

**The Compliant Victim of the Sexual Sadist and  
the Proposed Canadian Defence of Coercive Persuasion**

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## Introduction<sup>1</sup>

It has been argued that the goal of the criminal law is to “create a set of rules that best implements our collective sense of justice.”<sup>2</sup> To this end, the Canadian legal system has attempted to separate those who are deficient in one way from those who are at the most fundamental level “criminal.” There are still, however, some cases which fall into a grey area between choice and rationality. One of these situations is the defence of “brainwashing.” Brainwashing, also called coercive persuasion, mind control, thought control, thought reform and coercion, has not fully been recognized as a viable defence.<sup>3</sup> Although it has not been fully accepted in the legal realm, the use of the techniques and psychological bases for the phenomenon has been explored for decades:

by hundreds of scientists in dozens of countries on thousands of people hundreds of thousands of times. Behavior modification, a major school of psychological thought, dominates many university psychology departments; psychosurgery has been endorsed by a national commission established to investigate its dangers; micro-miniature electronic circuits are making control of the mind through direct stimulation a real possibility; drugs to control moods and emotions have become the largest and most profitable part of the pharmaceutical industry; the techniques of brainwashing appear to have been revived with great success by numerous religious sects; [and] computer technology now makes possible monitoring (and therefore control) of intimate aspects of behaviour.<sup>4</sup>

Although many see the science of brainwashing as a disproved relic of the past, this fails to recognize the huge viability of the concepts behind coercive persuasion. These techniques will have an integral part of our lives, and our law. It is important to recognize that “[m]ind-manipulation techniques are not merely the pet projects of white-coated, laboratory-housed, contract-funded intellectual recluses who fiddle with dials, pull levers, push buttons and throw switches. The techniques were developed for use on people and they are tested on people.”<sup>5</sup> Brainwashing is particularly hard to classify and study because it “draws on both reason and emotion.”<sup>6</sup> Taylor notes that it is

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<sup>1</sup> This is an annotated draft of the PhD dissertation of Frances E. Chapman that is set to be completed in early 2009.

<sup>2</sup> Paul H. Robinson, “Causing the Conditions of One’s Own Defense: A Study in the Limits of Theory in Criminal Law Doctrine” (1985) 71 Va. L. Rev. 1 at 1 [Robinson, “Causing”].

<sup>3</sup> For the purpose of this paper I will use these terms interchangeably. Alan W. Schefflin & Edward M. Opton, *The Mind Manipulators: A Non-Fiction Account* (New York: Paddington, 1978) at 9 [Schefflin & Opton] at 87, also note the term that is the “most pungent of all, ‘mental douche.’”

<sup>4</sup> See Albert D. Biderman, “The Image of ‘Brainwashing’” (1962) 26 *The Public Opinion Quarterly* 547 [Biderman]. Albert D. Biderman notes, at 547, that he was asked by a television journalist why what sociologists do is different than research a story. Biderman’s response was that the major difference “is that we social scientists take one heck of a lot longer to cover the story.”

<sup>5</sup> Schefflin & Opton, *supra* note 3 at 11. It has also been noted that the terms reflect the process and its affect on individuals. It has been noted that “[b]rainwashing’ conveys the sense of something *done to* a person that actually eliminates his original value system and worldview. ‘Menticide’ emphasizes that this transformation is no voluntary conversion. ‘Thought reform’ distinguishes this kind of change from that produced by the gradual accretion of socializing influence (as occurs, for example, in professional training). Also see Vanessa Merton & Robert Kinscherff, “Coercive Persuasion and the ‘Culpable Mind’” (1981) 11 *The Hastings Center Report* 5 at 6 [Merton & Kinscherff] who note that brainwashing “is intended not simply to force ‘a person to do that which you will’, but rather to force him through the manipulation of his emotions to will that which you will.”

<sup>6</sup> Kathleen Taylor, *Brainwashing: The Science of Thought Control* (Oxford, Oxford U.P. 2004) at 98 [Taylor].

particularly terrifying because “[b]rainwashing evokes fears of losing self-control, of being used and dominated by another, and of losing one’s very identity.”<sup>7</sup>

There has been relatively little research on the role of brainwashing in the context of criminal law, but the concept has emerged in the United States as a legitimate means of defence. Many, like Dr. Thomas Szasz, question the basis of such a defence and claim that entire notion of brainwashing is fallacious as one can no more “wash” another’s brain “than he can make him bleed with a cutting remark” and this term is wrongly reserved for influences of which we disapprove.<sup>8</sup> Given the current climate of religious extremism and terrorist organizations, this approach is short sighted. There are numerous examples of battered spouses who commit unimaginable acts under the influence of thought control which could be explained using this conceptualization. There has been little written on the topic since the case of Patty Hearst in the 1970’s, but I believe that this has become an important area of research given today’s reality of increasing coercion in diverse spheres of society.

The first section of this paper will address a brief summary of the historical and technical basis of the defence in Canada and the United States. Secondly, it will be examined whether a brainwashing defence exists for subsets of offenders who currently do not have a defence in criminal law. The group of offenders focused on are battered spouses who commit crimes against third parties under the overwhelming influence of an abusive partner. Lastly, I propose to specifically examine the partner of the sexual sadist and the specific Canadian case example of Karla Homolka.<sup>9</sup> These women are currently unserved by the criminal justice system but forced to commit crimes under the overwhelming influence of their spouse. As has been noted by Richard Delgado, it is important to recognize how the “legal system should treat the coercively persuaded criminal defendant.”<sup>10</sup>

## **History and Definition of Brainwashing**

Brainwashing has a long and sordid history. Some have theorized that coercion techniques originated with the Russians, but Rogge notes that “the Russian communists did not invent the inquisitional technique either: they inherited it from the Czars. The Czars likewise did not invent it: they adapted it from the French; and the French in

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<sup>7</sup> Taylor, *supra* note 6 at 98.

<sup>8</sup> Thomas Robbins, Dick Anthony & James McCarthy, “Legitimizing Repressing” in David G. Bromley, James T. Richardson eds., *The Brainwashing/Deprogramming Controversy: Sociological, Psychological, Legal and Historical Perspectives* (New York: E. Mellen Press, 1983) at 319 [Robbins, Anthony & McCarthy].

<sup>9</sup> Karla Homolka was also referred to as Karla Bernardo by some commentators, and her husband Paul Bernardo sometimes referred to himself as Paul Teale. These names should be used interchangeably.

<sup>10</sup> Richard Delgado, “Ascription of Criminal States of Mind: Toward a Defense Theory for the Coercively Persuaded (“Brainwashed”) Defendant” in Michael Louis Corrado ed., *Justification and Excuse in the Criminal Law, A Collection of Essays* (New York: Garland, 1994) 1 at 6 [Delgado, “Ascription”].

turn borrowed it from the church. The origin of the inquisitional technique goes back more than 700 years to some decretals of Innocent II, a great papal legislator and one of the ablest of popes . . . it was the inquisitional technique made more relentless by the power of an authoritarian state that the Chinese people described as brainwashing.”<sup>11</sup> At its most alarmist, the “process” of brainwashing has been called an “evil and terrifying magic which turns free citizens into zombies.”<sup>12</sup> This type of comment contributes to the hysteria that surrounds this area which has been the subject of much speculation for centuries.

What has plagued the study of brainwashing is that there is no “specific magic process called ‘brainwashing.’”<sup>13</sup> Instead, the expression is a “shorthand for a set of specific social psychological processes, some or all of which may be operative when ‘mindcraft’ is employed to influence a person or persons.”<sup>14</sup> However, the modern term was coined in an article, “Brainwashing Tactics Forced Chinese Into Ranks of Communist Party,” published in the *Miami Daily News* in September 1951<sup>15</sup> by American journalist and CIA operator Edward Hunter who translated the Chinese colloquialism “*hsi nao*” (literally “wash brain.”)<sup>16</sup> This was a term used by Chinese informants to describe the Communist takeover,<sup>17</sup> and their program of re-education called “*szu-hsiang kai-tsao*” (variously translated as ‘ideological remolding,’ ‘ideological reform,’ or ‘thought reform.’)<sup>18</sup> Hunter described how he first heard this term in China while interviewing a young man about his experiences. During his testimony at the *Un-American Activities* committee, Hunter described that he had been interviewing this young man when he:

used the phrase “his nao” or “wash brain.” I immediately stopped him, asking what he meant. He laughed and said, “Oh, that’s nothing; it’s only something we say when close relatives or friends get together.” When somebody said something the Peiping Government wouldn’t like, a relative or friend was liable to say to him, “Watch out, you’ll get your brains washed.” That was the first time I heard the word “brainwashing” . . . That word and its connotation, against this background that I had been weaving ever since I started in journalism, especially during the years since the civil war in China became acute, was like a streak of lightning, clarifying the patter of which I had already discerned its shadows. Brainwashing was

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<sup>11</sup> John Oetjje Rogge, *Why Men Confess* (New York: DaCapo Press, 1959) at 23-24 [Rogge].

<sup>12</sup> Taylor, *supra* note 6 at 15.

<sup>13</sup> *Ibid.*, at 94.

<sup>14</sup> *Ibid.*

<sup>15</sup> Schefflin & Opton, *supra* note 3 at 86.

<sup>16</sup> 1902-1978, see Garth S. Jowett, “Brainwashing: The Korean POW Controversy and the Origins of a Myth” in Garth S. Jowett & Victoria O’Donnell *Readings in Propaganda and Persuasion* (Thousand Oaks, CA: Sage, 2006) at 202 [Jowett].

<sup>17</sup> Edward Hunter, *Brain-washing in Red China; The Calculated Destruction of Men's Minds* (New York: Vanguard Press, 1951) [Hunter, “Brain-washing,” 1951]. Term first appearing in the *Miami News* in September 1950, see Denise Winn, *The Manipulated Mind: Brainwashing, Conditioning and Indoctrination* (London, Octagon Press, 2000) at 1 [Winn].

<sup>18</sup> Donald T. Lunde & Thomas E. Wilson, “Brainwashing as a Defense to Criminal Liability: Patty Hearst Revisited” (1977) 13 *Criminal Law Bulletin* 314 at 343 fn 6 [Lunde & Wilson]. See also Schefflin & Opton, *supra* note 3 at 86. Hunter said in Edward Hunter, *Brain-washing in Red China; The Calculated Destruction of Men's Minds* (New York: Vanguard Press, 1971) [Hunter, “Brain-washing,” 1971] at 329 that “[t]here can be no greater mission for any man than to prevent this [brainwashing.]”

the new procedure, built up out of all earlier processes of persuasion, using the Pavlovian approach to make people react in a way determined by a central authority, exactly as bees in a hive.<sup>19</sup>

Brainwashing has been subsequently defined as “the forcible application of prolonged and intensive indoctrination sometimes including mental torture in an attempt to induce someone to give up basic political, social, or religious beliefs and attitudes and to accept contrasting regimented ideas.”<sup>20</sup> A North American public was eager to hear about this phenomenon which reportedly persuaded 30-70% of American POW’s in the Korean war to confess or yield.<sup>21</sup> These numbers were “high enough to shock Americans into embracing the brainwashing explanation” but even more shocking was the equally glaring fact that “few British POWs and few, if any, Turks, who suffered the same treatments, capitulated.”<sup>22</sup> Many were dismayed to find out more about this insidious blight on the American serviceman. However, many sceptics believed that the brainwashing scare was simply fostered by the CIA to make people believe that the superpowers had this type of overwhelming control on an individual.<sup>23</sup>

### **What is Brainwashing?**

The seminal study on brainwashing was conducted by Robert Jay Lifton who interviewed fifteen Chinese citizens and twenty-five Westerners who were “brainwashed” by the Chinese government in the 1950’s. Lifton exposed what he believed was the “most powerful efforts at human manipulation ever undertaken.”<sup>24</sup> He observed a general method for brainwashing including the “death of the self” where everything previously known is taken away. Second was a “transition” phase including the torture of the individual to the point of nervous collapse. Just as quickly the captives are shown kindness and relaxation of rules leading to a “rebirth” where the prisoners say whatever is required to survive while beginning to believe their conditioned responses.<sup>25</sup>

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<sup>19</sup> U.S., *Committee on Un-American Activities, House of Representatives, 85<sup>th</sup> Cong.* (1958) (in consultation with Edward Hunter: Author and Foreign Correspondent) at 14 [*Un-American*].

<sup>20</sup> Ida-Gaye Warburton, “The Commandeering of Free Will: Brainwashing as a Legitimate Defense” (2003) 16 *Cap. Def. J.* 73 at 76 fn 24 [*Warburton*].

<sup>21</sup> *Winn, supra* note 17 at 1-2.

<sup>22</sup> *Ibid.*, at 2.

<sup>23</sup> *Ibid.*

<sup>24</sup> Robert Jay Lifton, *Thought Reform and the Psychology of Totalism: A Study of ‘Brainwashing’ in China* (New York: Norton, 1961) at 4-5 [*Lifton*].

<sup>25</sup> *Lifton, supra* note 24 at 65-86. Edward Hunter illustrated this point in his testimony before the *Un-American Activities* committee, *supra* note 19 at 17, using the example of Capt. Zach W. Dean. Hunter explains that Dean was “taken on a ‘death march’ and put in a Korean hut and left to hunger and freeze while the Reds harassed him with threats and propaganda and what they called ‘learning,’ until he became so weak and sick that he felt he was going to die. At once the Communists changed their tactics and injections, good enough food, and kindly words, until they saved his life. A few weeks passed and the cat-and-mouse game switched back once more. He was again put under the brainwashing pressures. He became sick again, catching pneumonia on top of another case of freezing. Deprived of all attention, he was positive he was going to die this time. Then once more they switched moods, and he was given the best available of everything, and again his life was saved. Zach knew what a deep study I had made of all of this. I can never forget the look he gave me when he told me about it, saying, ‘Mr. Hunter, I don’t believe you’ll be able to understand what I’m going to tell you now. After the Reds do that to you a few times, you are grateful to them for saving your life. You forget that they are the people who almost killed you.’”

As noted by Lifton, for there to be true brainwashing the individual has to be segregated from others as a basic element of thought reform. This was not possible with a large prisoner of war population. Prisoners were put in a “cage” where they could not stand, sit or lie down, and the “hole” which was solitary confinement.<sup>26</sup> The effective elements of the coercion used on the prisoners were “conditions of *dehumanization* of the camps and the maltreatment and torture” which creating feelings of “fear, confusion, and dependency” which were effective for conversion.<sup>27</sup> Lastly, the “*repetition* of questions and demands, combined with the fatigue and stress of the interrogation situation, served as ‘educative,’ as well as spirit-breaking, function.”<sup>28</sup> Critics have noted that it is very difficult to quantify “ideological change” in any individual.<sup>29</sup> The difficulty in this exercise may be related to the “shortcomings in the term ‘brainwashing.’”<sup>30</sup> Lunde & Wilson explain that the popular conception of brainwashing is that of total change from one belief system to another ignoring the continuum of conversion.<sup>31</sup> For this reason, many prefer the term “coercive persuasion” which is defined as when “a person is subjected to intense and prolonged coercive tactics and persuasion in a situation from which that person cannot escape. It may lead to the committing of illegal or antisocial acts and to conversion to the coercive power’s system of political or religious beliefs.”<sup>32</sup> This conceptualization recognized the inhumanities experienced and the reform accomplished on these POW’s.

Another key figure in the historical development of the study of coercive persuasion was Dr. Joost Meerloo and his 1956 work *The Rape of the Mind: The Psychology of Thought Control, Menticide, and Brainwashing* in which he equated the brainwashing experienced by the prisoners and Pavlovian conditioning.<sup>33</sup> Meerloo distinguished this mind control from “training or persuasion or even indoctrination. It is more than that. It is taming. It is taking possession of both the simplest and the most complicated nervous patterns of man. It is the battle for the possession of the nerve cells.”<sup>34</sup> He notes that “Pavlovian strategy” means “imprinting prescribed

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<sup>26</sup> Lunde & Wilson, *supra* note 18 at 349.

<sup>27</sup> *Ibid.*, at 349-50 (emphasis in the original).

<sup>28</sup> *Ibid.* (emphasis in the original).

<sup>29</sup> *Ibid.* at 350-51.

<sup>30</sup> *Ibid.* at 351.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> Joost A.M. Meerloo, *The Rape of the Mind: The Psychology of Thought Control, Menticide, and Brainwashing* (New York: Grosset & Dunlap, 1956) at 49 [Meerloo].

<sup>34</sup> *Ibid.* at 48-49.

reflexes on a mind that has been broken down.”<sup>35</sup> Meerloo identified the factors that needed to be implemented to achieve this type of conversion: “physical pressure, moral pressure, fatigue, hunger, boring repetition, [and] confusion by seemingly logical syllogisms.”<sup>36</sup> The person under this type of pressure explains this as the total “confusion” in which “nothing had any validity” through a process of “mental disintegration or depersonalization.”<sup>37</sup> There are several factors comprising coercive persuasion studies. Each of the influential studies on brainwashing have used some approximation of the factors of “isolation, physiological depletion, assertions of authority, guilt manipulation, peer pressure, and cognitive dissonance.”<sup>38</sup> They have also sought to study the “behavioral compliance and attitudinal change” that is seen in the victims<sup>39</sup>

### **Philosophy Supporting a Brainwashing Defence in Law**

There have been many attempts to understand the theory behind a brainwashing defence in Canadian criminal law. “Coercive Control Theory” is a philosophical perspective developed by Okun from the work of Margaret Singer and Camella Serum<sup>40</sup> which builds on what Singer calls a “coercive control situation.” These theories were developed from brainwashing theory developed from concentration camps, Chinese thought reform, hostage situations, and cults.<sup>41</sup> However, most basically in law, “[t]he imposition of criminal liability for faultless conduct is contrary to the basic Anglo-American premise of criminal justice that crime requires personal fault on the part of the accused.”<sup>42</sup> This premise is the basis for the legal work on the coercively persuaded defendant: they did not have the personal fault required to be convicted of their crimes. Delgado theorizes that there might be enough room in the present defences to allow for the defence of coercive persuasion. He notes that there may be:

elasticity in such defenses as insanity and diminished capacity to permit their extension to at least some coercively persuaded defendants. For example, insanity might be found in cases involving a severe traumatic neurosis which affected the victim’s ability to appreciate the nature of the allegedly criminal act or to know that it was wrong . . . Since thought reform may cause exactly such results, a victim might successfully argue that he was rendered legally insane by the process of thought reform. Diminished

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<sup>35</sup> *Ibid.* at 49.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> Delgado, “Ascription,” *supra* note 10 at 2.

<sup>39</sup> *Ibid.*

<sup>40</sup> The original papers that this work was based on were Serum’s papers “Battered Women and Batterers” presented at Hoyt Conference Center, Eastern Michigan University, Ypsilanti, MI, on May 9, 1979; “The effects of violent victimization in the family” Paper presented to the Michigan Coalition Against Domestic Violence, December 3, 1979, “Violent Conjugal Relationships: New Psychological Perspectives and Treatment of the Violent Man” Seminar conducted at the 1981 Spring-Summer Symposium, Continuing Education Program in the Human Services, University of Michigan School of Social Work, June 23-24, 1980, and Singers article “The Nature of Coercive Control” Paper presented to the Michigan Coalition Against Domestic Violence, December 3, 1979. Unfortunately, copies of these papers are not available.

<sup>41</sup> Lewis Okun, *Woman Abuse: Facts Replacing Myths* (Albany: State University of New York Press, 1986) at 86 [Okun].

<sup>42</sup> Wayne R. LaFave & Austin W. Scott, *Handbook on Criminal Law* (St. Paul: West Pub. Co., 1972) at 228 [LaFave & Scott].

capacity is a second possible defense. When recognized, the defense will lie if the accused lacked the ability to form the specific type of intent required for conviction, for example, premeditation in the case of first degree murder.<sup>43</sup>

Of course in Canada there is no diminished capacity defense, and many are loath, as I am in the case of battered women, to say that these individual should fit within the paradigm of mental disorder.

Delgado also investigates the possibility of allowing coercive persuasion within the defence of duress. However, this is almost impossible in the Canadian context. Delgado reaches substantially the same conclusion and comments that the fundamental problem is that the “victim of thought reform often continues to feel controlled by the captors even after leaving their presence, he may ‘reasonably,’ if incorrectly, believe that he will suffer punishment if he fails to act as expected.”<sup>44</sup> He also notes that it may not be the best solution to try to fit coercive persuasion into one of the existing defences. He notes that the extension “may blur the lines separating legal concepts to the point where no one can predict their boundaries. Moreover, this solution may be available only to some thought reform victims – those who are able to bring their mistreatment within the parameters of some existing defense theory. Others will be left without any defense. Finally, a totally new defense has the considerable advantages of analytical simplicity and precision, [and] predictability.”<sup>45</sup> The author accentuates that if there is no defence of coercive persuasion the result is a “troubling one” because this would mean “denying a defense to a class of defendants who are, by ordinary moral intuitions, often more victims than perpetrators.”<sup>46</sup> This is the undesired result in the case of the battered woman who is forced to commit illegal acts by her abuser.

### **Brainwashing and the Battered Spouse**

This delay in revealing brainwashing left the public with a twisted conception of it. People still think it has something to do only with prisoners of war, and possibly foreigners put under arrest . . . Brainwashing only incidentally concerns military prisoners or foreigners.<sup>47</sup>

When the first research was being published on Battered Woman Syndrome (BWS), Steinmetz commented that “[o]ur burgeoning body of knowledge about family violence requires such a reformulation of the dynamics of wife battering in order to resolve discrepancies between previously held assumptions and recent findings.”<sup>48</sup> The

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<sup>43</sup> *Ibid.* at 6 fn 29.

<sup>44</sup> *Ibid.* at 7 fn 29.

<sup>45</sup> *Ibid.*

<sup>46</sup> Delgado, “Ascription,” *supra* note 10 at 6-7.

<sup>47</sup> Testimony of Edward Hunter, *Un-American*, *supra* note 19 at 20.

<sup>48</sup> Suzanne K. Steinmetz, “Wife Beating: A Critique and Reformulation of Existing Theory” (1978) 6 *Bulletin of the American Academy of Psychiatry and the Law* 322 at 322 [Steinmetz].

same could be said of today. There is a great deal of research on BWS and its impact on women around the world. However, it is now time to extend that knowledge to other women who need a further definition and a legal defence.

It has been noted that the BWS defence is “not itself analogous to an indoctrination defense. Indoctrination may, but need not, involve fear of death or serious bodily harm. Indoctrination is not a self-defense claim. Rather, the essence of the defense is that the defendant’s will is no longer hers.”<sup>49</sup> Since the defence of brainwashing has been acknowledged in law, the question remains, how will this defence be conceptualized? Like duress, brainwashing states that “despite the existence of *mens rea* the defendant is morally blameless because the guilty mind with which the defendant acted was not his own. Unlike duress, however, the threat does not have to be imminent. Rather, the defendant must establish that the crime was committed while under the coercive influence.”<sup>50</sup> Thus, some of the limitations inherent in the defence of duress, like proximity, would be avoided with brainwashing. Warburton notes that the standard should be the same as in the case of duress. She notes that a “‘reasonable person’ standard would be inappropriate because no two defendants will respond in the same way to psychological manipulation.”<sup>51</sup> By way of example, Warburton explains that “persons with low self-esteem are more susceptible than others to coercion, therefore the degree of low self-esteem may alter the time and extent to which they are affected by coercion.”<sup>52</sup> Warburton rationalizes that our system accepts that a person’s choice can be reduced to no choice at all in duress; thus, a framework for brainwashing could be built on the same foundation.<sup>53</sup> Warburton notes that it is important to remember that “no two defendants will have the same traits for susceptibility, nor will they respond similarly to the same coercive influence.”<sup>54</sup> For this reason she concludes that individual torture and manipulation could “excuse the offender, go towards mitigation, or do neither, depending on the nature of the coercion.”<sup>55</sup>

Warburton notes that BWS and brainwashing “provides several lessons because both defenses involve a person coerced to act in a manner in which he or she presumably would not act if not under the influence of

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<sup>49</sup> Thomas D. Nolan III, “The Indoctrination Defense: From the Korean War to Lee Boyd Malvo” (2004) 11 Virginia Journal of Social Policy & the Law 435 at 454 [Nolan].

<sup>50</sup> Warburton, *supra* note 20 at 84.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.* at 83.

<sup>55</sup> *Ibid.* at 83. Mitigation is an area explored in my upcoming dissertation.

another.”<sup>56</sup> She recognizes that there are other similarities between the defences including: “[f]irst, expert testimony is necessary to dispel layperson views and to explain novel concepts. Second, lay witness testimony is useful to bolster the expert’s assertion that the actor exhibited indicia of coercion. Third the defense is most effective when used for mitigation purposes.”<sup>57</sup> Since there are these overlapping issues in both BWS and brainwashing, Warburton concludes that “[d]uress in conjunction with the BWS defence establishes the foundation for legitimizing the brainwashing defence. She explains that this results in an incomplete defence because “a brainwashed defendant intends the consequences of his actions and believes his actions are justified. Therefore, the requisite *mens rea* and *actus reus* are present. A brainwashed defendant, however, is not wholly responsible because the intent involved was superimposed.”<sup>58</sup> Warburton states that the defendant is not fully culpable because he “acted with the intent of another. The superimposed intent was a result of intentional coercive influences that overcame his free will.”<sup>59</sup> Duress is analytically and functionally similar to brainwashing, but has some important differences. It is time for the legal community to acknowledge an existing class of defendants and accept the defense.<sup>60</sup> Yet, understanding the women who would use this defence is problematic.

There have been few researchers who have made the link between those who have been brainwashed and the battered women. However, there was research in the 1970’s exploring this phenomenon. Steinmetz described that brainwashed battered spouses are “fearful, isolated, dependent, helpless, and trapped, overcome by anxiety, depressed, and full of guilt and shame.”<sup>61</sup> The similarity between prisoners of war, as discussed above, and the process that is experienced by the battered woman, is shockingly similar. This link between these two groups of superficially disparate populations has not been extensively researched. Mega *et al.* note that the batterer attempts to maintain power of their victim by using “‘brainwashing tactics’ similar to those used on prisoners of war, hostages, or members of a cult.”<sup>62</sup> In short, they note that:

[c]ommon features of brainwashing include isolation, humiliation, accusation, and unpredictable attacks. The abusive environment produces real and anticipated fear, which contributes to the battered woman’s belief that her situation is hopeless and that she must depend on her abuser. She develops coping strategies to deal with her oppressive environment, but eventually exhibits symptoms of ‘battering fatigue,’ similar to

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<sup>56</sup> *Ibid.* at 87.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.* at 88.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.* at 87.

<sup>61</sup> Steinmetz, *supra* note 48 at 326.

<sup>62</sup> Lesly Tamarin Mega, Jessica Lee Mega, Benjamin Tamarin Mega and Beverly Moore Harris “Brainwashing and Battering Fatigue: Psychological Abuse in Domestic Violence” (2000) 61 North Carolina Medical Journal 260 at 260 [*Mega et al.*].

the battle fatigue of soldiers in combat who, like battered women, live in fear of being killed or severely injured.<sup>63</sup>

This creates an environment of fear that is ever-present in the life of the battered woman which contributes to her belief that she is caught in an endless dependence on her batterer.<sup>64</sup> Browne notes that battered women are like other victims of trauma, and that the long-term reactions may be to become “dependent and suggestible, and find themselves unable to make decisions or to function alone.”<sup>65</sup> This model is seen time and again in the case studies of battered women.

Okun has also studied the links between these populations.<sup>66</sup> He has noted that the “battered woman’s situation obviously resembles that of a prisoner subject to thought reform. Like brainwashed captives, battered women are subjected to verbal abuse, beatings, other forms of physical abuse, and to confinement or imprisonment.”<sup>67</sup> Okun also notes that declarations of guilt are common in POW’s are also used by the batterer against his victim. Okun explains that the “batterer coerces a false confession from the battered woman in order to justify or to rationalize his assault her. Often this involves her confessing nonexistent extramarital sexual contacts.”<sup>68</sup> The batterer often forces the victim to agree that she is responsible for her abuse. Okun notes that “[a]ny time that a battered woman attempts to mollify her abuser by apologizing and claiming her own fault for his abuse of her, this can be viewed as identical in kind to confessions elicited in brainwashing. These false confessions by woman abuse victims can be induced by the batterer through physical, emotional, or economic coercion, or through a mixture of the above.”<sup>69</sup>

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<sup>63</sup> *Mega et al.*, *supra* note 62 at 260.

<sup>64</sup> *Ibid.* at 261.

<sup>65</sup> Angela Browne, *When Battered Women Kill* (New York: The Free Press, 1987). Browne notes, at 125, that “[p]arallels also exist between the principles of brainwashing used on prisoners of war and the experiences of some women in battering relationships. Key ingredients of brainwashing include isolation of the victim from outside contacts and sources of help, and humiliation and degradation by the captor; followed by acts of kindness coupled with the threat of a return to the degraded state if some type of compliance is not obtained. Over time, the victims of such treatment become apathetic, sometimes react with despair, and may finally totally submit.”

<sup>66</sup> *Okun*, *supra* note 41.

<sup>67</sup> *Ibid.* at 115-16.

<sup>68</sup> *Ibid.* at 116-17. Okun, at 117, cites an actual example stating, “Kellie recounted how she had been beaten and interrogated by her husband for at least four hours. He demanded she confess to having had sex with a mutual friend of theirs. She truthfully insisted that she had not had any extramarital sexual contacts, even though she was beaten almost continually for her refusal to confess. When her husband took out a sawed-off shotgun, loaded it, and demanded again that she own up to this imaginary sexual affair, she finally gave in and confessed in fear for her life. He continued to interrogate her at gunpoint, forcing her to fabricate details of her nonexistent tryst, especially specific sexual acts. Sixteen months after this interrogation ordeal, Kellie’s husband would still cite her false confession to justify beating her.”

<sup>69</sup> *Ibid.* at 117. Okun notes, at 117, that “[b]attered women can be coerced into taking blame in order to dissuade police officers from arresting the abuser. Especially if witnessed by a third person, false confessions can later be used against battered women in civil suits concerning divorce, custody and property settlements, child visitation rights, and damages. False confessions later recanted by the victim can be used to establish her unreliability as a witness in civil or criminal justice proceedings. Perhaps most important, confessions of this sort can be used to subvert the battered woman’s reputation among her closest friends and family.”

Okun notes that there is a “shocking similarity between the specific procedures and techniques of thought reform and woman abuse.”<sup>70</sup> He notes that the:

intended results for both thought reform and woman abuse are also similar. Thought reform is intended to produce a psychological breakdown so that the prisoner becomes malleable . . . brainwashing him into compliance with his captors. In woman abuse, the process involves a male captor (the batterer) breaking a woman’s spirit and bending her to his will. That the purpose and result of woman abuse may not be consciously premeditated, while thought reform was a carefully conceived procedure, is irrelevant to the aim and usefulness of the present discussion. What is important here is the chilling overall similarity of woman-battering to brainwashing.<sup>71</sup>

Okun concludes that it has become “compellingly – though terrifyingly – obvious that some conjugal relationships or families resemble a prison or concentration camp or torture chamber more than they exemplify the usual positive connotations of the words ‘couple’ or ‘family.’”<sup>72</sup> This link between battering and torture is unsettling, and may be increasingly difficult to navigate for the battered spouse.

Okun also notes the deprivation that is similar in both the prisoner of war, and the battered woman. He notes that:

[i]nadequate food, clothing, shelter, heating, and medical care are considered neglect when they occur in families. Many battered women and their families are subjected by the batterer to inadequate provision of the basic necessities of life. More often than not, this is not a matter of poverty . . . Perhaps the most common pattern is for the batterer’s alcoholism to exhaust the couple’s or family’s finances, at times to the point of literally starving the battered woman and her children.<sup>73</sup>

Okun also discusses sleep deprivation which is a basic tool used against prisoners of war. He notes that most “battered women suffer loss of sleep. Anxiety-induced insomnia is common; the batterer also often takes steps to prevent his mate from sleeping. Sleep deprivation procedures include lengthy harangues and interrogations into the night; making loud noise with stereos, television or machinery; threats of battering or murder if the woman falls asleep; and enforcement of the expectation that the battered woman be awake when her mate returns home.”<sup>74</sup> Many women are also subjected to unrealistic work requirements (including child care and house work) that will drive them to the point of exhaustion.<sup>75</sup>

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<sup>70</sup> *Ibid.* at 132.

<sup>71</sup> *Ibid.* Okun notes that better understanding of this similarity could be useful to those who think that conjugal relationships should stay together despite the problems. He notes, at 133 that these “individuals might change their priorities and their policy preferences if they learned that sometimes ‘preserving the family’ amounts to aiding and abetting the brainwashing process of coercive control.”

<sup>72</sup> *Ibid.* at 136. Okun notes, at 137, that awareness of this reality for many is “important to halting domestic abuse, however. If blinded by the positive connotations of family to its potential for torture and coercive control, helpers and policy makers will be, at best, ineffective in halting family violence, and they more likely will unintentionally help perpetuate abuse.”

<sup>73</sup> *Ibid.* at 121.

<sup>74</sup> *Ibid.* at 122.

<sup>75</sup> *Ibid.*

Conversely, Okun also notes some important differences between brainwashing and battering. He argues that a battered woman will generally cooperate with her partner while “[t]hought reform prisoners, subjected to imprisonment and abuse by adversaries in a foreign land, would generally feel more motivated than battered mates to resist their coercive controllers.”<sup>76</sup> He also notes that another key difference between the two situations is that “[v]erbal, physical, and sexual humiliations from a husband or lover take on an enormous impact that similar behavior by a foreign adversary would achieve with greater difficulty, if at all. The fact that the batterer often is simultaneously the most rewarding and most dangerous person in the battered woman’s life poses tremendous psychological difficulties for the victim.”<sup>77</sup> Thus, the battered woman is placed in a situation potentially more dangerous and mentally debilitating than that of a POW.<sup>78</sup>

In the ultimate test of coercive persuasion, those who are battered often come to see their abuser as their protector. As Herman explains “[s]urvivors of domestic or political captivity often describe occasions in which they were convinced that they would be killed, only to be spared at the last moment. After several cycles of reprieve from certain death, the victim may come to view the perpetrator, paradoxically, as her savior.”<sup>79</sup> Again, what many do not understand is that the hope of a “meal, a bath, a kind word, or some other ordinary creature comfort can become compelling to a person long enough deprived.”<sup>80</sup> Martin Symonds has called this kind of cooperative dependence on a captor and resulting terror “frozen fright.”<sup>81</sup> Symonds says those exposed to terror exhibit a “basic anxiety” which “causes adults to set aside recently learned experience and to respond instead with the early adaptive behavior of childhood for survival” which he terms “traumatic psychological infantilism.”<sup>82</sup> Symonds claims that “traumatic psychological infantilism compels victims to cling to the very person who is

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<sup>76</sup> *Ibid.* at 119.

<sup>77</sup> *Ibid.*

<sup>78</sup> Judith Lewis Herman, *Trauma and Recovery* (New York: BasicBooks, 1992) at 77 [*Herman*]. Note *Herman, supra* note 78 at 82, who has noted that the relationship of the battered woman and her abuser is much more difficult to navigate than the hostage and hostage-taker. In the hostage situation, the hostage is “taken prisoner by surprise. She initially knows nothing about the captor, or she regards him as an enemy . . . In domestic battering, by contrast, the victim is taken prisoner gradually, by courtship.” This initial attempt at power is seen as a “sign of passionate love. She may at first feel flattered and comforted by his intense interest in every aspect of her life. As he becomes more domineering, she may minimize or excuse his behaviour, not only because she fears him but also because she cares for him.” Herman also notes, at 82, that since many “women derive pride and self-esteem from their capacity to sustain relationships, the batterer is often able to entrap his victim by appealing to her most cherished values. It is not surprising, therefore, that battered women are often persuaded to return after trying to flee from their abusers.”

<sup>79</sup> *Herman, supra* note 78 at 77. Herman goes on to note at 78 that “sexual and domestic prisoners frequently describe long periods of sleep deprivation during sessions of jealous interrogation as well as meticulous supervision of their clothing, appearance, weight, and diet.”

<sup>80</sup> *Ibid.* at 78.

<sup>81</sup> Martin Symonds, “Victim Responses to Terror” in Frank M. Ochberg & David A. Soskis ed., *Victims of Terrorism* (Boulder, CO: Westview Press, 1982) at 98 [*Symonds*].

<sup>82</sup> *Ibid.* at 99.

endangering their life. It accounts for the obedient, placid, compliant, and submissive behavior seen in frozen fright.”<sup>83</sup> Isolation is also a key component of this cycle of violence filled with “jealous surveillance, such as stalking, eavesdropping, and intercepting letters or telephone calls, which results in solitary confinement of the battered woman within her home.”<sup>84</sup> Again, these moves are not made in large steps but rather in “small symbolic concessions” which “reluctantly made . . . slowly and imperceptibly destroy their ties to others.”<sup>85</sup> The battered woman who is the partner of a sexual sadist battles all of these elements in addition to the disturbing patterns of abuse found within this population.

### Sexual Sadism

The most resourceful, destructive, and elusive of all deviant offenders is the ritualistic sexual sadist. Just as the great white shark is the renowned predator of the oceans, the sexual sadist is the most dangerous and cunning of all aberrant criminals.<sup>86</sup>

The conception of the sexual sadist is by no means a new theory. Dietz, Hazelwood & Warren note that “sexual sadism” was coined by Richard von Krafft-Ebing based on Donatien-Alphonse-François, Marquis de Sade (1740-1814) for behaviours that combined “sexual acts with domination, degradation, and violence.”<sup>87</sup> Krafft-Ebing noted that “[s]adism is the experience of sexual pleasurable sensations (including orgasm) produced by acts of cruelty, bodily punishment afflicted on one’s own person or when witnessed in others, be they animals or human beings. It may also consist of an innate desire to humiliate, hurt, wound or even destroy others in order thereby to create sexual pleasure in one’s self.”<sup>88</sup> The birth of this term gave rise to a new way of conceptualizing the criminally deviant. As Foucault has noted:

sadism is not a name finally given to a practice as old as Eros; it is a massive cultural fact which appeared precisely at the end of the eighteenth century, and which constitutes one of the greatest conversions of Western imagination: unreason transformed into delirium of the heart, madness of desire, the insane dialogue of love and death in the limitless presumption of appetite. Sadism appears at the very moment that unreason, confined for over a century and reduced to silence, reappears, no longer as an image of the world, no longer as a *figura*, but as language and desire.<sup>89</sup>

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<sup>83</sup> *Ibid.* Symonds says, at 98, that he saw frozen fright when interviewing an “8 ½ year-old incest victim. During our interview, she was bright, vivacious, talkative, and very cooperative. Afterwards, when I said she could go, this youngster took a deep breath, sighed heavily, and said, ‘I thought I would never get out of here alive.’”

<sup>84</sup> *Herman, supra* note 78 at 80.

<sup>85</sup> *Ibid.*

<sup>86</sup> Roy Hazelwood & Stephen G. Michaud, *Dark Dreams* (New York: St. Martin’s Press, 2001) at 86 [*Hazelwood & Michaud*].

<sup>87</sup> Park Elliott Dietz, Robert R. Hazelwood, & Janet Warren, “The Sexually Sadistic Criminal and His Offenses” (1990) 18 *Bulletin of the American Academy of Psychiatry and the Law* 163 at 163 [*Dietz, Hazelwood & Warren*].

<sup>88</sup> Richard von Krafft-Ebing, *Psychopathia Sexualis: With Especial Reference to the Antipathic Sexual Instinct: A Medico-Forensic Study* (New York: Physicians and Surgeons Book Co., 1933) at 80 [*Krafft-Ebing*].

<sup>89</sup> Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* (New York: Pantheon Books, 1965) at 210 [*Foucault*].

Since the inception of this term, attempts have been made to access the elusive world of the sexual sadist who believes, to some extent, that “lust and cruelty are very similar stimuli.”<sup>90</sup>

To limit the field of this research I propose to study a subset of abused women which I characterize as the victims of the “sexual sadist.” Warren & Hazelwood recently used the term “compliant victims” to describe the women’s role in crime to reflect “the acquiescent nature of these women’s cooperation in their own and others’ victimization.”<sup>91</sup> This is not to minimize a women’s criminal behaviour as an accomplice to sexually and violent crimes, but instead to understand her culpability.<sup>92</sup> This term is most descriptive of the battered spouse’s reaction to that abuse. This type of relationship is characterized by some of the “most brutal forms of sexual violence and entails the transformation of a women’s sense of self and of her behavior in response to intimate contact with the fantasies and the overtly expressed desires of a sadistic male.”<sup>93</sup> Roy Hazelwood, Janet Warren and Paul Dietz have written a series of articles over the last several decades<sup>94</sup> that recognize that the battered spouse of the sexual sadist experiences a process of coercion akin to brainwashing. They have noted that these women go through a “systematic manipulation of rewards and punishments in the context of social isolation” which “can alter self concept, expectations, and behaviors among at least some victims.”<sup>95</sup> What is often most striking about these individuals under this type of influence is that the “victim seems to the casual observer to be voluntarily undergoing abuse despite opportunities to escape.”<sup>96</sup> This seeming “willingness” and even “enjoyment” of the participation of criminal acts is one of the ongoing problems of those acting under coercion, because the accused who seeks to use the established and recognized defence of duress must show that they were not complicit in bringing the coercion upon themselves. Many times it has been argued that the battered spouse stayed in this relationship and, thus, accepts responsibility for all actions which flow, and many argue that they experience satisfaction in participating. Yet, Hazelwood, Warren & Dietz note that in this type of domestic abuse the “‘captor’

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<sup>90</sup> Deborah Cameron and Elizabeth Frazer, *The Lust to Kill: A Feminist Investigation of Sexual Murder* (Cambridge, Polity in Association with Basil Blackwell, 1987) at 57 [*Cameron & Frazer*].

<sup>91</sup> Janet I. Warren and Robert R. Hazelwood, “Relational Patterns Associated with Sexual Sadism: A Study of 20 Wives and Girlfriends” (2002) 17 *Journal of Family Violence* 75 at 77 [*Warren & Hazelwood*].

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> *Warren & Hazelwood, supra* note 91; Roy Hazelwood, Janet Warren & Park Dietz, “Complaint Victims of the Sexual Sadist” (1993) 22 *Australian Family Physician* 474 [*Hazelwood, Warren & Dietz*]; Park Elliott Dietz, Robert R. Hazelwood, & Janet Warren, “The Sexually Sadistic Criminal and His Offenses” (1990) 18 *Bulletin of the American Academy of Psychiatry and the Law* 163 [*Dietz, Hazelwood & Warren*].

<sup>95</sup> *Hazelwood, Warren & Dietz, supra* note 94 at 474.

<sup>96</sup> *Ibid.*

not only seeks compliance, but also seeks opportunities for continuing abuse of the victim.”<sup>97</sup> I wish to examine how the abuser gains full control over their partners to the point that these women will endure long-term and horrific violence and will participate in deviant sexual, and sometimes murderous, crimes.

Most recently these researchers have noted that the motivation for the woman to submit herself to these acts is complex and not simply to please her abuser as was once assumed.<sup>98</sup> Interestingly, in some cases “the women become assimilated into the sexual aggression of their partners.”<sup>99</sup> As seen in the case study below regarding Karla Homolka, this explanation may shed light on why a woman might appear to be an active and eager participant in the crimes perpetrated. Research by Hazelwood, Warren & Dietz have noted that another motivation could be the “sense of exhilaration in sharing behavior that is extreme and outside all definitions of normalcy.”<sup>100</sup> They theorize that “these women become involved in this type of behavior subsequent to the establishment of intimacy, and that their response to this paraphilic interest in the man lies at the core of gradual assimilation of behavior that integrates the sadist’s sexual desires into their own behavior. It is the erosion of self-preserving and law-abiding boundaries that lies at the heart of this descriptive effort.”<sup>101</sup> This helps to explain why these margins disappear in these compliant victims who “actively” participate even when it appears that they could leave, they could refuse to perpetrate these disproportionate crimes, or they could seek assistance. Since relatively little is known about these women, this is a subset of offenders who are largely convicted without question by the Canadian criminal justice system. To analyze these offenders and the women who become complicit in their criminal actions, it is informative to look at the work of Hazelwood, Warren and Dietz who attempt to investigate this rare offender and his partner.

#### **a. The Sexually Sadistic Criminal**

Dietz, Hazelwood & Warren have attempted to trace the modern manifestation of the sexual sadist in three corresponding articles; “The Sexually Sadistic Criminal and his Offences” in 1990, “Compliant Victims of the Sexual Sadist” in 1993 and “Relational Patterns Associated with Sexual Sadism: A Study of 20 Wives and

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<sup>97</sup> *Ibid.*

<sup>98</sup> Warren & Hazelwood, *supra* note 91 at 76.

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.* at 77.

Girlfriends” in 2002.<sup>102</sup> In particular they have focused on those sexual sadists who translate their proclivities into criminal acts “unencumbered by ethical, societal, and legal inhibitions.”<sup>103</sup> The authors identify that these offenders are allusive and rare, but that they are an unimaginable threat to the unsuspecting public.<sup>104</sup> Dietz, Hazelwood & Warren nonetheless gathered a group of 30 offenders who fit the desired parameters.<sup>105</sup>

The authors discuss the difficulties in identifying and diagnosing these offenders as “even seasoned clinicians . . . find themselves tempted to ascribe psychosis to those who engage in extraordinarily cruel acts despite the absence of delusions, hallucinations, or markedly illogical thinking.”<sup>106</sup> Thus, it is difficult to diagnose because “sexual sadism can occur in the absence of any other diagnosable mental disorder or in combination with any other diagnosis. Even here, however, diagnostic errors are common.”<sup>107</sup> Surprisingly, the authors note that these offenders actually have “considerable insight into their sexual deviation and devote significant energy to self-scrutiny.”<sup>108</sup> Yet, this group of offenders are also difficult to study because they are “cunning and accomplished at deception. He rationalizes his actions, feels no remorse or guilt, and is not moved by compassion. He considers himself superior to society in general and law enforcement in particular.”<sup>109</sup> These types of offenders study their victim and crime scene meticulously, and focus on the perfection of their crimes. For this reason, they are extremely hard to detect.

The authors used strict guidelines in assessing which offenders from their pool were actual sexual sadists.<sup>110</sup> There were many common characteristics among the offenders which could potentially illuminate this type of offender. All but one of the 30 studied was white, all were male, 43% were married, 30% had children, 43% were educated post-secondary, and they ranged in occupation from candy maker, sheriff’s deputy, law student and military officer.<sup>111</sup> The authors note that most of the occupations included contact with the public, and “[t]hirty

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<sup>102</sup> Dietz, Hazelwood & Warren, *supra* note 87, Hazelwood, Warren & Dietz, *supra* note 94; and Warren & Hazelwood, *supra* note 91. Note that the Warren & Hazelwood article was cited in the *Galligan Report* explored below.

<sup>103</sup> *Ibid.* at 163. The authors note, at 164, that many of these individuals are not available for study because it is “possible that a majority of sexual sadists never engage in a sexually sadistic act, much less a crime. Among those who act on their fantasies, there are those who limit their actions to lawful behaviors with consenting partners or to behaviors with paid partners.”

<sup>104</sup> *Ibid.* at 164.

<sup>105</sup> *Ibid.* at 163.

<sup>106</sup> *Ibid.* at 164.

<sup>107</sup> *Ibid.* The authors note, at 165, that although this type of sadism can be linked with “mutilation followed by murder, murder followed by mutilation, and cannibalism” but these actions are “not necessarily indicative of either sexual excitement or sexual sadism.”

<sup>108</sup> *Ibid.* at 165.

<sup>109</sup> Robert R. Hazelwood, Park Elliott Dietz & Janet Warren, “The Criminal Sexual Sadist” (February 1992) FBI Law Enforcement Bulletin [*Hazelwood, Dietz & Warren*].

<sup>110</sup> For further information on the boundaries of the study see Dietz, Hazelwood & Warren, *supra* note 87 at 166.

<sup>111</sup> Dietz, Hazelwood & Warren, *supra* note 87 at 167-68.

percent of the offenders had established reputations as solid citizens through involvement in civic activities, volunteer work, charitable contributions, political activity, and sound business dealings.”<sup>112</sup> Dietz, Hazelwood & Warren noted several similarities in the offences perpetrated by these offenders including the fact that 37% of the men studied had a partner who assisted in the crimes including 11 male partners and seven females.<sup>113</sup>

Most noteworthy in reference to the crimes committed was the fact that 93% of the offenders “carefully planned their offences,” 90% used a “con approach” where they engaged the victim “under a pretext such as requesting or offering assistance, asking directions, or making an arrest.”<sup>114</sup> 60% kidnapped their victims from 24 hours to six weeks before releasing or murdering them, and three sadists “coerced former captives to return for additional abuse.”<sup>115</sup> A variety of sexual acts were performed on the captives including anal rape and foreign object penetration.<sup>116</sup> 87% of the offenders were described by their victims as having an “unemotional, detached affect” and 100% of the sadists “intentionally tortured their victims.”<sup>117</sup> The authors further explore the detachment of these offenders calling their actions “methodical,” “deliberate” and “calm” even during his victims “obvious and intense distress.”<sup>118</sup> They also noted that the men were often, “grandiose, lacked empathy, responded to criticism with rage, and demanded a show of admiration from those victims they kept captive” and may have regarded themselves as “super criminals.”<sup>119</sup> This very elusive criminal is understandably difficult to identify and study.

Astonishingly, the 30 men interviewed had murdered a total of 187 known victims, and were suspected of killing a total of more than 300.<sup>120</sup> 73% of the offenders targeted females, 17% males, and 10% males and females, and 43% victimized children.<sup>121</sup> Dietz, Hazelwood & Warren make some observations about the behaviours of these offenders including that a:

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<sup>112</sup> *Ibid.* at 168.

<sup>113</sup> *Ibid.* at 169. The authors also note at 169 that two of these partners were the fathers of the perpetrator, and five of the females were their wives and “one was a victim who had been held captive for weeks before she began assisting in the abduction and torture of other victims.”

<sup>114</sup> *Ibid.* at 170.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.* at 171.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.* at 175.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.* at 172. As noted at 172, an unusually high proportion of the murders were from “asphyxial causes of death (61%).” However, the authors also note, at 173, that there are many other sexual sadists who committed far less crimes but would not be studied by the National Center for the Analysis of Violent Crime and were therefore not included in this study.

<sup>121</sup> *Ibid.* at 173.

[f]ascination with police activities and paraphernalia reflects the offenders' fantasies of and strivings for power. Sexual partners are shared with others as a means of humiliation. Victims are held captive for ready access, to reshape their behaviour through 'training,' and to prolong their suffering. Victims are told what to say during assaults in order to recreate previously fantasized scenarios with idealized partners. Victims' corpses are concealed . . . to reduce the likelihood of rapid discovery and therefore apprehension.<sup>122</sup>

The authors note that the record keeping that these sadists keep about their actions is often quite detailed. Although they may be "forthcoming about their criminal acts, they are rarely forthcoming about the pattern of sexual arousal that motivates or accompanies the crimes."<sup>123</sup> Although they had all perpetrated elaborate and "grotesque" crimes, "not one was perceived as particularly odd by those who knew them well before their offenses."<sup>124</sup> In fact, some had attempted to get professional assistance with their proclivities but none were successful.<sup>125</sup> Having these characteristics will not necessarily lead to sexual sadism, but rather those with sexually arousing fantasies of these kinds should be further studied.<sup>126</sup> What should be flagged is that the "hallmark of their offenses is intentional torture of the victim to sexually arouse the offender."<sup>127</sup> This was one of the first large scale studies to look at the characteristics of the sexual sadist, but in the context of studying this subset of offenders, the authors became very interested in the victims of this attention: the wives and girlfriends that were subjected to this brutal and degrading abuse.<sup>128</sup>

#### **b. Compliant Victims of the Sexual Sadist**

This second article in the series by Hazelwood, Warren and Dietz. was essential in the psychiatric evaluations of Karla Homolka (discussed below), and thus, will be pivotal for explaining why a woman under brainwashing or marital coercion may actively seem to participate in the crimes dictated by their abuser. This study was based on interviews with seven women who had been the partners of sexual sadists who were identified

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<sup>122</sup> *Ibid.* at 174.

<sup>123</sup> *Ibid.* at 175.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.* The authors explain at 175 that these men had been examined for "military discharge, incarcerations for earlier offenses, or for other purposes." As explained at 176, one man went to see a psychiatrist to explain that he was concerned that he wanted to add murder to his sexual experiences, but "his elderly psychiatrist fell asleep" and he left therapy. Another left commitment in a state hospital to commit more murders, and one psychotherapist did not recognize that the writings of one of the men contained recollections, not fantasies. See also *Dietz, Hazelwood & Warren, supra* note 87 at 173-75 where the researchers had asked one sadist how a woman could prevent a rape by an offender such as himself. The man responded that, "there's a lot of steps you can take to help eliminate the average criminal [who is] just spontaneous and reckless and careless . . . [but] [i]f somebody wants somebody bad enough . . . it's nearly impossible [to prevent] . . . They could have the best security in the world. They could have guards and dogs and everything else. But if you have the time and the patience, the opportunity is going to arise when you can hit somebody."

<sup>126</sup> *Ibid.* at 176.

<sup>127</sup> *Ibid.* at 177.

<sup>128</sup> For the purpose of this paper, the victims of the sexual sadist that were studied were all women.

in FBI investigations.<sup>129</sup> Hazelwood, Warren & Dietz found that there was a pattern to the sexual, emotional and physical abuse and the “process of transformation” which each woman experienced.<sup>130</sup> Three of the women were married for 2 to 13 years, and the other four were in relationships ranging in length from 3 to 18 months.<sup>131</sup> All were products of “middle to upper-middle class backgrounds” and were “non-aggressive, remorseful, and guilt-ridden. They berated themselves for ‘being so stupid’ and could not accept the fact that they had been manipulated to such a degree by the men.”<sup>132</sup> All but one was successful professionally when they met their abuser.<sup>133</sup> Hazelwood & Michaud note that it is important to the sexual sadist to select professional women because he wants to prove that he can transform a “woman from a nice middle-class family” whom he can reduce to a “sexual slave willing to join him in any act, no matter how degrading or depraved, to prove her love or to keep him from leaving.”<sup>134</sup> The challenge of coercing an accomplished woman, who could rationally leave the relationship, seemed to be part of the game.

The physical abuse catalogued by the researchers is astounding. All were frequently beaten at the hand of their abuser or with objects.<sup>135</sup> One woman was bound with “adhesive tape” over her entire body for three days, and was continually beaten.<sup>136</sup> Four had broken bones, five were whipped, one was hung by the wrists and whipped over years of abuse, four were burned, and all were bitten.<sup>137</sup> Six were strangled in some manner during sex to the point of unconsciousness, and bondage was used on all of the women to increase discomfort.<sup>138</sup> Even though many had serious injuries, only one sought any medical attention. All were sexually abused, three with foreign objects.<sup>139</sup> A wide range of humiliating acts were reported including forced fellatio, ejaculating on their

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<sup>129</sup> Hazelwood, Warren & Dietz, *supra* note 94 at 474. The authors define, at 474, a “sexual sadist” from an original study that they had completed where they had interviewed 30 men who “were sexually aroused by the intentional torture of victims. Their crimes were also characterized by careful planning, selection of strangers as victims, recording of the offences by various means, keeping personal items taken from their victims, restraints of the victim, and a pattern of holding the victims captive for periods ranging from 24 hours to 7 years before killing or releasing them.”

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.* at 474-75. See also, at 475, that four of the women had been abused sexually as a child, two physically, and six psychologically, and six women were “sexually naïve” when meeting their abuser, all had low self-esteem, and none had experienced sadomasochism in the past.

<sup>132</sup> *Ibid.* at 475.

<sup>133</sup> *Ibid.* at 474. The authors note at 476 that the women were employed; their occupations ranged from a bank employee, a fire system engineer, business owner, insurance broker, student nurse to a retail clerk.

<sup>134</sup> Hazelwood & Michaud, *supra* note 86 at 111.

<sup>135</sup> Hazelwood, Warren & Dietz, *supra* note 94 at 475.

<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid.* Five women had “clamps” used on their labia and nipples with one woman noting that her “boyfriend wanted to place an earring through her labia but he could not find ‘one he liked.’”

<sup>138</sup> *Ibid.*

<sup>139</sup> *Ibid.*

face or mouth, being urinated on, forced enemas, sex with third parties, and sex with other kidnapped parties.<sup>140</sup> All stated that their partners were “sexually insatiable” and one reported that she was not allowed to “cry, scream or plead.”<sup>141</sup>

All suffered emotional and psychological abuse, three were kept captive for 24 hours or longer, three were forced to “write and sign documents of slavery or servitude,” six were “scripted” by the men, four had their sexual acts recorded in some manner (photographs, drawings, audiotapes, and writings) and some were later blackmailed with these recordings.<sup>142</sup> All were verbally abused which “lowered their self-esteem, but also kept them in a constant state of fear and depression.”<sup>143</sup> The transformation of these women, who led reasonably normal lives, to a “bizarre, destructive, and dangerous forms of exploitation and perversion” was shockingly similar.<sup>144</sup> The authors note a very similar pattern of coercive persuasion among the women, with five common factors which were found in most women:

1. **Selection of a vulnerable woman** – the men sought “naïve, passive, and vulnerable” women which the sadist would exploit for their own “need for dominance, control, and sadistic sexual behaviours,” and they would select “nice” women who had not been subjected to these practices before.<sup>145</sup>
2. **Seduction of the targeted woman** – all of the women stated that their abuser was “charming, considerate, daring, unselfish, and attentive” when they began dating, and all entered into a relationship quickly “even though they recognised a sinister side to them.”<sup>146</sup> The abuser was careful to be sure of “genuine affection” from the women until he was “confident in his ability to manipulate and use the woman in ways that were sexually gratifying to him.”<sup>147</sup>
3. **Shaping sexual behaviour** – this was dependent upon the malleability of the woman to engage in alternative sexual acts, and the abuser reinforced his gratitude towards her for participating in these activities, and his disappointment if she did not until these acts became regular.<sup>148</sup> Eventually, resistance was met with threats of violence.
4. **Social isolation** – the sadists became “possessive and jealous” of activities that did not involve them and rejected her friends so that “the world of these women became increasingly circumscribed and their circle of confidants eventually dissipated.”<sup>149</sup>

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<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.* at 476. The authors define “scripting”, at 476, as “being required to repeat words or phrases given theme by the men, being forced to verbally describe the sexual acts taking place, pleading for sexual or physical abuse, using derogatory terms for themselves or parts of their bodies, or developing obscene fantasy scenarios for the men.” Homolka alleged that she was “scripted” by Bernardo.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.* at 477.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.* See also *Hazelwood & Michaud, supra* note 86 at 112 note that the “compliant victim loves almost unconditionally; she’ll endure remarkable amounts of abuse, pain, and heartache one she’s fallen in love. And she’ll acquiesce in loathsome acts of which she once was utterly incapable.”

<sup>148</sup> *Ibid.* The authors note, at 477, that the women agreed that “once anal intercourse became a regular part of their sexual repertoire, vaginal intercourse ceased to interest their partners.”

<sup>149</sup> *Ibid.* Again, this is reminiscent of the stories of brainwashed POW’s. Edward Hunter noted in his testimony before the *Un-American Activities* committee, *supra* note 19 at 18, that “[n]o man has ever been brainwashed whose mind has not first been put into a fog . . . The

5. **Punishment** – psychological and physical punishment was the final step as the women became completely dependent on the sadist who reinforced that they had participated in acts that no “nice” woman would perform, and three were forced to call themselves “evil.”<sup>150</sup> The punishment included all of the acts described above, and the authors note that four of the women were made to participate in “criminal activities.”<sup>151</sup>

Hazelwood, Warren and Dietz identify that it is shocking that the “women were compliant for so long with the men who degraded, exploited and abused them.”<sup>152</sup> The common link that joined these women was a vulnerable “sense of self” which made her “a prime target for molding by her eventual captor.”<sup>153</sup> This very similar pattern was observed for all of the women studied, and their backgrounds and characteristics were almost identical.

The authors make the connection from this distinct group of battered women to brainwashing. They note that “[m]any of the dynamics used in other kinds of ‘brainwashing’ or ‘mind control’ seem to be used in this context. Not only does the sadist isolate the women from other intimate relationships, but he also physically abuses her, deprives her of sleep, repeatedly degrades and humiliates her, and gradually introduces new behaviours into her repertoire accompanied by both positive reinforcement for compliant behaviours and negative reinforcements of non compliant behaviour.”<sup>154</sup> Hazelwood & Michaud cite one of the subjects from their studies who explained how she was forced to sign a “slave contract.”<sup>155</sup> These same issues arise in those brainwashed in other circumstances.

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patient first has to be deprived of his bearings, to be shaken loose from whatever belief and convictions he formerly held, until he loses faith in them entirely.”

<sup>150</sup> *Ibid.* at 477.

<sup>151</sup> *Ibid.* See also Hazelwood & Michaud, *supra* note 86 at 113, explain why the sadist conditions this response in the women, making them degrade themselves. They theorize that “he has thoroughly conditioned her to comply with his perverted sexual demands; and because she does so, he is able to affirm his belief that all women are evil. He reasons that no decent woman would participate in such disgusting behavior. Because she does participate, she justifies the hatred he has secretly had for her from the beginning. In his twisted logic, she deserves to be punished.”

<sup>152</sup> *Ibid.* at 478. The authors cite Lenore Walker, at 478, noting that although they do not believe that anyone is “victim-prone” the fact that there had been such a history of abuse in their childhoods and past relationships leads to the conclusion that their backgrounds might have made them targets for the sexual sadist.

<sup>153</sup> *Ibid.*

<sup>154</sup> *Ibid.* The authors also note, at 478, that drugs were occasionally used in the process of transformation.

<sup>155</sup> Hazelwood & Michaud, *supra* note 86 at 116. The authors changed the names of the subjects but noted that the content of the document was drafted to read, “I, Ann, do hereby bequeath to Lyle total ownership of my person and possessions. This entitles him to do whatever he pleases to me. He has the right to impose punishment as he deems necessary. I release Lyle from all liability, both personal and financial. I will be responsible for all of my own bills. I have willingly entered into this contract.” “Ann” described her adherence to this contract to the authors noting:

I became convinced I was his slave . . . and he could do anything he wanted to me, even kill me. I didn’t enjoy what he was doing, and I didn’t want him to do these things to me. But when I refused to cooperate, he would hurt me so bad that I was afraid not to do as he ordered. If I did what he wanted, he would be nice and not hurt me so much. Because of this I wanted to be the best slave possible, and I worked hard at it.

It is difficult for most to understand how someone who was subject to this kind of abuse could want to be the “best slave possible” but these issues continue to arise in the context of the compliant victim of the sexual sadist.

In their previous study, Hazelwood, Warren & Dietz were given a definition of sexual sadism by one of the participants who said that his arousal came from. He said that the:

wish to inflict pain on others is not the essence of sadism. One essential impulse: to have complete mastery over another person, to make him-her [*sic*] a helpless object of our will, to become her God, to do with her as one pleases. To humiliate her, to enslave her are means to this end, and the most important radical aid is to make her suffer since there is no greater power over another person than that of inflicting pain on her to force her to undergo suffering without her being able to defend herself. The pleasure in the complete domination over another person is the very essence of the sadistic drive.<sup>156</sup>

The stories of these women confirm this domination as they describe the need of their spouse to control them in all aspects of their lives. This is the element that many do not understand when looking at these women in a legal perspective. The authors note that “the most extreme case was a woman who voluntarily returned to abysmal conditions of captivity despite frequent opportunities to escape. The psychological control of the sadist was graphically expressed as a physical reality.”<sup>157</sup> The need for overt control by the abuser slowly builds until she feels as if she could never escape, whether or not this is the truth. The psychological control is just as effective as the physical control of the complaint victim.

The authors question why the sexual sadist feels it necessary to bring other third party victims into the relationship where they already have a compliant victim. They note that it is puzzling why, given the “availability of consenting partners with whom they can legally enact these sexual scenarios raises the question as to why the sadists simultaneously choose to commit crimes against additional victims, despite the risk of apprehension.”<sup>158</sup> The reason might relate to the power felt in dominating even more women. For this reason, one of the subjects commented on why killing became part of their arousal noting that “I never thought it would be so easy to kill a person, or that I would enjoy it. But it was easy and I was enjoying the feeling of supremacy. A supremacy like I have never known before.”<sup>159</sup> It is for this reason that it seems that the sexual sadists coerce the complaint victims to also commit crimes. They discuss the fact that “several of the women eventually became co-conspirators with

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<sup>156</sup> Hazelwood, Warren & Dietz, *supra* note 94 at 478 citing, Dietz, Hazelwood & Warren, *supra* note 87 at 165 citing sexual sadist Mike DeBadeleben identified in Hazelwood & Michaud, *supra* note 86 at 87.

<sup>157</sup> *Ibid.* There are several examples of women returning to the sexual sadist when outwardly they appear “free” not to do so. Hazelwood & Michaud, *supra* note 86 at 94-95 describe one sexual sadist who would capture women and keep them captive in his house for approximately six weeks until he no longer wanted to hold them hostage. He conditioned their behaviour with poisonous snakes. He eventually told all of the women that they were allowed to leave, but “the women were instructed that they must return to him if he so demanded. If they didn’t, or if they reported him to the police, he warned them they very likely would find a snake in their shower, under their bedcovers, in their car, or in their mailbox. It was a very effective form of psychological coercion. The women did as they were told, without exception.”

<sup>158</sup> Hazelwood, Warren & Dietz, *supra* note 94 at 478. It is questionable whether some of these acts can ever be consensual.

<sup>159</sup> *Ibid.* citing their previous study, Dietz, Hazelwood & Warren, *supra* note 87 at 165.

the sadists in serious criminal activities.”<sup>160</sup> However, the authors do not go the last step to differentiate these cases of victims of a sexual sadist and identify that they should be treated differently within the criminal justice system. I believe that this is the final link in this very important analysis; understanding brainwashing and the battered spouse.

### **Case Example - Karla Homolka**

The “Barbie and Ken” couple who perpetrated notorious crimes in the early 1990’s horrified many Canadians. Karla Homolka and Paul Bernardo were eventually convicted of the sexual assault and murder of three young women. Homolka successfully negotiated a plea agreement of 12 years imprisonment in return for her testimony against her husband. However, after the plea deal, videotapes were found showing Homolka actively participating in the sexual crimes against young girls, the public sentiment immediately turned to horror that, in particular, a woman could be capable of these acts. The media portrayal of Homolka and her culpability in the deaths of her sister, Leslie Mahaffy and Kristen French is overwhelmingly negative, painting Homolka as a willing and culpable participant in these crimes. Nowhere is this more obvious in the media than in the descriptions of the video tapes of Homolka, Bernardo and the young girls. For example, Jenish described the tapes as:

full of adolescent smiles and Christmas cheer. A blond and beaming Karla Homolka, then 20, giggles with her sisters, Lori, 19, and Tammy, 15 . . . those scenes were recorded by Paul Bernardo, Homolka’s future husband, on the evening of Dec. 23, 1990, at the Homolka family home in St. Catharines, Ont. A few hours later, Homolka and Bernardo appeared in another home-made video – this time as they raped Homolka’s drugged and unconscious sister Tammy in the basement recreation room while the rest of the family slept upstairs.<sup>161</sup>

Jenish goes on to say that on other tapes Homolka “seems a willing – even enthusiastic – participant in her future husband’s fantasies.”<sup>162</sup> The question, was Homolka “cunning or coerced?” seemed unquestionably answered by the media who wholly discount her abuse.<sup>163</sup> It is difficult for many to conceptualize Homolka as a victim as “women who have committed violent crimes have historically been constructed as being mad, bad or sad.”<sup>164</sup> The inability of commentators to pinpoint Homolka as falling squarely into any one of these categories has led to difficulty in rationalizing her crimes.

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<sup>160</sup> *Ibid.* at 478.

<sup>161</sup> D’Arcy Jenish, “The Two Faces of Karla Homolka” *Maclean’s* (12 June 1995) 50 [Jenish, “Two Faces”].

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ibid.*

<sup>164</sup> Jennifer M. Kilty & Sylvie Frigon, “Karla Homolka – From a Woman *In Danger* to a *Dangerous* Woman: Chronicling the Shifts” (2006) 17 *Women & Criminal Justice* 37 at 40 [Kilty & Frigon].

In 1996 an overarching review was completed by the Honourable Patrick T. Galligan into the circumstances surrounding the plea deal that was made with Homolka.<sup>165</sup> In the course of his research, there was considerable material regarding the documented evidence that Homolka may not have been acting voluntarily in her involvement in the deaths of the three girls. Although Justice Galligan concludes that a finding of whether Homolka acted voluntarily was not necessary for the purview of the inquiry, he notes that there is question whether “Homolka acted with volition when she participated with Paul Bernardo in unspeakable atrocities or whether as the victim/accomplice of a psychopathic sexual sadist she acted involuntarily because she was unable to extricate herself from his complete domination and control.”<sup>166</sup> What there is very little question about is that her husband, Paul Bernardo, “is a sexual sadist.”<sup>167</sup>

#### **a. The Relationship Between Homolka and Bernardo**

Homolka and Bernardo met in a hotel in October 1987 when Homolka was 17 and he was 22 years-old.<sup>168</sup> Homolka testified about the almost immediate power that Bernardo had over her saying, “[h]e just has this magnetism. It sounds stupid, but from that night I met him, I knew I would marry him. It’s like, he has this power over women. He just draws them to him. It’s his personality. People want to be around him.”<sup>169</sup> In complete adherence to the patterns of control exerted by the sexual sadist, Bernardo lavished gifts and attention on the 17 year-old Homolka when they began to date, but eventually:

he started to exercise control over her. He began telling her what to wear and how to style her hair. He told her where she could go and where she could not go. He began to encourage her to disassociate herself from her friends because they were immature and stupid. He began encouraging her to drink more and more alcohol. He began changing the nature of the sexual activity in which he wanted her to engage.<sup>170</sup>

Soon Bernardo was scripting what Karla was to say and made her repeat phrases such as “[m]y name is Karla, I am 17 years old. I am your little cocksucker. I am your little cunt. I am your little slut.”<sup>171</sup> The sexual nature of their

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<sup>165</sup> Canada, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, (Toronto: Ontario Ministry of the Attorney General, 1996) [*Galligan Report*].

<sup>166</sup> *Galligan Report*, *supra* note 165 at 17.

<sup>167</sup> *Ibid.* at 18.

<sup>168</sup> Anne McGillivray, “‘A Moral Vacuity in her Which is Difficult if not Impossible to Explain’: Law, Psychiatry and the Remaking of Karla Homolka” (1998) *International Journal of the Legal Profession* 255 at 261 [*McGillivray*]. McGillivray notes, at para. 14, that the couple had sex within an hour of meeting.

<sup>169</sup> Kirk Makin, “Homolka describes Bernardo Beatings” *The Globe and Mail* (20 June 1995) A1 at A1 [*Makin*, “Beatings”].

<sup>170</sup> *Galligan Report*, *supra* note 165 at 23. See *Makin*, “Beatings,” *supra* note 169 at A1, where Homolka testified to this control by Bernardo saying that “[h]e would tell me I couldn’t wear miniskirts to school. I couldn’t dye or perm my hair. I couldn’t go out with friends to dances. I used to wear things like ballet shoes and boxer shorts. He wanted me to dress more preppy. I used to colour my hair red and other colours. He didn’t want me to colour it any more.

<sup>171</sup> *Ibid.* at 23-24.

relationship became more violent as Bernardo insisted on anal intercourse while Homolka was wearing a “dog chain choke collar.”<sup>172</sup> Several months into their relationship Bernardo began beating Homolka. After the first incident he apologized, but Homolka soon blamed herself for the abuse because she had argued with him.<sup>173</sup>

Between these beatings he would treat her “well” but would alternate between calling her names such as “slut, bitch and cunt” and, alternately, “princess” and insisted that she call herself, his “sex slave”<sup>174</sup> and identified their relationship of “one of master and servant.”<sup>175</sup> Although Justice Galligan notes that it is unnecessary to recite her abuse for the purpose of his report, he does comment that “Homolka related in great detail an ever increasing cycle of physical and psychological violence toward her which wore her down so that she became more and more subject to his control.”<sup>176</sup> Even though Bernardo repeatedly “beat her and kicked her in the back, shoulders, leg and stomach” she did not tell her parents because she loved him, and her “confidence level was very low.”<sup>177</sup> Justice Galligan cites his scepticism about the violence and that she “would do his bidding, no matter how monstrous, yet she still loved him and would not rid herself of him,” even though she could have sought help from her parents, with whom she still lived.<sup>178</sup>

The Crown also submitted expert reports by several doctors who had the chance to evaluate Homolka. Dr. Chris Hatcher’s findings were reproduced in one of the court proceedings on the admissibility of psychiatric evidence for Homolka.<sup>179</sup> Using the MCMI-III psychological test on Homolka, Dr. Hatcher came to the conclusion that Homolka had:

[f]eelings of depression, loneliness, and isolation may have typified extended periods of her life, although she is not inclined to play up these troublesome moods. Her underlying tension and emotional upset are present in disturbing mixtures of anxiety, sadness, and guilt. Her insecurity and her fear of abandonment account for what may appear to be a quiet, accepting and benign attitude towards life’s difficulties. Apart from her infrequent outbursts, she is conciliatory, placating, and even ingratiating. She hopes to evoke nurturance and protection by assuming a dejected and self-denying manner, by expressing self-doubt, by communicating the need for assurance and direction, and by displaying a desire to submit and comply. By

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<sup>172</sup> *Ibid.* at 25. Media reports, *Makin*, “Beatings,” *supra* note 169 at A1, notes that when Homolka testified about the pictures of her having sex with Bernardo with a knife to her head and a cord around her neck she said that “[i]t was his idea. He used to call me his little slave and his little sex slave. I used to refer to myself as that. Because that’s how he treated me. When he wanted something, I would do it. When he told me to get something, I would get it. If I didn’t do it, he would verbally abuse me or threaten me or hit me.”

<sup>173</sup> *Galligan Report, supra* note 165 at 26.

<sup>174</sup> *Ibid.* at 26-29.

<sup>175</sup> *Kilty & Frigon, supra* note 164 at 38.

<sup>176</sup> *Galligan Report, supra* note 165 at 29-30.

<sup>177</sup> *Ibid.* at 31.

<sup>178</sup> *Ibid.* at 32.

<sup>179</sup> *R. v. Bernardo [Evidence - Psychiatric - Karla Homolka]*, [1995] O.J. No. 2249 (Ont. C.J.) at para 8 [*Bernardo, Homolka*].

submerging her individuality, sabotaging opportunities, subordinating personal desires, and submitting at times to abuse and intimidation, she hopes to avoid what she fears most – total abandonment.<sup>180</sup>

This description fits well within the paradigm of the compliant victim of the sexual sadist.

#### **b. The Crimes of Bernardo and Homolka**

The process of the sexual sadists continued in the relationship and eventually Bernardo was demanding other “sex slaves” and had Karla pretend to be her 15 year-old sister Tammy during sex. Bernardo said that he wanted to have sex with Tammy and it would be over quickly if they could drug her. Justice Galligan notes that Homolka “agreed to help him with his plan, [believing that] the violence to her and the threats to her and her family would cease.”<sup>181</sup> In the course of her employment at an animal clinic, Homolka came in contact with a drug named “Halcion” and an anaesthetic called “Halothane” and Bernardo told her to get the drugs for Tammy.<sup>182</sup> Both Bernardo and Homolka performed sex acts on the drugged 15 year-old, and the episode was videotaped. Tammy eventually vomited and stopped breathing, and she subsequently died during the assault. Bernardo and Homolka hid the evidence of their involvement and the death was ruled accidental.<sup>183</sup>

The *Galligan Report* states that Homolka continued to obey Bernardo’s demands for more drugs because “she felt totally trapped after Tammy’s death and became more and more subject to Paul Bernardo’s domination.”<sup>184</sup> Homolka moved in with Bernardo while the abuse escalated with the threats that he would expose her involvement in her sister’s death. She testified that he “would tell me I was nothing without him. He made me feel I was totally dependent on him.”<sup>185</sup> There was some independent evidence that Homolka had bruises that were “in strange places where one would not expect to knock oneself” but Homolka continued to appear happy and content with her relationship to outside parties.<sup>186</sup> On their wedding night, Bernardo revealed to Homolka that he was the Scarborough rapist, and her abuse continued “unabated.”<sup>187</sup> Bernardo demanded that Homolka bring more

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<sup>180</sup> *Bernardo, Homolka, supra* note 179 at para. 8.

<sup>181</sup> *Galligan Report, supra* note 165 at 34.

<sup>182</sup> *Ibid.* at 28-29 and 34.

<sup>183</sup> *Ibid.* at 35.

<sup>184</sup> *Ibid.* at 36.

<sup>185</sup> *Makin, “Beatings,” supra* note 169 at A4.

<sup>186</sup> *Galligan Report, supra* note 165 at 36. See *Makin, “Beatings,” supra* note 169 at A4 where Homolka testified to why she did not tell her parents what was happening. She notes that she “could have, but I didn’t feel I could . . . It’s hard to explain. I was afraid of him, but part of me still loved him. He also told me not to air our dirty laundry. I didn’t want my parents to know what he was doing to me – and I still loved him . . . I tried to make out like we had a great relationship.”

<sup>187</sup> *Galligan Report, supra* note 165 at 39.

young girls to their house for sexual purposes. These girls included Jane Doe,<sup>188</sup> Leslie Mahaffy and Kristen French. Homolka was not involved in the kidnapping of Mahaffy, but she was involved in her sexual assault, which was videotaped, and she assisted with the disposal of her body in concrete blocks in Lake Gibson.<sup>189</sup> Homolka also cleaned the house to eliminate evidence of the crimes.

Justice Galligan describes some of what was required of Homolka stating that she:

was often required to accompany him on trips in his car. He thought that she would make good cover for him since his car would not be suspected if there was a woman sitting in it. On several of those occasions, he brought his knife and rope. She described trips when he watched women. She described trips when he stalked women. She described occasions when he would follow women home and go to the windows of their houses . . . she described plans that he was making to kidnap a woman whom he had stalked. She testified that Paul Bernardo began talking of getting a place in the country with a sound-proofed dungeon where he could take girls and use them as sex slaves.<sup>190</sup>

Homolka was also involved in the abduction of Kristen French and her subsequent abuse.<sup>191</sup> It is much reported that Homolka was left alone in the house on two occasions when Bernardo left to buy food, but she did not attempt to free their captive.<sup>192</sup> Homolka testified that she “thought about” letting French go free, but she said that she was “so involved. All I could picture was the two of us going downstairs and Paul coming home right then and finding us, and killing us.”<sup>193</sup> Homolka testified that she had started to go “numb” after the death of her sister Tammy, and continued to get “numb-er” after Mahaffy and French had been in the house.<sup>194</sup> She explained that “I didn’t want to be there and I felt extremely bad about what we were doing . . . It’s my body’s way of protecting myself. I just

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<sup>188</sup> Jane Doe was her 13 year-old friend that she met at a local pet store. Jane Doe is the subject of much of the debate over whether Homolka tried to hide her involvement in her repeated sexual assaults.

<sup>189</sup> *Galligan Report, supra* note 165 at 38. Although McGillivray, *supra* note 168, suggests that Homolka assisted with the dismembering of her body and its placement in concrete blocks, the submissions of Mr. Segal at the sentencing hearing of Homolka cited in the *Galligan Report, supra* note 165 at 259, state that on “Monday, Karla went to work at the clinic. Later that day she learned that Paul Bernardo had dismembered Leslie Mahaffy and placed her in concrete blocks. Karla Bernardo had to help her husband carry the heaviest block to the car, that being the one that contained Leslie Mahaffy’s torso. Karla Bernardo joined her husband on two occasions to dispose of blocks in the lake.” In Homolka’s own testimony, recorded in *Makin, “Beatings,” supra* note 169 at A4, she was asked who dismembered Leslie Mahaffy and she responded “Paul did. I was at work. He told me he was going to do it, but I didn’t believe he actually would.”

<sup>190</sup> *Ibid.* at 39-40.

<sup>191</sup> According to the transcripts of the sentencing hearing attached to the *Galligan Report, supra* note 165 at 260, the submissions of Mr. Segal stated that Homolka lured Kristen French to their car “on the pretext of asking directions. Karla Bernardo held a map up as part of her role-playing. Paul Bernardo came around the car and forced Kristen French into the vehicle with a knife . . . Karla Bernardo jumped in the back of the car. Paul Bernardo drove holding a knife and threatening Kristen French. Karla Bernardo grabbed a hold of Kristen’s hair to help secure her. As pre-arranged, Karla placed a blanket over Kristen on the way home. They drove to the Bernardo’s home. Karla Bernardo opened the garage door. Kristen French was brought in. Karla Bernardo closed all the blinds and collected and hid all the telephones in the house. Karla was told to stay downstairs while Paul Bernardo had his way with Kristen French.”

<sup>192</sup> According to the transcripts of the sentencing hearing attached to the *Galligan Report, supra* note 165 at 261, the submissions of Mr. Segal stated that “Karla Bernardo thought about freeing Kristen French but did not out of fear of being beaten by her husband and being found out by the police.”

<sup>193</sup> Jim Rankin, Nick Pron & John Duncanson, “Homolka had 2 chances to let French go free” *The Toronto Star* (27 June 1995) A1 [*Rankin, Pron & Duncanson*].

<sup>194</sup> *Rankin, Pron & Duncanson, supra* note 193 at A1.

go numb.”<sup>195</sup> The Crown experts explained that this comes from a process called “normalization” which is related to BWS.<sup>196</sup> Justice LaSage related this principle to Homolka commenting that it “is an attempt to mix and integrate a criminal act into normal aspects of one’s life. An example of this is Homolka’s ability to prepare and serve Father’s Day dinner while Leslie Mahaffy’s dead body lay in her root cellar.”<sup>197</sup> Justice LaSage also cites Dr. McDonald’s report which states that expert testimony is necessary to allow the jury to understand why Homolka “relates past events, including sexual assault, the apparently un-intended death of her sister, sexual and physical abuse of herself by her husband and the eventual kidnapping, sadistic sex and murder, with seeming nonchalance” and to explain her “flat affect.”<sup>198</sup>

Homolka assisted with the disposal of Kristen French’s body and the cleaning of the house to destroy any evidence.<sup>199</sup> Justice Galligan notes the continuing abuse that Homolka was subjected to, saying there is “ample support for Karla Homolka’s assertions that she was the subject of continuous and unrelenting abuse at the hands of her husband. In June, she left him to go back to her parents, but returned when he threatened to expose her role in their crimes.”<sup>200</sup> Again, this is very much like the patterns described of the victim of the sexual sadist.<sup>201</sup>

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<sup>195</sup> *Ibid.*, and Homolka also explained that she had to perform the acts demanded by Bernardo or she would have been beaten. She also noted that she told French to “make Bernardo happy” because she did not want French to be beaten. There were also questions why Homolka smiled for the camera and seemed to be enjoying the sexual acts she was performing on the women. Appended to the *Galligan Report*, *supra* note 165 at 331 is a letter from James A. Treleven of the Ministry of the Attorney General to Inspector Vince Bevan and Acting Inspector Tony Warr of the Green Ribbon Task Force that said, “[w]e found particularly troublesome the segment of a tape in which Homolka smiles at the camera while apparently administering halothane to the unconscious victim, while the victim is being sexually violated by Bernardo. Although there were misgivings, Homolka’s explanation that she was forced to perform in this fashion by threats of violence from Bernardo is borne out by the evidence, including medical opinion, recently obtained by you. We note that Kristen French was at one point forced by Bernardo to smile for the camera.”

<sup>196</sup> *Bernardo, Homolka*, *supra* note 179 at para. 12.

<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid.*, citing Dr. McDonald’s Report at 2.

<sup>199</sup> *McGillivray*, *supra* note 168 at 263, alleges that the next morning Homolka “made drinks, whispered questions for Bernardo to ask Mahaffy, cunnilinguaged her and videotaped the rapes and beatings. She gave her sleeping pills and her own teddy bear to hold while Bernardo strangled her.” According to the transcripts of the sentencing hearing attached to the *Galligan Report*, *supra* note 165 at 261-62, the submissions of Mr. Segal for the Crown stated that “the Bernardo’s washed Kristen French extensively in their Jacuzzi. A douche, which had been purchased for the purpose of using on a victim, was used. At Paul Bernardo’s suggestion, Kristen French’s hair was cut by Karla to avoid carpet or other fibres being found. The couple placed Kristen French in their car and found a ditch where she was placed . . . The couple went to great efforts to eliminate traces of their crimes. Karla Bernardo washed down walls, and wiped the car for prints, finger prints. She vacuumed the car. She vacuumed the house incessantly. The contents of vacuum bags, and the victim’s clothing were burnt. The gloves worn by the Bernardo’s and the cardboard boxes used to help form the concrete blocks were all burned.”

<sup>200</sup> *Galligan Report*, *supra* note 165 at 41.

<sup>201</sup> See *Bernardo, Homolka*, *supra* note 179 at para. 8, that like those sexual sadists described above, Dr. Hackler, as the Crown expert, noted that those “involved in the commission of repetitive violent sexual crimes of kidnapping, rape, and homicide write text or record thoughts which reflect their view of themselves, their victims, and the implementation of their violent sexual fantasies.” Hackler notes that Bernardo wrote several accounts of his thoughts including “I’m the solo creep I make the girls weep acting out my crimes while the others sleep” and a “professional liar with time to waste, ya got no confession, ya got no case . . . I’ve got no remorse, and I’ve got no shame . . . the illusion has become real, ideal, how does it feel, got it at a steal, you’re the big wheel, Paul Jason Teale.”

Dr. Hucker, another Crown expert at Bernardo's trial, concluded that Bernardo fulfilled the criteria for a diagnosis with a paraphilia,<sup>202</sup> and that he likely meets the criteria for a sexual sadist in addition to that for urophilia,<sup>203</sup> toucheurism,<sup>204</sup> coprophilia,<sup>205</sup> and a "narcissistic personality disorder."<sup>206</sup> Hucker concluded that Bernardo demonstrated evidence of a sexual sadist before he met Homolka, and had chosen a "vulnerable, but not necessarily psychologically abnormal" spouse.<sup>207</sup> He notes that the "[i]nitial behaviour of the couple is moulded by the dominant partner who socially isolates his spouse, punishes her into subservience and involves her in his crimes."<sup>208</sup> Justice LeSage found that the Crown experts were "certain that while Homolka was with the accused she suffered from Battered Spouse Syndrome."<sup>209</sup>

### c. The Physical, Emotional and Psychological Abuse of Homolka

Hackler had noted in his report that "Homolka came to accept Paul Bernardo's very significant physical abuse of her, sexual abuse of her, and extreme sexual fantasies as part of a price to be paid in order to maintain the image to herself and to the world of a successful, happy couple."<sup>210</sup> He concluded that Bernardo's physical abuse and "Homolka's intense need to maintain the relationship would eventually lead to a belief that her survival and the survival of the relationship would depend upon her cooperation in the acting out of Paul Bernardo's sexual fantasies."<sup>211</sup> As noted in the research on the sexual sadist, one step lead to the next. Hackler noted that "[o]nce the acting out of Paul Bernardo's sexual fantasies began, each successful step in bringing this sexual fantasies to life further reinforced the potential to further explore and implement these fantasies."<sup>212</sup>

However, the life that Homolka was actually living was far from the perfect image she sought to portray. Dr. Hucker notes that "Bernardo increasingly dominated his wife during the relationship. In fact, Justice Galligan makes the comment that if this evidence is "truthful" then Homolka's life at the end of 1992 was "nothing short of

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<sup>202</sup> This was previously referred to as a sexual deviation or anomaly.

<sup>203</sup> A sexual preference for urine.

<sup>204</sup> Grabbing unsuspecting women sexually.

<sup>205</sup> Feces or defecation.

<sup>206</sup> *Bernardo, Homolka, supra* note 179 at para. 8.

<sup>207</sup> *Ibid.*

<sup>208</sup> *Ibid.*

<sup>209</sup> *Ibid.* at para. 11.

<sup>210</sup> *Ibid.* at para. 8.

<sup>211</sup> *Ibid.*

<sup>212</sup> *Ibid.*

a horror story. It is somewhat of a surprise that she is still alive and sane.”<sup>213</sup> Her abuse was discussed by Kovacs, J., in Homolka’s sentencing hearing. The Judge found that Bernardo:

strangled her, threw knives at her, hit her with firewood, hit her with his shoes and finally with a flashlight. He stabbed her with a screw driver, pulled handfuls of hair from her head, punched her, kicked her and raped her. He pushed her down stairs. On one occasion her foot was punctured when he pushed her onto a board with a rusty nail. He systematically made her feel unworthy and cut the contact with her family down.<sup>214</sup>

Her final beating in early 1993 resulted in her mother and sister removing her from the house and taking her to the hospital. Both Homolka’s mother, Dorothy, and her sister Lori, testified at Bernardo’s trial that they had “observed an escalating pattern of abuse, culminating in a terrible beating in early January 1993, that ended the relationship.”<sup>215</sup> This beating is described by one of the doctors in the emergency room as the “worst case of wife assault that he had seen in his experience as an emergency room physician.”<sup>216</sup> The medical reports stated that her:

eyes reveal raccoon’s eyes, bruising all around he orbits, large contusion to her head with what feels almost like a depressed fracture, although x-rays have ruled this out. She has a subconjunctival haemorrhage in the left eye . . . She has several bruises down the left side of her neck, along her arms, with a very large bruise in the upper right arm which is about three centimetres by three. About 75% of her legs from mid-thigh down are bruised, quite dramatically and swollen to touch. She cannot move them due to pain. On the right thigh, about 3 cm above the right knee, there is a puncture wound which she says was caused by Paul Bernardo when he punctured her with a screwdriver. On the left leg, there is a large isolated contusion about 6 inches by 3 inches, quite warm and tender.<sup>217</sup>

This description of Homolka’s face was recorded in medical photographs taken at the St. Catharine’s General Hospital which “provided a visual image to the police, the courts, and the media, that could not be easily discounted or dismissed.”<sup>218</sup> Justice Galligan notes that her injuries are “indicative of a very hard blow or blows to the back of the head. They are caused by a contra coup, which means that the blow from the rear causes the brain to move rapidly forward and collide with the front of the skull, causing bleeding or haemorrhaging into the tissue around the eyes.”<sup>219</sup> McGillivray noted that Homolka “could not walk. She had been handcuffed, bound with the

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<sup>213</sup> *Galligan Report, supra* note 165 at 41.

<sup>214</sup> Decision of Kovacs J., at the sentencing hearing appended to the *Galligan Report, supra* note 165 at 309.

<sup>215</sup> *Jenish, “Two Faces”, supra* note 10.

<sup>216</sup> *Galligan Report, supra* note 164 at 41.

<sup>217</sup> *Galligan Report, supra* note 165 at 42. According to the transcripts of the sentencing hearing attached to the *Galligan Report, supra* note 164 at 290, the submissions of Mr. Walker stated that the beating was “systemic and sadistic” and that there were “markings on the neck consistent with strangulation, or the application certainly of some sort of ligature applied to the neck of my client. Again, keep in mind that this beating was not detected and was kept from the Homolka family, and it is my position that Paul Bernardo tried to, and deliberately tried to stop my client’s family from coming over to see her, [sic] what condition she was in.”

<sup>218</sup> *Kilty & Frigon, supra* note 164 at 46.

<sup>219</sup> *Galligan Report, supra* note 165 at 41. See *Galligan Report, supra* note 165 at 55, that Homolka’s future lawyer, George Walker, noted that when he first met Homolka he estimated her weight at 80 to 85 pounds.

electrical cord used to strangle Mahaffy and French and left in the root cellar where the bodies had been stored.”<sup>220</sup> It has been observed that “[o]nce dominated by Paul Bernardo, in fear of physical injury, in fear of risk to her own life, and in fear of loss of their family, Karla Homolka attempted to develop a survival strategy for herself, a survival strategy which did place her own welfare above that of others.”<sup>221</sup> The choice of survival strategy would be the unravelling of Homolka’s claims of being a battered spouse.

Justice Galligan notes that Homolka was direct with the authorities not only the abuse she suffered, but about the deaths of the other girls. He notes that “[w]hile she contended from the first that she was, in effect, forced by Paul Bernardo to do what she did, she has never once attempted to deny her role or evade her complicity in those atrocities. From February 14, 1993 onwards, the Crown was fully aware of what she had done.”<sup>222</sup>

#### **d. Homolka and Brainwashing**

Psychiatric evaluations were conducted on Homolka before the plea bargain for a period of six weeks under the care of two psychiatrists and two psychologists chosen by the Crown.<sup>223</sup> Justice Galligan reviews the psychiatric reports completed on Homolka after she had contacted the police. Psychiatric reports revealed that Homolka suffered from “dysthymia, also known as reactive depression, and a serious post traumatic stress disorder.”<sup>224</sup> One of her doctors compared her experience with Bernardo from the age of 17 to that of a “concentration camp survivor” who was subject to:

horrendous tragedies and had to go through and perform actions in order to survive that under normal circumstances they would clearly have stayed away from, but in the interest of self-preservation or in the interest of preserving other people’s lives, did see themselves helpless and went through the actions as had been required of them.<sup>225</sup>

In the context of brainwashing, it is telling that her psychiatrists also note that she has:

all of the factors that constitute psychological torture as defined by Amnesty International. There was social isolation, exhaustion stemming from deprivation of sleep, monopolization of the perception through the exhibition of intensely possessive behaviour, threats of death against the person or the person’s relatives,

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<sup>220</sup> *McGillivray, supra* note 168 at 264. According to the transcripts of the sentencing hearing attached to the *Galligan Report, supra* note 165 at 262, the submissions of Mr. Segal stated that “Karla Bernardo thought that she would be the next to die. She as locked in their home’s root cellar.” Kovacs J. noted in his sentencing submissions, appended to the *Galligan Report, supra* note 165 at 310, that Bernardo “hand cuffed the accused’s hands behind her back and tied her legs together with the same electrical cord he used on the other victims.”

<sup>221</sup> *Bernardo, Homolka, supra* note 179 at para. 8.

<sup>222</sup> *Galligan Report, supra* note 165 at 58.

<sup>223</sup> *McGillivray, supra* note 168 at 267.

<sup>224</sup> *Galligan Report, supra* note 165 at 77.

<sup>225</sup> The Report of Dr. Arndt cited in *Galligan Report, supra* note 165 at 41.

humiliation and denial of power, and the administration of drugs or alcohol to diminish self control. Karla was systematically subjected to all of these things.<sup>226</sup>

It is also noted that these are the variables “found in virtually every case of wife abuse.”<sup>227</sup> The report explains that the reaction to this kind of abuse includes “feelings of powerlessness, passivity, a diminished capacity for problem solving and a general unwillingness to try to avoid painful stimulate.”<sup>228</sup>

The psychiatric model dictates that the woman often continues with these reactions until they “realize that with the next battering death will ensue. At such a point they will expose themselves to great danger by running away or by striking out at the person who is battering them.”<sup>229</sup> It is noted that Homolka had her opportunity to seek help when her mother and sister took her to the hospital and she “revealed the history of the physical and psychological abuse to which she had been subjected.”<sup>230</sup> Homolka has been criticized for not revealing her knowledge of the crimes earlier. The medical report also noted that:

Karla was subjected to repeated sadistic sexual attacks. She was humiliated, beaten, tied up and raped over a period of years. She was manipulated into being a participant in what eventuated in the death of a much loved sister. She was advised on her wedding night that her new husband was a rapist. She was told that if she ever tried to leave her husband he would track her down and kill her. Or else he would kill her remaining sister and her parents. She was living with a sexual sadist and she was convinced that from this bewildering fate there was no escape.<sup>231</sup>

Dr. Long has similar comments in his report after noting her depression and her withdrawal he noted that she was a “person suffering severe remorse for her participation in the illegal acts referred to.”<sup>232</sup> He noted that she “suffers from and requires treatment for the effects of extremely severe prolonged exposure to her husband's sadistic acts and the ominous atmosphere he created. The latter culminating in a deep belief that she too would someday become the victim of his murderous behaviour.”<sup>233</sup> Dr. Malcolm, another of the psychiatric team who diagnosed Homolka, stated that Homolka, “knew what was happening but she felt totally helpless and unable to act in her own defence or in anyone else’s defence. She was in my opinion, paralysed with fear and in that state she became obedient and self serving.”<sup>234</sup>

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<sup>226</sup> *Galligan Report, supra* note 165 at 78. According to the transcripts of the sentencing hearing attached to the *Galligan Report, supra* note 165 at 289, the submissions of Mr. Walker that “it was quite clear that Karla was starting to develop alcoholism.”

<sup>227</sup> *Ibid.*

<sup>228</sup> *Ibid.* at 79.

<sup>229</sup> *Ibid.*

<sup>230</sup> *Ibid.*

<sup>231</sup> *Ibid.* at 79-80.

<sup>232</sup> *Ibid.* at 80.

<sup>233</sup> *Ibid.*

<sup>234</sup> Cited in the sentencing transcript found appended to the *Galligan Report, supra* note 165 at 311.

Dr. Long describes that she had a history of adopting passive behaviour as a coping mechanism since early in life, and that there was no evidence that she would act aggressively on impulse, nor did she seem to have “masochistic tendencies in terms of finding pleasure by being hurt herself nor her observing the suffering of others.”<sup>235</sup> Dr. Malcolm confirmed this by saying that he had “no doubt that Karla was a passive, non-violent person . . . Even in her extremity she was unable to attack Paul in a final attempt to protect herself from what seemed certain death.”<sup>236</sup> Dr. Long concludes that:

she was sufficiently hoodwinked and intimidated by Paul Bernardo that she found herself in a compromising position as a result of a sequence of experiences with him that escalated in the intensity of their deviousness and severity. This reached a climax with the death of her sister and, from that point on, she believed that she was trapped in the same manner that an abused wife considers herself to be trapped and then having to fend for her life.<sup>237</sup>

Dr. Long is unable to reconcile her psychological issues with the law. He notes that her psychological state is not to “excuse her morally” for her role in the crimes committed as she was “technically of sound mind and free of disease of the mind of sufficient severity to cloud her awareness or cause her to be unable to appreciate the nature and quality of her acts. Indeed, she was a victim herself and is in serious need of continued psychiatric care.”<sup>238</sup> Justice Galligan notes that two other psychiatrists and two other psychologists diagnosed Homolka with Post Traumatic Stress Disorder, and three of the four noted that this was the result of the abuse she suffered.<sup>239</sup>

Dr. Peter Jaffe, an expert in this area, was also quoted in the *Galligan Report* after spending 10 hours interviewing Homolka.<sup>240</sup> Jaffe concluded that Homolka:

exhibits all the signs and symptoms of a young woman who has been extremely traumatized by an abusive relationship. She reports a clear and consistent history of emotional, physical, and sexual violence that trapped her in an abusive relationship. In our opinion, she fits all the criteria for the battered woman’s syndrome. In our views, she was groomed, by Mr. Bernardo, to become involved in increasingly bizarre and dangerous behaviour that was harmful to herself and others. Mr. Bernardo involved her in three deaths that gradually increased her role and participation. According to Ms. Homolka, Mr. Bernardo’s next instruction was for her to kidnap and kill someone by herself. If her family hadn’t dragged her out of her house in January 1993, it is likely, she or someone else may have been killed.<sup>241</sup>

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<sup>235</sup> *Galligan Report*, *supra* note 165 at 80.

<sup>236</sup> Cited in the sentencing transcript found appended to the *Galligan Report*, *supra* note 165 at 311.

<sup>237</sup> *Galligan Report*, *supra* note 165 at 80-81.

<sup>238</sup> *Galligan Report*, *supra* note 165 at 81.

<sup>239</sup> *Ibid.* *Galligan Report*, *supra* note 165 at 155. Justice Galligan references a “forty-five page document prepared by the police entitled ‘Abuse Timeline.’” Although this is not included in the report because of concerns about protected identities and because of the sheer length, there is a dearth of information about the abuse suffered by Homolka at the hands of Bernardo.

<sup>240</sup> *McGillivray*, *supra* note 168 at 268. Jaffe is an authority on spousal abuse, and he consulted with Lenore Walker on his findings.

<sup>241</sup> *Ibid.* citing the *Galligan Report*, *supra* note 165 at 156.

Looking at the evidence presented at the Bernardo trial, there is also keys to the fact that Homolka was not acting under her own volition. This extends as far as the speech patterns that she used on the infamous videotapes. To those who were determined to show that Homolka was complicit, the transcripts of the tapes seemed to support their point of view. However, in the context of the false statements of prisoners of war, and the speech patterns expected of the compliant victims of the sexual sadist, these transcripts take on new meaning. For example, one can look at the following exchange:

Bernardo: [Referring to the videotaped sexual assault of Tammy] Did you like watching that?

Homolka: I loved watching it.

Bernardo: How did you feel?

Homolka: I felt proud. I felt happy. It's my mission in life to make you feel good.

Bernardo: What did it teach you?

Homolka: Well we like little girls.

Bernardo: What age?

Homolka: Thirteen.

Bernardo: Why?

Homolka: Cause it'll make you happy.

Bernardo: But why 13?

Homolka: That's a good age I guess. They'll still be virgins.

Bernardo: So what are you saying?

Homolka: I'm saying I think you should take their virginity. They're our children and I think you should make them ours even more.

Bernardo: I think you're right. You're absolutely right, good idea. Is it because Tammy's gone?

Homolka: It's the closest thing we can get. We did something a few days ago. We raped a little girl down here in my room. You went out and you found her; got her. Brought her back to the house, brought her downstairs. I was shocked. I gave you that. I let you do this because I love you. Because you're the king. I want you to do it again.

Bernardo: When?

Homolka: This summer because the wintertime is too hard. If you want to do it 50 times more we can do it 50 times more. Every weekend. We can do it every weekend. Because I love you. Because you're the king. Because you deserve it.

Bernardo: Will you help me get the virgins?

Homolka: I'll go in the car with you if you want. Or I'll stay here and I'll clean up afterwards, like I did on Sunday. I'll do everything I can cause I want you to be happy, cause you're the king.<sup>242</sup>

To those observing this conversation without the benefit of the explanations of the sexual sadist provided above would think Homolka absolutely culpable. However, the speech patterns fall directly within the purview of the sexual sadist and the scripted dialogue that many women are forced to perform.<sup>243</sup> Yet, critics still dispute the abuse that Homolka suffered and note the “disconnect” between the abuse committed on her, and the abuse she

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<sup>242</sup> Jenish, “Two Faces”, *supra* note 10.

<sup>243</sup> Galligan Report, *supra* note 165 at 167. The Galligan Report also cites Bernardo jurors who state that “Homolka was, in fact, a battered woman. One of them is quoted as saying that the evidence was there ‘in huge, huge quantities.’ Another juror, a man, wrote to the Homolka family after the trial. I quote one sentence from his letter: ‘I personally believe she was manipulated, controlled and battered.’”

committed on others.<sup>244</sup> McGillivray notes that one evaluator noted that “Karla Homolka remains something of a diagnostic mystery. Despite her ability to present herself very well, there is a moral vacuity in her which is difficult if not impossible to explain.”<sup>245</sup> It is this judgement that Homolka did not behave as a battered woman ought to behave that abounds in the writing of those who do not believe that Homolka was battered, or not battered to the extent that she alleges.

Kilty & Frigon argue that Homolka’s agency should not be taken away; rather, they “contend that the abuse she endured impacted her agency and thus constrained her choice. Homolka’s intimate relationship with Bernardo impacted her criminality, but it does not excuse it. She had ‘choice’ but only that which was constrained.”<sup>246</sup> They note that even though the landmark Canadian case of *R. v. Lavallee* allowed evidence of BWS, “there have been few other successful cases where women have used this expert evidence.”<sup>247</sup> They note that “syndromizing women’s actions may lead to an increase in the power of such psychiatric diagnoses, which result in explaining women’s behaviour as being disorderly rather than reasonable.”<sup>248</sup> Homolka’s lawyer, George Walker, noted in his submissions that Homolka was not denying her involvement saying that this was a battered woman in the clutches of a sexual sadist as:

[i]t moves on to the occasional violent, physical assault, the promises of not doing it again and it continues on a gradual scale, and ultimately in my submission it would have followed that my client would not have escaped Mr. Bernardo. It was only a matter of time. She does not seek to minimize her involvement . . . She was there when both Kristen French and Leslie Mahaffy died and she was there when her own sister died. But, once the sister died, Paul Bernardo had her. But from that point on, as the doctor said, indicated, there was very little that she could do in her own mind.”<sup>249</sup>

There was no escape from this brainwashed existence that Bernardo had created. It is arguable that Homolka would have become the “fourth victim.”<sup>250</sup>

## Conclusion

There is no doubt that coercively persuaded defendants should be studied and a remedy accorded because the “frequency with which such cases arise is likely to accelerate as social conditions conducive to terrorism and

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<sup>244</sup> McGillivray, *supra* note 168 at 268.

<sup>245</sup> *Ibid.* citing *R. v. Bernardo* [voir dire, admissibility of psychiatric evidence on Karla Homolka] [1995] O.J. No. 2249 DRS 95-15614 Court File No. 274/94 (Ontario Court of Justice General Division) at para. 9.

<sup>246</sup> Kilty & Frigon, *supra* note 164 at 43.

<sup>247</sup> *Ibid.*

<sup>248</sup> *Ibid.*

<sup>249</sup> *Ibid.* at 47 citing *R. v. Bernardo* (June 6, 1993), (unreported) Ontario Court General Division, St. Catharines Registry No. 125 [Bernardo].

<sup>250</sup> *Ibid.*

other forms of psychologically totalistic behavior continue, and as the potential utility of thought reform methods becomes more widely known among extremist groups.”<sup>251</sup> The brainwashed defendant has already been a part of the Canadian legal system numerous times, and “judges and legislators will also undoubtedly have to address the issues raised by cases of coercive persuasion. Terrorism and hostage-taking, the proliferation of totalitarian cults, and the nature of modern ideological warfare will create other situations in which it will be claimed as an excuse.”<sup>252</sup> What form the defence of coercive persuasion will take is still unknown. However, the philosophy behind according such a defence, and the need to serve vulnerable populations is undeniable. It has been noted that “[w]hatever the juridical rubric – insanity, duress, or coercive persuasion *per se* – through which the facts of each such case are presented, jurors will be called upon to honor the proposition advanced by Hugo Bedau that ‘the moral quality of an act inheres not solely in the act but also in the actor’s frame of mind.’”<sup>253</sup> The frame of mind of one who has been ritualistically tortured into submission may not be a mind that we wholly understand, but it is one that we need to strive to ascertain.

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<sup>251</sup> Delgado, “Ascription,” *supra* note 10 at 6.

<sup>252</sup> Merton & Kinscherff, *supra* note 5 at 8.

<sup>253</sup> Merton & Kinscherff, *supra* note 5 at 8. See Streatfeild, *supra* note 10 at 383-84 for those who think that brainwashing, and the techniques behind these techniques are long dead, Streatfeild relates an interesting conversation that he had with a psychologist who worked as a consultant to MI5. When asking him about sensory deprivation and its application, the expert said “‘I don’t know anything about sensory deprivation’ he told me, ‘apart from the stuff that’s going on at the moment.’ There was an interesting development. ‘What stuff that’s going on at the moment?’ I asked. ‘Oh, nothing,’ he said. ‘Another beer?’”<sup>253</sup>

## Bibliography

### Jurisprudence

*R. v. Bernardo* (June 6, 1993), (unreported) Ontario Court General Division, St. Catharines Registry No. 125.

*R. v. Bernardo* [Evidence - Psychiatric - Karla Homolka], [1995] O.J. No. 2249 (Ont. C.J.).

### Secondary Materials

Albert D. Biderman, "The Image of 'Brainwashing'" (1962) 26 *The Public Opinion Quarterly* 547.

Angela Browne, *When Battered Women Kill* (New York: The Free Press, 1987).

Deborah Cameron and Elizabeth Frazer, *The Lust to Kill: A Feminist Investigation of Sexual Murder* (Cambridge, Polity in Association with Basil Blackwell, 1987).

Canada, *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka*, (Toronto: Ontario Ministry of the Attorney General, 1996).

Richard Delgado, "Ascription of Criminal States of Mind: Toward a Defense Theory for the Coercively Persuaded ("Brainwashed") Defendant" in Michael Louis Corrado ed., *Justification and Excuse in the Criminal Law, A Collection of Essays* (New York: Garland, 1994) 1.

Park Elliott Dietz, Robert R. Hazelwood, & Janet Warren, "The Sexually Sadistic Criminal and His Offenses" (1990) 18 *Bulletin of the American Academy of Psychiatry and the Law* 163.

Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* (New York: Pantheon Books, 1965).

Robert R. Hazelwood, Park Elliott Dietz & Janet Warren, "The Criminal Sexual Sadist" (February 1992) *FBI Law Enforcement Bulletin*.

Roy Hazelwood & Stephen G. Michaud, *Dark Dreams* (New York: St. Martin's Press, 2001).

Roy Hazelwood, Janet Warren & Park Dietz, "Complaint Victims of the Sexual Sadist" (1993) 22 *Australian Family Physician* 474.

Judith Lewis Herman, *Trauma and Recovery* (New York: BasicBooks, 1992).

Edward Hunter, *Brain-washing in Red China; The Calculated Destruction of Men's Minds* (New York: Vanguard Press, 1971).

Edward Hunter, *Brain-washing in Red China; The Calculated Destruction of Men's Minds* (New York: Vanguard Press, 1951).

D'Arcy Jenish, "The Two Faces of Karla Homolka" *Maclean's* (12 June 1995) 50.

Garth S. Jowett, "Brainwashing: The Korean POW Controversy and the Origins of a Myth" in Garth S. Jowett & Victoria O'Donnell *Readings in Propaganda and Persuasion* (Thousand Oaks, CA: Sage, 2006).

Jennifer M. Kilty & Sylvie Frigon, "Karla Homolka – From a Woman *In Danger* to a *Dangerous* Woman: Chronicling the Shifts" (2006) 17 *Women & Criminal Justice* 37.

- Wayne R. LaFave & Austin W. Scott, *Handbook on Criminal Law* (St. Paul: West Pub. Co., 1972).
- Robert Jay Lifton, *Thought Reform and the Psychology of Totalism: A Study of 'Brainwashing' in China* (New York: Norton, 1961).
- Donald T. Lunde & Thomas E. Wilson, "Brainwashing as a Defense to Criminal Liability: Patty Hearst Revisited" (1977) 13 *Criminal Law Bulletin* 314.
- Kirk Makin, "Homolka describes Bernardo Beatings" *The Globe and Mail* (20 June 1995) A1.
- Anne McGillivray, "'A Moral Vacuity in her Which is Difficult if not Impossible to Explain': Law, Psychiatry and the Remaking of Karla Homolka" (1998) *International Journal of the Legal Profession* 255.
- Joost A.M. Meerloo, *The Rape of the Mind: The Psychology of Thought Control, Menticide, and Brainwashing* (New York: Grosset & Dunlap, 1956).
- Lesly Tamarin Mega, Jessica Lee Mega, Benjamin Tamarin Mega and Beverly Moore Harris "Brainwashing and Battering Fatigue: Psychological Abuse in Domestic Violence" (2000) 61 *North Carolina Medical Journal* 260.
- Vanessa Merton & Robert Kinscherff, "Coercive Persuasion and the 'Culpable Mind'" (1981) 11 *The Hastings Center Report* 5.
- Thomas D. Nolan III, "The Indoctrination Defense: From the Korean War to Lee Boyd Malvo" (2004) 11 *Virginia Journal of Social Policy & the Law* 435.
- Lewis Okun, *Woman Abuse: Facts Replacing Myths* (Albany: State University of New York Press, 1986).
- Jim Rankin, Nick Pron & John Duncanson, "Homolka had 2 chances to let French go free" *The Toronto Star* (27 June 1995) A1.
- Thomas Robbins, Dick Anthony & James McCarthy, "Legitimizing Repressing" in David G. Bromley, James T. Richardson eds., *The Brainwashing/Deprogramming Controversy: Sociological, Psychological, Legal and Historical Perspectives* (New York: E. Mellen Press, 1983).
- Paul H. Robinson, "Causing the Conditions of One's Own Defense: A Study in the Limits of Theory in Criminal Law Doctrine" (1985) 71 *Va. L. Rev.* 1.
- John Oetje Rogge, *Why Men Confess* (New York: DaCapo Press, 1959).
- Alan W. Schefflin & Edward M. Opton, *The Mind Manipulators: A Non-Fiction Account* (New York: Paddington, 1978).
- Suzanne K. Steinmetz, "Wife Beating: A Critique and Reformulation of Existing Theory" (1978) 6 *Bulletin of the American Academy of Psychiatry and the Law* 322.
- Martin Symonds, "Victim Responses to Terror" in Frank M. Ochberg & David A. Soskis ed., *Victims of Terrorism* (Boulder, CO: Westview Press, 1982).
- Kathleen Taylor, *Brainwashing: The Science of Thought Control* (Oxford, Oxford U.P. 2004).

U.S., *Committee on Un-American Activities, House of Representatives*, 85<sup>th</sup> Cong. (1958) (in consultation with Edward Hunter: Author and Foreign Correspondent).

Richard von Krafft-Ebing, *Psychopathia Sexualis: With Especial Reference to the Antipathic Sexual Instinct: A Medico-Forensic Study* (New York: Physicians and Surgeons Book Co., 1933).

Lenore E. Walker, *The Battered Woman Syndrome* (New York: Springer Pub. Co., 1984).

Ida-Gaye Warburton, “The Commandeering of Free Will: Brainwashing as a Legitimate Defense” (2003) 16 *Cap. Def. J.* 73.

Janet I. Warren and Robert R. Hazelwood, “Relational Patterns Associated with Sexual Sadism: A Study of 20 Wives and Girlfriends” (2002) 17 *Journal of Family Violence* 75.

Denise Winn, *The Manipulated Mind: Brainwashing, Conditioning and Indoctrination* (London, Octagon Press, 2000).