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Kay L. Levine

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# WHEN GENDER MEETS SEX: AN EXPLORATORY STUDY OF WOMEN WHO SEDUCE ADOLESCENT BOYS

KAY L. LEVINE\*

## ABSTRACT

This article describes the origins, design, and implications of a new study exploring female-perpetrated statutory rape against adolescent boys in the United States. In contrast to both legal frameworks, which typically regard statutory rape as a male-on-female phenomenon, and existing literature from the fields of psychology and psychiatry derived from clinical samples and sex offender registries, this study examines the incidence of female-perpetrated statutory rape using data from electronic news reports covering the period 1990-2008. In this short article, the author explains the advantages of her approach over those taken by prior scholars, in terms of the size of the data set and the scope of coverage, as well as her decision to focus on statutory rape exclusively, rather than on female sex abuse more generally. The article also discusses the projected implications of the study for understanding not only the crime of statutory rape, but also the gender assumptions implicit in conventional works on this topic.

## INTRODUCTION

### I. THE BACKDROP: WHAT WE ALREADY KNOW ABOUT FEMALE SEX ABUSERS AND HOW WE KNOW IT

### II. THE RESEARCH DESIGN

### CONCLUDING REMARKS ABOUT EXPECTED SIGNIFICANCE

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\* Associate Professor of Law, Emory Law School. J.D. Boalt Hall School of Law, University of California-Berkeley 1993; Ph.D. Jurisprudence and Social Policy, University of California-Berkeley 2003. Many thanks to Michelle Oberman, Michael Kang, Joanna Shepherd, and Bob Agnew for their willingness to talk over research design issues and to read earlier versions of this work. Thanks also go to my fellow speakers and student participants in the 2008 Women and the Law Symposium at William & Mary School of Law for their incredibly thoughtful comments about the opportunities and challenges this project creates. A point to mention about the title of this work: the terms "gender" and "sex" have become problematized in feminist jurisprudence. *See, e.g.*, CAROL SMART, LAW, CRIME AND SEXUALITY: ESSAYS IN FEMINISM 100-07 (1995) (discussing the evolution of "sexuality" and "gender" in feminist works). Here I use those terms in the following way: "sex" refers to the act of sexual intercourse, while "gender" refers to the biological and social constructs by which we regard people as male or female.

## INTRODUCTION

In the conventional academic and policy landscape of statutory rape, defendants are adult men and victims are adolescent girls.<sup>1</sup> This gendered depiction of the crime structures both assessment of the problem — male exploitation of female vulnerability — and calls for reforms, which include better sex education or more severe punishment for males, coupled with programs that improve females' self-esteem and awareness of life opportunities.<sup>2</sup>

But what about statutory rapes committed by women against teenage boys? If women can be abusers as well as victims, and if males can be victims as well as abusers, our gendered assumptions about how and why statutory rape occurs, and what should be done about it, are not only impossible to ignore but also subject to challenge.

For this reason, I have designed a study to assess the behavior of adult women and teenage boys who become involved in the crime of statutory rape in the United States. In so doing, I am standing on the shoulders of talented scholars in the fields of psychology and psychiatry who have conducted various studies of smaller populations of women who committed sex crimes.<sup>3</sup> While these previous works have drawn from interviews with limited clinical samples or from prison records of convicted populations of female sex offenders, my study expands the knowledge base about female-perpetrated statutory rape by accessing electronic news reports from credible media outlets. From those news reports I have identified nearly one thousand dyads — the pairing of one female adult with one male adolescent in a sexual act — resulting in criminal charges against the female. Statistical software will enable me to analyze the characteristics of these dyads in terms of offender and victim demographics, offender and victim behavior leading up the prohibited sexual act, and consequences of the sexual act for both parties. Because my study is both much larger than clinical works on female sex abuse and more tailored to the statutory rape context than the prison/sex offender studies, it promises to provide substantial insights into the phenomenon of reverse-gender statutory rape.

Let me be clear about my objective in pursuing this data and its relation to the studies of male-perpetrated statutory rape against girls. I believe that comprehensive approaches to sex crimes, those that recognize multiple dimensions of victim and offender behavior, add nuance to our understanding of both gender hierarchies and

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1. Kay L. Levine, *No Penis, No Problem*, 33 FORDHAM URB. L.J. 357, 358 (2006).

2. *Id.* at 368-70.

3. See *infra* Part II.

criminal justice as institutions of agency and control. I also believe such studies offer a policy payoff that more limited works cannot provide: Although gendered assumptions about perpetrator and victim populations might allow for more straightforward reform proposals, ultimately such assumptions hinder our ability to address the problems as they exist (in all their messy realities). Most importantly, ignoring a certain population of criminals and victims invites future perpetration by, and future victimhood of, these groups. Offenders who stay beneath our radar may be encouraged to re-offend,<sup>4</sup> while their victims are likely to become angry and frustrated at the failure of anyone to respond to their needs.<sup>5</sup> Neither outcome, in my view, has burdens so slight that the sheer simplicity of a one-sided model of a particular crime outweighs them.

Investigating the incidence of female-perpetrated statutory rape against boys in no way suggests that male-perpetrated statutory rape against girls is unimportant, that female-perpetrated statutory rape is as prevalent as male-perpetrated statutory rape, or that the two types of crime merit similar levels of criminal justice resources, media attention, or public outrage. It simply suggests that statutory rape crimes committed by women, against boys, are worthy of study. (The policy implications will have to come later, once we know more about the crime.) If one identifies sexual exploitation as a social problem wherever it occurs, as I do, one can examine diverse types of statutory rape outside the zero-sum framework of traditional legal or policy analysis. In sum, I believe that we can increase the level of attention we pay to nontraditional perpetrators and victims without sacrificing our concern for, or our commitment to, the traditional and without needing to make claims about whose case is worse. We can also use what we learn from the nontraditional cases to better inform our understanding of the traditional and to better assess whether the policy responses we have adopted are best suited to the range of actions they are supposed to (or might conceivably) affect.

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4. As colorfully described by Bobbie Rosencrans in her study of mothers who commit incest, when offenders "are not acknowledged by society [they] are free to abuse with almost total impunity. Like spiders in an abandoned shed, they can catch their child victims in immobilizing webs and operate without concern about public monitoring." BOBBIE ROSENCRANS, *THE LAST SECRET: DAUGHTERS SEXUALLY ABUSED BY MOTHERS* 36 (1997).

5. Jacqui Saradjian and Helga Hanks explain the variety of emotions experienced by victims whose claims to victimhood are ignored or downplayed, as frequently occurs when their abusers are female. JACQUI SARADJIAN & HELGA HANKS, *WOMEN WHO SEXUALLY ABUSE CHILDREN: FROM RESEARCH TO CLINICAL PRACTICE* 6 (1996). Victims experience "traumatic sexualisation" (distorted sexual development), "stigmatisation," feelings of powerlessness, betrayal, anger, and identity separation difficulties. *Id.* at 7-11.

In the following pages, I describe my efforts to shine the spotlight on female-perpetrated statutory rape against adolescent males. I discuss in some detail the existing literature addressing female-on-male sex crimes, my research design, and the methodological concerns I have faced in gathering and analyzing the data. I conclude by offering some comments as to what I hope the data will show once the analysis is complete.

# I. THE BACKDROP: WHAT WE ALREADY KNOW ABOUT FEMALE SEX ABUSERS AND HOW WE KNOW IT

As I described in an earlier work documenting the near invisibility of the reverse gender paradigm in the legal, academic and policy literature about statutory rape, a variety of works from outside the legal academy have begun to illuminate the field of female-perpetrated sexual abuse.<sup>6</sup> Clinicians and academics in the fields of psychology and psychiatry have conducted these studies using clinical populations or convicted sex offender populations.<sup>7</sup>

Most of the clinical studies involve small numbers of research subjects who come to the attention of clinicians through self-referral for therapeutic assistance or as a result of agency referral for evaluation and/or treatment. For example, L.C. Miccio-Fonseca's study of adult and adolescent female sex offenders involved eighteen subjects, all of whom were referred to his Clinic for the Sexualities in San Diego;<sup>8</sup> Jane Kinder Matthews and her colleagues constructed a typology of female sex offenders based on sixteen women who were referred to a sex offender therapeutic program in Minnesota.<sup>9</sup> Other studies are based on clinical samples of fifteen or fewer participants.<sup>10</sup>

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6. Levine, *supra* note 1, at 389-94.

7. *Id.* at 379, 389-97.

8. L.C. Miccio-Fonseca, *Adult and Adolescent Female Sex Offenders: Experiences Compared to Other Female and Male Sex Offenders*, 11 J. PSYCHOL. & HUM. SEXUALITY 75, 75, 77 (2000).

9. Jane Kinder Matthews, Ruth Mathews & Kathleen Speltz, *Female Sexual Offenders: A Typology*, in FAMILY SEXUAL ABUSE: FRONTLINE RESEARCH AND EVALUATION 199, 199, 201 (Michael Quinn Patton ed., 1991); *see also* RUTH MATHEWS, JANE KINDER MATTHEWS & KATHLEEN SPELTZ, *FEMALE SEXUAL OFFENDERS: AN EXPLORATORY STUDY* (1989).

10. For studies in which the research subjects are female abusers, *see, for example*, Pamela Nathan & Tony Ward, *Female Sex Offenders: Clinical and Demographic Features*, 8 J. SEXUAL AGGRESSION 5, 10 (2001) (N = 12, where subjects were females clinically assessed following criminal conviction in Victoria, Australia); Edward L. Rowan, Judith B. Rowan & Pamela Langelier, *Women Who Molest Children*, 18 BULL. AM. ACAD. PSYCHIATRY L. 79, 80 (1990) (N = 9, where the New Hampshire and Vermont court systems referred the subjects for evaluation); Sheldon Travin, Ken Cullen & Barry Protter, *Female Sex Offenders: Severe Victims and Victimiziers*, 35 J. FORENSIC SCI. 140, 141

While from a scientific reliability standpoint these studies suffer from small Ns,<sup>11</sup> they also can boast of a significant advantage: the clinician usually has ongoing contact with each of her subjects, which means that her ability to gather relevant data is quite extensive.<sup>12</sup> The clinician can ask questions of the subject over the course of the therapeutic relationship and she can use follow-up questions to pursue emerging lines of inquiry. In other words, there are no limitations posed by an already-existing set of records that were designed and collected for another purpose; the researcher can gather the precise data she needs to answer the questions she finds interesting.

The other major source of information about female sex offenders comes from studies of prison or convict populations. In these works,

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(1990) (N = 9, where subjects were females referred for evaluation and treatment at a forensic psychiatry clinic). Other studies derive data about female-perpetrated abuse from contact with the victim population. See, e.g., Emanuel Peluso & Nicholas Putnam, *Case Study: Sexual Abuse of Boys by Females*, 35 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 51, 51-52 (1996) (N = 2, where subjects were victims hospitalized for medical or psychiatric evaluation); Philip M. Sarrel & William H. Masters, *Sexual Molestation of Men by Women*, 11 ARCHIVES SEXUAL BEHAV. 117, 119 (1982) (N = 11, where subjects were men who approached the Yale Human Sexuality Program or who requested treatment from the Masters and Johnson Institute). There are important exceptions to the small N phenomenon in clinical studies. See, e.g., ROSENCRANS, *supra* note 4, at 45 (receiving surveys from ninety-three women identified through a network of abuse survivors); SARADJIAN & HANKS, *supra* note 5, at xiii, 24 (interviewing more than fifty women referred by various British child abuse agencies); Kathleen Coulborn Faller, *A Clinical Sample of Women Who Have Sexually Abused Children*, 4 J. CHILD SEXUAL ABUSE 13, 15 (1995) [hereinafter Faller 1995] (N = 72, where subjects participated in a study conducted by the Interdisciplinary Project on Child Abuse and Neglect and the Family Assessment Clinic); Kathleen Coulborn Faller, *Women Who Sexually Abuse Children*, 2 VIOLENCE & VICTIMS 263, 264 (1987) (N = 40, where staff at the University of Michigan Interdisciplinary Project on Child Abuse and Neglect saw the subjects, mostly as a result of referral from child protection agencies).

11. In empirical work, "reliability" means the ability of future scholars replicating the study to find similar results; it measures the robustness of the results across time. For a more thorough explanation, see EARL BABBIE, *THE PRACTICE OF SOCIAL RESEARCH* 129-36 (8th ed. 1998); ROYCE A. SINGLETON & BRUCE C. STRAITS, *APPROACHES TO SOCIAL RESEARCH* 455-89 (3d ed. 1999). Large Ns allow the researcher to draw reliable inferences about the larger population because they are more likely to contain a representative sample of the whole population, which means future scholars are more likely to replicate the results; small Ns might reflect a skewed sample and thus produce results that others cannot replicate. Donna M. Vandiver & Glen Kercher, *Offender and Victim Characteristics of Registered Female Sexual Offenders in Texas: A Proposed Typology of Female Sexual Offenders*, 16 SEXUAL ABUSE: J. RES. & TREATMENT 121, 123 (2004); see also Michael Heise, *The Importance of Being Empirical*, 26 PEPP. L. REV. 807, 832-33 (1999) (discussing sample size restrictions and limitations in the Pepperdine Study); Craig A. Nard, *Empirical Legal Scholarship: Reestablishing a Dialogue Between the Academy and the Profession*, 30 WAKE FOREST L. REV. 347, 349 (1995) (highlighting the need for increased empirical research which can be used to formulate and reformulate policy).

12. Of course, studies based on agency referrals for evaluation in which the evaluation occurs in only one session do not share this advantage. See, e.g., Rowan et al., *supra* note 10, at 80. Rosencrans's survey approach is similarly limited. ROSENCRANS, *supra* note 4, at 45-46.

scholars have gained access to the court and prison records of all women in a given jurisdiction who have been convicted and/or sentenced for sex crimes.<sup>13</sup> The most prominent works of this field were authored by Donna Vandiver and her colleagues, Glen Kercher and Jeffrey T. Walker.<sup>14</sup> Although these studies have larger numbers of subjects than the clinical studies (N = 471 in Vandiver and Kercher's study, for example),<sup>15</sup> the authors were able to gather data only from pre-existing sources maintained by state officials.<sup>16</sup> Consequently, their conclusions were limited by the official information they obtained and they had no opportunity for follow-up inquiry.<sup>17</sup> A second limitation of these studies stems from their exclusive reliance on convicted and sentenced populations; this subset of sex offenders, particularly those incarcerated for their crimes, likely represents the most serious category of sex offenders, as historically these outcomes were reserved for the most serious female offenders.<sup>18</sup>

Notably, both types of studies — clinical and convict-population-based — typically gather data in only one jurisdiction,<sup>19</sup> but they

13. Vandiver & Kercher, *supra* note 11, at 125.

14. *See id.* (identifying and analyzing characteristics of female sex offenders based on Texas criminal records); Donna M. Vandiver & Jeffrey T. Walker, *Female Sex Offenders: An Overview and Analysis of 40 Cases*, 27 CRIM. JUST. REV. 284, 285 (2002) (analyzing forty female sex offenders for the purpose of developing typological characteristics); *see also* FARIYA SYED & SHARON WILLIAMS, CASE STUDIES OF FEMALE SEX OFFENDERS IN THE CORRECTIONAL SERVICE OF CANADA 1 (1996) (N = 19, where authors used information obtained from the Offender Management Systems and hard copy files of female offenders incarcerated in Canada). For an early effort with this research design in the United Kingdom, *see* A. O'Connor, *Female Sex Offenders*, 150 BRIT. J. PSYCHIATRY 615 (1987), cited in Rowan et al., *supra* note 10 (N = 19, where author reviewed the records of imprisoned women who had sexually assaulted children under the age of sixteen). Two researchers, one affiliated with the Sexual Behavior Clinic in New York and the other with the Department of Psychiatry at Columbia University, also studied incarcerated populations of female sexual offenders, although they recruited incarcerated women to be interviewed; hence, their study better fits the clinical model described above. Meg S. Kaplan & Arthur Green, *Incarcerated Female Sexual Offender: A Comparison of Sexual Histories with Eleven Female Nonsexual Offenders*, 7 SEXUAL ABUSE: J. RES. & TREATMENT 287, 287, 289 (1995) (N = 11, where subjects were incarcerated women who agreed to be interviewed for the study).

15. Vandiver & Kercher, *supra* note 11, at 126.

16. *Id.* at 125.

17. *Id.*; Vandiver & Walker, *supra* note 14, at 292-93.

18. Vandiver and Kercher recognize this challenge and assert that their study captures a broader population. Vandiver & Kercher, *supra* note 11, at 123, 125. Their exclusive reliance on sex offender registries (which include only convicted offenders required to register as part of their sentence) and court criminal history records suggests otherwise.

19. The clinical studies involve participants who came to the author's clinic during a specified period of time, which means they must be relatively local (even though the behaviors they describe may have taken place elsewhere). Faller 1995, *supra* note 10, at 16 (interviewing participants from Michigan, Ohio, and Ontario); Matthews et al., *supra* note 9, at 199 (interviewing agency located in Minnesota); Miccio-Fonseca, *supra* note 8, at 77 (interviewing participants from southern California). The convict population

investigate a greater variety of behaviors by female sex offenders than the precise context that interests me.<sup>20</sup> Most of the subjects in prior studies committed incest, forcibly assaulted someone, or molested prepubescent children, and their victims were just as likely to be female as male; sexual contact with adolescent boys was only one illegal behavior identified in these works, and in many instances it was far from the most common.<sup>21</sup> The diversity of sexually abusive behaviors disclosed to the researchers inspired several of them to develop typologies of female sex offenders.<sup>22</sup> In these frameworks, the classic statutory rape paradigm (described as an older woman who becomes sexually involved with, and asserts romantic feelings for, a teenage boy) appears as just one example.<sup>23</sup>

Despite this diversity, some facts seem common to the population of female sex offenders:<sup>24</sup> They tend to be Caucasian and to range in age from adolescent to senior citizen.<sup>25</sup> Marital status varies,<sup>26</sup> as does parental status.<sup>27</sup> Most victimize children they know, rather than strangers, and use of violence is rare.<sup>28</sup> Some offend in the presence of, or at the direction of, men.<sup>29</sup> Moreover, histories of personal (sexual,

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studies have been similarly limited. See, e.g., Vandiver & Kercher, *supra* note 11, at 125-26 (utilizing Texas criminal records and a Texas sex offender registry); Vandiver & Walker, *supra* note 14, at 285 (analyzing registered sex offenders in Arkansas).

20. See, e.g., Faller 1995, *supra* note 10, at 17-21 (summarizing the "circumstances" of sexual abuse reported by the research subjects); Kaplan & Green, *supra* note 14, at 291 (reporting types of offenses committed); Sarrel & Masters, *supra* note 10, at 119-20 (describing cases involving forced assault, babysitter abuse, incestuous abuse, and dominant woman abuse); Vandiver & Kercher, *supra* note 11, at 126 (listing the range of offenses covered); Vandiver & Walker, *supra* note 14, at 295 (presenting range of offenses in table format).

21. Faller 1995, *supra* note 10, at 17; Kaplan & Green, *supra* note 14, at 291-92; Vandiver & Kercher, *supra* note 11, at 126-27; Vandiver & Walker, *supra* note 14, at 295.

22. See SYED & WILLIAMS, *supra* note 14, at 42; Matthews et al., *supra* note 9, at 208-11; Sarrel & Masters, *supra* note 10, at 119; Vandiver & Kercher, *supra* note 11, at 125.

23. In the typology designed by Matthews and her colleagues, *supra* note 9, at 208, the classic statutory rapist was called "the Teacher/Lover Offender," while Vandiver & Kercher, *supra* note 11, at 130, identified 146 women they called "heterosexual nurturers" in the pool of registered female sex offenders in Texas. Sarrel & Masters, *supra* note 10, at 119, called the seduction of a young boy by an older female "babysitter abuse," and noted that it would be statutory rape if the victim were female. The linkage of romantic feelings and an adolescent partner is one of the topics I intend to explore further in my study.

24. For a quick summary of these findings, see Levine, *supra* note 1, at 389-92; Vandiver & Kercher, *supra* note 11, at 122 (reporting the common findings of these studies with respect to age, history of sexual abuse, history of substance abuse, and history of psychiatric disorders); Vandiver & Walker, *supra* note 14, at 288-90 (reporting characteristics of offenders).

25. Levine, *supra* note 1, at 389.

26. *Id.*

27. See *id.*

28. *Id.* at 390-91.

29. For comments about the role of men in female-perpetrated sex offenses, see SYED & WILLIAMS, *supra* note 14, at 43-45; Kaplan & Green, *supra* note 14, at 291; Nathan &



physical, or emotional) abuse are common in this population.<sup>30</sup> Last, while histories of substance abuse and psychiatric difficulties are fairly common, there is no direct causal link between these factors and the sexual abuse of children, and some scholars have cautioned that the prevalence of these traits in the offenders' histories may be an artifact of the populations studied.<sup>31</sup>

## II. THE RESEARCH DESIGN

My research on the topic of female-perpetrated statutory rape is based on a far more extensive and comprehensive data set than any prior study has used. Rather than relying on a single population of sex offender registrants or on a clinical sample, I have collected news reports of statutory rapes that were electronically published in major and minor news outlets across the United States. The vastness of my database derives from its national (rather than regional or solo-jurisdictional) character and from its threshold for inclusion, as news stories capture incidences of statutory rape well before the point of therapy or incarceration of the offender. By dramatically widening the net of possible cases through an electronic news search, I captured hundreds more observations than all of the prior studies combined. While this approach may offer less detail about each particular offense than a study based on clinical interviews or court records, the sheer number of cases included more than compensated for that loss of detail in terms of the analytical power my data set promises to yield.

My study is also the first to focus exclusively on the crime of statutory rape. Prior works explored the terrain of female-perpetrated sexual abuse more generally, seeking to identify commonalities and distinctions among offenders and behaviors, but sacrificing (in terms of depth) the information they could provide about any particular

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Ward, *supra* note 10, at 14; see also Loretta McCarty, *Mother-Child Incest: Characteristics of the Offender*, 65 CHILD WELFARE 447, 448, 450-51 (1986) (focusing on mothers who commit incest at the behest of their male partners).

30. Vandiver & Kercher, *supra* note 11, at 122.

31. Persons committing sex offenses who are in therapy for related or unrelated reasons are more likely (than those outside of therapy) to come to the attention of clinicians conducting sex offender studies. With respect to prison population or sex registry studies, substance abuse or psychiatric problems may be more common in the population of offenders who are caught and punished than in the population of offenders who remain under the radar of the criminal justice system. Craig M. Allen, *Women as Perpetrators of Child Sexual Abuse: Recognition Barriers*, in *THE INCEST PERPETRATOR: A FAMILY MEMBER NO ONE WANTS TO TREAT* 115-21 (Anne Horton et al. eds., 1990); see also SARADJIAN & HANKS, *supra* note 5, at 3 (noting that the vast majority of psychotic, alcoholic, or drug-dependent women do not sexually abuse children).

class of crime.<sup>32</sup> I tailored my database to include only statutory rape cases in order to test assumptions about this population that have been generated by the larger literature and to offer an in-depth look at one particularly thorny crime. My study thus offers both the breadth (in terms of population) and depth (in terms of crime focus) that clinical and convict population studies were not able to achieve.

Unlike prior works, my data set is national, rather than regional, in scope. I took this route to avoid being constrained by regional idiosyncrasies that may occur in either defendant populations or criminal justice processing. The nationwide scope also compensates for the fact that there are not enough cases in any particular jurisdiction to justify limiting the research to one site. In short, to be able to comment on trends in female-perpetrated statutory rape at the turn of the twenty-first century, I had to canvass the whole country to get a sufficient number of observations.

The best source of nationwide data on statutory rapes is, in my view, electronic news reports. They are easy to access, easy to track, and plentiful — these days, the media seem to love stories about female-perpetrated statutory rape — and many private web sites track these cases for a variety of reasons (some public safety-oriented, some voyeuristic, some in between). A few months of periodic searching can yield access to hundreds of observations from across the country, which allows a scholar to get a handle on national trends.<sup>33</sup> Courthouse records (the obvious choice for most crime researchers) are, in contrast, an impractical source when the scale of a project is nationwide — the cases are scattered all over the country, and one needs an extraordinary amount of time and funding to collect them.<sup>34</sup>

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32. Vandiver & Kercher, *supra* note 11, at 125.

33. Using the media to track national crime trends is a recognized research design strategy. For example, the Centers for Disease Control (CDC) tracks school homicides based on news reports. See Centers for Disease Control, *School-Associated Student Homicides — United States, 1992-2006*, 57 MORBIDITY & MORTALITY WKLY. REP. 33 (Jan. 18, 2008), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5702a1.htm>. The CDC does seek to confirm news information with independent sources. *Id.* (citing Mark Anderson et al., *School-Associated Violent Deaths in the United States, 1994-1999*, 286 J. AM. MED. ASS'N 2695, 2696 (2001)); see also Jennifer M. Collins, *Crime and Parenthood: The Uneasy Case for Prosecuting Negligent Parents*, 100 NW. U. L. REV. 807, 822-23 (2006) (explaining her research methods and asserting that media reports are the most comprehensive sources of information when the scholar's goal is to assess national trends).

34. There is no national organization that collects information from all jurisdictions about statutory rape offenses. The Federal Bureau of Investigation (FBI) collects nationwide data on certain crimes, but statutory rape alone is not one of them. FED. BUREAU OF INVESTIGATION, *UNIFORM CRIME REPORT: CRIME IN THE UNITED STATES 2007* (Sept. 2008). Therefore, cross-country data collection from criminal justice agencies would require an individual researcher to expend an extraordinary amount of money and time. Furthermore, the FBI does not collect information on most of the variables that interest

Moreover, as most of these cases result in plea bargains and very few contain appealable issues, the number of appellate cases available through legal databases such as Lexis and Westlaw is minuscule. Electronic media reports therefore provide the most extensive collection of information about female-perpetrated statutory rape available today.

Although selection bias through media filtering might be a concern in other types of media-based research,<sup>35</sup> the inherently sensationalist nature of these cases suggests that any such bias is likely quite small. Female-perpetrated statutory rape cases of any variety seem to have been garnering a lot of attention from various institutions in the past decade, so we can be reasonably sure that the media is reporting the cases about which they hear. So while I am certain that statutory rape charges have been brought against women about whom I have learned nothing through my internet searches, I doubt that I remain ignorant about a substantial percentage of them.<sup>36</sup>

I also believe news reports from credible agencies are sufficiently sound sources of the data that interest me for this study: the parties' respective ages and backgrounds, and the consequences of both the sexual relationships and the court cases for all involved.<sup>37</sup> None of this information involves legal maneuvers or hyper-technical legal language, and news agencies always have the opportunity to print retractions when they make errors in critical facts.<sup>38</sup> The news reports of female-perpetrated statutory rape thus seem accurate enough for my objectives in this research.

But this study does not comprise every electronic mention of a female involved in sexual behavior with a boy in the United States. Inclusion in my database is subject to four limiting principles: source threshold, crime threshold, unit of analysis, and proof threshold. As for source threshold, a credible news outlet that has a paper source must publish the story; I excluded any report of a statutory rape mentioned on a website that I could not trace back to a credible news source.<sup>39</sup> As to the crime threshold, the data set includes only those

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me, so even official reports of statutory rape, if they existed, would prove incomplete for my purposes.

35. Selection bias can be introduced at various stages, as cases get filtered out due to discretionary judgments by criminal justice personnel and by media entities.

36. Moreover, because my database includes widely varying fact patterns, I do not believe that the crimes that remained under my radar diverge in salient ways from the crimes that I discovered.

37. Because most of these cases result in plea bargains, any court files I might find would likely not contain as complete a set of information as these news reports.

38. Any such retractions would have turned up in my internet searches; I can thus correct errors in the database as they appear.

39. I also printed out copies of these paper sources to avoid concerns about websites expiring during the course of this research.

cases involving the crime of statutory rape (or a related age-of-consent violation, like oral sex with an underage person).<sup>40</sup> Other inappropriate behaviors by adult women that might be regulated exclusively under a different framework (like professional standards for teachers or clergy) or that violated other parts of the Penal Code (like distribution of intoxicants to minors) I excluded to keep the database focused on the crime of statutory rape.<sup>41</sup>

For the unit of analysis I chose the “dyad” — a pairing of one adult woman with one teenage boy that resulted in criminal charges against the woman for a statutory rape offense. The dyad struck me as superior to the case because it aptly addressed the issue of multiple partners. A woman caught with multiple adolescent sex partners might find herself charged in a multi-count indictment that covered all of the encounters, or might face separate cases over time.<sup>42</sup> By using the dyad instead of the case as my unit of analysis, my research ascribes equal weight to all defendants and all victims, irrespective of prosecutorial charging strategies.

The proof threshold question addresses the quantity of proof necessary to include a dyad in a database tracking criminal behavior. Where the size of the database is the only relevant priority, the arrest of the woman would be the threshold for inclusion. On the other hand, only after conviction has a woman been *proven* guilty of statutory rape, which suggests that using as a threshold any point before conviction would violate a woman’s right to be considered innocent until proven guilty. In the end, I decided that the filing of criminal court charges was the best threshold for inclusion, as it represents a prosecutorial opinion about the likelihood of guilt that incorporates a broader assessment of facts and law than that used by police who make the arrest. However, I plan to mitigate the effects of this decision in two ways. First, I will analyze the data to see if the population of charged dyads differs in any significant way from the population of convicted dyads,<sup>43</sup> and if it does, the bulk of my discussion will rest on the analysis derived from the convicted population. Furthermore, if

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40. This project takes the existence of age-of-consent prohibitions as a given; it does not interrogate state-by-state variations in these laws.

41. If the woman was charged with multiple Penal Code violations, the test for inclusion was whether at least one of those violations was a statutory rape offense. Moreover, inclusion was determined in light of the charges filed, not on the convictions obtained.

42. The percentage of women in the database who have had multiple partners is quite small, so in the end the differences between the case and the dyad as a unit of analysis will probably be negligible.

43. My preliminary review of the database suggests that the answer to this question is no because the vast majority of the dyads have resulted in completed prosecutions. The only bias on this point may come from recency, as many of the dyads charged in 2008 are still winding their way through the justice system.

I obtain information that any dyad resulted in complete dismissal or acquittal on all charges, I will eliminate that dyad from the database.

With these principles in place, I<sup>44</sup> began by constructing various searches on Nexis (the news arm of the legal search engine Lexis), in the "major newspapers" library, from 1990 onward. Using that tool, I found reports of a little over one hundred statutory rape dyads. I then turned my attention to the internet, predicting that outlets too small to surface in the major newspapers library may have published stories about rape dyads. With the help of search engines such as Google, the database grew exponentially. By the end of the summer of 2008, the database contained almost one thousand dyads, mentioned in thousands of news stories overall.<sup>45</sup> Coverage extends all over the United States for the years 1990-2008 (summer).

The codebook that I designed to handle this information contains thirty-four variables, covering the demographics and personal history background (such as substance abuse, psychiatric difficulties, and prior abuse victimization) of each dyad participant, the year the dyad was formed, the region of the country in which the relevant actions occurred, and the consequences of the dyad. Among the consequence variables, the codebook addresses both criminal justice outcomes and personal issues, such as effect of the dyad on the participants' other relationships, production of a baby, school failure, substance abuse, and the like.<sup>46</sup>

I will not attempt to assess these outcomes according to common demographic indicators such as the race, class or gender of either dyad participant. As to race, the news accounts (unlike police reports)

44. Here I use the pronoun "I" for simplicity; in fact, many of these searches were designed and conducted by my research assistants over the course of three summers. Many thanks go to Benjamin Davis, Caroline Placey, Carrie McCurdy, Sarah Tope, Stephanie Godfrey, Julio Driggs, Martha McClain, Andrew Strickland, and Gideon Alper for their efforts on my behalf.

45. As of this writing, my research assistants are collecting the hard copy news stories on the remaining handful of dyads who received mention on websites, so the actual size of the database is yet to be determined.

46. Because I have obtained this information from news reports, rather than from the participants directly, I am limited by the reporter's decisions regarding what information to include in the story. Hence, "not reported" will be coded the same as a negative response for purposes of this study. Moreover, I cannot interrogate the underlying facts supporting the claim to the presence of any of these factors; in other words, unlike the clinicians who independently diagnosed their subjects as depressed or addicted to a controlled substance, I must rely on statements made to reporters about these facts. Defense attorneys may be inclined to create or enhance a mental disease or substance abuse angle to gain sympathy for their clients, and prosecutors may be inclined to distort such claims in support of an aggravation argument. I therefore will have to take claims regarding mental disease and abuse history, when made by counsel but not corroborated by another source, both at face value and with a grain of salt.

rarely discuss the racial identity of the participants, which means I would have to speculate for most participants based on surname<sup>47</sup> or photo, where one is included. In either case, my conclusion would be too speculative to be useful. Likewise, class is not a variable in this study. While news stories typically report the job of the female (as it is often directly relevant to how she met the boy), they do not contain other information that researchers commonly use to identify class.<sup>48</sup> Finally, because all of the dyads have the same gender structure (a female adult with a male adolescent), I will not test gender in this analysis.

Once I have coded the dyads in the database,<sup>49</sup> I will use a statistical software package, such as SPSS,<sup>50</sup> to assess frequency of responses and relationships between variables. I hope to answer questions such as these:

- Based on this aggregate data, what is the most common age disparity between participants (are they typically close in age (less than five years) or is the gap much larger (over ten years))?
- What are the most common access channels — how are women meeting boys with whom to have sex?
- Is there a relationship between age gap and access channel?
- What are the background traits of people who become involved in these encounters; how common are substance abuse, prior victimization, and psychiatric disorders?
- What percentage of women fit the heterosexual nurturer model described in the clinical literature, professing love and commitment to their boy partners? Does that model correlate with age gap or access channel?
- What are the personal consequences of the relationships for both women and boys?
- What criminal justice system consequences have these women experienced? Have these consequences become harsher over

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47. When the defendant is married, surname is often not a good indicator of racial background.

48. See, e.g., Mary E. Campbell & Lisa Troyer, *The Implications of Racial Misclassification by Observers*, 72 AM. SOC. REV. 750, 755 (2007) (capturing the concept of socioeconomic status by documenting “parental education and the natural log of family income during adolescence” (emphasis omitted)); Michael Wood & Michael Hughes, *The Moral Basis of Moral Reform: Status Discontent vs. Culture and Socialization as Explanations of Anti-Pornography Social Movement Adherence*, 49 AM. SOC. REV. 86, 92-93 (1984) (discussing occupational categories used to identify class divisions).

49. As of this writing, I have not yet decided whether to code all of the dyads or to take a stratified sample to compensate for the smaller number of dyads in the early years of the database.

50. See SPSS, Statistical Analysis, <http://www.spss.com/> (last visited Jan. 14, 2009).

time (in terms of incarceration time or sex offender registration requirements), consistent with increasing harshness in treatment of male sex offenders and those who commit crimes against children generally?

- Is there a correlation between age gap or access channel and criminal justice consequence?
- Is there a correlation between personal consequence and criminal justice consequence, such that courts appear either to be offering leniency to women who claim to have suffered enough or to be denying leniency to those who have children as a result of the dyad?
- Are there any regional differences in criminal justice consequences?

This is far from an exhaustive list of the questions I hope my study will answer, yet I believe it represents the type and range of inquiries that are possible with the data I have collected.

#### CONCLUDING REMARKS ABOUT EXPECTED SIGNIFICANCE

In answering questions such as those posed above, my project will add significantly to what we know from the clinical and convict population studies about female-perpetrated statutory rape. By canvassing the country rather than limiting the pool to one jurisdiction, I will be interrogating the practices of a far larger population than previous scholars have studied. In addition, focusing exclusively on statutory rape (instead of the range of sexually abusive behavior in which women engage) will allow me to test assumptions about this crime that have surfaced in prior works.

For example, other works about female abusers have labeled women who have sex with adolescent boys as “teacher/lovers”<sup>51</sup> or “heterosexual nurturers.”<sup>52</sup> These labels cloak the crime of statutory rape in the language of the heart, conjuring up images of romantic liaisons between star-crossed lovers whom the law conspires to keep apart. Whatever degree of truth this portrayal captures for some relationships, examination of a great many statutory rape dyads will likely reveal that it is a vast generalization. Although a subset of the dyads may contain some elements of the romance story, I suspect that the remainder will reveal other motivations and emotions such as might characterize adult sexual encounters (desire to feel young,

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51. Matthews et al., *supra* note 9, at 208-09.

52. Vandiver & Kercher, *supra* note 11, at 130.

physical gratification, revenge against a spouse, and so forth).<sup>53</sup> Additionally, I believe that the romance story is fueled by the assumption that most female statutory rapists are relatively young and therefore close in age to their adolescent partners. My cursory review of the database suggests, however, that the assumption of youth is not warranted; more than fifty percent of the dyads include women who are over the age of thirty-five, if not over forty, generating age gaps of at least fifteen or twenty years in many instances.

If that's the case, why do we feel a strong need to portray female-perpetrated statutory rape as a crime of love? Saradjian and Hanks suggest that casting statutory rape as a "misguided extension of love" reinterprets the woman's criminal behavior as a sign of nurturing and caring, thereby rendering her less threatening and less responsible from a criminal law perspective.<sup>54</sup> Perhaps it is just another manifestation of criminal justice officials' long standing tendency to regard female offenders as sick rather than evil, which often results in lenient treatment for female criminals relative to male criminals.<sup>55</sup> Such efforts to minimize female responsibility for sex crimes can be incredibly damaging to their victims and ultimately corrosive for women's efforts to obtain equal standing in our society. Moreover, because the romance story has been largely rejected in the case of male-perpetrated statutory rape,<sup>56</sup> its retention in the female context implies that only men are capable of exploiting others for sexual purposes. It thus reinforces the conventional gender paradigm of this crime, and of heterosexual sexual behavior overall, which legal institutions should strive to eradicate rather than passively (or intentionally) reproduce.

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53. The literature about male-perpetrated statutory rape has also discussed this range of motivations. See, e.g., Kay L. Levine, *The Intimacy Discount: Prosecutorial Discretion, Privacy, and Equality in the Statutory Rape Caseload*, 55 EMORY L.J. 691, 713-25 (2006) (describing the distinguishing characteristics in prosecuting unlawful sexual activity with minors).

54. SARADJIAN & HANKS, *supra* note 5, at 5.

55. See generally LUCIA ZEDNER, *WOMEN, CRIME AND CUSTODY IN VICTORIAN ENGLAND* 268-71, 278-83 (1991) (discussing Victorian perceptions and methods of dealing with female criminals); Ania Wilczynski, *Mad or Bad? Child Killers, Gender and the Courts*, 37 BRIT. J. CRIMINOLOGY, 419, 423-25 (1997) (evaluating differential treatment of men and women in child murder cases).

56. Scholars long ago rejected romance as a sufficient form of mitigation in male-perpetrated statutory rape, reasoning that such feelings are disingenuous or reflective of subtle manipulation. See, e.g., Michelle Oberman, *Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape*, 48 BUFF. L. REV. 703, 771 n.218 (2000) (detailing sexual pressure exerted by older men on younger women); Michelle Oberman, *Turning Girls Into Women: Re-Evaluating Modern Statutory Rape Law*, 8 DEPAUL J. HEALTH CARE L. 109, 119-23 (2004) (detailing the historical development of statutory rape laws). But see Levine, *supra* note 53, at 721-32 (explaining how prosecutors often discount for what they perceive as genuine intimacy in a relationship between an adult and a minor).



In addition to providing a superior look at a previously neglected class of statutory rapes, my study more generally highlights the importance of outlier cases in criminal law. When we base our legal or policy discussions of a crime solely on the conventional cases, we develop only a limited understanding of what the crime is about, what the salient patterns of commission are, and whether legal institutions are responding appropriately. But when we expand our field of vision to include nontraditional cases, these conventional understandings may suddenly appear unsatisfactory as explanatory devices. Rather than dismissing the nontraditional cases as irrelevant, I suggest we use outliers to reframe our understanding of the traditional. In so doing, we have a wonderful opportunity to take a much closer look at the dynamics of the crime itself and to re-evaluate the propriety of legal and institutional responses to the crime, its perpetrators, and its victims.