

Risk assessment and intimate partner sexual abuse

The hidden dimension of domestic violence

by LYNN HECHT SCHAFRAN

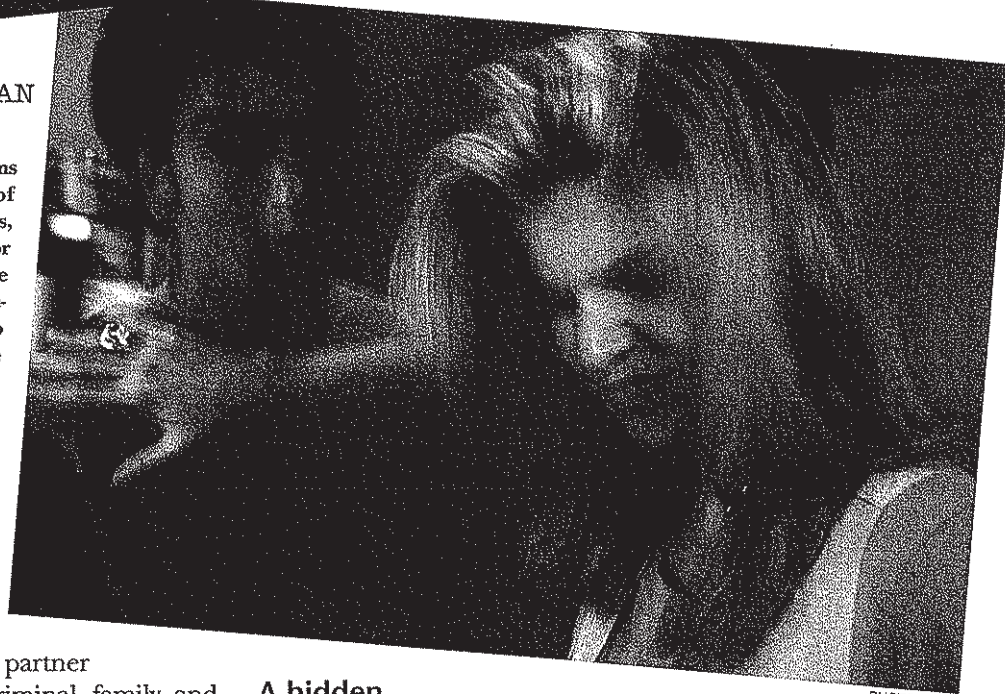
There was no greater divergence in what victims and perpetrators reported than in the area of sexual violence. If we are to believe the killers, none of them had ever been sexually violent or even coercive to the women they killed...The victims of abuse painted a very different picture. Nearly three-fourths of the women [who survived a near-murder] said their abusive partners had raped them.¹

Risk assessment is of critical concern to judges in every kind of domestic violence case. Recent research documents the importance of a largely ignored sign of risk and potential lethality in these cases: intimate partner sexual abuse. To assist in recognizing and addressing intimate partner sexual abuse in the contexts of civil, criminal, family, and juvenile law, the National Judicial Education Program created a comprehensive Web course, *Intimate Partner Sexual Abuse: Adjudicating this Hidden Dimension of Domestic Violence Cases*. Funded by the State Justice Institute and the Department of Justice Office on Violence Against Women, registration at www.njep-ipsacourse.org is free and open to all.²

In 13 modules the Web course presents an overview of intimate partner sexual abuse, as well as in-depth treatment of issues from immigrant victims to jury selection. Four civil and four criminal case scenarios, self-tests, and reflection questions provide opportunity for application of the curriculum and assessment of comprehension. The Web course contains links to much of the source material, including case law and articles on the subjects discussed, providing a comprehensive resource for judges and others. This article highlights the issues relating to risk assessment addressed in the course.

1. David Adams, *WHY DO THEY KILL?* 171-172 (2007). Adams's book is based on in-depth interviews with 31 incarcerated wife murderers, 20 wives who survived attempted homicide, and 19 additional women who were victims of potentially life-threatening intimate partner assault.

2. Instructional technology and design was provided by the Rozier E. Sanchez Judicial Education Center of the Institute of Public Law of the University of New Mexico.



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A hidden problem

Until recently, the marital rape exemption foreclosed legal recognition of intimate partner sexual abuse. Although by 2005 every state and the military eliminated the complete exemption, 26 states still provide lesser protection for victims, such as lesser penalties for the rapist and imposition of a limited reporting period. These diluted sexual assault laws reflect cultural adherence to the misguided belief that rape by a loved one is less harmful than rape by a stranger.

Some victims do not know that marital rape is against the law, and perpetrators often do not perceive their behavior as sexual abuse. Many victim advocates, police, prosecutors, and court personnel are not trained to ask the questions that would elicit this information. Even a victim who understands that an assault has occurred may hesitate to disclose this most personal form of violence and humiliation, sometimes out of fear that her credibility will be destroyed if she does.

The fact that the parties have had a consensual sexual relationship does not mitigate the horror of marital rape. In *Coercive Control* (2007), Professor Evan Stark, a leading researcher in this field, writes,

Marital rape...should be treated differently and more severely than similar crimes committed by strangers...sexual assault is far more likely to be repeated when it is committed by partners and almost always occurs amid other forms of violence, intimidation, and control. The level of unfreedom, subordination, dependence, and betrayal associated with marital rape has no counterpart in public life. [Emphasis supplied.]³

When this aspect of a domestic violence case is hidden, judges are deprived of essential information. In the words of Louisville, Kentucky, Judge Janice Martin, "As a judge, when I assess lethality, my assessment is only as effective as the information that I receive...And my orders are only as good as the information that I receive."⁴

Prevalence

Prevalence data about intimate partner sexual abuse have been developed in research with abusive men and abused women. These studies report intimate partner sexual abuse rates from 40 to 75 percent of the sample and a high rate of repeated sexual assault. For example, in a study of more than 200 men in a batterer intervention program in a Northeastern city, more than half admitted to acts that constituted intimate partner sexual assault. Yet when asked, "Have you ever sexually abused your partner?" only 8 percent answered "yes."⁵ Behavior not recognized as constituting sexual assault included forced sex under threat or use of force, including weapons, forced participation in sex with other people or animals, and forced enactment of pornography.

A study of abused women in Houston based its findings on interviews concerning sexual assault with nearly 150 women seeking orders of protection, not one of whom reported sexual violence in her application for an order of protection. When interviewed, however, more than two-thirds described sexual assault in addition to physical violence. One-fifth had a rape-related pregnancy. Significantly, the women who were being both physically and sexually abused reported

more of the risk factors for femicide, such as strangulation and threats to children, than did those subjected to physical abuse only.⁶

Finally, a National Institute of Justice study found that over half of women raped by an intimate partner were victimized repeatedly by that partner.⁷

Risk assessment

Risk assessment in domestic violence cases is typically limited to the risk that a batterer will kill his victim. But there are actually six types of risk, all heightened by the co-occurrence of sexual and physical violence. According to risk assessment expert Professor Jacquelyn Campbell, a physically-abused woman also subjected to forced sex is nearly two times more likely than other abused women to be killed.⁸

1. Will the batterer kill his victim?

On average, each day in the U.S. more than three women are murdered by their current or ex husbands or boyfriends.⁹ In a multi-city study of completed and attempted domestic violence femicide cases, Professor Campbell found that in more than half there was intimate partner sexual abuse. "Woman forced to have sex when not wanted" was the fifth most predictive factor in her risk assessment table, ahead of such factors as escalating physical violence and partner's drug abuse.¹⁰

2. Will the batterer kill his partner's or the couple's children?

Newspapers across the country frequently report cases of men murdering their or their partner's children in the context of killing the mother, as punishment for the mother's leaving the abusive relationship or as part of a custody struggle. Thus, any situation that heightens the risk of lethality for the mother heightens the risk of lethality for her children.

3. Will the batterer kill third parties?

In domestic violence murders there are often third-party victims. Family members, bystanders, co-workers, police, and court personnel who come to the principal victim's aid, or who are simply nearby at the wrong moment, may themselves be killed.

4. Will the victim kill herself?

Intimate partner sexual abuse is more psychologically damaging than physical violence alone. Two studies found far higher rates of suicide attempts among sexually assaulted battered women.¹¹

5. Will the victim kill the batterer?

In Anne Brown's 1987 study, *When Battered Women Kill*, three-quarters of the women reported having been raped at least once by their abusers. For her book *Wife Rape* (1996), Raquel Kennedy Bergen interviewed 40 victims of intimate partner sexual assault and reported that more than half had thoughts of killing their abusers.¹²

6. Will the violence continue/escalate after the relationship has ended?

Estranged husband of marital rape victim taped a photograph of a gravesite on her door. State v. Morrison, 426 A. 2d 47 (N.J. 1981).

There is a widespread but mistaken belief that if women in abusive relationships would just leave, the violence would end. In fact leaving is the most dangerous time for the woman because the batterer is outraged to be losing control over her.¹³ Much of the worst physical violence and most murders occur at or after separation.¹⁴ Intimate partner sexual assault often begins when the woman tries to

3. Evan Stark, *COERCIVE CONTROL* 388 (2007).

4. Judge Janice Martin, Battered Women's Justice Project Audio Conference, November 13, 2008.

5. Raquel Kennedy Bergen & Paul Bucovec, *Men and Intimate Partner Rape: Characteristics of Men Who Sexually Abuse their Partners*, 21 J. OF INTERPERSONAL VIOLENCE 1375 (2006).

6. Judith McFarlane & Anne Malecha, *SEXUAL ASSAULT AMONG INTIMATES: FREQUENCY, CONSEQUENCES AND TREATMENTS*, National Institute of Justice, 2005, available at <http://www.ncjrs.gov/pdffiles1/nij/grants/211678.pdf>.

7. Patricia Tjaden & Nancy Thoennes, *EXTENT, NATURE AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE*, National Institute of Justice, 2000, available at <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

8. Jacquelyn C. Campbell, et al, *Risk Factors for Femicide in Abusive Relationships*, 93 J. OF AM. PUB. HEALTH 1089 (July 2003).

9. U.S. Department of Justice, Bureau of Labor Statistics, *Homicide Trends in the U.S.*, available at www.ojp.usdoj.gov/bjs/homicides/tables/intimatestab.htm.

10. Campbell, *supra* n. 8, at 1098-1099.

11. McFarlane & Malecha, *supra* n. 6, at 37; Raquel Kennedy Bergen, *WIFE RAPE: UNDERSTANDING THE RESPONSE OF SURVIVORS AND SERVICE PROVIDERS* 59 (1996).

12. Bergen, *supra* n. 11, at 59-60.



Intimate partner sexual assault is associated with more severe depression, anxiety, and behavior problems in the children of adult victims.

leave and continues after separation and divorce. Professors David Finkelhor and Kersti Yllo, two of the earliest researchers in the field, wrote in *License to Rape: Sexual Abuse of Wives* (1985), "A wife's leaving or threatening to leave her marriage frequently provokes a marital rape...[o]ver two-thirds of the women in our sample were raped in the waning days of a relationship, either after previous separation or when they were making plans to get out."¹³ Raquel Kennedy Bergen similarly found that 20 percent of the women in her sample

were raped post-separation. One woman was frequently raped by her partner when he arrived to pay child support.¹⁶

Custody and visitation

The negative impact of domestic violence on children, and the reasons why batterers should not be awarded sole or joint custody or unsupervised visitation, are well-documented.¹⁷ When the mother has been sexually as well as physically assaulted, the potential for harm to the children is particularly grave. In *Children's Exposure to Intimate Partner Sexual Assault*, Kathryn Ford writes, "[I]ntimate partner sexual assault is associated with more severe

depression, anxiety, and behavior problems in the children of adult victims, as compared to those whose mothers have been physically, but not sexually, abused." Children exposed to intimate partner sexual abuse in their parents' relationship often "internalize distorted and unhealthy messages about gender and sexual consent."¹⁸

Victims should be encouraged to disclose sexually abusive behavior to enhance both their own safety and the safety of their children, and judges should take disclosures seriously. Presuming that such assertions are a ploy to deprive fathers of access to their children can have devastating consequences for a child's health and safety.¹⁹

Recommendations

Judges can have tremendous impact on law enforcement, court, and probation and parole personnel, prosecutors, victim advocates, treatment providers, and custody evaluators by informing them of the need to develop information about intimate partner sexual abuse and provide it to the court. Court intake forms for domestic violence victims and risk assessment instruments should include behaviorally based questions on the subject. Model samples can be found in the *Intimate Partner Sexual*

Abuse Web course, Module III, Risk Assessment.

Judges can enhance victim and community safety and educate the community by treating intimate partner sexual abuse with the seriousness it deserves. Judges can require that batterer intervention programs address intimate partner sexual abuse (many currently ignore it) and, in criminal cases, sentence offenders in accordance with the gravity of the crime and the unique impact on victims. Both pre-sentence investigations and post-conviction assessments should probe for co-occurring physical and sexual abuse, even if this was not raised in court, in order to determine whether sex offender treatment would be appropriate. If treatment is imposed as a sentencing condition, judges should require specialized, rigorous sex offender group treatment using a state of the art cognitive behavioral approach of the kind that can lead to lower recidivism rates for motivated offenders.²⁰

Judges need to know about intimate partner sexual abuse in order to assess risk, craft appropriate orders, effectively resolve custody/visitation matters, and impose appropriate sentences. Judges can take a leadership role in recognizing the significance of co-occurring domestic violence and sexual abuse by urging all stakeholders to address the issue comprehensively, creating a supportive courtroom environment, and utilizing all legal remedies available to ensure the safety of the victim and community through all stages of the court process. ☞

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13. This belief also ignores the high likelihood that the batterer will go on to abuse his next partner. As Professor Walter DeKeseredy has written, "Any woman is a possible object of violence. What differs is not the woman, but the man. If the man is sexually abusive, he will victimize any woman with whom he lives or has lived." Walter S. DeKeseredy & McKenzie Rogness, *Separation/Divorce Sexual Assault: The Current State of Social Scientific Knowledge*, 9 AGGRESSION AND VIOLENT BEHAV. 675 (2004).

14. Tjaden & Thoennes, *supra* n. 7, at 22-25.

15. David Finkelhor and Kersti Yllo, *LICENSE TO RAPE: SEXUAL ABUSE OF WIVES* 6-7 (1985).

16. Bergen, *supra* n. 11, at 21.

17. See, e.g., Lundy Bancroft and Jay G. Silverman, *THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS* (2002); Lundy Bancroft, *UNDERSTANDING THE BATTERER AS PARENT* (1998).

18. Kathryn Ford, *Children's Exposure to Intimate Partner Sexual Assault*, 1 FAMILY AND INTIMATE PARTNER VIOLENCE Q. 141 (2008).

19. Lynn Hecht Schafran, *Evaluating the Evaluators: The Problem with 'Outside Neutrals'*, 42 JUDGES J. 10 (Winter 2003).

20. Robert J. McGrath, et al., *Outcomes of a Treatment Program for Adult Offenders*, 18 J. OF INTERNATIONAL VIOLENCE 3 (2003).