

# Adverse Conceptual Representations of Children in Rape & Sexual Assault Cases in England and Wales, in Legal Processes and the Media

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## *Abstract*

The primary aim of this paper is to offer a Cognitive Linguistics analysis of the language used for and about children in the judicial system of England and Wales, as well as the reports of such cases in UK media. The treatment of children when questioned by the police and in court has been an ongoing issue. A number of outdated, social myths persevere in rape cases involving both adults and children. These myths generally include the 'Rape Myth' and the 'Autonomous Testosterone Myth', and for children also include other adverse, expected patterns of behaviour, such as a general expectation that children 'lie', 'cannot differentiate truth from fiction', and 'are easily confused about other people's intentions'. This paper offers a review of the legal process in England and Wales involving children, before illustrating how the above myths and expectations are triggered by the questions put to the witnesses. The analysis shows how these associations are networked in elaborate semantic domains that may trigger inferential information that prejudices hearers against those same young victims.

*Keywords:* forensic linguistics, rape and sexual assaults, frames, ICMs.

## **I. Introduction**

In the 1980s and '90s, researchers identified a particular, adverse representation of rape victims that emerged from the questions put to them in court: the so-called 'Rape Myth' (Aldeer 1987; Matoesian 1993; Ehrlich 2001). More recently, we put forward the 'Autonomous Testosterone Myth', which complements the earlier Rape Myth (Aldridge and Luchjenbroers 2007, 2008, 2011; Luchjenbroers and Aldridge 2007, 2013), in that it offers an explanation of how men have been characterised as 'victims' of a woman's allure only to find themselves accused of rape. Although these myths did not emerge

from a Cognitive Linguistics analysis, they nevertheless capture, in part, the conceptual frames that have been used to generate adverse, representations of rape/sexual assault victims in the legal process across countries. Of further, particular interest to us is the propagation and affect of such adverse representations of children in court who are legally beneath the age of ‘consent’. In this paper we consider the questions put to children in cognitive linguistics terms (conceptual frames and ICMs) in order to gain insight into the conceptual underpinnings of these myths/representations that add to the difficulties even children have in achieving justice in court. We also consider whether these representations are still present in recent media reports of rape cases despite attempts by the UK legal system to combat these prejudices.

## 2. Conceptual frames and ICMs

Fundamental to the Cognitive Linguistics approach to language production and comprehension is the assumption that word, sentence, and discourse meanings draw on conceptualisations that are shaped by personal experience. There is a huge body of research from linguistics, as well as philosophy (cf. Minsky 1975a, b), psychology (cf. Johnson 1987/2013), and artificial intelligence (cf. Schank and Abelson 1977) that has evidenced continuities between language and experience. In this way, the use of a word is tailored by the user’s field of experience, which determines when the use of a word may be deemed appropriate, but also how a network of expectations is triggered when the concepts related to those words are accessed. For example, the English word *bachelor*, if defined simply as an ‘unmarried man’, is somehow inappropriate in reference to the Pope, Moslem men with three wives (but allowed four), or divorcees (Lakoff 1983, 1987). This is because the essence of ‘eligibility’ and ‘inclination’ to marry is part of the concept even though the minimalist definition does not explain these assumptions. Similarly, for us this concept also triggers presumptions of ‘reasonable affluence’, meaning that a homeless man in his 50s is unlikely to be referred to as a *bachelor*, even though he well may be an ‘unmarried man’. Hence, this encyclopaedic approach to meaning clarifies how different language users may include different presumptions for

the appropriate use of a word, like *bachelor*, by drawing on their own experiences in society.

In this way, Fillmore's work on 'conceptual frames' captures more than just the prototypical, narrow sense of a given word, but also the prototypical context of its use, making additional associations available when a word triggers a particular concept (cf. Fillmore 1975, 1977, 1982, 1985). For example, Fillmore's well-known 'restaurant frame' (1982) immediately makes associated information conceptually 'available' without the need for expressed, lexical reference, as in (1) below:

- 1) I had a sandwich at the university canteen.

The speaker would not need to additionally convey that the sandwich had been paid for, or that payment preceded consumption, as the speaker's understanding of how canteens work (in the UK) will trigger that information for possible reference should further discourse require it, such as in (2):

- 2) It wasn't what they said it was, so I got a refund.

So, together with an expectation that other members of the same community of practice would have access to the same or a very similar pattern of experience, the user's conceptual frame of 'university canteens' would provide the component of 'payment before consumption', bridging the gap between examples (1) and (2). In effect, frames capture the body of social expectations (not just personal expectations) associated with each lexical choice, and these expectations might not be lexically represented. This conceptual network of additional information would thus complement the information provided lexically and would influence the understanding of the discourse.

Hence, the conceptual frames approach to word senses captures associations with related information in memory, drawn from the users' experience. Similarly, Lakoff (1987) proposed that different contextual uses of a given word sometimes cohere into a more general, conceptual representation, called an 'Idealised Cognitive Model' (or ICM). An ICM captures the full set of social expectations associated with the concept triggered by a particular

word. For example, the various uses of the English word 'mother' draw on a range of different social (component) models, including: *working mother* or *housewife mother*, *birth mother*, *adoptive mother*, *surrogate mother*, *real mother*, *child mother*, etc. Lakoff explained that these examples capture the range of potential associations triggered by the word 'mother'.

In effect, the ICM captures separate elements (or 'models') of what the American society generally associates with the concept of a 'mother', i.e., she is a mature woman (and not too young), who would produce the egg that is fertilised by the father, whom she is married to; she might work but also might stay at home; she would carry the foetus full term to birth; and she is the primary caretaker. Essentially, this is the prototype for this word; although not all uses match the prototype perfectly. In today's society, many instances of 'mother' exist that do not utilise every expected component of this ICM, but possibly just a subset (e.g., an *adoptive mother* is legally the mother, who might stay at home or go out to work, and be the primary caretaker, but she did not give birth to the child and might not be married. Such component models are drawn from the more general ICM, which enables us to understand non-prototypical cases, such as given in (3) below:

- 3) My third foster mum is the only real mother I have ever known.

Even though for many users a 'real mother' is also the 'birth mother', we can make sense of (3) by drawing on one particular component model from the more general ICM: the primary caretaker mother. It is also clear from (3) that the 'caretaker' component is held here more highly than other component features, even though others may have a different perception of what makes a 'real' mother. In effect, a person's ICM reflects the sum of that individual's social expectations concerning a given concept triggered by a particular word, and instances of use are measured against those general expectations (Lakoff 1990). From this perspective, words do not need to fit the world, but instead fit our ICMs of what we expect to find in it.

In our research, conceptual frames and ICMs are used in the analysis of the language produced in legal settings in cases of rape and/or sexual assault. The importance of a complete linguistic

analysis of not just the language used but the conceptual mappings that would follow from the lawyers' choices (or media's choices) of language is paramount since, in cases such as these, the information provided in the victim's account may be the only evidence available. The following section will offer some background into the legal system of England and Wales, leading to the myths recognised in earlier works, before dealing with the adverse representations of children generated by specific ICMs that are triggered by questioning from counsel.

### **3. The language of legal proceedings**

In England and Wales, a number of witness types have been identified as particularly disadvantaged in legal process. These witnesses include 'vulnerable' witnesses (such as children under the age of consent) and 'intimidated' witnesses (such as rape victims and those involved in violent crimes). In order to redress this disadvantage, a number of 'special measures' have been introduced to improve these witnesses' performance in the initial police interview and in court (we are referring to alleged victims not perpetrators of crime), to better enable them to give an accurate and coherent testimony (cf. Home office 1992, 2000, 2002). These special measures may now include: a visual barrier in court between the victim and the defendant/perpetrator; being cross-examined via video-link to a different location; and/or the initial police interview with the victim being videoed and this being offered in court as the examination-in-chief, in lieu of direct questioning by the prosecution barrister. Each of these measures needs to first be granted by the trial judge, and any or all of them may be denied.

A significant problem with this procedure for the victims is that the videoed, police interview must serve two objectives: (i) to inform the CPS (Crime Prosecution Service) of all possible aspects of an alleged crime, on the basis of which they can decide whether to pursue a case in court; and (ii) to represent the victim's case in court. This is problematic because the police interview involves questions that are not allowed in open court, such as questions regarding the victim's sexual history. Unfortunately, the police need to investigate both the (alleged) crime and the victim as thoroughly as possible, which results in questions to the victim that are not

necessarily victim-friendly. In essence, the police-video, if given as the victim's examination-in-chief, includes questioning that may also challenge the victim and the alleged crime in a manner that is not likely to be consistent with how a prosecution barrister would question their claimant (cf. Aldridge and Luchjenbroers 2008; Luchjenbroers and Aldridge 2013). In essence, the victim's case, her choices, her character and her past are investigated in her examination-in-chief (by the police), making the pursuit of all these issues also open to cross-examination by the defence. Even though the statistics for children's prosecutorial success is not calculated separately from adult claimants in England and Wales, after years of 'special measures', the overall success of conviction in rape cases is repeatedly reported around 5-6%<sup>1</sup>, and most cases (roughly three-quarters) never make it to trial.

As problematic as the use of the videoed police interview in court is for child witnesses, a far more problematic issue for rape victims (whether adult or child) is that in many cases, the verbal testimony of the victim may be the only evidence available. Added to this is a potentially low linguistic maturity among some child witnesses in terms of, (i) an inability to properly narrate what has happened to them; (ii) an insufficient knowledge of the lexical descriptions for sexual activity as produced by the police or in court; and (iii) lack of ability to answer questions in a way that would cast them in a more favourable light. Essentially, children often lack the linguistic skills necessary to recognise whether the questions put to them by the police or in court are victim friendly or not; and if they do recognise the questions as potentially hostile, they are often powerless to respond in a way that will improve jurors' perceptions of them.

For example, when a 10-year-old boy in a physical abuse case was asked, "Are you the kind of lad who runs away from a fight or an argument?" (Aldridge & Luchjenbroers 2007). A 'yes' would require the boy to declare himself a coward, as 'coward' is triggered by a frame-based recognition that 'running away from a fight' (from a threat) is something that only a coward would do. So, of course the boy answers 'No', seemingly oblivious that his answer also

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<sup>1</sup> David Cameron, reported by the BBC, November 12, 2007.

accepts that he would ‘stand up to ... an argument’, which could instead trigger a frame of ‘bully’ or ‘trouble maker’. This was by the questioning barrister’s obvious design, as this sequence was used before subsequent questioning that triggered a parental frame, to qualify why more aggressive measures may have been, unavoidably or understandably, taken by the adult in this case.

Further problems, more central to the concerns of our research, include the preponderance of police and barrister questions in court that dwell on both outdated and inappropriate social models of expected choices and behaviours in a rape/sexual assault situation. We can expect that jurors’ prior experiences of rape or sexual assault would only be by word of mouth (or the media), and not personal experience. As barristers can exclude jurors, we can assume that prior experience will be grounds for exclusion by both the prosecution and the defence. This means that the nature of police talk, in court and in the media, is relevant when investigating the frames and ICMs used to establish whether a crime has occurred. In the following sections we will outline the *Rape Myth*, followed by the *Autonomous Testosterone Myth*, before turning to the nature of the questions put to victims and the descriptions of such cases to the media.

### 3.1. The ‘Rape’ Myth

The nature of the questions put to victims (adults or children) reveals how outdated assumptions persist about what type of person can be a ‘true’ victim of rape. These stereotypical assumptions are that ‘she’ is a decent, married woman (so her sexual needs will be satisfied elsewhere), who neither makes advances to or provokes the rapist in any way (that might lead him to misread her intentions), and who is subjected to a completely unjustified and unexpected attack, with the wounds to testify to her resistance (see also Temkin 2010). In effect, the identified features of the Rape Myth cover much of what is included in an ICM of a ‘true’ rape, and it is this model that the legal profession in particular seems loath to abandon, even though advice on the CPS website warns against the associated presumptions.<sup>2</sup>

Further assumptions stemming from the ICM of a ‘true’ rape

<sup>2</sup> See [http://www.cps.gov.uk/publications/prosecution/rape.html#\\_o5](http://www.cps.gov.uk/publications/prosecution/rape.html#_o5).

include that 'she' would take reasonable steps to avoid a rape situation (i.e., avoid disreputable establishments; avoid clothing and makeup that might send the wrong signals; not use provocative behaviour); and if in trouble, she would be expected to make a reasonable attempt to escape. This stereotypical image is so persistent that both police and barristers address questions to alleged victims that speak to these prejudices.

Hence, the word 'Idealised' in ICM does not mean 'best' or 'optimal', but instead conveys 'principal', in that it captures a consistent reoccurrence of features associated with a particular word. Even though much of the 'rape' ICM has been rejected in many circles<sup>3</sup>, jurors are still encouraged to have certain expectations about what a rape is and how a 'true' victim would behave, and when a claimant's case is not 100% consistent with that representation, the defence effectively conveys 'reasonable doubt'.

### **3.2. The 'Autonomous Testosterone' Myth<sup>4</sup>**

This myth complements the Rape Myth in that it centres on what kind of man would carry out such an act (or need to) and what can be expected of any man. In other words, when a woman dresses provocatively and frequents the kind of places where sexual partners can be found, and/or is not wounded in the sexual event (she didn't fight back, or, if there are scratch marks, some girls like it rough), then sex must have been consensual or 'she asked for it'. This then shifts the blame in rape cases to the alleged victim, who is portrayed as responsible for 'luring' an otherwise upstanding (young) man into a sexual situation where he is then accused of rape. More importantly, following this myth, the man in the sexual event cannot be blamed for partaking in sex, when the behaviour of the female indicated her willingness for sex.

This then mixes the presumption that once aroused, a man can't help but finish the deed, and that a woman needs to take responsibility for luring a man into that situation. Therefore, he would be justified

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<sup>3</sup> We have taught forensic linguistics modules for many years and both male and female students are appalled that these prejudices still persist in court.

<sup>4</sup> Most of our work on rape and sexual assault has focused on women; however we are not suggesting that victims are only female or that rapists are only male.



in believing that she was both willing and actively pursuing sex. As a result, rape may simply be a matter of miscommunication. And if so, the man in question is not a villain, but a victim of the legal process and the accusations being made by a vindictive woman with other, more devious objectives (which are often not explained).

Importantly, the ICM of a ‘rapist’ is actively cultivated as someone who is unknown, single and no longer young, and who would be visibly ‘dangerous’, so that anyone could avoid becoming a victim by avoiding anyone filling all these criteria. The consequence of this is that a victim who dresses like her peers or like magazine celebrities and behaves in a manner typical of her peers, and frequents the same establishments as her peers is then blamed for her actions. It would be hard to imagine a situation today where otherwise typical behaviour and choices might not be argued as inviting sex.

### **3.3. Children ‘lie’, ‘are easily confused’, and ‘can’t differentiate fact from fiction’**

Further presumptions impacting children in a legal process have also been documented by Luchjenbroers and Aldridge (2007, 2013; Aldridge and Luchjenbroers 2007). These are frequently triggered or stated outright in trials with children, such as (4) and (5) below.

4) I want to suggest to you that you’re making that little bit up, C. Do you understand? That’s not true, is it?

In this sexual assault case, the barrister relies heavily on the suggestion that the child may be confused by the questioning (Do you understand) as well as the assertion that the child is lying. To what end, however, is not explored or explained.

5) Tell us how the game worked .... Did he touch your nose?

In (5), the 12-year-old girl in a sexual assault case is questioned about the defendant’s prior activities, which involved play. Although the child claimed that the event in question went beyond play, the child is portrayed as confused about this defendant’s behaviour, and the defendant is portrayed as an upstanding, innocent man. The

barrister later asserts to the witness that any reference to sexual activity sexual was a lie, or the result of confusion.

The specific research question addressed in this paper is that of calculating how the underlying conceptual frames and metaphors triggered by questions put to children in the legal process can prejudice those same children and/or their actions. In addition, we will also consider these frames in media reports of rape/sexual assault trials.

#### **4. Data**

##### ***Child data***

The material used in this paper is drawn from a databank of police and court transcripts from ca. 2000, involving sexual and physical assault cases with children between three and fourteen years of age. The extracts included in this paper are from the official transcripts of videotaped interviews and those from the cross-examination phase of courtroom interaction. Throughout, “P” is the policeman/woman, “C” is the child witness, and “B” is the questioning barrister in court.

The particular features of these testimonies from children include the fact that they have significant difficulty in (i) providing an account that is frame consistent and (ii) making appropriate, strategic choices about what to convey and what to withhold. We have examined the questions put to child witnesses concerning their sexual history, and to what extent these questions ‘normalise’ sex between adults and minors.

##### ***Rape case reports given in the media***

In addition to the child data, we also consider a range of media reports made by judges, barristers, and others involved in rape cases. We further consider these in terms of the conceptual frames and ICMs discussed in the cases involving children.

#### **5. Police and Barrister Questioning**

In these analyses, a number of ‘rape’ ICM components have emerged in the questioning of the children in our data. The first, prominent

in the police questioning of a 14-year-old girl is the notion of prior sexual experience in a child rape case, such as (6) below.

- 6) P: You told me earlier on you were on the game or had been on the game  
C: I've never been on the game  
P: Never been on the game?  
C: I have never taken money for sex, ever

Since the age of consent in the UK is 16, if the accused is convicted of abusing someone under 16, it is considered 'statutory rape'. The issue of the victim's age and/or consent may be thus considered a 'mitigating' factor and used in court for sentencing. The court's reasoning is that in sex events where the child seems mature enough to give consent, there is no force, so the event would be less damaging for the child. There are many problems with this line of questioning: (i) a witness's prior sexual history may not be asked in court, yet is brutally questioned here; (ii) prior sexual history has no bearing on whether this was rape or statutory rape; (iii) this is the video recorded police interview that would be shown in court as the victim's examination-in-chief, yet the questions seem more to be what would be expected of a, more hostile, cross-examination; (iv) because sexual history has been raised in the examination-in-chief, it is open to further scrutiny in the defence's cross-examination; and (v) physical wounds are not the only kind of trauma that can result from sexual assault. The legal profession's focus on sexual history is also captured in (7) below.

- 7) P: Have you ever done anything like that with anyone else before?  
C: No.  
P: Has anyone ever fingered you before?  
C: No.  
P: So, that was your first sexual encounter, was it?

What these questions show is not only that children who are legally below the age of consent are questioned for evidence of consent, but for explicit details of their prior sexual history, which has no bearing on the case under investigation and is simply used to assess whether the alleged victim is a 'true' victim. Essentially this suggests that evidence of prior sexual experience will diminish the accusation of

rape, and also reinforce the rape ICM of a true victim as a chaste female. Drawing then on the 'rape' ICM (as embodied by the Rape Myth), only a child with no prior sexual experience (or adult woman with little or no sexual history) can be a 'true' victim; and (as embodied by the Autonomous Testosterone Myth) a woman with prior sexual history must be seen as sufficiently sexually provocative as to lure an unwitting man into a sexual act. Unfortunately the focus on a child's sexual history (if there is one) entirely loses sight of the legal fact that in England and Wales, girls under 16 cannot consent to sex. Therefore, they are all victims of statutory rape; and any argument that sex with a sexually aware child isn't so bad, or not rape, essentially argues that abusing the already abused is okay.

Further attributes of the Rape Myth include the alleged victim's conduct, dress and other choices during the event in question, such as (8) through (12) below.

- 8) C: so I did and em and he started kissing me, started biting me again then he started... [silence]  
P: When it was happening, was the boat dark?

The police question appears odd in the context of the child's narrative. The relevance of this question must hence draw on the predictability of the alleged rapist's intent since the lights were off. If the room is dark then sexual advances might be predicted and a true victim would have tried to escape (at least sooner than this child had done, despite being on a boat).

The following two examples draw on the alleged victim's choice of clothing, thus drawing on the frame-based associations that a 'true' victim would dress appropriately and avoid dangerous circumstances where an attack might be pre-empted. Example (10) also comes from an attempted rape case involving an 11-year-old boy.

- 9) P: Can you tell me what you were wearing last night?  
C: I was wearing my cream Reebok jumper and my check shirt and my blue jeans and my trainers  
P: OK, did you have anything on underneath your shirt?
- 10) P: Alright OK. So it's a normal double bed is it?  
C: [nods]  
P: What were you wearing?  
C: My pyjamas

The following two examples draw on additional assumptions from the Rape Myth regarding a 'true' victim's choices regarding how much to drink (11) and how hard to fight an attacker off, leaving wounds as evidence (12).

- 11) P: Going back to when you were on the boat, how much of the brandy did you think you had?  
 C: Just half a mouthful  
 C: What about cigarettes? Did you have a cigarette on the boat?
- 12) P: OK so what are your injuries as a result of last night?

In addition, the Autonomous Testosterone Myth was also clearly evident in these testimonies. The questions above relating to the child's state of dress bear out this myth (cf. 9-10), as do questions concerning the witness (regardless of age and experience) being responsible for 'reading' the scene for possible threats (cf. 8 and 13 below). These examples illustrate how the child is held to be responsible for reading the situation correctly. If we assume that she understood, then she was consenting and this wasn't rape; and if she didn't want sex, then she failed to communicate this properly to the man (miscommunication).

- 13) P: Yeah OK, what was he wearing?

Added to these are police and barrister questions or assertions that convey that the child is either lying or is confused, such as (14) below. These involve a characterisation of the defendant as an otherwise upstanding individual who cannot be guilty of such a crime. In this case, the 10-year-old witness holds firm to having been hit, like others in the household. Nevertheless, the barrister dismisses them all, and it is unclear in the child's final contribution in this extract whether she contradicts the barrister's assertion or accepts them.

- 14) B: Was it your mum who told you that XXX had hit (your sister)?  
 C: No because I seen all of that in my mum's room  
 B: Are you sure?  
 C: Yes.  
 B: Has Nicola said to you "Well, XXX hit me"?  
 C: No, I have tried to ask her things about it, but she says that she didn't want to talk about it.  
 B: I see. Because XXX didn't hit (your sister), did he?

C: When?

B: When you told us that he did hit her, he didn't really hit her, did he?

C: He did

B: And he didn't hit you either, did he?

C: Yes

The ultimate importance of these myths, and the presumptions that jurors are invited to make regarding the alleged victim and/or the alleged rapist in a particular case, is that the failure of some or any of the features characterising these conceptual representations diminishes a claimant's case, and therefore the likelihood of conviction, which current trial statistics uphold. As jurors are directed to find a defendant guilty only "in the absence of reasonable doubt", being able to show in court that a claimant who appears under questioning to be a 'normal' sexual being who likes to be admired and thought of as attractive, and possibly 'sexy', can suggest 'reasonable doubt' with just a hint that she 'might' have wanted sex all along.

Even though the rape ICM and its component elements capture what characteristics are expected of a 'true' rapist and what characteristics are expected of a 'true' victim, these have involved false associations that society at large have condemned. In particular, adult standards of behaviour are extended to children under 13 years of age, who do not always have the social expertise to know how to act. Although we might assume that children of this age would be chaste, if they aren't it would only prove that they've been previously abused, which should increase rather than decrease their vulnerability. Unfortunately, this does not appear to be the court's thinking, as it imposes lesser punishments on the perpetrators in such cases. Similarly a child's clothing seems an unfair barometer: the child who wears pyjamas to bed, or the girl who may or may not be wearing something under her shirt and jeans, for example. None of these can provide evidence for or against rape/sexual assault of a minor and yet in these cases the police must deal with these questions (sometimes apologising to the child for doing so). The the only adequate course of action is to assess her actions and behaviour.

The following section deals with these issues as appearing in more recent media sources. The data used above could be outdated

as one can reasonably expect proceedings to have changed in the seventeen or so years since those cases. However, media reports suggest that very little has changed in that time.

## **6. Current representations of Rape and ‘consent’ appearing in the Media**

The Chief Crown Prosecutor for London, Alison Saunders recently wrote:

For too long society has blamed rape victims for confusing the issue of consent – by drinking or dressing provocatively for example – but it is not they who are confused, it is society itself and we must challenge that. Consent to sexual activity is not a grey area – in law it is clearly defined and must be given fully and freely. (*Mirror*, January 29, 2015)

Unfortunately ‘consent’ is not at all clear among legal professionals or laypeople, and does remain a grey area. Compounding these problems is media coverage, which surely influences, if not the schools, the public in rape situations and perpetuates the Rape and Autonomous Testosterone Myths identified in earlier research (cf. Aldridge and Luchjenbroers 2007, 2011; Benedict 1992; Ehrlich 2001; Franiuk et al., 2008; Luchjenbroers and Aldridge 2007, 2013; Matoesian 1993). For example, the fact that the victim is to blame headlined again in 2013, when barrister Barbara Hewson wrote in *Spiked* magazine that Operation Yewtree (a police investigation into alleged sexual abuse, predominantly the abuse of children, by the British media personality Jimmy Saville and others) is in fact engaged in: “The persecution of old men”. Even though Saville was in his 70’s, so an ‘old man’, this characterises the case against him as a pointless activity and diminishes any responsibility for past actions. Hewson continues:

Touching a 17-year-old’s breast, kissing a 13-year-old, or putting one’s hand up a 16-year-old’s skirt are not crimes comparable to gang rapes and murders and anyone suggesting otherwise has lost touch with reality.

Rather than denouncing the behaviour, Hewson calls for the lowering of the age of consent to 13. This is surely a worrying

comment from a barrister, as it overlooks whether children as young as 13 have the capacity and freedom to consent – the whole premise of the law in the first place. Similarly, the following quote by Nick Ross adds:

Half of all women who have had penetrative sex unwillingly do not think they were raped, and this proportion rises strongly when the assault involves a boyfriend, or if the woman is drunk or high on drugs: they went too far, it wasn't forcible, they didn't make themselves clear. For them, rape isn't always rape and, however upsetting, they feel it is a long way removed from being systematically violated or snatched off the street. (Ross 2013: chapter 12)

Ross starts with a characterisation of rape as 'not rape', so evidently 'no big deal', followed by a long abandoned feature of the Rape Myth, that rape is only 'true' rape when committed by a stranger who attacked unexpectedly. Even though this appears to be a misrepresentation of his views, the public will remember the claim (rape isn't always rape), not Ross' explanations. Furthermore, the comment quoted in (15) goes one step further and, consistent with the Autonomous Testosterone Myth, blames women for rape, in that molesters can apparently be recognised and therefore should be avoided, making the (alleged) victim to blame for failing to do so.

15) In an interview from jail, Mukesh Singh says 'women who go out at night have only themselves to blame if they attract the attention of gangs of male molesters. A girl is far more responsible for rape than a boy'. (The Telegraph, March 1, 2015)

In (16) and (17) women who drink to excess or take drugs are "asking for it", even though this state makes them incapable of giving consent to sex. The men in these cases are not seen as unseen and unknown attackers, even though this state would rob women of any active involvement in the decision to have sex.

16) CeeLo Green (2014) pleaded no contest to supplying ecstasy to a woman, and claimed that he had consensual sex with her, despite her saying she has no memory of the event. (The Drum News, September 2, 2014)



17) A woman judge slams drunk rape victims because juries can't convict when women can't remember anything about the attack. (*The Mail* online 2014)

The sum of the above media quotes from persons directly involved in rape and sexual assault cases shows a worrisome development suggesting substantially less protection by the law in such cases. The above appears to argue that light offences are no 'big deal' and pursuing old perpetrators pointless, as is protecting alleged victims who were drunk or high on drugs. This latter point is extraordinary given the specific wording of the law that holds that consent can only be given when the recipient is both *willing* and *conscious*. However, all of these arguments fall outside the Rape ICM that centres on what kind of people are 'true' victims or perpetrators of rape. The above statements, nevertheless, seem to give permission to those who might choose to perpetrate light offences or help future victims get drunk or high. In the examples below (18-22), the characterisation of a child as predatory is not uncommon, but is fundamentally flawed by the overriding premise that children cannot consent to sex. As such, any child of 13 or even 16 should be seen as vulnerable, and victim of the environment in which they have been raised, rather than someone who deserves blame and responsibility for the situation they are in.

18) During cross examination a barrister stated that a 13 year old girl was 'predatory' in all her actions and sexually experienced (*The Guardian*, August 7, 2013).

19) In 2012 a judge, when sentencing a 49 year old man for raping a 12 year old girl, said the child had 'let herself down badly, she consumed far too much alcohol and took drugs' (*The Guardian*, January 15, 2015).

20) In 2014 in a case with a 44 year old teacher and a 16 year old pupil the judge said that the teacher had violated a position of trust but she accused the girl of grooming the teacher 'it was she who groomed you'.

21) Barrister criticized for calling child abuse victim predatory. (BBC 2013: 7 Aug.)

22) In 2013 a judge said a 16 year old groomed her teacher – that's nothing. (*The Guardian*, January 15, 2015).

It is said that much has been achieved in legal cases, in the law regarding rape in general, and in cases of sexual assault and rape

of children in particular. Nonetheless, the above media extracts illustrate that a great deal of work is still required for courts and the media to move forward with the times. It is imperative that they reflect mainstream social views and behaviour more accurately, rather than schooling society with outdated perceptions. Essentially despite a year having passed since the introduction of special measures to assist children in pursuing justice in the legal system not much has changed, since the same rape ICMs are still being used in the questioning of children by the police and in court. Adult models of behaviour are often the standard applied to children, who do not meet them. Even though jurors may come to court with very different views, the possibility of consent is so actively pursued by the questioning by police and in court, that 'reasonable doubt' is successfully argued in many cases. Hence, if the defendant is convicted it is often for a lesser crime.

## **7. Steps forward**

In this paper we have illustrated, through police and court extracts and subsequently through more recent media extracts, that the rape ICM (conceptual frame network) of what constitutes a 'true' victim and a 'true' rapist (also captured in the Rape Myth plus the Autonomous Testosterone Myth) remains largely unchanged due to the type of questioning the different members of the judiciary are allowed to perform. The perceptions that become accessible from this ICM continue to undermine both the social understanding of 'consent' and rape victims in general, through questions that encourage hearers/readers to sympathise with the defendant rather than the (alleged) victim.

In recent years the courts have focused their attention on attempting to define 'consent' as a way of increasing the conviction rates in such trials, but a full understanding of 'consent' remains elusive. On the basis of the findings above, we suggest that there is more of a need to promote an alternative ICM for 'consensual sex' (for adults) as opposed to the continued reliance on the rape ICM and its component elements. So far, however, no alternative ICMs exist, as the examples illustrate there is high variability and products of individual tastes and desires. Nevertheless, promoting

an alternative ICM is necessary because it appears to be relatively easy to show jurors that at least ‘some’ of the Rape ICM prevails (thus reinforcing similar associations in memory), and thereby creating ‘reasonable doubt’.

More work is clearly needed in this domain<sup>5</sup>. Unfortunately, the judiciary is slow to change, despite the speed of change in public opinion. The judiciary also needs to make more amendments to the questioning of child witnesses to ensure that only questions that either prove or disprove rape or sexual assault (regardless of what the child was wearing, for example) can be put, rather than inquiring into the personal choices of the child in question.

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<sup>5</sup> Our work continues to address the laws concerning rape and minors, in terms of conceptual Frames and ICMs of expected network associations; as well as a small corpus study drawing on the social uses of the word ‘consent’. This work is nearing completion.

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