencies, but was still fit to stand trial.[22] This would support the notion that gender bias exists within the legal system. Such a supposition would sustain the notion that men and women have different "accepted" roles in society and that it is socially expected that women are burdened with the task of engaging in being the victim. It is indicative of gender bias as well, due to the fact that the battered woman's syndrome is brought up in Karla's assessments. Interestingly enough, there is no parallel

battered man's syndrome, though occurrences of husband abuse are known to happen. It is important to note however, that this lack of a parallel is in no way an attempt to equate husband abuse with wife abuse. It is fully acknowledged that these forms of abuse occur differently, with women being abused much more frequently and sustaining more serious injuries than men. The point is raised for consideration because it is an example where women are specifically singled out by the justice system. This gives credence to her being labeled a battered wife as being gender biased because it defines "proper" and "acceptable" roles for men and women in society. Such a "gendered" defense is also arguably biased against men, as they are liable to suffer similar abuse and yet they do not have access to using that abuse as a defense for subsequent crimes they may participate in. The diagnoses given to Karla Homolka are hard to accept, specifically in light of the fact that what her assessors had to work with was for the most part only what she herself told them - a woman who, during the course of the criminal activities in which she took part, was able to lie to the authorities, to present an impression to her family and friends that everything was normal, and was able to systematically clean her house and dispose of evidence in order to avoid suspicion and being apprehended.

The unanimous finding by the psychologists and psychiatrists who evaluated Karla

Homolka as being a battered wife, suffering reactive depression and post traumatic stress disorder, affected the sentence she received from the judge at her trial.[23] However, could this depression and stress disorder not be logically postulated to be linked with her role in the murders and assaults, as opposed to her relationship with Paul Bernardo? Perhaps questions regarding the influence of gender in this particular case would benefit further from an examination of biased or chivalrous attitudes and practices within the mental health professions and institutions. The reports most certainly do not give the impression that Karla was an instigative offender, who remained in the background and let Paul Bernardo take all of the risks. Nor is it evident from the psychological assessments that Karla had Paul carry out the heinous crimes which occurred, solely for her enjoyment. The view of Karla as being a victim does, however, potentially align itself with the notion of the instigative offender whereby the woman sees to it that she is protected by the criminal justice system by allowing the man to "take the rap". It is obvious from the sentences that each individual received that Paul Bernardo received a much harsher sentence than Karla Homolka. What becomes noticeable is that in all likelihood the fact that Karla Homolka was female, rather than male, influenced her assessors' diagnoses with respect to her being "hoodwinked", intimidated, and abused. Nonetheless, nothing is ever

so simple as to be able to be explained by a single variable, and thus gender as a variable may be significant even if it is not the primary aspect which affected sentences the couple received in light of the complexity of the case itself. The excerpts from the diagnostic reports from Karla Homolka's psychological assessment, which found her to be an abused, deceived victim, affected her plea-bargain, had an impact upon her trial and also upon her credibility as a key witness in Paul Bernardo's trial, but they did not exclusively determine the outcomes of these events.[24]

During her hospitalization, the police greatly strengthened their case against Karla Homolka, mainly through interviews with coworkers and family.[25] As mentioned in the previous chapter, the investigation against Paul Bernardo had not advanced, the evidence that had been collected was still undergoing testing and the videotapes had yet to be located. The authorities found themselves in a dilemma: they had enough evidence to charge and try Karla Homolka for murder, but such an action would most probably result in eliminating her as a means to establish murder and other related charges against Paul Bernardo. Due to the information made available by her psychological evaluations, particularly the doctors' opinions regarding her state of mind during the time period in which she participated in criminal activities, negotiations resumed with respect to Karla

entering into a resolution agreement. Her lawyer, George Walker, argued that the psychological information that resulted from her stay in hospital made a sentence of eight to ten years most appropriate.[26] The Crown responded with the notion that any sentence should be in excess of ten years due to the strength of the case that had built up against Karla. In order to secure Karla's assistance in obtaining evidence and her testimony against Paul Bernardo, a resolution agreement was drafted and agreed to, in which Karla would be sentenced to two twelve year sentences for manslaughter to be served concurrently. The agreement was, of course, subject to the acceptance of the trial judge. Additionally, the information surrounding her sister's death would be brought forward in court as an aggravating factor.[27] Why were the sexual assaults not added to the charges or at least as aggravating factors to be considered at her trial, when there was solid evidence of her guilt? A discussion as to why the Jane Doe sexual assault charges were not considered is undertaken at a later point in this chapter. Possibly the other sexual assault charges were not raised because they were omitted as part of Karla's plea-bargain deal, or perhaps because her participation in this type of criminal offense was not viewed as being as heinous as Paul Bernardo's involvement.

Again it becomes evident that Karla's being labeled as a victim in her psychological

assessments had a bearing on her treatment by the criminal justice system. The role of the protected female offender rears its head once more, as debates arose around the appropriate length of sentence, not only in an attempt to satisfy public perceptions of justice, but also to protect Karla from herself, the battered victim who had been duped and intimidated by a sadistic sexual psychopath, and who was diagnosed as not likely to be a further danger to society. This is not to make light of the fact that Karla had a strong bargaining chip in the information and assistance that she could offer in terms of convicting Paul Bernardo, rather it is an attempt to elicit the influence gender exerted throughout Karla Homolka's participation in the legal system. Clearly, as was proclaimed by the Crown Attorney's office, had the police been able to recover the incriminating videotapes there never would have been a deal offered to Karla Homolka; she would have been charged and tried for her participation in the assaults and murders of three young women.[28] In all likelihood, however, Karla's experiences as a battered wife would still have been an issue in the prosecution of both individuals. This begs the question of the manner in which police investigations are carried out, particularly where joint task forces are concerned, as well as whether the types of crimes that were being investigated had an impact upon the thoroughness and method of investigation. While it is plain that gender

played a role in determining the outcomes, and this at least is in line with what previous authors who wrote about this case have claimed[29], gender is so inextricably linked with the facets of the case and most often operates so subtly that it is extremely difficult to pinpoint and describe the manner in which it affects sentencing outcomes.

Karla Homolka stood trial on July 6, 1993. Upon agreeing to the resolution agreement and fulfilling, at least according to the Galligan Report, the obligations therein, Karla Homolka pleaded guilty to two counts of manslaughter at her trial. Interestingly enough, she was not charged with any sexual assaults that took place, not those that transpired along with the murders nor the others that are known to have occurred, even though police had recovered an incriminating video clip of her participation in such activities[30]. It seems as though they simply were forgotten or dismissed in Karla's case. Upon reaching a sentence of two twelve year terms to be served concurrently, which coincided with what was suggested by the Crown, the judge added a lifetime ban on Karla possessing any firearm, ammunition or explosive substance. However, he did not ask for an order of parole ineligibility under s.741.2 of the Criminal Code, because he contended that, "this accused will need ongoing psychiatric treatment"[31] and he did not wish to impose a fixed term which might hamper her getting the attention she requires.

At the trial, the Crown outlined in detail the circumstances of the death of Karla's little sister, Tammy Homolka, the abduction, confinement, torture, sexual abuse and deliberate killing of both Leslie Mahaffy and Kristen French and the indignity performed on Leslie Mahaffy's body.[32] Karla's participation and complicity in such heinous criminal activities was described, as well as her finding young girls to help satisfy Paul Bernardo's urges. The Crown also told the Court about Karla's subjection to an escalating pattern of verbal and physical abuse from Paul Bernardo. The Crown further stated that, although the evidence against Karla Homolka was in his opinion sufficient to found murder charges, the Crown would accept convictions for the lesser offenses of manslaughter.[33] The resolution negotiations and agreement were discussed, and the decision to pursue lesser charges was explained as stemming from the invaluable assistance of Karla, without which the true facts of the case may never have been known. Indeed, the Crown addressed her assistance to the police investigation several times throughout the trial.

What is evident is that even the Crown accepted the labels of "battered wife" and "victim herself" throughout the negotiations and trial of Karla Homolka, as they brought this evidence to the Court's attention for consideration of the reduced charges, regardless of the evidence that had been obtained against her. This falls in line with the section of the

gender bias definition wherein Karla was subjected, albeit to her favor, to being sexually stereotyped. However, the impact of gender was clearly overridden by the Crown's repeatedly established need of Karla's assistance and testimony in order to solidify their case against Paul Bernardo.

Karla's defense lawyer, George Walker, acknowledged the horrific nature of Karla's conduct and did not attempt to minimize it. He also informed the Court of Karla's immeasurable assistance to the authorities prior to her trial and her continued willingness to help. He reviewed in considerable detail the psychological assessment reports of Drs. Arndt, Malcolm and Long, in particular the information which showed that Karla's post traumatic stress disorder emanated from the spousal abuse she had suffered.[34] He argued that Karla's experiences were a "classic case of wife beating"[35]. He also stressed that the doctors had concluded that she posed no future danger to society. He referred to R. v. Lavallee (1990) which recognized that

> "it is too simplistic to expect that a battered woman can easily leave or refuse the demands of an abusive spouse...[and that] given the context in which spousal violence occurs, the mental state of a woman at a critical time cannot be understood except in terms of the cumulative effect of months or years of brutality".[36]

Walker apparently cited this case to somewhat explain, although not justify, Karla Homolka's conduct, rather than to advance a legal defense of compulsion. In addition,

Karla's defense lawyer pointed to the mitigating factors of an early guilty plea and the remorse that such a course of action indicates.

Karla Homolka's defense lawyer clearly attempted to establish a stereotypical view of her as being a victim of a "classic case of wife beating"[37]. He also pushed for the recognition of the Court that Karla was in need of protection from herself, i.e.; she required continued and extensive psychiatric care. Nonetheless, he too promoted Karla's past and continued cooperation with police and the Crown, in order to see that justice was done in the Paul Bernardo case, as being the most important factor to be considered at her trial.

Upon hearing from the Crown and the defense, Mr. Justice Kovacs agreed with the terms of the resolution agreement, as related above. In turn, he presented extensive and detailed reasons for agreeing to and imposing Karla's sentence. He first discussed the aggravating factors that impacted on her sentence. Mr. Justice Kovacs stated that, "The aggravating factors are self evident even to a callous observer"[38]: the conduct of the accused was monstrous, depraved and not isolated. The acts leading to the abduction of Kristen French were "coldly and calculatingly planned, with the full participation of the accused"[39]. Karla Homolka was present at the death of Leslie Mahaffy and, at least

passively, participated in the planning of her death. The facts leading to the death of her own sister indicated planning on her part. The young age of the victims was seen as being an aggravating factor, due to their susceptibility to be lured to their deaths. The impact of the crimes on the victims' families as well as on the communities, was also considered. In addition, aggravating factors included the circumstances which led to the deaths of Leslie Mahaffy and Kristen French, the attempted cover up of the circumstances surrounding Tammy Homolka's death, and the meticulous and planned attempts to eliminate evidence. The most disturbing factor was that the accused was left alone with Kristen French and yet she did nothing to assist in the young girl's escape, neither did she assist Leslie Mahaffy when the opportunity presented itself.[40] The fact that Karla lured Kristen French into the car indicated her willingness to act as a "cover" to the crime. Karla Homolka placed her own interest and that of Paul Bernardo ahead of the interests of the victims - she came forward only when her own life was in danger. Finally, the accused grievously breached the trust of her youngest sister and has caused immeasurable hurt to the remainder of her family.

Yet in light of these aggravating factors, Mr. Justice Kovacs presented mitigating factors which were to establish a balance, at least to some extent, and assist in justifying

the sentence which was handed down. The judge stated that by her guilty pleas, Karla Homolka "obviated a trial in respect to her and avoided inflicting additional trauma on the trial in res victims' families"[41] . The guilty plea is viewed as being the first clear sign of remorse. Second, the judge considered her youth and her previous unblemished character. Third, he considered that experts had described Karla Homolka as a "battered wife who endured terribly harsh physical beatings. Her self esteem was gradually destroyed. Her sense of propriety and moral convictions were sublimated"[42]. He further considered that the events, albeit of her own making and for which she must accept responsibility, require continued psychiatric care and that she will have psychological scars. Finally, the judge cited the most significant and compelling mitigating factor as being her "cooperation with the police and her agreement to cooperate with the prosecution until justice has been done"[43].

What becomes evident throughout Karla Homolka's trial is that gender can be seen to have been considered by all parties involved, yet the more pressing factor of her assistance in the prosecution of Paul Bernardo seemed to supersede all of the other factors that were brought to light. While the judge agreed that Karla needed to be "protected from herself" in the sense that he did not wish to impose on her continued psychiatric care and he did take her psychological state into consideration as a mitigating factor, it is clear

that his main focus was on her continued cooperation. While the burden of being held fully accountable for all of the crimes that were committed was removed from Karla Homolka, she was re-burdened with the obligation to live up to her end of the resolution agreement.

Gender can also be seen to play a role in Paul Bernardo's trial, which began on May 4, 1994, specifically when Karla Homolka took the stand to testify for the prosecution. Karla was on the witness stand from June 19 until July 14, 1995.[44] In relating a factual outline of the events that took place in the Bernardo-Homolka case, Galligan states at the beginning that when he discusses these facts he refers to Karla's version where her testimony conflicts with what was given by Paul, because "implicit in the verdict of the jury that convicted Paul Bernardo of murder, [is an apparent fact that] where there was conflict between the testimony of Paul Bernardo and Karla Homolka, the jury accepted her evidence"[45].

The cross-examination of Karla at the trial of Paul Bernardo very vigorously attacked her credibility. It was this credibility which the case against Paul Bernardo depended upon entirely. In order to strengthen her credibility in the eyes of the jury, the Crown presented the evidence which strongly suggested that Karla Homolka was a battered spouse and that she "contended that her criminal acts had been committed while

she was under extreme duress and while she was under the control and domination of Paul Bernardo"[46] early in the trial. While her testimony was believed by the jury[47] , it was secondary to the videotapes which were recovered and given over to police on September 22, 1994. What is interesting is that the jury was more willing to believe Karla over Paul, even though she had been as fully involved in the offenses as he was. Possibly this willingness to believe Karla over Paul was due to a hesitancy or reluctance on the behalf of the jury to believe that she was as capable as Paul of committing such heinous crimes. Or perhaps this inclination to accept Karla's testimony stemmed from a belief that she truly was another of Paul's victims.

It becomes evident throughout the examination of events that, where gender can be seen to have had an impact, its influence was not the primary deciding factor for the disparate sentences which resulted. Rather the need to have Karla Homolka provide information, assistance and testimony seemed to override everything else in order that Paul Bernardo could be prosecuted for his crimes. As the Crown was noted to have stated earlier in this chapter, had the videotapes been recovered prior to the establishment of the resolution agreement, Karla Homolka would have found herself charged and tried for the same offenses as Paul Bernardo.

Other Related Influential Factors

What is also of interest is the issue of charging Paul Bernardo and Karla Homolka with the Jane Doe incidents that arose on December 2, 1994, shortly after Paul Bernardo's trial began. As mentioned in the previous chapter, there were three incidents that are known to have taken place involving Jane Doe, parts of which were videotaped. However, charges were not laid against Karla Homolka for two reasons. First, the Crown needed her credibility to be solid, and if charged with the assaults of Jane Doe, her case was unlikely to have been over prior to the Bernardo case. Karla Homolka's being embroiled in another court hearing, facing charges of further criminal involvement would subsequently make her debatable credibility even more questionable. Second, the Jane Doe incidents were only clearly revealed after the resolution agreement had been drafted and accepted, thereby raising the question as to whether or not charges could be laid. It seems that the Crown thought the resolution agreement expressly or in its undertones protected Karla Homolka from prosecution for offenses which she disclosed even after her sentencing. This was contingent however, upon her continued cooperation with the Crown in testifying against Paul Bernardo.[48] Paul Bernardo was additionally charged with the Jane Doe assaults. What is interesting here is that it seems as though the Crown was

more concerned with ensuring Karla's credibility with respect to testifying at Paul's trial than with convicting both guilty parties for an offense wherein the evidence showed both were clearly guilty.

Other factors, clearly unrelated to gender, also emerged throughout the case as having a substantial effect upon the sentences that Paul Bernardo and Karla Homolka received. One of the most obvious externally relevant factors was the Green Ribbon Task Force itself. The Green Ribbon Task Force was the official title given to the amalgamation of the various police forces involved in the investigation of the Mahaffy and French murders. It was named for the green ribbon of hope campaign started by Kristen French's school when she was abducted.[49] In his review of the Bernardo investigation, Campbell is quick to point out that although the officers involved in the task force worked well together for the most part, problems occurred, particularly in terms of communication and information transfer between the Niagara Regional Police Force and the Halton Regional Police Force. For example, several stalking incidents had been reported to the Niagara Police Force in 1991, yet the Green Ribbon Task Force was not made aware of these incidents until 1993.[50] In addition to miscommunication within the task force, there was also a similar problem between the Metropolitan Toronto Police Service, who were

investigating the Scarborough rapes, and the Green Ribbon Task Force. For example, an alert about the Henley Island rape[51] was sent to the Metro Force and yet none of the Metro investigators recalled receiving the alert.[52] Another example is evident when Paul Bernardo was identified following a one probe DNA match with samples taken from several rape victims. The Metro force decided not to notify the Green Ribbon Task Force or the Regional Niagara Police Force and instead put him under surveillance, even though the task force had earlier inquired about Bernardo as a suspect.[53] This decision was influenced, according to Campbell, by an attitude that Bernardo was Metro's suspect and Metro's case came first, even though Bernardo was also a Green Ribbon Task Force murder suspect and living in the Niagara region.[54] Obviously clear lines of communication would have greatly improved the manner and effectiveness in which the investigation was carried out, perhaps even leading to Paul Bernardo's arrest at an earlier point in time. It certainly would have dispelled the mistrust which Campbell claims resulted from the withholding of pertinent information.[55]

A related problem was the general manner in which the investigation was carried out by the police forces. Campbell repeatedly refers to the problems of information mismanagement within and between forces as stemming from a need to have a

sophisticated case management information system that was computerized.[56] For example, when investigating the cement that was used to conceal Leslie Mahaffy's body parts, police checked all purchase receipts, yet they failed to check return and exchange slips as well.[57] Additionally, only one search team was sent into 57 Bayview Drive to collect evidence. This team was comprised of forensic officers, who according to Campbell, felt restrained in their investigation by the minimization principle regarding the right to inflict damage to property in order to retrieve evidence.[58] It was this principle which could be used as an excuse for the videotapes not being recovered, as an officer did check the ceiling lighting pot where the tapes were located, yet he simply did not reach into the ceiling far enough.[59] There was also a problem with the manner in which suspects were classified. The system was quite subjective, in fact, Paul Bernardo was classified differently by two police officers. He was classified by one officer as being an unlikely suspect for probable elimination[60], and by another as a good suspect, but for probable elimination.[61] Had there been a clearly laid out classification process, perhaps such a discrepancy would not have arisen.

There was also a difficulty between the police forces and the Centre of Forensic Sciences that was to carry out all of the scientific testing on the suspect samples that the

police provided to them. This was perhaps the largest stumbling block to capturing Paul Bernardo and ranks up with the videotapes with respect to hard evidence of his committing numerous assaults. The samples of Paul Bernardo's blood, hair, and saliva were submitted for testing on November 21, 1990, yet the first DNA test was not completed until February 1, 1993.[62] It was this first test which clearly linked Paul Bernardo to the sexual assaults. There was confusion between employees of the forensic centre as to who could authorize the DNA tests, as the centre had just recently opened, and there was confusion between the police and the centre as to when the tests would be carried out. The important issue is that the police had submitted Paul Bernardo's samples for serology and DNA testing. While the serology tests were completed by December 13, 1990[63], the samples were returned to police in November of 1991 without all of the requested tests being completed. The police were forced to resubmit the samples on April 2, 1992, when a new detective was assigned to the Scarborough rapes case.[64] Unfortunately when the police resubmitted the samples the workload at the laboratory was heavy and there was only one qualified DNA technician at the time. The centre decided to let a trainee finish the Bernardo sample testing after she finished her training as she had already been using other samples which had been submitted under the case for serology testing.[65] This

decision caused a further three month delay, until her training was completed. The actual processing of the samples did not begin until October 29, 1992 due to the training delay, but also due to the internal assigning of case priorities. When the testing actually began, it was found that the samples were insufficient, however the police ordered that the tests be carried out with what was available on January 26, 1993. The first test was completed February 1, 1993 - amounting to a delay of twenty-five and one-half months from the time the samples were originally submitted until the first DNA test was completed.[66] Such a huge delay could have been avoided had the investigation been better organized.

It becomes evident following a brief review of the impact of gender and other relevant factors that problems within the Green Ribbon Task Force, and between forces and the Centre of Forensic Sciences, impacted upon the outcomes of the Bernardo-Homolka case. In conjunction with these policing problems, the need to have Karla Homolka's cooperation and assistance superseded the impact of gender. Gender did have a significant impact, nonetheless, its influence definitely took a backseat to the other, more pressing variables. What the evidence presents leads to other important questions, such as how great is the onus to "fix" the system in terms of gender in light of the influence it was found to play in the Bernardo-Homolka case? Or is it something that

points to a need to revise the current system? Perhaps time, attention and money would be better spent revising and improving the manner and methods applied in police investigations, or in expanding the Centre of Forensic Sciences in order that more technicians are trained and more cases can be processed through their system. Such issues will be pursued further in the next chapter.

Endnotes: Chapter Six

1. Campbell, Justice A. Bernardo Investigation Review: A Report of Mr. Justice Archie Campbell. Toronto: June, 1996.

2. Galligan, The Honourable P. Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka. Toronto: March, 1996.

3. See for example: Burnside, S. and A. Cairns. Deadly Innocence: The True Story of Paul Bernardo, Karla Homolka, and the Schoolgirl Murders, 1995; Davey, F. Karla's Web: A Cultural Investigation of the Mahaffy-French Murders, 1995; Pron, N. Lethal Marriage: The Unspeakable Crimes of Paul Bernardo and Karla Homolka, 1995; and Williams, S. Invisible Darkness: The Strange Case of Paul Bernardo and Karla Homolka, 1996.

4. Refer to Galligan, supra note 2 at 105-106, 254-255, 259,262, 277, 279, 285-291, 293, 295, 298, 301, 303-304, 309-313, 320.

5. Galligan, supra note 2 at 74.

6. Ibid., p.74.

7. Ibid., p.76.

8. Psychological Excerpts, Galligan, supra note 2 at 77.

9. Ibid., p.77.

10. Ibid., p.78.

11. Ibid., p.78.

12. Ibid., p.78.

13. Ibid., p.79.

14. Ibid., p.79.

15. Ibid., p.80.

16. Ibid., p.80.

17. Ibid., p.81.

18. Ibid., p.81.

19. Ibid., p.151.

20. Ibid., p.152.

21. Ibid., p.156.

22. Galligan, supra note 2 at 50. See also: Williams, S. Invisible Darkness: The Strange Case of Paul Bernardo and Karla Homolka, 1996, p.520.

23. Refer to Galligan, supra note 2 at 301, 303-304, 309-313. 320.

24. Ibid., pp. 122-123, 254-255, 259, 262, 277, 279, 285-291, 293, 295, 298, 301, 303-304, 309-313, 320.

25. Ibid., p.76.

26. Ibid., p.82.

27. Ibid., pp.86-87.

28. Ibid., p.89.

29. See for example: Davey, F. Karla's Web: A Cultural Investigation of the Mahaffy-French Murders, 1995; and Williams, S. Invisible Darkness: The Strange Case of Paul Bernardo and Karla Homolka, 1996.

30. This refers to the Jane Doe video clip which was shown to Karla Homolka during one of her interviews with police prior to the resolution agreement. See for example: Galligan, The Honourable P. Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka, 1996, pp.127-129.

31. Trial excerpts, Galligan, supra note 2 at 298.

32. Ibid., p.102.

33. Ibid., p.102.

34. Ibid., p.105.

35. Ibid., p.290.

36. R. v. Lavallee (1990) 1 S.C.R. 852. p.118.

37. Trial excerpts, Galligan, supra note 2 at 278.

38. Ibid., p.316.

39. Ibid., p.316.

40. Ibid., pp.317-318.

41. Ibid., p.319.

42. Ibid., p.320.

43. Ibid., p.321.

44. Ibid., p.239.

45. Galligan, supra note 2 at 17.

46. Ibid., p.123.

47. See for example the jury comments found in the Galligan Report, p.167.

48. Galligan, supra note 2 at 142.

49. Campbell, supra note 1 at 140.

50. Ibid., p.118.

51. The Henley Island Rape refers to the sexual assault Paul Bernardo committed on April 6,1991, three months after moving to 57 Bayview Drive, less than a mile away from Henley Island. This is noteworthy because the attack was a carbon copy of the Scarborough Rapes, yet occurred in the Niagara Police's area of jurisdiction. Paul Bernardo was a Metro Police rape suspect at that time, yet no connection was made by either the Niagara force nor the Green Ribbon Task Force to the Scarborough Rape case, even though Bernardo resided so closely to the site of the attack.

52. Campbell, supra note 1 at 108.

53. Ibid., p.172.

54. Ibid., p.173.

55. Ibid., p.175.

56. See for example: Campbell pages - 2, 29, 33, 35, 39, 42, 163-164, and 168.

57. Campbell, supra note 1 at 124-125.

58. Ibid., p.211.

59. Ibid., pp.219-220.

60. Ibid., p.159.

61. Ibid., p.160.

62. Ibid., p.44.

63. Ibid., p.56.

64. Ibid., p.60.

65. Ibid., pp.64-65.

66. Ibid., p.69.

CHAPTER SEVEN: CONCLUSION

> "In one of the papers, you know, they called them Ken and Barbie. In Barbie's world, everything is an accessory - including Ken."[1]

The case of Paul Bernardo and Karla Homolka leaves a bad taste in one's mouth, not simply from the knowledge that terrible, heinous criminal atrocities were strategically perpetrated and meticulously concealed. It also stems from the bile that rises when contemplating how the system dealt with the situation and the punishments that resulted. The deductions reached in the previous chapter raise many challenges for future research on the Canadian criminal legal system and for developing proposals with respect to revising or overhauling the current status quo of the institutions of justice.

Following an analysis of the case of Paul Bernardo and Karla Homolka, it is apparent that gender was involved in the sentence that Karla Homolka received in so far as her diagnosis as a battered woman was accepted by the majority of the individuals involved and resulted in a lenient sentence in comparison to the one given to Paul Bernardo. However, it also became evident that although a gender factor was present, it was superseded by more pressing elements, specifically the need to ensure that the Crown possessed solid, credible evidence against Paul Bernardo, in the form of Karla Homolka's assistance and testimony, and the problems experienced by the police forces involved in terms of amassing evidence, particularly the miscommunication and resulting mishandling

of the suspects' samples for forensic testing. In addition, it was disappointing to discover that the findings that resulted in this thesis were not capable of surpassing previous research. Particularly dissatisfying was the inability to pinpoint the manner in which gender operates as an influencing factor in this case. While gender obviously affected the case and its outcomes, even if only acknowledged in light of its revolving around sexually based crimes, it was not possible to identify the exact effects gender contributed when looking at specific aspects of the events. It was only feasible to define areas, on the basis of the theoretical tenets and definitions outlined within this thesis, where gender was plainly involved and to discuss the ways in which it potentially affected the events that transpired.

Gender works in an extremely subtle manner which is difficult, if not impossible, to separate out of context and from other relevant factors, perhaps because for the most part it is inherently a part of ulterior related factors. Or perhaps it is because gender is so intrinsic to the way in which our current social institutions operate that it is not possible to simply pick out gender and view its effects to the exclusion of other factors. Engaging in such research, that of viewing a factor in a vacuum, if it is truly possible, would in all likelihood badly skew or distort the credibility of the proof one is trying to gather. Perhaps gender expresses its effects at a subconscious level in the minds of all of the parties

involved in the act of investigating, trying and deciding of a case and therefore the focus might be better aimed at what underlines the current system of justice. Perhaps attention and research should be shifted to the present day environments and education systems that allow biased lines of thinking, be they in terms of gender, race, or class for example, to be perpetuated in our social systems.

What was discovered in this thesis is that the argument that one's gender causes one to receive more lenient or harsher sentences than those of the opposite gender is too simplistic an explanation. Granted, gender bias possibly emerges through women being viewed as being instigative, sexualized or protected, yet relying on these characterizations as explanations for disparate sentences attempts to demote the complexities of a criminal case to an elementary level, which is simply unrealistic. Obviously gender is not the exclusive influence on the sentence an accused individual receives, in light of the previous case analysis, it is not even one of several major variables, but rather an elusive background player whose impact is hard to single out and prove. Therefore, it is more accurate and appropriate to argue that gender works at most in conjunction with other legally relevant factors when judgments on sentences are being decided.

In retrospect, the analysis that was undertaken did fulfill one of its primary

purposes, it did disclose that gender has a role throughout the unfolding and subsequent punishments handed down in the case. That, in and of itself, points to a need for further research to be undertaken in the field of gender and it effects on current social systems. Research should be conducted to facilitate an understanding of gender's role, regardless of whether this role is deemed to be problematic or not. Due to its arguably secondary influence on the aforementioned case, however, it becomes questionable how much onus there ought to be to reform our existing justice institutions in this regard. If gender is overridden by methodological and communication difficulties within the forces charged with the task of maintaining justice, should attention not be more firmly focused upon correcting such arguably "fixable" problems? From the aforementioned analysis, several possibilities for further research emerge, both from the results that were uncovered with respect to gender and its role in the legal system, and from the aftermath of the Bernardo-Homolka case itself.

Perhaps one of the most interesting areas open to future research entails a more critical examination of the effectiveness and accountability of the social institutions charged with upholding and maintaining justice. Such a critique could focus upon a consideration of the methodological and systemic problems that evidently need to be

addressed and surmounted in order that justice could be pursued and accomplished more efficiently. It could also, however, move beyond the mechanics of the justice system to assess the extent to which the system needs to be revised in light of claims that it contains stereotypical and discriminatory overtones. In essence, the definitions and methods which are currently being employed to study such phenomenon perhaps yield results that are too open to interpretation and criticism because the research hypotheses and methodology that have been developed are not able to accurately capture and explain the influence of gender as it truly manifests itself in judicial processes. It becomes evident using the currently established theoretical propositions and definitions that the factor is present in legal decisions in Canada's criminal courts, but it is not possible to tease out in all certainty the exact manner in which gender operates to affect said decisions. Implementing current forms of research to elicit information on the workings of gender on sentences handed down by the courts is akin to a patient having a back pain that a doctor can identify, yet regardless of the existing medical technology that he or she employs cannot locate its cause or origin.

Several domains for further research also stem from the case of Paul Bernardo and Karla Homolka. In the Galligan report on particular matters relating to Karla

Homolka, great weight is placed upon a psychological study that was undertaken in Australia, called "Compliant Victims of a Sexual Sadist".[2] The paper details the physical, sexual, and psychological abuse to which the test sample of seven women were subject as well as the process by which they were apparently transformed from independent, competent women to compliant appendages of their criminally active partners.[3] Galligan notes that there are striking similarities between what these subjects underwent and Karla Homolka's experiences.[4] In fact, one of Karla Homolka's psychological assessors also refers to this article. It would be most interesting to thoroughly compare Karla Homolka's assessments and the events in which she was involved with Paul Bernardo to the data that is available on the seven women subjects of this study and to attempt to determine the accuracy of the comparison, as well as to reconsider the case and its outcomes in light of the results obtained from such a paralleling of psychological cases. This would potentially bring forth greater clarity in understanding Karla Homolka's claims and rationale for the criminal activities in which she participated.

In line with a psychologically oriented research focus and with reference to the opening quote cited in this chapter, perhaps it would be worthwhile to re-examine the events and the impact of gender, or potentially how it was manipulated to Karla's favor, by

viewing Karla Homolka through the lens of being the "mastermind" or "dominant partner" in the events that transpired - this would be possible if court transcripts of Paul Bernardo's trial could be attained, as each of the accused presented differing testimony to the jury at his trial. Perhaps this would enable a clearer example of gender enacting an influence upon the sentences that resulted in this particular case.

Another area of investigation centered around gender would be to investigate the issue of sororicide in this case and its implications with respect to the types of criminal activities which female offenders are engaging in, as well as the impact that such crimes have upon families, particularly the parents, wherein the victim and the offender reside in the same residence. The murdering of Tammy Homolka by Karla Homolka and Paul Bernardo remains one of the hardest of their crimes to comprehend. What were the factors involved that led an older sibling to betray and sacrifice her youngest sister? Could the battered woman's syndrome be applied as an explanation to this crime?

Further areas of study related specifically to the Bernardo- Homolka case include two specific events that have occurred in the aftermath. On January 23, 1997, the first lawyers involved in the defense of Paul Bernardo, Carolyn MacDonald and Ken Murray were charged with regard to the videotapes that the police were unable to recover during

their seventy-one day search of Karla and Paul's residence at 57 Bayview Drive. These two lawyers stepped down from representing Paul Bernardo during his trial and were replaced by John Rosen in the fall of 1994, who turned over the tapes to police. The tapes show Homolka and Bernardo raping Leslie Mahaffy, Kristen French, Tammy Homolka and Jane Doe. Murray and MacDonald were charged with obstructing justice and possessing child pornography, Murray was additionally charged with making obscene material. These charges carry prison terms of up to ten years. The most prominent area of study that arises out of these proceedings is the debate over the extent of privilege that lawyers can claim in defending their clients, as there exist rules prohibiting lawyers from withholding information from authorities in certain circumstances. Arguably the importance of these incriminating videotapes with respect to prosecuting Paul Bernardo as well as how they would have affected the plea-bargain that was entered into with Karla Homolka is worthy of discussion. Also worth investigation, once again, is the manner in which police investigations are carried out. In particular, perhaps the rules of conduct guiding and defining the manner in which joint task forces are assembled and maintained, would benefit from being critically reviewed and reassessed.

In addition to the possibilities for further research that were revealed through the

undertaking of the Bernardo-Homolka case analysis, it becomes clear that several suggestions for reform manifest themselves. Throughout the Campbell Report[5], Mr. Justice Archie Campbell repeatedly remarks that a computerized information management system needs to be implemented throughout the province of Ontario so that collaborative police force investigations will be more efficient, particularly in terms of communication and the sharing of information and evidence. It is also important in terms of ensuring that the large quantities of information collected are compiled into one main system whereby they are sorted and organized by the computer and stored in one main readily accessible area. However, such a reform is only the tip of the iceberg in terms of what would improve Canada's current systems enjoined with the challenge of obtaining and implementing social justice. In addition, several other reforms became evident throughout the investigation of the Bernardo-Homolka case. For example, one search squad, consisting of crime scene investigators, was used for the seventy-one day search of 57 Bayview Drive. In all likelihood, it would have benefited the investigation if a second, independent squad of officers, in particular those who investigate narcotics, searched the residence because, according to Campbell[6], these officers tend to be more aggressive in their searching procedures and may have been able to collect evidence that the first squad

may not have located. A second example concerns the need to re-instill common sense into police investigation procedures. When the police were attempting to establish who had purchased the cement in which Leslie Mahaffy's body parts were concealed, they only examined sales receipts. It would have obviously been very beneficial to their case had they also examined return and exchange receipts as well. In fact, they would have discovered that Bernardo had returned the cement left over from his criminal activities. There are numerous other reforms of investigation procedure that would be propitious if implemented, such as an end to the competition that exists between forces to be the first one to solve a case, and stricter rules regarding the follow-up of suspect samples that are submitted to the Centre of Forensic Sciences for scientific testing. Furthermore, the problems encountered in this case raise questions as to whether the police were negligent or incompetent in this investigation because of the nature of the crimes and / or the gender of the victims.

Police investigation is not the only area in need of revision, other areas of the Canadian legal system would benefit from the implementation of reform. Though not a factor in the Bernardo-Homolka case, reforms would also be particularly useful in the area of training judges to be more empathetic and understanding of those who appear before

them. As Sheilah Martin[7] and Lynn Smith[8] have argued, heightened judicial neutrality and increased objectivity contains an understanding of the life circumstances of both sexes. It is further contended that without the use of empathy, "decisions rest implicitly upon the assumption that the persons affected are like the decision makers"[9]. An empathetic judge, by taking into consideration the pertinent distinctions between the individuals involved and himself or herself, inclines toward a more nonpartisan decision. In summary, a total detachment is not necessarily impartial nor objective nor possible, as it leaves the decision maker with solely his own perspective of the world to consider.[10] A consideration of the lives and circumstances of the victims and accuseds coming before Canadian courts seems to be becoming the trend, as was started in R. v. Seaboyer[11], however it is not clear that this has become common practice. Issues regarding the reform of legal system ideologies and practices continue to encourage academic discussions.[12]

Also in need of reform is the manner in which plea-bargains are entered into and negotiated. It is clear, due to the amount of controversy stirred by the deal made with Karla Homolka, that the public to which our justice systems are responsible does not understand how such deals are arrived at, nor do they seem to comprehend the not-necessarily pleasant need for such a practice to exist within our system. Perhaps if

relatively flexible guidelines were established for the process of plea-bargaining in general and detailed conditions for specific cases were made more visible, there would be less confusion and public outrage when the Crown deems it necessary to engage in such practices. It is not a question of considering eliminating this more informal legal process, perhaps it is more a matter of making the practice more visible and accountable in the criminal justice system, i.e.; to make it a more "legitimate", and therefore acceptable, practice.

In summation, there are obviously many realms within the legal system that require continued as well as subsequent research and reform, some arguably more urgently than others. It is also apparent that gender remains an elusive factor in the quest to evolve our current criminal justice institutions into the neutral, objective social system that it is purported to be. Is it a question of gender being too complex or too much of an all-encompassing phenomenon that it defies being accurately targeted and studied? Or is it that gender, while certainly present, if only on the basis of human nature, does not play an influential role within the Canadian legal system? Further research and the development of new methodologies are required.

Endnotes: Chapter Seven

1. Williams, S. Invisible Darkness: The Strange Case of Paul Bernardo and Karla Homolka, 1996, p.16.

2. Galligan, The Honorable P. Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka: Appendix "F", March, 1996, pp.334-340.

3. Ibid., p.335.

4. Galligan, The Honorable P. Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka, March, 1996, p.169.

5. Campbell, Mr. Justice A. Bernardo Investigation Review: Report of Mr. Justice Archie Campbell, June, 1996.

6. Ibid., p.228.

7. Martin, S. "Proving Gender Bias in the Law and Legal System", in Investigating Gender Bias:Law, Courts, and the Legal Profession, Chapter Two, (Brockman, J., and D. Chunn, ed.), 1993, pp.19-36.

8. Smith, L. quoted in Investigating Gender Bias: Law, Courts, and the Legal Profession. (Brockman, J., and D. Chunn, ed.), 1993, p.4.

9. Ibid., p.4.

10. Ibid., p.4.

11. R. v. Seaboyer (1991), S.C.J. No.62; 2 S.C.R. 577.

12. See for example: Brockman, J., and D. Chunn, (ed.). Investigating Gender Bias: Law, Courts, and the Legal Profession, 1993; and Wilson, Madame Justice B. "Will Women Judges Really Make a Difference?". Osgoode Hall Law Journal, Vol.28, 1990, pp.507-522.

Bibliography

Adelberg, E., and C. Currie, (ed.). In Conflict with the Law: Women and the Canadian Justice System. Vancouver: Press Gang Publishers, 1993.

Adler, F., and R. Simon. The Criminology of Deviant Women. Boston: Houghton Mifflin Company, 1979.

Adler, F. Sisters in Crime: The Rise of the New Female Criminal. New York: McGraw-Hill Book Company, 1975.

Albertson Fineman, M., and N. Sweet Thomadsen, (ed.). At the Boundaries of Law: Feminism and Legal Theory. New York: Routledge, 1991.

Allen, L., (ed.). Section 15 - Equality in the Criminal Justice System and the Workplace: Fact or Fantasy? Seventh Biennial Conference of the National Association of Women and the Law - Winnipeg. Ottawa: National Association of Women and the Law, February, 1987.

Anderson, E. "The "Chivalrous" Treatment of the Female Offender in the Arms of the Criminal Justice System: A Review of the Literature". Social Problems, Vol.23, No.3, February, 1976, pp.350-357.

Backhouse, C. Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada. Toronto: Women's Press, 1991.

Backhouse, C. Women and the Law in Nineteenth Century Canada. Winnipeg: Canadian Legal History Project, Faculty of Law, University of Manitoba, 1991.

Backhouse, C. "Desperate Women and Compassionate Courts: Infanticide in Nineteenth-Century Canada". University of Toronto Law Journal, Vol.34, No.4, 1984, pp.447-478.

Backhouse, C. "Nineteenth-Century Canadian Rape Law 1800-92". Essays in the History of Canadian Law, Volume II. (Flaherty, ed.) Toronto: The Osgoode Society, 1983, pp.200-243.

Bardsley, B. Flowers in Hell: An Investigation into Women and Crime. London: Pandora Press, 1987.

Bartlett, K., and R . Kennedy, (ed.). Feminist Legal Theory: Readings in Law and Gender. Boulder: Westview Press, 1991.

Beattie, J. Crime and the Courts in England, 1600-1800. Princeton: Princeton University Press, 1986.

Bock, G., and S. James, (ed.). Beyond Equality and Difference: Citizenship, Feminist Politics and Female Subjectivity. London: Routledge, 1992.

Boldt, M. Surviving as Indians: The Challenge of Self-Government. Toronto: University of Toronto Press, 1993.

Boritch, H. "Gender and Criminal Court Outcomes: An Historical Analysis". Criminology, Vol.30, No.3, 1992, pp.293-325.

Bowker, L. Women, Crime and the Criminal Justice System. Lexington: D.C. Heath and Company, 1978.

Boyd, C., and E. Sheehy. Feminist Perspectives on Law: Canadian Theory and Practice. Jurisprudence Working Paper Series. Ottawa: Carleton University, 1986.

Boyd, C., and E. Sheehy. "Feminist Perspectives on Law: Canadian Theory and Practice". Canadian Journal of Women and the Law, Vol.2, 1986, pp.1-52.

Boyd, N. The Last Dance: Murder in Canada. Scarborough: Prentice Hall Canada Inc., 1988.

Boyle, C., et al. A Feminist Review of Criminal Law. Ottawa: Minister of Supply and Services Canada, December, 1985.

Brockman, J., and D. Chunn, (ed.). Investigating Gender Bias: Law, Courts, and the Legal Profession. Toronto: Thompson Educational Publishing, Inc., 1993.

Brockman, J., Evans, D., and K. Reid. "Feminist Perspectives for the Study of Gender Bias in the Legal Profession". Canadian Journal of Women and the Law, Vol.5, 1992, pp.37-62.

Burnside, S., and A. Cairns. Deadly Innocence: The True Story of Paul Bernardo, Karla Homolka, and the Schoolgirl Murders. New York: Warner Books, 1995.

Cain, M., and A. Hunt. Marx and Engels on Law. London: Academic Press, 1979.

Campbell, Mr. Justice A. Bernardo Investigation Review: Report of Mr. Justice Archie Campbell. Toronto: June 1996.

Canada. Royal Commission on the Status of Women in Canada. Ottawa: Information Canada, 1970.

Canadian Bar Association - Ontario. Institute of Continuing Legal Education - Feminist Analysis: Challenging Law and Legal Processes. Toronto: Canadian Bar Association - Ontario, January / February, 1992.

Canadian Bar Association. The Canadian Bar Association Task Force on Gender Equality. Canada: May, 1991.

Canadian Sentencing Commission. Sentencing Reform: A Canadian Approach - Report of the Canadian Sentencing Commission. Ottawa: Supply and Services Canada, February, 1987.

Carlen, P., and A. Worrall, (ed.). Gender, Crime and Justice. Milton Keynes: Open University, 1987.

Carrigan, D. Crime and Punishment in Canada: A History. Toronto: McClelland & Stewart Inc., 1991.

Caudill, D., and S. Gold, (ed.). Radical Philosophy of Law: Contemporary Challenges to Mainstream Legal Theory and Practice. New Jersey: Humanities Press, 1995.

Cavan, R. Criminology. New York: Crowell, 1962.

Comeau, P., and A. Santin. The First Canadians: A Profile of Canada's Native People Today. Toronto: James Lorimer & Company, 1995.

Crites, L. The Female Offender. Lexington: D.C. Heath and Company, 1976.

Culliver, C., (ed.). Female Criminality: The State of the Art. New York: Garland Publishing, Inc., 1993.

Davey, F. Karla's Web: A Cultural Investigation of the Mahaffy-French Murders. Toronto: Penguin Books Canada, Ltd., 1995.

Dawson, B., (ed.). Women, Law and Social Change. North York: Captus Press, 1990.

Dickason, O. Canada's First Nations: A History of Founding Peoples From Earliest Times. Toronto: McClelland & Stewart, Inc., 1993.

Dranoff, L. Women in Canadian Law. Toronto: Fitzhenry & Whiteside Limited, 1977.

Duffin, J. Langstaff: A Nineteenth-Century Medical Life. Toronto: University of Toronto Press, 1993.

Eagly, A., and A. Mladinic. "Gender Stereotypes and Attitudes Toward Women and Men". Personality and Psychology Bulletin, Vol.15, No.4, 1989, pp.453-558.

Edwards, S., (ed.). Gender, Sex and the Law. London: Croom Helm Ltd., 1985.

Edwards, S. Women on Trial: A Study of the Female Suspect, Defendant and Offender in the Criminal Law and Criminal Justice System. Manchester: Manchester University Press, 1984.

Ekstedt, J., and C. Griffiths. Corrections in Canada: Policy and Practice. Second edition. Toronto: Harcourt Brace & Company, Canada, 1988.

Faith, K. Unruly Women: The Politics of Confinement and Resistance. Vancouver: Press Gang Publishers, 1993.

Faludi, S. Backlash: The Undeclared War Against American Women. New York: Bantam Doubleday Dell Publishing Group, Inc., 1992.

Federal/Provincial/Territorial Working Group of Attorneys General Officials on Gender Equality in the Canadian Justice System. Gender Bias in the Courts (Ontario - Northwest Territories): Background Papers. Canada: April, 1992.

Feinman, C. Women in the Criminal Justice System. New York: Praeger Publishers, 1980.

Fox, J., and T. Hartnagel. "Changing Social Roles and Female Crime in Canada: A Time Series Analysis". Canadian Review of Sociology and Anthropology, Vol.16, No.1, 1979, pp.96-104.

Galligan, QC, The Honourable P. Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka. Toronto: ADR Chambers, March, 1996.

Gartner, R. "The Victims of Homicide: A Temporal and Cross-National Comparison". American Sociological Review, Vol.55, 1990, pp.92-106.

Gartner, R., et al. "Gender Stratification and the Gender Gap in Homicide Victimization". Social Problems, Vol.37, 1990, pp.593-612.

Gavigan, S. "Petit Treason in Eighteenth Century England: Women's Inequality Before the Law". Canadian Journal of Women and the Law, Vol.3, 1989-90, pp.335-374.

Graycar, R., and J. Morgan. The Hidden Gender of Law. Annandale: The Federation Press, 1990.

Griffiths, C., and S. Verdun-Jones. Canadian Criminal Justice. Toronto: Butterworths Canada Ltd., 1989.

Griffiths, C., Klein, J., and S. Verdun-Jones. Criminal Justice in Canada: An Introductory Text. Western Canada: Butterworth & Co., 1980.

Hagan, J., and N. O'Donnel. "Sexual Stereotyping and Judicial Sentencing: A Legal Test of the Sociological Wisdom". Canadian Journal of Sociology, Vol.3, No.3, 1978, pp.309-319.

Hartman, M. Victorian Murderesses: The True Story of Thirteen Respectable French and English Women. New York: Schocken Books, 1977.

Hartmann, B. "China - 'Gold Babies' and Disappearing Girls". Reproductive Rights and Wrongs. Boston: South End Press, 1995, pp.157-170.

Hartsock, N. "The Feminist Standpoint: Developing Grounds for a Specifically Feminist Historical Materialism". Feminism and Methodology. (Harding, S., ed.). Bloomington: Indiana University Press, 1987, pp.157-180.

Hatch, A., and K. Faith. "The Female Offender in Canada: A Statistical Profile". Canadian Journal of Women and the Law, Vol.3, 1989-90, pp.432-456.

Heidensohn, F. Women and Crime. Houndsmills: Macmillan Publishers, Ltd., 1985.

Hoff-Sommers, C. Who Stole Feminism? How Women Have Betrayed Women. New York: Simon & Schuster, 1994.

Hoffman-Bustamante, D. "The Nature of Female Criminality". Issues in Criminology, Vol.8, No.2, 1973, pp.117-136.

Hosek, C. "Women and the Constitutional Process". And No One Cheered. (Banting, K., and R. Simeon, ed.). Toronto: Methuen, 1983.

Iacovetta, F., and M. Valverde, (ed.). Gender Conflicts: New Essays in Women's History. Toronto: University of Toronto Press, 1992.

Inquiry Committee. Report to the Canadian Judicial Council by the Inquiry Committee Appointed under Subsection 63(1) of the Judges Act to Conduct a Public Inquiry into the Conduct of Mr. Justice Jean Bienvenue of the Superior Court of Quebec in R. v. Theberge. Quebec: 1996.

Jackson, M., and C. Griffiths. Canadian Criminology: Perspectives on Crime and Criminality. Toronto: Harcourt Brace Jovanovich, Canada, 1991.

Jones, A. Women Who Kill. Second edition. Boston: Beacon Press, 1996.

Kealey, L., (ed.). A Not Unreasonable Claim: Women and Reform in Canada, 1880s - 1920s. Toronto: The Women's Educational Press, 1979.

Keohane, N., Rosaldo, M., and B. Gelpi, (ed.). Feminist Theory: A Critique of Ideology. Sussex: The Harvester Press, 1982.

Kirsta, A. Deadlier than the Male: Violence and Aggression in Women. Hammersmith: Harper Collins Publishers, 1994.

Klein, D. "The Etiology of Female Crime: A Review of the Literature". Issues in Criminology, Vol.8 (Fall), 1973, pp.3-30.

Koedt, A., Levine, E., and A. Rapone, (ed.). Radical Feminism. Toronto: Fitzhenry & Whiteside, Ltd., 1973.

Kratcoski, P. "Differential Treatment of Delinquent Boys and Girls in Juvenile Court". Child Welfare, Vol.53, January, 1974, pp.16-22.

Law Reform Commission of Canada (LRCC). Studies on Sentencing. Ottawa: Information Canada, 1974.

Law Society of British Columbia. Gender Equality in the Justice System: A Report of The Law Society of British Columbia Gender Bias Committee: Volumes One and Two. British Columbia: April, 1992.

Law Society of British Columbia. The Law Society of British Columbia's Subcommittee on Women in the Legal Profession: Subcommittee's Report. British Columbia: January, 1992.

Leonard, E. Women, Crime and Society: A Critique of Theoretical Criminology. New York: Longman Inc., 1982.

MacKinnon, C. Only Words. Cambridge: Harvard University Press, 1993.

MacKinnon, C. Toward a Feminist Theory of the State. Cambridge: Harvard University Press, 1989.

MacKinnon, C. Feminism Unmodified: Discourses on Life and Law. Cambridge: Harvard University Press, 1987.

MacKinnon, C. "Feminism, Marxism, Method, and the State: An Agenda for Theory". Signs, Vol.7, 1982, pp.515-544.

Mahoney, K., and S. Martin, (ed.). Equality and Judicial Neutrality. Toronto: Carswell, 1987.

Manitoba Association of Women and the Law. Gender Equality in the Courts - Criminal Law: A Study by the Manitoba Association of Women and the Law. Manitoba: March, 1991.

Mann, C. Female Crime and Delinquency. Alabama: University of Alabama Press, 1984.

Martinson, D. "Implications of Lavallee v. R. for Other Criminal Law Doctrines", in "A Forum on Lavallee v. R.: Women and Self-Defence". University of British Columbia Law Review, Vol.25, 1991.

Martinson, D. "Lavallee v. R.: The Supreme Court of Canada Addresses Gender Bias in the Court". University of British Columbia Law Review, Vol.24, 1990.

Matsuda, M. "Looking to the Bottom: Critical Legal Studies and Reparations". Harvard Civil Rights - Civil Liberties Law Review, Vol.22, 1987, pp.323-399.

McLachlin, B. "Crime and Women - Feminine Equality and the Criminal Law". University of British Columbia Law Review, Vol.25, 1991, pp.1-22.

McLean, S., and N. Burrows, (ed.). The Legal Relevance of Gender: Some Aspects of Sex-Based Discrimination. Atlantic Highlands: Humanities Press International, Inc., 1988.

Mohr, R., (ed.). Sentencing and Punishment: Critical Dimensions, Volume II. Ottawa: Carleton University Press, 1995.

Mohr, R. "Sentencing as a Gendered Process: Results of a Consultation". Canadian Journal of Criminology, Vol.32, No.3, July 1990, pp.479-485.

Morris, A. Women, Crime and Criminal Justice. Oxford: Basil Blackwell Ltd., 1987.

Mukherjee, S., and J. Scott, (ed.). Women & Crime. North Sydney: George Allen & Unwin Australia Pty. Ltd., 1981.

Nagel, I., et al. "Sex Differences in the Processing of Criminal Defendants". Women and the Law: A Social Historical Perspective, Volume 1: Women and the Criminal Law. (Weisberg, D., (ed.).) Cambridge: Schenkman, 1982, pp.259-283.

National Council of Women of Canada. Women of Canada: Their Life and Work. The National Council of Women of Canada, 1975.

Neuman, W. Social Research Methods: Qualitative and Quantitative Approaches. Second edition. Needham Heights: Allyn & Bacon, 1994.

O' Donovan, K. Sexual Divisions in Law. London: Weidenfeld and Nicolson Ltd., 1985.

Parker, G. "The Legal Regulation of Sexual Activity and the Protection of Females". Osgoode Hall Law Journal, Vol.21, No.2, 1983, pp.187-244.

Pickard, T., and P. Goldman. Dimensions of Criminal Law. Toronto: Emond Montgomery Publication Limited, 1992.

Pollock-Byrne, J. Women, Prison & Crime. Pacific Grove: Brooks / Cole Publishing Company, 1990.

Prentice, A., et al. Canadian Women: A History. Toronto: Harcourt Brace Jovanovich, 1988.

Pron, N. Lethal Marriage: The Unspeakable Crimes of Paul Bernardo and Karla Homolka. Toronto: McClelland-Bantam Inc., 1995.

Razack, S. "Using Law for Social Change: Historical Perspectives". Queen's Law Journal, Vol.17,1992, pp.31-53.

Reaume, D. "The Social Construction of Women and the Possibility of Change: Unmodified Feminism Revisited". Canadian Journal of Women and the Law, Vol.5, 1992, pp.463-483.

Reesor, B. The Canadian Constitution in Historical Perspective: With a Clause-By-Clause Analysis of the Constitution Acts and the Canada Act. Scarborough: Prentice-Hall Canada Inc., 1992.

Reitsma-Street, M. "A Review of Female Delinquency". The Young Offenders' Act: A Revolution in Canadian Juvenile Justice. (Leschied, A. ed.) Toronto: University of Toronto Press, 1991, pp.248-277.

Rhode, D. Justice and Gender: Sex Discrimination and the Law. Cambridge: Harvard University Press, 1989.

Roberts, J., and R. Mohr, (ed.). Confronting Sexual Assault: A Decade of Legal and Social Change. Toronto: University of Toronto Press, 1994.

Russell, M. "A Feminist Analysis of the Criminal Trial Process". Canadian Journal of Women and the Law, Vol.3, 1989-90, pp.552-562.

Salhany, R. The Police Manual of Arrest, Seizure & Interrogation. Fourth edition. Toronto: The Carswell Company Limited, 1988.

Scott, J. "Gender: A Useful Category of Historical Analysis". Gender and the Politics of History. New York: Columbia University Press, 1986, pp.28-53.

Sheehy, E. Personal Autonomy and the Criminal Law: Emerging Issues for Women. Background Paper for the Canadian Advisory Council on the Status of Women. Ottawa: September, 1987.

Sheppard, C. "Equality in Context: Judicial Approaches in Canada and the United States". UNB Law Journal, Vol.39, 1990, pp.111-125.

Simon, R., and J. Landis. The Crimes Women Commit, The Punishments They Receive. Lexington: D.C. Heath and Company, 1991.

Simon, R. Women and Crime. Lexington: D.C. Heath and Company, 1975.

Smart, C. Law, Crime and Sexuality: Essays in Feminism. London: Sage Publications Ltd., 1995.

Smart, C. "The New Female Criminal: Reality or Myth?". British Journal of Criminology, Vol.19, No.1, 1979, pp.50-59.

Smart, C. Women, Crime and Criminology: A Feminist Critique. London: Routledge & Kegan Paul Ltd., 1976.

Strange, C. "Patriarchy Modified: The Criminal Prosecution of Rape in York County, Ontario,1880-1930". Essays in the History of Canadian Law, Volume V. (Phillips, et al, ed.). Toronto: The Osgoode Society, 1994, pp.107-251.

Strange, C. The Politics of Punishment: The Death Penalty in Canada, 1867-1976. Winnipeg: Canadian Legal History Project, Faculty of Law, University of Manitoba, 1992.

Strange, C. "The Criminal and Fallen of Their Sex: The Establishment of Canada's First Women's Prison, 1874-1901". Canadian Journal of Women and the Law, Vol.1, 1985, pp.79-92.

Sullivan, J. Policing Poverty: The Rhetoric and Realities of Drug Enforcement. M.A. Thesis, Legal Studies. Ottawa: Carleton University, 1996.

Tomlinson, M., et al, (ed.). Whose Law & Order? Aspects of Crime and Social Control In Irish Society. Belfast: The Sociological Association of Ireland, 1988.

Vorst, J., et al (ed.). Race, Class, Gender: Bonds and Barriers. Toronto: Garamond Press, 1991.

Weiner, N., and M. Wolfgang, (ed.). Violent Crimes, Violent Criminals. Newbury Park: Sage Publications, Inc., 1989.

Weisstub, D., (ed.). Law and Policy: Osgoode Hall Law School, York University, Annual Lecture Series 1974-75. Toronto: Osgoode Hall Law School, York University, 1976.

Wild, K. An Ideological Analysis of the News Discourse Surrounding the Ban on Publication of the Karla Teale Manslaughter Trial. M.A. Thesis, School of Journalism and Communication. Ottawa: Carleton University, 1994.

Williams III, F., and M. McShane, (ed.). Criminological Theory. Second edition. Englewood Cliffs: Prentice-Hall, 1994.

Williams, S. Invisible Darkness: The Strange Case of Paul Bernardo and Karla Homolka. Toronto: Little, Brown and Company (Canada) Limited, 1996.

Wilson, Madame Justice B. "Will Women Judges Really Make a Difference?". Osgoode Hall Law Journal, Vol.28, 1990, pp.507-522.

Wilson, J. Thinking About Crime. Third edition. New York: Vintage Books, 1985.

Yin, R. Case Study Research: Design and Methods. Revised edition. Newbury Park: Sage Publications, Inc., 1989.

Zingraff, M., and R. Thomson. "Differential Sentencing of Women and Men in the U.S.A.". International Journal of the Sociology of Law, Vol.12, 1984, pp.401-413.

Unpublished Sources

Lahey, K. Women, Criminal Law, and Equality. Unpublished draft, 1987.

L.E.A.F. "L.E.A.F. and Pornography: Litigating on Equality and Sexual Representations". Confidential draft, pp.1-19.

Cases Cited

R. v. Seaboyer (1991), S.C.J. No.62; 2 S.C.R. 577.

R. v. Lavallee (1990), 1 S.C.R. 852.

R. v. Whynot (1983), 9 C.C.C. 449 (N.S.C.A.)

Newspaper and Magazine Articles

Abbate, G. "Arrests in seizure of papers with Homolka story a 'sham'". Globe and Mail, December 13, 1993.

Abbate, G. "Teale lawyer joins publication ban appeal, Homolka trial secrecy called unfair". Globe and Mail, July 9, 1993.

Alaton, S. "Amid the expressions of chagrin and dread, its hard to ignore the excitement that attends our discussions of the slayings". Globe and Mail, July 17, 1993, p.A5.

Alberts, S. "Bernardo trial haunts victims' family". Ottawa Citizen, November 22, 1996, p.A6.

Appleby, T. "Murray ill-equipped for glare of publicity". Globe and Mail, January 24, 1997, p.A6.

Artuso, A. "Grit rips done deal // Homolka report". Toronto Sun, March 20, 1996, p.14.

Artuso, A. "Homolka plea pact stands // A-G backs 'deal with the devil'". Toronto Sun, March 19, 1996, p.5.

Artuso, A. "Homolka deal to go public // secret details will be aired on Monday". Toronto Sun, March 16, 1996, p.4.

Bailey, I., and W. Cox. "Trial ban comes under fire". Calgary Herald, July 6, 1993, p.A3.

Bain, G. "Cross-border journalism". Maclean's, January 24, 1994, p.63.

Barber, J. "Right to a fair trial a sacred principle". Globe and Mail, December 2, 1993, p.A5.

Bindman, S. "Top court to weigh rights to fair trial against freedom of the press". Ottawa Citizen, January 24, 1994, p.A3.

Bindman, S. "Teale ban a bust - gag order can't stop 1 in 4 Ontarians getting details: poll". Hamilton Spectator, December 29, 1993, p.A1.

Bindman, S. "Gag order didn't deter us from learning Teale details". Ottawa Citizen, December 28, 1993, p.A4.

Blackwell, T. "Bernardo rape hearing canceled". Ottawa Citizen, May 4, 1994, p.A4.

Blackwell, T. "Crown argues against right to appeal publication ban: third parties will clog courts, Crown argues". Ottawa Citizen, February 1, 1994, p.A4.

Blackwell, T. "Judge 'agonized' over ban". Ottawa Citizen, July 6, 1993, p.A1.

Blackwell, T. "News ban in Teale case irks curious spectators". Winnipeg Free Press, July 6, 1993, p.A3.

Blackwell, T. "Teale wants wife's deal on killings made public". Ottawa Citizen, June 29, 1993, p.A1.

Blanchfield, M. "Customs can't halt Teale story". Ottawa Citizen, November 25, 1993, p.A4.

Blanchfield, M. "U.S. paper publishes banned details of Karla Teale's manslaughter trial". Ottawa Citizen, November 24, 1993, p.A2.

Blatchford, C. "Who really wins in Homolka deal". Toronto Sun, March 22, 1996, p.5.

Blatchford, C. "Better the devil you know...". Toronto Sun, March 20, 1996, p.5.

Blatchford, C. "Report is a judicial pat on the head". Toronto Sun, March 19, 1996, p.5.

Bongers, A. "'Distasteful' Homolka deal ruled necessary". Ottawa Citizen, March 19, 1996, pp.A1-2.

Bourque Wiley, C. "Sex-killer's lawyers want quick trial on charges over videotapes". Calgary Herald, February 26, 1997, p.A12.

Calgary Herald. "Bernardo trial wasn't necessary: victims' lawyer". Calgary Herald, April 3, 1997, p.B4.

Calgary Herald. "Paul Bernardo: Court won't name appeal lawyer". Calgary Herald, March 28, 1997, p.A19.

Calgary Herald. "Bernardo seeks appeal lawyer". Calgary Herald, March 19, 1997, p.A3.

Calgary Herald. "Bernardo's ex-lawyers to discuss charges". Calgary Herald, March 18, 1997, p.A14.

Calgary Herald. "Lawyer's obligations may be defined". Calgary Herald, January 25, 1997, p.A12.

Calgary Herald. "Bernardo attacker hailed as hero". Calgary Herald, December 22, 1996, p.A11.

Calgary Herald. "Homolka trial: man fined for breaking publication ban". Calgary Herald, December 8, 1996, p.A5.

Calgary Herald. "Galligan inquiry: new Homolka charges?". Calgary Herald, March 17, 1996, p.A10.

Calgary Herald. "Homolka's deal to get closed-door scrutiny". Calgary Herald, November 15, 1995, p.A10.

Calgary Herald. "Deals with the devil? people hate plea bargains like Karla Homolka's, courts depend on them". Calgary Herald, September 3, 1995, p.A10.

Calgary Herald. "Homolka's education raises public ire: time behind bars can be used to get a degree". Calgary Herald, July 28, 1995, p.A9.

Calgary Herald. "Homolka kills time at school: critics argue public shouldn't pay for convicts". Calgary Herald, September 26, 1994, p.A10.

Calgary Herald. "Newspapers launch challenge to publication ban". Calgary Herald, July 10, 1993, p.A2.

Calgary Herald. "Suspect's wife now charged". Calgary Herald, May 19, 1993, p.A3.

Cobb, C., and E. Payne. "Journalists respect court ban". Globe and Mail, July 7, 1993, p.A1.

Cobb, C., and E. Payne. "Journalists respect court ban". Ottawa Citizen, July 7, 1993, p.A1.

Cox, B. "Supreme Court hears arguments on gag orders". Ottawa Citizen, January 25, 1994, p.A5.

Cox, W. "Press outraged, sickened". Winnipeg Free Press, July 9, 1993, p.A1.

Cox, W. "Views differ on influence of media in high-profile trials". Calgary Herald, July 7, 1993, p.A5.

Cox, W. "Public opinion plays major role in how cases are judged -- lawyer". Halifax Chronicle Herald, July 3, 1993, p.A10.

Coyle, J. "Customs officials go to ridiculous lengths to stop Homolka story at border". Ottawa Citizen, November 28, 1993, p.A10.

Crone, G. "Attorney general names retiring judge to investigate Homolka plea-bargain". Ottawa Citizen, November 15, 1995, p.A11.

Duffy, A. "Homolka may be moved near killer ex-husband". Calgary Herald, January 25, 1997, p.A12.

Duncanson, J. "Star bids to reverse Homolka gag order". Toronto Star, July 9, 1993, p.A1.

Duncanson, J., and N. Pron. "Homolka judge bars public, curbs media". Toronto Star, July 6, 1993, p.A1.

Ferguson, R. "Two women sue police over Bernardo rapes". Calgary Herald, December 24, 1996, p.A9.

Finkle, D. "The Current Affair Affair". Globe and Mail, December 4, 1993, p.D1.

Ford, C. "Justice was not seen to be done". Calgary Herald, July 8, 1993, p.A4.

Fotheringham, A. "Judge's ruling on Homolka trial an exercise in naivete". Financial Post, July 10, 1993, p.A3.

Fuller, A. "Friends of Kristen march in favor of publication ban, but other local residents say community needs truth". Globe and Mail, July 6, 1993, p.A3.

Galloway, G. "Bernardo lawyers charged over tapes". Calgary Herald, January 24, 1997, p.A3.

Galloway, G. "Behind prison doors". Calgary Herald, September 1, 1996, p.A8.

Galloway, G. "Bernardo case: families say pornographic evidence should be kept form public, media". Ottawa Citizen, February 6, 1996, p.A4.

Globe and Mail. "Homolka eligible for pass". Globe and Mail, January 7, 1997, p.A3.

Globe and Mail. "Former Bernardo lawyer ends silence over tapes". Globe and Mail, September 7, 1995, p.A7.

Globe and Mail. "Homolka testimony challenged". Globe and Mail, September 5, 1995, p.A1, A10.

Globe and Mail. "Homolka jail term up to board". Globe and Mail, September 4, 1995, p.A6.

Globe and Mail. "Risk of Bernardo's killing Homolka rated 'high'". Globe and Mail, September 2, 1995, A5.

Globe and Mail. "Homolka trial caused anger on all sides". Globe and Mail, September 1, 1995, p.A6, A7.

Globe and Mail. "Homolka's deal with Crown likely to stick". Globe and Mail, July 1, 1995, p.A9.

Globe and Mail. "Homolka reveals plea bargain". Globe and Mail, June 30, 1995, p.A1, A8.

Globe and Mail. "Death of Tammy focus of testimony". Globe and Mail, May 27, 1995, p.A1, A10.

Globe and Mail. "Bernardo portrayed as monster". Globe and Mail, May 19, 1995, p.A1, A10.

Globe and Mail. "Lawyers argue for Homolka appearance". Globe and Mail, April 20, 1995, p.A7.

Globe and Mail. "Homolka to reveal details, court told". Globe and Mail, April 6, 1995, p.A4.

Globe and Mail. "Why does the Homolka case thrill us so?". Globe and Mail, July 17, 1993, p.D3.

Globe and Mail. "Which court's rulings are we to observe?". Globe and Mail, July 8, 1993, p.A16.

Globe and Mail. "It casts a pall on the law". Globe and Mail, July 8, 1993, p.A25.

Globe and Mail. "Homolka doesn't fit category of worst offender, Kovacs says". Globe and Mail, July 7, 1993, p.A4.

Globe and Mail. "Mask lifts as curtain falls: Homolka finally couldn't hide her emotions". Globe and Mail, July 7, 1993, p.A1, A2.

Globe and Mail. "Reasons given for ruling: judge answers arguments". Globe and Mail, July 6, 1993, p.A1. A2.

Globe and Mail. "News ban decision expected today: judge to rule on Homolka trial". Globe and Mail, July 5, 1993, p.A5.

Globe and Mail. "Press ban sought in trial - Homolka not innocent victim of mate, Court hears". Globe and Mail, June 29, 1993, p.A1.

Globe and Mail. "The Homolka case in retrospect". Globe and Mail, June 29, 1993, p.A16.

Globe and Mail. "Couple charged in girls' slayings: French, Mahaffy sexually attacked". Globe and Mail, May 19, 1993, p.A1, A3.

Globe and Mail. "Homolka ban evolves into cause celebre". Globe and Mail, January 29, 1993, p.A3.

Gorham, B. "Bernardo lawyer faces censure over graphic videotapes". Calgary Herald, February 22, 1997, p.A15.

Gorham, B. "Former Bernardo lawyer faces disciplinary hearing over tapes". Ottawa Citizen, February 22, 1997, p.A4.

Gorham, B. "Kristen's mother fights on". Calgary Herald, September 1, 1996, p.A3.

Halifax Chronicle Herald. "To see, not to take over". Halifax Chronicle Herald, July 9, 1993, p.C1.

Harder, J. "Homolka bargain unveiled". Toronto Sun, March 18, 1996, p.7.

Hess, H., and M. Grange. "Bernardo's ex-lawyers charged". Globe and Mail, January 27, 1997, p.A1.

Lawton, V. "Border-hopping readers sidestep Teale gag order". Toronto Star, July 17, 1993, p.A4.

LeBlanc, D. "'Need to know' masks flawed human nature". Halifax Chronicle Herald, July 14, 1993, p.C1.

Maclean's. "Fateful Obsession: Paul Bernardo's lawyer accuses Karla Homolka of killing two girls". Maclean's, vol.108 (30), July 24, 1995, p.49.

Maclean's. "Karla Homolka faces the heat: a tough defence lawyer grills the Crown's star witness against Paul Bernardo". Maclean's, vol.108 (29), July 17, 1995, pp.36-37.

Maclean's. "Ending the secrecy: Karla Homolka details her deal with the Crown". Maclean's, vol.108 (28), July 10, 1995, pp.12-13.

Maclean's. "Suspicions of a hidden agenda". Maclean's, vol.108 (26), June 26, 1995, p.44.

Maclean's. "The Homolka enigma: finally Karla Homolka will have her say - Bernardo trial". Maclean's, vol.108 (26), June 26, 1995, pp.32-35.

Maclean's. "The two faces of Karla Homolka: was she, as the Crown alleges, another of Bernardo's victims, or was she a cold and calculating predator?". Maclean's, vol.108 (24), June 12, 1995, pp.50-51.

Maclean's. "A delicate balance: a court weighs rights in the Homolka case / Teale case". Maclean's, vol.107 (7), February 14, 1994, pp.13-14.

Maclean's. "Unspeakable crimes". Maclean's, vol.106 (29), July 19, 1993, pp.14-17.

Makin, K. "Senior panel of judges stepping into Homolka ban breach". Globe and Mail, 1993, p.A3.

Mallan, C. "Homolka plea bargain: 'Deal with the devil' meets with resignation, rage". Ottawa Citizen, March 19, 1996, p.A3.

Mathias, P. "In Canadians' eyes, Homolka has yet to be tried". Financial Post, July 10, 1993, p.A2.

Newsweek. "The Barbie - Ken Murders, Canada: Blacking Out a Horror Story". Newsweek, December 6, 1993, p.36.

Ottawa Citizen. "Inmate faces charge for slugging Bernardo". Ottawa Citizen, December 10, 1996, p.A3.

Ottawa Citizen. "Judge orders Bernardo to take AIDS test". Ottawa Citizen, September 24, 1996, p.A2.

Ottawa Citizen. "French, Mahaffy families appeal pornography ruling". Ottawa Citizen, May 4, 1996, p.A3.

Ottawa Citizen. "Homolka considers asking for day pass, newspaper says". Ottawa Citizen, April 22, 1996, p.A3.

Ottawa Citizen. "Bernardo victims' families denied say in court hearing". Ottawa Citizen, March 28, 1996, p.A3.

Ottawa Citizen. "Plea Bargains: cancerous growth or necessary evil?". Ottawa Citizen, March 19, 1996, p.A3.

Ottawa Citizen. "A deal of injustice". Ottawa Citizen, March 19, 1996, p.A14.

Ottawa Citizen. "Homolka report creates furore before release". Ottawa Citizen, March 16, 1996, p.A4.

Ottawa Citizen. "Judge gets extra time to review Bernardo case". Ottawa Citizen, March 9, 1996, p.A3.

Ottawa Citizen. "Court to rule if access to tapes degraded Bernardo victims". Ottawa Citizen, February 10, 1996, p.A15.

Ottawa Citizen. "Experts say tapes violated equality rights". Ottawa Citizen, February 8, 1996, p.A3.

Ottawa Citizen. "Anti-porn researcher slams Bernardo tapes". Ottawa Citizen, February 7, 1996, p.A4.

Ottawa Citizen. "Bernardo lawyer ordered to hand over videotapes". Ottawa Citizen, February 2, 1996, p.A3.

Ottawa Citizen. "Bernardo's lawyer refuses to return videotapes". Ottawa Citizen, January 27, 1996, p.A3.

Ottawa Citizen. "Judge named to head Bernardo probe". Ottawa Citizen, December 8, 1995, p.A3.

Ottawa Citizen. "Volunteer crew to tear down Bernardo house". Ottawa Citizen, December 5, 1995, p.A5.

Ottawa Citizen. "Police board to decide if public gets to see report on Bernardo murder investigation". Ottawa Citizen, November 29, 1995, p.A5.

Ottawa Citizen. "Lawyer apologizes to Bernardo judge". Ottawa Citizen, November 25, 1995, p.A4.

Ottawa Citizen. "Police to decide if book about Bernardo is porn". Ottawa Citizen, November 22, 1995, p.A4.

Ottawa Citizen. "Juror says Bernardo book riddled with errors". Ottawa Citizen, November 21, 1995, p.A3.

Ottawa Citizen. "Ex-officer guilty of breaking publication ban in Homolka case". Ottawa Citizen, May 21, 1994, p.A5.

Ottawa Citizen. "Efforts to ban Karla Teale story gone overboard, say lawyers". Ottawa Citizen, November 28, 1993, p.A2.

Ottawa Sun. "Bernardo kills Mahaffy marriage". Ottawa Sun, November 22, 1996, p.8.

Ottawa Sun. "'You better hang yourself now'". Ottawa Sun, June 16, 1996, p.16.

Ottawa Sun. "Teale deal leaves public devastated, lack of information on murders is a 'dirty rotten trick'". Ottawa Sun, July 8, 1993, p.5.

Ottawa Sun. "Judge orders ban". Ottawa Sun, July 6, 1993, p.5.

Payne, E. "Buffalo media set to defy Teale trial blackout". Toronto Star, April 24, 1994, p.A5.

Payne, E. "Paul Teale trial date could be in October". Ottawa Citizen, April 6, 1994, p.A3.

Pearson, P. "Behind every successful psychopath: why Karla Homolka was a perfect match for Paul Bernardo". Saturday Night, v.110 (8) October, 1995, pp.50-55.

Platiel, R., and D. Downey. "Trial of lawyers may offer guidance". Globe and Mail, January 24, 1997, p.A6.

Platiel, R. "Ruling expected to encourage gossip". Globe and Mail, July 6, 1993, p.A3.

Pron, N. "A lesson from Homolka trial: forced secrecy doesn't work". Toronto Star, September 11, 1995, p.A10.

Pron, N. "Lid blown off ban". Toronto Star, December 1, 1993, p.A1.

Pron, N. "Ban appeal said without jurisdiction; civil application in wrong court, Crown argues". Toronto Star, December 1, 1993, p.A4.

Pron, N. ""Homolka trial judge to rule today on request for publication ban: media and public may be barred to protect Bernardo's right to a fair trial". Toronto Star, July 15, 1993, p.A4.

Rankin, J. "Angry residents call public lockout another injustice". Toronto Star, July 6, 1993, p.A2.

Shahin, M. "Freenet pulls plug on details of Karla Teale trial". Ottawa Citizen, November 28, 1993, p.A4.

Shahin, M. "Internet posts banned details of Teale trial". Ottawa Citizen, November 27, 1993, p.B4.

Smith, M. "Grisly details available on computer networks". Toronto Star, December 1, 1993, p.A40.

Swardson, A. "Secret tale of murder". Washington Post, November 24, 1993, p.B1.

Toronto Star. "Homolka deal isn't final, Harnick says". Toronto Star, November 15, 1995, p.A1, A32.

Toronto Star. "Harnick to launch Homolka probe". Toronto Star, November 13, 1995, p.A1.

Toronto Star. "Karla Homolka in prison scare, Prison for Women, Kingston, Ontario". Toronto Star, September 26, 1995, p.A1.

Toronto Star. "2 Bernardo jurors say Homolka was beaten Susan Spatone, Erma Stultz discuss the trial". Toronto Star, September 21, 1995, p.A3.

Toronto Star. "Overturn Homolka deal, MPPs urge". Toronto Star, August 22, 1995, p.A1, A24.

Toronto Star. "Item missed in search of Karla's house". Toronto Star, November 24, 1994, p.A1, A26.

Toronto Star. "Deal with the devil Paul Bernardo and Karla Homolka case in detail". Toronto Star, September 3, 1994, p.F1, F4.

Toronto Star. "Emotionless Karla a true mystery". Toronto Star, September 3, 1994, p.A6.

Toronto Star. "Homolka questioned in Shaw slaying". Toronto Star, May 10, 1994, p.A4.

Toronto Star. "OPP want to talk to Homolka about 2 slayings". Toronto Star, September 11, 1993, p.A8.

Toronto Star. "Homolka to pursue education". Toronto Star, August 26, 1993, p.A10.

Toronto Star. "The Karla Homolka / Teale case". Toronto Star, July 10, 1993, p.A8.

Toronto Star. "Strong evidence sways jurors most studies show". Toronto Star, July 8, 1993, p.A32.

Toronto Star. "The Karla Homolka / Teale trial". Toronto Star, July 6, 1993, p. A8, A9.

Toronto Star. "Judge rules ban needed so Bernardo trial is fair". Toronto Star, July 6, 1993, p.A9.

Toronto Star. "Bernardo and wife charged in slayings". Toronto Star, May 19, 1993, p.A1, A6.

Toronto Sun. "Bad deal". Toronto Sun, March 20, 1996, p.10.

Tyler, T. "Court looks 'foolish', professor says". Toronto Star, December 1, 1993, p.A4.

Tyler, T. "Media ban based on false premise, legal experts say - potential jurors called capable of independent judgment". Ottawa Citizen, July 9, 1993, p.A4.

Vancouver Sun. "Distasteful Homolka deal defended". Vancouver Sun, March 19, 1996, p.A1, A6.

Vancouver Sun. "Ontario attorney fired after criticizing deal obtained by Homolka". Vancouver Sun, January 13, 1996, p.A5.

Vancouver Sun. "Secret Homolka inquiry defended". Vancouver Sun, November 15, 1995, p.A3.

Vancouver Sun. "Keep Homolka in prison until she dies, bill demands Bill S-11". Vancouver Sun, October 19, 1995, p.A4.

Vancouver Sun. "Leaked letter reveals intent behind Homolka deal". Vancouver Sun, October 11, 1995, p.A9.

Vancouver Sun. "Anger rises over Homolka sentence". Vancouver Sun, September 7, 1995, p.A6.

Vancouver Sun. "Homolka deal stirs cries for public inquiry". Vancouver Sun, September 1, 1995, p.A4.

Vancouver Sun. "Tapes show Homolka in sex act, paper claims". Vancouver Sun, December 10, 1994, p.A12.

Vancouver Sun. "TV tells of 'sweetheart deal' for Homolka". Vancouver Sun, July 28, 1994, p.A4.

Vancouver Sun. "Defense team quizzes ex-wife inside prison". Vancouver Sun, July 27, 1994, p.A7.

Vancouver Sun. "Karla Homolka lives, eats and walks alone in only prison for women". Vancouver Sun, July 8, 1994, p.A6.

Vancouver Sun. "Karla Homolka quizzed about murder of university student". Vancouver Sun, May 10, 1994, p.A4.

Vancouver Sun. "Strong secrets for weak reasons". Vancouver Sun, July 10, 1993, p.A8.

Vancouver Sun. "Residents stunned as judge bars public from trial". Vancouver Sun, July 6, 1993, p.A1.

Vancouver Sun. "Gag order keeps public in dark: judge upholds fair trial concern over press freedom [Karla Teale case]". Vancouver Sun, July 6, 1993, p.A4.

Vancouver Sun. "Justice must be seen to be done, too". Vancouver Sun, July 6, 1993, p.A8.

Vancouver Sun. "Ruling due on whether the media can report on Karla Teale trial". Vancouver Sun, July 5, 1993, p.A4.

Winnipeg Free Press. "Judge eyes Homolka deal: Patrick Galligan". Winnipeg Free Press, November 15, 1995, p.B4.

Winnipeg Free Press. "Convicted in secret". Winnipeg Free Press, July 8, 1993, p.A6.