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## The blunder that will not die

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Last May, I wrote about the Montana rape case that drew national attention, shock and ire. Due to the gravity of the crime, the resulting suicide and injustice that followed, it bears repeating.

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

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

Shortly thereafter, the Montana branch of the National Organization for Women (NOW) called on both the governor and the state's attorney general to review Baugh's action in the case. Because of that intense heat, Baugh ordered a new sentencing hearing to take place, then saying that Montana state law appeared to require a two-year mandatory minimum prison term. Baugh wrote that "imposing a sentence which suspends more than the mandatory minimum would be an illegal sentence."

What a pity that Baugh had not thought of that a bit earlier, as in before rendering his absurd and morally bereft decision. Jurisprudence utterly devoid of common sense aside, one would think that logic, precedent, decency and accountability might play a role in sentencing statutory rape too.

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

As I previously wrote, even assuming for the sake of discussion that the victim looked and acted 25, produced a fake ID reflecting she was 25 and clearly stated - contrary to all presented evidence - that she *wanted* to have sex with a man old enough to be her grandfather, since statutory rape laws are ones of strict liability, the victim is legally incapable of consent. Period. Full stop. Accordingly, the man would still be convicted of rape in a state with these types of laws. I also discussed the grotesque violation of a teacher's fiduciary responsibility to his students in a place of learning, and the horrible abuse of that trust and authority in the worst possible way: the rape of a child in a school house; the only place besides our homes where our children should be safe in an often terrifying world.

Then last May, the Montana Supreme Court decided the appeal and overturned the rapist's 30-day sentence, ordering that a different judge resentence the rapist. The court also criticized Baugh for his "control" comments and unanimously ruled that Baugh should not have exempted the rapist from Montana's mandatory minimum four-year sentence. In its decision, the Montana Supreme Court wrote that the concept that

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the victim "could have 'control' of the situation is directly at odds with the law, which holds that a youth is incapable of consent." The court went on to say "That statement also disregards the serious power disparity that exists between an adult teacher and his minor pupil." These concepts of course form the very basis of the strict liability imposed, and inherent in, statutory rape laws.

That Montana Supreme Court decision, rendered seven years after the teacher's multiple rapes of the young teen, one would have hoped, would have finally give the victim and her family some solace and a sense of closure from this seemingly never-ending nightmare. However, nowhere is the concept of "Justice delayed is justice denied" more apropos than on these facts - the teen rape victim committed suicide in 2010, just short of her 17th birthday. Clearly, she was not "as much in control of the situation" as Baugh had thought.

Justifiably outraged, the Montana branch of the NOW submitted a complaint against Baugh to the Montana judicial standards commission last September, and that complaint went to the Montana Supreme Court.

When the rapist was finally sentenced by another bench officer, he received an appropriate 10-year prison term.

At the time, Baugh was 72 years old. Due in large part to the continuing public anger and scandal over his conduct, he retired at the end of last year. And that was a very good thing. For the bench, for the bar, and for past, present and future Jane Q. Publics, and the people who love them.

Finally, it was high time for some healing to commence. For the family of the victim in that case, for rape victim/survivors everywhere, and for bench officers who do their level best in difficult cases to uphold the statutory rape laws in Montana and elsewhere.

But it was not to be.

Former Judge Baugh was recently chosen to receive a lifetime achievement award from the Yellowstone Area Bar Association.

Seriously? A lifetime achievement award?

There may have been decisions in Baugh's long career that were correct and in accordance with the law he was sworn to interpret, uphold and apply. He may have even been liked, and possibly, even respected, in certain circles he inhabited. However, to bestow a lifetime achievement award on a jurist who ended his career in such wholesale disgrace, and, as the Montana Supreme Court stated in 2014, "eroded public confidence in the judiciary and created an appearance of impropriety," is outrageous.

This case was thoroughly tragic from beginning to end. But end it must. And it should absolutely not end with congratulatory kudos to an outlier judge who downplayed a horrible crime involving a teacher in a position of trust and a minor pupil, and stating, among other absurd comments "it wasn't forcible beat-up rape."

American jurisprudence simply cannot afford to inadequately punish rape, or worse, actively aid in perpetuating the rape myth (defined as prejudicial, stereotyped, or false beliefs about rape, rape victims and rapists). The belief in rape myths can lead people to justify acts of sexual violence by rationalizing that the victim did something wrong and therefore is at fault (i.e., look at how she dressed, she was asking for it). It appeared that perpetration of the rape myth had a solid foundation in Baugh's comments to the press and his judicial actions in the case that ended his career.

American jurisprudence can also not afford to permit the rendering of decisions that fly in the face of well-established law, reflect moral collapse or which result in the wholesale denial of justice to rape victims and their families. The Montana Supreme Court correctly saw to it that justice was ultimately served, though that decision was of little solace to the teenage rape victim who committed suicide or her family.

Apparently, American jurisprudence has precious little to do with who receives lifetime achievement awards in Montana bestowed by the Yellowstone Bar Association. But it certainly should. And whatever value that "award" may have had historically, it has disintegrated; much like the erosion of public confidence in the judiciary following Baugh's comments and judicial actions.

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