

*Sexual Assault,
Sex Trafficking and
Prostitution*

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Legal Momentum

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Topics Covered

- Intimate partner sexual assault
- Trauma
- Link between intimate partner sexual assault and trafficking

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A Common View

"I don't know how on earth you could validly get a conviction in a husband-wife rape where they're living together, sleeping in the same bed, she's in a nightie and so forth. There's no injury, there's no separation, or anything."

Virginia State Senator Richard "Dick" Black, February 7, 2002.

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"If a partner is controlling, abusive, and violent in the kitchen, the living room, and in public, why would he stop the abuse at the bedroom door?"

Hon. Jeffrey Kremers, Chief Judge, First Judicial Administrative District, Milwaukee, WI.

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Why is the Sexual Abuse Aspect of Domestic Violence so Hidden?

- Because until recently, marital rape was completely legal in every state;
- Because no one wants to talk about sexual abuse and assault in any context;
- Because as soon as a woman charges a man with any type of sexual misconduct, she loses credibility, and women know this.


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Manifestations of Intimate Partner Sexual Abuse

- It is important to be aware of all the manifestations of intimate partner sexual abuse and to understand them as:
 - an aspect of domestic violence
 - an assertion of power and control
 - factors for risk assessment
 - behaviors to be addressed in prevention education, batterer intervention programs and sex offender treatment programs

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Graham Barnes

Team Leader
Training and Resources
The Battered Women's Justice Project
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“Until I had worked with men who batter for three to five years, I had no idea that the level of sexual assault within domestic violence relationships was so high. I had to hear these stories from the facilitators of the women's partner group before I realized that most of the women partners are also being sexually assaulted.”

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Studies of Physically Abused Women – the Houston Study

- A diverse group of 148 physically abused women seeking orders of protection
- Researchers used a conservative definition of sexual abuse and asked only behaviorally-based questions

Judith McFarlane & Ann Malecha, *Intimate Partner Sexual Assault Against Women: Frequency, Health Consequences, and Treatment Outcome*, Vol. 105 AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS 99 (2005).

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Houston Study

The questions asked were:

During your relationship, did (name of abuser):

- Make you have sexual intercourse against your will?
- Physically force you to have sex?
- Make you have oral sex against your will?
- Make you have anal sex against your will?
- Use an object on you in a sexual way?

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Houston Study

Results:

- 68% of the 148 women reported sexual abuse in addition to physical violence
- 15% attributed sexually-transmitted infections to the sexual abuse
- 20% had a rape-related pregnancy

Judith McFarlane & Ann Malecha, *Intimate Partner Sexual Assault Against Women: Frequency, Health Consequences, and Treatment Outcome*, Vol. 105 AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS 99 (2005).

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Offenders

- Perpetrators are often described as feeling a sense of entitlement to have sex with their "property."

"I remember one time he [her husband] told the judge, 'That's my wife, you can't tell me what to do with her.' "

Quoted in Raquel Kennedy Bergen, *WIFE RAPE: UNDERSTANDING THE RESPONSE OF VICTIMS AND SERVICE PROVIDERS* (1996).

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“A lot of times it [rape] happened because he was so jealous. He always thought that I was looking at other men. Like the time my brother and his friend—who I grew up with—were over, and he thought I was looking at his friend, and he was really mad. He started hitting me and then forced me to have sex.”

Natalie, quoted in Raquel Kennedy Bergen, *WIFE RAPE: UNDERSTANDING THE RESPONSE OF VICTIMS AND SERVICE PROVIDERS* (1996) at 22.

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Statistics on Prevalence

Study of Men in a Batterers Intervention Program in a Northeastern City

- 229 diverse men
- Men completed a questionnaire that included specific behaviorally-based questions
- 53% answered “yes” to questions about conduct that met the legal definition of rape or sexual assault in the program’s jurisdiction

Raquel Kennedy Bergen & Paul Bukovec, *Men and Intimate Partner Rape: Characteristics of Men who Sexually Abuse Their Partner*, Vol. 10 JOURNAL OF INTERPERSONAL VIOLENCE 1375 (2006).

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Prevalence

Even though 53% of these men admitted to at least once engaging in behavior constituting intimate partner sexual assault, only 8% answered “yes” to the question that put a label on their conduct: “Have you ever sexually abused your partner.”

Raquel Kennedy Bergen & Paul Bukovec, *Men and Intimate Partner Rape: Characteristics of Men who Sexually Abuse Their Partner*, Vol. 10 JOURNAL OF INTERPERSONAL VIOLENCE 1375 (2006).

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Who Are the Victims?

"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 BEHAVIOR* 675 (2004).

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Who Are the Victims?

- Vast majority of victims are women
- Marital and intimate partner rape is perpetrated in all racial and ethnic groups, across all economic classes and in urban and rural setting

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Who are the Victims?

- Same-Sex Couples:
 - In a study of people who identify as GLBTQIQI, 52% reported at least one incident of sexual coercion by their same-sex partner
- Victims of Teen Dating Violence:
 - Report the same rates of co-occurring physical and sexual violence as adult victims
- Children:
 - May witness or be forced to take part in violent acts

Kim Fountain & Avy Skolnik, National Coalition of Anti-Violence Programs, *LESBIAN, GAY, BISEXUAL, AND TRANSGENDER DOMESTIC VIOLENCE IN THE UNITED STATES IN 2006: A REPORT OF THE NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS* 46 (2006).

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Victim Impact: Psychological

"When you're raped by a stranger, you have to live with a frightening nightmare. When you're raped by your husband, you have to live with your rapist."

David Finkelhor & Kristi Yllo, LICENSE TO RAPE: SEXUAL ABUSE OF WIVES (1985).

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Victim Impact: Psychological

"Courts in many states continue to set higher standards of proof in sexual assault cases involving husbands or partners than when strangers are charged...[But marital rape] *should* be treated...*more severely* than similar crimes committed by strangers... The level of unfreedom, subordination, dependence, and betrayal associated with marital rape has no counterpart in public life."

EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE (2007).

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Victim Impact: Physical

- Sexually-Transmitted Infections (STIs)
- Pregnancy
- Bruising, broken bones, burns, internal injuries
- Long-lasting physical consequences because of repeated assaults, including internal injuries and chronic pain

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Repeated Sexual Assaults are Typical

- The National Institute of Justice found that just over half of women raped by an intimate partner said they were victimized repeatedly by that partner
 - The average was 4.5 rapes by the same partner
 - Individuals have reported 20 and more rapes by the same partner

PATRICIA TJADEN AND NANCY THOENNES, NAT'L. INST. OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE (2000); Raquel Kennedy Bergen, WIFE RAPE: UNDERSTANDING THE RESPONSE OF VICTIMS AND SERVICE PROVIDERS (1996).

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Risk Assessment Related to Intimate Partner Sexual Abuse

- Assessing likelihood of continued and escalating physical and sexual violence
- Assessing risk of lethality to victim and others
- Assessing risks to children when making custody and visitation decisions

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Risk Assessment - Lethality

- Risk assessment in domestic violence cases is traditionally thought of as assessing the risk that a batterer will kill his victim
- There are actually six types of risk to be assessed:

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Risk Assessment

- Femicide: Will the abuser kill his victim?
- Child Murder: Will the abuser kill the couple's children?
- Third Party Lethality: Will the abuser kill a third party?
- Suicide: Will the victim kill herself?
- Suicide: Will the abuser kill himself?
- Will the victim kill the abuser?

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Risk Assessment

Taking all risk factors into account, a batterer who subjects his victim to forced sex in addition to physical violence is more than twice as likely to kill her than a batterer who subjects his victim to physical violence alone.

Finding from Professor Jacquelyn Campbell, *Assessing Risk Factors for Intimate Partner Homicides*, Vol. 250 NIJ JOURNAL 15 (2003).

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Risk Assessment

“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.”

DAVID ADAMS, WHY DO THEY KILL? (2007) at 171-172.

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Risk Assessment: Children

"[A] history of sexual assaults against the mother...[is] linked to increased risk of sexual abuse of the children and increased physical danger."

Lundy Bancroft, Jay G. Silverman, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS (2002).

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Recommendations

- Urge state lawmakers to repeal the remaining marital rape exemptions
- Write to media professionals who mistakenly use the language of consensual sex to describe sexual assault
 - A Nevada judge created a guide for the media on how to cover domestic violence cases

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Recommendations

Justice System Employees and Judges:

- Education programs for court personnel and judges who handle domestic violence cases should ensure that all are aware of:
 - The high incidence of intimate partner sexual abuse in the context of domestic violence;
 - the many forms intimate partner sexual abuse can take;
 - the implications for victim trauma;
 - the implications for risk assessment;
 - the services victims need; and
 - the interventions necessary with offenders.

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Recommendations

Justice System Employees and Judges:

- Create a court environment in which victims perceive they will be respected if they disclose intimate partner sexual abuse
- Ensure that court intake forms and risk assessment instruments used with domestic violence victims include behaviorally-based questions about intimate partner sexual abuse
- Maintain a secure waiting area for victims in the courthouse outside of the courtroom
- Use behaviorally-based questions to ask domestic violence victims about intimate partner sexual abuse

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Recommendations

- Use creative methods to secure all information necessary to make informed pretrial release and dispositional orders and to enhance victim safety:

“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.”

Judge Janice Martin, Jefferson District Court, Kentucky.

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Recommendations

Justice System Employees and Judges:

- Allow a thorough voir dire to identify and excuse jurors who cannot deliberate fairly in a case involving marital rape or intimate partner sexual abuse
- Admit expert testimony when needed
- Work with Department of Corrections and Probation and Parole to ensure that treatment programs in prison and in the community address the intersection of sexual abuse, physical violence and coercion and control

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Recommendations

Victim Services Agencies:

- Increase cross-training opportunities between organizations that serve battered women and those that serve rape victims
- Ensure that intake forms and risk assessment instruments used with domestic violence victims include behaviorally-based questions about intimate partner sexual abuse

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National Judicial Education Program Web Course

Intimate Partner Sexual Abuse: Adjudicating this Hidden Dimension of Domestic Violence Cases

Registration is free and open to all at:
www.njep-ipsacourse.org

- Provides current interdisciplinary research from law, medicine and the social sciences on intimate partner sexual abuse
- Includes 13 modules on issues varying from victim impact to cultural defenses, self-tests, reflection questions, and civil and criminal case studies

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