Sexual Assault in Canada

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Police Investigation of Sexual Assault Complaints: How Far Have We Come Since Jane Doe?

Teresa DuBois

This chapter turns to the “unfounding” problem condemned by Jane Doe’s judge in her legal victory in 1998. Teresa DuBois revisits the Jane Doe Social Audit mentioned in the first chapter of this book, “The Victories of Jane Doe.” The audit represented an effort by activists to pressure police to respond to the legal judgment against them by reforming their investigatory practices and discarding biased assumptions in their assessments of the credibility of women’s reports of sexual assault. Teresa reviews successive audit reports from Toronto and studies beyond that show not only that police continue to unfound sexual assault reports at higher rates than any other crime, but also that “rape myths” seem to be operative in police assessments of whom to believe. Two investigative techniques used by police to assess women’s credibility, both premised on women as “hard to be believed,” may play a role in sexual assault being “wrongfully” unfounded. Teresa joins Fran Odette in calling for data collection as the basis for policy-making and legal strategy.

Jane Doe’s victory against the Toronto Commissioners of Police¹ was expected to mark the beginning of significant reform in police forces across Canada. It was assumed that Jane Doe’s exposure and Madam Justice MacFarland’s condemnation of reliance on rape myths and stereotypes by the Toronto Police Service would result in a new approach to the investigation of sexual assault. Joan Grant Cummings, then president of the National Action Committee, stated that the decision “propel[ed] us miles in dealing with state accountability where women’s security issues and the violation of our human rights [were] concerned.”² Unfortunately, as this article will demonstrate, over ten years later that vision has yet to be realized.

¹ Jane Doe v Metropolitan Toronto (Municipality) Commissioners of Police (1998), 39 OR (3d) 487, 160 DLR (4th) 697 (QL) (Ont Ct (Gen Div)) [Jane Doe cited to DLR].
² “(Jane) Doe victory sparks demand for better treatment” (Fall 1998) Herizons 8.
In *Jane Doe v Metropolitan Toronto Commissioners of Police*, Madam Justice MacFarland condemned the behaviour and attitudes of the Toronto Police Service, specifically regarding the way that the victims of the so-called “Balcony Rapist” were treated when they reported their sexual assaults to police. She was critical of the incredulity with which the officers handled the women’s reports. For example, in the case of BK, the second known victim, the investigating officer went as far as closing the case because he believed that she was lying about having been raped.3 One of Justice MacFarland’s findings was that the police “act as a filtering system for sexual assault cases” by determining that certain complaints are “unfounded.”4 She noted that crimes of sexual assault are “unfounded” at a higher rate than other crimes and she stated that

One of the reasons suggested for the higher “unfounded” rate in relation to sexual assaults is the widespread adherence among investigating police officers to rape mythology, that is, the belief in certain false assumptions, usually based in sexist stereotyping, about women who report being raped.5

The wrongful “unfounding” of sexual assault reports can have a substantial and damaging impact on women. Where a perpetrator of sexual violence is known to his victim, she can be left in a dangerous situation if she is not believed and protected by police. As well, any women whose report of sexual assault has been “unfounded” faces long-term danger, because the police are much less likely to believe her if she reports another sexual assault.6 Most importantly, wrongful “unfounding” of sexual assault reports reflects a much bigger issue — that of disbelieving attitudes on the part of investigating officers, which are often evident to those making reports.7 The “unfounding” of women’s reports leaves perpetrators free — indeed emboldened — to repeat their crimes, putting the safety of many women at risk.8

3 *Supra* note 1 at paras 52–74.
4 *Ibid* at para 11.
5 *Ibid* at para 12.
Negative reactions by service providers — such as blaming, doing nothing to help, doubting their stories, and maintaining a cold and detached demeanour — have been shown to have a harmful impact on women’s recovery and general sense of well-being following a sexual assault. As well, women who experience negative reactions after reporting a sexual assault and whose cases are not pursued in the justice system have been found to suffer more severe symptoms of post traumatic stress disorder and depression than do other victims of sexual assault. For these reasons, it was hoped that the unique opportunity for judicial scrutiny of sexual assault investigation presented by the Jane Doe case would lead to lasting reform.

Over ten years after Jane Doe, there have been some visible changes to the way sexual assault is addressed by police forces. For example, officers in Toronto now receive more training, although it is not clear what is involved in this training. However, victims of sexual assault do not seem to have noticed a difference. The proportion of reported sexual assaults that result in charges being laid has actually decreased, from 44 percent in 1998 to 42 percent in 2006, and the proportion of women willing to report being sexually assaulted has also declined,


12 A Decade Later, ibid at 8.

13 Statistics Canada, Table 252–0013 Crime Statistics by Detailed Offenses, 1977–2006, Annual (Ottawa: Statistics Canada, 2007); it should be noted that the proportion of sexual assaults cleared by charge in Toronto has increased by 12 percent.
from 12 percent in 1999 to 8 percent in 2004.\textsuperscript{14} Perhaps most troubling is the fact that sexual assault reports continue to be “unfounded” at higher rates than reports of other crimes.

The first part of this article will summarize available evidence with respect to rates of “unfounded” sexual assault reports, as well as indicators that these rates are higher due to wrongful “unfounding” by police. The second part of this article will deal with the question of what these statistics likely indicate — that police investigation of sexual assault reports continues to be based on the false assumption that women who report sexual assault are more likely to be lying than individuals reporting other crimes.

“\textit{UNFOUNDED}” REPORTS

Crimes reported to the police become the object of a preliminary investigation to determine whether the report is valid. Where the police determine that no crime has actually taken place, the report is classified as “unfounded.”\textsuperscript{15} An “unfounded” report by an individual claiming to have been victimized presumably involves false allegations.

Studies conducted in the United Kingdom and the United States to address “attrition” of sexual assault cases from the criminal justice system have shown that reports of sexual assault are “unfounded” by police at very high rates. Out of nine studies published between 1996 and 2007,\textsuperscript{16} five found that reports of sexual assault were “unfounded”

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at rates ranging from 25 to 43 percent, and none found rates below 10 percent. Closer to home, in a study published in 2000, Janice Du Mont and Terri Myhr examined the attrition of sexual assault cases in Ontario. These authors tracked the cases of 284 women who presented at sexual assault care centres and stated that they had been sexually assaulted. Only 187 (66 percent) of those women chose to report to police. Three years later, fifty-one (27 percent) of the reported cases remained unsolved. Of the cases that the police considered “solved,” eighty-one (47 percent) resulted in charges being laid, eleven (14 percent) were discontinued by the victim, and fourteen (17 percent) were classified as “unfounded.” The authors suggested that the relatively “low” rate of “unfounded” cases and the high number of unsolved cases in this study could be the result of reluctance on the part of the Toronto Police to “unfound” cases, given previous research findings and the high profile Jane Doe case.

In a more recent study conducted by Linda Light and Gisela Ruebsaat in British Columbia, the jurisdictions considered were chosen on the basis of “unfounding” rates for sexual assault reports because the authors wanted to examine the reasons for varying rates from one detachment to another. The rates ranged from a low of 7 percent


17 Gregory & Lees, ibid; Harris & Grace, ibid; Kelly, Lovett & Regan, ibid; London Metropolitan Police, ibid; Bouffard, ibid.
19 Ibid at 1121.
20 Ibid at 1124.
in Vancouver to a high of 28 percent in Chilliwack. Other studies that have compared statistics for police stations in more than one jurisdiction\(^\text{22}\) have similarly found that “unfounding” rates for sexual assault reports vary greatly. These findings suggest that different, often neighbouring, jurisdictions employ different practices to investigate and/or classify sexual assault reports. As well, the lower rates serve as proof that there is no reason for cases of sexual assault to be “unfounded” at disproportionately higher rates than for other crimes.

Where rates of “unfounded” sexual assault reports are compared with “unfounded” rates for other crimes, sexual assault reports have been shown to be “unfounded” at much higher rates. For example, in 2002, Statistics Canada determined that 16 percent of all sexual offences reported to police were deemed to be “unfounded,” while other types of violent offences were “unfounded” at a rate of 7 percent.\(^\text{23}\) More recently, however, inconsistent protocol related to the “unfounding” of crime reports has caused Statistics Canada to cease performing any analysis regarding this issue.\(^\text{24}\) It is difficult to determine how many crime reports are ultimately deemed by Canadian police to be “unfounded” because police forces do not adhere to uniform methods of classification and Statistics Canada only requires forces to report the number of “crimes” reported and not the number of reports deemed to be “unfounded.”\(^\text{25}\)

As part of a forthcoming study, this author and Professor Blair Crew of the University of Ottawa Faculty of Law made Freedom of Information requests to selected police forces throughout Ontario, namely the Ontario Provincial Police and police forces in Toronto, Ottawa, Hamilton, Peel Region, Windsor, London, Kingston, and Durham. In addition to requesting the number of sexual assault reports that were “unfounded” each year between 2003 and 2007, we requested the number of “all other crimes” that were “unfounded” during the same period. Many of the forces required a great deal of time and money before responding with the requested information. Kingston and Durham never did provide statistics. While the final analysis of these statistics has not been completed, the table below lists the average rates of “un-

\(^{22}\) Light & Ruebsaat, \textit{ibid}; HMCPSI, \textit{supra} note 16; HMCPSI follow-up, \textit{supra} note 16; Feist \textit{et al}, \textit{supra} note 16.


\(^{24}\) Hattem, \textit{supra} note 21 at 35; citing Light & Ruebsaat, \textit{supra} note 21 at 80.

\(^{25}\) \textit{Ibid.}\n
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founded” sexual assault reports compared with “unfounded” rates for other crimes during the same period. It is of note that the rates vary greatly from one jurisdiction to another. As well, in every jurisdiction, including Windsor where the “unfounded” rates were comparatively low, the “unfounded” rate for sexual assault reports was higher than the “unfounded” rate for all other crime reports.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Sexual Assault</th>
<th>Other Crimes</th>
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<td>Total Reports</td>
<td>&quot;Unfounded&quot;</td>
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<tr>
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<tr>
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**WRONGFUL “UNFOUNDING” OF SEXUAL ASSAULT REPORTS: REASONS FOR HIGH “UNFOUNDED” RATES**

Researchers who have examined police case files have often uncovered instances where sexual assault reports were classified as “unfounded” when they should not have been. For example, in an extensive study published in the United Kingdom in 2005,26 Liz Kelly, Jo Lovett, and Linda Regan found that between 22 and 26 percent of cases reported to police received a “no crime” designation, meaning that police

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26 Kelly, Lovett & Regan, supra note 16.
deemed the reports to be “unfounded.” The authors concluded that the United Kingdom Home Office’s “no crime” category tends to serve as a “dustbin” for sexual assault cases. When they examined the files of rape investigations that had been closed after receiving a “no crime” designation, they found that many reports had been “no crimed” for reasons such as “lack of evidence,” “victim withdrawal,” “victim being extremely vulnerable,” or “suspect not identified.” “Unfounding” reports for reasons like this is in clear violation of classification procedures for that jurisdiction. In only 3 percent of cases did the case file actually contain enough evidence to support a conclusion that the woman had “probably” or “possibly” lied about being raped. Other studies of attrition of rape and sexual assault cases from the United Kingdom’s criminal justice system have made comparable findings.

Some might suggest that higher rates of “unfounded” sexual assault reports indicate that there are more false allegations of sexual assault than of other crimes. However, the researchers mentioned above have proposed other explanations for the high rates at which sexual assault reports are “unfounded.” They are of two general opinions. Researchers connected with police focus a great deal of attention on whether police officers follow proper classification procedures for their jurisdiction. They suggest that the main problem is a lack of understanding or respect for the rules on the part of officers.

While appropriate classification of cases is obviously important, researchers who are independent from police go much further in their assessment of the overall problems surrounding sexual assault investigation. These researchers generally feel that high rates of “unfounding” are indicative of a generalized attitudinal problem within police forces. A New Zealand researcher, Jan Jordan, sums up the immensity of this problem in her conclusion that “the issue of belief is central to investigations” and “issues of belief and credibility will remain vexed and contentious so long as investigative officers approach rape complain-

27 Ibid at 36, 38.
28 Ibid at 38–39.
29 Ibid at 50.
30 Gregory & Lees, supra note 16; Harris & Grace, supra note 16; HMCPSI, supra note 16; Lea, Lanvers & Shaw, supra note 16 at 587; UK, HMCPSI follow-up, supra note 16; Feist et al, supra note 16 at 4–5.
31 HMCPSI, ibid; HMCPSI follow-up, ibid; Feist et al, ibid.
32 See eg Light & Ruebsaat, supra note 21; Harris & Grace, supra note 16; Kelly, Lovett & Regan, supra note 16; Jordan, supra note 6.
ants with a prevailing mindset of suspicion and disbelief.” In essence, many of these researchers suggest that high rates of “unfounding” of sexual assault reports are caused by police culture and ways of thinking. Such conclusions are often based on the factors associated with “unfounding” of sexual assault reports. At least six studies have found that sexual assaults perpetrated by someone known to the victim or by an intimate partner are more likely to be “unfounded” by the police. Other factors that make women less likely to be believed include suffering from a mental health problem or a disability, having reported a previous sexual assault, lacking physical injuries, not being hysterical or upset when reporting to police, being young or old, not physically resisting during the attack, or having used alcohol or drugs prior to being assaulted. All of these factors are related to stereotypical beliefs about what constitutes a “real” rape victim.

As well, interviews with police officers have shown examples of how some police officers are inclined to believe that large numbers of women lie about sexual assault. This belief carries over into the way they conduct their investigations. Likewise, in interviews with women who have reported a sexual assault to the police, a major recurring theme is that women are made to feel as though the police do not believe them. Taken together, these findings suggest that police forces still

34 Light & Ruebsaat, supra note 21; Gregory & Lees, supra note 16; Temkin, “Plus ça change,” supra note 7; Harris & Grace, supra note 16; Lea, Lanvers & Shaw, supra note 16; Bouffard, supra note 16 at 532.
35 Light & Ruebsaat, ibid; Kelly, Lovett & Regan, supra note 16.
36 Ibid.
37 Ibid.
38 Light & Ruebsaat, ibid; Temkin, “Reporting Rape in London,” supra note 7.
39 Kelly, Lovett & Regan, supra note 16 at 47; UK, London Metropolitan Police, supra note 8 at 6.
40 Du Mont & Myhr, supra note 18 at 1135–16.
41 Light & Ruebsaat, supra at note 21.
42 Kelly, Lovett & Regan, supra note 16; London Metropolitan Police, supra note 8.
44 Temkin, “Plus ça change” ibid; Temkin, “Reporting Rape in London,” ibid; Jordan, “Have you really been raped?: Criminal Justice System Responses” in Jordan, supra note 6 at 76; Kelly, Lovett & Regan, supra note 16; Rebecca Campbell, “Rape Survivors’ Experiences With the Legal and Medical Systems: Do Rape Victim Advocates
have work to do in order to eliminate systemic bias against women who report being sexually assaulted.

**IMPACT OF THE JANE DOE DECISION**
A major element of the *Jane Doe* decision was the finding that women were badly treated when they reported being sexually assaulted, along with the suggestion that many sexual assaults were “unfounded” wrongfully by the Toronto police. This did not come as a surprise to those who work directly with sexual assault victims. Anecdotal evidence has long suggested that such treatment is commonplace, but the *Jane Doe* case offered a rare opportunity for judicial scrutiny of investigative techniques and of the way that misogynistic stereotypes affect how police react to women. Of course, the great hope was that Madam Justice MacFarland’s decision would lead to lasting change in the way that police investigate sexual assault, including their willingness to believe women who make reports.

The 1999 *Review of the Investigation of Sexual Assaults* conducted in the wake of the *Jane Doe* decision found that a significant number of sexual assaults reported to the Toronto Police Service had been classified as “unfounded,” even though the case file did not contain enough information to support this determination. The audit also found that sexual assault reports were being classified as “unfounded” in cases where it was clear that a sexual assault had occurred. The audit report contained the following two recommendations specifically related to the “unfounding” of sexual assault reports:

18. Under no circumstances should a first-response officer make a determination as to whether a sexual assault incident is classified as unfounded. The determination of this matter be reviewed and approved by a qualified trained sexual assault investigator. All occurrence reports contain information sufficient to substantiate conclusions.

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19. The definition of what constitutes an unfounded sexual assault occur-

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Make a Difference?” (2006) 12 Violence Against Women 30 at 34.


46 Ibid at 54–55.
It is not clear whether these recommendations were fully implemented or whether they had any impact on sexual assault investigations. In 2004, *The Auditor General's Follow-up Review* noted that while procedures had been put in place to ensure that incidents of sexual assault are only “unfounded” if a detective sergeant has thoroughly reviewed the case, there was no evidence that these procedures were ever followed.47 In 2010, *The Review of the Investigation of Sexual Assaults: A Decade Later* made no further mention of recommendations 18 and 19.48

**WHAT DOES WRONGFUL “UNFOUNDING” INDICATE?: INVESTIGATION OF SEXUAL ASSAULT REPORTS**

The preceding section concluded that higher rates of “unfounded” sexual assault reports, compared with reports of other crimes, and varying rates of “unfounding” among neighbouring jurisdictions, are indicators that wrongful “unfounding” of sexual assault reports may be a systemic problem among police forces. However, a review of the academic literature on police investigation suggests that those who train police officers have a different interpretation. Despite findings to the contrary,49 it is not uncommon for researchers to use the terms “unfounded” and “false allegation” interchangeably in their writing and to indiscriminately refer to the rate of “unfounded” cases as the rate of “false allegations.”50

Researchers who accept the premise that there are more false allegations of sexual assault than of other crimes have promoted investigative techniques that supposedly allow police officers to determine when a woman is lying about being sexually assaulted. It is impossible to confirm whether Canadian police forces have adopted these techniques, as they do not share information pertaining to investigations. However, there

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48 A Decade Later, *supra* note 11.

49 See eg Kelly, Lovett & Regan, *supra* note 16.

are indications that these techniques have made their way into the repertoires of Canadian sexual assault investigators.

**STATEMENT ANALYSIS**

One of these techniques is called Statement Validity Analysis [SVA]. This technique, touted by Andrew Parker and Jennifer Brown, among others, consists of two checklists: the “Criteria-Based Content Analysis” and the “Validity Checklist.” Where this technique is used, a woman who reports a sexual assault will be guided through a semi-structured interview for which the questions are developed based on any other information that the investigator is able to collect about the case. Her statement is then scored on the basis of the two checklists to determine whether it is a “genuine report” or a “possible fabrication.” There is disagreement in the literature on SVA as to what score indicates a “false allegation.”

SVA was developed in Germany in the 1950s in an effort to evaluate the veracity of children’s allegations of sexual abuse. While some authors suggest that this technique has been successfully adapted for use with women, other studies have shown that SVA is probably not even a valid tool for use with children. In a study that examined the accuracy of social workers’, students’, and police officers’ judgments with regards to the veracity of children’s statements, the social workers did not improve after training, the students improved slightly, and the police officers became significantly worse. Regardless of their performance, the police officers were significantly more confident in their decision-making than the other two groups. Philip Rumney points out that the

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52 *Ibid*.

53 Kapardis, *ibid* at 251–55; Rumney, *supra* note 50.


55 Lucy Akehurst *et al*, “The Effects of Training Professional Groups and Lay Persons to use Criteria-Based Content Analysis to Detect Deception” *(2004)* 18 Applied Cognitive Psychology 877 at 885. It should be noted that it is virtually impossible to provide subjects in studies on SVA with examples of statements that are “true” and “false.” Fabricated statements are, by nature, untrue, and real life statements from cases that have been unfounded by police may, in fact, be true.

56 *Ibid*.
use of SVA checklists is open to a great deal of subjectivity on the part of the police officers who apply them, and he questions why it is necessary to develop an investigative technique for the unique purpose of assessing the veracity of women’s reports of sexual assault.57 He suggests: “A sounder approach might be to emphasize the importance of the ongoing education of police officers so that they better understand such things as victim reactions to rape, victim perceptions of their treatment by officers and false allegations.”58

Another version of statement analysis involves “understanding what is typical of a truthful statement and looking for any deviation from the norm”59 by evaluating the way that different components of speech are used. In an example given by Special Agent Susan Adams, who teaches courses on statement analyses at the FBI Academy, a rape victim might be lying if she uses the pronoun “we” to describe herself and her alleged attacker, because “normal” rape victims prefer to put distance between themselves and their attackers.60 This technique does not account for possible language barriers or learning disabilities or for the fact that many victims of rape know the offender before the attack and may be accustomed to using the pronoun “we.” According to Adams, the use of past tense in speech is the norm when describing events that have happened, so a victim who refers to events in the present tense may be inventing as she goes along.61 This technique fails to account for language barriers, for the fact that women may have flashbacks while describing what has happened to them, or for the possibility that questions might be asked in the present tense. Finally, according to this method, an interviewee who “feigns” a memory loss “to avoid giving certain details” might be lying.62 Interestingly, the SVA checklist described above gives victims credit for admitting when they do not remember certain details.63 This suggests that different types of statement analysis may attribute varying interpretations to the same behaviours.

It appears that variations of statement analysis are employed by police forces throughout the world to interview individuals suspected of

57 Rumney, supra note 50 at 150–54.
58 Ibid at 154.
60 Ibid.
61 Ibid.
62 Ibid.
63 Brown, Statement Validity Analysis, supra note 51.
different types of crimes. One self-proclaimed expert, Avinoam Sapir, claims on his website that he has provided training on the use of “Statement Content Analysis (SCAN)” to over fifty police forces in Canada.64 While this technique appears to be popular with Canadian police forces, its critics suggest that it has no scientific basis. According to one author: “If the theory underlying statement analysis is based on little more than speculation, the empirical evidence for its claims is no better. Simply put, there is no empirical validation for SCAN … the value of SCAN and statement analysis lies simply in its utility as an interrogation technique.”65

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While the different varieties of statement analysis are presented as a supposedly “objective” means for imposing the subjective views of police officers on victims of sexual assault, the methods proposed by other authors are openly hostile towards women who report being sexually assaulted. In a textbook on behavioural evidence analysis,66 Detective John Baeza and Mr Brent Turvey state that “investigators and criminal profilers are very likely to encounter a false report if they work sex crimes”67 and comment that “[u]nfortunately, it is common for even seasoned investigators to accept an alleged victim’s statement or story without question or suspicion.”

Detective Baeza and Mr Turvey base their assertions on a handful of “scientific studies conducted to ascertain false report rates.”68 An example of these studies is that of Eugene Kanin published in 1994. Mr Kanin looked at 109 police files in an attempt to explain the phenomenon of false rape accusations, which he considered to be “a reflection of a unique condition of women, not unlike that of kleptomania.”69 Over a period of nine years, he took the police at their word when they told

64 LSI Laboratory for Scientific Investigation, Inc, Past Participants of the SCAN Course: Canadian Law Enforcement Agencies, online: <http://www.lsiscan.com/id65.htm>.
67 Baeza & Turvey, ibid at 174–76.
68 Ibid at 169.
him that a victim had recanted her story and examined the file to try to determine her motivation for “lying.” During this period, the police detachment in question deemed that 41 percent of reported rapes were “false accusations.” Kanin concluded that women lie about being raped for three reasons: to create an alibi, to get revenge, and to elicit sympathy or attention.

Both Philip Rumney and Karen Busby have found major flaws in Kanin’s work. According to the former, Kanin’s finding that all “unfounded” cases in a jurisdiction represented false claims is unique in the academic literature. Most studies have found at least some cases that were “unfounded” in error or “unfounded” for reasons other than the complainant being dishonest. In addition, while Kanin claims that the police in his study acted in a professional manner and did not put undue pressure on victims to recant their stories, he cannot be sure of this, given that he only had access to paper files written by the police officers themselves. He did not have any contact with women who reported being raped in that jurisdiction, and he had no way of assessing their perceptions of how they were treated by the police. Finally, while Kanin claims that the policy of the police department in his study was to “unfound” rape cases only when the victim herself had recanted, it seems naïve on his part to assume that all the officers followed department policy, given that so many studies have shown neglect of official police policy.

Karen Busby points out that Kanin’s study does not account for the possibility of one individual making more than one report, which would have a significant effect on such a small sample. Nor does he acknowledge that some of the reports might have been made by a third party. He completely ignores the possibility that the women who supposedly recanted their stories might have been pressured by police or family members. His study does not discuss the possibility that some of the complaints may have been about sexual violations other than “completed forcible rape” and that the laws in that jurisdiction may not have encompassed these crimes during the time of his study. Notwithstanding the fact that Kanin’s work is virtually unsupported by recent studies and that there are problems with both his methodology

70 Rumney, supra note 50 at 139.
71 Ibid at 139–40.
73 Ibid at 18–27.
and the stereotypical beliefs upon which his work is based, this study has been cited by defence lawyers and scholars alike to support the idea that women lie about being raped.

Following Mr Kanin’s assertions, Detective Baeza and Mr Turvey recommend that investigators use the “Baeza False Report Index” throughout their investigations. They refer to this index as “a list of false report red flags” and suggest that “[o]ne or more of the circumstantial red flags described in this index has surfaced in most, if not all, of the false reports investigated by the authors.” According to the list, victims who ask to speak to a female officer, who missed a curfew on the night of the incident, who move to a new home during the course of the investigation, who cry during the interview, or who have a psychiatric history should be investigated more thoroughly because it is possible that they are lying about being raped. The authors suggest that women are motivated to lie for the following reasons: to get revenge; to satisfy a need for attention; to obtain medical treatment; for profit (to file a lawsuit, to obtain better housing, to get custody of a child, etc); if the women is a prostitute, to get back at a customer who did not pay (what they refer to as “theft of services”); to explain a pregnancy, a sexually transmitted disease, infidelity to a partner or drug/alcohol use; or to deal with a change of heart after a consensual sexual encounter.

Baeza and Turvey suggest specific interview techniques to identify women who are supposedly lying. Once a rape victim has given her statement, they suggest using a “frame-by-frame” analysis to scrutinize the story. They compare this technique to watching a movie one frame at a time and paying attention to every detail. They note that it is important to question any and every small inconsistency in the story: “The interviewer should never accept contradictory statements in the victim’s statement because the victim was upset or experiencing trauma.” Once inconsistencies have been pointed out to the victim, the authors suggest that the interviewer say the following:

I have been investigating sex crimes for X amount of years and I have interviewed many girls/guys who have for one reason or another not told the whole truth. I know you’re not telling me the whole truth but I also know that you seem like a good person. I’m sure there is a perfectly good reason...

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74 Ibid at 7, 12–18; Rumney, supra note 50 at 153–54.
75 See eg Busby, ibid at 7; Parker & Brown, supra note 50 at 238.
76 Baeza & Turvey, supra note 66 at 177.
77 Ibid at 178–85.
78 Ibid at 174–75.
79 Ibid at 175.
why you are not telling the truth. Without the truth I can’t help you with your problem.80

They suggest that the interviewer then leave the room to let the woman think about the inconsistencies in her story. According to them: “[q]uite often, upon reentering the room, the interviewer will find the victim crying and the confession will be near.”81 Of course, it is impossible for the public to know whether police in Canada rely on the textbook described above. Even the author of the *Jane Doe* audits made no comment as to specific investigative tools and techniques employed in sexual assault investigations.82 However, it is of note that the textbook is carried in at least fourteen Ontario university libraries.83 As well, videotaped interviews obtained by women who reported sexual assaults show that some of these same techniques are employed by the Ottawa Police Service.84

The videotaped interviews portray interviews with two women who had been drugged and then sexually assaulted in Ottawa in 2003. The women’s interviews with a police investigator follow the pattern described above, with the officer allowing each woman to give her statement and then going over it “frame-by-frame,” analyzing minute details and challenging any inconsistencies with what was said before. The officer then suggests to each woman that she remembers more than she is admitting and that she is trying to believe that she was raped in order to justify behaviour that she regrets. The officer tells the women that everyone makes mistakes and that making a mistake does not mean that she is a bad person. Near the end of the interview, the officer makes the following remarks:

This is serious, this is a serious police investigation (yeah, I know), and we

80 *Ibid* at 176.
81 *Ibid*.
82 *Jane Doe Audit, supra note 45; Follow-up Review, supra note 47; A Decade Later, supra note 11.
84 Full videos of these police interviews, conducted by Detective Theresa Kelm of the Ottawa Police Service in 2003, were obtained by the women who reported being sexually assaulted through Freedom of Information requests. Excerpts from those interviews were later aired on CTV News as part of a two-part story by Natalie Piersara. Both parts of the story have been posted on YouTube, “Cops Ignore Rape Part 1,” online: <http://www.youtube.com/watch?v=GhpZjpRd420&feature=related>, and “Cops Ignore Rape Part 2,” online: <http://www.youtube.com/watch?v=hO1BiRnnS7o&feature=related>.
can’t keep tying up resources if it didn’t really happen that way. . . . I think you do remember having had sex with these two guys, and I’ve been doing this job for a long time, ok, and people make mistakes all the time. I mean, why is there an eraser at the end of a pencil?

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There’s no doubt in my mind, that you remember a lot more than what you are admitting to. (No, I do not.) No, listen to me, ok; I’ve done a very, very thorough investigation here. We’ve all been in situations in life where we make a mistake, and then, what do we start thinking? (I did not make a mistake.) Ok, well you did make a mistake that night, and now you’re regretting it and most people would react that way too.85

Eventually, despite the women’s continued assertions that they were raped, the officer informs them that their files will be closed. The women are told that their reports will not be classified as sexual assaults because, having been unconscious during intercourse, they cannot remember saying no.

CONCLUSION

The studies examined in this article, the anecdotal evidence from women who have dealt with police, and the police videos described above suggest that the wrongful “unfounding” of sexual assault cases continues to be a systemic problem in Canadian police forces. The most troubling fact uncovered by the studies discussed here is that women who are particularly vulnerable are the least likely to be believed when they report being sexually assaulted. Young women, old women, women who use alcohol or drugs, women who have reported a previous sexual assault, and women who are disabled or suffer from mental health problems are more likely to see their reports of sexual assault “unfounded” by police. Many of these factors are related to stereotypical beliefs about what does or does not constitute a “real” rape victim.

Sadly, it is evident from the research summarized here that some police officers believe that women have a natural inclination to make false allegations of rape. This belief is contrary to what we know about the small number of women who are willing to report to police after being sexually assaulted. Nonetheless, the premise that women lie about sexual assault seems to permeate police investigations and has led to the unfortunate development of damaging investigative techniques. The large scale of the problem suggests that it is not individual officers, but rather those who train them and who have the power to frame

85 “Cops Ignore Rape Part 1,” ibid.
policies who are responsible for this situation. Individual police officers have a difficult, taxing job, and they require support and training that will enable them to carry out their investigations effectively.

Radical changes are required in order to stop the wrongful “unfounding” of sexual assault reports and ensure that women who are sexually assaulted are not revictimized when they report to police. Police forces will not be held accountable until the problem of wrongful “unfounding” is given more attention. No Canadian police force has been scrutinized in the same way that the Toronto Police Service has since the Jane Doe decision. Yet, even in Toronto, reports of sexual assault continue to be classified as “unfounded” at a higher rate than reports of other crimes. It is difficult and expensive to obtain statistics on the rate at which sexual assault reports are “unfounded,” and it is even more difficult to access qualitative information that would lend insight to the question of why sexual assault reports are “unfounded” at such high rates. Even where the data is made accessible, it is difficult to compare data across jurisdictions, given that Canadian police forces do not use uniform collection procedures. Therefore, an important first step towards reform would be to institute uniform recording procedures in police forces across the country. It is also imperative that Statistics Canada resume collection of information on the number of crimes “unfounded” by the police and that more research be conducted and published in this area.