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## 15. WHAT'S IN A NAME?

### Who Benefits from the Publication Ban in Sexual Assault Trials?\*

JANE DOE

- i. Introduction 265
  - A. Context and Background 266
  - B. Methodology 268
  - C. Interrogating Anonymity/Jane 269
  - D. Manipulating Jane 272
  - E. Living Jane Doe 276
- ii. Conclusion 281

#### I. INTRODUCTION

According to Canadian law,<sup>1</sup> a publication ban (also referred to as a media ban) is granted when a court official applies on a raped woman's behalf. The ban prohibits, under the threat of criminal sanction, the public use of the woman's name, likeness, or any other identifying information. If not stipulated otherwise, the pseudonym most often assigned to her is "Jane Doe."

I am a Jane Doe. I have lived with that alias and the relative anonymity it grants me since 1986. In this essay, I will investigate whether the publication ban does in fact protect the privacy of sexually assaulted women, or instead keep the crime of sexual assault private and hidden. To accomplish this, I will address the gendered nature of anonymity.

The qualitative research that I conducted was designed to elicit personal accounts that centre on the experiences of women who have been sexually assaulted and who either chose or rejected the publication ban. Through interviews with women who work in agencies that provide counseling and support to women who have been sexually assaulted, I will reflect on the dominant thinking on publication bans from the Violence Against Women (VAW) sector. Canadian case histories and transcripts further inform my content. Finally, I will draw on my own personal experience and reasoning for "staying Jane."

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\* Sections of this paper are taken from Jane Doe, *The Story of Jane Doe: A Book About Rape* (Toronto: Random House, 2007).

1. Section 486.4 of the Canadian Criminal Code is specific to publication bans in sexual assault trials and is mandatory.

### A. Context and Background

Pursuant to the *Canadian Criminal Code*, section 486.4(1)(a)(i), it is stated that,

Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast in any way, in proceedings in respect of . . . an offence under section . . . 271, 272, 273 . . .<sup>2</sup>

Literature regarding the case indicates that the publication ban was enacted to

foster complaints by victims of sexual assault by protecting them from the trauma of widespread publication resulting in embarrassment and humiliation. Encouraging victims to come forward and complain facilitates the prosecution and conviction of those guilty of sexual offences. It's ultimate objective is to favour the suppression of crime and to improve the administration of justice.<sup>3</sup>

But the ban and its intent were soon challenged. A newspaper publisher, who appeared at a rape trial in 1986, opposed the application of the publication ban on the basis that it violated the right to freedom of the press, guaranteed by s. 2(b) of the *Canadian Charter of Rights and Freedoms*. The publisher argued that the ban denied the accused a public trial by preventing others who may have been previously falsely accused by the woman involved from coming forward. The presiding judge decided against Canadian Newspapers, stating that, although the ban did encroach on the right to freedom of the press, it is a *reasonable limitation* on that right and he subsequently issued the ban.

An appeal was heard at the Supreme Court for this case. In its decision, the court held that

Arguments based on the possibility that publication of the complainants name in a particular case might lead to other person's coming forward who had previously been falsely accused by the same complainant had no relevance to the freedom of the press issue. As regards the accused's right to a public hearing, the mandatory ban on publication provided for in s. 442(3) does not prevent the public or the press from attending trial proceedings. Therefore [the publication ban] does not in any way infringe the accused's right to a public hearing.<sup>4</sup>

The Women's Legal Education Action Fund (LEAF) and a coalition of VAW community agencies intervened to reject the "spurious false allegation defense" put forth by the publisher. In addition, these groups rejected the court ruling that the ban was a mandatory right that grants the women involved control over

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2. Criminal Code R.S.C. 1985 c. C-46.

3. *Canadian Newspapers Co. v Canada (Attorney General)* [1988] 2 S.C.R. 122.

4. *Canadian Newspapers* (n. 3).

whether their name is used or not, as this control appears to be transferred to the presiding judge (who did not comment on this matter in this ruling).<sup>5</sup>

Feminist activists, researchers, and scholars have examined rape and its significance regarding women's equality, agency, and choice for decades.<sup>6</sup> Critiques of the legislation and policies that govern the crime of sexual assault are certainly familiar with the arguments. In fact, recent studies have illustrated the deleterious effect of certain sexual assault legislation on female equality rights as protectionist<sup>7</sup> and even promoting harm.<sup>8</sup> There has been little focus, however, on the influence of the publication ban on the lives of women.

This is not to suggest that it has been ignored. In her case comment *Canadian Newspapers Co. v. Canada*, Christine Boyle<sup>9</sup> praises the Supreme Court for upholding the publication ban and the protection it offers raped women. She laments that the Court's reasoning did not focus on the rights of women to freedom of expression, liberty, and security by enshrining C486 under equality-seeking sections of the Charter. Instead, the Supreme Court upheld "the complainant initiated mandatory ban as the minimal *interference with freedom of the press* necessary to facilitate the prosecution and conviction of those guilty of sexual offences" (emphasis added).<sup>10</sup> In her conclusion, Boyle reminds us that "the contrast between the privileged

5. Women's Legal Education Action Fund (LEAF). (2000). *Sexual Assault Law, 2000*, <http://www.leaf.ca> (accessed September 30, 2007).

6. Christine Boyle, *Sexual Assault* (Toronto: Carswell, 1984); Susan Browmiller, *Against Our Will: Men, Women, and Rape* (Toronto: Bantam Books, 1975); Catherine Mackinnon, *Only Words*. (Cambridge, MA: Harvard University Press, 1993); Elizabeth Sheehy, "Advancing Social Inclusion: The Implications for Criminal Law and Policy," *Canadian Journal of Criminology* 46 (2004): 73–95; Carol Smart, *Law, Crime, and Sexuality: Essays in Feminism* (London, Thousand Oaks, New Delhi: Sage Publications, 1995).

7. Canadian Association of Sexual Assault Centres (CASAC), "Myths Mask the Facts About Rape," *Myths and Facts* (2004), [http://www.casac.ca/english/issues/myths\\_rape.htm](http://www.casac.ca/english/issues/myths_rape.htm) (accessed September 30, 2007); M. Denike, "Sexual violence and 'fundamental justice': On the failure of equity reforms to criminal proceedings," *Canadian Woman Studies* 20. (2000): 151–159; Ontario Women's Justice Network, *When a Sexual Assault Case Goes to Trial: Basic Legal Information for Women Experiencing Violence*. (Toronto: 2006); Walker (1988). "Introduction to feminist therapies," in *Feminist Psychotherapies: Integration of Therapeutic and Feminist Systems*, eds, M.A. Dutton-Douglas and L.E. Walker (Norwood, NJ: Ablex), 3–11.

8. Nora Currie and Kara Gillies, "Bound By Law: How Canada's Protectionist Public Policies in the Areas of Both Rape and Prostitution Limit Women's Choices, Agency and Activities" (forthcoming); Rita Gunn and Rick Linden, "The Impact of Law Reform on the Processing of Sexual Assault Cases," *Canadian Review of Sociology and Anthropology* 34, 2 (1997): 155–177; Sheehy, "Advancing Social Inclusion," (n. 6).

9. Christine Boyle, "Publication of identifying information about sexual assault survivors: *R. v. Canadian Newspaper Co. Ltd.*" *Canadian Journal of Women and the Law*, 3 (1989): 602–614.

10. *Ibid.*, 609.

constitutional status accorded freedom of the press and the lack of any constitutional status afforded women in complaints about sexual assault is acute.”<sup>11</sup>

A lack of clarity remains about how the publication ban is applied, which raises the question of whether it indeed benefits women.

## B. Methodology

In analyzing the publication ban, I have rejected the characterization of sexually assaulted women as fundamentally damaged and in need of paternalistic protection, and have instead used a framework that acknowledges their individual and collective agency. I do not use the popular discourse of victimization (“rape victim,” “survivor,” or “thrivor”), and I use the terms “rape” and “sexual assault” interchangeably. My focus is not on individual stories of victimization that keep sexual assault in the realm of the normative, confessional, or depoliticized as is often reflected in what is referred to as “Survivor Discourse,”<sup>12</sup> or viewed through mainstream pop psychology such as that of Dr. Phil or Montel.

The term “experiential” is used in this paper to specifically identify adult women who have entered the legal system as the result of their rapes. The phrase “key informant” refers to women who work in community-based rape crisis centers.

Sexually assaulted women are an extremely hard-to-reach population in part as a result of the lack of institutional, social, and legal supports. The issue of anonymity itself makes studies about raped women’s experiences difficult to design and complete.

Interviews were held with eight experiential women from three provinces who had been sexually assaulted as adults, and three key informant women who work as counselors/advocates in feminist community rape crisis centers. Of those, one was Aboriginal, (experiential) and three were women of color (two experiential, one key informant). The sample for this study also included the contributions of three reporters from one national and two local media outlets.

Interview material does not distance the voice of interviewed women from mine. I will not attempt to present recommendations for change or alternatives to the publication ban, as there are too many other fugitive pieces that must also be tracked and inspected. Instead, my goal here is to look sideways at rape, to surveil and “talk back” to the cacophony of the publication ban. Ultimately, I question the benefits of its use. I hope to identify what is not working, and, in doing so, convert, subvert, or at least give pause to what has gone under the radar as normal discourses of rape.

I was told that my success in contacting this population of women was due to my own experiential location as a Jane Doe. They understood that this was not to be the traditional positioning of raped women as emotionally traumatized

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11. *Ibid.*, 614.

12. Linda Martin Alcoff and Laura Gray-Rosedale, “Survivor Discourse: Transgression or Recuperation?” *Signs* 18, 2 (1993): 260–290; Boyle, “Publication of identifying information about sexual assault survivors,” (n. 9).

and/or intellectually incapacitated by the crime that has been committed against them. But how does an anonymous woman (myself) write about women and anonymity while respecting the stipulation of most of the women I interviewed that I maintain their anonymity?

**Articulating/Voicing Jane(s)** There is a research practice to assign participants numbers, which seemed like the cleanest and most symbolic approach, but it is cold and hard and, well, *anonymous*, and it does not reflect the agency and acumen of the women with whom I spoke. Then, I thought I would give them the names of fictional female heroes, (quick! name three), or saints or celebrities (sinners). Most women in those categories are already sexualized, and many use first names only or aliases. All groups hold preconceived notions of female identity and were therefore unsuitable for my purposes.

*We are symbolic creatures and whatever name we choose would be a powerful choice. You could choose your grandmother's name as opposed to the namelessness of Jane Doe and all of its symbolism.*

Key Informant Jane Doe

### C. Interrogating Anonymity//Jane

**Constructing Women's Identities; or, What's in a Name?** Not much if it's Jane Doe. It is the sobriquet commonly used to denote the "average" woman. She is otherwise unidentified and understood as anonymous or "ordinary."

In law, and in the media, especially given the glut and popularity of crime procedurals on TV, the moniker is code for unidentifiable women who are raped, missing, or dead. Jane Doe is their epithet, and the true identities of these women are forever lost. We view their bodies as piecework, as evidence, as information. There is no power in a Jane Doe identity. The same can be said of female nomenclature generally. In the West, patriarchal institutions assume that a woman will take the family name of the man she marries.

Women are cautioned about using their full names online in phone books and other public directories, and in public space for fear of signaling female identity to sexual offenders, thieves, and any man who may harm or exploit them.<sup>13</sup> We are cautioned not to put our names on luggage, jewelry or other personal public space.<sup>14</sup> To a large extent, society demands Jane Doe-ism of all women—in the name of our own safety—as if there is safety in not being a woman and danger inherent in womanhood (especially if you take your womanhood out in public).

13. Ontario Women's Justice Network (n. 7).

14. [http://www.witi.com/careers/2004/travel safety tips](http://www.witi.com/careers/2004/travel%20safety%20tips) (accessed August 8, 2007).

The construction of the “rape victim” reflects and supports feminist sociological literature about private and public women and private/public space.<sup>15</sup> We already think of rape as a private matter between one man and one woman versus a public, social matter that affects all men and all women. Anonymity reinforces this understanding.

In rightly preserving women’s privacy, the publication ban also allocates the crime to the private realm where the overwhelming majority of sexual assaults take place.<sup>16</sup> Women raped in public by serial or stranger rapists are warned by the police before the fact, and then admonished afterwards that it was their very presence in public space that precipitated their sexual assaults. They did not do as they were told. The message to all women is to regulate their movements and/or “stay home” as prevention.<sup>17</sup>

The publication ban reinforces the current understanding of rape as blight on the perceived goodness or the quality of the woman involved, and one that she has brought on herself.<sup>18</sup> The theme in both publication bans and rape warnings seems to be that privacy/safety for women can only be accomplished if women withdraw from public life into the private realm.

The publication ban’s stated purpose to “foster complaints by victims of sexual assault by protecting them from the trauma of widespread publication resulting in embarrassment and humiliation” is confirmation of the disgrace and dishonor we attach to a raped woman, and the manner in which her virtue and body are understood to be sullied and defiled.<sup>19</sup> The second proposition that the ban would “encourage victims to come forward and complain to facilitate the prosecution and conviction of those guilty of sexual offences” is dubious, particularly in nonurban areas where women’s identity quickly becomes common knowledge.<sup>20</sup> There is no research to prove the ban’s efficacy in this regard.

**Embodying Jane Doe: Who Does “Jane” Erase?** I asked all of the women I interviewed to tell me what they imagined Jane Doe looked like when they read or heard of “her” in the news. Elements of their reply were always the same. They said she was white, relatively young, and middle-class.

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15. Tamara Myers, *Caught: Montreal’s modern girls and the law, 1869–1945* (Toronto: University of Toronto Press, 2006); Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885–1925* (Toronto: McClelland & Stewart, 1991).

16. Statistics Canada, “Crime statistics in Canada, 2000,” *Juristat* 21 (Ottawa: Canadian Centre for Justice Statistics, 2001).

17. Ontario Women’s Justice Network (n. 7).

18. Franca Iacovetta and Mariana Valverde, *Gender Conflicts: New Essays in Women’s History* (Toronto: University of Toronto Press, 1992); Mariana Valverde, *Sex, Power and Pleasure* (Toronto: Women’s Press, 1985).

19. *Canadian Newspapers* (n. 3).

20. *Ibid.*

*What is more Anglo or plain than Jane? It doesn't speak to age or culture or race or anything. Existing power structures are manifested in that.*

Key Informant Jane Doe

*She's white and middle class. Her social definers and issues are erased. She can't be a minority or a sex worker or a poor woman. Every time I see or hear about Jane Doe I think of the huge amount of fear it puts in place, they are images of fear.*

Experiential Jane Doe

*A little white woman, broken and pathetic, demolished, with bunched up Kleenexes in her hand. She's an object of pity and holds all the stereotypes of a hopelessly destroyed woman, emotionally mangled, who requires circling off and rescue.*

Key Informant Jane Doe

*Jane Doe is coded as white. Sort of a universal victim. All complexities are erased in a Jane Doe. She is young, 20–40. I think of her as being so individualized that she is just a thing. She exists outside of relationships, is probably single with no man to protect her.*

Experiential Jane Doe

Racialized women are scarce or absent in our general understanding of women who are sexually assaulted. Their rapes are even further distanced from our consciousness if we hold to the descriptors above. On the other hand, the racial identities of raped women can be used purposefully to situate them in a negative light.

The same kind of breach of a publication ban occurs if the woman is identified as a sex worker. Every myth and judgment we hold about “those women” falls into place. Such violations not only subject the women involved to a greater potential for stigmatization and harm, they contribute to rape mythology that holds that some women cannot be raped, some are more subject to rape, or that men in their cultures are more prone to rape.

Currently, the convenient notion that some racialized women report their rapes less frequently than white women because they are more subject to shame, community censure, disbelief, and the fear of powerful men is common.<sup>21</sup> Although such strictures certainly exist, it is the nature and consequence of racism and systemic racist beliefs as well as stereotypes that further prohibit racialized women from reporting to the police or accessing the legal system.<sup>22</sup>

21. “Culture Clash: Ripples from a Sexual Assault,” *Globe and Mail*, Editorial, September 30, 2007; Margaret Wentz, “Why are we so afraid to offend?” *Globe and Mail*, September 29, 2007.

22. Y. Jawani, *Intersecting Inequalities: Immigrant Women of Colour, Violence and Health-care*, (Vancouver: Freda Centre for Research on Violence Against Women

Indeed, we cannot separate race or racism from rape. How else can we explain the construction of Jane Does as white? We imbue raped women with characteristics with which we are comfortable, and when details of her race, geography, or trade become known, we isolate her, treat her as the “Other,” and thus increase the likelihood that she will be denied presumptive protection.

In her 1992 social critique of print media coverage of sexual assault, Helen Benedict analyzed four sensational U.S. cases (that also led Canadian headlines) to conclude that sex crime coverage still privileges crimes against white women, while ignoring those against black women,<sup>23</sup> and still covers black men against white women rapes with an “exaggerated frequency, class prejudice and racist stereotypes.”<sup>24</sup>

If our perception of Jane Doe/raped woman excludes racialized female identities why would First Nations women, black women, and women of color knowingly assume that location? The paper shield that the publication ban presents to white women is based on historical constructs of western female sexuality as delicate and in need of paternalistic protection, whereas racialized women, especially black and First Nations women, are understood as hypersexual and/or immoral, and therefore unable to be raped.<sup>25</sup>

#### D. Manipulating Jane

**Ball of Confusion** My survey resulted in some notable revelations: no one really understands the publication ban specific to sexual assault, not the lawyers, judges, antiviolence advocates nor the media, and certainly not the women to whom—or against whom—the publication ban is applied. Perhaps the specificity of the ban in sexual assault cases is also specific to the identity of the group that uses it. It has been documented in massive amounts of additional research internationally that rape mythology allows us to view women as causing sexual

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and Children, 2001); Shahrzad Mojab, “Theorizing the Politics of ‘Islamic Feminism,’” *Feminist Review* 69, no. 1 (2001):124–146; Sherene Razack, *Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms* (Toronto: University of Toronto Press, 1998).

23. In 2007 Amnesty International released “Maze of Lies: the Failure to Protect Indigenous Women from Sexual Violence in the USA.” They report that Native women are raped at three times the rate of non native women and that there is an abysmal “failure to pursue” when the perpetrators are known to be nonnative men.

24. Helen Benedict, *Virgin or Vamp: How the Press Covers Sex Crimes* (New York: Oxford University Press, 1992), 251.

25. Donovan, Roxanne A. (2007). “To Blame or Not To Blame: Influences of Target Race and Observer Sex on Rape Blame Attribution,” *Journal of Interpersonal Violence* 22, 6 (2007): 722–736; Joan Sangster, “Criminalizing the Colonized: Ontario Native Women Confront the Criminal Justice System, 1920–60,” *Canadian Historical Review* 80, 1(1999): 32–60; Carolyn West, *Violence in the Lives of Black Women: Battered, Black, and Blue* (Binghamton: Haworth Press, 2003).

violence, lying about it, enjoying it, and making false allegations.<sup>26</sup> If we are invested in those beliefs, why take the ban that seriously?

**Grassroots Anonymity** Women who work in community-based sexual assault centers (versus those who operate under the umbrella of legal, medical, and social work institutions and agencies) are in a unique position to comment on anonymity. They are often the spokeswomen for other women who have been sexually assaulted. As second wave feminists, many of them were directly involved in breaking the silence around rape. They fought and paid dearly for the Rape Shield Law and the publication ban. But the silence has returned; and only a feminist crack or two remains in the predominant discourse on violence against women today, and few workers are informed about the media ban.

*With rape crisis centres like ours there is a public fear of our radicalism, that we are lesbians and man-hating. That understanding is alive and well.*

Key Informant Jane Doe

Other Crisis Centre workers added,

*Service providers often feel that they are helping and doing advocacy work when inadvertently we are taking women's power away. We will only speak on behalf of her if she asks us and we will look for ways to give her voice power. We want to reinforce that she has choices. The hard part is how do we know we are doing that?*

Key Informant Jane Doe

*When a woman loses her individuality and becomes anonymous there is an ability to speak to the larger systemic problem. It allows us to look at violence in a more theological and ideological way in order to analyze the impacts of gender inequity. Anonymity can help us do that. On the flip side the very act of removing individuality disables us from looking at that individual woman, her experience and needs. Women are not a homogenous group so how can anonymity speak to or serve all women? If you clump us all together you lose your consciousness of race, poverty, ability, all of the basic areas that affect how women are experiencing the crime.*

Key Informant Jane Doe

**The Media and Jane Doe** What informs us most about the crimes of sexual assault and the women who experience them comes from mainstream media. It is

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26. Canadian Association of Sexual Assault Centres, "Myths Mask the Facts About Rape," *Myths and Facts*, <http://www.casac.ca/english/issues/> (accessed September 30, 2007); N. Gavey and V. Gow, "'Cry wolf,' cried the wolf: Constructing the issue of false rape allegations in New Zealand media," *Feminism & Psychology* 11, no. 3 (2001): 341-360; Ontario Women's Directorate, "Sexual Assault: Dispelling the Myths," <http://www.citizenship.gov.on.ca/owd/english/publications/sexual-assault/myths.htm> (accessed September 30, 2007); Ontario Women's Justice Network (n. 7).

the “Fifth Estate” that defines the state of sexual assault to us, for us. In interviews with reporters from major dailies (one national and two local newspapers), I was informed that “rape sells,” especially if it includes the can’t-fail components of celebrity, sensation, and additional physical violence.

*If it’s juicy or more compelling, that’s great, but there won’t be a lot of coverage unless it is a serial rapist or the woman is left dead or a multiple number of attackers. It is the melodrama of life that most of us will not ever experience but we respond to it in our gut. I don’t think there is anything intrinsically wrong in being interested in that sort of stuff—Scott Peterson versus Healthcare for instance. It resonates with us, the suspense, it’s the same reason we read mystery novels.*

Reporter Jane Doe

*Sexual assault is a common crime. If we covered all of them there wouldn’t be enough room in the newspaper. There has to be some other element to interest the paper. How it impacts the victim, the way it damaged or traumatized her. The general rule is if you report the crime you report the trial which takes a lot of man-hours so it needs to be compelling.*

Reporter Jane Doe

When asked how they would feel, how their editors might react if women stopped using the name Jane Doe and, instead, used names of their individual choice, the following was explained to me:

*Jane Doe is code for the longer story of sexual assault. It’s a name that speaks the crime. It’s like saying “Lolita” or even Karla Homolka, they are shorthand for an entire story or scene. I personally would continue to use Jane Doe in print even if rape victims chose other names. I think all reporters would.*

Reporter Jane Doe

**The Internet** Unlike any other form of communication, the Internet offers the promise and possibility of anonymity, and has been utilized by women who have been sexually assaulted to share their experiences, to politicize, and to educate. Some women use their real names, sometimes in conscious defiance of a media ban they feel contributes to the stigma surrounding sexual assault. For instance, a woman whose rape is currently under investigation writes and signs with her own name:

*I hope that I was able to create something positive out of such a horrific event in my life.*

Facebook has become a gathering place for some women to speak about their rapes unmediated by the forced narrative of police, lawyers, advocates, or the media.<sup>27</sup> But the press is ever-hungry for a good rape story and mightily

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27. Siri Agrell, “Sexual-assault Survivors Find Solace on Facebook,” *Globe and Mail*, September 4, 2007.

conscious of the tempering of their constitutional rights as presented in a publication ban. A recent *Globe and Mail* article drew attention to the many Facebook sites in which women use their real names to discuss the sexual assaults that have been committed against them. The article prints some of those names. Has *The Globe* violated the publication ban in doing so? What about their own internal policies? Is it their decision to make? Are the Facebook women in violation of the legislation?

**Unexpected Allies** My literature review on the subject of the publication ban produced a host of unexpected allies who also question the benefits of anonymity for sexually assaulted women. Check any search engine or Google, “Jane Doe, anonymity, and sexual assault.” Fathers’ rights and men’s groups who understand publication bans in rape trials as a method to support their own oppression are first to surface. The specter of false allegations, and the damage done to men by women granted use of media bans, are their reasons for condemning the Rape Shield Law and women’s anonymity. In many instances, the vitriol and misogyny of their arguments allow for easy dismissal, but their political clout and media-friendly jingoism are not to be ignored. For example the article “Protection for Malicious Liars: The Supreme Court Upholds Anonymity for Women who Falsely Claim Sexual Assault”<sup>28</sup> addresses the court’s decision in *Canadian Newspapers Co. v. Canada*<sup>29</sup> and contains sound bites such as “there’s a war against men” and “these people are liars,” which support the rape mythology and feminist backlash that surfaced in many of our institutions in the late eighties. In September of 2007, “FemCunts Are Angry”<sup>30</sup> waxed more graphic about “lying hags” and “bitches” whose identities are protected by a media ban.

Feminist advances that identified the systemic problems and nature of male sexual violence against adult women are also denied or at least missing in the mandates and directives of state-sponsored victims’ rights groups. They embrace, instead, a law and order agenda that calls for bigger prisons and longer sentencing. Their initiatives present solutions that do not work in the best interests of women who experience the crime.<sup>31</sup>

Perhaps more than any other rape myth, the so-called “False Allegation”—also referred to by Toronto Police Sex Crimes investigators as “Alligators”<sup>32</sup>—is the

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28. *Alberta Report* 23, no. 5 (1996): 24.

29. *Canadian Newspapers* (n. 3).

30. “FemCunts Are Angry,” <http://mensrightsblogs.com>.

31. Mandy Bonisteel and Linda Green, *Implications of the Shrinking Space for Feminist Anti-Violence Advocacy*, (conference paper, Fredericton, New Brunswick, Canadian Social Welfare Policy Conference, June 16–18, 2005).

32. Christie Blatchford, “Crying Wolf: In a System That Assumes Children Don’t Lie and Women Are Victims, False Allegations Happen with Alarming Regularity and Frequency,” *National Post*, September 8, 2001.

most popular and damaging. Although police statistics themselves indicate that the occurrence of false allegations is no higher in sexual assault than in any other crime (only 5% of all those reported), false allegations can be manipulated to discredit all women who file charges.<sup>33</sup> Research has found that the 5% of false allegations stated by police also accounts for unfounded charges where 1) the woman is believed to have been raped, but there is not enough evidence to proceed to court; 2) the police do not believe her story; and 3) women have dropped the charges before they reach trial.<sup>34</sup> Nonetheless, thirty years after it was used in *R. v. Seaboyer* and *Canadian Newspapers Co. v. Canada* to attempt to disqualify women from the protection of the law, the False Allegation charge, or threat of it, contributes to a dismally low reporting rate of sexual assault nationwide.<sup>35</sup>

### E. Living Jane Doe

**Becoming Jane Doe** Experiential Jane Does that I spoke with told me stories of judges who refused to allow them the choice of using their real names, as that would also identify their abusers or because they ruled that the legislation was mandatory—versus the mandatory right of the sexually assaulted woman to use it, or not.

*I had the ban at first and then tried to have it removed before the trial ended but the judge completely patronized me. He said “we know what’s good for you; there are laws in place to protect you. I don’t believe you’re prepared for the fall-out” and he said no.*

Experiential Jane Doe

*Anonymity was not presented to me as a choice. The judge just put a stop on using my real name. There is an assumption that this is what you want, it is a rigid and non-flexible law.*

Experiential Jane Doe

On a personal level, I discovered during this research that if, for instance, I publish this paper under my real name, I would be breaching the ban and would be subject to criminal charges. Were I to flout the authority of the courts on this matter, I would be subject to penalties that can range from public confession and apology to a fine (plus court costs). The legal advisor with whom I spoke at Justice Canada also opined that given the notoriety of my case in the media,<sup>36</sup> it would be unlikely for the courts to overturn my ban.

33. Toronto Police Service, 2006 Annual Statistical Report, <http://www.torontopolice.on.ca/publications/files/reports/2006statsreport.pdf> (accessed September 30, 2007).

34. Ontario Women’s Directorate (n. 26); Ontario Women’s Justice Network (n. 7).

35. *R. v. Seaboyer* [1991] 2 S.C.R. 577; *Canadian Newspapers* (n. 3).

36. *Jane Doe v Board of Commissioners of Police for the Municipality of Metropolitan Toronto* [1998] 39 O.R. 487.

Who knew that to be a Jane Doe could be a permanent choice? Or that the courts could appropriate my real name? Under law, the reasons my lawyers used (in the criminal and civil courts) to obtain my anonymity were that I would suffer shame and humiliation as a publicly named rape victim. To have my ban rescinded, I must say that those conditions do not exist for me anymore, and, by extension, for other women.

Many felt that the notion of protection afforded to them via a publication ban was just that—a notion, and a false one at that. Participants indicated that the ban only restricted the use of their name and likeness to media or public accounts, and did not offer them any safety or protection from identification in the courtroom.

*So where's the privacy? Your real name is still being used in the courtroom. Classrooms of young boys and girls parade through looking at you. Anyone can.*

Experiential Jane Doe

It should be noted that such protection is not the intent of the publication ban, and the woman's anonymity is far from total. It does not even begin until the trial stage, which on average is about two years after the offence.<sup>37</sup> Police officers are required to maintain sexually assaulted women's privacy during the investigation and in the interim, but are not bound to do so by law.<sup>38</sup> The fact that the ban does not cover the court proceedings is a source of considerable anxiety for women who must identify themselves, their address, and other highly personal information and history brought out in cross-examination in front of the accused and his family and friends (as well as a public gallery). Rapists, whether they are known to the woman whom they have raped, or unknown, often threaten women with serious reprisals if they report the rape to the police. Women are often misinformed or not informed enough about these limitations and assume protection when there is none.

*Anonymity keeps you anonymous to anonymous strangers. Whoop di doo!*

Experiential Jane Doe

Women located in nonurban settings told me that news of their reports of the crime traveled freely and quickly in small towns and communities, and that anyone or everyone seeking access to the legal proceedings had full knowledge of their identities.

It would appear that shoddy jurisprudence, intemperate jurists, the nature of the legislation itself, and uncertainty by all involved on the use of the publication ban—which does not actually, adequately, or completely protect women's identity or give them agency—undercut any perceived benefit the ban might offer.

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37. Ontario Women's Justice Network (n. 7).

38. In Ontario, police officers are subject to charges under the Police Services Act should they breach anonymity. Police Services Act R.S.O. 1990 c. p.15.

I also asked women what impressions they had of Jane Does who appear on television. You've seen them—women who sit behind the shadows and pixilation commonly used to disguise raped women. Their voices are clear, although sometimes disguised, but their heads and torsos are in shadow or dissolved into an electronic mass. Sometimes we might see their hands or other truncated body parts.

*When we see a Jane Doer on TV I think it allows us to impose all of our judgments and preconceived thoughts about who rape victims are. And I think that it is mostly negative, judgmental, always skeptical. Her disguise affects her credibility. I don't really see how she is being protected in that context or how her anonymity is making it safe for her.*

Key Informant Jane Doe

A woman with whom I spoke did go public on TV, and told this story:

*I felt most naked and vulnerable when I did TV. When any rape victim goes public, be it in the print media, the radio or TV, they are putting themselves out there to be judged by strangers. In the process, they hope to educate people and maybe even get folks to start asking questions. It's a very scary, risky business. I elected to allow strangers to see me as the "woman who sucked the priest's cock," to name but one of the crimes he committed. It is difficult to present yourself to strangers, never mind intimates, in this visual context. It's gross, icky, humiliating, but I believe the deleterious effects of the image of the named priest forcing his penis into a woman's mouth were more than humiliating to him and his church. I hope that this is the part of the picture that people will react to and remember most.*

Experiential Jane Doe

My own experience was that, even with a media ban, the artist sketches of me that appeared on the TV news every night for weeks showed me from behind, or with a thin, black bar the size and shape of sunglasses covering my eyes. Even though my identity was protected, the sketches were remarkably like me, good enough that family members and acquaintances formerly unaware of my Jane Doe status were able to identify me. My voice, its quality and timbre, my physical size, skin, eye, and hair color were reported on. All clear violations of the publication ban.

**10. Realities of Reporting** There is immense institutional pressure on women to report sexual assault and most of us would prefer to. But here is some of what happens when we do and despite the stated intent of the publication ban to encourage others to come forward and to protect us from embarrassment and humiliation.

1. We are not believed.

*There were a lot of letters to the editor about how horrible it was that this woman has lied and ruined his reputation and that I was hiding behind the ban.*

Experiential Jane Doe

2. We are humiliated through public exposure of our personal lives in the courtroom, and misinformed by court officials.

*I see the police utilize the threat of loss of anonymity all the time. It can be used as leverage to make women drop charges. They are told that for instance their case isn't strong and the judge won't grant them a ban or it will be made public if her attacker isn't found guilty and everyone will know what happened.*

Key Informant Jane Doe

3. We are required to assume passive roles, cannot defend ourselves, and have no legal representation.

*I see anonymity another way. I see it as a threat of exposure to women if they step outside of the victim role. It says "we are protecting you now but we will stop if you become problematic. We will take away this protection and you will be destroyed." It is another tool supposedly [designed] to protect women but used to diminish them.*

Experiential Jane Doe

4. We are shunned by our friends, family, and community.

*I lived in a small town and my name wasn't used so I thought I had some control. But word got around. My assailant was a doctor and someone in his office sent my name to another doctor I was seeing and he wouldn't treat me without someone else present. I was stunned. So shamed. It was a horrible experience.*

Experiential Jane Doe

5. We cannot speak of our experience again unless it is in the context of trauma.

*It's a lot of work to tell people you've been sexually assaulted, it's like telling people you are dying. Doing it in social or political circumstances is difficult. I think there is an amazing desire to keep the definition of sexual assault individualized or atomized. Anonymity assists with that.*

Experiential Jane Doe

6. Our past histories can be used against us.

*I have two divorces and was in a reform school for girls when I was young and a child I gave up for adoption. That and other stuff was brought up by his lawyer to describe my morals. It was in the paper. My name wasn't but lots of people knew anyway. I wish I had never done it.*

Experiential Jane Doe

7. We can be charged ourselves.

*A woman who was a Jane Doe spoke publicly about her case and the media started calling. The police told us that "we have not released her name yet as she is a victim,*

*but if she goes forward with this political agenda we will charge her with public mischief and release her name.*

Key Informant Jane Doe

**Reclaiming Jane** Many argue or suggest that the burden of shifting the negative constructions of rape victims is the responsibility of those very women who are burdened by it; that the use of anonymity only perpetuates the stigma—the thing women say they fear most. We are encouraged to rise up, break free from the shackles of shame and dishonor, and just use our real names. Do it for the team! If enough women used their own names it is argued, why before you know it, there would no longer be a rape problem. There is some truth in such ideology as the publication ban itself can be read to reinforce and endorse rape mythology.

*There is this idea that to be shamed is the worst thing that can happen, as bad as the rape itself, but it is very Victorian and doesn't properly identify the harm of the assault.*

Experiential Jane Doe

Some reporters also felt that it is the responsibility of individual women to renounce the publication ban in order to put a face to rape and to better address the crime.

*Rape is not the worst crime. We play into the whole victim stain with anonymity. If she is anonymous we don't connect with her. If women would just be brave and do it, use their own name, then others would follow. If I were a victim I would far prefer that people know my name and know what had happened to me than to be put in a position where I am anonymous.*

Reporter Jane Doe

Others disagreed:

*Nothing would really change that much. It's not like the system would work differently or better [if women used their own names]. Reportage wouldn't change. We'd still go for the sensational, only it would have her real name on it.*

Reporter Jane Doe

We must recognize that in supporting the “just say no to Jane Doe” response, we require women who have experienced crime to take a large and unknown risk without any safety net or reward—and to do it alone, without any institutional or social support. We forget that, despite the purported gains of some legislation, women's histories continue to be used to discredit them in court, and the most detailed accounts of their rapes are reported in local and national media. We disregard the rape myths that continue to inform our understandings of the crime. We negate the reality that few sexual assault trials end in convictions. We reduce the crime to a private matter and ignore its systemic and institutionalized nature and power.

One woman I interviewed who went public, but asked that her real name not be used here, wept when I suggested that for the duration of her trial (which took place

during this writing process), all women adopt her real name to deflect the stigmatization to which she was subject.

*That would have been amazing, I felt so alone. I couldn't look at anyone when I walked down the street. I was afraid to meet anyone I knew, even strangers who might know me from work, I kept thinking do they know? Do they know I'm her?*

Experiential Jane Doe

What about reclaiming Jane Doe? Reconstructing “her” and what she signifies as honourable and heroic as opposed to rendering her tragic and hidden. Allotting her the respect and gratitude we would afford to any responsible citizen who, faced with incredible odds and hardship, enters the legal system and does what she thinks is the right thing and for the public good. Jane Doe it is then—all around.

## II. CONCLUSION

There are a series of pros and cons in the issue of a woman's anonymity in relation to sexual assault and with dilemmas in all camps. Publication bans are seen by most as positive and convenient and to “improve the administration of justice.” But in practice, they represent an enormous loss of power in a raped woman's circumstance—losses that are not accrued or tallied in other legal battles or for other anonymous persons, losses that are gender-based and intersected by race and social status. The relocation or appropriation of power the media ban represents is based on assumptions inherent in the belief, the reality (and the legislation) that being identified as raped results in public embarrassment and humiliation so great that women will not report at all if their privacy is not protected. But which comes first? Which impacts most, works best, and for whom? The presumption that she who has had something done to her or against her is the one who must guard against the ruination of her reputation (versus the perpetrator) is indicative of how turned-around we are on the subject of sexual assault.

We require that women protect themselves by limiting their actions before rape in order to prevent it and then hide themselves after rape to avoid shame, blame, and other retribution. We have organized a good/bad morality and racially based understanding of sexually assaulted women as defiled and suspect, without agency, choice, or activity of their own, so much so that their identities must be hidden, their names lost.

My interviews, however, revealed an entirely different picture of women who are vibrant, reflective, and informed.

