

## Anti–Sexual Violence Issue Report, Volume 12 (2018)

**Ulim** is a research institute that analyses anti–sexual violence theories, sexual violence culture, as well as the laws, policies and systems regarding sexual violence, based on the data and experiences accumulated by the Korean Sexual Violence Relief Center (KSVRC) through its support of sexual violence victims/survivors for the past 28 years. Although sexual violence occurs because of androcentric sexual culture, sexist and patriarchal structures and inner–organizational perceptions, the theories of victimology and the social expectation of what constitutes as a ‘victim–like victim’ is still prevalent in our society.

**Ulim** is a research institute established to publically circulate theory and activism, by sharing anti–sexual violence research using accessible language. We will create a reverberating cry for a world without sexual violence.

### **History of the KSVRC Research Institute**

**1991** Opening of the KSVRC

**1997** Opening of the Research Institute for the Issue of Sexual Violence

**2009** Closure of the Research Institute for the Issue of Sexual Violence

**2014** Opening of the Research Institute Ulim

# Commercialization of sexual violence counter-accusations and 'retaliatory, planned counter-accusations'<sup>12</sup>

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## 1. Introduction

In 2015, so-called 'dating violence cases in the progressive camps' were disclosed, while in 2016, the cases of 'false accusation of sexual violence' by celebrities in the literary world, the film world and others made the headlines, and "false accusation is a big sin"<sup>3</sup> became a 'famous saying'. In 2018, with the disclosure of sexual violence cases within the prosecution, victims of sexual violence from diverse societal sectors, including broadcasting, theatrical, political, religious worlds, continue to speak up about their experiences, and so the #MeToo movement continues. There are some instances where the victims have received apologies [from the perpetrator], yet victims who come forward continue to suffer from different types of counter-accusations.<sup>4</sup>

In South Korea, sexual violence perpetrators have continuously used counter-accusations. For instance, Moon, a perpetrator of sexual torture in the 1986 Bucheon Police Station case, and Professor Shin, a perpetrator in the 1993 Seoul National University case, have both accused their victims of defamation (Cho, 2002). Moreover, in 2002, Jeju Women's Association was accused of defamation after exposing the sexual violence by the governor of Jeju Island, and so was accused the 100-person committee that revealed sexual violence perpetrated by the executive of KBS's [abbr. of Korean Broadcasting System] labor union. Also, when a female laborer working in the Jugam Service Area rest stop accused her boss of sexual harassment, she was arrested instead on charges of defamation and threatening. Furthermore, despite having been convicted of sexual violence, Professor K from K University in Kyungsan and Professor L from K University in Daegu accused the former co-representative of the Daegu Women's Hot Line for defamation, while a professor from D University, who committed sexual harassment, accused the victim, and a female professor supporting the victim, for defamation (Editorial Department of the Korean

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<sup>1</sup> This paper is an updated version of the statement made at the forum 'From suspicion to support: deconstructing the sexual violence counter-accusations', which was organized by KSVRC Research Institute 'Ulim' on April 19, 2018, and the article "Sexual violence crime in the market: the truth of what the planned accusation is really about" included in the "Women's Studies Review" Volume 35, Issue 2 published in 2018.

<sup>2</sup> Translated by: Jin Sun Park (Intern, KSVRC/ Sciences Po) Checked by: Anat Schwartz (Visiting researcher, KSVRC)

<sup>3</sup> The Hankyoreh, "Jin Wook Lee suspected of sexual violence: 'false accusation is a big crime'", 2016.7.17., available at: [http://www.hani.co.kr/arti/society/society\\_general/752665.html](http://www.hani.co.kr/arti/society/society_general/752665.html)

<sup>4</sup> The Hankyoreh, "Ki Deuk Kim accused for false-accusations the female actors and others who claim the sexual violence damage", 2018.6.3., available at: [http://www.hani.co.kr/arti/society/society\\_general/847431.html](http://www.hani.co.kr/arti/society/society_general/847431.html)

Association of Women Theologians, 2002). As such, there have been countless cases of counter-accusations, and women's organizations have been informing the public about the problem of sexual violence counter-accusations and actively responding to this issue by forming the joint committee and taking other measures.

Recently, perpetrators' practice of counter-accusations is becoming more diversified. The perpetrators, including some celebrities, whose wrongdoings have been exposed through the #MeToo movement, make counter-accusations full of not only false accusation and defamation, but also to insult, threat, civil and claim damages, among other reasons. Victims of sexual violence get accused of being a 'gold digger' when they demand monetary compensation or when they agree to make an agreement. Victims of sexual violence who are sued by counter-accusers are occasionally found guilty of defamation or other related crimes and thus perpetrators can use the threat of turning survivors into ex-convicts in order to push victims to sign agreements. In addition to this, the victims can find themselves in a very difficult position if they cave and sign an agreement for 'threatening' as a counter-accusation, as then, despite being a victim of sexual violence, they may have to make a 'reverse-compensation' to a perpetrator.

Now, solidarity among perpetrators is not restricted to merely a discourse. It goes beyond feelings of injustice and resistance. Rather, solidarity is becoming more 'planned'. For instance, perpetrators share information on counter-measures, the lawyers who helped them, etc. Moreover, certain law firms increase the threat and counter-accusation cases against victims by using promotional phrases such as 'lawyer dedicated to sex crimes,' 'I will help clear you of suspicion or to be acquitted,' 'expert for false accusations.' By doing so, these law firms raise the lawyer's fee and commercialize the defense of sexual violence related cases.<sup>5</sup> In this way, sexual violence became 'marketized' and is being preferred by lawyers and law firms more than any other field of crime, as it is considered to be a field where one can 'make some money'. This became possible due to loose ethics regulations in the attorneys industry, the common notion in the judiciary, which is perpetrator-centered, and the backlash by 'men's solidarity' groups. On May 28, 2018, following the recommendation of the Sexual Harassment and Sexual Exploitation Committee of the Ministry of Justice, the Supreme Public Prosecutors' Office revised the investigation manual so that false accusations can only be investigated after sexual violence investigations are completed. In response, a national petition campaign entitled "I request to stop the [revision of the] sexual violence investigation manual" circulated for one month beginning in May 28, 2018, and collected a total of 217,143 signatures.<sup>6</sup> This shows that a fear of the mythical 'gold digger' and of being a 'falsely accused innocent man' make extensive solidarity among and for perpetrators be possible.

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<sup>5</sup> The Hankyoreh, "Have you committed a sex crime? We will 'rescue' you", 2018.9.15., available at: [http://www.hani.co.kr/arti/society/society\\_general/862196.html](http://www.hani.co.kr/arti/society/society_general/862196.html)

<sup>6</sup> Republic of Korea Blue House national petition campaign(2018), "I request to stop the illegal [revision of the] sexual violence investigation manual by Supreme Prosecutors' Office", available at: <https://www1.president.go.kr/petitions/246489> (date of searching: 2018.12.1.).

Therefore, this paper focuses on the ‘perpetrator’s retaliatory, planned counter–accusations,’<sup>7</sup> which refers to situations where victims of sexual violence are further victimized by retaliatory counter–accusations such as false accusation, defamation, insult, civil damage claims and others, after victims accuse a perpetrator of sexual violence through means such as social media, as well as situations where the perpetrators try to accuse the third person standing in solidarity with and supporting the victim(s). In this way, this paper attempts to expose what and who have been effectively stopping victims from speaking up, and in what shape this has taken in Korean society. For this research, the author examined various literature and related cases, conducted in–depth interviews with five victims who suffered from counter–accusations, and interviewed two lawyers who supported victims. The general characteristics of the participants are as follows<sup>8</sup>:

**<Table 1> Main Cases: Victims of Counter–Accusations**

Case	Current Age	Characteristics of Sexual Violence Damage		Characteristics of Counter–Accusations	
		Age at the time of accusation	Type of accusation	Year of accusation	Type of accusation
1	30s	20s	Dating violence	2015–17	Injunction to delete posts disclosing details of the case, defamation (civil and criminal offense), insult, civil suit
2	20s	20s	Dating violence	2015–16	Defamation (criminal offense), insult, insult of a third person (in another related case)
3	30s	20s	Rape, Stalking, etc.	2010–11	Defamation (criminal offense), insult, compel, threat, perjury, false accusation
4	20s	20s	Sexual violence	2016	Defamation (2 times)
5	40s	40s	–	2015	Insult

<sup>7</sup> In this paper, sexual violence counter–accusation is defined as “when the sexual violence perpetrator and the prosecutor accuse and prosecute the victim for false accusation, perjury and others after the victim of sexual violence accuse the perpetrator for sexual violence, or when the perpetrator or the perpetrator’s allies accuse the victim and the victim’s allies for defamation, insult and others or file a civil suit for damages”. The expression ‘retaliatory accusation’ will also be used in the same meaning, while for describing the case where several counter–accusations have been proceeded against the victim, the allies of the victim, the person in solidarity with a victim, and the third person, the expression ‘retaliatory planned accusation’ is used.

<sup>8</sup> Some of the interviews with the research participants were made during the process of creation of “A handbook for the support of the victims of sexual violence counter–accusations” published by KSVRC Research Center Ulim and Korean Women’s Hot Line(2017), and the research participants have agreed that their interview can be used for the research purposes.

<Table 2> Secondary Cases: Lawyers Supporting the Victims

Case	Age	Sex	Experience as a lawyer
1	Early 40s	Female	10 years
2	Late 30s	Female	8 years

## 2. Encouraged sexual violence counter-accusations: sexual violence as a new money-maker

### 1) “We lead the unjust punishment to acquittal, non-prosecution, and probation”

In recent years, when one searches key words such as ‘sexual crime attorney’, ‘a lawyer specializing in sex crimes’, ‘center for sex crimes’, countless advertisements appear. There is even a law firm that published on their homepage 1,867 (as of October 12, 2018) ‘success cases’ where the client who was ‘in trouble’ could be cleared of suspicion or received suspension of indictment.<sup>9</sup> This law firm published the judgment and only deleted the real names in the document. In 2017, another law firm made an advertisement with the phrase “We lead the unjust punishment to acquittal, non-prosecution, and probation”, using examples from cases of child molestation, rape, and other sexual violence crimes. The law firm removed the advertising board after a citizen questioned this form of advertising.<sup>10</sup> Now, the jurisdiction over sexual violence cases lies beyond the common wisdom and sensitivity of the investigation and trial processes, and has become a problem that could be solved by hiring a good lawyer.

In the past 3-4 years, lawyer advertisements were not this frank. (...) But now people really do come [and visit lawyers] after they check the blogs. (...) Well, you can just make an agreement and actually, you won't take the responsibility. You can just sue, for example. It became a really good means to earn some money. (...) Sharing of information is now happening in a very strange way. I think people get trained to think ‘Oh, I should appoint a lawyer as soon as possible and should deal with this in a certain way’. When you go to the online cafes where the majority are men, yes, there are lots of cafes. So, there are things like ‘how to deal with the situation’. (...) Frankly speaking, employees and office

<sup>9</sup> YO law firm (2018), available from: <http://www.성범죄전문센터.com/sexu/> (Date of searching: 2018.10.12.).

<sup>10</sup> YTN News, “‘We will help your sexual violence case to be acquitted’ - controversies over the law firm’s advertisement”, 2017.4.3., available at: [http://www.ytn.co.kr/\\_ln/0103\\_201704031624400848](http://www.ytn.co.kr/_ln/0103_201704031624400848)

managers of law offices participate in such cafes. They answer all the questions pretending that it's not them, and they attract these clients to their offices. There are really many cases where these people do their business in such a way, through cafes. The lawyers, they talk among themselves that they bought, for example, a popular cafe for two hundred thousand won, and they also buy such cafes from one another. <Secondary Case 2>

Considering the words of <Secondary Case 2>, who used to support victims of sexual violence, the law market is becoming more commercialized. It is in this context that the existence of 'sexual violence perpetrator' is becoming a 'means for business' in the boundary between unlawfulness and lawfulness, and the public is receiving "training" about countermeasures. Moreover, <Secondary Case 1> and <Secondary Case 2> point out that in the latest, overheated lawyer market, there is a tendency to encourage counter-accusations, beyond taking countermeasures. That is to say, the "attack" goes beyond the defense.

It is lawyers who propose 'Let's counter sue the victim for false accusations or defamation'. That is to say, they do not just defend their client, but they make an active offense. (...) When you start several cases for defense, there will be more demands for your defense. Lawyer's fee is set for each case, so I think maybe they are trying to increase the cases in this way. I think there are many cases where the perpetrator's side make the first strike by accusing the victim of defamation or intimidation, (...) even when the victim is still hesitating to accuse the perpetrator or not. (...) The victim fires a rifle saying 'I suffered, now it is your turn, you get punished too', and from here, an atomic bomb is dropped. But such ideas do not come from the perpetrator's head. It is impossible for a perpetrator to think like this, considering their intellectual capacity. Eventually, it is the [perpetrator's] lawyer who draws a map and takes action, and the objective of this lawyer is money. Actually, there is no need to accuse the victim like this. Why would you drop an atomic bomb on someone firing a rifle? The damage will be disastrous and you get the price for the atomic bomb from the perpetrator. What about the cost of materials [that is needed to make a bomb]? <Secondary Case 1>

According to <Secondary Case 1>, the retainer that lawyers defending perpetrators get is different depending on the case, but it starts from 15-30 million won. If the suspect is a minor, even when the perpetrator could just be sent to Juvenile Court, the lawyer requests the fee by saying "I can make you avoid a criminal trial", or request the ridiculously high cost of consultation. Moreover, there are some lawyers that "split one case into numerous cases and produce a lot of dispute, and, as a consequence, get more in lawyer's fee". So for them, "sexual violence became a new means for making money". For the lawyers, whose "objective is money", they have nothing to loose, as "the cost of materials" for the

counter-accusations will be paid by the perpetrator. Furthermore, in one case where the <Secondary Case 2> supported the victim, when the victim told the truth to the university professor, the perpetrator's side requested a financial settlement from the victim for counter-accusations such as intimidation, threat, and others. However, when a victim publicizes, reports and sues, this can be used [by the perpetrator and lawyer] as a reason for the counter-accusation against the victim, and there continue to be the cases where the victims suffer helplessly because the perpetrator and/or lawyer demand that an agreement be reached.

I think it is quite common that the people do like that after they meet a lawyer. After you get a consultation, it is really some kind of package that you take the case, these days. A sex crime suspect visits the lawyer's office. And there, they tell them how to counteract by saying things like 'you should attack [the victim] too, we can sue for false accusations'. So commonly, it is not that the perpetrator thinks of suing for false accusation from the beginning, but they first meet and consult someone [the lawyer] and then they think 'maybe I should try'. What I also felt is that there are many perpetrators that do not really know what constitutes a false accusation. <Secondary Case 2>

In practice, it is possible to easily find a situation where the perpetrator's behavior suddenly changes after they meet with a lawyer. One of the representative methods is, when the perpetrator, who apologized and asked for the victim's forgiveness, 'disguises' [changes words] by saying that the apology and the act of asking for forgiveness was due to intimidation and threat after the victim reports and/or sues the perpetrator.<sup>11</sup> Therefore, so-called 'sexual violence lawyers' advice that "when you apologize, you are admitting the crime so do not apologize"<sup>12</sup>, becomes an important thing to note for the perpetrators.

## **2) Law firm's PR strategies for sentence commutation**

On September 14, 2017, the organizations affiliated with the National Council of Sexual Violence Relief Centers held a press conference asserting that "unilateral sponsoring and donation by the sexual violence perpetrators should be excluded from the reasoning for sentence reduction, and that such behavior does not constitute 'self-reflection'". Meanwhile, there have been many cases where the perpetrator got their

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<sup>11</sup> In the judgments [Seoul High court 2017No2773] and [Seoul Central District Court 2016Godan5886], which is about the sexual violence false accusations, the perpetrator asked the victim for apologies before the victim accused the perpetrator for sexual violence crime. However, when the victim finally accused, the perpetrator claimed that it is a false accusations and that there was a threat and intimidation, and so the victims from these two cases got the judgment of a conviction for false accusation.

<sup>12</sup> The Hankyoreh, "Do not apologize yet? The reporter's consulting experience with a lawyer who is 'exclusively in charge of sex crimes'", 2018.3.4., available at: [http://www.hani.co.kr/arti/society/society\\_general/834511.html#csidx590f0f221768016a3f83eabe760805f](http://www.hani.co.kr/arti/society/society_general/834511.html#csidx590f0f221768016a3f83eabe760805f)

sentence reduced by making a donation payment to the sexual violence relief centers and submitting the certificate of the deposit to the justice department. Such payments were done by the perpetrator himself, the perpetrator's family, or even by the perpetrator's lawyer, regardless of the victim's will. What is critical is that during the criminal trial process, the perpetrator's sentence was reduced due to the perpetrators' donations: 1) sentence reductions due to the perpetrator's unilateral donations go against the victims' will, and 2) the perpetrator was abusing the activities of the [sexual violence] relief centers and women's organizations. A recent investigation focusing on the sexual violence relief centers, a total of seven organizations, found 101 cases where the centers were offered a donation (87 cases) or where a payment had already been confirmed (14 cases). Among confirmed donations, there were also cases where the donated money had to be returned, because when traced back, it was revealed that the donation was made by a law firm, in the perpetrator's name. There were four such cases, where the perpetrator was informed that donations made by a lawyer or a law firm manager may result in a reduced sentence, and the [perpetrator's] lawyer inquired whether receipts for donations could be issued immediately. This practice is only possible because donations by perpetrators have come to be regarded as a customary practice to get their sentence reduced. In one such case, [the perpetrator] was prosecuted for 'filming using a camera and other means', resulting a 3 million won fine in the first trial, but the perpetrator was given a suspended sentence in second trial, as the court notes in the following:

Considering that the defendant has confessed oneself to be guilty and is regretting one's wrongdoings, that the defendant is a first-time offender and has no criminal history, that the defendant is voluntarily taking sexual violence prevention training and is making regular contributions to the Korean Sexual Violence Relief Center, promising not to repeat such mistakes, and that the defendant made serious efforts to reach an agreement with the victims, and apart from all these, considering the defendant's age, prevalence, environment, profession, criminal intent, means and results [of crime], situation after crime, and others, and taking into account the matters set forth in Article 51 of the Penal Code, it is possible to admit that the defendant is deeply regretting the crime, thus the sentence of penal fine of 3 million won will be deferred. [Extract from Seoul Eastern District Court 2015No95 judgment, decided on 18 June, 2015]

This judgment is used by one law firm as a 'success case' promotion. There are many other similar 'success cases,' which are promoted by emphasizing how, by 'self-reflecting,' 'intending to make an agreement,' 'regretting their mistake,' and so on, the perpetrator could avoid a sentence and given a suspended sentence or suspension of indictment. Prior to June 2013, the 'offense subject to complaint' allowed charges to be dropped in cases where an agreement was reached between the victim and the perpetrator. However, despite this law being abolished in June 2013, there is an ongoing practice where the



perpetrator's sentence is reduced due to perpetrator's intention to make an agreement, their supposed self-reflection, and/or donating to organizations supporting the victims, none of which have anything to do with the will of the victim.<sup>13</sup>

In this way, perpetrator's lawyers may reduce their clients' sentences by claiming 'self-reflection', 'intention to make an agreement', 'forced sponsorship' among others. The perpetrator's lawyers use various tactics in order to increase their profit and accomplish more 'success cases' that can be used as promotional material for their offices. For scope of rape crime as narrowly as possible, among others. As such, it is common, for instance, that lawyers increase their profit margins by actively increasing the number of cases filed by the perpetrator through planned 'forced accusations', and demand that an agreement must be made to their clients, thus painting the perpetrators as victims of counter-accusations. Successful counter-accusation cases are then promoted as a 'success case'. In South Korea, rape culture runs strong and is deeply established. Victim-blaming perspective continue to prevail systematically, such as through victimization theory, theory of sympathy towards perpetrators of sexual violence, and the practice of interpreting the perpetrator to escape prison, receive a reduced or suspended sentence, or receive a suspension of indictment.<sup>14</sup> To increase the chance for this [sentence reduction], the defense is coming up with more targeted strategies. Considering that sexual violence is a field with high possibility for conservative interpretations of the law, as well as the standard of judgment disfavoring the victims, the sexual violence perpetrator's defense lawyer industry is expanding as a 'niche market.'

### **3. 'Planning' patterns of sexual violence counter-accusations and the 'perpetrators' solidarity'**

As observed above, the expanding market for sexual violence perpetrators' defense lawyers is behind the growth in counter-accusations against victims. This emerging field is 'practiced' through abusing various kinds of accusations, thus weakening the victims' and their allies' ability to confront the perpetrators. Such 'practices' are strengthening their basis through 'perpetrators' solidarity', crossing the public and private

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<sup>13</sup> Mi Kyung Lee (2017), "Legal precedent where [perpetrator] one-sided sponsoring/donation became a reason for reduction of sentence and the problem of the defendant's defense strategy", statement at the National Council on Sexual Violence Relief Centers press conference(2017.9.14.). Oh My News, "Sex offender sponsoring women's organization and getting the sentence reduced. This is not a self-reflection", 2017.9.14.,available at: [http://www.ohmynews.com/NWS\\_Web/View/at\\_pg.aspx?CNTN\\_CD=A0002360102&CMPT\\_CD=P0010&utm\\_source=naver&utm\\_medium=newsearch&utm\\_campaign=naver\\_news](http://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0002360102&CMPT_CD=P0010&utm_source=naver&utm_medium=newsearch&utm_campaign=naver_news)

<sup>14</sup> In the "Symposium on support and protection of the victims of the power-related sexual violence" that took place on April 6th, 2018, lawyer Hyun Joo Cho pointed out that in the case where the perpetrator, who got sentenced to two years and six months in prison for committing the sexual assault by the abuse of occupational authority, the degree of sexual assault and the defendant's false perception on sex was considered as a reason for giving a sentence favorable to the perpetrator. Hyun Joo Cho (2018), "The support cases of the power-related sexual violence crime, the limitations and improvement points", statement(2018.4.3.) from sourcebook "Symposium on support and protection of the victims of the power-related sexual violence", Korean Legal Aid Corporation, Korean Women Lawyers Association, p.49. There is a need for further studies on the justice department's 'perception on sex' that considers perpetrator's 'false perception of sex' as a reason to reduce the sentence.

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### 1) Abuse of accusations and “settlement money business”

Sexual violence perpetrators typically ‘attack’ their victims by abusing, or taking advantage, of various kinds of accusations. Several years ago, <Case 1> publicized the damage experienced by dating violence on social media. Right after publication, the victim received an apology from the perpetrator, but for next two years, the perpetrator alleged five times in total, against the victim in so-called ‘retaliatory counter-accusations.’ These accusations included an injunction to delete posts disclosing details of the case, defamation as a criminal offense, insult, civil suit and others. While the victim in <Case 1> was confused in their attempts to respond to the outpouring of counter-accusations, the perpetrator threatened to accuse third parties supporting the victim in <Case 1>, and re-tweeted and shared the post disclosing the case, criticism of the perpetrator or anyone who left a comment supporting the victim. The perpetrator indeed began legal action, accusing third parties of insult, defamation and others, and demanded settlement money from hundreds of people regardless of their region of origin and sex. The perpetrator went further by saying that he will “sue for insult, defamation, and others”, unless he received the settlement money through criminal settlement arbitration, and at times refused to withdraw charges before the court ruled the accused not guilty. The perpetrator also shared on social media the ways in which he tracked down the ‘slandering’ people. Such way of ‘planning’ would not have been possible for the perpetrator without a network of support. In <Case 5>, an ally in support of a victim of sexual violence criticized the perpetrator and re-tweeted the original Twitter post by the victim, resulting in the ally being accused of insult. 1–2 months after re-tweeting, an acquaintance of the victim gave the contact information for <Case 5> to the perpetrator, and so the person in <Case 5> was notified by the perpetrator, saying “apologize and go through formalities.” After another 1–2 months, <Case 5> was contacted by the police station calling her down to the station for a formal investigation. Likewise, <Case 5> was contacted by a man presenting himself as a lawyer for the perpetrator, offering to “make an agreement for 2 million won” [approximately 1,700USD].

I was asked ‘Do you know ○○○?’, and I answered, ‘No, I don’t know [that person] personally. We just messaged each other because I was told that I was accused [by him]’, and then I was told that he is a famous person. (...) Police said: ‘that person is searching online everyday and accusing people, so it’s better to be careful. Don’t talk about him a lot’. [Then I thought that] I must not be the only one who was accused. (...) Because, there were many people who got angry about that case and there were many people like me making comments online, and if I became a target it means that there are many similar cases, so these people must be fighting an individual battle. (...) (I was thinking about saying sorry) so when

we met in the place for an agreement, I was expecting that maybe I will be told something like 'anyway, at least be more careful next time', but that person just automatically went on its way, and this is something beyond my realm of expectation. <Case 5>

The person involved in <Case 5> was vaguely assuming that people, like herself, who were accused are fighting an individual battle against the perpetrator, but did not want the case to drag on. As such, she met the perpetrator at a police station mediation room and settled for 1 million won [approximately 850,000USD]. However, she realized after making the settlement that this is not a "normal case," that the lawyer suddenly pressures for a financial settlement, and that perpetrators accuse victims in order to "tie the victim's tongue." It is estimated that by counter-accusing the victim and their supporters in this way, the profits made by the perpetrator and the law firm, is beyond one's imagination.<sup>15</sup>

## 2) Perpetrators' solidarity

Counter-accusations targeting allies thus prevent solidarity between victims and their supporters. This was made possible by the perpetrators' cooperation with the representing law firm(s), and also due to the presence of a strong 'male solidarity', or in other words, 'perpetrators' solidarity'.

The perpetrators are united through accusations. (...) The perpetrator spreads false information, saying as if I removed the post voluntarily, and in this way takes the case in another direction. And [the perpetrator] broadcasted the process of accusations in ++, in real time. So afterwards, [the perpetrator] was contacted by [other] perpetrators and they had a meeting. (...) I was the first one to be accused, and another victim \*\*\* got accused next, and then it was victim @@@ who also got accused. Several people got accused in order. And right after ○○○ [the perpetrator] accused the people in solidarity with the victim and the third parties, (other perpetrator) started uploading on social media the story about them

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<sup>15</sup> According to <Case 1> and <Case 2>, who are the lawyers, there has been the practice where the law firms contacted the computer programme copyright enterprises and told that they will sue the users of illegal programmes on behalf of them, and then randomly sent the emails to the users of illegal programmes, which notifies that they are aware that they are using the illegal programmes and thus could be accused and punished. After, the law firms did "settlement money business" against some of these people and in this way, the "planned suit" has been practiced. And it is assumed that this idea has been used for 'retaliatory planned accusations', for instance, for accusing someone for insult and other crimes, which are crimes subject to victim's complaint or the crime not prosecuted against objection. Dong Hyung Lee (2017) has pointed out the problem regarding the copyright law, where the copyright holder asks for the settlement money to the person who violated the copyright law, and the accuser cancels the accusation for receiving the settlement money. Dong Hyung Lee named such practice as "settlement money business". See Dong Hyung Lee (2017), "Examining the article on criminal punishment for infringement of copyright", Pusan National University Law Research Institute, "Law Research", Volume 58, Issue 1, pp. 253-280.

accusing the third parties in exactly the same way [as the perpetrator ○○○ did], and broadcasting about it online. It's about whom I [the perpetrator] sued, who got this much in fine money. And they scan the document indicating the result of the disposition and then upload it online. ○○○ and \*\*\* each have been doing these kind of things on their own accounts. So the perpetrator of some other sexual violence case that happened before and is not related to this one, could contact other perpetrators through this network of solidarity and learn about such methods from them. I heard that this person also belatedly started to counter-accuse the victim and the victim's allies. <Case 1>

So this is the way in which the perpetrators' solidarity is attained. They share information about law firms and lawyers, and share information about their object of complaint in a similar way. This can also be seen as a very special case, because when there is a legal disclosure, these people get their information about a specific victim, particularly the victim's allies. They all share this information, and when another perpetrator accuses people in his list, this is again shared with everyone else. So although I am for sure done with this one case, that is to say, I am done with being in solidarity with this specific person [the victim] and was acquitted, I could be contacted by another perpetrator. And I see that these two perpetrators are in solidarity. So this happens in this way, through some acquaintances. For example, the victim can also be a person in solidarity with another victim, and in this case, if the perpetrators get each other's contact and become connected, they exchange the information and the victims each get sued once again. (...) In almost exactly the same way, they [the perpetrators] say that they have apologized unwillingly, due to external pressures, and they commonly start to criticize specific organizations. They talk about women's organizations, about feminists. (...) Nowadays, [the perpetrators] seek out new ways to stand out in the media in order to highlight their positionality and narrative regarding their accusations. <Case 3>

What can be surmised from the aforementioned cases is that the common methods used by the perpetrators is the circulation of people's name involved in solidarity with the victim, the process and methods they took to counter-accuse, and the sharing of language used through "media." Additionally, they claim that a specific organization is "behind" all of this [the victims' allies' supportive posts online], and that this organization tries to "slander" them. If the case was already publicized and the perpetrator already did apologize to the victim, then they say that they had to, unwillingly, apologize due to "threat and intimidation by certain organizations". As such, 'male solidarity' enables perpetrators' solidarity, and an individual perpetrator becomes a plural 'perpetrators'. In Bo Hwa Kim's "A Study on Sexual Violence Perpetrators" (2011), perpetrators felt it was unfair both when they admitted to sexual violence and when they do not admit to it. They felt it was unfair because they got punished, because the punishment was too harsh,

because they were accused by the police, because they were drunk or sober. From the perpetrators' perspective, they were treated unfairly, and thus conceived a 'center for scapegoats' and 'anti-feminist solidarity' were. The perpetrators in this paper also emphasize their feelings of injustice, and they use counter-accusations as a strategy to 'monopolize' the position of victimhood and 'victimize' themselves. This is possible and is strengthened and encouraged as the process of investigation and trial sympathizes with the perpetrator, and in the situations where there is a [systematic] doubting of the victim.

So there is sympathy towards perpetrators. There was an investigator who told me things like 'Oh, he has to raise a child, this old man. He must have been very tired'. Also, the investigator said something like 'Was this a case where you were about to break up?' and asked 'Who said let's break up then? Did you already break up?', as if it was normal to ask this. When I explained the case, there was also a secretary who said like 'Why wouldn't you just break up then?', and really, [I thought that] overall, the judicial system is not on the victim's side. <Case 1>

Police asked me like that. Police asked me what was the reason I uploaded the post [publicizing the damage from sexual violence] and said: 'I heard that you are a feminist activist, so didn't you post it to gain a reputation as a feminist?'. It is very shocking. I don't really know what kind of imagination they have, and it's not that I was offended by this, it was just something outside the scope of my imagination, so it was very ridiculous. <Case 2>

I found out later that the police and the perpetrator are calling each other like 'older brother, younger brother', and they didn't transmit the information to me in a proper way, and everything was excluded. I didn't even know that [the case] was submitted as no indictment. The case was already submitted, and they still didn't contact me. Later, when I saw the post uploaded by the perpetrator, I checked and contacted the perpetrator, but he avoided my calls. And I received a message [regarding the case] only after the fact. <Case 3>

As we see in the above cases, there is a perception that dating violence is a 'petty quarrel between lovers' and a common misconception by the investigators making their own assumptions that the victims have other 'objective' than [disclosing] damage [from sexual violence]. There are also people in positions of power who express, verbally and in action, sympathy with the male perpetrators. These actions further frustrate the victims who attempted to gather their courage and cope with their circumstances.

In fact, if there is a need to arrest either a criminal who committed sexual violence or a gold digger, then I think one should arrest a criminal who committed sexual violence, as the nature of the crime is heavier. And if so, I think it's necessary to consistently listen to the alleged victim as the person in a fragile position. (...) What I felt this time, while testifying on defamation, is that when talking about the harm caused by sexual violence, I had to, at the same time, prove that I'm not a gold digger, and I had to mix these two things up when speaking. I also felt like I had to prove that I didn't defame the perpetrator by law, but that this is a case of sexual violence. It is not that I can just describe the harm [caused by sexual violence]. It is not that I can just say that I'm not trying to defame someone just by chance, but I have to first say that I am not a gold digger. And to me this seems like a double-edged situation. <Case 4>

When <Case 4> came forward with its experience as a victim of sexual violence, she was suspected of defamation. What was especially hard for her was not testifying that the sexual violence really did occur, and was thus not a case of defamation, but to prove that she was "not a gold digger". The validity of a defamation accusation must be assessed, however, it seems "double-edged" for the victim to prove that she is "not a gold digger," rather than testifying to the harm of sexual violence. As we saw in <Case 4>, from the victim's point of view, if there is debate on whether to arrest either a sex offender or a gold digger, it is the sexual violence criminal who should be arrested. In most cases, a characteristic of sexual violence cases publicized is a big power difference between the perpetrator and the victim, thus the victim usually concludes that there is a very low possibility to win over the perpetrator on their own or through institutional/legal means. Moreover, the 'real gold digger's' goal is to have reach 'financial settlement,' so there is no need to publicize. Nevertheless, in South Korea, even when there is no demand for a 'financial settlement,' if the person is perceived to be an 'unvictim-like victim', then they are easily accused of being a 'gold digger' and there is no consideration to the power difference or wealth disparity between the victim and the perpetrator. In this way, the male/perpetrator solidarity is beyond the realm of individual solidarity, and the strong social and cultural connections are clearly revealed during the investigation process.

Due to common myths and perception regarding sexual violence, most sexual violence perpetrators do not believe that they committed any crime, do not admit it, or 'do not' remember it. Therefore, when you give a sexual violence perpetrator and a victim a lie detector test, in many cases, there is a 'true' reaction for both perpetrator and victim.<sup>16</sup> On [falserrapesociety.com](http://falserrapesociety.com), a U.S.-based website (later renamed the 'meeting of

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<sup>16</sup> Eun Jung Park (2018), "Me too, #With you : Imagine New Democracy", from roundtable "Speaking out the sexual violence, challenging democracy" (2018.6.16.), Korean Women Society.

people who were unjustly prosecuted'), members share articles on reported rape cases where the investigations were halted or withdrawn, as well as discuss the problem of false rape reports from the point of view of the unjustly prosecuted (Raphael, 2017). In South Korea, the perpetrators are also actively responding to unjust prosecutions by creating an online cafe [forum]<sup>17</sup> where they can share their own experiences and other issues, and even publish books that support this and instruct other perpetrators with specific strategies and the ways to respond to allegations.<sup>18</sup> Perpetrators maintaining their attacks on victims through counter-accusations implies that they will continue their current behavior and actions in future. When perpetrators win counter-accusation cases, then their second conviction may be disregarded. Thus, counter-accusations become an authentication and confirmation of male solidarity by saying. 'In this way, it is possible to beat a woman who got me in trouble', and further supports male solidarity and their determination to avoid any secondary convictions.

### **3) Weakening the support and solidarity for victims**

What perpetrators are looking for, by overabusing accusations, is primarily to stop the victim's response and support by the victim's allies. Moreover, it weakens the victim's expectation for the perpetrator to be punished, and they use counter-accusations as a countermeasure.

When I think about it now, I was actually out of my mind. It was very tiring for me, because every two months I was being accused, so I was out of my mind and it was hard for me to maintain my everyday life. But the perpetrator was being very strategic, finding those people everyday and proceeding with the accusations, one by one. And [the perpetrator] has been finding the people around me, who stand in solidarity with me, and he has been finding out their personal information, contacting them directly, and telling them that 'that fact is false'. So, while I was besides myself, the perpetrator already proceeded this much. When I tried to manage this situation later, it was too tiring for me, so I gave up, partially. (...) Every time I received a complaint, the feeling of tension didn't disappear. Even when you get accused several times, you don't get used to it. But anyways, perpetrator accused me of anything he could find. He filed all kinds of retaliatory accusations against me. <Case 1>

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<sup>17</sup> Naver cafe(2018), "Men who are in a difficult situation, being falsely charged of sex crime", available at: <https://cafe.naver.com/narutoninetail>(date of searching: 2018.12.1.).

<sup>18</sup> Seung Hee Bae (2017), "The men caught in a trap: crisis management solution for innocent, endangered men", Book Lab. In this book, the author considers the real cases where the person was 'falsely' accused as a sex criminal, and provides a legal information to the 'future perpetrators' for their consideration. Won Kyung Park (2015), "Response strategies for sex crime at the stage of police investigation, agreement and trial, differing by case and time". Seoul: Knowledge Space. In this book, there is included the strategies for the perpetrators can pursue or things that they should avoid doing before and during the investigation, and also during the trial stage. There is even included the detailed action plan for different situations.

I think it's like trying to buy some time. You hire a counsel. When people give you advice or when you consult a lawyer, then you might receive advice like 'First, accuse'. When you do accuse, and when the case becomes publicized, then people start to talk about it, and the [period of] accusation lasts a long time. And during this long period, it remains an unsolved case for other people. It is a case where you don't know the conclusion. It seems that they are trying to gain time. That is what I feel. And talking about that time, for a person who is getting accused, it is like being forced to be silent, so the perpetrator can say whatever things he wants to say, and by doing so, I think he is trying to lead the situation in his advantage. <Case 2>

As we saw in <Case 1>, when it comes to 'retaliatory planned accusations', even when you are "accused several times", one "does not get used to it" and gets "nervous". Therefore, due to fear and fatigue, it is hard for victims to respond and to remain in solidarity in a consistent manner, and in this way, the victims become marginalized. <Case 3>, who is a victim of 'retaliatory accusations', and also an ally with other victims like herself, speaks about how present 'retaliatory planned accusations' are different from the past ones.

Commonly known retaliatory accusations include persuading people to post malicious comments, then hiring a law firm to file complaints against hundreds and thousands of people, and then closing the case after reaching an agreement. But recently, investigative agencies have decided that planned accusations can include large joint lawsuits, so it is possible to be charged with intimidation among other crimes. But these days, perpetrator's planned accusations are a bit different. There are some aspects, especially in relation to money, and it is an effective method to buy a person's silence. So, anyways, the situation is becoming like, freedom of expression is restricted, the framework for solidarity is blocked, and so the victim can not speak out anymore. So the nature of these two counter-accusations are a bit different. Their intention is [different]. <Case 3>

As in <Case 3>, in sexual violence cases, 'planned accusations' are being used as a method to "silence" the victim and to "block the framework for solidarity", so for allies who gather with the purpose of solidarity with a victim, their activities have become more restricted, and it is harder for them to act in support [for a victim]. In this process, the initial sexual violence case disappears, and what continues is the



victim's exhaustion from legal disputes. <Case 3> accused a perpetrator after being raped and stalked by him, and after [the accusations], she experienced in total 7 'retaliatory counter-accusations', and such types of counter-accusations experienced by <Case 1> and <Case 3> appear like 'public versions' of retaliatory crimes experienced by the victims of crime.<sup>19</sup> Retaliatory crime usually occur when there is a strong power relations struggle between perpetrator and the victim, and is committed against the victim and their allies, after the victim accuses the perpetrator. It is a private type of punishment to the victim, saying 'you being impudent enough to disturb me'. In that sense, 'retaliatory planned accusation' against a victim of sexual violence is a process of 'public punishment' made in the name of 'objective and rational' law, and is a 'public and retaliatory violence'. Private retaliatory crimes result in additional punishments, but public and retaliatory forms which abuse accusations are not restricted. Rather, 'retaliatory counter-accusations' are a more advantageous countermeasure for perpetrators, due in large to the common conventions about sexual violence.

#### 4. Conclusion

This paper focused on 'retaliatory counter-accusations', specifically on 'retaliatory, planned counter-accusations', which are practiced by perpetrators of sexual violence, to threaten and pressure victims, their supporters, and any allies. Here, we looked through the situations and methods behind the sexual violence defense lawyer industry and their 'commercialization', as well as the social structural 'perpetrators' solidarity' and its patterns, which further encourage and support the 'retaliatory, planned counter-accusations'. In order to counter 'retaliatory counter-accusations', first of all, sexual violence victim's rights should be guaranteed during the process of investigations of counter-accusation and any subsequent trials, and there is also a need to adopt 'active measures' (Soon Kyung Cho, 2002), through measures such as establishing regulations preventing the abuse of counter-accusations and expanding interpretations of the justification regarding defamation. Moreover, as we have seen in this paper, the defense lawyer industry's indiscriminate promotion of strategies for sexual violence cases and defense 'packages', begets an urgent response by the bar association and the establishment of their own regulations [to control this],

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<sup>19</sup> According to the National Assembly Research Service (2013)'s seminar material, the retaliatory crime that accounted for 75 cases in 2006 has increased to 5 times by 2013. By definition, the retaliatory crime is the term combining retaliation (meaning 'harming someone as they have harmed oneself', and used as a synonym for revenge, punishment and others) and the crime, and the Public Prosecutor's Office defines the retaliatory crime as 'a brutal crime where the criminal commits murder and violence crime against the victim and the witness, and at the same time a grave crime that breaks the criminal justice order'. The retaliatory crime occurs when there is a practice of blaming the minority people for causing the perpetrator's criminal act, the lack of punishment for the retaliatory crimes under the current law, and the lack of government's measures to protect the victims. Hong Yeol Kim (2013), "Present situation on retaliatory crimes and its implications", from sourcebook "Ways to promote human rights of the victims of crimes for the prevention of retaliatory crimes", National Assembly Research Service.

and to amend related Attorneys-at-Law Act.

In particular, according to Article 11 (No aiding illegal act) section 2 of the “Korean Attorneys’ Code of Ethics”, it is stated that “The attorney-at-law shall not encourage suing or complaining if the merit of the criminal case is minimal”. As Chang Wan Son (2009) notes, in the case of the US, for lawyers, it is required that they fulfill 13 criteria on moral character and fitness, and the sixth criterion is about the abuse of legal process. Although most of the victims who are counter-accused for defamation get non-prosecution disposition and are cleared of suspicion, if the circumstances regarding the perpetrator’s lawyers’ encouragement and potential abuse of [counter-accusations] raise suspicions, then there is a need to institute restrictions and requires effort to be taken by related associations. Abel (2008) has called for the enactment of the law obtaining second opinion when setting attorneys’ fees, as a means to sanction misconducting lawyers. As sexual violence is subject to strong influence from existing prejudice and common sociocultural conventions in the interpretation of the law and in judgments, law firms should consider different ways to clear themselves and reform, and to keep each other in check. Moreover, most sexual violence perpetrators are typically in higher social and economic positions than their victims; thus when the defense lawyer industry became more ‘commercialized’, this has greater socioeconomic ramifications for the victims. Therefore, there is certainly a need to add and increase educational training on issues of human rights and gender sensitivity for lawyers. Nevertheless, as we have observed through the victims’ experiences, the most potent resistance comes from the victims and 'victims' solidarity'.

Victims are not ‘weak’ beings. The research participants of this paper have been actively participating in each trial, bravely collected evidence, and contacted the prosecutors and the justice department. In cases where violence is absent [not regulated] under the current law, victims looked for research materials and submitted them and sometimes argued with their lawyers or attempted to persuade them. In this process, the victims reconstructed the language surrounding the harm of sexual violence, and became empowered by objectifying the damage caused to them, and this power is the foundation for creating a form of informal solidarity with other victims.

There are people directly concerned with the case and people who are not directly concerned, but anyways, all these people stood in solidarity with the victim from where they are or were dealing with their own cases. (...) This created connection points. Although, before we first met, there were many victims who were falling into despair. I was also a bit like that. But when we met [each other], when I found that there actually is a way out of all this, I could get some kind of energy thinking that I can actually deal with this, and this was like going one step forward from just giving up. Such processes happened continuously and consecutively. And when [a victim] won one case, then we were all so happy, as this

could be an example for another victim. Besides, it's not we stopped winning after one case. By sharing the information with each other, such things [winning] happened consecutively. And this became an important process for me to escape from the experience of damage [from sexual violence]. Because, of course, I visited psychologist for counseling, and I went to see a psychiatrist, all these have helped me, but it would still have been hard for me if I relied only on them. So what helped me a lot was the process of finding out that there is a group where women meet, have discussions, share information, and support each other. <Case 1>

Many sexual violence victims go through times of despair after the damage, but they are encouraged by seeing other victims speak out, and so they 'name' their experiences as 'damages' and decide to publicize it. Although after, they could be framed as suspects due to all kinds of counter-accusations, they become stronger by standing in solidarity together, accumulating know-how and wisdom for their resistance. As a victim, and at the same time as an ally [with other victims], as a person in solidarity and at the same time as an experienced person, and as a specialist, there is a loose boundary [distinguishing these titles]. When those directly concerned meet and form a ring of 'solidarity', their combined powers have an explosive energy. Indeed, despite the perpetrator, the law, the media, the social discourse, the commercialization of the lawyer industry, among others penalizing the victims, and despite all kinds of 'retaliation', victims/women maintain solidarity with each others' survival and they are 'still' 'alive', but looking much stronger.

If there are ten people who throw a stone at you, there are a hundred people who want to stand in solidarity with you. But many are locked away behind those ten. It was same for me, at the beginning. But now there are hundred people who are not [locked], so I want to say that we can fight well by maintaining relations with these women, and by being in solidarity with one another. <Case 1>

As <Case 1> said, "There are more people who want to be in solidarity with victims than those who throw a stone at them" and I hope this will be remembered. Yet, there is no need to pressure oneself to take action, to stay silent, to give up, or to respond strongly. All these are options that the victims/survivors can have. In the book "An Ordinary Experience" (2011), the Korean Sexual Violence Relief Center named the power that the [sexual violence] victim has as a 'victim's leadership', going beyond the [existing] image of 'victim-like'. 'Victim's leadership' has to do with the fact that the person who knows the most about the case is the victim, and that victims can make different choices. At every moment, a victim has already been

making many decisions and taking action for herself, and that person who has been hurt can see the world deeper, and so it is about showing one's ability for reflection about their co-existence with other beings. Many victims already have such leadership abilities. But it is our task to strengthen and support them.

So far, our society has conflated so-called 'gold diggers' with sexual violence victims, comparing the [importance of] verifying 'real sexual violence' with [preserving] the perpetrator's reputation. More specifically, a sexual violence victim's 'imagined' level of shame is compared with [to an extent] the perpetrator's social reputation [which was damaged]. What is important is not how 'ashamed' the victim was, or if she is a 'gold digger' or not, or to what extent the perpetrator was defamed. It is a reflective question on why the victim perceives it as sexual violence, how deeply Korean society has been supporting perpetrator's 'misunderstanding' and 'delusions' regarding consent, and whose words have been regarded as more credible in our society.

Nowadays, definitions of sexual violence and secondary damage are expanding to include different kinds of retaliatory accusations in their meanings, and there is a need to discuss activist strategy and to continue with posing problems. In this process, it is vital to have an in-depth discussion on situations where the process of dealing with sexual violence cases get buried by the language of the law. When the 'political' field, like sexual violence gets trapped in the confines of the law, what disappears is the language that resists to the meaning and the components of sexual violence, hierarchy in gender violence and structural violence. Thus, it is necessary to maximize the possibility that the judicial process has, yet to know its limits, and this requires further in-depth research.

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