

Telling it like it isn't: obscuring perpetrator responsibility for violent crime



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LINDA COATES

UNIVERSITY OF LETHBRIDGE

ALLAN WADE

PRIVATE PRACTICE

ABSTRACT. Part I of this article introduces the interactional and discursive view of violence and resistance, part II illustrates its application to the analysis of sexual assault trial judgments, and part III provides a detailed analysis of an entire judgment. In giving their reasons for verdicts and sentences, the majority of judges accounted for the assaults by drawing on psychological concepts and constructs. These psychological explanations or causal attributions were grouped into one or more of eight categories: alcohol and drug abuse, biological or sexual drive, psychopathology, dysfunctional family upbringing, stress and trauma, character or personality trait, emotional state, and loss of control. The causal attributions in all categories systematically reformulated deliberate acts of violence into non-deliberate and non-violent acts. Psychologizing attributions, that is, causal attributions that functioned to conceal the violence and mitigate the perpetrator's responsibility, accounted for 97 percent of attributions. Through line-by-line analyses of the full text of one judgment, we show how psychologizing attributions are combined in use with other linguistic devices to (i) conceal violence, (ii) mitigate perpetrators' responsibility, (iii) conceal victims' resistance, and (iv) blame or pathologize victims.

KEY WORDS: *discourse, law, rape, resistance, responsibility, sexual assault, victim blaming, violence*

The sentencing of individuals convicted of sexualized violence¹ is a complex legal matter with profound implications for victims, offenders, and the general public. The Canadian Criminal Code requires that judges balance a number of considerations, including denunciation of unlawful conduct, individual deterrence, general deterrence, protection of the public, and rehabilitation of the offender. The Court is also required to address the question of responsibility in two ways:

First, 'a sentence must be proportionate to the gravity of the offense and the *degree of responsibility* of the offender' (1995: c.22, s.6; emphasis added). Second, a sentence is to 'promote a *sense of responsibility in offenders*' (1995: c.22, s.6; emphasis added). The question we address here is precisely how, and how accurately, judges apportion responsibility for crimes of sexualized violence in their characterizations of the offender and accounts of the crime.

This article stems from our interest as researchers and therapists in the nature of violence and resistance, and the connection between violence and language² (Bavelas and Coates, 2001; Coates, 1996a, 1997; Coates et al., 1994; Wade, 1995, 1997, 2000). We chose to examine legal judgments because they reflect a concerted effort to produce a judicious rendering of the facts relevant to sentencing. Given the role of the court in civil society, the judgments should assess and promote responsibility for violent crimes in a manner that is intellectually rigorous, socially responsible, and in keeping with the law. The data examined herein are used to test that assumption and illustrate the key psychological constructs and discursive resources that judges employ. The crime of sexual assault entails the abuse of power (Brownmiller, 1975; Rush, 1971). Notably, it is professionals in powerful and privileged positions, such as psychologists, psychiatrists, lawyers, and judges who later assess the assaults. Thus, these data give us a glimpse into a larger question: To what extent do more powerful members of society, in this case judges, protect the rights of less powerful members of society, such as victims of sexualized assaults?

This article consists of three parts. In part I, we outline the interactional and discursive view of violence and resistance that underlies our approach to research, critical analysis, and therapeutic work (Wade et al., 2002). In the process, we identify a number of commonly used linguistic devices that (i) conceal violence, (ii) mitigate perpetrators' responsibility, (iii) conceal victims' resistance, and (iv) blame or pathologize victims. In part II we present an analysis of psychologizing attributions used by judges in sexual assault trial judgments. We identify eight types of attributions, illustrate their structure, compare their frequency, and show how they mitigate perpetrators' responsibility for violent acts. In part III, we present a line-by-line analysis of one sexual assault trial judgment to show how psychologizing attributions are combined with other linguistic devices to accomplish the four-discursive-operations identified in part I.

Part I: An interactional and discursive view of violence and resistance

The tenets of the interactional and discursive view of violence and resistance encompass both the actions of the offender and the victim (what we call 'interaction') and linguistic representations of those actions (what we call 'social discourse'). The 'degree of responsibility' apportioned to any offender depends only in part upon his or her actions. It hinges also on how both the offender's and the victim's actions are represented linguistically in police reports, legal arguments,

testimony, related judgments, and more broadly in professional and public discourse. Later, we briefly state and then expand upon each of the six tenets of the interactional and discursive view, with a primary focus on the issue of responsibility.

INTERACTION

Violence as social and unilateral

Violence is social in that it occurs within an interpersonal interaction that is comprised of at least two people (the perpetrator and the victim).³ Violent behavior, like other forms of social conduct (Bavelas et al., 2002; Brenneis and Lein, 1977; Coates and Johnson, 2001; Goodwin, 1981; Kendon, 1985; Kraut and Johnston, 1979; Linell, 1982, 1988; Rosenthal, 1982), is most accurately understood when it is examined in context, that is, when we consider both the offender's actions and the victim's immediate responses to those actions. Through a contextual analysis it becomes clear that the perpetrator's actions are predicated on the anticipation of certain responses by the victim and modified as those or other responses do or do not occur (Wade, 2000). For example, in anticipation that victims will cry out for help, offenders often cover victims' mouths or isolate victims so that they cannot be heard.

Conversely, specific responses by the victim become intelligible as forms of resistance only when we examine the *details* of the offender's behavior in *context*. For example, a child taking hours to walk two blocks home becomes understandable as a form of resistance only when we put the behavior in context and discover that his father would rape him after school, before his mother got home from work. The disparity between events as they actually occurred and accounts of those events remains concealed until the events are examined in context.

Contextual analysis also reveals that, although violent behavior is inherently social, it is also unilateral rather than joint or mutual in that it entails actions by one individual against the will and well-being of another (Coates, 2000a, 2001, 2002a, 2002b; Coates and Wade, 2001). The unilateral nature of violent behavior seems self-evident once it is made apparent. However, in previous analyses of legal judgments, we found that judges did not treat sexualized assaults as violent acts even though Canadian law defines sexual assault as inherently violent (Bavelas and Coates, 2001; Coates et al., 1994). Instead, judges characterized sexual assaults most frequently as erotic, romantic, or affectionate acts. For example, an offender forcing his tongue into the victim's mouth was reformulated as 'they [had] French kissed', rape was reformulated as 'intercourse' or 'unwanted sex', and violating physical contact was reformulated as 'fondling'. None of these accounts reflect the unilateral nature of sexualized violence or the victim's experience of those acts (Bavelas and Coates, 2001; Coates, 1996a, 1996b, 2001, 2002a, 2002b; Coates and Johnson, 2001). In our view, language that mutualizes violent behavior implies that the victim is at least partly to blame and inevitably conceals the fact that violent behavior is unilateral and solely the responsibility of the offender.

Violence as deliberate action

The court's assessment of 'the extent of the responsibility of the offender' rests largely on the extent to which the offender's actions are viewed as deliberate. Consequently, many offenders attempt to avoid responsibility, even if they cannot avoid guilt in the legal sense, by concealing the deliberate nature of their actions. Yet perpetrators' actions before assaults (e.g. isolating and interrogating the victim), during and concurrent with assaults (e.g. threatening and humiliating the victim), and after assaults (e.g. concealing the violence, giving false apologies, blaming the victim) evince a level of deliberation that cannot be accounted for by the notion that they lack control over their conduct or awareness of its consequences (see Todd and Wade, 2001; Wade, 2000).

Researchers investigating language and responsibility have identified several problematic practices in linguistic representations of violence. Coates (1996a, 1997) found that judges obscured the deliberate nature of assaults by using externalizing attributions that constructed the cause of offenders' violent behavior as an external force (e.g. 'He was influenced by alcohol'). Internalizing attributions (e.g. 'He was out to attack'), though relatively uncommon, connected the cause of the assaults directly to the perpetrator or described the perpetrator himself as an agentic force and were significantly correlated with longer sentences (see Coates, 1996a, 1997). The same judges selectively characterized perpetrators' actions as deliberate when the actions had been reformulated (Davis, 1986) as non-violent (e.g. 'having sex'; see Coates, 1996a, 1997; Ehrlich, 2001). Attributions that described the cause as something other than violence (i.e. non-violent attributions) were significantly related to lower sentences (Coates, 1996a). Finally, perpetrator responsibility was reduced by shifting the focus from the offender to the victim (Coates 2000b, 2000c). The high incidence of agentless descriptions of violent acts, which conceal who did what to whom, has also been observed by Lamb (1991) and Lamb and Keon (1995).

Finally, researchers have found that accounts written in the passive voice⁴ reduce attributions of responsibility (Henley et al., 1995; Penelope, 1990). Henley et al. (1995) also found that readers of passive constructions were more likely to attribute less harm to the victim and significantly less responsibility to the offender.

The ubiquity of resistance

When the actions of both victims and offenders are examined in context and in sufficient detail, it becomes apparent that resistance is ubiquitous: whenever individuals are badly treated, they resist (Brown, 1991; Burstow, 1992; Hydén 1999; Kelly, 1988; Reynolds, 2001; Wade, 1997, 2000; Zemsky, 1991). The most convincing evidence of the ubiquity and significance of victims' resistance may be the perpetrators' elaborate efforts to conceal and suppress it (Scott, 1990). The perpetrators of diverse forms of sociopolitical and interpersonal violence, from European Imperialism to wife assault and the sexual abuse of children, conceal victims' resistance by reformulating it as deficiency or disorder (Ridley and

Coates, 2003; Wade, 1995, 1997, 2000). If the perpetrator is successful in concealing the victims' resistance, the question of how the perpetrator attempted to suppress that resistance cannot come up for consideration, and the victims' apparent lack of resistance becomes the focus of assessment (for example, in the courts) and intervention (Ridley and Coates, 2003; Wade, 1997, 2000). Accounts that conceal victims' resistance also obfuscate the more deliberate aspects of the violent behavior.

Misrepresentation

Critics have long observed that the strategic use of language is central to the acquisition and exercise of power, even benign power (Fairclough, 1989; Foucault, 1980; Parker, 1992; Penelope, 1990). Less well understood, however, is that misrepresentation is an integral feature of interpersonal violence and other forms of oppression (Scott, 1990; Wade, 2000). Perpetrators often misrepresent their own actions to garnish support, avoid responsibility, blame the victim, and conceal their activities. Thus, where someone is committing or has committed acts of violence, public appearances cannot be taken as a reliable index of life behind the scenes (Scott, 1990).

Fitting words to deeds

How we account for the actions of perpetrators and victims of violence has far reaching implications. Accounts are not objective or impartial reflections of events; rather, they must be treated as representations of events that vary in accuracy. Such fundamental constructs as the nature of the events (e.g. violent versus sexual), the cause of the events (e.g. deliberate versus accidental), the character of the offender (e.g. good versus bad), and the character of the victim (e.g. passive versus active) are constructed within the account of the crime. Different accounts call for different kinds of social action (Coates, 1996b, 2000c, 2001; Coates and Wade, 1995). For example, although the accounts 'he kissed her' and 'he forced his mouth against hers' could be used to describe ostensibly the same physical act, they suggest very different characterizations of the act (e.g. affectionate versus violent) and call for radically different actions (e.g. no intervention versus legal intervention).

Four-discursive-operations

To this point we have shown that certain linguistic devices, for example, passive and agentless grammatical constructions, euphemisms, mutualizing and eroticizing terms, can be used to misrepresent the actions of perpetrators and victims. In professional, scholarly, and public discourse these and other linguistic devices, including the psychologizing attributions that we examine next, are frequently used in a manner that (i) conceals violence, (ii) obscures and mitigates perpetrators' responsibility, (iii) conceals victims' resistance, and (iv) blames or pathologizes victims (Wade et al., 2002). These four-discursive-operations produce inaccurate accounts that tend to impede effective intervention.

We now turn to the analysis of psychologizing attributions in sexual assault judgments. Then, in part III, we extend this analysis to illustrate how the psychologizing attributions are combined in use with other discursive practices to accomplish the four-discursive-operations.

Part II: Judges' explanations for sentencing in sexual assault trials

In this study, we were interested in judges' use of psychological concepts and theories to determine if or how such constructs functioned in accounts of perpetrator responsibility. We called attributions that drew upon psychological constructs and concealed violence or mitigated the perpetrator's responsibility *psychologizing*.

METHOD

Database

The database consisted of British Columbia and Yukon sexual assault trial judgments available through Quicklaw, a computerized database of Canadian legal judgments for the years 1986 (when Quicklaw began) to 1993. Cases used for analysis were selected using the following procedure. First, all judgments that contained the terms 'sexual' and 'assault' anywhere in the text were identified. Duplicates and cases in which the charge was other than sexual assault were eliminated. Appeal cases and other judgments that focused on issues of law rather than on the assault itself (e.g. *voir dire*s) were also eliminated. Finally, cases in which the accused was acquitted, or charges were dismissed or stayed were also excluded from analysis. Some of the British Columbia cases from 1986–92 had been selected in previous studies (Bavelas and Coates, 2001; Coates et al., 1994). The sexual assault trial judgments ultimately selected contained (i) a description of the assault, (ii) the judge's reasons for finding the accused guilty, or (iii) the judge's reasons for passing a particular sentence (e.g. jail term, suspended sentence). In total, we analyzed 64 judgments. In these cases, all offenders were men; the victims were women, girls, and boys.

Analysis

Analysts applied a decision tree to aid in identifying attributions and placing them into categories. To ensure that the analysis was consistent, we assessed inter-analyst agreement for locating and categorizing the attributions. Three independent analysts identified explanations of the sexualized assault that stated or implied a psychological motive or cause. Analysts identified only those statements that went beyond merely characterizing or describing the assault (e.g. 'he fondled the girl's breasts') to making an attribution about the cause of the assault (e.g. 'he fondled the girl to gratify his sexual urges'). Also excluded were descriptions of the perpetrator's current psychological state (e.g. 'he is depressed') unless it was connected to the cause of the assault (e.g. 'he was depressed at the time of the assault'). Attributions cited from case law, or the perpetrator's previous

convictions were excluded from analysis. The same independent analysts categorized the attributions according to the cause described by the judge. Attributions that indicated the absence of a cause in the current case were included in this analysis (e.g. 'there was no alcohol involved in this offence'). The identification of attributions was highly reliable, with a mean interanalyst agreement of 92 percent.

We found eight main categories that are listed below in decreasing order of frequency:

1. *Alcohol and drug abuse* attributions linked the cause of the assault to alcohol or drug abuse, for example, 'alcohol was undoubtedly involved' (35%).
2. *Sexual drive* attributions presented the cause of the assault as arising from the man's biology, for example, 'sexual gratification' or 'sexual urges' (31%).
3. *Psychopathology* attributions described the cause of the assault as stemming from a psychological disorder, for example, 'he became obsessed', 'his sexual deviancy', or 'there is no cure for paedophilia' (10%).
4. *Family of origin* attributions placed the cause of the assault in the offender's upbringing, for example, 'I take into account . . . that you've had an unfortunate upbringing' (8%).
5. *Trauma or stress* attributions portrayed the assaults as being caused by the stressful or traumatic events in the offender's life, for example, 'at the time of the offences . . . the accused had lost his mother' (5%).
6. *Character* attributions described the offenders' personality or character as relevant to the cause of the assault. They included such attributions as 'this man is of impeccable character' and 'this incident . . . is completely out of character' (5%).
7. *Emotion* attributions connected the offender's emotional state with the cause of the assault, for example, 'he was angry' or 'he lost his temper' (3%).
8. *Loss of control* attributions portrayed the offender as unable to control his actions, for example, 'he was out of control' or 'he could not stop himself' (2%).

Analysts placed the attributions into as many categories as necessary to fully capture their meaning. For example, the attribution 'that insidious substance [alcohol] of course deprives people of their inhibitions and self control' described the offender as having abused alcohol and been out of control, and so was identified as the alcohol and out of control categories. Placing the attributions in categories was also highly reliable (mean interanalyst agreement was 96%).

RESULTS AND DISCUSSION

The use of psychological concepts and theories to explain sexualized violence was common in trial court judgments. Fifty-five of the 64 judgments analyzed (85%) contained at least one attribution that drew upon psychological concepts and theories, and of those judgments, the mean frequency of attributions was 3.78 per judgment, with a low of 1 and a high of 17. In total, analysts identified and

analyzed 208 attributions. During the trials these attributions had been introduced to the court from a variety of sources including: psychologists, psychiatrists, corrections officers, judges, defense counsel, and witnesses. Ninety-seven percent (205) of the attributions that drew upon psychological theories or concepts were psychologizing attributions; that is, they functioned to conceal violence or reduce the offender's responsibility. Specific examples of psychologizing attributions in each category are described later. In the interests of simplicity, attributions belonging in more than one category (approximately 16% of the total attributions) were explained and tabulated in just one category. For example, if a statement mentioned alcohol abuse and lack of control, it was still only tabulated once because only one attribution had been made. For each category of psychologizing, we identify a series of disparities between the actions of perpetrators and the manner in which those actions are represented. We then discuss the implications of these disparities for the issue of responsibility.

Alcohol and drug abuse

Attributions that in any way cited alcohol and drug abuse as an underlying cause of sexualized violence made up 35 percent of the total attributions in the data set. Although drug abuse was mentioned in a few cases, the majority of attributions in this category were solely about alcohol abuse. Within this category, judges made such attributions as: 'With respect to his consumption of alcohol, it's clear that he was under the influence of alcohol at that time', 'this offence has alcohol overtones', or 'he was drunk at the time'. Typically, these attributions portrayed the offender as having committed the assault, not through deliberate choice, but because alcohol eroded his inhibitions. For example, one defense counsel repeatedly denied the deliberate nature of his client's violent actions by arguing that the assault 'arose out of release of inhibition obviously [due] to gross consumption of alcohol'. The phrase 'release of inhibition' casts the man as having been deliberately and constantly controlling his actions until overwhelmed by the personified force 'alcohol'. Thus, although the man might be responsible for consuming the alcohol, he was not responsible for the deliberate act of violence. The defense counsel then continued:

I should ask Your Honour as well to consider the fact that [the Offender] has no recollection of this and therefore if we can redeem him in this sense that clearly he should have learned that he shouldn't drink alcohol and not control his actions . . .

Having placed the focus of his arguments on drunkenness and away from deliberate violence, the defense counsel then asked for a lenient sentence that would reflect the non-deliberate nature of the crime and serve only to deter the man from drinking alcohol and losing control ('what amounts to that he was so drunk that basically he was out of control'). The judge concurred with the defense counsel's arguments that alcohol abuse was the cause of the offender's actions and stated 'alcohol . . . may be why things occur . . .'.

In many statements, judges explicitly connected attributions that reformulated

violent actions into non-deliberate effects of alcohol consumption with a reduction in perpetrator culpability. Typically, judges explicitly cited alcohol as a mitigating factor in sentencing: 'I have to take into consideration the circumstances of the offence, including the fact that at the time it occurred [the offender] was under the influence of alcohol', 'partly to blame appears to be his alcohol problem', or 'considering the fact that alcohol played a prominent part in this . . .'.

Alcohol abuse was also seen as temporarily overcoming the offender's good character. For example, one judge stated:

Here there seems to be some agreement that this incident was an isolated one, entirely out of character and perhaps the reflection of some substantial consumption of alcohol and drugs. There appears to be no possibility of recurrence.

In this example, a judge once again used the non-volitional term 'incident' rather than the more volitional term 'action' to refer to the violent acts. Having obscured the deliberate nature of these violent acts, the judge then described the offender's violent actions as 'entirely out of character' – in statistical terms, an anomalous outlier. The judge further reduced the man's responsibility by characterizing the cause as 'the reflection of some substantial consumption of alcohol and drugs'. This description implied that the offender typically acted in ways consistent with his good character (i.e. non-violently), and as such could not easily be seen as the author or actor of the violent acts. The description casts the violence as an isolated event caused by a non-deliberate effect of alcohol abuse. Thus, the judge concluded 'there appears to be no possibility of reoccurrence'. Similarly, another judge stated '[the offender's] behavior here may be consistent with a passive individual of his type being under the influence of alcohol'. In this case, the 'passive' man had not deliberately chosen to be violent; he was just unable to resist the 'influence' of alcohol. These explanations cannot explain why the majority of men do not assault someone in sexualized ways after they use alcohol or drugs.

Alcohol abuse operated as such a taken-for-granted causal explanation that the judges sometimes openly commented on the absence of alcohol as a possible cause. 'You have no drug or alcohol problem', or even more explicitly, 'there is no evidence laid before me that this man was under the influence of alcohol to in any way [give] a reason for his actions'.

Consistent with judges accepting that alcohol abuse and not deliberate choice was the underlying cause of sexualized violence, they frequently mandated alcohol counseling as part of the offender's sentence. For example, one judge stated, 'you will take such alcohol counseling as [the probation officer] instructs. It seems to me that alcohol is at the bottom of some of your problems', or 'he is going to need some form of residential or non-residential treatment for this alcoholism'. In only one case did a judge mandate violence counseling.

Sexual drive

Attributions that placed the cause of the assault within the domain of sexuality

made up 31 percent of the total attributions. At times, these attributions justified the assault and concealed the violence by describing a lack of sexual fulfillment as a precipitating factor in the commission of sexualized assault. In describing factors that led to the assault, one judge stated, 'the offender and his wife withdrew from each other sexually and emotionally'. In order to make sense of this statement we must draw upon two taken-for-granted assumptions or presuppositions. First, that the offender and his wife withdrawing from each other created a need for sexual release in the perpetrator but not necessarily in his wife. That is, the offender needed to have sex. Second, that committing sexualized violence is a way of fulfilling one's sexual drive or needs; that is, that sexual assault and sexual activity can in some cases be considered synonymous activities. Such an assumption ignores the fact that sexual assault and sexual activity have completely different meanings: one is a unilateral act of violence, whereas the other is a mutual activity (Bavelas and Coates, 2001; Coates, 1996a). Thus, the attribution of sexual assault as synonymous with sexual activity conceals violence by casting the assault as a need fulfillment and reduces the offender's responsibility by making him a participant in a non-violent, mutual act. To accept this assumption would be to accept the analogous idea that someone can fulfill his need for positive social affiliation by assaulting people.

Sexual attributions also explicitly portrayed the offender as fulfilling his basic sexual needs, thereby naturalizing the assault. For example, one judge characterized the assault as the offender 'engaging' in [his] sexual gratification'. In another judgment, the judge stated:

His sexual gratification does not come primarily from his conduct but comes from normal sexual behavior.

Such statements suggest that it is natural for men to assault someone in sexualized ways because they have biological urges that encourage or compel their behavior. Notice that these attributions, in effect, characterize not only the offender, but virtually all men⁵ as constantly on the verge of assaulting someone in sexualized ways: men must deliberately and constantly strive to suppress or inhibit their urges, otherwise violence erupts. Biological attributions do not account for victimization patterns. They do not explain why typically women, children, and the disabled are assaulted (Porteous and Alexander, 1989; Roberts, 1994). If assaults were actually caused by men losing control, anyone whether male/female, adult/child, abled/disabled should be indiscriminately attacked, not just those from socially disadvantaged groups. The judges seemed to be unaware of the inconsistency in accepting a biological explanation that ignores the selectivity clearly exhibited by the offender in his choice of where, when, and whom to assault. A human being driven by the biological need to breathe will gasp for air anywhere and everywhere, but these offenders selectively chose where, when, and whom to assault. Not one offender in the sample had assaulted someone in front of other people who could be expected to disapprove of the assaults even though public interactions (i.e. easily observable) were likely the most frequent

and extended periods of contact with victims. This strongly implies volition and choice rather than lack of control.

After casting sexualized violence as biological need, judges gave offenders credit for not succumbing to their drives:

The accused has been able to control his sexual appetite over the years since these deprivations took place.

Thus, judges recognized the offenders' volition when they were controlling their biological urges but not when they committed sexual assault. Consistent with characterizing the assaults as (i) not violent but sexual, and (ii) out of the offender's control, the judge recommended sex counseling for this offender:

That he report to a probation officer as directed and follow as with respect to counseling . . . for his sexual difficulty.

Once again, the offender was no longer clearly being held responsible for a violent crime, but something far more benign – having a sexual appetite.

Other attributions placed the cause of the assault within the domain of sexuality but also linked the cause to psychopathology. The cause was thus intrinsically linked to non-deliberate and uncontrollable behavior because a person cannot control a sickness.

The accused is a pedophile⁶ who is possessed of an enormous – indeed, an apparently insatiable – appetite for sexual contact with pre-pubescent girls.

Rehabilitation then necessarily focused on controlling the offender's psychological disorder, the goal of which was to teach the pedophile how to control his deviant sexual urges so that the risk of re-offending is minimized.

Moreover, the offender was not required to say that he would not commit further acts of violence in order to be assessed as remorseful and sincerely wanting to rehabilitate himself. Instead, he communicated an interest in learning to manage his disorder:

[The accused] expressed his desire to learn to control his deviant urges to each of the expert witnesses.

Thus, the offender was not held accountable for his acts of violence but rather for possessing inappropriate sexual urges that were no fault of his own.

Psychopathology

Attributions that connected the cause of the assault to a psychological disorder accounted for 10 percent of the total attributions in the data. Whether the offender could be given a diagnosis from the *Diagnostic and Statistical Manual* was discussed in many of the cases. Sometimes the judge summarized the evidence of expert witnesses (psychologists or psychiatrists) who had concluded that the man could not be diagnosed as having a pathology. For example, one judge quoted an expert witness as concluding:

In terms of sexuality I do not see a deep-seated psychosexual disorder being present in the form of pedophilia. Consequently, I do not see Mr M. as being a predatory individual who will prey on children.

In another case, a psychiatrist concluded from his evaluation that the offender

[presented] no paedophilic tendencies. He is no danger to the public. There is no evidence of any mental disorder.

Expert witnesses also concluded that the offender had a disorder. One judge summarized a psychiatrist's report by stating that

The test results indicated that Mr V. is very much concerned with himself, his needs, and tends to indulge his own needs without significant concerns about the rights or welfare of others.

At first reading this evaluation sounds positive – the psychiatrist was clearly disapproving of the offender, and was essentially describing him as selfish. On closer reading, however, this statement reformulated or transformed the criminal actions from deliberate acts of violence to acts of selfishness. The man was described as having 'needs', which suggested a biological requirement that must be met in order to survive. It also calls forth the possibility that the 'needs' being reported may be sexual needs, thereby drawing upon the notion that sexual assaults are caused by sexual urges. Furthermore, the man's problem was not that he was violent but that he was 'very much concerned with himself, his needs'. He was then described not as violating or attacking other people but as 'indulging' his needs. He was not actively hurting people physically and psychologically, he was merely acting 'without significant concern about the rights or welfare of others'. From this description, the problem to be addressed was not stopping the man from being violent; it was stopping the man from being selfish. Once again, the violence inherent to the sexualized assault was transformed into something far less serious (i.e. selfishness) and the offender's responsibility was transformed from perpetrating violence upon others to being self-absorbed at the expense of others.

Other times, the offender was described as having a mental disorder as delineated in the *Diagnostic and Statistical Manual* (American Psychiatric Association, 1987, 1994). For example, one offender was described as

[becoming] depressed by the setbacks of life, and on five occasions, has reacted to that by committing sexual assaults.

In this description, the offender was described as committing violent acts, but his ultimate responsibility was reduced, even eradicated due to his mental disorder. The cause of the offender's actions was not a decision to violate others but a result of depression. His actions were not volitional; rather, he was reflexively 'reacting' to this psychiatric condition. Thus, the problem to be treated was depression, and the offered explanation indicated that if the man was no longer depressed, he would no longer act violently. Given this logic, it was not surprising to see this

offender described as 'a victim of . . . his inadequate personality'. The offender was effectively transformed into a victim.

Dysfunctional family upbringing

Attributions that connected the cause of the assault to the offender's family upbringing made up 8 percent of the attributions in the data set. Family background as a likely cause of violent behavior could be seen in comments noting the lack of a dysfunctional family upbringing. For example, one judge stated

You do not have the usual background of offenders committing these types of offences. You come from a caring family with a good upbringing.

In other attributions, the offender's actions were seen as determined by the offender's past. For example, one judge stated that the offender's assaults against several children '[stemmed] from his own background and consequent psychological make-up'. If the past caused the offender to assault children, then the offender was not responsible for deliberate actions. Also, notice that if the past were to blame for the man's violent behavior (i.e. completely determined the man's present behavior), then the prospects for rehabilitation are very poor as one cannot change the past. Such a deterministic view of the past ignores the fact that people are not passive objects, but thinking, choosing beings. The judge's account created a version of the offender that suggested that he could not hope to easily stop acting in violent ways. If suffering mistreatment at the hands of others were a determinist factor in behavior, then we should find that women and girls, who are the most frequent victims of sexualized assault, are the leading perpetrators of these assaults. However, offenders tend to be overwhelmingly male (Roberts, 1994).

Trauma and stress

Descriptions that cast current or recent stress or trauma in the offender's life as compelling him to act violently accounted for 5 percent of the total attributions in the data. For example, in one case in which the offender threatened his estranged wife with a knife and assaulted her in sexualized ways, the judge opined:

In my view those are very similar sorts of reactions to what counsel refers to as family pressures.

The judge's description reduced the offender's responsibility for his violent actions by characterizing them as 'reactions' and by creating the cause of the behavior as 'family pressures'. The degree to which the offender could be seen as the author of his own actions was limited.

Sometimes judges stated that stress and trauma explained the behavior, that is, they were the ultimate cause, but claimed that this did not excuse the behavior.

I am told your life changed from law-abiding to otherwise after the trauma of your

Vietnam battle experiences and your petty crimes accelerated to more serious ones after a failed marriage, a conviction for obscene telephone calls and the death of your father . . . you feel considerable responsibility for your father passing. . . . Those explanations can be accepted as partial explanations for your conduct but can never be excuses.

In this example, the juxtaposition of the conviction for making obscene phone calls with war experiences and death of loved ones was particularly ironic and informative. The judge essentially constructed the man's illegal actions as something that he experienced rather than something he did deliberately. The judge stated that these explanations did not excuse the man's behavior. However, Coates (1997) found that explanations like this, in which the judge constructs the cause of the assault as other than a decision by the offender, were positively correlated with shorter sentences. This is illustrated in the following example,

The court feels considerable concern for imposing a lengthy prison sentence on a man who . . . had very few cultural advantages and has had a life of considerable distress.

Here, the judge mentioned the man's stressful experiences in such a way that reduced the degree to which the man's actions were seen as deliberate or volitional, and this was directly reflected in the sentencing decision.

Character traits

Character trait attributions made up 5 percent of the data. At times, judges described the offender as a violent person, that is, as though he was always violent. For example, one judge stated:

Efforts to assist the Accused in bringing his problems with regard to alcohol and his violent nature under control . . .

This description not only constructed the offender as totally violent (what Coates, 1996a, 1997 defines as a saturating description), but also reformulated the cause of the violence from a choice to behave violently into having a violent nature, an inherent quality or characteristic. The statement begs the question: Can a person act in a way contrary to his or her nature? Thus, such descriptions may prove to be less than helpful in promoting rehabilitation. Moreover, they may actually reduce the degree to which the offender is held responsible because in order to be seen as legally responsible, one must have acted of his or her own free will (Lipkin, 1990).

At other times, the judges described the violent acts as outside the man's character. For example, one judge stated

It has been submitted to this Court by counsel for the defendant that his conduct is out-of-character.

This description downplayed the deliberateness entailed in the choice to be violent by portraying the man as somehow 'not himself' when he committed the assaults. Seeing the assault as out-of-character permitted viewing the offender in extremely positive terms. For example, one judge opined that the offender was 'of

impeccable character and that this incident . . . [was] completely out of character'. Another attribution, quoted previously, explicitly connected the offender's character to sentencing:

Because of the exceptional character of the offender . . . I propose on imposing as short a sentence as I think I can.

Thus, the psychological concept of character or personality was frequently used to create the assault as an inexplicable anomaly with little to no chance of reoccurring. The offender was clearly responsible for his good character but not for his problematic, violent behavior.

Emotion

Sometimes the cause of the assault was described as overwhelming emotions. In one assault, where a teenaged girl was picked up on the side of a road, taken to a remote location, and raped, the judge noted the defense counsel's argument that the assault 'was a singular act of lack of control over his emotions'. The planning and premeditation involved in the assault is not made clear in such a description of cause. When the cause of violence was cast as emotion, usually anger, the judge often recommended anger counseling as a relevant intervention. For example, one judge advised the offender:

You would be wise to take advantage of any program that helps you control your temper.

Attributions of emotion accounted for 3 percent of the total attributions.

Loss of control

At times the offender was described as being out of control for reasons other than those mentioned earlier. These attributions accounted for 2 percent of the total attributions. In one case where a man assaulted young children (including the rape of an 8-year-old girl), the judge summarized the offender's testimony as:

He ended up saying that he didn't intend to hurt them, things just got out of hand.

This statement works to deny the deliberateness and seriousness of the man's sexual assault by casting his actions as a simple manner of 'things' somehow getting 'out of hand'. In another case, the judge remarked

The pre-sentence report indicates that Mr [XX] is a person who had difficulty controlling his assaultive behaviour. There is a recommendation in it that he should take advantage of some sort of treatment within the prison system to control his tendency to violence.

The judge's attribution clearly described the offender's behavior as violent (i.e. 'assaultive') but rather than portraying the offender as freely choosing to be violent, he was described as having 'difficulty controlling' his violent behavior, as though he had been trying not to be violent but could not help himself. Thus, the problem to be solved was not that the offender decided to be violent and acted

accordingly, but that the offender had violent tendencies which he could not control.

Attributions that could not be placed into any of the previous categories accounted for 1 percent of the total attributions.

Summary

Our analysis shows that judges typically mitigated offenders' responsibility for sexualized violence by portraying them as compelled by forces beyond their control (e.g. alcohol, sexual urges, pathology, emotion, stressful experiences, or past experiences). In this way, judges reformulated offenders' actions as non-deliberate and even non-autonomous; that is, judges cast perpetrators as having experienced events outside their free will. The attributions also mitigated offenders' responsibility by holding them accountable for non-violent rather than violent acts (e.g. consuming alcohol, pathology, or having sex). Consistent with these reformulations, judges infrequently recommended counseling specifically for the problem of violence as part of the sentence. Instead, they directed offenders to other types of treatment programs (e.g. alcohol abuse, anger management, deviant sexual impulses) that were presumed to address the cause of the violence. Moreover, it is important to note that the judges themselves articulated the connection between their formulation of the cause of an assault and their judgment about the offender's culpability.

Attributions in our data also mitigated perpetrator responsibility by integrating representations about perpetrator responsibility with the other three discursive-operations identified in part I (i.e. concealing the violence, concealing the victims' resistance, and blaming or pathologizing the victims). Thus, we now analyze one entire judgment to illustrate how the discursive construction of responsibility is locally accomplished and how psychologizing attributions are combined with other linguistic devices to accomplish the four-discursive-operations.

Part III: Sample judgment

In Canada, after all the evidence and arguments have been heard, judges give their reasons for verdicts and sentencing decisions in the form of a judgment. In this case, an elementary school teacher pleaded guilty to two counts of sexual assault against two of his students (girls, both aged seven). We chose this judgment because it illustrates several themes that were prominent in the judgments that comprised our data set (i.e. sexual drive, good character, psychopathology, and out of control). The following is the full text of the judgment.

- 1 The accused, a forty-one year old school teacher, has pleaded guilty to two counts of
- 2 sexual assault. The offences involved the touching on the private parts outside their
- 3 clothing of two young students, aged seven. These students were in the accused's class in
- 4 school when the offences occurred. The accused knew that they occurred but he was
- 5 reluctant to accept that they had. At first he could only bring himself so far as to admit

6 that if the girls said it happened they had no reason to lie so it must have happened. He is
7 described by one of the experts as not a primary paedophile. That is his sexual
8 gratification does not come primarily from his conduct but comes from normal sexual
9 behaviour, although for many years he has had some sexual fantasies that involved the
10 touching of young girls. Neither in the circumstances here nor in the fantasies has there
11 ever been any violence or anything more than touching and I accept that that is all that did
12 occur.

13 The offences have had a serious impact on the victims and on their families. The
14 pre-sentence report is critical of the authorities for not assisting the victims and their
15 parents through the trauma. I do not propose to say anymore about that, all of the
16 problems of the family cannot and are not going to be solved by the penalty imposed on
17 the accused. The parents should not feel that they or their children will be assisted by
18 anything that now happens to the accused. Their job is to deal with their children and not
19 with the accused. Sentencing is one of the most difficult jobs of any Judge. It goes on
20 everyday but that doesn't make it easier and it is at the same time one of the most least
21 understood aspects of the law from the point of view of the public and of some victims
22 and their families. People hear, read or see about cases and complain that sentences are
23 too lenient, that the law should be more severe when imposing penalties against those
24 who have committed crimes. Some people would suggest that a teacher like Mr E. should
25 be locked up forever but that is not the kind of retribution that society in general agrees
26 with. And I can say that for most cases long prison terms do not assist in rehabilitation of
27 the person serving the sentence. Long prison terms can, in many cases, only make them
28 well-adjusted prisoners and does not serve to make them well-adjusted citizens to return
29 to society. That does not mean that we should not impose penal sentences. We must and
30 we do. We do it as a form of punishment because people who commit crimes must be
31 punished. We also do it to give those people whatever assistance can be given towards
32 their rehabilitation.

33 In cases such as this one, one of the principal concerns in imposing penalties is the
34 question of deterrence. This accused, if he has already not decided to do so, and he may
35 have, must decide that he cannot put himself at risk where he might do this again. A term
36 of imprisonment is therefore imposed in part to assist him in that deterrence. He must
37 seek employment; he must conduct his social life; and do whatever else is necessary to
38 place himself in a position where he will not be at risk to himself and thereby to other
39 people. It maybe as is suggested here, that with the proper [therapy] he could overcome
40 this difficulty entirely. I hope that he can but if he does not, he must at least know that the
41 consequences of repeating such conduct would have to be so severe that any future
42 sentence would be for the most part to keep him away from society. That, however, is not
43 required at this time because, based on the existence before me and the experience of the
44 courts, many people in this accused's position are able, based on the assistance given them
45 and the realization of the consequences to themselves, to rehabilitate themselves and to
46 firmly resolve that they will not repeat and make every provision in their own life to
47 protect themselves against it.

48 The last consideration in respect of sentence is the most important one in this case and
49 that is the deterrence of other people who might be in this accused's position. Everyone
50 who thinks they might like to be a teacher or a social worker or a Boy Scout leader,
51 everyone who is going to be dealing with children must know that if they have any
52 tendencies towards this kind of activity they must not pursue those vocations because the
53 risk might be too great to themselves and their victims. It is an unfortunate anomaly
54 because many of the people who have these tendencies turn out to be the best teachers,
55 the best social workers and the best Boy Scout leaders and it is pretty clear here that this

56 accused was a more than adequate school teacher and a more than adequate parent and a
 57 more than adequate member of society. But it is because these people have the aptitude to
 58 deal with the children that they get themselves in positions, not deliberately or knowingly,
 59 but they have a tendency to get themselves in a position where they can have access to
 60 children with sometimes these very unfortunate results. So the penalty that must be
 61 imposed here has to say to the public at large, this conduct is not to be condoned and if
 62 you have any tendency to conduct yourself in such a manner, you must know that the
 63 penalties that the law imposes are severe. As for this particular case, although the facts are
 64 not serious in themselves the impact on the victims has been serious. But even that impact
 65 resulting from those facts would not have called in my view for a serious penalty if it
 66 were not for the fact that this accused was the victim's teacher.

67 Taking all of those things into consideration and the authorities that have been briefly
 68 referred to and to which I have made reference, Mr E., I sentence you to twelve months
 69 in jail to be followed by two years' probation. I recommend that you be involved in the
 70 program at Kamloops under the guidance of Dr Madrya. I hope that the period of
 71 probation will be used to retrain you in a position that will help support your very
 72 supportive family but at the same time will allow you to start a new career that does not
 73 involve the association with children that you have had before. The terms of the probation
 74 are just as set out in Mr Leischner's report. Report to and abide the reasonable directions
 75 of a probation officer; to live at a residence approved by a probation officer; and not to
 76 have exclusive care or control of any children twelve years of age or younger with the
 77 exception of his own family and to seek and maintain such counseling or other treatment
 78 as directed by a probation officer.

79 That's all, thank you

In the Canadian judicial system, the status-neutral term 'the accused' (l. 1) is used to refer to the person who has been charged with a crime in order to follow the principle that an individual should be presumed innocent until proven guilty. Once an 'accused' is found guilty he or she may be accurately referred to with status-definite terms such as 'the offender' or 'the perpetrator'. The teacher in this case has been found guilty of two sexual assaults, partly on the basis of his own plea. Yet throughout the judgment the judge refers to the teacher as the 'accused'. In doing so, he alludes indirectly to the presumption of innocence and calls into question the validity of the conviction.

In the next sentence (l. 2), the judge uses an agentless grammatical construction ('the offences involved the touching') that does not connect the offender directly to his actions. It is as though the 'offences', an impersonal noun, are responsible for 'touching' the girls. In this and the next sentence the judge uses a combination of linguistic devices – the euphemism 'touching', the nominalizations 'the offence' and 'his conduct', and the existential constructions 'they occurred', 'it happened', and 'the circumstances' – to downplay the severity of the assaults, reduce the perceived harm to the victims, and mitigate the offender's responsibility. Only once, in the summary listing of legal charges, does the judge refer to the sexualized assaults *as* assaults (l. 2). Throughout the entire judgment, the judge never explicitly connects the offender to deliberate acts of violence.

The facts of the case show that the teacher used his physical power as a man and his social power as an adult and teacher to deliberately violate two children

in his care. However, the judge makes no clear statement to this effect. The statement 'these students were in the accused's class when the offences occurred' (ll. 3–4) seems to apportion added responsibility to the offender for his breach of trust, but in fact minimizes it. The judge does not state the functional relationship between the victims being students in the perpetrator's class and his assaults against them. Indeed, from the judge's account, one could get the impression that the two facts are coincidental. Later (l. 66) the judge mentions the perpetrator's breach of trust as an aggravating factor in sentencing, but at no point does he detail the deliberate, coercive manner in which the offender exploited his status as a teacher. By the end of l. 4, the judge represents the 'accused' as being minimally responsible for non-serious and non-deliberate 'offences', themes that are expounded more explicitly later in the judgment.

In ll. 4–6, the judge indirectly raises and then carefully side-steps the intimately related issues of deliberation and responsibility, even though both are crucial to sentencing. The judge's use of the phrase 'knew that they occurred' restricts the focus to what the offender knew after the assaults. The more relevant question of what the offender 'knew' before the assaults, which would raise the issue of deliberation, is not asked. This omission is noteworthy because the offender 'had some sexual fantasies that involved the touching of young girls' (ll. 9–10) and took steps to isolate the victims (i.e. in his classroom where he had control and would have been able to establish secrecy and limit the chances of adults stopping him). These facts show that the offender's actions were deliberate, and that he 'knew' about the assaults both before and after 'they occurred'.

In l. 5, the judge's use of the words 'accept' and 'admit' is puzzling. If the perpetrator 'knew' that he had assaulted the girls (i.e. 'that they occurred'), then how can he be 'reluctant to *accept* that they had [occurred]'? One possibility is that the judge is using 'accept' as a substitute for either 'admit' or 'acknowledge'. If so, the judge is indirectly alluding to the perpetrator having deliberately refused to admit that (i) the girls were assaulted and (ii) he was the offender. This interpretation of the sentence fits the facts of the case but is inconsistent with the judge's view that the assaults were not deliberate acts.

A second and more likely possibility is that the judge is using 'accept' as a synonym for 'believe'. (This interpretation is consistent with the judge's use of 'accept' in l. 11.) The sentence would then mean that the offender was 'reluctant' to believe that he had assaulted the girls. Though not consistent with the facts, this interpretation fits the view proffered by the judge. An offender who disbelieved the accusations leveled against him would not be expected to admit to them. Thus, rather than openly admitting to his assaults against the girls, the perpetrator '*could* only bring himself so far' (l. 5; emphasis added). He '*could* only admit that they 'had no reason to lie' and were therefore more believable than he. The judge's use of the word 'could' suggests that the perpetrator was unable rather than unwilling to admit to the assaults: It is not that the offender refused to take responsibility for his violent actions, he was simply unable to face the truth. Thus, although the judge credits the perpetrator with the positive act of

'bring[ing] himself . . . to admit', he never connects the perpetrator with committing the crimes. In this light, the perpetrator's guilty plea is not an admission that he committed the crimes but a prudent acknowledgment of the fact that there was sufficient evidence to obtain a conviction.

Also, notice in this section, that the judge never explicitly provides a precise, contextualized meaning of 'it' (used twice on l. 6). Yet, such detail is of crucial importance because it can reveal the deliberate nature of the offender's actions, including the manner in which he tried to circumvent and suppress the victims' resistance. Did the offender assault the children when he was alone with them? If so, how did he come to be alone with them? Did he try to disguise the assaults as accidents? Did he attempt to prevent the children from telling anyone (e.g. by using threats)? The lack of detail conceals evidence that might elucidate the victim's resistance and contradict the judge's versions of the assaults as non-deliberate.

In ll. 6–8, the judge bolsters his account of the attacks as sexual, non-violent and non-deliberate. He simultaneously offers and rejects pedophilia as a cause of the assaults. The fact that the offender is 'not a primary paedophile' sets aside one explanation but leaves unexplained (even in theory) the origins of the assaults and the 'sexual fantasies'. The term 'primary' pedophile (l. 7) suggests another category of offender, perhaps that of a secondary pedophile, whose 'sexual gratification' comes secondarily from 'fantasies' about, and the 'touching' of, 'young girls'. Having removed the offender from the category of 'pedophile' (and the implications of that designation for sentencing), the judge suggests instead that the offender was compelled to assault the children by the combined pressure of normal and abnormal sexual drives. In either case, the assaults are defined as sexual rather than violent. As was typical of sexualized explanations of violent behavior in our data, the judge casts the offender as controlled by his sex drive (see part II).

The phrase 'has had some sexual fantasies' represents the 'sexual fantasies' as impersonal nouns, that is, as psychological entities that occasionally visit the offender, presumably against his will. The offender is attributed no responsibility for the act of 'fantasizing' (a verb) about 'the touching of young girls', an act that entails the wilful construction of certain mental images. The judge then explicitly and emphatically reformulates the assaults as non-violent: 'Neither in the circumstances here nor in the fantasies has there ever been any violence or anything more than touching' (ll. 10–12). It is important to note here that in Canadian law the crime of sexual assault is defined as inherently violent. Consequently, by law, there can be no non-violent sexual assaults. Yet, in this case and the rest of our data judges frequently constructed sexualized assaults as non-violent.

In the second paragraph, the judge acknowledges the 'serious impact' of the 'offences' upon the victims and notes that the pre-sentence report is critical of the authorities. He then proposes to leave the subject of the families' criticisms of the authorities (l. 15). However, it is clear that the judge anticipates the families' criticism of his sentencing decision because in ll. 16–29 he resorts to a

particularly aggressive form of prolepsis, the debating strategy in which one participant pre-emptively negates the position he anticipates will be put forth by his counterpart. The judge's statement that '*all* of the *problems* of the family cannot and are not going to be solved by the penalty imposed on the accused' (ll. 15–17; emphasis added) suggests that at least some of the families' problems are unrelated to the assaults. In this context, the parents' are not seeking a sentence that reflects the gravity and seriousness of the crime. They are excessively concerned with the 'penalty imposed on the accused' possibly because they are attempting to avoid their own problems by focusing on the sentencing of the accused. The judge questions the competency of the parents by lecturing them on their responsibilities ('the parents should not feel . . .', l. 17; 'their job is to . . .', l. 18). Indeed, the judge implicitly defines the parents' concern for the sentencing of the offender as a dereliction of their duties.

The judge then shifts to more general remarks about sentencing that clearly refer to, but do not explicitly name, the victims' families. The judge's claim that sentencing is 'one of the most least understood aspects of the law from the point of view of the public and of some victims and their families' serves to dismiss any criticisms made by the families. According to the judge, such complaints are not thoughtful and justified, but mere reflections of the person's own ignorance. In ll. 24–32, the euphemism 'crimes' represents all crimes as if they were equal and effectively conceals the unique and disturbing nature of sexualized assaults against children. In ll. 24–26, the judge formulates parents as seeking revenge ('retribution') through sentencing ('locked up forever'). The parents are then presented as being out-of-step with 'society in general' whose members share the goal of 'rehabilitation'.

One striking feature of this segment (ll. 15–26) is the lengths to which the judge goes to discredit the families, apparently as a means of dismissing their anticipated complaints. Responsible parents of children who have been sexually abused are often determined to ensure that the Court takes seriously the claims of their children, acknowledges the nature of the trauma their children have endured, ensures that the offender faces the full social and legal consequences of his actions, and acts to ensure the safety of other children. Indeed, for many victims and their families, seeing that justice is done is crucial to the recovery process. Here, however, the judge argues that the victims' parents, and by extension the parents of other children who have been sexually abused, should not concern themselves with the sentencing of the offender. This argument absolves the court of direct accountability to victims and their families, protects the judge from the kind of criticism that was apparently directed at other authorities, and forms part of the rationale for the sentencing decision that follows. Finally, in this segment, the judge effectively reverses the positions of offender and victim: the victims and their families are positioned as troubled, uninformed, and unreasonable people in search of revenge against 'a teacher like Mr E', while the offender is positioned as the prospective victim of that revenge who, it follows, is in need of 'assistance' (l. 31) from the court.

At five separate points the judge represents the offender as the victim. The judge advises the perpetrator (and others) that he 'cannot put himself at risk' (l. 35) or 'be at risk to himself' (l. 38) by teaching children. He stresses that offenders must realize 'the consequences to themselves' (l. 45) of being around children and resolve to 'protect themselves' (l. 47) from children because 'the risk may be too great to themselves' (l. 53). Here, the judge conflates the potential danger to any prospective victims of this offender with the discursively constructed risks facing the offender. The girls are the catalysts that incite overwhelming emotions or drives in the perpetrator, which in turn compel him to act violently.

Finally, in the third paragraph (ll. 33–47) the judge addresses the question of individual deterrence, that is, how best to prevent the perpetrator from harming others. Here the judge represents the perpetrator as highly agentive, that is, as capable of deliberate, constructive action. The perpetrator has the capacity to 'decide' (ll. 34 and 35), 'firmly resolve' (l. 46), 'make every provision' (l. 46), 'rehabilitate' (l. 45) and 'protect' (l. 47) himself. Yet, when accounting for the crimes the judge does not credit the offender with the same capacity for deliberate action. The offender did not 'decide', 'firmly resolve', and 'make every provision' to assault the girls. Nor did he 'protect himself' by establishing secrecy and refusing to accept responsibility when caught. Rather, the judge attributes the assaults to the combined action of several psychological entities: 'a tendency' (ll. 52, 54, 59); a 'difficulty' (l. 40); 'sexual fantasies' (ll. 9, 10); and an 'aptitude' (l. 57). Thus, the judge differentially constructs the perpetrator's capacity for deliberate action: positive behavior is constructed as deliberate, whereas negative behavior is constructed as non-deliberate.

In short, as with other judgments in our data, all four-discursive-operations are accomplished in this judgment. The judge (i) *mitigates* the perpetrator's *responsibility* by concealing the deliberate nature of the perpetrator's use of power to entrap the victims and by using psychologizing attributions that portray the perpetrator as out-of-control. The judge (ii) *conceals* the *violence* by using mutualizing and eroticizing terms that portray the assaults as sexual and non-violent. Moreover, euphemisms and existential grammatical constructions are also used to obscure the nature of the violent acts in question. The judge (iii) *conceals* the victims' *resistance* by portraying them as passive objects who incited sexual desire in the perpetrator. The strategic manner in which the perpetrator tried to suppress and circumvent their resistance was also concealed.

Finally, the judge (iv) *blames* and *pathologizes* the *victims* by portraying them as the catalysts who excited the sexual desire of a good man who is among the 'best' of teachers. In this case, the judge also conceals the resistance of the victims' families by labeling them problematic and vengeful. The judge reformulates the child victims into perpetrators who are responsible for the acts committed against themselves and the adult perpetrator into a victim who is not responsible for his actions. He is among the 'best teachers' and is deserving of the Courts' assistance, a service the judge explicitly denies the victims. Thus, all four-discursive-

operations do not merely co-occur in this judgment, they are integrated into the account in such a way as to mutually support the function of the others. One can best see the full extent to which the judge mitigates this perpetrator's responsibility by examining all four-discursive-operations.

General discussion

The question we asked at the beginning of this article is how, and how accurately, judges apportion responsibility for sexualized assaults in cases where the perpetrators' guilt was established. In part I we introduced the interactional and discursive view of violence and resistance in order to clarify our analytic framework and link the analysis of legal judgments to broader questions of social justice and the connection between violence and language. Then, in part II, we analyzed causal attributions found in sexual assault trial judgments. The attributions were divided into eight general categories: alcohol and drug abuse, sexual drive, psychopathology, family of origin, trauma or stress, character or personality of the perpetrator, emotion, and loss of control. A preponderance of these causal attributions was psychologizing in that they mitigated perpetrators' responsibility for sexualized violence. Some of these attributions explicitly mitigated perpetrator responsibility (e.g. 'alcohol robs people of their self-control'), whereas others implicitly mitigated responsibility by casting the act as non-violent or even mutual. Finally, in part III, we analyzed the full text of one judgment in detail. We showed how psychologizing attributions are combined with other linguistic devices to perform the four-discursive-operations (i.e. concealing violence, mitigating perpetrators' responsibility, concealing victims' resistance, and blaming or pathologizing victims) and produce accounts that firmly, and often drastically, reduce perpetrator responsibility.

Legal experts have argued that in weighing perpetrators' responsibility judges assess whether or not the behavior was autonomous. If the perpetrator can be seen as the 'author or source of his [or her] own behaviour' then the judge determines if the behavior meets the legal or social criterion of having committed a crime. If the perpetrator is convicted, the judge assesses 'the degree of criticism required for holding the individual accountable' (Lipkin, 1990: 332). But this does not appear to be the process occurring in the judgments that comprised our data. The overwhelming majority of attributions (not just those offered by the defense counsel) portrayed perpetrators as overwhelmed by social or psychological forces that compelled them to perform violent acts. Moreover, judges did not appear to be assessing the degree of sanction required given the offence so much as assessing extraneous factors that could be used to argue that the behavior was non-deliberate and non-autonomous. Despite the gravity of the violent acts in question, the judgments did not accurately reflect the degree of responsibility evident in perpetrators' behavior, nor did they promote a sense of responsibility in perpetrators as required by the Canadian Criminal Code (c.22, s6). Instead, judges obscured and mitigated perpetrators' responsibility: deliberate acts of

violence were systematically reformulated as non-deliberate, non-violent acts. Judges then gave sentences and recommended treatment programs that were consistent with these reformulations. This mitigation of perpetrator responsibility occurred despite the fact that every perpetrator in our study had pleaded or was found guilty.

Narrowly interpreted, this article serves as a critique of current legal practices, particularly the use of psychological concepts and constructs to represent perpetrators of sexualized assault. However, we are not arguing that judges' use psychologizing attributions strategically to excuse men and promote violence against women and children. In fact, judges are far from alone: similar constructions are used by academics in scholarly texts, mental health professionals in clinical literature, and journalists in media reportage. Our view is that it is not essential to take up an ideological position to produce and reproduce social injustices. The simple act of participating in everyday, taken-for-granted discursive practices, such as those we have documented here, directly and indirectly reproduces social injustices and impedes effective intervention. As Fairclough (1989) pointed out, discursive practices do not merely 'reflect' an independent reality: 'Discursive practices entail an active relationship with reality and, in fact, change reality'. (p. 37).

Our analysis demonstrates the importance of the discourse used to represent violent acts. By examining psychologizing attributions and the four-discursive-operations, we identified a number of disparities between the deliberately violent actions of perpetrators of sexualized violence and the manner in which those actions and perpetrators' responsibility for those actions were represented. Although the precise manner in which the four-discursive-operations function is always unique and local, they generally function to produce inaccurate accounts that are nevertheless used as a basis for intervention (e.g. prevention, education, victim advocacy, reportage, law enforcement, criminal justice, child protection, and counseling with perpetrators or victims). The four-discursive-operations impede effective intervention according to the extent and precise manner in which they are employed in particular cases.

The present study also identifies discursive practices that are used in relation to diverse forms of violence, not only sexualized assault. We have found this approach to critical analysis of immediate practical benefit in therapeutic practice with victims and perpetrators. Our hope is that our framework and research contribute to effective prevention and intervention in all forms of violence. Significant changes in discursive practice must occur if we are to engage in more effective and respectful prevention and intervention. Discursive practices that (i) expose violence, (ii) clarify responsibility, (iii) elucidate and honour victims' responses and resistance, and (iv) contest the blaming and pathologizing of victims are necessary for socially just, safe, and effective prevention and intervention. Our experience as therapists indicates that more accurate and respectful language is immediately beneficial to victims and, ultimately, to perpetrators who want to take responsibility for their actions.

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NOTES


1. The term sexualized assault is used here instead of the legal term sexual assault because the latter term implies that these assaults are sexual acts. The authors do not accept this assumption.
2. The term language is used broadly and includes all the verbal and non-verbal elements of language. Language use takes place within and form social interaction.
3. We use the term 'interpersonal violence' throughout this article even though it is potentially misleading. Although violence is social in that it involves at least two individuals, we do not intend to suggest that victims and offenders share responsibility for violent behavior. We are grateful to Martine Renoux for pointing out that the term interpersonal violence is also mutualizing.
4. For example, Mary was hit by John.
5. Because all of the offenders in our research were male, and given differing cultural stereotypes about male and female sexuality, we cannot assume that the same sex drive attributions would be used for male and female offenders.
6. The term pedophile means 'child loving'. The fact that psychologists and psychiatrists use this term exemplifies the problematic treatment of sexualized violence by these professionals.

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LINDA COATES, PhD, is an Associate Professor in the Department of Sociology, University of Lethbridge. She has conducted numerous studies in the issue of language and violence and how it affects social policy and practice. Linda has given workshops to various groups who are interested in understanding, preventing or intervening in violence. She works closely with Nick Todd and Allan Wade on the development of the Interactional and Discursive View of Violence and Resistance. [email: l.coates@uleth.ca]

ALLAN WADE, PhD, works as a therapist and discourse analyst in private practice. He works extensively with victims of diverse forms of violence and other forms of oppression and adversity. Allan has incorporated research into the nature of violence and resistance and the connection between violence and language in developing the response-based approach to therapy. Allan works closely with Linda Coates and Nick Todd on the development of the Interactional and Discursive View of Violence and Resistance. Allan consults to groups interested in violence prevention or intervention.