

The 'rape myth': alive and well?

By Julie L. Kessler

Last October I wrote in this column about the Montana rape case which drew national attention, shock and ire. The basic facts were undisputed. In 2007, a 14-year-old girl was repeatedly raped in a schoolhouse by a man 33 years her senior, a 47-year-old teacher. At the sentencing phase, the prosecution asked for a 20-year prison term with 10 years suspended. In late August, Montana District Judge G. Todd Baugh handed down his decision on the sentence: 31 days with credit for one day served. You read correctly. For the rape of a child not even old enough to possess a learner's permit to drive, the rapist received a sentence of one month — less time than it takes for mold to grow on a loaf of rye bread in the back of the refrigerator.

Cultural Commentary

If the imposed sentence was not shocking enough, several comments made by Baugh were outrageous, the most egregious of which were that the 14-year-old victim was "older than her chronological age" and "as much in control of the situation" as her rapist. Comments that patently go against not only the underlying foundation of strict liability statutory-rape laws, but also reflect a complete detachment from the fiduciary responsibilities owed, both from teacher to student and from bench to litigant-victim.

The Montana branch of the

National Organization for Women (NOW) called on both the governor and the state's attorney general to review Baugh's action in the case. Because of that heat, in early September, Baugh ordered a new sentencing hearing to take place, then saying that Montana state law appeared to require a two-year mandatory minimum prison term. Baugh wrote that "imposing a sentence which suspends more than the mandatory minimum would be an illegal sentence." Pity that Baugh had not thought of that a bit earlier, as in before rendering his absurd and morally bereft decision. Jurisprudence utterly devoid of common sense aside, one would think that logic, precedent, decency and accountability might play a role in sentencing statutory rape too.

However, despite Baugh's very public wake-up call, he was not legally able to compel a sentence longer than the original 30 days he imposed. The Montana Supreme Court in a 4-7 decision, denied Baugh the do-over, since, under Montana state law, an illegal sentence must be processed as an appeal.

As I wrote in my prior column, even assuming for the sake of discussion that the victim looked and acted 25, produced a fake ID reflecting she was 25 and clearly stated — contrary to all presented evidence — that she *wanted* to have sex with a man old enough to be her grandfather, since statutory rape laws are ones of strict liability, the victim is legally incapable of consent. Period. Full stop. Accordingly, the man would still be convicted of

rape in a state with these types of laws. I also discussed the grotesque violation of a teacher's fiduciary responsibility to his students in a place of learning, and the horrible abuse of that trust and authority in the worst possible way: the rape of a child in a school house; the only place besides our homes where our children should be safe in an often terrifying world.

Last week the Montana Supreme Court decided the appeal and overturned the rapist's 30-day sentence, ordering that he be resentenced by a different judge. The court also criticized Baugh for his "control" comments and unanimously ruled that Baugh should not have exempted the rapist from Montana's mandatory minimum 4-year sentence. In its decision, the Montana Supreme Court wrote that the concept that the victim "could have control" of the situation is directly at odds with the law, which holds that a youth is incapable of consent." The court went on to say "That statement also disregards the serious power disparity that exists between an adult teacher and his minor pupil." These concepts of course form the very basis of the strict liability imposed, and inherent in, statutory rape laws.

This Montana Supreme Court decision, rendered seven years after the teacher's multiple rapes of the young teen, one would hope, would finally give the victim and her family some solace and a sense of closure from this seemingly never-ending nightmare. However, nowhere is the concept of "Justice delayed is justice denied" more apropos than on these facts — the

teen rape victim committed suicide in 2010, just short of her 17th birthday. She was not, apparently, "as much in control of the situation" as Baugh had previously thought.

That this case was, and remains, tragic goes without saying. However, it forces one to question the rape narrative in America and its impact and effect on American jurisprudence. That Baugh may be a judicial officer outlier of course may well be true. But if I had to guess, he may not be alone in his thoughts and ideas. The difference of course is that his position allowed him, temporarily anyway, to proffer them, in direct contradiction to the very laws he was sworn to interpret, apply and uphold. That Baugh made these statements from the bench, under color of authority and while wearing a black robe, seems to indicate that sadly, the "rape myth" may be alive and well in America.

The rape myth concept was first introduced by sociologist Martha R. Burt in 1980, and is defined as "prejudicial, stereotyped, or false beliefs about rape, rape victims and rapists." The belief in rape myths can lead us to justify acts of sexual violence by rationalizing that the victim did something wrong and therefore is at fault (i.e. She regretted having sex, so she lied about the rape. Or, look at how she dressed, she was asking for it.). It would appear that the rape myth seems to have had a solid foundation in Baugh's comments about the 14-year-old victim and the 30-day sentence he initially imposed upon the 47-year-old rapist.

According to a U.S. Bureau of

Justice study completed in June 2013, there were 89,000 rape cases reported annually in the U.S., and 16 percent of all American women have experienced an attempted or completed rape. Perhaps even more shocking, the percentage of rapes that are never reported to authorities is a whopping 60 percent. To put the state of rape in America in perspective relative to the rest of the world, on the list of countries with the highest rape rates, the U.S. comes in at number six. This is just behind Lesotho at number one, Trinidad & Tobago at number two, and Sweden, Korea and New Zealand at numbers three, four and five, respectively. According to this Bureau study, the lowest incidences of rape occurred, in ascending order, in Egypt, Azerbaijan, Armenia, Syria, Turkey, Sierra Leone and Canada.

While anyone who has studied statistics knows that numbers can be manipulated to prove or disprove just about anything, these numbers should, at a minimum, serve as a piercing alarm to action. If the U.S. is truly at, or anywhere near, number six of the countries with the highest rape rates in the world, we certainly have our work cut out for us. Both to reduce the number of instances of attempted or completed rape in the U.S., as well as to consistently apply the proper punishment of those who commit rape. Baugh is 72 years old and has said he will retire at the end of this year. While his retirement will probably not have any effect on the ongoing sentencing matter in the "control" statutory rape case, Baugh's retirement is a good thing. American jurisprudence simply

cannot afford to inadequately punish rape, or worse, in effect actively aid in perpetuating the rape myth. Nor can it afford to permit the rendering of decisions that fly in the face of well-established law, reflect moral collapse or which result in the wholesale denial of justice to rape victims and their families.

The Montana branch of the NOW submitted a complaint against Baugh to the Montana judicial-standards commission in September, and that complaint is now pending before the Montana Supreme Court. According to last week's opinion, that matter will be addressed separately.

Stay tuned.

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