"I, ROBERT OLAV NOYES, ..."

by

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B.Sc. Hons., University of Toronto, 1989

THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS

in the School

of

Criminology

SIMON FRASER UNIVERSITY

August 1994

APPROVAL

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Degree: Master of Arts

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Abstract

This thesis considers how dangerousness is ascribed and censured in Dangerous Offender hearings conducted under Part XXIV of the Canadian Criminal Code. The study explores the construction and deconstruction of dangerousness by medical and legal professionals, along with the diffusion of images about dangerous offenders contained in media coverage and public accounts. Consideration is given both to the power to characterize certain individuals as dangerous and to translate this classification into medico-legal sanctions, and to the loci, forms and extent of resistance to such control practices.

A case study approach is employed, in which the various discourses on dangerousness articulated in the case of one legally defined dangerous offender - namely Robert Olav Noyes, a British Columbia school principal convicted of sexual offences against children - are examined. Analysis concentrates on the vocabularies of censure and resistance that emerged before, during and after Noyes' 1986 dangerous offender hearing. Data sources comprise the official transcripts of the provincial Supreme Court hearing; newspaper articles, editorials, features and letters to the editor; and semi-structured interviews conducted with, and mail-out questionnaires completed by, various individuals who participated in the Noyes hearing, its antecedent events and aftermath.

Qualitative analyses of these data demonstrate that clinical, legal, public and media perceptions of Noyes and his offending varied substantially. Two vocabularies of censure (medical and public protectionist discourses) and two vocabularies of resistance to censure (civil rights and critical discourses) are identified. These four discourses differed in form, function and organization, although there were many points of overlap in their enlistment by those involved in the Noyes hearing, and in media reporting, research questionnaires and interviews.

Overall, the thesis findings substantiate the critical perspective on dangerousness that has developed over the past two decades. Through the various accounts of the Noyes hearing that are elicited in this study, dangerousness is revealed to be a political and moral construct, whose legal and clinical properties cannot be separated from the dominant discourses and professional interests that govern its construction and mobilization in Canadian dangerous offender tribunals, and more widely in legal, clinical and public culture.

Acknowledgements

I am most grateful to the following people:

The individuals and institutions who participated, in one way or another, in this study and who ultimately made this work possible.

Robert Menzies, my Senior Supervisor, for his guidance, patience and ongoing support.

John and Toula Koutetes, my parents, for their strength, support and encouragement.

Bill Glackman and Steven Hart, members of my examining committee, for their participation, and their examination and favorable evaluation of the work.

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Chapter One

Introduction

1.1 Overview

This thesis concerns itself with dangerousness. In sharp contrast to the conventional clinical literature, the research that follows does not proceed on the assumption that dangerousness is a manifestation of mental illness. Its purpose is not to identify and enumerate "underlying psychopathologies", to propose variables and factors that may assist in the accurate prediction of future dangerousness or to suggest means and methods to mitigate the harm posed by dangerous offenders.

Informed by revisionist critiques which have exposed the constitutive and shifting nature of dangerousness, and the term's "...recurrent circulation in the context of moral panics, legislative expansion, institutional proliferation, and [in] the ascendancy of 'new' professions and interest groups" (Menzies, 1986, p. 205), this research examines how dangerousness is constructed and censured in the context of Dangerous Offender hearings and in and through discursive practices. It also considers the loci, forms and extent of resistance to the exercise of power to characterize certain individuals as dangerous and to translate this classification into legal and/or other sanctions.

To a large extent, the research presented in this thesis was inspired by Foucault's "I, Pierre Rivière,..." (1982). In that work, a number of theoretical issues and questions were raised through an examination of an 1835 parricide case. More specifically, a dossier containing medical and police reports, court exhibits including statements by witnesses, newspaper articles, court documents and Rivière's own memoir was published by Foucault in its entirety and then analyzed. The approach proved particularly effective in highlighting the different and often competing discourses on Pierre Rivière and in reconstructing the discursive confrontations that ensued.

In this thesis, a case study approach will be similarly enlisted to examine the theoretical issues outlined above. The case of one court-designated dangerous offender, Robert Olav Noyes, will serve as an exemplar of how dangerousness is discursively played out in both legal and public arenas. The Noyes hearing was conducted in 1986 following the 38 year old school principal's plea of guilt to ten counts of indecent assault and nine counts of sexual assault on predominantly male children. It was selected from among 100 other Dangerous Offender hearings convened across Canada since 1977 because the unprecedented court time, media attention and public notoriety that it received, the number and variety of witnesses subphoenaed[1], and the similarities and differences between Noyes and the "typical" dangerous offender permitted the

[1] A total of 26 Crown and three defense witnesses testified at the Noyes hearing. Included among them were mental health professionals, medical doctors, school administrators and colleagues, and parents of victims.

articulation, circulation and deployment of a number of competing and sometimes overlapping discourses.

The focus in this thesis will be on discourses on dangerousness, and on vocabularies of censure and of resistance to censure (Mills, 1940; Sumner, 1983; Lowman & McLaren, 1990). Data sources will comprise the official Robert Noyes Dangerous Offender hearing court transcripts, newspaper articles, letters, editorials and features dating from the time of Noyes' arrest (April 28, 1985) to his official labeling and his indeterminate confinement as a Dangerous Offender (June 9, 1986), as well as materials derived in the course of semi-structured interviews with various individuals who participated in the construction and censure, and the deconstruction and resistance to the censure of Noyes, his offending and his imputed dangerousness. The quantity of the data collected made it difficult to proceed, as Foucault did, by ordering the materials chronologically and then reprinting them in their entirety. In lieu of this, the perceptions of the key protagonists on the major issues that arose during the course of the hearing and more general questions concerning dangerousness and Dangerous Offender legislation are summarized and where possible reproduced verbatim.

1.2 The History of the Concept of Dangerousness

During the course of modern history, the term "dangerous" has been repeatedly reconstituted and used, with varying degrees of explicitness and regularity, to define, censure and sanction perceived recalcitrant populations. In Middle England, as Sarbin's (1967) etymological analysis has shown, the term referred to the power of a Lord or master to harm or dispose of his vassals. Prior to the 19th century, a number of groups acquired the label "dangerous", among them the Christians of Roman times, highwaymen, vagabonds, escaped servants, labourers, artificers, political and religious heretics and freethinkers (Rennie, 1978).

During the 1800s, as the Second Enclosure Movement and the Industrial Revolution were well under way and the proletarization of labourers was near complete, the concept of dangerousness was modified and "inextricably linked with class affiliation and with bourgeois interests in conserving privilege and property" (Menzies, 1986, p.184). The term was applied to those populations that threatened the bourgeois constituted social order, namely the working poor, the "vicious" poor and criminals who were collectively known as the Dangerous Classes (Radzinowicz, 1966). In the second half of the nineteenth century, the term was reconstituted by positivist ideology and ultimately came to refer to a definable biosocial category. Cesare Lombroso claimed that the defining characteristic of the dangerous offenders was an *etat dangereux* which he understood as

> the perversion of the affective sphere, the hate, exaggerated and without motive, the absence or insufficiency of all restraint, [and] multiple hereditary tendencies... (in Rennie, 1978, p. 68).

In their campaigns to establish the above images in the public conscience and in the legal arena, positivists developed two additional terms. Raffaele Garafalo, a distinguished judge in Naples, developed the term *temibilita* (fearsomeness) and defined it as

> the active and constant perversity of the agent and the quantum of harm to be apprehended from him (in Rennie, 1978, p. 72).

Enrico Ferri, a lawyer, reformulated the term in greater detail with the concept of *pericolosita* which, in turn, referred to the probability of an individual's reversion to crime.

Contemporary to and immersed within positivist ideology, the nascent profession of psychiatry took the concept one step further by forging a closer and presumably more intelligible link between insanity, violence and dangerousness through the concepts of moral idiocy (a precursor to the twentieth century notion of the psychopath) and monomania (the danger that was immanent to the state of mental illness) (Menzies, 1986, p. 186). Cumulatively, positivistic, legal and psychiatric conceptions of dangerousness fashioned a situation in which the dangerous offender came to be viewed

> as falling somewhere between the healthy and the psychotic, the responsible and the irresponsible, the doomed and far from hopeless. The dangerous offender was both mad and bad, the former being less obvious than the latter (Dinitz & Conrad, 1978, pp. 105-106).

Over the course of this century, the concept of dangerousness has continued to expand throughout the medical-legal apparatus. Changes in the criminal and civil law

> ..enlarged, organized and codified the suspicion and the locating of dangerous individuals from the rare and monstrous figure of the monomaniac to the common everyday figure of the degenerate, of the pervert, of the constitutionally unbalanced, of the immature, etc. (Foucault, 1978, p. 17).

1.2 Dangerousness and the Critical Literature

In reviewing and analyzing the history of the dangerousness concept, and in charting its shifting and constitutive nature, a number of researchers have opposed the conventional depiction of this phenomenon as a personality trait and/or as an empirical description of specific social behaviors. This revisionist critique has resulted in the reconceptualization of the term and a corresponding interest in the genealogy of the dangerousness concept. Combining elements of symbolic interactionist and social reaction theories, Sarbin (1967) has suggested that the term "dangerous" is a symbol denoting relational power in a social organization and that

> the assaultive or violent behavior that leads us to attach the label "dangerous" to an offender can best be understood as the predictable outcome of certain antecedent and concurrent conditions (Sarbin, p. 286).

The creation of the dangerous offender, Sarbin asserts, is the result of social identity transformations produced in large measure by the institutions that have been created to manage and mold him or her (Sarbin, p. 294). In a similar fashion, Sutherland (1950) attributes the diffusion of sexual psychopath legislation in the United States to moral

panics precipitated by a few spectacular sex crimes, and augmented by the responses of legal personnel and psychiatric authorities. He contends that the content of such legislation is attributable to a general social movement towards the treatment of criminals as patients, rather than to overt demonstrations that treatment is more effective than punishment in protecting society or that pathology is directly related to crime.

Petrunik (1983) concerns himself less with moral panics and more with

> ...the ideological underpinnings of the notion of dangerousness, the uses to which [dangerousness] is put in the formulation of measures of social control and how the various sorts of claims about dangerousness and its assessment reflect the concerns and interests of different interest groups (Petrunik, 1983, p. 226).

Petrunik's research addresses, in the Canadian context, a variety of ideologies on dangerousness, the role of the human element, and the resistance that was launched in respect to aspects of preventative detention legislation in the late 1960s and early 1970s by civil rights advocates and "human science" researchers (Petrunik, p. 233). He suggests that the form and content of Canadian dangerous offender legislation have been influenced by social control ideologies, interest group pressures and pragmatic political adaptations to these factors. For her part, Rennie (1978) contributes a critical historical summary of ideas about crime and dangerousness and an analysis of the cultural, theological, social, economic and legal matrices within which they were formed. She has concluded:

> the "dangerous offender" is a protean concept, changing its color and shape to suit the fears, interests and prejudices of a society...It is an idea, not a person (Rennie, p. xvii).

Finally, Foucault (1978) has examined the concept of the dangerous individual in nineteenth century legal psychiatry. He has focused specifically on how, in and through the construction, articulation and deployment of constructs such as homicidal monomania and degeneration, mental health professionals entered legal terrain from below, through the mechanisms of punishment and as specialists in motivation. The concept of the dangerous individual, he has suggested, was invented by psychiatry - but it was accepted by legal officials not only because of its seemingly scientific basis but because it resolved the dispositional problems experienced by the courts where certain offenders were concerned. Over and above this, Foucault has demonstrated that a new set of objects and concepts were born at the boundaries of, and from the interchanges between, psychological knowledge and the judicial institution. With regard to the last point, Foucault has observed:

> by bringing increasingly to the fore not only the criminal as author of the act, but also the dangerous individual as potential source of acts,...one...give[s] society rights over the individual based on what he is. No longer, of course, based on what he is by statute (as was the case in societies under the Ancien Regime) but based on what he is by nature, according to his constitution, character traits, or his pathological variables (Foucault, 1978. p. 17).

Cumulatively, the above research has shown that, at different historical junctures, the deployment and circulation of the dangerousness construct has been only marginally related to a concern with overt manifestations of violence and aggression or authoritative demonstrations of a link between mental illness and crime in general. It has drawn attention to, and elaborated on the economic, social and political antecedents and concomitants related to the construction and censure of dangerousness, the

immediate and long-term advantages accrued by individuals and institutions who have mobilized legitimating images and messages, and the practical effects that the construction of dangerousness has had in the social field. It has also actively endorsed the notion that dangerousness is an ideologically mediated construct and, to some extent, it has explored the processes by which dangerousness and the dangerous individual have been constituted in and through ideology and as effects of power.

However, and without underplaying the theoretical and practical significance of the above work, the tendency to present only the dominant ideologies on dangerousness, the exclusion of any resistance to the exercise of power to characterize individuals and groups as dangerous, and the erasure of the human element, have individually and cumulatively limited the above analyses and have contributed to their often conspiratorial and deterministic tone. The contents and effects of more critical ideologies on dangerousness have generally remained unanalyzed. This has resulted in a failure to acknowledge that: (1) civil rights and critical discourses have played a role in the persisting popularity of the concept of dangerousness, precisely because researchers and civil rights advocates did not question the existence of the dangerous offender but directed their objection more towards the application of the term; (2) while both were instrumental in the movement away from designating habitual non-violent offenders as dangerous, both, to varying degrees, were also helpful in creating a new category of dangerous offenders, namely violent criminals; and (3) critical

material on dangerousness was not ignored or passed over by lawmakers in Canada and elsewhere but was selectively co-opted.

4.3 Theoretical and Practical Objectives of the Thesis

This thesis examines how dangerousness is constructed and censured in the context of the Noyes Dangerous Offender hearing. The theoretical framework that will be developed throughout this thesis enlists Foucault's focus on discourse and his position on ideology, power and knowledge. The key themes reviewed in the critical literature, and their application to the Noyes case, are examined through an explicitly discursive analysis. Unlike prior critical work in the area of dangerousness, the research that follows focuses principally on the role of ideology and human agency in the construction and deconstruction of dangerousness. Consideration will also be given to the loci, forms and extent of resistance to the exercise of power to characterize certain individuals as dangerous and to translate this classification into legal and/or other sanctions.

These general questions on the construction and deconstruction of censuring practices related to dangerousness generate a number of subsidiary questions. Several issues will be addressed in the course of this thesis, including: (1) how discourses differ in form, organization, and function; (2) how they intersect; (3) how they constitute a contest or a battle among discourses and through discourses at macro,

mecro and micro levels; and (4) how discourses become weapons of attack or defense in relations of power and knowledge.

Dangerousness, in the context of this thesis, is conceptualized not as a symbol, or an idea or a label with no real reference point or justifiability. Consistent with Sumner's (1983) reconstruction of the deviance concept, dangerousness is viewed mainly as a social censure - that is, as a negative ideological term of abuse or disapproval which is at root practical, tactical, political and moral, but which at the same time superficially, selectively and partially refers to real people and relies on general moral principles (Sumner, p. 196). Sumner has remarked that censures are unintelligible outside of the ideologies that constitute them, and the economic, political and cultural contexts which precipitate and sustain their use. Both the former and the latter are considered in this thesis. The emphasis, however, will be on the site at which censures are constituted, articulated and deployed, namely in and through discourse.

Discourse refers to written or spoken words, to the domain of language use, or more concisely to language practised. Any analysis of discourse involves a number of epistemological assumptions. Among these is the idea that language is not neutral in that it constructs meaning at the same time that it reflects it. Related to this is the notion that discourse through language puts into play a privileged set of viewpoints; it makes certain thoughts and ideas present, others absent (Eisenstein, 1988, p. 10). Reality, in this epistemological framework, is openly textured so that multiple

standpoints, truths, and above all, sites of power can coexist (Eisenstein, pp. 10-11). Power is viewed not as a property or commodity which may be seized or acquired. It is dispersed and ascending, it is present throughout social structures and relations, and it is something which is exercised through "dispositions, maneuvers, tactics, techniques and functionings" (Smart, 1983, pp. 86-87). Relations of power (ways of acting upon the actions of other acting objects) become the focus of discursive analyses (Smart, 1986, p. 169). In addition, power is conceptualized as productive, in the sense that it constitutes reality and resistance through discourse. Discourses transmit, disperse and produce power but at the same time they undermine and expose it.

This thesis focuses primarily on factors that have been consistently ignored in the critical literature on dangerousness, and it extends a Foucauldian analysis to the phenomenon of dangerousness, through a specific case analysis. No political rationale or direction for action against existing practices will be offered. This follows from a belief that future practices will not be the direct outcome of any reform agendae but will be the direct consequence of transformations in the constructed reality of dangerousness. In order to bring about changes, those directly affected by existing practices must come to understand the prevailing regimes of truth embedded in and through discursive practices, and must understand from this that their emancipation can be achieved only through transforming dangerousness by speaking out and acting on their own behalf. The practical importance of this thesis, therefore, rests on unmasking the prevailing regimes of truth. In doing so, discourse is offered as a weapon of attack

or defense - in short, as a means of both decomposing and reconstituting received truths about the dangerousness construct.

In what follows, the historical context within which the Noyes hearing occurred is examined (Chapter 2). In Chapter 3, the research methods are outlined. Perceptions of Noyes, his offending and his dangerousness, and perceptions of Dangerous Offender legislation and dangerousness are explored and analyzed in Chapters 4 and 5 respectively. In the final chapter, the findings of the research, and the main themes to be developed in this thesis, are reviewed and summarized.

Chapter 2

Historical Background

The purpose of this chapter is to describe the historical context within which the Noyes hearing occurred. To this end the enactment, contents and application of Dangerous Offender legislation are reviewed as are the substance and practical effects of two pre-1986, federally commissioned reports on child sexual abuse. Consideration is also given to the Clifford Olson case and the climate of panic and outrage which it precipitated. In the final section, the background events leading up to the Noyes Dangerous Offender hearing are examined.

2.1 Dangerous Offender Legislation

In 1977, the Canadian Parliament enacted Dangerous Offender legislation under Part XXIV (then Part XXI) of the Criminal Code. It did so despite American and Canadian research findings (Greenland, 1971, 1972, 1976; Marcus; 1971; Kozol, Boucher & Garafalo, 1972; Steadman & Cocozza, 1974; Quinsey, 1975a; Quinsey, Warneford, Preusse & Link, 1975b; Quinsey, Preusse & Fernley, 1975c; Quinsey, Preusse & Fernley, 1975d; Cocozza & Steadman, 1976) that rendered questionable the prediction of dangerousness, and despite academic and civil libertarian critiques (Price, 1970; Klein, 1973, 1976; Law Reform Commission, 1975; Price & Gold,

1976) that emphasized the general failure of Habitual Criminal (1947) and Dangerous Sexual Offender (1948) legislation and the Bill of Rights violations that had resulted from the inconsistent and arbitrary application of these provisions.

An understanding of why statutory action was taken in the face of such ardent opposition requires an examination of the particular historical juncture within which Dangerous Offender legislation was recommended and considered. First, as Petrunik (1983) indicates the provisions were an integral component of the Federal Government's 1977 Peace and Security Package. The desire on the part of the Solicitor General and Prime Minister of Canada to abolish capital punishment, at a time when 80% of the public supported executions under at least some circumstances, significantly shaped the contents of the omnibus legislative program. If capital punishment was to be eliminated then other conservative controls (such as handgun regulations, tighter parole provisions, and legislation that specifically targeted "dangerous offenders" and provided for their indeterminate detention) were viewed as a necessary concession aimed at securing public legitimacy and deflecting the opposition of interest groups such as police and correctional employee associations (Petrunik, p. 245).

A second important precipitating factor in the renaissance of dangerousness was the trend during the 1960s and 1970s towards bifurcation policies and ideologies in both the penal and mental health systems (Bottoms, 1977; Petrunik, 1978; Menzies, 1986). A deepening fiscal crisis coupled with the rising costs of state crime control

functions, and doubts about the efficacy of correctional programs, led to the development of social control strategies aimed at two categories of legal subjects - those who could be managed safely in the community, and those whose dangerousness required their secure and sometimes long-term confinement in penal and psychiatric institutions (Bottoms, 1977; Petrunik, 1978; Cohen, 1979; Menzies, 1986). Dangerous Offender legislation, with its targeting of "deep end" offenders and its reliance on the indeterminate sentence option, was consistent with this trend.

Third, the enactment of special provisions for "dangerous offenders" had been recommended and/or endorsed by federal (Ouimet, 1969; Goldenberg, 1974) and professional (Canadian Mental Health Association, 1969; Gilkes & Salus, 1975; Law Reform Commission, 1975; Law Reform Commission, 1976) committees and by the Solicitor General's own Advisory Board of Psychiatric Consultants (Koz, 1971-72, 1972-73 as cited in Petrunik, p. 239). The psychiatrists, lawyers, academics, police and correctional workers who comprised these committees both enlisted and reaffirmed presumptions about the existence of discernible categories of dangerous offenders. The partial confluence of preoccupations and discourses between the representatives of medical, public protectionist and civil libertarian interests had a powerful effect in legitimizing the need for Dangerous Offender legislation.

Ultimately, the Part XXIV provisions were a reflection of the complex interplay among these various perspectives, and among the different interest groups who were

involved. In particular, medical and public protectionist models and discourses were embedded in the sections of the legislation that dealt with the definition and sentencing of dangerous offenders, and in the restricted range of civil liberties afforded to this group. Civil rights discourse, in contrast, was at best a marginal element of the final legislation as the limited procedural and evidentiary safeguards embedded in the 1961 amended Dangerous Sexual Offender statute were incorporated into the new legislation almost wholesale. Conspicuously absent from the new Part XXIV were the kinds of substantive and evidentiary reforms that many commentators had deemed essential for protecting the civil rights of alleged and court designated dangerous offenders[2] .

> In general terms, the primary purpose of the legislation was to
>
> [provide] for the indeterminate confinement of those persons judged by a tribunal to be dangerous, after their conviction for specified violent and/or sexual offences (Menzies, 1986, p. 188).

More specifically and in the context of Part XXIV, convicted offenders could be declared "dangerous" if they demonstrated "a failure to control their sexual impulses" and/ or if they constituted "a threat to the life, safety or physical and/or mental well-being of other persons." The specified violent and/or sexual offences are all (indictable) serious personal injury offences which carry maximum terms of imprisonment of ten years or more[3] .

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[2] See McRuer, 1958; Mewett, 1961; Price, 1970; Law Reform Commission, 1975; Price and Gold, 1976.

[3] As originally enacted and prior to the 1980-81-82 Criminal Code amendments, the specified sexual offences included rape; attempted rape or an attempt to commit the offence(s) of sexual intercourse with a female under 14 years of age or between 14 and 16 years of age; indecent assault on a female; indecent

An application for a hearing requires the consent of the Attorney General of the province in which the offender is tried. Following the making of an application, at least seven days notice has to be given to the offender outlining the basis upon which the Crown intends to proceed under Part XXIV. Without exception, hearings are conducted before a judge sitting alone[4] .

Elsewhere in Part XXIV, the testimony of two psychiatrists (one for crown counsel and one for the defense) is required[5] . Further, the legislation provides for the remand of candidates to a diagnostic facility for a maximum of sixty days in instances where there is reason to believe that evidence might be obtained as a result of such observation[6] . Finally, Part XXIV grants dangerous offenders who are sentenced to an indeterminate term of preventive detention the right to appeal such a sentence on any ground of law or fact or mixed law and fact, and the right to periodic review after three years of custody and no later than every two years thereafter[7] (see Appendix 1 for a reproduction of Dangerous Offender legislation).

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assault on a male; and gross indecency. With the exception of the last two offences, these specified serious personal injury offences carried a ten year maximum term of imprisonment. An attempt to commit an indecent assault on a male and gross indecency carried a five year maximum term.

[4] Sections 754 (1)(a), (1)(b), and 2 respectively.

[5] Sections 755 (1) and (2).

[6] Section 756 (2)(a) and (2)(b).

[7] Sections 759 (1) and 761 (1) respectively.

In practice, as reported by Jakimiec, Porporino, Addario and Webster (1986)[8], a relatively homogeneous group of Canadian offenders has been targeted by the legislation. The vast majority of dangerous offenders are Caucasian males whose mean age at the time of the positive finding was 35 years of age. The average dangerous offender has acquired a grade 10 education and sits at the lower rungs of the socioeconomic scale. The mean number of past convictions incurred by the Jakimiec et al (1986) sample was 8.3 and the mean number of previous provincial and/or federal incarcerations was four (averaging 76 months). In 43% of the cases, the application was prompted by a single conviction for a single offence. For over three quarters of the sample the index crime was a sexual offence which, for the most part, involved female victims older than twelve years of age. Only two males and one (the only) female have received fixed sentences of 14, 10 and two years respectively (Jakimiec et al, 1986).

2.2 The Badgley and Fraser Committee Reports

In the 1980s, the problem of child sexual abuse was constructed largely in and through the words and deeds of a number of identifiable professional interest groups. In the Canadian context, two federally commissioned reports, namely The Report of

[8] In this study, descriptive data were collected for 50 of the 60 dangerous offenders who had been so designated between October 1977 and December 1985.

the Committee on Sexual Offences against Children and Youths[9] and The Report of the Special Committee on Pornography and Prostitution[10] , were most instrumental in the manufacture and organization of the problem.

The Badgley Report was the end product of an 11 member commission appointed jointly, in February 1981, by the Minister of Justice and the Minister of National Health and Welfare and chaired by Dr. Robin Badgley of the University of Toronto. The Badgley Committee was mandated:

> ...to ascertain the incidence and prevalence of sexual abuse against children and youths and of their exploitation for sexual purposes by way of prostitution and pornography (Badgley Report, 1984, p. 3).

Members were asked to pay special attention to issues of age and consent, and to obtain "comprehensive factual information" on all the relevant areas of inquiry. They were further instructed to determine the adequacy of existing Canadian laws in safeguarding young persons from sexual offences, and to make recommendations for improving this protection.

Three and a half years after its establishment, the Badgley Committee reported that one in two females and one in three males had been victims of sexual offences. It concluded that not only was child sexual abuse "[a] pervasive tragedy that has damaged

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[9] The Report of the Committee on Sexual Offences Against Children and Youths and the committee that produced it are hereafter referred to as the Badgley Report and the Badgley Committee, respectively.

[10] The Report of the Special Committee on Pornography and Prostitution and the committee that authored it are hereafter referred to as the Fraser Report and the Fraser Committee, respectively.

the lives of tens of thousands of Canadian children and youths" but also that the protection afforded to victims by both the legal system and social services was inadequate (Badgley Report, p. 29). On the basis of these two primary conclusions, 52 recommendations were made. Among the Badgley Committee's proposals were the following: the establishment of an Office of the Commissioner whose duty would be to provide an effective network of services for the assistance and protection of child victims of sexual abuse, the development and implementation of public education and health promotion, the strengthening of services to child victims, the establishment of information systems with data on victims and offenders, and the undertaking of comprehensive, fact-finding research on (*inter alia*) the consequences of child sexual abuse on its victims, the long-term effects of exposure to pornography, and the treatment and recidivism of child sexual offenders.

Approximately half of the Badgley Committee's recommendations focused exclusively on legislative reforms to existing Criminal Code provisions relating to offences against young persons, and the rules of evidence as they pertained to the victims of such crimes. The Badgley Committee called for the creation of three new indictable offences[11] that would absorb, in whole or in part, under-age sexual intercourse and seduction laws and would criminalize other sex-related acts.

[11] These were: (1) touching anyone under the age of 16 years for a sexual purpose with any part of the body or with an object, (2) inviting or inciting a child under the age of 14 years to touch another person in a sexual way and (3) the sexual touching with, on or against a young person under the age of 18 years by a person in a position of trust. These three categories correspond to the present Criminal Code offences of sexual interference (section 151), invitation to sexual touching (section 152) and sexual exploitation (section 153), respectively.

Amendments to provisions relating to indecent acts, indecent exposure[12] and buggery[13] were suggested, as was the creation of additional offences with respect to bestiality[14] .

Consideration was also given to the Part XXIV statutory provisions and to child sex offenders who upon sentencing were designated as dangerous offenders. Data were gathered which compared this group with other convicted child sex offenders on a number of offence- and offender-related variables. The Committee found that

> [w]hen the circumstances of the sexual offences committed by dangerous child offenders are compared to those committed by other convicted male offenders, it is evident that the main dimensions of the elements of the offences committed by both groups were remarkably similar (Badgley Report, p. 941).

It noted though that there were "sharp and persistent regional disparities" in the application of Part XXIV provisions[15] and that a significant factor influencing the making of an application for a dangerous offender hearing was the type of association between offenders and victims[16] . To facilitate the more consistent and frequent use of

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[12] The Badgley Committee called for the creation and separate classification of a new summary conviction offence, namely the exposure of one's genitals to a person under the age of 16 years.

[13] An act of buggery on a person under 18 years of age, even with that person's consent, was considered "...sufficiently serious and distinctive behavior to warrant a separate section in the Criminal Code (Badgley Report, p. 54).

[14] The Committee proposed that the following two activities be included in the Criminal Code section pertaining to bestiality (section 155): (1) compelling another person to commit bestiality; and (2) committing bestiality in the presence of or with the participation of another person under the age of 18.

[15] Four out of five dangerous child sex offenders were so designated in Ontario, Alberta and British Columbia. No convicted child sex offender in Newfoundland, New Brunswick, the Yukon and the Northwest Territories had been the subject of a Dangerous Offender hearing.

[16] According to the Committee:

Dangerous Offender provisions against child sex offenders, the Badgley Committee advocated: (1) a precise specification in the legislation of those sex offences that fell within the parameters of a serious personal injury; (2) deletion of any reference to the prediction of future behavior; and (3) elimination of the requirement for physical and/or mental harm as threshold criteria. In the event that these amendments were not implemented, the Badgley Committee recommended the enactment of new legislation separate from Dangerous Offender provisions and consistent with the above requirements.

An overhaul of provisions relating to the testimony of child victims was also proposed. It was the Badgley Committee's view that amendments which would, for example, render admissible the uncorroborated evidence of young persons, remove the special rules of testimonial competency with respect to children, and eliminate the one year statute of limitations pertaining to child sexual abuse offences, would better help young persons "...enjoy the protection the law [sought] to afford them" (Badgley Report, p. 67).

Elsewhere in its Report, the Badgley Committee recommended that juvenile prostitution be made a summary offence. It contended that

> in order to bring...[juvenile prostitutes] into situations where they [could] receive guidance and assistance, it is first necessary to hold them and the only

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one in 15 dangerous offenders was a family member or relative of the victim; three in five were strangers. In contrast, of other convicted male offenders, over one in four was a family member or relative and about an equal proportion [were strangers] (Badgley Report, p. 941).

> effective means of doing [so] is through the criminal process (Badgley Report, p. 1046).

For clients and persons living partly or entirely on the avails of juvenile prostitutes, the Badgley Committee recommended the imposition of severe criminal sanctions and no recourse to the mistake of age defense. Finally - and in spite of its finding that only 1.3% of all pornographic materials seized in Canada involved children - the Committee recommended the creation of new laws to limit the production, distribution and possession of child pornography.

Two years after the establishment of the Badgley Committee, a second federal commission chaired by Paul Fraser, Q.C., was appointed by the Minister of Justice to study the problems associated with pornography and prostitution in general. The Fraser Committee was asked to address issues concerning the existing definition and impact of pornography, and to assess public opinions about the use of pornographic materials. Moreover, it was mandated to evaluate the problems and legal implications of: loitering and street soliciting; the operation of bawdy houses and living off the avails of prostitution; and the exploitation of prostitutes (Fraser Report, 1984, pp. 5-6). The Fraser Committee was further instructed to solicit public views on ways and means of dealing with pornography and prostitution, to consider the experiences of other countries, and to offer recommendations in both these areas.

Eight months after the release of the Badgley Report and just five days before Noyes' initial arrest, the Fraser Committee made public its 105 recommendation report.

Two fundamentally different approaches were adopted to the problems of adult and child prostitution and pornography. The liberal philosophy that underlay its recommendations on adult prostitution and pornography gave way to a brand of moral conservatism and legislative zeal reminiscent of the Badgley Committee when discussion turned to the involvement of young persons in these same activities. As one member, John McLaren, has since written

> [the Committee] was of the opinion that the vigorous enforcement of the criminal law had a role to play in penalizing those who sexually exploit young people... Law enforcement authorities should be encouraged to develop...investigative techniques and programs which will assist in detecting and dealing resolutely with procurers, pimps, customers and pornographers (McLaren, 1986, p. 49).

From the time of its establishment, the Badgley Committee had been oriented towards establishing a linkage between various consensual and non-consensual, and violent and non-violent, sex-related acts. Young persons were portrayed as a special class in need of protection, and child sexual abuse as a legislative problem that required a statutory solution. In and through its official discourse, the Committee not only reaffirmed and added legitimacy to these views but also actively participated in the production of a morally conservative and paternalistic social consensus on the "problem of child sexual abuse" and the need to "protect" all young persons from sexual activity.

According to the Committee, there was a close association between such diverse practices as prostitution, pornographic productions, incest, sexual violence and consensual sexual activity between young persons - they were uniformly categorized as

child sexual abuse (Brock & Kinsman, 1986, p. 109). In the Committee's marginalization of the social, economic and gender relations within which abuse takes place and its treatment of abuse as a purely sexual problem, young people were recurrently depicted as an endangered cohort that needed special forms of legal shielding from all forms of sexual practises (Brock & Kinsman, p. 109). Protection, in the discourse of the Badgley Report, was equated with: (1) the enactment of age and behavior-specific offences; (2) the specification of severe penalties and limitations on the defenses available to alleged offenders; and (3) an expanded apparatus of sexual regulation directed by and consistent with the interests of service providers, namely professionals and experts (Sullivan, 1986, p. 187).

The Fraser Committee, to some extent, recirculated the Badgley Committee's regime of truth. Fraser et al, for example, did not challenge the Badgley Committee's basic presumptions and proposed forms of regulation. Instead, and in spite of the wide latitude that its terms of reference afforded it, Fraser mirrored Badgley in its discussions and recommendations on child prostitution and pornography.

The mass media provided further closure on the issue of child sexual abuse. Selected empirical findings (particularly those relating to incidence and prevalence) and the recommendations of both committees were the subject of widespread media reporting and commentary. The central concepts invoked by the two committees - such as "child sexual abuse," "the sexually abused child" and "the problem of child sexual

abuse" - were deployed with increasing regularity but were rarely examined critically. In fact, as Brock and Kinsman (1986) have noted

> much of the mainstream media perceive[d] the [Badgley] Report as having established an objective assessment of "sexual abuse" as a contemporary phenomenon (Brock & Kinsman, p. 121).

Ultimately, the perspectives of both Committees permeated mainstream reporting on the issue of child sexual abuse and (as Chapter 4 will show) were to figure prominently in the media presentation of Robert Noyes and his sexual offences.

2.3 Clifford Olson

A discussion of the historical context of the Noyes hearing would not be complete without some mention of the Clifford Olson case and the public panic and outrage that it provoked. The trial, its background and consequences highlighted the predominantly moral conservative consensus that existed in British Columbia on the subject of offences against children. Moreover, as a direct result of their problematic handling of the Olson case, the Attorney General of the province and the police (later, two key protagonists in the Noyes hearing) found themselves in a crisis of legitimacy.

One writer has described July to mid August of 1981 as

> a time of fear for the nearly two million people who lived in Vancouver, its sprawling suburbs on the Fraser River delta and in the nearby farming towns that are scattered on the fertile valley (Mulgrew, 1991, p. ix).

The source of the fear was the increasing number of young persons who had been reported missing, and the four among them who had been found murdered. As later information would reveal, that summer marked the apex of a nine month killing spree by British Columbia's most notorious serial killer. It also represented the culmination of a public panic that was fostered by the media, by government and by various groups in the community.

The mass media brought to public attention each successive disappearance and murder, and broadcast the grief endured by the parents of both known and suspected victims. Despite statements from R.C.M.P. officials to the contrary, reporters contended that all these occurrences were probably the work of a single individual whom they described in newscasts and headlines as "[a] cunning killer with blazing eyes" (Mulgrew, p. 61). Public panic intensified as the media relayed the R.C.M.P.'s pleas for assistance and information, and as parents were warned about the risks being faced by their children.

In an effort to prompt a greater response from the police and from provincial and federal governments, the parents of one known victim and three (at the time) still missing children orchestrated a massive publicity campaign. Ten thousand posters bearing the pictures of the three missing children with a chilling warning "Our children are missing and yours could be next" were circulated throughout British Columbia

(Mulgrew, p. 58). The group's spokesperson, Chris Burgess, further fuelled the flames of public anxiety with statements like the following:

> Some maniac has declared war on the children of this country... Three bodies [have been found] within three miles of one another. Unless someone wants to try to convince me that there's a communal dump site for psychotics out there, it's obvious we're dealing with the same animal... [The various police forces and R.C.M.P. detachments] are moving on this like a snail on valium (Mulgrew, pp. 61-62).

The media and the parents of known and suspected victims were not alone in fuelling the province-wide panic. The British Columbia Federation of Labor, for example, launched an anti-hitchhiking campaign, and various citizens, trade unions, local companies and philanthropists collaborated to offer a sizable reward for information relating to the kidnappings and killings. During the course of the police investigation nearly 200 officers became involved in the manhunt and over 2400 people were interviewed. Surveillance teams were employed and a helicopter equipped with an infra-red camera combed the Fraser Valley in search of the bodies of suspected victims.

The disappearances and murders ceased when Clifford Robert Olson was taken into custody on August 12, 1981. Olson was a 41 year old former police informant who had spent, in all his adult life, less than 50 months free from 24 hour supervision. He had been identified as a suspect by police investigators as early as the first occurrence in 1980, but in the absence of material evidence he could not be detained. As public panic mounted, and as investigators became increasingly concerned that the

warm weather would hasten the decomposition of victim's bodies and hence destroy the main source of incriminating evidence, the R.C.M.P. placed Olson under active surveillance in the hope that he would implicate himself. On the seventh day of surveillance, police arrested and charged him with impaired and dangerous driving after he was observed turning into a wooded area with two female hitchhikers he had picked up earlier. Subsequently, an address book was found belonging to Olson and containing the name of one murdered victim, Judy Kozma, and a witness was located whose statements placed Olson in the victim's company on the day of her reported disappearance.

Shortly after notification that first degree murder charges would be laid, Olson began to negotiate a deal with the R.C.M.P. The agreement that has subsequently been referred to as "the money for graves deal" was authorized by the R.C.M.P. Deputy Commissioner in Ottawa, Henry Jensen, and by the then Attorney General of British Columbia, Allan Williams. It provided that in exchange for a sum of $100 000 payable in installments to Olson's wife and child, Olson would lead R.C.M.P. investigators to the sites where seven of his victims were located and would provide material evidence concerning the homicides of the four victims whose bodies had already been recovered.

On the grounds that any publicity might violate Olson's right to be presumed innocent and might therefore compromise his conviction, Allan Williams thereupon approached television, print and radio media executives and asked them to keep secret

the deal he had authorized. For almost five months, the media refrained from mentioning or even acknowledging the existence of the pact. Even the questions raised about the payoff by Elmer McKay, a Conservative Member of Parliament, in the House of Commons were censored by British Columbia's media (Mulgrew, p. 127). On September 17, 1981 the last body was recovered and the final $10 000 installment paid.

In January 1982, after a truncated proceeding in which only the Crown's summation of evidence was heard, Olson pleaded guilty to the first degree murder of 11 young persons between the ages of nine and 17. Although Olson had provided the R.C.M.P. with tape recorded statements detailing the acts of necrophilia, paedophilia, sadism and sodomy he had perpetrated on his victims, his aborted trial and the silence of the Attorney General and the R.C.M.P. officials involved in the case ensured that this information would remain outside of the public domain. The details of his crimes were of interest to the parents of the victims, the media and the general public. The deal also became a central focus for these groups when, at the conclusion of the trial, John Hall (Crown counsel in the case) confirmed that an exchange of money had occurred five months earlier.

Public outrage and indignation began to escalate as some of the details of the deal and the identities of its signatories became known, and as the conspiracy of silence between the media and those directly involved in the Olson case was made public.

Media outlets, both those that had been party to the pact and those that had not, vilified Allan Williams and denounced the deal. Senior R.C.M.P. officials who had been directly involved in the Olson case and who had negotiated the deal also came under attack when a secret briefing document[17] revealed what was interpreted as a botched investigation. According to the report, Olson had been identified as a suspect, by standard police practises, in December 1980 when the first murder victim was found and then again during the murder and missing children investigations of early July 1981. Had Olson been arrested or at least put under surveillance immediately, argued reporters and the parents of victims, at least half of the murders would have been prevented.

The Office of the Attorney General and the R.C.M.P. had both entered into a crisis of legitimacy. The public's disenchantment was reflected in a public opinion poll indicating that nearly nine out of ten people had lost faith in the Attorney General, and that 60% of those surveyed wanted a public inquiry into the affair (Mulgrew, p.164). Williams responded by asking the provincial coroner's office to review the case privately. When the report was delivered in June 1982, it was summarily dismissed as a government cover-up. Ten months later, Allan Williams announced that he would not be running for re-election.

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[17] The document was left behind by Williams at one of his press conferences and was subsequently stolen by Ian Mulgrew, a Globe and Mail correspondent, and George Oakes, the west coast correspondent for the Southam News wire service.

In an effort to examine the details of the deal and to recover the $100 000, seven of the families of Olson's victims filed a writ suing Olson, his family and his lawyers under a provision in the British Columbia Family Compensation Act. On December 7, 1984 the Supreme Court of British Columbia ordered that the full $100 000 plus interest be returned to the families. On March 11, 1986, the British Columbia Court of Appeal reversed the lower court's decision. A few months later the Supreme Court of Canada refused, without explanation, to consider the parents' appeal.

Olson, the "cash for bodies deal" and the police investigation were the subjects of media attention and public concern for a period of more than six years. Two months into the Noyes hearing, Olson's name re-emerged in the print media - this time, in reports that the Courts had denied his victims' families any legal claim to the $100 000. As Chapter 4 will show, the Olson articles went beyond a simple presentation of events. Their prominence, and their placement in close proximity to stories about Robert Noyes, implied something more.

2.4 Background To The Events Leading To The Robert Noyes Dangerous Offender Hearing

Robert Noyes was born on December 6, 1948 in Winnipeg, Manitoba. In the late 1960s, he left northern Ontario and moved with his parents to Vancouver, where he enrolled in the Faculty of Education at the University of British Columbia. In 1970,

he left school for a year and began working with the Children's Aid Society as a resident supervisor at the Eileen Corbett reception centre. Noyes was fired and asked to seek professional help in July of that year after an 11-year-old child in his care (Count 1, Schedule 1) brought incidents of fondling and mutual masturbation to the attention of the head supervisor.

Upon completion of a Bachelor of Science in education, in 1972, Noyes secured employment as a physical education teacher at Balmoral High School in North Vancouver. In late November and early December of that year, he disclosed both his sexual attraction to and involvement with young boys to Dr. Maelor Vallance, a private psychiatrist.

From 1974 to 1978, Noyes was employed by the Coquitlam school district first at George Pearkes Junior High (1974 - 1976) and then at Roy Stibbs Elementary (1976 - 1978). On referral from his general practitioner, Dr. David Kell, Noyes visited Dr. Pedro Paragas who, during the course of eleven sessions, assessed him and engaged him in individual psychotherapy. During the latter part of his treatment and up until early 1978, Noyes was seen and treated for numerous ailments and injuries, and somatic complaints whose cause(s) remained undetermined by his new general practitioner, Dr. Robert Kochendorfer.

Noyes again came into contact with mental health professionals in early 1978. He admitted himself into Vancouver General Hospital the day after the mothers of two of his male students filed complaints of child sexual abuse (Counts 2 and 3, Schedules 2 and 3) with school principal, Jack Thomas, and following a telephone conversation between one of the complainants and Dr. Kochendorfer.

During Noyes' six-day stay at the Vancouver General Hospital, Psychiatric Assessment Unit, he was seen by a medical resident (Dr. Walter Rebeyka), a social worker (Peter Choate) and two psychiatrists (Dr. Peter Nicholls and Dr. Vallance). A week after discharge, Noyes was admitted to the Day House, Health Sciences Centre at the University of British Columbia where he was assessed by Dr. Britt Bright, a resident at the time, and where he remained in day care for seven consecutive weeks of intensive psychotherapy administered largely by psychologist Judith Lazerson. While he was in treatment and on medical leave, Dr. John Blatherwick, the Medical Health Officer for the Coquitlam school district who had become involved when the allegations of sexual abuse first surfaced, negotiated Noyes' resignation, effective June 1978, from the district.

Before accepting a teaching post in Vanderhoof at the Nechako Valley Secondary School, Noyes participated in three after care and three follow-up sessions with Dr. Patricia Schwartz and Dr. Vallance, respectively. He obtained the necessary medical clearance to resume teaching from Dr. Kochendorfer. Prior to hiring Noyes,

school officials in Vanderhoof, including the principal of the high school, David MacKinley, were made aware of the allegations that had precipitated the events of early to mid 1978, when they contacted their Coquitlam counterparts. Between the time of his employment in September of 1978 and his departure in 1980, Noyes engaged in acts of fondling, mutual masturbation and fellatio with two of his male students (Counts 4 and 5, Schedules 4 and 5, respectively). Complaints of child sexual abuse did not surface though until 1985.

In the fall of 1980, Noyes married and moved to Gibsons Landing to work for four years in two separate schools in the Sunshine Coast school district where John Denley, who had been his vice principal at Balmoral Junior Secondary, was superintendent. Noyes taught for 18 months at an alternative school (Elphinstone Secondary School), designed for secondary school-aged children with behavior problems, before he transferred to the elementary school in neighbouring Langdale. A year after his move to the Sunshine Coast and after repeated complaints of palpitations, sweating, shaking and disorientation, Noyes' family physician, Dr. Rand Rudland, referred him to a neurologist, Dr. Kastrukoff, and to a local psychiatrist, Dr. William Bridge. Both were asked to determine which of his physical complaints were the result of organic illness or impairment and which, if not all, were psychiatric or psychological in origin. Additional neurological tests and psychiatric examinations were ordered and conducted on an in-patient basis at the Health Sciences Centre at the University of British Columbia from January 7 to 15, 1982.

From October 22, 1981 to January 21, 1982, Noyes visited Dr. Bridge on seven occasions for one to one psychotherapy and hypnotherapy. Following disclosures of past offending and ongoing sexual fantasies involving children, Noyes was referred by him to psychologist Bruce Etches for behavior modification therapy at Riverview Hospital. In all, Noyes was seen by Etches on an out-patient basis for 23 sessions from March 5, 1982 until June 30, 1983, just three months after the birth of his first child. In the fall of 1982, while Noyes was under Etches' care and teaching at Langdale, the mother of a seven-year-old child called school principal, Bob Wetmore, and complained about Noyes' practice of having her son sit on his lap. The mother was referred directly to Noyes with whom she met on one occasion to discuss the lap-sitting incidents. Approximately three years later, Noyes admitted that he had fondled and/or engaged this child (Count 9, Schedule 9) and six others (Counts 6, 7, 8, 10, 11 and 12, Schedules 6, 7, 8, 10, 11, and 12) in mutual masturbation.

In 1983, Noyes was selected by Bruce Avis (the Superintendent of the South Cariboo school district) and the school board over two local applicants (Lisa Hadiken, a teacher, and Ward Bishop, the mayor and counselor at the high school) to assume the principalship at Coopervale Elementary in Ashcroft. In the two years that followed, Noyes had sexual contact with seven students (six males and one female). The incidents to which Noyes later pleaded guilty involved fondling, masturbation, mutual masturbation and, to one child only, the display of homosexual pornography.

Then, on April 26, 1985 a female provincial ward living in Kamloops reported to a Ministry of Human Resources social worker, Cynthia Hansen, that she had been sexually abused by her 37 year old Ashcroft elementary school principal, Robert Noyes. Hansen notified the R.C.M.P. The complainant, along with a second child whom she cited as another victim, were interviewed and on April 28, 1985 Noyes was arrested and charged with two counts of sexual assault. A list of possible victims - including the second grade son of the investigating officer - was provided by the initial complainant. Complaints from other Coopervale Elementary School children soon followed. A full-scale investigation was launched with the objective of identifying, locating and interviewing children with whom Noyes had had sexual contact in both the early and later stages of his career, and of seizing and subpoenaing psychiatric and medical reports, confidential files and teaching correspondences in which Noyes had disclosed his activities with children. Two weeks after the initial charges, 14 additional counts of sexual assault were laid. On May 21, 1985 Noyes was arrested again and charged by a third information with 16 counts of sexual assault. At each successive court appearance relating to the above charges, Noyes entered a not guilty plea.

During the period leading up to the trial, the police were not alone in censuring Noyes and his activities. On April 29, 1985 (the day after his initial arrest), Noyes was suspended indefinitely without pay by the board of school trustees for school district 30 (South Cariboo). On May 16, 1985 Ken Young, counsel for Noyes, filed a notice of challenge to the constitutional validity of the section in the School Act under which the

suspension was ordered[18] , along with a petition seeking either Noyes' reinstatement or his suspension with pay. Two weeks later, the appeal failed in the British Columbia Supreme Court.

As a second set of sexual assault charges were being accumulated in Ashcroft, the South Cariboo school board, and later the Sunshine Coast district boards, joined forces with the provincial ministries of education, health and human resources to bring into the communities a number of counselors and mental health professionals to help alleged victims and their families to (as one reporter stated) "cope with the trauma" (Margoshes, 1-8-86, A1). When rumour spread in Ashcroft of a possible lynching, Noyes, his wife and his two year old and 16 month old sons left the community of 2,500 and moved into the Burnaby home of a friend. There, on July 12, 1985 a Ministry of Human Resources representative seized, without warning or notice, Noyes' two children and placed them in foster care[19] . Noyes' attorney Young eventually negotiated the return of the children but pending custody proceedings, a restriction order was issued permitting Noyes access to his children during the daytime only. Custody proceedings were dropped by the Superintendent of Child Services only after Mrs. Noyes agreed, on August 22, 1985, to leave the province with the children.

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[18] The section that was at issue was Section 122 (1) (b) of the School Act. It permitted school boards to suspend teachers charged with a criminal offence, although it also provided for the reinstatement of teachers who were subsequently acquitted.

[19] The Ministry was apparently responding to two reports filed by an unnamed complainant that alleged Noyes had molested his sons by handling their penises on two occasions: once, when he was changing a diaper and once while bathing them.

As early as the summer of 1985, there was also evidence that the offices of the Crown and the Attorney General would actively participate in the prosecution. When the Assistant Deputy Attorney General was advised of the existing and pending charges, he instructed that no further decisions about the conduct of the case against Noyes were to be made until he had met with four senior people in the Crown office. At that meeting, it was resolved by all parties present that Crown counsel in each of the five jurisdictions in which Noyes was charged would not be permitted to accept Noyes' pleas or to deal with him in the conventional manner. Instead, it was decided that upon Noyes' conviction on the combined charges, the Crown with the Attorney General's signed consent would proceed under Part XXIV of the Criminal Code. Barry Sullivan (a senior barrister in the organization who had handled high profile cases in the past) and Michael Harrison were selected to try the case and to conduct the Dangerous Offender hearing.

By the time of the trial, the 32 charges had been reduced to ten counts of indecent assault and nine counts of sexual assault. The charges spanned a 15 year period and involved mostly male children[20] from the five different learning institutions in Ashcroft, the Gibsons-Langdale area, Vanderhoof, Coquitlam and Vancouver where Noyes had served as a child care worker, teacher or principal. The complainants ranged in age, at the times materially alleged, from six to 15 years. The number of alleged incidents ranged from one to two per complainant to, in some instances, a

[20] Only one female child was named in the indictment.

hundred. The incidents themselves consisted of: fondling and masturbation (almost invariably with both participants fully clothed), fellatio (on two separate occasions and with two of the complainants), and the display of homosexual pornography (on one occasion and to one complainant only). All the complainants stated that on no occasion were force or violence, or threats of force or violence, used to secure their compliance in the acts alleged.

On January 7, 1986 Noyes pleaded guilty to every count alleged. Immediately following the plea, Barry Sullivan made public his intention of proceeding under Part XXIV and requested that Noyes be remanded into custody. The following day, bail was revoked. Soon thereafter, a group of Ashcroft parents began to demand a public inquiry, the Cariboo School board formally fired Noyes, and Jack Heinrich, the education minister at the time, revoked Noyes' teaching certificate.

Dangerous Offender proceedings began on January 20, 1986 with evidence and argument presented on Noyes' behalf that the Dangerous Offender provisions, in general, contravened sections 7, 12 and 15 of The Charter of Rights and Freedoms. Following the Crown rebuttal, Justice Raymond Paris elected to reserve judgment on the constitutional challenge until he had before him Crown and defense evidence and arguments pertaining directly to the case. In what followed, the Court heard the evidence of 26 Crown and two defense witnesses. The witnesses for the Crown included: seven psychiatrists, three medical doctors and a single psychologist whose

services Noyes had sought from 1975 to 1985; school officials in some of the five districts where he had been employed since 1972; and the parents of four victims. The two defense witnesses were both psychiatrists who had become involved in Noyes' treatment following his arrest. After 45 days of hearings, on June 9, 1986, Noyes was designated a Dangerous Offender and sentenced to an indeterminate term of preventive detention. To the present date, he remains in custody.

Implicit in this brief chronology are the many dissimilarities between Noyes and the national sample described in the first section of this chapter. Noyes was both university educated and basically middle class[21] . In addition, his victims were predominantly male children. Finally, Noyes had never been convicted of an indictable or summary offence and, by implication, had never been incarcerated in a provincial or federal penal institution[22] .

Given that a case study approach is employed in this thesis to explore the key theoretical issues outlined in Chapter 1, it is important to acknowledge these differences as they will, to some extent, bear directly on the generalizability and representativeness

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[21] Although background data on each individual dangerous offender's educational and socioeconomic status as indicated by type of employment are not available, it appears that at least among British Columbia's 1977 to 1985 dangerous offender population, Noyes is the only individual with a university degree (a Bachelor of Education). He is, as well, one of the 29% among this cohort who did not have an erratic work record and/or were not unemployed or on welfare at the time of arrest (Pos, Grant, Coles & Schellenberg, unpublished, Case 1-21).

[22] At the time of Noyes' hearing only three other dangerous offenders (two of whom were designated in Ontario and one in British Columbia) were in the same position (from data provided by the Solicitor General of Canada).

of my work. At the same time, it is also important to recognize that the unique attributes of this case were a major factor in its notoriety and public profile, and were largely responsible for the ensuing circulation of competing discourses about dangerousness in the court and media and in academic, legal and civil communities. A detailed analysis of these alternative accounts of the Noyes hearing, as they were constructed by and through the official court transcripts, local print media, and the words and deeds of participants, comprises the following three chapters of this thesis.

Chapter 3

Research Methods

3.1 Introduction

A case study approach that focuses exclusively on the discourses on dangerousness articulated in the case of one labelled Dangerous Offender is used to explore the key theoretical issues developed in Chapter 1. The decision to proceed with an analysis of the discourses on dangerousness that were articulated and circulated during R. v. Noyes (1986), from among the more than 100 Dangerous Offender hearings convened across Canada since 1977, was not an arbitrary one. Robert Noyes and his activities received unprecedented court time, media attention and public notoriety. Both the convergences and the discrepancies between Noyes and the "typical" dangerous offender, in terms of personal history and offence characteristics, permitted the articulation, circulation and deployment of a number of competing, and sometimes overlapping, discourses that will be the subject of analysis in Chapters 4 and 5.

As described in Chapter 2, the Noyes case was clearly a watershed. Prior to 1987, of the 18 successful Dangerous Offender applications in British Columbia for which there is information available, 15 occupied no more than four days of court time (Pos, Grant, Coles & Schellenberg, unpublished). Only one other Dangerous Offender

hearing in British Columbia's history (R. v. Carlson, 1985) approximated the Noyes hearing in the length of time it took for the Court to hear the testimony and submissions that were put forth (17 days against 45 in R. v. Noyes), and in the number of witnesses called by Crown (35 in Carlson, 26 in Noyes) and defense counsel (four versus three, respectively) (Pos, Grant, Coles & Schellenberg, unpublished, Case Summaries, Case 20, p. 1). The criteria for selection stated above are not meant to imply that any given Dangerous Offender hearing is not meritorious of or even amenable to an investigation of the type undertaken in this thesis. Rather, thesis scope and breadth requirements made the Noyes hearing a more appropriate choice.

3.2 Data Sources

Following from the theoretical framework developed in Chapter 1, this thesis is concerned with the identification and analysis of the vocabularies of censure, and of resistance to censure, embedded in three principal data sources, namely, the Noyes Dangerous Offender hearing court transcripts, newspaper materials, and interview and questionnaire responses. In the subsections that follow, the contents and compilation of each data set are described.

3.21 The Hearing Transcripts

The official R. v. Noyes Dangerous Offender hearing court transcripts were the first source of thesis data. Following denial of access to the original hearing transcripts by the Vancouver Criminal Registry, the Law Courts[23] , the office of the presiding judge (Justice Raymond Paris) was contacted. In his response, Mr. Trevor Hughes (Clerk of the Court) indicated the following: transcripts could be obtained through the court reporters who were assigned to the hearing at a personal cost of $1.00 to $1.50 a page; criminal files are open to inspection only by the accused, his counsel and Crown counsel assigned to the case; members of the general public may have access to a copy of the indictment[24] and/or the reasons for judgement; and requests for specific materials would have to be referred to the trial judge or Chief Justice. Given the exorbitant cost that the first option would have incurred, a formal request was submitted for access to the transcripts. Permission was subsequently granted to view part of the record[25] . Arrangements for office space in the Criminal Registry Department were made for the week of April 8, 1991 and for June 8, 9 and 10, 1991.

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[23] When contacted, Criminal Registry personnel stated that the publication ban on the names of the complainants and the identities of the parties who authored letters in one of the exhibits prohibited them from granting me access, in whole or in part, to the record.

[24] In accordance with the terms of the publication ban, the complainants' names would be deleted from the indictment.

[25] Transcripts bearing the identities of the individuals named in the indictment and the names of the parties who authored one of the exhibits were unavailable as a decision was reached to honor the terms of the ban on publication.

In the interest of time limitations and with the permission of the Criminal Registry Office, the transcripts were read into a tape recorder and then transcribed.

In sum, 1808 pages of testimony and submissions (30 bound volumes) covering 28 days of the 45 day hearing were made available. The documents included the submissions of the accused; the complete testimony of nine Crown witnesses (four psychiatrists, a psychologist, a medical doctor, a health records administrator, a school official and the mayor of Ashcroft); and the partial testimony of four Crown witnesses (two psychiatrists, a Medical Health Officer and a school official) and three defense witnesses (one psychiatrist who was called during the six days of argument on the constitutionality of the Dangerous Offender provisions, and two psychiatrists who testified during the hearing itself).

These Registry transcripts, however, represented less than half of the complete set of testimony that was heard and considered by the Court and only a fraction of the arguments advanced by Crown and defense counsel. In order to supplement the above documentary data base, the defense counsel and the appeals lawyer in the case, Mr. Ken Young, was contacted. Mr. Young confirmed that he had in his possession most of the medical testimony tendered at the time of the hearing and in January, 1992 permitted access to it. Photocopies were subsequently made of 693 pages of additional materials. This second data set included: the remaining testimony of three of the four Crown witnesses (two psychiatrists and a medical doctor) and two of the three defense

witnesses (two psychiatrists mentioned above); the complete evidence of an additional three Crown witnesses (a medical doctor, a social worker and a psychiatrist); and Mr. Young's closing arguments, the admission of facts and the 19 schedules that accompanied it, the notice of appeal and the Court of Appeal brief.

Altogether, the combined documents included the complete testimony of 15 of the 26 Crown and two of the three defense witnesses, and the partial evidence of an additional Crown and defense witness (see Table 3.1 for a complete list of the data collected). The data set covered approximately 32½ out of 36 days of testimony and two out of nine days of Crown and defense arguments.

Recovery of the remaining documents was not possible as Crown counsel, Barry Sullivan, had died in 1989 and his assistant, Stephen Harrison, had since left the country. Inaccessible and therefore unavailable for consideration in the thesis is the remaining testimony of the one Crown and one defense witness mentioned above, and the entire evidence of four parents of the victims, a teacher, a school principal, a nurse therapist and three other Crown witnesses whose identities and/or professions could not be ascertained through the Criminal Registry, Mr. Young or from the newspaper coverage.

Table 3.1: Court Transcript Data

1. Partial testimony of Peggy Koopman (psychologist; witness for defense)
2. Testimony of Pedro Paragas (psychiatrist; witness for the Crown)
3. Testimony of Robert Kochendorfer (medical doctor; witness for the Crown)
4. Testimony of Judy Lynn Renfrew (Health Records Administrator, Vancouver General Hospital; witness for Crown)
5. Testimony of Walter Rebeyka (medical doctor; witness for the Crown)
6. Testimony of Peter Choate (sociologist; witness for the Crown)
7. Testimony of Maelor Vallance (psychiatrist; witness for the Crown)
8. Testimony of Peter Nicholls (psychiatrist; witness for the Crown)
9. Testimony of Britt Bright (psychiatrist; witness for the Crown)
10. Testimony of Patricia Schwartz (psychiatrist; witness for the Crown)
11. Testimony of John Blatherwick (medical health officer; witness for the Crown)
12. Testimony of David McKinley (Assistent Superintendent of School District 56; witness for the Crown)
13. Partial testimony of John Denley (Superintendent of School District 46; witness for the Crown)
14. Testimony of Henry Bridge (psychiatrist; witness for the Crown)
15. Testimony of Bruce Etches (psychologist; witness for the Crown)
16. Testimony of Ward Bishop (teacher and mayor of Ashcroft; witness for the Crown)
17. Testimony of Robert Pos (psychiatrist; witness for the Crown)
18. Testimony of John Bradford (psychiatrist; witness for the defense)
19. Testimony of Roy O'Shaughnessy (psychiatrist; witness for the defense)
20. Submissions of the accused
21. A portion of the overall Crown and defense submissions and arguments
22. Reasons for judgement
23. The indictment
24. Schedules 1 through 19
25. Notice of appeal
26. Court of Appeal brief

3.22 Media Materials

The second principal data source for this thesis consists of the articles, features, letters to the editor and editorials that made reference to Robert Noyes, his activities and the legal repercussions that followed, or to child sexual abuse and child sexual offenders in general. With regard to the latter, materials that focused on the antecedents, incidence, prevalence, and effects of child sexual abuse, the clinical profile of child sexual offenders, and proposed policy changes and initiatives were included. The data were collected from three newspapers available for circulation in the city of Vancouver, namely The Province, The Vancouver Sun, and The Globe and Mail. Three distinct time frames were covered: (1) the period of Noyes' initial and subsequent arrests (April 28 to May 21, 1985); (2) the span prior to and including the plea of guilt (January 1 to January 7, 1986); and (3) the phase linking the Crown's public announcement that it would proceed with a Dangerous Offender application, Noyes' official labelling and sentencing as a Dangerous Offender, and the aftermath (January 8 to June 31, 1986).

Given the incomplete representation of relevant articles, features, editorials and letters to the editor in the Canadian and British Columbia News Indexes, it was necessary to conduct a manual, day-to-day search on microfiche for the duration of each phase. To guard against overlooking materials in the initial search, the process

was repeated a second time. The materials collected were then compared with an extensive but not exhaustive library file[26] . Table 3.2 displays the quantity and type of reportage on the subjects and object of interest present in the three newspapers under consideration. A cursory examination of Table 3.2 confirms that in aggregate terms a large amount of material was generated. In sum, 115 items with specific references to Noyes and 48 items on the general areas of child sex offenders and child sexual abuse were printed. While the quantity of editorials and letters to the editor did not vary substantially, there were marked differences in the number of articles and features between newspapers on both areas of interest. Cumulatively, the greatest number of articles and features on Noyes were published in The Vancouver Sun (70 and 7 respectively, versus 27 and 0 in The Province and 4 and 0 in The Globe and Mail). Articles and features that contained general comments on child sexual abuse and child sex offenders were also much more prevalent in The Vancouver Sun (13 and 5 respectively, versus 10 and 0 in The Globe and Mail and 9 and 0 in The Province) (see Appendix 2 for the complete of materials comprising each subset of data).

[26] This file was compiled by personnel at the Vancouver Public Library.

Table 3.2: Newspaper Data

Newspaper	Type of Reportage:				
	Articles	Features	Letters	Editorials	Total
The Vancouver Sun					
Noyes	70	7	2	1	80
Child sexual abuse and offenders	13	5	2	0	20
The Province					
Noyes	27	0	3	1	31
Child sexual abuse and offenders	9	0	6	0	15
The Globe and Mail					
Noyes	4	0	0	0	4
Child sexual abuse and offenders	10	0	2	1	13
Total	133	12	15	3	163

3.23 Interview Data

The last data source under consideration in this thesis has been derived from semi-structured interviews with some of the key protagonists in the Noyes hearing. These interviews were intended to supplement both court transcript documents and newspaper materials by providing key players with the opportunity to voice their perceptions and ideas about Noyes and his activities; about the various issues that related to the hearing (such as media coverage, the labelling and selection of Noyes,civil rights violations and harm done); and about dangerousness, Dangerous Offenders and Dangerous Offender legislation in general.

In preparation for interviews, a strategic sample was chosen in March, 1991 and a protocol was drawn up in October, 1991 to correspond with the aim of exposing the various discourses on dangerousness that were articulated, circulated and deployed both at the centre (that is, the courtroom) and at the periphery of the drama. The sample of 34 prospective interviewees included: the Crown and defense witnesses identified in the court transcript and newspaper materials (nine psychiatrists, two psychologists, two medical doctors, the Medical Health Officer of one of the school districts where Noyes had taught, three school officials, two of Noyes' teaching colleagues, one sociologist and one nurse therapist); defense counsel; in lieu of Crown counsel, the Assistant Deputy Attorney General who had overseen the Crown's case; the presiding judge; the three reporters who had systematically covered the hearing and submitted materials to

the three newspapers under consideration in the thesis; the two R.C.M.P. officers who were in charge of the investigations that preceded criminal charges; two representatives of the general public (a mayor and a parent activist); and Noyes himself, along with one of his friends who was mentioned several times during the course of the hearing but who never actually testified.

Conspicuously absent from the above list are the parents of the victims. Initially, they were also part of the sample but for ethical reasons they were subsequently deleted. The R.C.M.P. officer who investigated the initial complaints against Noyes[27] , and the health records administrator who was subpoenaed by the Crown[28] , were also deleted from the sample.

Ethical approval to locate, contact and interview members of the above-described sample, save and except those mentioned in the preceding paragraph, was granted by the Simon Fraser University Research Ethics Committee in June, 1991. It was acknowledged from the very beginning, however, that locating the entire sample would be at best problematic. Six years had passed since the Noyes Dangerous Offender hearing and numerous transfers and relocations were highly likely. As expected, the location of many subjects - 15 in total - could not be ascertained through

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[27] Newspaper materials and court documents revealed that he, too, was a parent of a victim.

[28] The limited nature of this witness' involvement precluded her inclusion in the sample. She was called by the Crown not to testify directly on the many issues that arose during the course of the hearing but for the sole purpose of introducing into the record Noyes' Vancouver General Hospital file.

telephone directory searches and/or conversations with individuals in their agencies and institutions of employment during the time of the hearing. In several instances, the province of residence was intimated but subsequent telephone directory searches proved fruitless. Eighteen potential respondents (excluding Robert Noyes himself), on the other hand, were located - 13 in the Vancouver or Greater Vancouver area, one in Gibsons, one in Sechelt, one in Victoria, one in Ottawa and one in Nova Scotia.

Regrettably, limited resources rendered impracticable the original plan to conduct face-to-face interviews with the entire sample. Accordingly and prior to establishing contact with the "out of town" group, a decision had to be made on an alternative means of administering the protocol to at least some portion of the group. At the time, the only financially feasible alternative was a subject-administered, mail-out questionnaire, followed by a telephone interview if written responses needed elaboration and/or if new questions arose from responses. Given the focus of the thesis, it was thought appropriate first to solicit Noyes' participation in a face-to-face interview and then to proceed by either asking the remaining five prospective "out of town" subjects to participate by completing a questionnaire if Noyes consented or by conducting interviews with as many members of this group as resources permitted if he declined.

Problems of a different nature were expected to hinder access to Robert Noyes, whose location within the federal correctional system is not a matter of public

record[29] . Personnel at one of the federal penal institutions where Noyes had been held previously were contacted and their assistance requested. One individual was able to provide the name and phone number of a contact who, because of his rank and close proximity to Noyes, could act as an intermediary. In a telephone conversation with this individual, the nature and purpose of the research and, in particular, the interview component were disclosed and his consent to forward materials to Noyes was secured. From the information available, it was discovered that Noyes was being held at a federal prison outside of British Columbia.

A formal request was sent introducing myself and the research, and soliciting the participation of Noyes and the 13 local potential interviewees. It was stressed that participation was voluntary and that respondents would be free to withdraw their consent, in full or in part, without qualification at any point during the course of the interview. Potential interviewees were also assured confidentiality if they wished, and the liberty to decide what information not already in the public domain should be communicated or withheld. Unless an objection was raised, all interviews were to be tape recorded and the tapes destroyed after their contents were transcribed.

Upon receipt of the request and after a telephone conversation, Noyes agreed to participate. He did reveal his location within the federal correctional system, but both

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[29] This information is protected by Section 8 (1) of the Privacy Act which states that "[p]ersonal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution..." (Information Commissioner of Canada,1991, p. 151).

he and his lawyer asked that the information remain confidential. Permission to enter the prison for the purpose of conducting the interview was granted by the institution's Chief of Case Management.

Of the 13 local prospective participants, seven (three psychiatrists and one psychologist (all of whom had been subpoenaed by the Crown), one newspaper reporter, defense counsel and Noyes' friend) agreed to participate. One of the psychiatrists stated that he did not wish to comment directly on Noyes or his hearing, and defense counsel asked that his responses not be tape recorded. Interview times and dates were set with all of the participants and travelling arrangements were made in order to meet with Noyes.

Of the remaining six local candidates for interviews, three (the Medical Health Officer, a psychiatrist and the presiding judge) declined. The latter (Justice Raymond Paris) stated that the legal basis for his decision is inherent in the original judgement and in his reasons for judgement, and that the constitutional doctrine of the separation of the different branches of government required that judges not engage in any public discussions or debates over social policy (in this instance, Dangerous Offender legislation). The remaining three prospective interviewees (one defense psychiatrist, one defense psychologist and a medical doctor) did not respond to the request and failed to return any and all phone calls.

The five "out of town" prospective participants (a defense psychiatrist, an R.C.M.P. officer, a parent activist, the mayor of Gibsons and the Assistant Deputy Attorney General) were sent a formal written invitation and were asked to participate by completing a research protocol containing the questions that would have been posed had a face-to-face interview been possible. All five agreed to participate. A package containing the research protocol, an informed consent form, a subject feedback form, a postage paid return envelope and a cover letter[30] was subsequently sent to each participant. Following the receipt of the package, an injury prevented the Gibsons respondent from completing the questionnaire and hence arrangements were made to conduct a face-to-face interview after all. In the end, the defense psychiatrist did not respond to the research protocol or to subsequent written and telephone inquiries.

The research protocol was designed according to a semi-structured format in order to avoid either limiting or artificially expanding the range of possible responses. The protocol itself comprised two sections. Part One dealt with participants' perceptions of dangerous offenders and Dangerous Offender legislation. On the subject of legal doctrine and process, participants were asked the following: When and in what context had they become familiar with Dangerous Offender legislation? Under what circumstances was the legislation passed? Whom did the legislation define as a "dangerous offender"? Who was to be protected by the legislation? How did the

[30] The cover letter reminded participants of their rights as research subjects, elaborated on the contents and relevance of each item in the package, and finally, thanked them for their time and effort.

legislation protect those against whom Dangerous Offender proceedings were brought to bear? What is the purpose of the indeterminate sentence? What role should experts play in such proceedings? Were they satisfied with the contents and application of the current Dangerous Offender legislation? If not, what remedies did they consider to be appropriate?

In order to probe respondents' conceptions of the dangerousness construct, the following questions were posed: Do "dangerous" individuals exist? If so, who are they and why are they "dangerous"? Are all violent offenders "dangerous"? Are all sex offenders "dangerous"? Are all violent sex offenders "dangerous"? Is dangerousness a legal and/or medical and/or other kind of problem? What is/are the appropriate way(s) to deal with "dangerous" individuals?

Part Two of the protocol dealt directly with participants' perceptions of Robert Noyes, of the activities that had precipitated the criminal charges against Noyes, and of his imputed dangerousness. Questions in Part Two varied across interviews and questionnaires depending on the participants' professional background and level, extent and type of involvement in the hearing. Professional background information pertaining to each respondent's length of service and past involvement in Dangerous Offender hearings was collected and all participants were asked to define the duty of their respective offices or positions. Based on information in the court transcript and newspaper materials, specific questions focussing on each participant's pre- and/or

post-1985 involvement with Noyes were formulated. Where applicable, respondents were also asked what professional and personal benefits and losses were associated with their participation in the hearing.

Further, individuals were encouraged to comment on whether and how the various labels (for example, "dangerous", "psychopath", "drug dependent" and "sex offender") attached to Robert Noyes during the hearing did or did not apply to him. Also asked were the following: How were Mr. Noyes, Dangerous Offender legislation, sex offenders in general and each respondent himself or herself portrayed by the media at the time of the hearing? Were Robert Noyes' civil liberties violated in any way? Why had Noyes engaged in the activities that had led to his arrest? How was he able to do so over such a long period of time without incurring a single legal charge? What kind and degree of harm was perpetrated on the victims, their families, the communities, and on society in general? What alternative sentencing dispositions would have been appropriate? Why did Mr. Noyes not receive the short, fixed sentence that had been imposed on all other persons in British Columbia with authority over children who had been charged with sexual and/or indecent assault in 1985 and 1986? Was his case somehow different, and if so, in what way? Have there been any changes in the handling of similar fact cases as a result of the Noyes Dangerous Offender hearing? Will Mr. Noyes be released? If so, when? Should conditions be imposed upon his release? If and when he is released, what will be the public and media response?

These various issues and questions, in sum, were the subject of nine face-to-face interviews and three written mail-out questionnaires (for a list of participants, see Table 3.3). On average, interviews were two and a half hours in duration. The shortest was completed within one and a half hours and the two longest interviews in seven hours each[31]. Responses to the mail-out questionnaires, in contrast, were relatively brief and in two instances subsequent telephone interviews were necessary to elaborate onresponses. Two participants asked that their identities not be revealed. For the sake of consistency, all questionnaire and interview participants are identified in Chapters 4 and 5 by profession and by an assigned respondent code number. As promised, all tapes were destroyed after their contents was transcribed.

An overwhelming majority of the participants expressed a genuine interest in the subject matter. Three participants voluntarily and at their own expense supplied me with additional documents. Robert Noyes provided copies of psychiatric reports, therapy notes and personal thoughts that were written subsequent to his incarceration. One psychiatrist presented me with a recent journal article that supported and specified the role of psychiatrists in Dangerous Offender hearings (Coles & Grant, 1991). Another psychiatrist submitted a package containing examples of Canadian research on

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[31] A number of "off the record" comments were made by participants and noted, but not included as analyzable data. At the conclusion of their interviews, two separate respondents solicited my views on the appropriateness of the Dangerous Offender finding in R. v. Noyes. My response was that given the contents of the legislation, the case law pertaining to Part XXIV, the intensity of the media coverage and the fact that only a small minority of Dangerous Offender applications fail (Worwith & Ruhl, 1986), the finding was not surprising.

Table 3.3: Interview and Questionnaire Sample

Interview Participants:
Participant 1: Noyes
Participant 2: psychiatrist for the Crown*
Participant 3: psychiatrist for the Crown
Participant 4: psychiatrist for the Crown
Participant 5: psychologist for the Crown
Participant 6: defense counsel
Participant 7: reporter
Participant 8: mayor of Gibsons
Participant 9: Noyes' friend

Questionnaire Participants:
Participant 10: Assistant Deputy Attorney General
Participant 11: R.C.M.P. officer
Participant 12: parent activist in Sechelt

*This respondent did not participate in Part Two of the interview.

Dangerous Offender legislation (Marcus, 1966; Greenland, 1984; Webster, 1985; Jakimiec et al, 1986; Pos et al, unpublished).

3.3 Limitations of the Research

Two methodological limitations of this thesis must be acknowledged. The first difficulty centres around the representativeness of the purposively selected case study. The differences between Noyes and other dangerous offenders, and between the Noyes hearing and other such tribunals, operate to limit the generalizability of conclusions that can be drawn. Moreover, to date no comprehensive study on Dangerous Offender hearings, other than the Pos et al (unpublished report) exists to permit comparisons between individual cases.

The second restriction pertains to scope. Altogether, 44% of the initial sample and some portion of the court transcripts were inaccessible and six prospective subjects, implicitly or explicitly, elected not to participate. In what follows, the written and spoken words of Robert Noyes' victims, their parents, and all the witnesses whose testimony was inaccessible and whose location could not be ascertained, are not considered. Moreover, the written words of some witnesses who testified at the hearing are examined but their spoken words are not - either because they could not be located or because they exercised their right not to participate.

3.4 Conclusion

This thesis should not be read as the definitive analysis of either the discursive construction and censure of dangerousness in general, or the conduct of the Noyes hearing specifically. The work is far more exploratory in its objectives, aiming primarily to expose and analyze the vocabularies of censure, and resistance to censure (Mills, 1963; Sumner, 1983; McLaren & Lowman, 1988), as they are embedded in the three data sources outlined above. In addition, in the following two chapters, I use the three data sources to develop a tentative framework within which dangerousness as a sociological and critical concept might be better understood.

Chapter 4

Perceptions Of Robert Noyes, His Offending and His Dangerousness

4.1 Introduction

The purpose of this chapter is to show how Noyes' dangerousness was constructed in and through the discursive practices of professionals and non-professionals. Consideration is also given to the loci, form and extent of efforts to resist the characterization of Noyes as dangerous, and the imposition of legal and/or other sanctions. To these ends, pre- and post-1985 perceptions of Noyes, his offending and his dangerousness are identified and examined. The pre-1985 discussion that follows, focuses on a small portion of the court transcript data described in Chapter 3, namely the clinical and medical records, files and reports and the work-related correspondences authored in the years preceding Noyes' arrest and entered as exhibits in the R. v. Noyes dangerous offender proceedings. In the second section, attention shifts to all three of the data sources outlined in the preceding chapter, namely the actual testimony of the key protagonists in the case, the responses of 11 interview participants, and newspaper materials.

4.2 Perceptions of Noyes Prior to 1985

In the 15 years prior to his arrest, Robert Noyes made contact with a minimum of three psychiatrists in private practice (Vallance, Paragas and Bridge) and with three psychiatrists (Nicholls, Bright and Schwartz) and two psychologists (Lazerson and Etches) who, at the time, were employed by treating institutions. Almost invariably, Noyes was referred to these mental health professionals by his general practitioners or treating psychiatrists. According to the referral requisitions and clinical notes, the referrals of the former group (Kell, Rudland and Lehman) were occasioned by repeated complaints of unspecified "sexual problems" or physical discomforts and ailments that did not appear to be related to organic pathology. In contrast, those of the latter (Vallance and Bridge) were precipitated by a perceived need for more specialized treatment.

Once in the clinical setting, Noyes was invited, via the deployment of secular confessional techniques, to enumerate and describe the problems that had caused him to solicit the services of these professionals. Lists of presenting complaints were constructed (see Table 4.1) and their veracity was tested in the assessment phase of the initial and sometimes only meeting. Each assessing psychiatrist consistently elicited and selectively codified information about Noyes, his parents and his relationship with them. Complete and detailed histories of Noyes' past and ongoing heterosexual and paedophilic involvements and fantasies became part of the clinical record. Throughout

Table 4.1: Noyes' Presenting Complaints 1972-1982

Year	Mental Health Professional	Presenting Complaint(s)
1972	Dr. Maelor Vallance	Turned on by women but no penetration. Mostly fantasies of fondling small boys up to age 13. Goes to point of mutual masturbation.
1975	Dr. Pedro Paragas	Depression characterized by hyperactivity, irritability, sad affect, talk of suicide. Two weeks ago, thought of running his car into an oncoming truck; frightened by the idea. Sexual problem: impotent. Can have an erection during foreplay but becomes impotent on penetration; six years standing.
1978	Dr. Maelor Vallance	Tense, hyperactive. Paedophile since early teens.
1978	Dr. Peter Nicholls	Admitted with suicidal ideation and 15 year history of mutual masturbation with 10 to 15 year old boys.
1978	Dr. Britt Bright	Guilt, anxiety, depression, optimism based on getting monkey off my back,suicidal ideas, headaches, physical tension, feelings of inadequacy with adults, and sexual feelings and acts with children.
1981	Dr. William Bridge	Since five months ago often on point of passing out. Heart doing really weird things. Not very fit and not too much endurance.
1982	Bruce Etches	Paedophilia

this information-gathering stage, characterological attributions, or what were euphemistically referred to as "clinical observations", were commonly made and recorded. Noyes was variously described as "narcissistic", "immature", "aggressive", "arrogant", "irresponsible" and "impulse-ridden". Ultimately, the confessed materialalong with the psychiatrists' own observations of Noyes constituted the basis upon which the diagnoses were founded (see Table 4.2).

On the surface there does appear to be some correspondence between Noyes' presenting complaints and the final diagnoses presented in Table 4.2. However, two psychiatrists (Paragas and Bridge) included paedophilia in their diagnostic formulations despite the fact that Noyes had not in the course of the assessment interviews identified his attraction to and sexual involvement with children as a problem or as a reason for consulting them. Another psychiatrist (Nicholls) dismissed the suggestion by Noyes that he was suicidal or depressed. Instead, he concluded, after a maximum one hour and fifteen minute interview that one of his students conducted and that he witnessed from start to finish through a one-way mirror, that Noyes was suffering from a personality disorder and possibly codeine dependence.

Over and above these additions and omissions, each psychiatrist (with the exception of Nicholls) inscribed his or her diagnoses with a coherence - one that was largely absent in the individual lists of presenting complaints - by claiming that Noyes'

Table 4.2: Diagnoses of Mental Health Professionals 1972-1982

Year	Mental Health Professional	Diagnosis
1972	Dr. Maelor Vallance	no diagnosis was made
1975	Dr. Pedro Paragas	paedophilia, secondary impotence, depressive reaction
1978	Dr. Maelor Vallance	history of paedophilia since early adolescence. Recently discovered by school, resultant anxiety state
1978	Dr. Peter Nicholls	sexual deviation: paedophilia; personality disorder with anti-social and paranoid trends; drug dependence
1978	Dr. Britt Bright	paedophil ia, depressive equivalent
1981	Dr. William Bridge	anxiety, paedophilia
1982	Bruce Etches	paedophilia

primary problem was paedophilia and that the depression, anxiety, suicidalness and even impotence in heterosexual relationships were secondary reactions precipitated by the paedophilia or its discovery. Finally, the psycho-medical terms that comprised the final diagnoses were not by any means neutral synonyms for Noyes' presenting complaints. Individually and cumulatively, they denoted illness, abnormal sexual propensities and a certain psychologic disposition characterized not by afflictions in thought and consciousness but by perturbations in instincts and emotions. In practice, these terms operated as social censures simultaneously legitimizing and justifying further medical interventions.

In and through such discursive practices, psychiatrists and psychologists were able to introduce and perpetuate the idea that Noyes' offending was a manifestation of underlying psychopathology. "Early childhood deprivations" (Paragas), "Noyes' considerable repressed hostility" towards one (Lazerson) or both (Vallance) of his parents, and personality pathologies (Vallance, Paragas, Bright, Lazerson, Schwartz) figured prominently as possible causative factors. A small number of mental health professionals did attempt to move beyond the above formulations by specifying the deprivations and the repressed hostility experienced by Noyes, and by establishing a more salient link between these factors and Noyes' attraction to and involvement with children. Bright and Lazerson noted, for example:

> [Rob] never received any warmth or physical contact from his father...[He] resented his father for being intellectual and not athletic - not a companion for him... Rob had taken on the aspects of the ideal father with the boys in a way to meet the needs which had not been met with his own father (Bright, clinical notes, 1-30-78 and Lazerson, clinical notes, 3-13-78).

A direct relationship was also established between Noyes' offending and specific personality pathologies. This link was forged in inferences consistent with the following:

> sex play with children should be seen as a symptom of insecurity and poor self-esteem (Bright, clinical notes, 1-30-78).

One psychiatrist, Nicholls, adopted a more extreme stance by claiming that Noyes' sexual involvement with children, his lack of "subjective insight", his "externalization and rationalization of responsibility", his "poor impulse control and judgement", his "preoccupation with sexuality", his "little sense of loyalty in intimate relationships" and his inability "to modify his behavior in response to treatment" were not manifestations of underlying personality pathologies; they were indicative of a personality disorder (Nicholls, history sheet, 1-23-78).

While the idea that Noyes' offending was a manifestation of underlying psychopathology was endorsed by the majority of mental health professionals who examined him, it was not supported by the psychologist, Etches. He contended that Noyes' masturbatory fantasies involving children, and his attraction to and sexual involvement with predominantly male children, were learned. On Noyes' third visit, Etches offered the following explanation:

> [Noyes'] first significant sexual experience occurred when Rob was thirteen. It involved having a nine year old brother of a friend masturbate him to orgasm after initial intimate contact was established by having the child search for a coin in his pocket. This incident was quickly followed by a few similar occurrences and together these experiences formed the basis for most masturbation fantasies over the past 20 years (Etches, clinical notes, 4-27-82).

Having diagnosed him, and having identified his offending as either a manifestation of underlying psychopathology or learned behavior, psychiatrists and psychologists proceeded to treat Noyes. By 1985, Noyes had been engaged in one-to-one psychotherapy (by Paragas, Vallance and Bridge), pharmacotherapy (by Paragas), intensive group-oriented psychotherapy (by Bright, Lazerson and Schwartz), hypnotherapy (by Bridge) and behavior modification therapy (by Etches). Despite the differences in how these were administered, and in the underlying postulates and assumptions upon which each was based, all of these treatment modalities were directed towards normalization, that is, helping Noyes overcome his overt and covert offending and assisting him in developing exclusively adult, heterosexual relationships. This was perhaps most obvious in the treatment administered by Etches. For example, in order to decrease Noyes' "deviant sexual arousal", electric shock was paired with taped accounts of actual or fantasized incidents (aversive conditioning); fearful and/or disgusting images generated by Noyes were paired with the audio-visual material described above (covert sensitization); and prolonged masturbation was paired with verbalized deviant sexual fantasies (satiation). To increase his arousal to "age appropriate females", Noyes was instructed to regularly view adult heterosexual erotic material both in the lab and at home (exposure) and to have heterosexual fantasies precede orgasm during masturbation or intercourse (covert sensitization).

Throughout their involvement with him, mental health professionals retained a monopoly of power to censure Noyes and his offending. Noyes was not reported to the

police or to the Ministry of Human Resources, even when one psychiatrist concluded that his sessions and treatment "did not accomplish much" (Paragas, letter to Kell, 3-16-76), and even when a second learned that upon Noyes' discharge from the Day House program, he was coaching 11 and 12 year old children (Vallance, clinical notes, 4-20-78). Moreover, a number of mental health professionals (Paragas, Vallance and Bridge), in their letters to the referring general practitioners and to the Coquitlam Superintendent of Schools, either did not mention their diagnosis of paedophilia (Paragas, letter to Kell, 3-3-75; Vallance, letter to Paton, 2-3-78), or else referred to Noyes' sexual fantasies about and involvement with children as a "sexual problem" (Paragas, letter to Kell, 3-16-76) or a "sexual orientation problem" (Bridge, letter to Lehman, 2-25-82).

Finally, prior to 1985 no resistance to the censuring power of mental health professionals existed. General practitioners (Kochendorfer and Rebeyka), school officials (Paton and Blatherwick) and the parents of victims (Counts 2, 3, and 9) who became aware of Noyes' offending did not report him to the police or to the Ministries of Education or Human Resources. Instead and at the mention of a "sexual problem", or after failed attempts to treat Noyes' "anxiety" or "stress" with pharmacological agents and/or following extensive cardiological and neurological examinations indicating that there was no organic basis to Noyes' complaints of physical discomforts and ailments, general practitioners (Kell, 1975; Kochendorfer, 1977; Lehman, 1981) handed Noyes over to mental health professionals. On the occasions that Noyes did

solicit the services of the psychiatrists to whom he was referred (Paragas, 1975; Bridge, 1981) and throughout his treatment at the Vancouver General Hospital and then the Day House, Health Sciences Centre, general practitioners did not intervene. They did not solicit the clinical opinions, diagnoses and findings of mental health professionals nor did they ask those psychiatrists who, on their own initiative, sent them vague written correspondences, to elaborate on Noyes' "sexual problem", his psychiatric status or his treatment.

School officials in Coquitlam did censure Noyes when they successfully negotiated his resignation from the school district. However, when a decision had to be made on whether Noyes should be permitted to continue teaching, they solicited (Blatherwick, letter to Knoblock, 2-27-78) and followed (Blatherwick, letter to Paton, 3-28-78) the recommendations of Day House personnel. Ultimately, diversion, non-involvement and the failure to report Noyes augmented the censuring power of mental health professionals and stood as an explicit or implicit endorsement of the idea that Noyes' sexual offending was a medical problem that required medical interventions - an idea that was challenged and that had to be defended throughout Noyes' dangerous offender hearing.

4.3 Perceptions of Noyes, His Offending and His Dangerousness Following His Plea

4.31 The Harm Done to Victims

Reporters for The Vancouver Sun and The Province moved quickly to address the effects of sexual abuse on child victims in general and on Noyes' victims in particular. Two days prior to Noyes' guilty plea and almost two weeks before the commencement of his dangerous offender hearing, the issue was raised and covered in The Vancouver Sun (1-9-86, A1) in a seemingly general way. The feature itself included, as authoritative indications of victimization, the incidence figures of The Badgley Report[32] and an unnamed "recent" study. It was saturated, from start to finish, with the views and ideas of professionals (a paediatrician, a sex abuse educator and a psychologist) who, according to other features authored by the same reporter, had lost counselling contracts in the first wave of provincial government cutbacks in 1984 (1-4-86, A10), and one of whom had in fact visited Ashcroft several times "to help ease the pain" (6-12-86, B6).

In the context of the feature, the sexually abused child was characterized as "a time bomb waiting to go off" even though elsewhere in the article the reporter, quoting another expert, stated that only about 50% of all victims will experience some emotional problems. Bedwetting, sleeping and eating problems, and poor school

[32] See Chapter 2, p.20.

performance in younger children, and depression, alcoholism, drug abuse, prostitution and suicide in adolescents and adults, were listed as possible outcomes and as confirming evidence of past and ongoing sexual abuse. The following gender specific results, along with their general rate of occurrence, were alluded to not once but twice:

> [males who have been abused] **often** become molesters while [females] **frequently** wind up in relationships with violent men who beat them and abuse their children (emphasis added).

Finally, treatment was advocated on the ground that, even though there were no guarantees that mental health professionals could prevent the above behavioral and emotional problems from establishing themselves, "a victim who got no help at all was **almost certain** to experience some emotional difficulties (emphasis added)".

The issue of harm was also addressed by The Province, albeit more directly and without recourse to the opinions and ideas of "experts", the day after Noyes' plea and in an article reporting on a class action suit that a group of Ashcroft parents were intending to file (1-8-86, p. 3). Consistent with the newspaper's tabloid-style reporting, no detailed analysis was undertaken in the article of the kind and degree of harm that was perpetrated by Noyes on his victims. Instead, the reporter opted to "go for the short, quick hit" (P7) with the following statement:

> [The grieving father of one victim] said it will take years to undo the psychological and emotional harm that Noyes inflicted on his then seven year old son and scores of other youngsters.

During the course of the hearing, the impact of non-violent sexual abuse on child victims was adduced by the Crown not from the 19 individuals named in the indictment (even though five of them (Counts 1 through 5) were adults at the time of the hearing) but from three expert witnesses (Nicholls, Bright and O'Shaughnessy) who had been involved in the treatment of child sexual abuse victims and/or child sex offenders but who at no material time had assessed, evaluated or treated any of Noyes' victims. In an effort to show that Noyes had indeed caused harm, and to provide evidence in support of one of the three threshold criteria (namely, that there was a likelihood that Noyes would cause "injury, pain or other evil to other persons through failure in the future to control his sexual impulses" (section 753 (b)), Crown counsel engaged the psychiatrists in a discussion concerning the effects of such behavior on child and adolescent victims by asking each an open-ended question. This was followed by more specific queries, on the part of both Sullivan and Justice Paris, into (1) when these effects would manifest themselves; (2) the cost of residential treatment; (3) the incidence of homosexuality and prostitution among individuals who had been abused in the past; (4) whether or not frigidity, future offending and resistance to authority figures were possible outcomes; and (5) whether or not, after the cessation of the offending (which would itself advance a child's sexual experience beyond his/her chronological age):

> treatment people [could] have an impact on deprogramming [a sexually abused] child back to a state of innocence [s/he] **should** have (emphasis added, Sullivan, 2-5-86, p. 252).

In and through such discursive practices, Nicholls and Bright introduced the idea that there was a predilection on the part of the paedophile to choose "vulnerable" victims, whom they went on to define as

> children who may be foster children or missing a parent or deprived, or psychologically or emotionally in need of the attentions of an adult caregiver (Nicholls, 2-5-86, p . 248).

Having to some extent already pathologized the victims, they along with O'Shaughnessy proceeded to enumerate the expected psychosocial, behavioral and developmental effects of non-violent sexual abuse. These included: guilt for participation in the sexual behavior, for the disclosure and for the disruption that followed; fear of future disability in interpersonal sexual relationships; depression characterized by sadness or expressed as complaints of fatigue, physical illness and sometimes self-mutilation or suicide attempts; low self-esteem; poor social skills; repressed anger and hostility towards the offender, and towards parents, family members, neighbours and school personnel who failed to protect the victim; oppositional behavior; and an inability to trust others.

In addition, a relationship was established between sexual abuse in childhood and adolescence and later homosexuality, prostitution, frigidity and sexual offending. This was accomplished by citing the incidence figures (from unnamed, retrospective studies) of past sexual abuse in some of the above populations and then summarily following these with statements suggesting not just a simple correlation but an outright

causal relationship. The following comments proffered by Nicholls were a particularly salient example of this practice:

> We have good reason to believe that many of our current sex offenders were sexually abused historically. Various studies have put it at 40% (it may well be more than that) of sex offenders have indeed been involved by homosexual paedophiles in those kinds of relationships modelling the offending activity for them (sic). Consequently, these young people come to carry out that behavior themselves (2-5-86, pp. 249-250).

On other occasions, the link was established by describing their own patient population and then estimating what portion of these individuals had been sexually abused historically. Nicholls, who was involved primarily in the residential treatment of adolescents with psychiatric or psychological difficulties, stated for example:

> I am working currently with female prostitutes as young as twelve and thirteen. I am working with male sex offenders and many young women, young men and boys who have been offended sexually... I can't think of a single case in the population that I have described...where they have not been sexually abused (2-5-86, p. 253).

All three psychiatrists conceded that they could not predict with any degree of certainty which victims would suffer which effects, and when in terms of months or years these effects would manifest themselves. Two (Nicholls and O'Shaughnessy) stated further that some victims may not suffer any deleterious consequences, while one (Bright) actively denied that a healthy outcome was possible. The latter commented:

> there would be some immediate effects in all of the children, but they may not be apparent as the environment...may block their cues... As far as breaking out in massive symptoms...that may not happen until much later. That can lie latent for as much as two, five, ten or even twenty years (emphasis added, 2-10-86, pp. 442 and 444).

According to all three psychiatrists, the degree of impairment was largely dependent on the gender and age of the victim (that is, males fared worse than females, and children under the age of five had an increased risk of developing a psychotic-like reaction in response to the abuse); his/her relationship to the offender (that is, individuals who were abused by a family member or a known and valued adult would suffer more than those who were sexually abused by a stranger); and on the absence or presence of a family support system (victims with "warm and caring" parents and caregivers who were adept at effective limit setting and behavioral control would suffer the least). Treatment was advocated as a means of mitigating the psychosocial and emotional harm and ensuring the "normal" sexual development of each victim. Bright stated, for example,

> Through therapy it is possible, although difficult to have the person get rid of their guilt,...fear,...anxiety and...rage... In regards to whether the child's sexual development continues normally, it would depend a lot on whether [s/he] gets adequate therapy (2-10-86, p. 47).

Over and above soliciting the opinions of experts, Crown counsel also asked the parent of one victim (an R.C.M.P. constable) to describe what effects his own son had suffered throughout the course of the abuse. The parent testified that immediately following Noyes' arrival and up until the time of his arrest, his seven year old son had displayed a number of "problems" including bedwetting, thumb-sucking, poor grades and personal hygiene, and "great objection to attending school" (R. v. Noyes, 6 B.C.L.R. (2d) p. 327). While the difficulties identified by the parent were consistent with the effects chronicled by mental health professionals, a comparison of this

testimony with the details of the indictment revealed that some of the boy's symptoms had emerged one full year **prior** to the first incident of sexual contact with Noyes. This apparent discrepancy was not however addressed by any of the key protagonists; in fact, defense counsel Young declined the opportunity to cross-examine this witness. Moreover, the presiding judge appended a portion of the constable's testimony to his reasons for judgement, recommending it as required reading "...for any person who professe[d] an interest in the subject of paedophilia and its effects on victims" (R. v. Noyes, p. 316).

While Young did not question the parent's claims, he did to some extent challenge those advanced by both Nicholls and Bright by exposing their own active participation in the amplification of harm done to the victims. This was accomplished through a critique of the then-current literature on child sexual abuse[33] , drawing attention to the more methodologically-sound studies in the area[34] , and through questions designed to demonstrate the untenability of their position, as with the following:

> ...[Dr. Nicholls,] are we to conclude from the evidence you gave that...a third of the future adult male population and 50% of the female population, when they grow up to adulthood shall be homosexuals or prostitutes (2-6-86, p. 344)?

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[33] Among the studies that were critiqued by Young were the following: Kope, T. "Behavioral indicators of sexual abuse in children and adolescents" British Columbia Medical Journal, Volume 26, No. 7, (July 1984), pp. 440-441; and Hlady, L., J. Carter, and D. Smith, "Sexual abuse in children - A review of the first year's experience at Children's Hospital" British Columbia Medical Journal, Volume 26, No. 7, (July 1984), pp. 442-443.

[34] Young referred to a study conducted at the Sexual Assault Centre at the Harbourview Medical Centre in Seattle, Washington as it appeared in Kope (1984) and to the work of Groth, A., A. Burgess, Holmstrom, and S. Sgroi, Sexual Assault of Children and Adolescents, 1982.

Young proceeded by making the point that small sample sizes, short follow-up periods and the failure of researchers to distinguish between, for example, victims of extra-familial versus intra-familial abuse and/or those who had been raped versus those who had been inappropriately touched had resulted in inconclusive findings, conclusions and statistics on the specific effects of fundamentally different kinds of sexual abuse by different kinds of offenders. According to Young, when larger samples were employed, and when adolescents who had been sexually abused by a family member were compared to those who had been sexually abused by a non-family member, the results seemed to indicate that psychosocial trauma was not an inevitable byproduct of every sexual encounter between an adult and a child and/or adolescent:

> ...statistically,...there exist[ed] a 50% chance more or less of negative complications from...sexual abuse of whatever kind (2-6-86, p. 355).

They also seemed to confirm that a proportionately larger number of intra-familial versus extra-familial sexual abuse victims had suffered complications.

During the course of his examination of these witnesses, defense counsel also suggested that both had consistently ignored the impact that the responses of other social network people could have on the development of negative sequelae and the degree of victim impairment. He argued that, post-1985, the activities of three groups of social network people (namely, mental health professionals, print media personnel and the parents of some of the victims) individually and/or cumulatively could have led to the development of symptoms and/or augmented the harm that had already been done to the victims. More specifically, Young asked, after revealing that some of the

19 individuals named in the indictment had been interviewed by as many as six or seven helpgivers:

> if you take an eight or nine year old child and bombard that child...in the name of treatment,...with a multitude of interviews [at times, six or seven per child]... hypothetically, [might you not] do that child more harm than good (2-12-86, p. 615)?

Over and above this, defense counsel also suggested that: (1) the "gigantic [and] unprecedented media attention" paid to the offences and the offender by the provincial papers and by the weekly publication The Ashcroft Journal (where for six consecutive weeks 13 pages were devoted to the subject of sexual abuse) could have had a damaging effect on the victims, especially given the smallness of some of the communities where these victims resided and the corresponding ease with which they could be singled out; and (2) the civil suit that a group of Ashcroft parents intended to file, in order to recover monetary damages commensurate to the harm done to victims, could very well have precipitated the conscious or unconscious exaggeration of symptoms or what was referred to as "compensation neurosis" (Young, 2-6-86, pp. 364-366).

Newspaper reporters who authored articles on the effects of child sexual abuse as they arose during the course of the hearing were highly selective in what they reported. Without exception, the more critical views and ideas advanced by Young (and endorsed, to some extent, by Nicholls and O'Shaughnessy) were not reproduced, or even addressed, in articles summarizing each day's testimony. This was hardly

surprising given that the points raised directly contradicted the Sun's and Province's earlier presentation of the effects of sexual abuse on child victims. Far from acknowledging their own participation in the amplification of harm, newspaper reporters continued to simultaneously develop and sustain the moral panic that they had partially created. This was accomplished by accurately summarizing portions of the testimony given by Bright (see, for example, The Vancouver Sun, 2-11-86, A11) and the parent of a victim (The Vancouver Sun, 2-28-86, A1, A4) and by semantically transforming the evidence of Nicholls. Nicholls' contention that "many of our current sex offenders were abused historically" was inverted and appeared in The Vancouver Sun (2-6-86, A1) as "many victims become sex offenders themselves". His $90 000 a year figure for the residential treatment of adolescents at the Maples Adolescent Treatment Centre was applied directly to Noyes' victims by a Province newspaper reporter in the following way:

> The public is stuck with the bill for the extensive damage "sex addict" Robert Noyes inflicted on his victims. And the tab could run as high as $90 000 a year for each abused youngster says an expert (2-6-86, p. 5).

4.32 The Harm Done to Parents of Victims

During the course of the hearing, evidence was led from Bright and Nicholls by Crown counsel regarding the harm done to parents of child sexual abuse victims, and in particular to those

> ...[who had] taken [the offender] into their own home and with their consent, perhaps even [with] their encouragement had given their child over to the adult who had done the assaulting (2-10-86, p. 441).

Bright responded that the effect would be "devastating" and that knowledge of the abuse would cause "overwhelming despair, depression, anger [and] rage" (2-10-86, p. 441). Nicholls conceded that the effect would be "profound", and likened the responses of parents to such disclosures to those that occur when one goes through a "grief reaction":

> there may be initial denial, followed by some acceptance that this occurred but with great anger at the perpetrator followed by a much more depressive pattern as they realize their own responsibility for what happened and their failure to protect the young person and they may even blame themselves too much at that point (2-5-86, p. 256).

Once again, the services of "helping professionals" were deemed necessary not only to "survive this period" but to learn how "to be there for their child...psychologically and emotionally" (Nicholls, 2-5-86, p. 256).

The issue was also addressed by the parents of victims who testified at the hearing and/or who spoke to newspaper reporters. One stated that when she learned of her son's involvement with Noyes, she was "very upset" (The Vancouver Sun, 1-30-86, A3), a second, "I guess I felt like somebody had ripped my heart out" (The Vancouver Sun, 2-27-86, A2), a third, "I don't know whether [my son] will be gay or if he'll turn out to be another Mr. Noyes. It's frightening" (The Province, 1-10-86, p. 3), and a fourth testified:

> I had a meeting with a teacher and he cried and told me my son was a homosexual... How can I describe the feeling you have (The Vancouver Sun, 2-19-86, A10)?

To some extent the kind and degree of harm that was perpetrated by Noyes upon the parents of the victims was epitomized in the following testimony offered by the second parent of the victim referred to above:

> [In the year prior to Noyes arrest] I would plead with [my son] and bribe him ...to go to school... [I would] get out and take him out of the car and physically take him into the school and give him to his teacher to hang on to while I got out of the school... I can recall a couple of occasions taking him into school, carrying him in and giving him to Mr. Noyes to hang onto until I got away. I can still see him sobbing and calling after me as I left the school (R. v. Noyes, p. 327).

4.33 The Harm Done To The Communities

The kind and degree of harm perpetrated by Noyes on the communities where he had resided and worked constituted a third area of interest for Crown counsel. At the hearing, the effects of Noyes' actions on the schools where he had taught and on the wider community were addressed by an Ashcroft Elementary School teacher, Lisa Hadiken, and the Mayor of Ashcroft, Ward Bishop. Attempts had also been made by the Crown to call as a witness the then principal of Langdale Elementary, George Allen, to describe the repercussions on the school following Noyes' arrest, and to introduce into evidence the diary of the mayor's foster daughter to show that:

> Noyes manipulated the children ... and [to show] the sort of system that he had in playing one against the other whether or not they were being assaulted (Harrison, 2-26-86, p. 13).

During the course of his testimony, Bishop stated that, following Noyes' arrival, there were immediate negative changes in the children of Ashcroft. He explained

> My son along with lots of other young fellows, they would be out on the sand dunes digging forts, running around on BMX bikes, hiking to Barnes Lake, playing ball, playing road hockey, you name it...[After Noyes arrived to Ashcroft], they were starting not to do this any more... They weren't going out to the sand dunes like they use to... They weren't going out to play hockey. They weren't going out to Barnes Lake on days off. They were staying home...close to home and parents. They were hanging and clinging on (Bishop, 2-26-86, p. 9).

Over and above this, the grade school environment became what Hadiken described as "total chaos" and the children within it, "secretive, disruptive, loud, vulgar and physically violent" (The Vancouver Sun, 2-26-86, A14).

According to Bishop, Noyes' arrest and the revelations that subsequently emerged put the whole community "under a lot of strain". Members within the community "carr[ied] a great deal of guilt" for having subjected their children to "a lot more stress and strain than [they]...should ever be expected to stand". They feared and were uncertain about "what was going to happen down the road with the children", particularly because victims were already being singled out by their peers, and because the community had been left "hanging in mid-air without very much outside support" (Bishop, 2-26-86, pp. 16-17).

Defense counsel did launch a resistance against the testimony of Bishop and Hadiken. Young suggested that both of these Ashcroft residents had their own reasons

to resent Noyes. Noyes had, after all, secured a position that both had vied for and that had been, at least initially, offered to Mayor Ward Bishop. Moreover, their assessments of Noyes' ineffectiveness as an educator, and of the chaotic school environment that had existed since the time of his arrival, were challenged by introducing into evidence a directly contradictory evaluation. As it turned out, both Noyes and the learning environment at Ashcroft Elementary had been appraised positively over an eight month period (from September 1984 to April 1985) by the Superintendent of Schools, Bruce Avis.

Defense counsel did not dispute that the community had suffered the effects that had been described by Bishop. Instead, he asked,

> it would be fair, would it not, to characterize this collection of concerns, over and among other things, no safety, crying mothers, anger and ...[the planned but not executed lynching of Noyes] in a single word...- hysteria (2-26-86, p. 46)?

In what followed, Young contended that it was not the Noyes case, per se, that had fuelled "the hysteria". It was the local print media that saturated a 10 to 11 page weekly publication with, on average, two full pages for the first five consecutive weeks following Noyes' arrest with articles (and sometimes cartoons) on the topic of child sexual abuse (2-26-86, p. 52). It was representatives from the provincial ministries of health, education and human resources who had assured the local school board and Ashcroft residents that "help" would arrive at the end of May, but who in reality took two months to dispatch "a platoon of helpers" (2-26-86, p. 48). It was the counsellors and other mental health professionals who besieged Ashcroft residents with public

information programs and workshops on child sexual abuse and its effects (2-26-86, pp. 54-55).

4.34 Civil Rights Violations

Of the individuals who articulated a position during the course of the hearing (Young, Sullivan and Justice Paris) and/or at the time of interview (P1, P3, P4, P5, P6, P7, P8, P9, P10, P11 and P12) on whether or not Noyes' civil rights were violated, only three (Young, P1 and P9) responded in the affirmative. First, combining evidence from the critical literature on dangerousness[35] with legal argument, defense counsel contended that the application of Part XXIV to Noyes violated his rights under section 9 (the right not to be arbitrarily imprisoned), section 12 (the right not to be subjected to cruel and unusual punishment) and section 15 (equality before and under the law) of The Charter of Rights and Freedoms. More specifically, Young stated that contrary to section 9, the discretion that gave rise to the Noyes application in the first place had been exercised improperly, that is,

[35] The work that was cited included: Berzins, L., A Study of Dangerous Offender Legislation, October 1977 - March 1983: Application and Associated Management and Treatment Problems. Preliminary Report: Exploratory Phase (Ottawa: Correctional Services of Canada, Policy Branch, 1983); Webster, C. D. and B. Dickens, Deciding Dangerousness: Policy Alternatives and Dangerous Offenders. Report to the Department of Justice, Canada (Toronto: University of Toronto, 1983); MacKay, D. C., Dangerous Offenders in Ontario 1977 - 1983: Making the Decision to Proceed, unpublished master's thesis, (Toronto, Centre of Criminology, University of Toronto, 1983) and Koopman, P., The Dangerous Offenders in Canada: A Case Study, Report for the Solicitor General of Canada, 1985.

> [Noyes was]... arbitrarily chosen for social or political reasons to be the subject of... a show proceeding... Howard[36] was not selected. Minor[37] was not selected. Bennett[38] was not selected. Noyes was (4-15-86, p. 2045).

Second, the matter of discrimination was raised and supported by evidence indicating that the legislation had been applied unevenly from province to province and that it had led, unfairly and unreasonably, to the targeting of one class of offenders, namely those who committed sex offences. Third, and in light of the "unrefutable evidence" demonstrating that individuals sentenced pursuant to Part XXIV were "warehoused and [were] never in practical terms... afforded treatment, particularly in cases such as Noyes" (Young, 4-15-86, p. 2045), an indeterminate sentence of preventive detention constituted cruel and unusual punishment. Finally, the imposition of such a sentence was completely disproportionate in its result (and thus inconsistent with section 12) given that: (1) in 40 other "similar fact cases" child sex offenders had received a fixed sentence ranging from 30 days to four years and/or probation ranging from two to three years, and (2) in five other dangerous (or dangerous sexual) offender cases, the accused had been, unlike Noyes, convicted and/or incarcerated for like offences in the past (Young, 4-5-86, pp. 2044-2045).

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[36] Donald Esmond Howard, a Catholic high school teacher, was convicted of six counts of gross indecency involving 13 to 16 year old boys on January 24, 1986. He received a two year term of imprisonment and two years probation (The Vancouver Sun, "Molester gets two years in jail", 1-25-86, A3).

[37] Daniel Minor, a convicted child sex offender was sentenced on March 7, 1986 to an 18 month prison term and three years probation (Young, 4-1-86, p. 1408).

[38] Michael Charles Bennett, a convicted child sex offender, was sentenced on March 11, 1986 to two years less a day and three years probation (Young, 4-1-86, p. 1408).

P9 (see Table 3.3) and Noyes himself agreed that Noyes' civil rights had been impugned in the manner described above. P9 went on to state that, over and above civil rights violations, Noyes' dangerous offender hearing was an infringement on his "human rights". Noyes himself proffered the opinion that media personnel had also violated his civil rights by making "false allegations" and "exaggerations" particularly in respect of the actual number of children he had sexually and/or indecently assaulted. Indeed, in four articles (The Province, 1-8-86, p.3; The Vancouver Sun, 1-9-86, A18; 2-27-6, A12; 6-9-86, A2) and two features (The Vancouver Sun, 6-11-86, A1; 6-12-86, B6), reporters introduced and perpetuated the idea that the 19 individuals named in the indictment were just a small fraction of the total number of children whom Noyes had "engaged in sexual play" (The Province, 1-8-86, p. 3). This was accomplished by (1) referring back to earlier informations where the number of alleged victims named per community was substantially higher than those listed in the final indictment (The Vancouver Sun, 2-27-86, A12); (2) simply claiming that "...in fact, dozens of [other children had been victimized by him] in one way or another" (The Vancouver Sun, 6-9-86, A2; 6-11-86, A1); and (3) printing the numbers that "sources" (The Province, 1-8-86, p. 3) and "prosecutors and counsellors involved in the [Noyes] case" (The Vancouver Sun, 6-12-86, B6) had provided indicating that Noyes had been sexually involved "to one degree or another with upwards of 50 Sunshine Coast youngsters" (The Vancouver Sun, 6-12-86, B6) and with "85 of the 120 children who attended Coopervale Elementary during the two years he was there" (The Province, 1-8-86, p. 3).

The arguments and submissions offered by Young, and the civil rights violations that he identified, were simultaneously ignored and implicitly rejected by both Crown counsel and the presiding judge. Both claimed, for example, that any imprisonment that flowed from dangerous offender proceedings could not be arbitrary because it was the trier of fact who had the power to impose an indeterminate sentence and because in doing so, s/he was obliged in a "rational and principled way" to determine if the statutory criteria had been satisfied. In advancing the above ideas, they effectively avoided problematizing or politicizing the discretionary powers of Crown counsels and Attorney Generals.

Prosecutor Sullivan and Justice Paris were not the only individuals who actively denied that Noyes' civil rights had been violated. Indeed, seven of the ten interview respondents who offered an opinion on the issue (P3, P4, P5, P8, P10, P11 and P12) responded in the negative. Of the four (P3, P4, P10 and P12) who elaborated, two (P10 and P12) emphasized that "Noyes was given a fair trial" (P12) and "he was well protected and represented by counsel who spared no effort in his defense of Noyes" (P10). The remaining two (P3 and P4) stated that Noyes' rights under section 9, 12 and 15 had not been violated because far from being arbitrary, his imprisonment "looked more like justice creakingly, slowly, eventually [having caught up with him]" (P3). Further, "he had equal protection under the law and better than most other dangerous offenders will ever get" (P4). Finally, since Noyes could not be effectively

treated within a fixed period of time, his imprisonment was neither cruel nor unusual (P4).

In general and with one exception (The Vancouver Sun), newspaper coverage on the civil liberties issue was minimal. While six days of court time were devoted to Young's constitutional challenge and Sullivan's response to it, The Province dispensed with the question in a two-sentence article (1-22-86, p. 16) stating that Noyes was "protest[ing] government attempts to have him labelled as a dangerous offender" by claiming that the legislation violated his constitutional right to equality and his right not to be subjected to cruel and unusual punishment. The extent of coverage was only marginally better in The Globe and Mail. In the single article (1-21-86, A9) that was published by the Globe on this issue the author noted simply that Young was challenging the constitutionality of Part XXIV on the grounds that it violated The Charter, and then proceeded to report on the testimony that was offered by the defense witness (Peggy Koopman) on the difficulties involved in forecasting violence.

4.35 The Appropriate Disposition

During the hearing and/or at the time of interview, a number of professionals and non-professionals offered an opinion on the subject of an appropriate disposition for Noyes. An indeterminate sentence of preventive detention was recommended by

Crown counsel, ordered by the presiding judge, and endorsed by a number of individuals (including the parents of victims, a school trustee on the Sunshine Coast, and the principal of Langdale Elementary where Noyes had taught) and by the British Columbia Teachers Federation, all of whom were polled by The Vancouver Sun (6-10-86, A1 and A4) and The Province (6-10-86, p. 3) following Noyes' sentencing, and by seven (P3, P4, P7, P8, P10, P11 and P12) of the 11 respondents who either participated in a face-to-face interview or completed a mail-out questionnaire.

According to the above, an indeterminate term of imprisonment was appropriate because: (1) "[Noyes] had damaged hundreds of lives" (The Vancouver Sun, 6-10-86, A1); (2) it would ensure that no other child was sexually assaulted by him, as he would not be released until and unless he no longer posed a danger, and he would remain on lifelong parole thereafter (Paris, Sullivan, P3 and P8); (3) such a sentence would reflect the revulsion which is felt by the entire community at this type of offending (Sullivan, B.C.T.F.); (4) given the nature of paedophilia ("the proclivity is lifelong and the behavior is compulsive", Paris, R. v. Noyes, p. 325), given Noyes' personality (he was "manipulative, deceitful and callous", Paris, R. v. Noyes, p. 321), and given the fact that the proposed treatment (anti-androgen therapy) would not change the direction of the drive but would only reduce it, the protection of the public could very well have been jeopardized if a fixed (even lengthy) sentence had been ordered (Paris, Sullivan); and (5) it would symbolically permit society to say to Noyes:

> We have given you numerous chances and we have spent thousands of dollars on your medical treatment. You have squandered those opportunities and continued for fifteen years to sexually assault young children. We can no longer take a chance with you (Sullivan, The Vancouver Sun, 4-17-86, A3).

A second group of individuals (Nicholls, O'Shaughnessy, Bradford, Vallance, Etches, and Noyes himself) implicitly or explicitly denied that a term of imprisonment (be it fixed or indeterminate) was the appropriate disposition for Noyes. This position was predicated on the idea that Noyes' sexual offending against children was symptomatic of psychosocial dysfunction, and that remission of the behavior could be achieved only by treating the very problems that prompted it in the first place. At the time of interview Noyes stated, for example,:

> I think that punishment in and of itself for a paedophile is completely insufficient, inappropriate and irresponsible. I think that without sufficient treatment, a person is likely to reoffend.

During the course of the hearing, each successive mental health professional who had had contact with Noyes in a professional capacity in the years prior to his arrest (Vallance, Nicholls, Bright, Schwartz, Bridge) conceded during their cross examination by Young that they had not treated him for paedophilia, or what they had offered as treatment had been, in retrospect, inappropriate and insufficient (Etches). A number of them (Etches, Bradford, O'Shaughnessy) and Noyes himself agreed that while the various consequences experienced by Noyes - the "unrelenting" media exposure, the degradation of his wife and family, his loss of liberty, the proceedings

themselves, and even the possibility of a lengthy fixed term (Etches) - were important and perhaps necessary first steps in decreasing the likelihood of reoffence (if indeed they were perceived as punishment or as aversive experiences); nonetheless, they were not sufficient. What was recommended and/or endorsed by this group were: (1) limited access to prepubescent children (Noyes, Etches, O'Shaughnessy and Bradford); (2) chemical castration via the administration of cyproterone acetate by a trained specialist to "reduce deviant sexual fantasies and drive and the frequency of erections and orgasm" (Vallance, O'Shaughnessy, Bradford and Noyes); (3) psychotherapy to address the underlying psychopathologies, group therapy to challenge the stratagems or cognitive distortions that Noyes used to rationalize his behavior, and behavior therapy to further decrease the deviant arousal, increase arousal to a heterosexual partner and impress upon Noyes that his offending was indeed damaging (Vallance, Etches, O'Shaughnessy, Bradford and Noyes); and (4) because the behavior was compulsive and the condition lifelong, lifetime monitoring to ensure that Noyes was not offending and that he was indeed ingesting the anti-androgens (O'Shaughnessy, Bradford, Noyes).

Two other respondents (Young and P9) suggested that many of the above concerns, along with their own desire that Noyes be treated equitably, could best be accommodated by a fixed term of imprisonment followed by probation. The plan articulated by Young at the conclusion of the hearing entailed a sentence of two years less 19 days and three years probation on the first of the 19 charges. This would be

followed by 18 additional one-day jail sentences and three years probation, each served consecutively so that in sum, Noyes would serve a fixed term of two years less a day and 57 years of probation. The fixed term, Young contended, would be consistent with that imposed by other courts in similar fact cases. Lifelong probation (versus parole) would obviate the necessity of relying on the National Parole Board to keep the promise under section 761 of Part XXIV of speedy parole - a promise that Young stated had not been kept since the inception of the legislation. He noted:

> From 1947 to the present, 17 years has been the average served by an individual [sentenced to an indeterminate term of detention] and eight or nine years has...been the minimum required before parole eligibility is seriously considered (Young, 4-15,86, p. 2046).

Probation would also allow for the lifelong monitoring of Noyes and would permit the presiding judge the opportunity to "endorse and legitimate" the treatment Noyes was already undergoing, by making the continuation of that treatment a requirement of probation. While the reasons offered by Young in support of probation were reiterated by P9, the latter stated that the seriousness of the offences and the principle of general deterrence demanded a fixed term of five to seven years.

4.36 Differences Between Noyes and Other Child Sex Offenders

During the course of the hearing and at the time of the interviews, two diametrically opposing views were proffered in response to the question whether Noyes differed from other child sex offenders in positions of trust who had received

fixed sentences. Those individuals who responded in the affirmative (Sullivan, Paris, P3, P10, P11 and P12) stated that the large number of victims (P3, P11 and P12) and counts per victim (Paris, Pos, P7); a fifteen year history of sexual offending (P11 and P12); the continuation of his offending during treatment (P10) and despite having been exposed (P3); the numerous "failed" treatment attempts (Sullivan and P10); his "perverse success in setting [himself] up...in a particular close role to children" even after "partial exposure" in 1978 (Bright, 2-10-86, p. 493); the betrayal of his position of trust in the "basest of ways" (P11, Paris); and a diagnosis of psychopathy (Sullivan and Pos) individually and/or cumulatively separated Noyes from other child sex offenders and made him what one interview respondent (P7) referred to as "the godfather of child molesters".

The precise extent to which Noyes differed from other child sex offenders in the clinical literature and/or before the courts was rarely addressed. When the question was raised, a number of techniques were used to advance the idea that these differences were indeed profound. P3, for example, went beyond the agreed-upon facts to state that special sanctions against Noyes were appropriate because

> it...[made] a difference if [a child sex offender had] ten known victims and [was] found guilty against three versus someone [that is, Noyes] who had 200 victims and was found guilty against 19.

How P3 arrived at the 200 victim figure remains unclear, especially given that she was not a member of any of the mental health teams that had been sent to two of the affected communities, and given that the highest count indictment to which she might

have been privy in testifying as an expert witness on behalf of the Crown named a total of 32 alleged victims.

In reference to the number of children victimized by Noyes, the print media (The Vancouver Sun and The Province), like P3, also portrayed Noyes as atypical. They did so by failing to print any of the evidence that was led by Young and endorsed by all the expert witnesses, indicating that over a 12 year span, the typical paedophile has been sexually involved with approximately 75.8 victims (Young, 4-15-86, p. 2075); and by actively advancing the idea that the 19 individuals named in the indictment were but a small sample of Noyes' total number of victims. The issue of victims aside, one newspaper (The Vancouver Sun) employed a much more subtle method, by printing articles on the Noyes hearing on the same page and either directly above (2-21-86, A8) or below (2-22-86, B6) items about Clifford Olson.

Finally, a particularly effective means for demonstrating Noyes' atypicality was to refer back to the clinical literature on paedophilia, in the process ignoring those submissions suggesting that Noyes' offending was perhaps not as chronic as that of other paedophiles, and instead emphasizing those that indicated much more involvement on Noyes' part. The following statements by Pos, in his report on Noyes, served as a particularly salient example of this practise:

> If Abel's earlier [findings] of 70 victims per offender [and 471.16 completed deviant acts per paedophile] hold, then this would mean just under seven completed sexual contacts per victim. Mr. Noyes' history shows that there can be - by his own admission - something like 100 such acts [per victim] (Pos, Report on Noyes, p. 8).

Two individuals (Paris and P4) went on to suggest that in addition to the differences noted above, the trier of fact had, in the Noyes case, the "benefit" of an "unprecedented (for court proceedings)" body of (almost invariably, psychiatric) evidence on the subjects of paedophilia and the "great harm" this activity causes to its victims and their families (Paris, R. v. Noyes, p. 319). Moreover, there was purportedly a "stunning amount of [incriminating] information" on Noyes - most notably, medical and psychiatric reports and an autobiography that Noyes had to complete upon admission into the Day House program (P4).

In sharp contrast to the above, mental health professionals (with the exception of Pos and Bright), Young, Noyes himself, P5, P8 and P9 maintained that Noyes did not differ from other child sex offenders. Evidence was led by Young from each successive expert witness indicating that Noyes did not deviate from the "typical" paedophile described in the literature in terms of the age of onset of the condition, the duration and type of offending, the number of victims, his personality (and in particular his narcissistic traits, immaturity, feelings of inferiority and superiority and sensitivity to children), his choice of a profession involving children, his use of cognitive distortions, his lack of guilt while he was offending, and his record of offending despite promises to stop and despite having been exposed. According to Young, Etches, O'Shaughnessy and Bradford, how he did differ (namely, by voluntarily seeking treatment for his condition, by disclosing to mental health professionals his ongoing

and/or past offending, and by suffering anxiety and guilt in relation to his offending in the form of psychosomatic symptoms) tended to indicate a good prognosis.

In his submissions on sentencing, Young also contended that the Noyes case was not factually different from at least 40 other cases that had come before the courts and been dealt with without recourse to Part XXIV. According to defense counsel, all of these cases, as with Noyes, involved the non-violent sexual and/or indecent assault of mostly male children over a period of months or years, by persons in positions of authority and/or high profile in their communities, with no previous criminal record, who may or may not have undergone voluntary treatment for paedophilia, and whose trials sometimes attracted a great deal of publicity (4-15-86, pp. 2084-2105). Young also emphasized that, in a number of these cases, the trier of fact and/or Crown counsel had stated that the sentence imposed should reflect the revulsion of society to such acts, and should be sufficiently lengthy to act as a specific and general deterrent and to protect the public (4-15-86, p. 2091).

Of the five individuals (Young, Noyes, P5, P8 and P9) who went on to venture an opinion as to why Noyes, unlike other convicted child sex offenders, had been designated a dangerous offender and given an indeterminate sentence, only one (P8) maintained that this had occurred because "the communities were far, far more outraged". The remaining four (Young, Noyes, P5 and P9) agreed this sentencing disparity occurred because Noyes was selected to serve as an example. Three (Young,

Noyes and P5) stated that Noyes ended up being the "perfect person" (P5) for this because he was a school principal (Young), he had sexually and/or indecently assaulted a number of children (P5), the offending had occurred in five different communities (P5) and over a 15 year period (Young), "the focus of public attention came quickly and never left him" (Young), and he was "the last person that anybody would suspect" of being involved in this kind of offending (Noyes). P5 also noted

> there was a whole [paper] trail of his involvement with the [mental health] system even before he was charged, so he could therefore be presented as being more incorrigible [than other child sex offenders].

According to Young, Noyes and P9, social and political exigencies had also played a role in the targeting of Noyes for exceptional sanctions. As defense counsel submitted to the Court:

> [child sexual abuse] has become, for whatever reason, society's recently acquired acknowledgement of the existence of a problem that has been far reaching for a multitude of years. This offence has become...the crime of the 80s (4-15-86, p. 2106).

Noyes himself stated that the course of action taken against him was consistent with provincial Attorney General Brian Smith's promise in May of 1985 to "get tough" with child sex offenders. He along with Young and P9 suggested that "it was cheaper [for Smith and the ruling Socred Party] to try Noyes as a dangerous offender than to pave the highway between Ashcroft and Kamloops" (Young).

4.37 Why Was Noyes Not Reported?

One question that was raised repeatedly and almost invariably by Young was why, in the years prior to his arrest, Noyes was not reported to the proper legal authorities by the numerous individuals who had come to learn (from Noyes, his victims or their parents) of his ongoing offending. Three psychiatrists were asked by defense counsel to explain why they had failed to divulge this information given that Noyes' 15-year history of mutual masturbation with 10 to 15 year-old children left one of them "enormously worried" (Nicholls, 2-5-86, p. 256), another convinced that the next time she would see Noyes would probably be in a courtroom (Bright, 2-11-86, pp. 562-563), and the third almost certain that Noyes' prognosis was "poor" (Paragas, 1-28-86, p. 47). They responded that: (1) they were ethically bound to respect and protect the confidentiality of the patient-doctor relationship (Paragas, Bright); (2) the medical treatment of Noyes would fall into "a state of chaos" if one were to intervene by "parachuting in" on another psychiatrist's patient or by involving the authorities (Nicholls, 2-5-86, p. 236); and (3) they had a professional obligation to follow the assessment of Noyes with treatment (Paragas and Nicholls). Moreover, Bright maintained that while The Protection of Children Act required every adult in the province of British Columbia, notwithstanding any claim of confidentiality or privilege, to report to the Ministry of Human Resources suspected victims of child sexual abuse, the reporting requirement did not apply to a suspected offender (2-11-86, p.563). Finally, Nicholls contended that while he may have been required under the same act

to report Noyes, to have done so would have put him in a legally compromising position because:

> physicians who report[ed] or alleg[ed] abuse to have occurred [were] not protected under the [statute] from suit for libel (Nicholls, 2-6-86, p. 336).

While professional, ethical and legal considerations had figured prominently in the responses of these psychiatrists, the parents of three victims (Counts 2, 3, and 9) testified that after having notified the school principal of Noyes' sexual misconduct, they were "talked out of" pursuing the matter any further by the following individuals: (1) their sons, who did not want Noyes "to go to jail" (the mothers of Count 3 and 9); (2) the school principal, Jack Thomas, who had assured the mothers of the two Coquitlam victims (Counts 2 and 3) that Noyes was undergoing treatment for his "sexual problems", that it would be better not to involve the police, and that Noyes would not be allowed to teach again (The Vancouver Sun, 1-31-86, A3); (3) Dr. John Blatherwick, who convinced the mother of one victim (Count 2), during the course of two telephone conversations, that Noyes was responding to treatment and had "[begged him] not to go to the police, not to ruin him for life over this one incident" (The Vancouver Sun, 1-31-86, A3); (4) Dr. Robert Kochendorfer, who advised the second Coquitlam mother not to contact the police as Noyes was seeking treatment (The Province, 1-30-86, p. 5); and (5) Noyes himself, who told the mother of a Langdale victim (Count 9) that while he had had a sexual problem in the past, his wife had helped him through it, and who convinced her that it was her son who had made advances towards him (The Vancouver Sun, 2-19-86, A10).

The reporting issue was again raised by Young in his cross examination of John Blatherwick, whose duty as the medical health officer of School District 43 (Coquitlam) was to liaise and advise the school board in respect of Noyes' medical status following allegations of sexual misconduct in early 1978. During the course of his examination-in-chief, Blatherwick stated that he had discussed with the School Superintendent the possibility of reporting Noyes, and was told that: (1) they could not involve the police because the mothers of the victims were unwilling to press charges (2-12-86, p. 646); (2) they could not go to the school board to have him removed because they lacked "sufficient evidence" (2-13-86 p. 699); and (3) the only option available to them was to secure his resignation, to forward a letter to the Ministry of Education stating that Noyes could not teach at the elementary school level, and to disclose the allegations if and when another school district asked for a reference (2-13-86, p. 655).

During his cross examination of Blatherwick, Young offered a second interpretation of the events of 1978. Defense counsel suggested that the medical health officer had not been particularly interested in reporting Noyes to the police or in ensuring, as Blatherwick had stated, that "Noyes never teach again in British Columbia" (2-13-86, p. 696). According to Young, if police involvement had been considered, then why during a telephone conversation with the parent of one of the Coquitlam victims (Count 2) had Blatherwick tried to persuade her not to go to the police (2-13-86, p. 695)? If permanent dismissal had been his intention then Young

asked: Why was Noyes put on paid medical leave (2-13-86, p. 700)? Why, in his written correspondences to the School Superintendent, did he state that the reason for Noyes' admission to the Day House was "a nervous breakdown" (2-13-86, p. 663)? Why did he consistently fail to mention the Coquitlam allegations and Noyes' long history of sexual involvement (of which he was admittedly aware) (2-13-86, p. 684)? Why, on Noyes' medical progress report, did Judith Lazerson[39] comment that

> the health officer decided that he would not pursue the matter any further and would recommend that Rob be returned to teaching outside of the district (Young, 2-13-86, p. 700)?

Why did he ultimately recommend to the School Superintendent that "Noyes could teach again in a senior high school" (2-13-86, p. 705)? Why, if he felt (as he claimed) that Noyes' condition was such as to endanger the health of students, did he not report this as he was obligated by statute (The School Act, Section 106), knowing that once this information was received, the School Board pursuant to section 107 (3) of the same Act had to dismiss Noyes (2-13-86, p. 708)? Why, if he believed he needed more authority, did he not report Noyes to the Superintendent of Welfare as he was required to do under the Protection of Children Act? The answer to all these questions, according to defense counsel, was that Blatherwick fully intended to have Noyes re-enter the school system in a different district and at an "other than elementary [school] level" (2-13-86, pp. 698-699).

[39] Judith Lazerson was Noyes' primary therapist at the Day House, Health Sciences Centre at the University of British Columbia.

4.38 Noyes' Evasion From The Legal Authorities

How Noyes was able to sexually and/or indecently assault children over a 15-year period without a single legal charge filed against him was the central question that parents of the victims, teachers and trustees in the South Cariboo and Sunshine Coast school districts, and the British Columbia Teachers' Federation wanted addressed. Following Noyes' arrest, calls were made by both school districts for a public inquiry into the procedures and practices of the Ministry of Education, the school boards and medical practitioners who may have treated Noyes and had knowledge of his offending (The Vancouver Sun, 1-13-86, A7 and 1-17-86, B6). The Sunshine Coast board of trustees ordered their own independent review. Through the British Columbia School Trustees' Association they hired and empowered three consultants "to examine all board records and interview any district employees" to ascertain how alleged sexual abuse could have taken place in the schools where Noyes had taught, and in the one school that had employed a second alleged child sex offender (Len Marchant) (The Vancouver Sun, 1-25-86, A14). A few months later and prior to the conclusion of the Noyes hearing, a provincial audit (by department heads from the education, health and Attorney General ministries) on molesting cases, and in particular those involving offenders in positions of trust, was ordered by Human Resources Minister, Jim Nielsen. At the same time, Crown Attorney Barry Sullivan was selected to conduct a province-wide inquiry into sex abuse in schools and to make recommendations for changes to the School Act in order to (in his words):

prevent or eliminate the Noyeses from moving from district to district or even getting in the profession (The Vancouver Sun, 7-7-86, A3).

During the course of the hearing and interviews, how Noyes was able to offend over a long period of time without a single legal charge against him prompted a number of responses. Some individuals (Sullivan, Pos, P3, P4, P5, P10, and newspaper personnel for The Vancouver Sun and The Province) attributed this result to Noyes himself. Evidence was led and submissions and arguments were made by Crown counsel (and later reproduced by the presiding judge) indicating that Noyes had managed to escape criminal prosecution and move from district to district: (1) by feigning illness and suicide; (2) by seemingly soliciting the services of mental health professionals; (3) by lying to at least one parent of a victim (Count 9) and a general practitioner (Kochendorfer) about being cured; (4) by being "deceptive and misleading" in post-1978 letters to school boards "as to his past, what he did in his past and who he used as a reference" (Sullivan, 4-10-86, p. 1937); and (5) by simply not divulging his ongoing sexual offending to mental health professionals (Etches and Bridge) or anyone else who may have opted to report him. All this was endorsed by P4 and P5 in statements like the following:

> [Noyes was] a con artist...of the first order...[and a person who had] an immense command of the here and now,...a certain charisma,...superior intelligence, [and some experience with what tune to play, once he was in the care of mental health professionals and medical doctors] (P5).

Finally, P4 and P10 added that Noyes had devoted a lot of time "setting kids up, developing the relationship and ensuring they would not tell" (P4).

In sharp contrast to the above, a second group (Paragas, Nicholls, Bright, school trustees interviewed by The Province (1-17-86, p. 24) and The Vancouver Sun (1-6-86, A9) suggested that the fault lay with the professional code of ethics that they were bound to honor and with the Protection of Children Act (and the Family and Child Services Act that replaced it in 1980). It was claimed that prior to 1985, a suspected child molester could use the threat of counter action to gag accusers. This made it preferable for school officials to confront an admitted or suspected offender and then permit him to resign on the condition that allegations of sexual misconduct not be passed on to the next school district (The Vancouver Sun, 1-6-86, A9). In addition, mental health professionals maintained that child protection legislation did not legally obligate them to report offenders (Bright) and in these instances did not override patient-doctor confidentiality (Nicholls and Paragas).

A third group (Young, Noyes, the editors of The Vancouver Sun and The Province, a reporter for The Globe and Mail, P7, P9, P10 and P12) claimed that the fact that no criminal charges had been filed against Noyes in the years preceding his arrest had little or nothing to do with codes of ethics, child protection legislation, or with what were referred to as Noyes' "manipulations...and pleadings" (Young, 4-15-86, p. 2064). Every adult in the province of British Columbia who had learned of Noyes' offending had an obligation, both prior to and following the 1980 amendments to the Act, to report Noyes irrespective of any confidentiality that was claimed. As a matter of practice or convention (Young, Noyes, P7 and P10) or because "no one

wanted to take ownership of the problem" (P9), or because of "[a] breakdown of official duty and individual responsibility" (The Vancouver Sun, 6-14-86, B4 and The Province, 1-9-86, p. 24), allegations of child sexual abuse were "[swept] under the carpet" (Noyes) or "covered up" because they were not perceived as crimes (P10). Parents of victims were dissuaded by school officials from reporting Noyes (Young) and children who complained of sexual misconduct were not believed (Young, P12). One participant (P7) added that once complaints were made, those who received them engaged in an "unspoken conspiracy" with Noyes that was beneficial to both parties. Noyes was permitted to continue teaching with his reputation intact (P7 and Young), while school officials saved the school's or the district's reputation (Young) and avoided costly legal proceedings (P12).

Young took the above statements one step further by stating that what was done to Noyes in lieu of reporting him also had a profound impact on the continuation of his offending. According to defense counsel, each successive mental health professional who came into contact with Noyes recognized the problem, diagnosed it, but did not bring to bear any "treatment modality of substance designed for and capable of addressing the disorder of paedophilia". Each

> dealt with him day to day and sent him...back to a class room full of students knowing that a pattern of compulsive conduct that existed in him since age 13, created in him a pattern of compulsive conduct that he himself lacked the ability to overcome (Young, 4-15-86, p. 2066).

In addition, he suggested that the non-action of parents of victims, and the decision of school officials to transfer Noyes out of the district once allegations were made, both operated as powerful reinforcements.

4.39 Was Noyes Dangerous?

For Crown counsel, the Assistant Deputy Attorney General and the Attorney General of British Columbia, Noyes' dangerousness was decided in the summer of 1985 when they announced informally that following Noyes' guilty plea or conviction the Crown would proceed, with the consent of the Attorney General, under Part XXIV. The decision represented a conscious attempt to extend dangerous offender status to non-violent child sex offenders. This motive was acknowledged by the Assistant Deputy Attorney General who stated, in his response to the research questionnaire, that an application under Part XXIV was considered because

> I was...of the view that the criminal justice system should be explored on the issue of dangerousness being something beyond guns, knives, and overt violence - to include the destruction of children in the way that Noyes destroyed children.

Similarly, in response to what one reporter referred to as the "increasing line of fire" being faced by the government of British Columbia because of "a rash of child sexual abuse cases", Attorney-General Brian Smith issued the following press release:

> child sexual abuse is a serious criminal offence and will be dealt with as such by the [criminal] justice system (The Province, 5-7-85, p. 3).

In Justice Paris' reasons for judgement, in the arguments and submissions of Crown counsel and in the responses of P7, P8, P10 and P11, Noyes' dangerousness was also linked to the kinds of offences he had committed and to the "serious" short and long term harm and/or "evil" that he had perpetrated on his victims, on their parents and communities, on the teaching profession and on society in general. The latter, it was claimed or implied, would ultimately have to bear the financial burden involved in treating those who had been victimized, and would have to deal with any criminal behaviors that victims might engage in as a result of Noyes' "depredations" (Paris, R. v. Noyes, p. 317).

In their discussion of Noyes' dangerousness, these authorities also spent a considerable amount of time emphasizing: (1) the "callous deceit and manipulation to which [Noyes] resorted to be able to avoid detection and continue [his] activities" (Paris, R. v. Noyes, p. 319; Sullivan; P10); (2) the betrayal of the "great" trust bestowed upon him by parents, communities and his own profession in "the basest of ways" (Paris, R. v. Noyes, p. 319; Sullivan; P7); (3) his use of "facile rationalizations" to argue that his conduct was not harmful but beneficial to the children he molested (Paris, R. v. Noyes, p. 317); (4) his "grandiose" lack of guilt and anxiety for his behavior and "what this may do to his life and family" (Pos, 3-19-86, p. 1310; Sullivan); (5) his inability to recognize that what he had done was "wrong" (P7); (6) the continuation of his offending despite having been exposed, informed of the deleterious consequences of sexual abuse on child victims, treated by "skilled

psychiatrists", and asked repeatedly to limit his contact with children (Sullivan, 4-11-86, p. 1974; P10); (7) his ability to "feign rehabilitation" (P10); and (8) his calculated past attempts to escape the consequences of his behavior by seeking the services of mental health professionals, and by feigning illness and threatening suicide (Sullivan).

During the course of the hearing and in two of the research interviews (P3 and P4), mental health professionals avoided using the term "dangerous", or any derivative thereof, in relation to Noyes. At the same time, they conceded that: (1) Noyes' offending would or could have numerous deleterious effects on his victims, their parents, their communities and society in general (Nicholls, Bright, O'Shaughnessy); (2) Noyes had demonstrated an inability to control his sexual impulses (Vallance, Paragas, Nicholls, Bright, Bridge and Etches); (3) paedophiles in general and Noyes in particular cannot be cured since they have an enduring condition (Etches, Bradford, O'Shaughnessy) that requires lifelong monitoring (Bradford and O'Shaughnessy); and (4) without treatment, there was a likelihood that Noyes would reoffend (Vallance, Paragas, Bright, Nicholls, Etches).

The two mental health professionals (P4 and P5) who proffered an opinion on whether or not Noyes was dangerous (among the three interviewed) responded in the affirmative. P5 arrived at this conclusion by focusing on the kinds of offence committed, and added that he could not think of any sexual offender who was not dangerous. P4 stated:

> in terms of...the risk of recidivism and the risk of the poor outcome of any treatment, I think these risks are very high and as such he posed a serious danger to his own two sons,...his wife and on a great deal of children in the community because the number of [children] he involved [in sexual activity] were phenomenal.

A third group (Young, Noyes and P9) actively denied that Noyes was dangerous. Noyes stated that, at the time of sentencing, he was not likely to molest children and therefore did not constitute "an undue risk". P9 maintained that Noyes was not dangerous but that:

> he was sick and certainly aware of what he was doing [and] he was not at that particular point...refusing to accept responsibility for what he had done.

For Young, the issue of Noyes' dangerousness was purely legalistic. Young did not dispute that there was proof beyond a reasonable doubt that Noyes had committed a serious personal injury offence as defined by section 752(a) of Part XXIV nor that he had demonstrated a failure to control his sexual impulses. However, he contended that the Crown had fallen short of the required standard of proof on the last criterion, namely that there existed a likelihood of his causing pain, injury or other evil to other persons by failure in the future to control his sexual impulses. Of the four constituent elements of the Crown's case on the issue of potential for reoffence, only one was conceded by the defence: that without treatment there was a likelihood that Noyes would reoffend. Young disputed the Crown's submission that the earlier interventions in fact constituted "failed treatments" at all. It was his position (one that was by the testimony of both Crown and defense expert witnesses) that on the six

when Noyes had voluntarily presented himself for treatment, the problem was identified and diagnosed but not treated. The two remaining elements of the Crown's case on this point, namely Pos' conclusion that Noyes was a psychopath, and that he was certain to reoffend with or without treatment, were also rendered problematic. According to Young, Pos' claims were not substantiated by any of the expert witnesses who had been involved in a professional capacity with Noyes prior to 1985, nor were they endorsed by the two psychiatrists who were called by the defence and who had had substantial contact with Noyes following his arrest. Moreover, the diagnosis and accompanying prognosis were arrived at, not through a clinical examination of Noyes, but by

> [focusing]...upon isolated incidents...carefully selected...and carefully culled to support [Pos' own] theories and the ultimate horrible prognosis with which the doctor started in the first place (Young, 4-5-86, p. 2058).

Defence counsel concluded that there was a basis for reasonable doubt which must go to the benefit of Noyes. The presiding judge, in Young's submission, had to consider that, at the time of judgement, Noyes had been chemically castrated and posed no more than a five per cent risk of reoffence. While Young conceded that the prospect of treatment was irrelevant to the issue of reoffence likelihood, he argued that Noyes' treatment had already been undertaken and produced the desired effect:

> Treatment [had already] brought [about] such a comprehensive diminution of libido... as to render Noyes virtually incapable presently of reoffence (Young, 4-15-86, p. 2081).

4.40 Was Noyes A Psychopath?

During the course of the hearing and at the time of interviews, the question of Noyes' alleged psychopathy prompted a variety of responses. Of the eight mental health professionals who proffered an opinion on the issue (Paragas, Vallance, Nicholls, Bright, Pos, Bradford, O'Shaughnessy and P4), only Pos, who had been nominated by the Crown pursuant to section 755(1) of Part XXIV, and who had at no time materially examined Noyes, responded in the affirmative. Combining clinical, medical and work-related notes, letters and files, court transcript materials, all four indictments, police reports and interviews with witnesses and victims, along with Noyes' own autobiography, Pos had constructed a biographical summary. An ongoing clinical analysis of Noyes and his offending and non-offending behavior was undertaken, which indicated, according to Pos, that: (1) Noyes had satisfied all 16 of Cleckley's (1976) criteria for psychopathy; and (2) Noyes had exhibited the key features of the psychopathic personality posited by Pos, Becker and Coles (unpublished report), namely the absence of future-oriented anxiety and past-oriented guilt, and a persistent state of moral realism[40].

[40] According to Pos, moral realism refers to the second of three levels of moral development which usually ends between the ages of eight and eleven. At this level,

> there is a basic rejection of authority and a sole concern with [oneself]. There is no deeply felt acceptance of rules...Lying is defined by [its] consequences, not morality; it is only bad when caught, not because of guilt (Pos, Becker & Coles, unpublished, p.12).

An ensemble of techniques were used by Pos to support the above claims. First, clinical signifance was infused into vague statements made by Noyes. The following excerpt from Pos' report was a particularly salient example of this:

> ...[I]t is clinically fascinating that he states in his biography that only on discovery and admitting himself, if not escaping into the VGH [in 1978] that "the dream was over and the nightmare began", that is, the "dream" of ongoing access to seductive prey, and the "nightmare" of being without a job and assuming the role of a psychiatric patient. It is difficult to state more concretely how Mr. Noyes lived in the here-and-now... For a person with intensive and functional emotional contact with the past and future he might have stated that the "nightmare", that is, living with the hell and anxiety concerning the future was over, and what he had been dreaming of had begun (Pos, Report on Noyes, p. 25).

Second, behavior on Noyes' part that had been construed by Young and other mental health professionals to be consistent with a negative finding of psychopathy was not ignored; instead, it was reinterpreted and then used by Pos as additional evidence for his diagnosis. For example, the complaints that had precipitated visits to his general practitioners, emergency room admissions and/or testing for organic pathology were not viewed as psychosomatic manifestations of guilt. According to Pos, they were voluntarily produced by Noyes to escape into a medical dimension for the purpose of avoiding exposure and evading the consequences of his behavior. Finally, the existence of a number of psychopathic features including an impersonal, trivial and poorly integrated sex life, poor judgement, failure to learn from experience, and unresponsiveness in general interpersonal relationships (Cleckley, 1976) were inferred from Noyes' sexual involvement with children over a 15 year period.

A second position on the issue of psychopathy was advanced by two other psychiatrists who testified on behalf of Crown counsel. Indicative of the range of diagnostic possibilities available to mental health professionals, Paragas (at the time of the hearing but on no occasion prior to it) and Nicholls (following his one and a half hour observation of Noyes from behind a one-way mirror) contended that Noyes had "some traits" of the psychopathic personality (Paragas, 1-28-85, p. 15). Referring to the description of psychopathic personality in the second edition of the Diagnostic and Statistical Manual of Mental Disorders (1968), the following psychopathic traits were inferred from Noyes' offending: (1) "[Noyes did] not seem to care for the rights of others because of what he [did]" (Paragas, p. 15); (2) "he didn't learn from experience" (Paragas, p. 15; Nicholls, history sheet, 1-23-78); (3) "he appeared poorly socialized with little sense of loyalty in intimate relationships" (Nicholls); (4) "he was irresponsible, impulse-ridden with poor frustration tolerance" (Nicholls); and (5) "he gave plausible rationalizations and blamed others" (Nicholls). Although there were presumably criteria that Noyes had failed to meet, no reference was made to these.

Finally and in sharp contrast to the opinions of the above three psychiatrists, a total of five mental health professionals (Vallance, Bright, Bradford, O'Shaughnessy and P5) maintained that Noyes was not a psychopath. Bright, for instance, explained:

> [Noyes didn't qualify...because to me [a person with] an anti-social [personality] was somebody with no conscience whatsoever. I saw [Noyes'] conscience as to be particularly and peculiarly lacking in his area of behavior with children and I saw it as being present in some other aspects of his relationships (Bright, 2-10-86, p. 427).

Bradford and O'Shaughnessy defended their finding by stating that in their own opinion Noyes had failed to meet any current or past classification, and by attacking Pos' constructs, claims and practices. According to these clinicians: (1) Pos' constructs were "out of date" (Bradford, 4-2-86, p. 1549) or "inappropriate" (O'Shaughnessy, 4-8-86, p. 1816); (2) Noyes had registered a negative score on every one of Cleckley's 16 indicators of psychopathy either because there was no evidence to support a positive rating or because there were a number of incidents in Noyes' past that contradicted Pos' conclusions; (3) Noyes did feel guilt and anxiety (as evidenced by what were referred to as psychosomatic manifestations of guilt and anxiety) and was capable of empathy (as demonstrated by his understanding of his wife's "distress" and his awareness of peer reactions to his paedophilia) (O'Shaughnessy, 4-8-86, p. 1821); (4) Pos' ethics were questionable because he had rendered an opinion on the mental status of Noyes without first conducting an examination; and (5) the method by which Pos had arrived at his diagnosis was suspect on the ground that:

> [w]hat Dr. Pos [had] done [was] to take one or two episodes which [again] do not meet what Cleckley described, and [try] to fit them into a diagnosis of psychopathy (O'Shaughnessy, 4-8-86, p. 1839).

At issue here was not just the diagnosis of psychopathy, but also its embedded implication that Noyes was untreatable; for if Noyes could not be treated, there was no legitimate need for intervention by mental health professionals. This concern was evident in the following comment made by Bradford:

> [Pos' rendering of a diagnosis poses] problems in terms of making recommendations with regard to treatment and other things which are fairly far-reaching (Bradford, 4-2-86, p. 1547).

Throughout the course of the hearing and in his submissions and arguments, Sullivan placed great emphasis on the opinions of Pos, Nicholls and Paragas. Their assertions that Noyes was incapable of anxiety, guilt and empathy, and that he lacked a conscience, were used not as proof of illness but as a further indication of Noyes' "badness" (and ultimately as evidence to support one of the three criteria necessary for a positive dangerous offender finding, namely that Noyes would likely reoffend). Defense counsel resisted these claims by: (1) introducing contradictory evidence (namely, the opinions of Vallance, Bright, Bradford and O'Shaughnessy, and a number of letters from students, colleagues, acquaintances and family members testifying to Noyes' good character and repute); (2) challenging the admissability of Pos' testimony on the ground that Crown counsel had well exceeded the number of expert witnesses allowed by The Canada Evidence Act; and (3) undermining the credibility and reliability of Pos' testimony. To achieve this latter objective, Young filed as exhibits Pos' reports in two other Dangerous Offender hearings (R. v. Wright (1984) and R. v. Robideaux (1984)) that, according to Young, bore an "unholy similarity" in content and in language to Pos' report on Noyes (3-19-86, p. 1398). He also suggested:

> [Pos first]...selected the prognosis of untreatability which would conform to the requirements of section [753 (b) and] then selected the diagnosis of psychopathy to bring about support for that diagnosis (3-19-86, p. 1385).

Young's critique was precipitated not by a concern that Noyes was being further pathologized by the term's application to him, but rather by the prospect that such a

diagnosis could be used as evidence indicating a likelihood of reoffence. As Young stated, before the Court and during his cross examination of Pos:

> [The purpose of] undermin[ing] a diagnosis of psychopathy is to eliminate the prognosis...attach[ed] to it (4-18-86. p. 1348).

Having heard the arguments and submissions of both Crown and defense counsel, Justice Paris stated in his reasons for judgement that it was not necessary for him to resolve whether or not Noyes was a psychopath. While no formal position was taken by him, Pos' interpretations of Noyes' behavior were reproduced in the presiding judge's own "background of Noyes". 

Despite the great deal of time and attention that were devoted to the question of psychopathy, reporters for The Globe and Mail and The Province made no mention of it in their coverage of the hearing. The Vancouver Sun did refer to the psychopathy question, but in a selective and unbalanced manner. Of seven Sun articles pertaining to psychopathy (2-6-86; 3-14-86; 3-15-86; 3-18-86; 3-20-86; 4-3-86; 4-9-86), four (3-14-86; 3-15-86; 3-18-86; 3-20-86) related to the testimony of Pos. Nicholls was incorrectly quoted to have diagnosed Noyes as an anti-social personality (2-6-86). In addition, the articles on the testimony of Bradford and O'Shaughnessy (4-3-86 and 4-9-86, respectively) focussed less on how and why they had arrived at a diagnosis other than psychopathy, and more on the attacks they were levelling against Pos.

Finally, the remaining interview participants who proferred an opinion on the question of psychopathy (P1, P7, P8, P9, P10 and P11) approached the issue in a number of ways. Four (P1, P8, P9 and P11) stated that Noyes was not a psychopath, one (P7) claimed that a determination of psychopathy "was up to a psychiatrist", and one (P10) responded "if a psychopath is a person without real feelings for others' pain, [Noyes is a psychopath]."

4.41 Was Noyes A Paedophile?

Whether Noyes was a paedophile was a question that was answered, without exception, in the affirmative by the key protagonists in the case (Sullivan, Young and Paris) and by interview subjects who offered an opinion (P1, P3, P4, P5, P6, P7, P8, P9, P10 and P11). Following Noyes' initial arrest and well before his guilty plea, the proposition that Noyes had in fact indecently or sexually assaulted children was actively advanced: (1) by newspaper personnel who authored articles on Noyes' arrests and the charges against him (The Province, 5-14-85, p. 13; The Vancouver Sun, 5-2-85 A19; 5-15-85, A3; 5-18-85, A1 and A3), on his release on a $20 000 personal recognizance bond and on his indeterminate suspension without pay by the Ashcroft school board (The Vancouver Sun, 5-15-85, A1 and A3; 5-18-85, A1); (2) by the South Cariboo and Sunshine Coast districts, the ministries of education, health and human resources, and the counsellors and mental health professionals who had been brought into Ashcroft

and Gibsons "to help victims and their families cope with the trauma" (The Vancouver Sun, 1-9-86, A1); (3) by parents of victims who had discussed filing a class action suit; (4) by the Attorney General, Assistant Deputy Attorney General and Crown counsel who decided not simply to prosecute Noyes but to also proceed under Part XXIV; and (5) by the R.C.M.P. who launched a full scale investigation

> to locate,...identify and interview all children Noyes had contact with because his potential as an offender was recognized as unlimited (P11).

Following Noyes' plea of guilt to a 19 count indictment, a range of social censures were publicly deployed which recurrently referred to Noyes' sexual offending and functioned effectively, albeit differently, to marginalize and differentiate him from the "good" and the "normal". The terms "child molester" (see, for example, The Vancouver Sun, 1-28-86, A15;1-30-86, A3; The Province, 1-8-86, p. 3; 1-9-86, p.24; The Globe and Mail, 1-31-86, A4) and "sex pervert" (see, for example, The Province, 2-7-86, p. 6) were used almost exclusively, in headlines and in text, by newspaper reporters in their discussions of Noyes. The term "paedophile" was deployed by them as well but only rarely and almost never in headlines. Mental health professionals, defense counsel, the prosecutor and the presiding judge used the terms "paedophile" and "homosexual paedophile" but did so in very different ways. For example, the presiding judge noted that the term homosexual paedophile referred to "a man with a **compulsive proclivity** to engage in ...sexual activity with pre-pubescent boys" (emphasis added, R. v. Noyes, p. 314). In sharp contrast, mental health professionals defined the term in the following way:

> a [homosexual] paedophile is an individual with a sexual deviation where the **act or fantasy** of sexual activity with prepubertal [males] is the preferred or exclusive [method] of achieving sexual excitement (emphasis added, Paragas, 1-28-86, p. 16).

Finally, mental health professionals also applied the term "fixated paedophile" to Noyes not just to emphasize the nature his sexual orientation but also to draw attention to "[his] difficulties [generally] in heterosexual relationships and [his] other insecurities of personality" (Vallance, 2-3-86, p. 192).

4.42 Will Noyes Ever Be Released?

Of the 11 interview respondents who offered an opinion on whether Noyes would ever be released, ten (P1, P4, P5, P6, P7, P8, P9, P10, P11 and P12) responded in the affirmative[41] . The related question on when this was likely to occur elicited a variety of responses. Two participants (P10 and P12) stated that Noyes would be granted parole when he no longer posed a "threat" to society (P12) or when he "[develops an] ability to control his behavior and some sense of real compassion and empathy" (P10). A third (P4) stated that Noyes would be released earlier than the average dangerous offender because

> psychopaths notwithstanding a more serious crime record...are more likely to get earlier parole and stay out [for a] shorter period of time.

[41] P3 stated "I don't know".

In sharp contrast to the above, P5 maintained that it was difficult to predict when this would occur because the decision to release Noyes will not be made on the basis of risk but on "political grounds". Given that he was a "high profile" offender, P5 stated that "he won't be let out until [the National Parole Board figures] that there is not going to be a huge furor".

An additional four participants (P6, P7, P8,and P11) responded that Noyes will not be released until after he has served a term of imprisonment of ten (P8), 12 (P6) or 15 years (P7) or longer (P11). P6 and P11 went on to state that their estimates were based on "the age when reoffence was unlikely" (P6 and P11), "the enormity of public pressure" (P6), and the empirical finding that the average dangerous offender serves about 14 years before parole is even contemplated.

The remaining two participants (P1 and P9) hoped that Noyes would be released in the "foreseeable future" (P9). Noyes stated, though, that the National Parole Board is going to be "cautious" with his release, "not so much because they feel that I will reoffend but just for fear of possible challenge".

While participants disagreed on when Noyes would be released and why, all 11 concurred that, irrespective of when this occurs, conditions should be imposed. According to four individuals (P4, P5, P7 and P10), this was necessary because "the prognosis isn't that terrific" (P5), "recidivism is immensely likely" (P4), "he may add

some varieties to his repertoire" (P4), "it's still very easy for people to molest children" (P7), and "I have my doubts, given his command of the language and demonstrated manipulative skills, that one could responsibly take him at his word" (P10). The following recommendations were made: (1) no contact occupationally (P1, P6, P7, P10 and P11) or socially (P6, P7, P10 and P11) with children under the age of 14 years except in the presence of a third party (P1 and P6); (2) "regular" (P11) or "weekly, if not daily" (P7) reporting to correctional services (P11) or "a probationary officer" (P7); (3) close medical supervision (P4, P5 and P11); (4) medical monitoring (P5, P9); (5) involvement in psychological and psychiatric counselling, as directed (P1); and (6) that "he live in a cell in a house that is patrolled 24 hours a day" (P8).

Of the ten individuals (P1, P3, P5, P6, P7, P8, P9, P10, P11 and P12) who proffered an opinion on what the public and media response would be upon Noyes' release, seven (P3, P5, P6, P7, P8, P10 and P12) stated that both would respond in the same manner. That would be: acceptance provided that "enough time has elapsed, conditions were imposed and he was no longer a danger" (P12); a neutral reaction if they were satisfied that he had gained insight into his behavior - otherwise a "negative" response because in his abusive period, he had been involved in what was described as "successful therapy" (P10); "outrage because there is no guarantee he won't do it again" (P8); "fear, horror and loathing" (P7); "abject horror and letters to editors and MLAs because he had been equated to Clifford Olson" (P6); a "pretty negative"

reaction (P5); and "apath[y] or outrage...[depending] on what else was going on at the time" (P3). Finally, Noyes himself predicted that:

> some members of the public won't care, others will think I shouldn't be released and others will think that I should be given a chance (P1).

4.4 Summary

In this chapter, pre- and post-1985 perceptions of Noyes, his offending and his dangerousness have been identified and examined. The discussion of events prior to 1985 focused on how Noyes and his offending were defined, censured and sanctioned. Consideration was also given to how mental health professionals, as opposed to other individuals who were aware of Noyes' offending, secured an almost complete monopoly of power to censure Noyes. The post-1985 discussion focused more directly on: (1) the construction of Noyes' dangerousness in and through the articulation, deployment and circulation of different and often competing vocabularies of censure; (2) the form and content of resistances that were launched once dangerousness became a legal issue; and (3) the routine and selective co-optation of parts of vocabularies of censure and vocabularies of resistance to censure by the hearing and interview participants and by newspaper personnel. In Chapter 5, the focus of analysis will shift, in order to address a number of wider issues emanating from the Noyes case, including Canadian Dangerous Offender legislation and the dangerousness construct itself.

Chapter 5

Perceptions Of Dangerous Offender Legislation And Dangerousness

5.1 Introduction

This chapter is devoted to an examination of the perceptions of Dangerous Offender legislation, and dangerousness in general, as they were embedded in the discursive practices of both professionals and non-professionals. The data sources employed in this discussion include the following: (1) the responses of the 12 individuals who participated in face-to-face interviews or completed mail-out questionnaires; (2) Justice Paris' reasons for judgment (particularly on the constitutional issue); (3) Ken Young's submissions at the conclusion of the hearing; and (4) some 25 pages of testimony given by Peggy Koopman (the expert witness who was called by the defense in their bid to challenge the constitutionality of Part XXIV) on January 22, 1986.

It is important to note here that the print media did not explore the above stated issues either directly through features and editorials, or indirectly in letters to the editor. Two newspapers (The Globe and Mail and The Vancouver Sun) did, however, (selectively) cover the six day constitutional challenge and one (The Vancouver Sun)

devoted some space to the concluding submissions of Crown and defense counsel. Where applicable, the information in these articles was used to supplement the limited amount of court transcript data that were made available.

5.2 Perceptions of Dangerous Offender Legislation

5.21 The Objectives of the Statute

The context within which Dangerous Offender legislation was enacted received little to no attention from those who participated directly in the hearing, nor from the 12 individuals who either took part in a face-to-face interview or completed a mail out questionnaire. At no time during the course of the hearing or in articulating his reasons for judgment did the presiding judge allude to any of the circumstances that prompted the passage of Part XXIV. Indeed, a substantive scrutiny of the legislation's objectives was not forced by Ken Young, even in his submission that the indeterminate sentence represented cruel and unusual punishment. Young did not contend (as he could have) that in drafting the legislation Parliament had neither a valid purpose nor a rational basis for the legal distinctions it created. In fact, he stated

> although the Legislature may **validly** proclaim the law to protect society, it must... ensure the safety, sanity and dignity of the offender after it has dealt with him (April 15, 1985, p. 2045).

It appears that, for Young, the issue was not the intended function of the indeterminate sentence, but rather its disproportionality of application.

Crown counsel did make reference to the context within which Part XXIV was passed, during his cross examination of Peggy Koopman, when he stated that Parliament's objective when it had enacted the law in 1977 (and with Dangerous Sexual Offender legislation before that) was the protection of society from offenders who had a likelihood of repeating their crimes (The Vancouver Sun, 1-23-86, A6). This and like statements not only implied and reinforced the idea that the legislation was a product of benevolent intentions, but also denied the role that historical, social, political, ideological or economic developments played in the formulation and enactment of preventive detention legislation.

During the course of the constitutional challenge, Ken Young described the legislation as "a sop to those concerned with the abandonment of capital punishment". While he acknowledged that political considerations had played a role, what was at issue was not how or why certain ideologies and interests had found their way into the legislation, but that the arbitrary application of these provisions had fostered a false sense of security. Of particular significance here was the evidence that was led through Peggy Koopman that more than half of the general federal prison population was as violence-prone and dangerous as (or more so than) the handful of offenders who had been designated "dangerous offenders" by the courts.

The context within which the legislation was passed was either narrowly defined or not defined at all by the 12 interview participants. Six respondents (P1, P5, P9, P10, P11 and P12) conceded that they were not aware of the surrounding context; one (P3) did know that an indeterminate sentencing format existed for dangerous offenders who were "guaranteed to reoffend" and who committed physically, violent acts; one (P8) commented that the legislation was enacted "to protect children from people [like] Noyes"; two (P2 and P6) stated only that the enactment had replaced Dangerous Sexual Offender legislation; and two (P4 and P7) explained that it had replaced Habitual Criminal legislation after it had been found by a commission investigation to have sometimes been used to incarcerate petty criminals for long periods of time.

5.22 Who Fell Within The Meaning Of "Dangerous Offender"

Most individuals who voiced an opinion regarding the categories of persons who fell within the meaning of "dangerous offender" under Part XXIV of the Criminal Code concurred that the legislation applied to violent and/or sexual offenders. A more detailed analysis of the views and opinions expressed suggests, however, that there were significant differences between professionals and non-professionals in how they defined those individuals whom they believed were the targets of Dangerous Offender legislation.

Mental health professionals, and even Noyes himself, stated that the legislation was restricted to repeat (P1, P2, P3, and P5), incorrigible (P1 and P5), and psychiatrically disordered (P1 and P2) individuals who had committed and were likely to recommit offences involving physical (P1, P2, P3, P4 and P5) and emotional (P2 and P4) damage to a victim or victims. Likelihood of reoffence, psychiatric disorders, a repetitive pattern of reoffending and incorrigibility were all conspicuously absent from the definitions offered by P8, P9, P10 and P11 (all of whom, incidentally, were individuals who serviced the public). It was not that these factors were unimportant; indeed, the Crown's case against Noyes was predicated on the entire range of variables and P11 collected evidence to support all of the above claims. They were simply secondary considerations. The definitions provided by the group focused on the kinds of crimes committed and on those people who were directly endangered by the criminal activity. Thus, a dangerous offender was viewed as someone who committed "crimes against the person" (P7 and P11), as "anyone who offended against any child under the legal age, murders and rapists" (P8) and as "those who represented a continuous serious risk to do harm to people" (P10). Finally and in contrast to both the above groups, defense counsel's response was a paraphrase of the legal definition of a "dangerous offender" (that is, the statutory criteria listed in section 753(a) and (b)).

5.23 Who Was To Be Protected By The Legislation and How

On the issue of who was to be protected by Dangerous Offender legislation, there was consensus. In the arguments and submissions of Crown counsel, Justice Paris' reasons for judgment and the responses of nine interview participants (P1, P2, P4, P6, P7, P9, P10, P11 and P12) it was the public that was identified as the principal beneficiary of Dangerous Offender legislation. Some respondents moved beyond the general category of the public, and stated that it was women (P7), children (P7 and P8), future potential victims (P3 and P5) and the feelings of previous victims (P3) that the legislation protected. Only one respondent (P9) stated that Part XXIV could ultimately benefit the offender (if one assumed that an offender was remorseful and wanted to be caught) by preventing him/her from re-offending.

There was also agreement on exactly how the endangered were protected by the legislation. For seven respondents (P2, P4, P5, P6, P8, P10 and P11) confinement or segregation provided the necessary protection. One participant (P7) stated that the legislation put the "onus on the criminal justice system and on the criminal to make an attempt or to take steps to rehabilitate before being released". For three others (P1, P3, and P9) it was both confinement and the legislation's guarantee that the offender would not be released until and unless he had been rehabilitated. Finally, one participant (P3) declared:

> it's been my experience in my practice that when a victim of a crime feels that an offender has met with punishment suitable to fit the crime against them, there's a great improvement in their overall well being - a feeling that some sort of justice has been served or something like that.

5.24 How Did The Legislation Protect or Not Protect Those Against Whom Dangerous Offender Proceedings Were Brought To Bear

This question elicited a variety of responses. For three participants (P3, P5 and P9) the issue was irrelevant. Protection, it appeared, was not necessary, either because a Dangerous Offender hearing was a sentencing hearing and guilt had therefore already been established (P3), or because the appellants in these cases ran a serious risk of reoffending (P5 and P9). Indeed, during the course of the hearing, the nature of the proceedings was used, successfully and repeatedly, by Crown counsel to counter Young's objections concerning the admissibility and relevance of evidence. In essence and in effect, the strict rules of evidence that operated at trial (and the accompanying legal protection they provided) did not apply at a sentencing hearing.

Six other participants (P1, P2, P4, P8, P10 and P11) agreed that the legislation did protect offenders. One respondent (P8) went as far as stating

> I feel that our system seems to protect the guilty a lot better than it protects the innocent. I know our system has to go through innocent until proven guilty but I find that it doesn't work for the innocent people but it certainly works for the guilty.

While P8 did not venture any further in specifying exactly how the system (or the legislation) accomplished this, the remaining five respondents listed as "protections" the requirement of the Crown to prove beyond a reasonable doubt the statutory criteria listed in section 753 (a) and (b) (P10), the right to periodic review (P2 and P10), access to a "good" or "competent" lawyer (P4 and P1, respectively) and a "first rate" expert or "well respected" psychiatrist (P4 and P1, respectively), and incarceration for an extended period of time (P11).

The idea that an offender against whom such proceedings were brought to bear received adequate protection was reinforced both by Justice Paris' decision that the legislation did not violate the Charter of Rights and Freedoms, and by the very reasons he provided to support his ruling. The presiding judge upheld the constitutionality of Part XXIV on the following grounds: (1) the Court was obliged in a rational and principled way to determine if an accused met the test of dangerousness set out in the legislation; (2) even if it did find an offender dangerous, the Court had a residual discretion as to whether or not to impose a sentence of indeterminate detention; (3) the legislation itself made no geographical or territorial distinctions nor did it unfairly or unreasonably create a particular class of persons subject to its provisions; and (4) the indeterminate sentence of preventative detention did not constitute cruel and unusual punishment because it was, in some instances, appropriate and necessary for the protection of the public.

Finally, a third group stated that the legislation did not safeguard the subjects of Dangerous Offender proceedings. The perceived lack of protection was embedded within Peggy Koopman's more general critique that the legislation was not doing what it was intended to do, namely, "picking the most dangerous offenders" (Vancouver Sun, 1-21-86, A3). At the commencement of the hearing, Koopman, testifying on behalf of the defense, indicated that: (1) while 50-55% of the 6 700 individuals held in federal penal institutions[1] satisfied the statutory criteria, less than 50 offenders had been selected for processing under Part XXIV; (2) as a group, dangerous offenders did not differ significantly on actuarial data from offenders serving long prison terms; (3) when using the best statistical (demographic, dispositional and situational) predictors available, dangerous offenders as a group did not qualify at a level usually thought necessary when predicting dangerousness; (4) the great majority of successful applications had been undertaken in Ontario and British Columbia, while none had been pursued in Newfoundland and Quebec; and (5) the great majority of dangerous offenders (79%) had as their qualifying crime (a) sexual offence(s).

Drawing on the critical literature, Koopman maintained that two practices had been instrumental in the above less-than-desirable results: (1) the moral, political and philosophical exigencies (like intense press coverage and a perceived need by

[1] According to Statistics Canada (1985), the average number of inmates held in feder any given week from March 31, 1984 to March 31, 1985 was 10 875; 11 872 individuals during this time. On any given week from March 31, 1985 to March 31, 1986, the figu and 12 281 respectively (Statistics Canada, 1986).

authorities to make a strong statement on a case) that governed provincial Attorney Generals' decisions to proceed under Part XXIV; and (2) the judiciary's reliance on psychiatric assessments that were based on extra scientific (sometimes value-laden) variables, and that tended to overpredict dangerousness.

The lack of protection was equated not only with discriminatory practices prior to and during Part XXIV proceedings, but also to the warehousing of these individuals once an indeterminate sentence was imposed. More specifically, Koopman observed that only a limited number of dangerous offenders had received treatment; the variety of specific programs that these offenders needed were largely unavailable; and as a matter of practice or policy eight to nine years was the minimum time served before parole was even considered. Moreover,

> the effects of the Dangerous Offender status were altogether negative: stigma as a sex offender whether the man was or not, the view of the institution and himself as a man doing a life sentence, the probability of doing much of their time in protective custody, and the self-fulfilling prophecy of other persons treating a man over a number of years as a dangerous person (Koopman, 1985, p.p. 137-138).

These findings and conclusions were used by defense counsel in conjunction with legal argument to substantiate the claim that far from protecting those against whom Dangerous Offender proceedings were brought to bear, Part XXIV violated three fundamental rights set out in the Charter of Rights and Freedoms, namely, the right not to be arbitrarily imprisoned (section 9), the right not to be subjected to cruel and

unusual punishment (section 12), and the right to equal treatment under the law (section 15). But apart from Young, only one other respondent (P7) stated that by reason of its unconstitutional nature, the legislation had failed to protect dangerous offenders. The issue for P7, though, was not so much civil rights violations (as it had been for Young), but that "there was no assurance that a [dangerous offender] was going to get the help he needed".

5.25 The Purpose of the Indeterminate Sentence

In the submissions and arguments of Crown and defense counsel both during the constitutional challenge and at the conclusion of the hearing, and in the presiding judge's reasons for judgment, the indeterminate sentence was repeatedly linked not to punishment and/or rehabilitation but to the protection of the public. Justice Paris noted for example:

> It seems evident...that in deciding how to deal with a person found to be a dangerous offender, the protection of the public must be the Court's paramount concern. That is, even if the other principles of sentencing, namely, deterrence and rehabilitation, would be satisfied by a sentence of a fixed or definite duration, the protection of the public may still require an indeterminate term of imprisonment (R. v. Noyes, pp. 317-318).

At the time of interview, five participants endorsed the view that the purpose of the indeterminate sentence was to protect the public (P1, P7, P10 and P12) and/or potential victims (P3 and P5). One other respondent (P6) stated that its objective was to isolate and segregate, and to act only as a specific deterrent. While agreeing with P6's assessment, P4 added that:

> in a sense, [you] indeed warehouse [dangerous offenders] so that [when] there is a breakthrough in treatment (which is very likely to happen one of these days) and the treatment works...we [mental health professionals] can recommend with great comfort to the National Parole Board "when this guy's number comes up, send him on the street and just supervise him."

Of all the individuals interviewed, only one (P3) stated that:

> the purpose of the indeterminate aspect of it was that the individual could get treatment, that it could not be determined how long it might take for him to be rehabilitated with treatment and consequently there was no point in putting a definite term on it unless you were pretty confident that he could be treated within a particular time.

The above argument was rejected by three other respondents (P3, P4 and P8) who actively denied that dangerous offenders could be rehabilitated. Two additional participants (P7 and P9) indicated that the purpose of the sanction was simply to punish. Although P7 did not elaborate, P9 commented:

> What it does is to punish without remorse [and] without any feeling of sensitivity to humanity because it puts someone in a position of never knowing what lies ahead. [Dangerous offenders] are basically at the whim of a community [and] political persuasion.

Finally, only one individual (P11) claimed that it had a dual function, namely punishment and rehabilitation.

5.26 The Role of the Expert

During the course of the Noyes hearing, a total of 14 experts (two general practitioners, a nurse, two psychologists, and nine psychiatrists) were called to testify, ten on behalf of the Crown and three for the defense. The subject areas addressed by these experts included their past professional involvement with Noyes; the etiology, defining characteristics, course and treatment of paedophilia; the prognosis and diagnosis for Noyes at the time of the hearing; the effects of child sexual abuse on victims and parents of victims; and the use and abuse of Dangerous Offender legislation.

At the time of interview and as a group, mental health professionals defined the role of the expert in Dangerous Offender proceedings in a manner that explicitly or implicitly reinforced the link between mental illness and dangerousness and hence legitimized their involvement in these hearings. P3 remarked, for example,:

> there needs to be forensic experts to determine whether or not the offender was suffering from a condition that would be treatable, curable [or] likely to be changed.

Although most of the mental health professionals who were interviewed confined their responses to the above and avoided using the term "dangerous" or any derivatives thereof, there was one exception (P3). This respondent suggested that:

> the role of the expert might [also] be to evaluate the victim and determine if, in fact, they had been submitted to danger and/or speak to whether those kinds of acts, in general, constitute danger and if so, what kind.

Implicit in these and like statements was the notion that what was being requested by those involved in dangerous offender hearings, and what was being provided by mental health professionals, was expert knowledge. One respondent (P4) took the role of experts one step further by stating that:

> people are constantly busy with the ethical things as to what psychiatrists should or should not do with offenders. They forget that one of the first ethical commitments, which is written in virtually any code of ethics having to do with doctors, is that the if the Court asks for an opinion you shall help the court... I'm there to serve the Court and that is what I see as the role of the expert witness.

All of the remaining seven participants (P6, P7, P8, P9, P10, P11 and P12) conceded that experts did have a role to play in these hearings. Two respondents (P6 and P10) stated that their participation was required under section 755 of Part XXIV and that their role was to give facts and opinions that would ultimately be weighed with all the facts. Three other individuals specified the area(s) that they believed experts should address, namely, an offender's chances of rehabilitation (P11 and P12), "the psychological factors influencing re-offenders" (P12), and the impact that an

indeterminate sentence will have on an offender (P9). Only one interview subject (P7) expressed some reservations regarding an expert's function in these proceedings. She commented:

> ...psychiatrists go in there saying or at least implying that they do have...[answers] and the judges, over a period of years on these sentencing cases, found that they did not. They certainly couldn't predict the potential for violence.

5.3 Perceptions of Dangerousness

In general, the mental health professionals interviewed, and Noyes himself, tended to view the dangerous offender as a sick individual - someone whose dangerousness was a manifestation of psychopathology. The terms most often deployed in the context of discussions on dangerous offenders were "psychopath" and "sociopath". On occasion, some participants were inclined to detail the perturbations in instincts and emotions characteristic of such individuals. At the time of interview, Noyes stated:

> I would consider a dangerous offender to be somebody who because of some psychiatric disturbance or some high degree of psychopathy...didn't have a conscience, didn't care whether [s/he] hurt people,...[and] who had gone through the prison system for like offences before [and] had not shown any evidence of rehabilitation or change.

Quite apart from this, perturbations in thought and consciousness also surfaced in some of the definitions that were offered. P3 commented, for example,:

> people with certain types of mental disorder [are dangerous]... So, there are people with schizophrenia and severe manic depressive types of illnesses with psychosis who may be extremely dangerous...because they have hallucinations and delusions that might instruct them to do harmful things. [People with] dissociative disorders might dissociate into states where they would be seriously dangerous, violent [and] murderous.

In and through the discursive practices of participants, dangerousness was linked not only to mental illness but also to the commission of violent and/or sexual offences. This was most evident in the responses given by this group to the questions: (1) Are all violent offenders dangerous? (2) Are all sexual offenders dangerous? And (3) Are all violent, sexual offenders dangerous? As Table 5.1 indicates, one respondent (P5) stated that all violent offenders were dangerous, two (P3 and P5) volunteered that all sexual offenders were dangerous, and four (P1, P2, P4 and P5) agreed that all violent, sexual offenders were dangerous. Without exception, the remaining respondents applied the term to only a portion of the above-specified offenders. Most of them did so in a manner that implied that mental health professionals had within their corpus of knowledge the means and methods to scientifically identify and forecast dangerousness. P4, for example, reduced the issue of which sexual offenders were dangerous to three factors. He stated:

> Sexual offences? I think the statistics are grim. The reason for that is that we are talking about [three] issues... There is the issue of the particular sexual arousal map in these people's brains... [Then, there is] the issue of what kind of a moral system does this person have... (If a person's moral system is externally regulated, the child is at enormous risk. If the morality is inhibitory towards a child, then there isn't much risk). [Finally], there is the question of

Table 5.1: Responses of Mental Health Professionals and Noyes to Questions Concerning the Dangerousness of All Violent and/or Sex Offenders*

Questions	Participants' Responses**	
	Yes	**No**
Are all violent offenders dangerous?	P5 Total=1	P1 P2 P3 P4 Total=4
Are all sex offenders dangerous?	P3 P5 Total=2	P1 P2 P4 Total=3
Are all violent, sexual offenders dangerous?	P1 P2 P4 P5 Total=4	P3*** Total=1

* In this table, the responses of only five participants (four mental health professionals and Noyes himself) are presented together primarily because their perceptions of dangerousness constituted a distinct discursive field - one that varied in form and content from that of the remaining interview participants.

** See Chapter 3, Table 3.3 (p.62) for the list of respondents.

***This participant stated:

> Probably the vast majority. That's not the same as saying all. I mean, as soon as I say all I'll meet the one person who has ceased to be dangerous.

> [how much] impulse control [does the person possess]. These are...the sorts of things that go through my mind and I look for supportive or mitigating evidence.

Inherent in all the responses provided was the idea that the dangerous offender posed a serious social threat if left to his/her own devices. Not only was there a high risk of reoffence (P1, P3 and P4), but such offenders had already committed dangerous acts (P3) and had, in the process, displayed "[a] lack of appreciation of, or consideration for others" (P2) and had inflicted emotional and/or physical damage on their victim(s) (P3 and P5).

Having defined the dangerous offender and explained why s/he constituted a danger, this group went on to categorize dangerousness as both a legal and medical problem. While one individual (P1) stated that both legal and medical personnel had the same role to perform (that is, determining a person's level of controls and understanding of the consequences of his/her behavior), the four mental health professionals in this group disputed this assessment. For the latter, dangerousness was a legal concern only to the extent that it involved behaviors that were legally prohibited (P4 and P5), that the public had to be protected (P2), and that:

> the rights of [the offender had to be] infringed upon in order to prevent them from infringing [upon] other people's rights (P3).

According to this position, dangerousness was a proper medical concern because there did exist what was referred to as a "science of human behavior" that had to do specifically with repetitive behavior and impulse control, and that could illuminate causes and assist in the prediction of reoffence (P2 and P4). Over and above scientific knowledge on these issues, mental health professionals maintained (and Noyes himself endorsed the idea) that medical (as opposed to legal) personnel were charged with the responsibility for treating the "condition" of dangerousness (P4) and "healing" the victims of dangerous offenders (P3). In and through their discursive practices - and in particular those that pathologized the dangerous offender (P1, P2, P3, P4 and P5) and his/her victims (P3), and that reinforced the idea that mental health professionals could identify and predict dangerousness and treat all the parties involved (P1, P2, P3, P4 and P5) - dangerousness was defined largely as a medical problem that required clinical intervention.

When members of this group were asked whether dangerousness represented some other kind of problem, one psychiatrist (P4) refused to shift his attention away from individual psychopathology. He stated:

> [dangerousness] is basically a problem of personality functioning...which is really beyond voluntary control.

Whereas two other respondents (P2 and P3) commented that dangerousness was a social problem, neither was able to differentiate the social from the individual disorder. P3 stated, for example,:

> ...some of the conditions that...produce dangerousness are most likely caused by social ills where the [offender himself has been a] victim of violence, a victim of an extremely disruptive family life, a toxic upbringing, poverty [or]...social injustice.

Finally, P5 was the only subject in the entire sample to indicate that dangerousness was a cultural question, and was therefore largely dependent on what any given society considered dangerous or harmful. He observed:

> there are societies where...[sexual] offences against young boys...[are not] a problem... [I]n our society [they are].

In considering what was to be done about the dangerous offender, four (P1, P2, P3 and P4) of the five participants advocated the imposition of an indeterminate sentence. One individual (P3) made the suggestion after stating:

> it would be nice to have a colony to send them to, but they might be dangerous to each other and then where would we be?

While P3 and P4 did not object to the indeterminate sentence as it was being administered at the time of the research, P3 suggested:

> it should be stated clearly that [the indeterminate sentence] is for the protection of the public: period, and that all the legal safeguards be built into a detention that is exclusively for public protection so the individual knows what they're facing and [so that] it is not quasi-medical.

P1 recommended that the sentence not be interminable and that it be used to keep dangerous offenders under the control of the criminal justice system for "the purposes of monitoring and supervision" once they are released. It is interesting to note that while all participants proposed that rehabilitative efforts should be brought to bear once dangerous offenders are incarcerated, not one justified the indeterminate sentence on

the basis that treatment could be provided over an extended period of time until a cure was effected. Indeed, the only participant (P5) within this group who advocated permanent incarceration did so on the ground that:

> there are individuals, no question, that we [mental health professionals] have absolutely, at present, no way and shouldn't try to pretend that we have any way of rehabilitating them.

A second set of respondents (P7, P8, P9, P10, P11 and P12), at least at this phase of the interview protocol, actively resisted the psychiatrization of dangerousness. Almost invariably, this group defined dangerous offenders as

> people who commit acts destructive to other people and who on the facts are likely to do it again (P10).

While the above definition implied that a whole range of individuals would qualify as dangerous offenders, the term was selectively applied to murderers (P7, P8 and P10), rapists (P7, P9 and P11), child sex offenders (P7, P8, P9 and P11) and gang members (P8). In fact, when these individuals were later asked whether all violent and/or sexual offenders were dangerous, a higher proportion responded in the affirmative (see Table 5.2).

For most of this group, the issue of dangerousness went beyond the physical, emotional and/or psychological damage perpetrated on victims of dangerous offenders. P8 stated, for example,:

Table 5.2: Responses of Group 2 to Questions Concerning the Dangerousness of All Violent and/or Sex Offenders*

Question	Participants' Responses**	
	Yes	No
Are all violent offenders dangerous?	P7 P8 P12 Total=3	P9 P10 P11 Total=3
Are all sexual offenders dangerous?	P7 P8 P11 P12 Total=4	P9 P10 Total=2
Are all violent, sexual offenders dangerous?	P7 P8 P9 P11 P12 Total=5	P10 Total=1

* The responses of P7, P8, P9, P10, P11 and P12 are considered in this table. Their perceptions of dangerousness constituted a second discursive field.

** See Chapter 3, Table 3.3 for the list of respondents.

> [dangerous offenders] don't just kill or injure one person. They prey on their victims and there [are] many victims.

For two other participants, the problem resided in offenders' unwillingness to accept responsibility for their behavior (P9), their lack of remorse (P7), and their failure to understand that they had done something "wrong" (P7). A fourth respondent focused more directly on the offender's lack of "basic, moral values" which inevitably compromised the safety of citizens.

In the definitions that they provided, this group did support the non-medical censure of dangerous offenders. However, this opinion appeared to contradict the responses that they offered when asked whether dangerousness was a legal or medical problem or both. Five (P7, P8, P9, P11 and P12) of the six respondents categorized it as both. Three (P8, P9 and P12) went on to indicate that it was a medical problem because "[dangerous offenders] were not right in the head" (P8), because their inability to control their tempers was indicative of a psychological disorder (P12), and because "we are talking about a sickness that has to be addressed" (P9). To be fair, equal (and sometimes more) emphasis was placed on a discussion of dangerousness as a legal problem. While mental health professionals dispensed with the issue quickly, these respondents did assert that dangerousness was a concern and threat to society (P9) and that:

> it [made] our streets unsafe,...women and children victims [and it ultimately made] for a very fearful society (P7).

The single respondent (P10) who did not categorize dangerousness as both a medical and legal problem stated:

> dangerousness is neither a legal or medical problem. It is a common sense term used to describe someone who will clearly hurt again.

When this group was asked if dangerousness represented some other kind of problem, P7 responded that it was essentially a moral concern and that it was indicative of moral pathology within the person who engaged in these activities. P9, on the other hand, viewed it as a social problem that was not being addressed precisely because

> we are responding to the victim on a short term basis but we are not understanding that in many cases their situations are a result of what we have or have not done to them.

A variety of responses were offered by this group concerning the appropriate way(s) of dealing with dangerous offenders. Two participants (P10 and P11) stated that the current Part XXIV provisions were satisfactory in accomplishing this task. P11 suggested that the only difficulty he had with the existing legislation was that the imposition of an indeterminate sentence was not made mandatory upon a positive dangerous offender finding. This, he thought, should be changed because:

> ...an offender will only do what was necessary for him to "get by" if he knows he is going to get out at a set time... Without that specified time period of incarceration the offender is more likely to put an effort into rehabilitation programs as that may be the only way he will ever be released.

Three other individuals (P7, P9 and P12) recommended that dangerous offenders be held in secure environments where treatment would be made available. Finally, only one respondent (P8) advocated permanent incarceration for the following reasons:

> I find that they are released back into society too quickly. They have already proven that they can't live within society - within the rules and laws and the rights and wrongs. By releasing them (and it's been proven over and over again)...we are putting more children and more people at risk.

A third set of ideas and views on the dangerous offender were voiced by P6. He recommended that the term "dangerous offender" be reserved for individuals who constituted a menace as opposed to a nuisance to society. More specifically, he stated:

> [Dangerous Offender legislation] should have application to the worst of the worst... On a continuum scale the legislation should have application to an offender who has committed anal rape at knife point. It should not apply to an offender who fondles the genitals of a child over his or her clothes no matter how many times he has done it.

Consistent with this line of reasoning, P6 categorized only all violent, sexual offenders as dangerous presumably because they would represent the "worst of the worst". For such individuals:

> common sense dictates that if driven by psychopathology as distinct from situational impulse, they will repeat and continue to repeat.

For P6, dangerousness was "an emotional or social problem with legal implications". Once a person became actively dangerous, he stated:

> in the context of the definition and depending on the age, background and antecedents of the offence, it is probably the case that there is no determinate sentence that is adequate. I don't disagree with the

legislation in respect of a discrete group of individuals. I'm not offended by its application to this group.

5.4 Satisfaction or Dissatisfaction With Dangerous Offender Legislation and Recommendations For Change

Of the 11 individuals who voiced an opinion on whether or not they were satisfied with the contents and application of Dangerous Offender legislation, only three responded in the affirmative. All three qualified their responses. One (P10) stated that his only reservation was "...that because of the executive discretion to apply it, some anomalies exist[ed]". The comment was followed neither by an elaboration of the anomalies nor by calls for the elimination of the discretionary power to proceed under Part XXIV. Instead, the practice was justified on the basis that "this is a difficult truth of the charging process generally".

The same approach was adopted by P4 who, before expressing his satisfaction with current practices, acknowledged the uneven province-by-province application of Part XXIV provisions and then proceeded to explain why the criticism was naive and why Greenland and McLeod's (1981) conclusion that psychiatrists in British Columbia were being induced by the province "...to march to a different and more savage drummer..." was inappropriate. He suggested that the number of convicted persons who were processed as dangerous offenders was simply a function of any given

province's financial resources and crime rate. When P4 responded directly to the question, he stated:

> often court cases...have little to do with justice. [They are] a way of solving problems... I think given the crime rate, given the knowledge we have about repetitive behaviors, given the agony of the victim, I think [Dangerous Offender legislation] is a reasonable proposition.

Consistent with the above, P4 did not recommend abolition or legislative amendments. This did not, however, preclude him from suggesting that the Forensic Psychiatric Services Commission of British Columbia should solicit an agreement with the federal forensic services so that both (as opposed to the latter) would be responsible for the psychiatric care and supervision of federal prisoners on parole.

The last participant who viewed the legislation favourably was opposed only to the determinate sentencing option. He, unlike P4 and P10, proposed that an amendment be made to delete it.

Dissatisfaction with the contents and/or application of the legislation was voiced by eight respondents. Despite the impressive array of provisions within Part XXIV, the primary complaint of two participants (P3 and P8) was that the legislation did not go far enough to really protect people. P3 elaborated stating that:

> the legislation has not been applied often enough or stringently enough and sufficient numbers of people [have not] been considered for the application of it.

Both respondents were clearly opposed to the legislation's abolition. Reform through amendments to the Criminal Code was suggested. While P8 could not specify the changes she thought appropriate, P3 recommended that a dangerous offender hearing should be the "automatic next step" for every single person who has been found guilty of a serious crime that has harmed others to a significant degree, and that a review process should be instituted

> to determine which people, if any, had ceased to be dangerous in light of new findings, new research, new studies [and] new treatment.

Both proposals would substantially increase the involvement of psychiatrists in matters involving dangerousness and would permit them to control any given offender's access to a legal category that they themselves had been partially responsible for constructing.

A second criticism that was levied against Part XXIV was the expense (to the public) involved in the "fairly tough standard" that a Crown had to meet in order to establish that a person was a dangerous offender (P7). P7 stated:

> it would be nice to cut back or eliminate [such costs]. On the other hand, on the accused's own right to a fair...hearing tough standards have to be in the law so that it is not abused.

This contrasted sharply with the articles this newspaper reporter had penned accusing **Noyes** of "chalking up added expenses" (1-9-86, The Province, p. 4) in his bid to challenge the constitutionality of Part XXIV and leaving the public with a "sex tab" that was incorrectly estimated to run as high as $90 000 a year per victim (2-6-86, The Province, p. 5). At no place in these articles were the Crown's expenditures

scrutinized, printed or politicized. Moreover, this participant's only recommendation during the interview (namely, the establishment of rehabilitation programs to meet the needs of those rendered dangerous offenders) would itself incur a major expenditure of taxpayer money.

A third criticism related directly to the problems the legislation created for mental health professionals and offenders. More specifically, P2 stated that in the absence of objective, reliable tests, and without assurances to offenders that their self-report data will not be used against them at trial or during the hearing, accurate clinical predictions were difficult, as both factors helped conceal repetitive offenders and the scope and seriousness of their behaviors. In addition, he commented:

> Dangerousness is very difficult to predict and where any single instance of it can be so disastrous, then prediction becomes even more important [and] you require higher and higher standards. What you're dealing with here is the combination of "Yes we can predict quite a lot but given the severity of the offences, by and large, I doubt we are going to be able to predict enough for you".

Finally, objection was taken to the quasi-medicalization of the indeterminate sentence on the grounds that treatment facilities and knowledge about treatment were very limited and, in the absence of reliable tests, the individual's capacity to prove that s/he has responded to treatment (as opposed to "recruited allies and gained their support") was circumscribed.

What appeared to be a persuasive argument against the involvement of mental health professionals in such proceedings, upon closer examination turned out not to be that at all. On no occasion did P4 contend that psychiatrists were incapable of accurate pre-trial or pre-parole assessments, or of successfully treating dangerous offenders; it was just that these tasks were complicated by other factors like being compelled to breach the patient-client confidentiality or being required to make predictions that broke the .40 sound barrier (Menzies, Webster and Sepejak, 1985). P4 did support an amendment to the existing legislation that would make it clear that the imposition of an indeterminate sentence was strictly for the protection of the public rather than for the good of the offender. This suggestion was followed not by a call to eliminate the role played by treatment considerations (and, by implication, mental health professionals more generally) in determining whether an offender would receive a definite or indefinite sentence, but instead by the suggestion that "[these decisions] should not be related to [treatment] too explicitly". While this would undercut the power of psychiatrists to censure dangerousness, P2 compensated by advocating proliferation in the area of treatment.

A fourth criticism focused specifically on how the legislation had been and could continue to be abused in the manner described by Koopman's testimony in the first part of this chapter, and by its application to Noyes specifically. One respondent (P5) commented:

> I've seen many, many individuals..whose offences were at least as severe [and] as damaging and [who] probably [were at] as high [of a]

> risk for reoffending as Noyes...who clearly didn't get that kind of sentence... It's true with all kinds of sentences you see these inequities but I think when you're going to use the [indeterminate sentence] as a last resort you have to be especially careful that it is being used fairly, that you try to see it as not overreacting and that it be separate from political considerations.

While P1, P6 and P9 agreed that political exigencies and/or a perceived need by criminal justice officials to appease an angry public were at the root of past abuses, P1 also contended that the misuse of Part XXIV stemmed from

> ...[the lack of] understanding of the intent of the legislation...that being for the "worst of the worst", to provide for the safety of society and for release when a [dangerous offender] isn't at an undue risk to reoffend.

Furthermore, P1, P5 and P6 concurred that the legislation's lack of criterial parameters made abuse legally possible. P1 observed:

> the criteria are so broad that...any paedophile arrested in Canada...would [fall within the definition of a dangerous offender].

The solution to these problems for three of the four respondents mentioned above was not the abolition of the legislation. What was suggested was a "tighter" (P1), "clearer" (P5) definition of the qualifying dangerous behaviors (P5) or dangerous persons (P1) because presumably

> if you [tightened] the criteria, not many people are going to qualify. Those people who do qualify, by fact, are going to be somewhat deserving of having a sentence like that sought against them and indeed the public will need to be protected from them (P1).

While P9 agreed that consideration should be given to the above, he recommended the deletion from the legislation of the indeterminate sentence of preventive detention. Finally, the only non-legislative changes that were advocated were better education of

the judiciary and the whole criminal justice system concerning the intention of the legislation, along with the involvement of more expertise (P1). Cumulatively and, to some extent, individually, the above represented yet a further endorsement of the need for special sanctions against dangerous offenders.

Koopman and one respondent (the only one in the entire sample) called for the repeal of the legislation. At the hearing and in her report, Koopman's objection to the legislation appeared to revolve around the indeterminate sentence as it was then being administered. For P6, abolition was advocated on purely legalistic grounds. He stated:

> ...[dangerousness] is incapable of being defined. It's easier to define an application by the multiplicity of previous convictions taken alone (the three time loser rule) than to postulate criteria.

Over and above this difference, P6 did not recommend that the legislation be replaced. Koopman, on the other hand, made suggestions that amounted to, perhaps not new legislation, but a marginally different way of dealing with dangerous offenders. She suggested that

> substantive versus indeterminate sentences be given to men who are considered **dangerous** and in need of treatment but where treatment becomes part of the court order in such a manner that the system is compelled to provide for the specific needs of [these individuals] (Koopman, 1985, p. 142).

Under such a system, the label or status would be maintained, a new sanction would be imposed and mental health proliferation in the area of dangerousness could continue.

5.5 Summary

In this chapter perceptions of Dangerous Offender legislation, and dangerousness construct more generally, were identified and examined. The data indicated that only rarely was there consensus on issues relating to each of these areas. The examination of views, ideas and opinions on particulars of Dangerous Offender legislation revealed that interview and hearing participants agreed on three issues: (1) it was violent and/or sexual offenders who were defined as dangerous by the act; (2) it was the public that the legislation was intended to protect; and (3) experts did have a role to play in Part XXIV proceedings. Agreement dissipated when interview respondents and hearing participants moved beyond offender categories to describe who they believed fell within the meaning of dangerous offender, and when they began to specify the precise role that experts played in these proceedings. Marked differences were evidenced in perceptions of the legislation's objectives and the protection that it provided both for the endangered and for those against whom it was brought to bear.

On the subject of dangerousness itself, there were substantial differences in whom respondents perceived as dangerous, in what they viewed was (were) the appropriate way(s) of handling the dangerous and, to some extent, in whether or not dangerousness was a medical, legal or other kind of problem. Interview participants expressed both satisfaction and dissatisfaction with Part XXIV provisions and offered a

variety of recommendations for change. In Chapter 6, these questions are reconsidered in the context of the thesis as a whole. The major themes that emerged in this study, and their implications for the future role of Dangerous Offender legislation in Canada, are considered.

Chapter 6

Conclusion

This thesis has examined how dangerousness was defined, censured and sanctioned in the context of the Noyes hearing and in and through the discursive practices of the various participants. The loci, forms and extent of resistance to the exercise of power to characterize Noyes as dangerous, and to translate this classification into legal or other sanctions, have also been explored as has the wider socio-legal context within which the various impulses to censure emerged. In this final chapter, the key themes and findings of the research are considered.

6.1 Vocabularies of Censure

6.12 Medical Discourse

In the years prior to his arrest, mental health professionals classified and censured Noyes and his offending in and through their diagnoses and medical interventions. The psychomedical terms that were deployed in the context of discussions about Noyes recurrently denoted illness, abnormal sexual propensities and personality pathologies. In practice, these terms operated as powerful social censures,

marking Noyes off from the "normal" and simultaneously legitimizing and justifying further medical and psychological intervention.

Invariably, medical involvement was directed towards normalization, and specifically towards the cessation of the offending behavior, the elimination of Noyes' sexual attraction to prepubescent boys, the fostering of sexual relationships with age-appropriate females, and the uncovering and correcting of what turned out to be a myriad of underlying psychopathologies of which paedophilia was purportedly a part. In the absence of any effective resistance from other individuals who had been made aware of Noyes' sexual involvement with children, mental health professionals retained a complete monopoly of power to identify and sanction Noyes and his transgressions against children.

Throughout the course of the hearing and at the time of the research interviews, mental health professionals continued to contend that Noyes was sick and that his offending was a manifestation of underlying psychopathology. The medical censure of Noyes was revisited as mental health professionals reviewed medical records, files and reports compiled before and after his arrest (and even, in one instance, without any one-to-one contact with Noyes). Through comparisons between Noyes and the "typical paedophile", through the deployment and application of terms such as "paedophile", "psychopath" and "anti-social personality trends", and through expert opinions indicating that Noyes had shown a failure in the past to control his sexual impulses,

mental health professionals were able to establish and continuously reassert ownership over this medico-legal case.

At the same time, new areas were colonized as expert testimony regarding the effects of sexual abuse on child victims, their families and their communities was solicited and proffered. Both in the court room and in the print media, mental health professionals enumerated the expected behavioral, psychosocial and developmental effects of child sexual abuse. Through an ensemble of techniques (including what was characterized by the defense as the misleading use of correlations and an uncritical reliance on findings in the sexual abuse literature), and aided and abetted by newspaper personnel, they actively engaged in the amplification of harm. In the end, victims, their parents and their communities were, like Noyes himself, pathologized and deemed to be in need of the services of mental health professionals.

Having successfully constructed the social threat posed by Noyes and his offending, mental health professionals went on to insist that they had within their corpus of knowledge the means and methods to mitigate the future potential harm. Consistent with the ideas that Noyes' sexual offending was symptomatic of psychosocial dysfunction, and that remission of the offending behavior could only be achieved by remedying the underlying problems that prompted it, mental health professionals recommended treatment administered by trained professionals in specialized institutions. In doing so, however, mental health professionals had to

overcome the crisis in legitimacy that had been precipitated by past treatment failures. This was, to some extent, accomplished by making the following claims: (1) they had not treated Noyes for paedophilia in the years prior to his arrest; (2) what had been offered in the past as treatment had, in retrospect, been inappropriate or insufficient; (3) standard penological devices would not only have little appreciable effect in reducing deviant fantasies and drive but would also create a false sense of public security; (4) a new technique (namely, chemical castration) was now available and effective in immediately reducing the deviant sexual drive and fantasies; (5) a combination of traditional techniques (namely, psychotherapy, and behavior and group therapy) could be brought to bear in the treatment of Noyes; and (6) in contrast to former circumstances, lifelong medical monitoring would henceforth comprise an integral part of treatment.

Renewed calls for medical intervention were accompanied by an abandonment of cure as the ultimate goal of treatment. Via claims that Noyes' condition was lifelong, and through repeated comparisons between paedophilia and alcoholism, mental health professionals cut down on expectations and carved out their own criteria for success, namely the reduction (but not the elimination) of the risk of reoffence. While as a group they stood opposed to the imposition of a fixed or indeterminate term of imprisonment in a penal institution, they fully endorsed the administration of treatment over an indeterminate period of time accompanied and followed by indefinite medical monitoring.

Throughout the hearing and at the time of interview, there were points of disagreement among mental health professionals, particularly on the presence or absence of psychopathy, guilt, empathy and remorse, the similarities and differences between Noyes and the typical, clinical paedophile, and the efficacy and ethical implications of anti-androgen therapy. However, these differences did little to undermine the core ideas that held this discursive field together.

6.2 Public Protectionist Discourse

In the midst of these various efforts to psychiatrize Noyes' dangerousness, a diverse group of individuals (including the Assistant Deputy of the Attorney General, Crown counsel, the presiding judge parents of victims, members of the affected communities, P8, P10, P11 and P12) fully and actively endorsed the non-medical censure of Robert Noyes. As revealed in Chapter 2, the non-medical censure and sanction of Noyes and his transgressions did not await his trial or his dangerous offender hearing. Once the first set of allegations were made: (1) a full scale R.C.M.P. investigation was ordered; (2) multiple charges were accumulated and two further arrests followed as did the threat of a possible lynching in Ashcroft; (3) Noyes was suspended without pay by the school board of trustees; (4) his children were seized by the Ministry of Human Resources; (5) pending custody proceedings, a restriction

order, allowing Noyes limited access to his children, was issued; and (6) an agreement was struck between the Assistant Deputy Attorney General and four unnamed senior people in the Crown office to enjoin Crown counsel in each of the five jurisdictions where Noyes was charged from accepting his plea, to have Barry Sullivan and Michael Harrison prosecute Noyes on the combined charges, and to proceed, following conviction, under Part XXIV. Following his plea to the final 19 count indictment, Noyes was fired by the Cariboo school board, his teaching certificate and bail were revoked and Crown counsel made public his intention to have Noyes designated a dangerous offender.

Throughout the course of the hearing and at the time of interview, the construction, censure and sanction of Noyes' dangerousness continued unabated. Attention was refocussed on the actual crimes committed and on those who had been victimized. Repeated references were made to the age and gender of the victims, the counts per victim and the total number of children with whom Noyes had had sexual contact. A great deal of time and attention was devoted to reiterating the short- and long-term developmental, behavioral and psychosocial effects that Noyes' offending had or might have (at some future time) on victims, their families and their communities. Consideration was also given to the potential financial costs that would have to be incurred to treat and counsel all affected persons, and to deal with any illegal activities (that is, prostitution and sexual offending) that victims might engage in as a result of the crimes committed against them.

In and through these discursive practices, Noyes' dangerousness was linked not just to the types of offences he had committed, but also to the immoral or offensive behavior that Noyes had demonstrated before, during and after his sexual offending. The issue of psychopathy was raised and proved particularly effective in highlighting Noyes' badness. The fact that Noyes had continued to offend despite having been apprised of the potential harmful effects on his victims, coupled with his denial that the behavior was harmful, were used as conclusive evidence to support the claims that Noyes lacked guilt, empathy and remorse. It was contended that Noyes had manipulated and deceived mental health professionals, medical doctors, school administrators and parents of victims not just to avoid criminal prosecution but also to secure for himself continued access to victims. Finally, attempts were made to differentiate Noyes from other child sex offenders. The number of children victimized by Noyes, the counts per victim, the 15-year history of sexual offending, the continuation of the offending during treatment and following exposure, and the numerous failed treatment attempts were used to advance the claim that Noyes was "the godfather of child molesters" and that, as such, he should be sanctioned severely.

Having constructed Noyes dangerousness, public protectionists went on to suggest that given the nature of paedophilia and Noyes' personality more generally, the appropriate disposition in the case was an indeterminate sentence of preventive detention. The sentence was justified and legitimized on the following g[illegible] variety of treatments and exposure in the past had had no appreciable eff

conduct; (2) the proposed anti-androgen therapy was not only costly but also ineffective in changing the deviant drive; and (3) the sentence would act both as a specific and general deterrent and would with its attendant parole for life upon release best provide for the protection of society.

6.2 Vocabularies of Resistance to Censure

6.21 Civil Rights Discourse

While mental health professionals and public protectionists were advocating the censure of Noyes, Ken Young, in conducting his defense of his client, launched a resistance. Immediately following Noyes' plea, and at the commencement of the hearing, Young challenged the constitutionality of the Part XXIV provisions. Combining evidence from the critical literature with legal argument, he contended that: (1) contrary to section 9 of the Charter of Rights and Freedoms, Noyes had been arbitrarily selected by both the Attorney General's office and Crown counsel, for social and political reasons, to be the subject of a show proceeding; (2) the uneven province-by-province application of dangerous offender proceedings, and the unfair and unreasonable targeting of sex offenders constituted discrimination, in violation of section 15; (3) the warehousing of dangerous offenders and the unavailability of treatment throughout their incarceration was, contrary to section 12, cruel

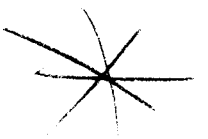
punishment; and (4) given that in other similar fact cases offenders had received fixed sentences and/or probation, and that in other dangerous offender cases the accused had (unlike Noyes) been convicted of like offences in the past, the imposition of an indeterminate sentence would be, contrary to section 12, disproportionate in its result.

During the course of the hearing, numerous legal objections were raised to the introduction of Crown evidence. The credibility of certain key Crown witnesses was undermined by revealing what defense counsel perceived as hidden agendas and unprofessional conduct. The amplification of harm in which mental health professionals, Crown counsel and newspaper personnel routinely participated was exposed. Evidence was introduced to counter claims that Noyes was a psychopath, that he lacked remorse, empathy and guilt, that he was untreatable, and that he differed substantially from the typical paedophile or from other child sex offenders who regularly appeared before the courts. Attention was refocused on the failure of mental health professionals and school administrators to report Noyes once they became aware of his offending behavior. Finally, Young contended that Noyes did not meet the statutory criteria necessary for a positive dangerous offender finding, primarily because at the time of sentencing Noyes had been chemically castrated and was therefore incapable of "...causing pain, injury or other evil to other persons through failure in the future to control his sexual impulses (Section 753(b))."

Ken Young was virtually alone in maintaining, during the hearing, that Noyes' civil and legal rights were being impugned. Moreover, his ability to challenge the censuring power of mental health professionals and public protectionists was severely limited for three principal reasons. First and by his own admission, Young's defense of Noyes was less tied to an abstract, philosophical commitment to the cause of individual or group rights than to a professional obligation to muster a vigorous defense, along with the strictly legalistic discourse of procedural and evidentiary safeguards. Second, the defense of Noyes involved the development of a number of key propositions, among them that: (1) Noyes was a typical paedophile; (2) he had suffered psychosomatic manifestations of guilt; (3) the lack of guilt, remorse and empathy that he had demonstrated in consultations with mental health professionals, and the manipulation and deceit to which he had occasionally resorted, were typical characteristics of all paedophiles and were in no way indicative of psychopathy; (4) Noyes was treatable; and (5) past treatment attempts had been inappropriate or insufficient. Paradoxically, all of these counter claims, to some extent, themselves relied on and served to augment the power of prevailing medical constructs. Third, while Young claimed on legal grounds that Noyes was not a dangerous offender, he too advocated the imposition of an exceptional sanction (that is, a fixed term of two years less a day and 57 years of probation). Furthermore, Young's sentencing recommendation appeared to be a compromise solution - a way of appeasing public protectionists who had advocated punishment, deterrence and lifelong legal monitoring,

and mental health professionals who had endorsed an indeterminate period of treatment and lifelong medical monitoring.

6.22 Critical Discourse



In the context of the constitutional challenge, a second vocabulary of resistance was articulated and deployed - one that, at least to some extent, attacked the sources and justifications of psychiatry's power, authority, status and prestige. Referring to the critical literature on dangerousness and to her own research, the defense expert witness Peggy Koopman argued that: (1) psychiatrists, in their assignment of "dangerous" labels, relied less on a corpus of knowledge that was scientific (that is, rational, objective and value-free) than one that was idiosyncratic and governed by the assessor's own orientation, training, experience and personal biases, along with the subject's class, culture, race and gender; (2) forensic predictions of future dangerousness were based largely on officially-recorded histories of aggression instead of medical or psychological variables; (3) psychiatrists were incapable of accurately predicting dangerousness; (4) other professionals (such as, psychologists, social workers and correctional officers) were better at predicting future dangerousness than were psychiatrists; (5) a number of dangerous offenders had been incorrectly diagnosed as psychopaths; (6) moral, political and philosophical exigencies had often governed

provincial Attorney Generals' and crown counsels' decisions to proceed under Part XXIV; and (7) dangerous offenders were subjected to a range of sanctions that extended far beyond the indeterminate sentence alone (namely, the dangers that they faced from other inmates, the unavailability of treatment, and the fact that eight or nine years was the minimum time served before they were even considered for parole).

The resistance launched by Koopman, like that of Young, was limited. First, Koopman confined herself to only general criticisms of existing practices. No opinions were proffered on the conduct of the key protagonists in the Noyes case, or, more generally, on the conduct of the Noyes hearing itself. Second, there was no denial from Koopman that dangerous offenders existed or that they included individuals convicted of violent and/or sexual offences. Third, she did not move beyond exposing the general censuring power of public protectionists and mental health professionals. In recommending change (that is, making treatment part of a court order so that correctional institutions would be compelled to provide it), she implicitly accepted the status quo and endorsed further medical intervention once the dangerous offender designation is established.

6.3 Implications of the Research

The vocabularies of censure and resistance to censure that were articulated, circulated and deployed throughout the Noyes hearing and at the time of research interviews were interwoven throughout the verbalizations of participants, particularly as they discussed Dangerous Offender legislation and dangerousness in general. Recommendations for change often involved calls for legislative expansion and institutional proliferation. While discourses on dangerousness differed in form, organization and function, there were many points of overlap, as Chapter 5 indicates. The common elements in medical, public protectionist, civil rights and critical discourses were: (1) that there was an entity called a dangerous offender; (2) that those who committed violent and/or sexual offences were dangerous; (3) that the public required protection from these individuals; (4) that dangerous offenders had to be sanctioned; and (5) that dangerousness was both a medical and a legal problem. These points of agreement served to close a conceptual circle of consensus on dangerousness. They, combined with favorable social, political and economic conditions, have also permitted the selective appropriation of various components of danger discourse into legislation that is proclaimed to be fair, and to protect the public.

This is not to say that transformations in the constructed reality of dangerousness are impossible. In order to bring about changes, the prevailing regimes

of truth embedded in discursive practices, and the practical, tactical, political and moral potential of the dangerousness construct, must be exposed. Those directly affected by existing practices must come to realize that discourses can function as weapons of attack or defense - as a means of decomposing and reconstituting received truths about the dangerousness construct. Given the 1993 proposed legislative changes that would allow Part XXIV to apply retroactively (The Globe and Mail, 5-26-93, A1, A2), discursive and non-discursive action becomes even more imperative.

Appendix A: Dangerous Offender Legislation

PART XXIV

DANGEROUS OFFENDERS

Interpretation

DEFINITIONS - "Court" - "Serious personal injury offence".

752. In this Part,

"court" means the court by which an offender in relation to whom an application under this Part is made was convicted, or a superior court of criminal jurisdiction;

"serious personal injury offence" means

(a) an indictable offence other than high treason, treason, first degree murder or second degree murder, involving

(i) the use or attempted use of violence against another person, or

(ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person,

and for which the offender may be sentenced to imprisonment for ten years or more, or

(b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

Dangerous Offenders

APPLICATION FOR FINDING

753. Where, upon an application made under this Part following the conviction of a person for an offence but before the offender is sentenced therefor, it is established to the satisfaction of the court

(a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing

(i) a pattern of repetitive behavior by the offender, of which the offence for which he has been convicted forms a part, showing a failure to restrain his behavior and a likelihood of his causing death or injury to

other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his behavior,

(ii) a pattern of persistent aggressive behavior by the offender, of which the offence for which he has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his behavior, or

(111) any behavior by the offender, associated with the offence for which he has been convicted, that is of such a brutal nature as to compel the conclusion that his behavior in the future is unlikely to be inhibited by normal standards of behavioral restraint, or

(b) that the offence for which the offender has been convicted is a serious personal injury offence as described in paragraph (b) of the definition of that expression in section 752 and the offender, by his conduct in any sexual matter including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses and a likelihood of his causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses,

the court may find the offender to be a dangerous offender and may thereupon impose a sentence of detention in a penitentiary for an indeterminate period, in lieu of any other sentence that might be imposed for the offence for which the offender has been convicted.

HEARING OF APPLICATION

754. (1) Where an application under this Part has been made, the court shall hear and determine the application except that no such application shall be heard unless

(a) the Attorney General of the province in which the offender was tried has, either before or after the making of the application, consented to the application;

(b) at least seven days notice has been given to the offender by the prosecutor, following the making of the application, outlining the basis on which it is intended to found the application; and

(c) a copy of the notice has been filed with the clerk of the court or the provincial court judge, as the case may be.

(2) An application under this Part shall be heard and determined by the court without a jury.

(3) For the purposes of an application under this Part, where an offender admits any allegations contained in the notice referred to in paragraph (1)(b), no proof of those allegations is required.

(4) The production of a document purporting to contain any nomination or consent that may be made or given by the Attorney General under this Part and purporting to be signed by the Attorney General is, in the absence of any evidence to

the contrary, proof of that nomination or consent without proof of the signature or the official character of the person appearing to have signed the document.

EVIDENCE OF DANGEROUS OFFENDER STATUS - Nomination of psychiatrists - Nomination by court - Saving.

755. (1) On the hearing of an application under this Part, the court shall hear the evidence of at least two psychiatrists and all other evidence that, in its opinion, is relevant, including the evidence of any psychologist or criminologist called as a witness by the prosecutor or the offender.

(2) One of the psychiatrists referred to in subsection (1) shall be nominated by the prosecution and one shall be nominated by the offender.

(3) If the offender fails or refuses to nominate a psychiatrist pursuant to this section, the court shall nominate a psychiatrist on behalf of the offender.

(4) Nothing in this section shall be construed to enlarge the number of expert witnesses that may be called without the leave of the court or judge under section 7 of the Canada Evidence Act.

DIRECTION OR REMAND FOR OBSERVATION - Idem

756. (1) A court to which an application is made under this part may, by order in writing,

(a) direct the offender in relation to whom the application is made to attend, at a place or before a person specified in the order and within a time specified therein, for observation, or

(b) remand the offender in such custody as the court directs, for a period not exceeding thirty days, for observation,

where in its opinion, supported by the evidence of, or where the prosecutor and the offender consent, supported by the report in writing of, at least one duly qualified medical practitioner, there is reason to believe that evidence might be obtained as a result of the observation that would be relevant to the application.

(2) Notwithstanding subsection (1), a court to which an application is made under this Part may remand the offender to which that application relates in accordance with that subsection

(a) for a period not exceeding thirty days without having heard the evidence or considered the report of a duly qualified medical practitioner where compelling circumstances exist for so doing and where a medical practitioner is not readily available to examine the offender and give evidence or submit a report; and

(b) for a period of more than thirty but not more than sixty days where it is satisfied that observation for that period is required in all the circumstances of the case and its opinion is supported by the evidence of, or where the prosecutor and the offender consent, by the report in writing of, at least one duly qualified medical practitioner.

EVIDENCE OF CHARACTER

757. Without prejudice to the right of the offender to tender evidence respecting his character and repute, evidence of character and repute may, if the court thinks fit, be admitted on the question whether the offender is or is not a dangerous offender.

PRESENCE OF ACCUSED AT HEARING OF APPLICATION - Exception

758 (1) The offender shall be present at the hearing of the application under this Part and if at the time the application is to be heard

(a) he is confined in a prison, the court may order, in writing, the person having the custody of the accused to bring him before the court; or

(b) he is not confined in a prison, the court shall issue a summons or a warrant to compel the accused to attend before the court and the provisions of Part XXI relating to summons and warrant are applicable with such modifications as the circumstances require.

(2) Notwithstanding subsection (1), the court may

(a) cause the offender to be removed and to be kept out of court, where he misconducts himself by interrupting the proceedings so that to continue the proceedings in his presence would not be feasible; or

(b) permit the offender to be out of court during the whole or any part of the hearing on such conditions as the court considers proper.

APPEAL - Appeal by Attorney General - Disposition of Appeal - Idem - Effect of judgement - Commencement of sentence - Part XXI applies re appeals.

759. (1) A person who is sentenced to detention in a penitentiary for an indeterminate period under this Part may appeal to the court of appeal against that sentence on any ground of law or fact or mixed law and fact.

(2) The Attorney General may appeal to the court of appeal against the dismissal of an application for an order under this Part on any ground of law.

(3) On an appeal against a sentence of detention in a penitentiary for an indeterminate period, the court of appeal may

(a) quash such sentence and impose any sentence that might have been imposed in respect of the offence for which the appellant was convicted, or order a new hearing; or

(b) dismiss the appeal.

(4) On an appeal against the dismissal of an application for an order under this Part, the court of appeal may

(a) allow the appeal, set aside any sentence imposed in respect of the offence for which the respondent was convicted and impose a sentence of detention in a penitentiary for an indeterminate period, or order a new hearing; or

(b) dismiss the appeal.

(5) A judgement of the court of appeal imposing a sentence pursuant to this section has the same force and effect as if it were a sentence passed by the trial court.

(6) Notwithstanding subsection 721 (1), a sentence imposed on an offender by the court of appeal pursuant to this section shall be deemed to have commenced when the offender was sentenced by the court by which he was convicted.

(7) The provisions of Part XXI with respect to procedure on appeals apply, with such modifications as the circumstances require, to appeals under this section.

DISCLOSURE TO SOLICITOR GENERAL

760. Where a court, pursuant to section 753, finds an offender to be a dangerous offender and imposes a sentence of detention in a penitentiary for an indeterminate period, the court shall order that a copy of all reports or testimony given by psychiatrists, psychologists or criminologists and any observations of the court with respect to the reasons for the sentence, together with a transcript of the trial of the dangerous offender, be forwarded to the Solicitor General of Canada for his information.

REVIEW FOR PAROLE - Idem

761. (1) Subject to subsection (2), where a person is in custody under a sentence of detention in a penitentiary for an indeterminate period, the National Parole Board shall, forthwith after the expiration of three years from the day on which that person was taken into custody and not later than every two years thereafter, review the condition, history and circumstances of that person for the purpose of determining whether he should be granted parole under the Parole Act and, if so, on what conditions.

(2) Where a person is in custody under a sentence of detention in a penitentiary for an indeterminate period that was imposed before October 15, 1977, the National Parole Board shall, at least once in every year, review the condition, history and circumstances of that person for the purpose of determining whether he should be granted parole under the Parole Act and, if so, on what conditions.

Appendix B: Newspaper Data

KEY
(A) - Article
(F) - Feature
(L) - Letter to the editor
(E) - Editorial

PHASE ONE - APRIL 28, 1985 to MAY 22, 1985

THE VANCOUVER SUN
Noyes Data:
"Principal faces sex charges", May 2, 1985, A19. (A)
"Principal remanded on sex counts", May 15, 1985, A3. (A)
Dave Margoshes,"Principal faces 16 charges of child sex", May18, 1985, A1, A2. (A)
"Former teacher released on bail", May 22, 1985, A10. (A)

Child Sexual Abuse/Child Sex Offenders Data:
Mike Hughes, "Special system urged in sexual abuse cases", May 3, 1985, A18. (A)
Valerie Casselton, "Groups urged to unite - What child sex abuse study recommends", May 3, 1985, B5. (A)
Grace McCarthy, "In reporting child abuse, few cases involve malice", May 3, 1985, A5. (L)
Lynn Kelly, "Reality counters myth: Female molesters forgotten", May 10, 1985, A18. (A)
Rick Ouston, "Cooperation urged to cut child abuse", May 17, 1985, A11. (A)

THE PROVINCE
Noyes Data:
"Principal charged", May 14, 1985, 13. (A)
"Principal free on bail", May 15, 1985, 7. (A)

Child Sexual Abuse/Child Sex Offenders Data:
"We Ask You: Tattoo molesters?", May 15, 1985, p.13. (A)
Andrew Ross, "Abusers beware", May 17, 1985, p.3. (A)

THE GLOBE AND MAIL
Child Sexual Abuse/Child Sex Offenders Data:
Margaret Polanyi, "Cases continue to go undetected - Report suspected child abuse, teachers told", May 11, 1985, M1. (A)

PHASE TWO - JANUARY 1, 1986 to JANUARY 7, 1986

THE VANCOUVER SUN
Child Sexual Abuse/Child Sex Offenders Data:
Dave Margoshes, "Abuse a secret no more", January 4, 1986, A1, A10. (F)
Dave Margoshes, "Molesters are not sick - they're addicted", January 4, 1986, A10. (F)
Dave Margoshes, "Sex abuse hits schools", January 6, 1986, A9. (F)
Dave Margoshes, "Attention moves to children", January 6, 1986, A9. (F)
Dave Margoshes, "Victims' pain called set to explode", January 9, 1986, A9. (F)

PHASE THREE - JANUARY 8, 1986 to JUNE 31, 1986

THE VANCOUVER SUN
Noyes Data:
Larry Still, "Sex assaulter's bail revoked - Noyes held in custody", January 8, 1986, A1, A2. (A)
Dave Margoshes, "Towns welcome guilty pleas", January 8, 1986, A1, A2. (A)
Larry Still, "Teacher's child molesting spanned 15 years, 5 schools", January 8, 1986, A14. (A)
Dave Margoshes, "Town hit by 'emotional bomb' ", January 9, 1986, A1, A18. (A)
Dave Margoshes, "Noyes: A special report - Complaint ignited 'bomb' ", January 9, 1986, A18. (F)
Larry Still, "Superior praised 'well-respected' teacher", January 9, 1986, A18. (A)
"Legal review hastened by Noyes case", January 10, 1986, A11. (A)
"Parents want Noyes inquiry", January 13, 1986, A7. (A)
Larry Still, "Parole felt unlikely for offenders", January 15, 1986, A11. (A)
Douglas Todd, "Anti-abuse kit urged on schools", January 16, 1986, A18. (A)
Dave Margoshes, "Parents, teachers call for sex-abuse probe", January 17, 1986, B6. (A)
Dave Margoshes, "Noyes sentencing - 'Dangerous' designation fought", January 21, 1986, A3. (A)
Dave Margoshes, "Dangerous offenders trapped in jail: expert", January 22, 1986, B6. (A)
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