

## Module III: Risk Assessment

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(9 Pages)

#### Learning Objectives:

This module will enable a judge to:

- Improve risk assessment in domestic violence cases by recognizing that when intimate partner sexual abuse is a factor, the risk of injury or death is heightened for the victim, her children and others, especially when the victim tries to leave and seeks help from the justice system.
- Utilize risk assessment instruments that include intimate partner sexual abuse as a factor.

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## Module III: Risk Assessment

### Introduction: Risk Assessment

◆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.

We know from the research that forced sex is a key indicator of escalating violence and potential lethality. It is critical to have trained domestic violence prosecutors and victim advocates assigned to domestic violence cases, so that thorough and appropriate interviews are conducted with the victims. Victims are often more reluctant to discuss sexual abuse, or assault, and the horrific details connected thereto, and the experience of the interviewer along with appropriate questions are key in eliciting information relevant to risk assessment.◆

—Judge Janice Martin, Jefferson District Court, Louisville, Kentucky

Risk assessment is one of the most significant challenges in a domestic violence case. As Judge Janice Martin observes, a judge's assessment is only as good as the information the court receives, and this information is often difficult to obtain, especially when it relates to sexual abuse and assault. Given that forced sex is a critical indicator of escalating violence and potential lethality, it is essential for court systems to create an environment and processes which encourage full disclosure of sexual abuse.

Assessment of an abuser's future dangerousness is usually thought of as assessing the risk that an abuser will kill his victim. In fact, assessing the risk the abuser poses is multi-faceted. There is the risk of escalating violence, especially when the victim tries to leave the relationship, and the risk of lethality to the victim, her children, third parties, and the abuser himself. All of these risks are heightened when intimate partner sexual abuse is a factor.

#### **In New Mexico...**

"The purpose of the Sexual Crimes Prosecution and Treatment Act [§29-11-1, et. seq] is to promote effective law enforcement and prosecution of sexual crimes and to provide medical and psychological assistance for victims of such crimes. Implementation of the Sexual Crimes Prosecution and Treatment Act will serve to assist existing community-based victim treatment programs, to provide interagency cooperation, training of law enforcement, criminal justice and medical personnel and to affect proper handling and testing of evidence in sexual crime offenses." §29-11-2.

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### Separation and Risk

There is a widespread but mistaken belief that if women in abusive relationships would just leave, the violence would end. This leads to the always wrong question, "why doesn't she leave?" instead of "why doesn't he stop hurting her?" The reality is that leaving is the most dangerous time for a battered woman because the abuser is outraged that he is losing control over her. **An impending separation or divorce often prompts renewed or first-time intimate partner sexual abuse.**

"[H]e would know it was getting close to the end of our relationship once again and he would [rape me]. And the whole time I would be crying, but I couldn't cry loud enough because if his parents heard us he swore he would take our children away. I know he did this when he thought I was getting ready to leave and he knew that I couldn't live without my children."

— Tina, quoted in DeKeseredy, *et al.*, *Separation/Divorce Sexual Assault: The Contribution of Male Support* (2006) at 236.

"Any time I would try to leave him, the beatings or the rape would come, he would threaten my family and friends and my silence was bought once again."

— Excerpt from Froggie's story posted on [Aphrodite Wounded](#), a website for survivors of intimate partner sexual abuse.

#### In New Mexico...

New Mexico state law provides that: "Physical or verbal resistance of the victim is not an element of force or coercion." §30-9-10(A). See also *State v. Jensen*, 2005 NMCA 113: "absence of consent is not an element of the crime of CSP."

## Resources

### Articles

- Walter S. DeKeseredy, *Separation/Divorce Sexual Assault: The Contribution of Male Support*, VOL. 1 FEMINIST CRIMINOLOGY 228 (2006)

### Online

- Aphrodite Wounded, [Froggie's story](#)

## Module III: Risk Assessment

### Separation Sexual Assault

Research documents that the risk of intimate partner sexual abuse is high when the abuse victim tries to leave and continues after separation and divorce.

"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."

— DAVID FINKELHOR & KERSTI YLLO, LICENSE TO RAPE: SEXUAL ABUSE OF WIVES (1985) at 6-7.

"[W]omen are particularly at risk of being raped when they are separated or divorced, because despite the dissolution of the marital bond, this sense of entitlement and the belief that their wives are their property live on."

— BERGEN, WIFE RAPE (1996) at 21.

Bergen found that 20% of the women in her sample were raped during or after separation.

One such example was a woman who was frequently raped by her partner when he arrived to pay child support. (BERGEN, WIFE RAPE, 1996).

In the most recent National Institute of Justice National Violence Against Women Survey, 24.7% of women raped by a former spouse or cohabiting partner said they were raped before and after the relationship ended. Another 6.3% said they were raped only after the relationship ended. (TJADEN & THOENNES, EXTENT, NATURE, AND CONSEQUENCES OF RAPE VICTIMIZATION, 2006 at 25).

## Resources

### Nonperiodical Literature

- David Finkelhor, Kersti Yllo, LICENSE TO RAPE: SEXUAL ABUSE OF WIVES (1985)
- Raquel Kennedy Bergen, WIFE RAPE: UNDERSTANDING THE RESPONSE OF SURVIVORS AND SERVICE PROVIDERS (1996)
- Patricia Tjaden, Nancy Thoennes, U.S. Department of Justice, [EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, NATIONAL INSTITUTE OF JUSTICE](#) (2000)

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#### Separation Sexual Assault (cont'd)

Professor Walter DeKeseredy conducted an original study with a rural population of women in Ohio, which focused on the rate of separation sexual assault and the factors that contribute to it (DeKeseredy, et al., *Separation/Divorce Sexual Assault: The Contribution of Male Support*, 2006). The experiences of the women in his sample are captured in this victim's narrative of drugging, strangulation and rape.

"I agreed to meet with him to discuss visitation and child support for our daughter and I wanted to go to a public place after everything he had done because it wasn't just sexual, it was mental, physical. And I showed up there. I had a couple of friends who were sitting [there] throughout keeping an eye on me. Ordered the drink, got up to use the bathroom, drank my drink and that was pretty much the last thing I remembered until the next morning when I woke up with a killer headache and my daughter crying in her crib....He was in bed next to me....I had strangulation marks around my neck. I had marks around my wrists and an open wound on my face and he had obviously had sex."

— Walter S. DeKeseredy, et al., *Separation/Divorce Sexual Assault: The Contribution of Male Support* (2006) at 239.

In a larger 2007 study of a diverse urban population of women, Professors Walter DeKeseredy and Carolyn Block found that among 214 women who left their abusers approximately 24% experienced forced sex just before or after attempting to leave (DeKeseredy & Block, *Forced Sex & Leaving Intimate Relationships*, 2007 at 20).

### Resources

#### Articles

- Walter S. DeKeseredy, *Separation/Divorce Sexual Assault: The Contribution of Male Support*, VOL. 1 FEMINIST CRIMINOLOGY 228 (2006)
- Carolyn Rebecca Block, Walter DeKeseredy, *Forced Sex & Leaving Intimate Relationships: Results of the Chicago Women's Health Risk Study*, WOMEN'S HEALTH AND URBAN LIFE 6 (May 2007)

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### Stalking

Stalking is a serious crime that often accompanies intimate partner sexual abuse and domestic violence. In the most recent national stalking study, 81% of the women stalked by a current or former husband or cohabiting partner were also physically assaulted by that partner, and 31% of the women stalked by a current or former husband or cohabiting partner were also sexually assaulted by that partner. (Patricia Tjaden & Nancy Thoennes, [Stalking in America: Findings From the National Violence Against Women Survey](#) (PDF 119KB), National Institute of Justice (1998).

Stalking is legally defined as "a course of conduct directed at a specific person that places a reasonable person in fear for her or his safety. It is against the law in every state. Stalking across state lines or in federal territories is illegal under federal law." ([Ten Things You Need to Know About Stalking](#) (PDF 32KB), National Center for Victims of Crime.

Although stalking is a key indicator of escalating violence and potential lethality is stalking, it is often unrecognized, trivialized or dismissed by law enforcement, prosecutors and the courts (BREWSTER, INTIMATE-STALKING VICTIMS, 2001). The victims understand the threat, but, as the California Court of Appeals observed:

"Battered women...may perceive danger and imminence differently from men...A subtle gesture or a new method of abuse, insignificant to another person, may create a reasonable fear in a battered woman."

— *People v. Romero*, 26 Cal. App. 4th 315, 26 Cal. App. 315, 13 Cal Rptr.2d 332, 336 n. 6 (Cal. Ct. App. 1992) at n. 6. (quoting Crocker, *The Meaning of Equality for Battered Women Who Kill Men in Self Defense* 8 HARVARD WOMEN'S L.J. 121 (1985).)

For example, a woman trying to break with her abuser tells him to have no contact with her and obtains an order of protection. A few days later a florist delivers to her workplace a bouquet of roses with a loving card from her abuser. An outsider sees a simple gift of flowers, but in fact this is stalking. The woman rightly understands this as a message from the abuser that she is wrong to think she can escape him.



In a study about the accuracy of victims' perception of risk from their abusers, those who were stalked viewed themselves as being at higher risk than those who were physically abused only. The researchers noted:

"Our results with respect to stalking were clearest: Those with higher levels were likely to see themselves at high risk and to be correct in that assessment...It may be that batterers who stalk leave more clues about their intentions than other batterers do" (CATTANEO ET AL., VICTIMS' ACCURACY IN ASSESSING THEIR RISK OF RE-ABUSE, 2007 at 438).

The leading study on the correlation between stalking and intimate partner femicide showed that 89% of these victims who had been physically abused were also stalked in the 12 months before the murder (MCFARLANE ET AL., STALKING AND INTIMATE PARTNER FEMICIDE, 1999; see also, Stalking Resource Center, [Stalking Fact Sheet](#) (PDF 43KB), 2005).

## Resources

### Articles

- Mary P. Brewster, *Legal Help-Seeking Experiences of Former Intimate-Stalking Victims*, CRIMINAL JUSTICE POLICY REVIEW 91 (2001)
- Sarah M. Buel, [Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay](#), THE COLORADO LAWYER 19 (October 1999)
- Lauren Bennett Cattaneo, *Intimate Partner Violence Victims' Accuracy in Assessing their Risk of Re-abuse*, VOL. 429 JOURNAL OF FAMILY VIOLENCE (2007)
- Judith McFarlane, [Stalking and Intimate Partner Femicide](#), VOL. 300 HOMICIDE STUDIES (1999)

### Nonperiodical Literature

- Patricia Tjaden, Nancy Thoennes, National Institute of Justice, [STALKING IN AMERICA: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY](#) (1998)

### Online

- National Center for Victims of Crime, [Ten Things You Need to Know About Stalking](#)
- Phyllis L. Crocker, *The Meaning of Equality for Battered Women Who Kill Men in Self Defense*, VOL. 121 HARVARD WOMEN'S L.J. 8 (1985)

### Cases

- *People v. Romero*, *People v. Romero*, 26 CAL. APP. 4TH 315, 26 CAL. APP. 315 (1992)

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### Lethality

"[V]ictims of wife rape are at greater risk of being murdered by their husbands, or of murdering them, than battered women who are not also sexually violated."

— DIANA E. RUSSELL, RAPE IN MARRIAGE (1990) at xxviii.

Research documents that in abusive relationships much of the worst physical violence and most murders occur at or after separation (TJADEN & THOENNES, EXTENT, NATURE, AND CONSEQUENCES OF RAPE VICTIMIZATION (2006) at 30). Nationally, "it is estimated that a battered woman is 75 percent more likely to be murdered when she tries to flee or has fled than when she stays" (Buel, [Fifty Obstacles to Leaving](#) (PDF 1.12MB), 1999 at 19).

In WHY DO THEY KILL?: MEN WHO MURDER THEIR INTIMATE PARTNERS, researcher David Adams found that among the men who had murdered or attempted to murder their intimate partners, the patterns of coercion and violence escalating to murder were similar.

"Violence inevitably creates resistance on the part of the victim, and the abuser must continuously resort to escalating levels of violence in order to achieve the same results. This pattern of escalation is particularly evident in the many cases of domestic violence and stalking, when the victim has left the abuser or is trying to leave him. Here, the abuser resorts to ever-increasing levels of terroristic threats and violence in order to compel the victim to return or prevent her from leaving in the first place. Many killings of women occur following estrangement or attempted separation on the part of the victim."

— ADAMS, WHY DO THEY KILL? (2007) at 183.

### Six Types of Potential Lethality

Although the data on domestic violence fatalities tend to focus on cases where the abuser kills the victim, in reality there are six types of potential lethality:

1. The abuser may kill the victim.
2. The abuser may kill the couple's children.
3. The abuser may kill a third party.
4. The abuser may kill himself.
5. The victim may kill herself.
6. The victim may kill the abuser.



## Resources

### Articles

- Sarah M. Buel, [Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay](#), THE COLORADO LAWYER 19 (October 1999)

### Nonperiodical Literature

- Diana Russell, RAPE IN MARRIAGE (1982)
- David Adams, WHY DO THEY KILL?: MEN WHO MURDER THEIR INTIMATE PARTNERS (2007)

## Resources

## Articles

- Jacquelyn C. Campbell, [\*Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study\*](#), VOL. 7 AMERICAN JOURNAL OF PUBLIC HEALTH 93 (2003)

## Cases

- State v. Morrison , *State v. Morrison* , 426 A. 2ND. 47 N.J (1981)
- Jones v. State , *Jones v. State* , 74 S.W. 3D 663, 667 ARK (2002)

## Nonperiodical Literature

- Bureau of Justice Statistics, [\*Intimate Partner Violence\*](#) CRIME DATA BRIEF (2003)

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## Femicide

## The abuser may kill the victim.

Marital rape victim testified her husband told her "the only way to get out of our marriage...is through death and I would have to die."

— *Jones v. State* 74 S.W. 3d 663, 667 (Ark. 2002).

Estranged husband of marital rape victim taped a photograph of a gravesite on her door.



— *State v. Morrison* 426 A. 2nd. 47 (N.J. 1981).

According to the Bureau of Justice Statistics, on average, each day in the United States more than three women are murdered by their husbands or boyfriends. In 2005, 1,181 women were killed by an intimate partner ([Homicide Trends in the U.S.: Intimate Homicide](#), 2005).

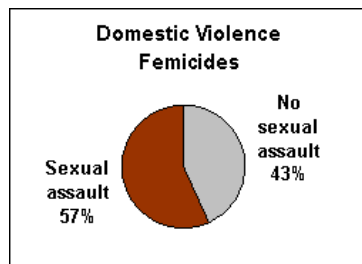
While there can never be an absolute prediction of dangerousness, research documents that **sexual assault in an intimate partner relationship is a leading indicator of lethality.**



"Forced sex in intimate partner relationships increases the risk for intimate partner homicide over and above prior domestic violence, the use of a weapon against the female partner and repeat physical violence. In other words, the man who not only physically abuses his partner but also rapes her is particularly dangerous."

— Jacquelyn C. Campbell, PhD, RN, FAAN Anna D. Wolfe Chair & Professor Johns Hopkins University School of Nursing

Professor Jacquelyn C. Campbell of Johns Hopkins University is the country's leading researcher on intimate partner violence risk assessment. In an 11-city study of actual and attempted domestic violence femicides she found that in 57% of these cases there was intimate partner sexual abuse. (Campbell, *et al.*, [Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study](#) (PDF 851KB), 2003 at 1089-1097). Also see Dr. Campbell's [Danger Assessment website](#).



David Adams' study of thirty-one men who killed their female partners, described in [Defining Intimate Partner Sexual Abuse and Assessing Its Prevalence](#), determined that "[n]one of the thirty-one killers admitted ever to raping his partner or forcing her to have sex...This information from killers about sexual coercion contrasts radically with information obtained from the victims of attempted murder. Nearly three-fourths of these women reported having been raped by their partners." —ADAMS, WHY DO THEY KILL? at 141-142.

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#### Femicide (cont'd)

Professor Campbell found that the factor labeled "Woman forced to have sex when not wanted" was the fifth most predictive item in her risk assessment table, ahead of such factors as escalating physical violence and partner's drug abuse. A physically-abused woman also experiencing forced sex was over seven times more likely than other abused women to be killed. (Campbell, *et al.*, [Assessing Risk Factors for Intimate Partner Homicides](#) (PDF 851KB), 2003).

Similarly, in a study of abused women in Houston in which 68% were being both physically and sexually abused, the sexually-abused women reported more of the risk factors for femicide, such as strangulation and threats to children, than did those experiencing physical abuse only (McFarlane & Malecha, [Sexual Assault Among Intimates](#) (PDF 991KB), 2005).

#### Resources

##### Articles

- Jacqueline Campbell, [Assessing Risk Factors for Intimate Partner Homicides](#), Vol. 250 NIJ JOURNAL 15 (2003)

##### Nonperiodical Literature

- Judith McFarlane, Ann Malecha, National Institute of Justice, [SEXUAL ASSAULT AMONG INTIMATES: FREQUENCY, CONSEQUENCES AND TREATMENTS](#) (October 2005)

## Resources

## Articles

- Carolyn H. Johnson, *Filicide and Family Law: A Study of Familicide - Suicide Following Separation*, Vol. 44 FAMILY COURT REVIEW 448 (2006)

## Module III: Risk Assessment

## Child Murder

## The abuser may kill the couple's children.

Newspapers across the country frequently report incidents of men murdering their children as well as killing the mother as punishment for the mother's attempt to leave the abusive relationship. This form of child murder is called "familicide." "The batterer's perception that he is losing control over his family when the victim seeks assistance from the court is the accepted explanation for such familicides." (Johnson, *Familicide and Family Law*, 2006.)

Recent examples include:

- Father drowns three children to punish wife for leaving him. Annie Linskey & Nicole Fuller, Father held without bail in 3 killings, [BALTIMORE SUN, April 2, 2008](#). Mother was repeatedly denied court protection for herself and her children, one court noting that she had sexual relations with the father while claiming he was abusive. See, [When a Domestic Violence Victim Engages in Sexual Relations with the Abuser, What is Consent?](#)
- Divorced dad publicly admits killing his kids ([CNN.com](#), Kansas City, 11/20/07);
- Woman, 7-year-old are slain in Carrollton: Ex-boyfriend kills self after standoff at neighbor's home (*The Dallas Morning News*, 5/22/07)
- 3 dead in possible murder, suicide – Man, wife, son, shot in Saugus (*The Boston Globe*, 5/22/07)
- Alaskan man on trial for the murder of his girlfriend and infant (*Anchorage Daily News*, 9/26/06)
- Missouri man assaults his girlfriend and then throws their daughter off a bridge (*Springfield News-Leader*, Springfield, MO 9/7/06);
- California man murders his girlfriend, their son and their dog (*Dateline Los Angeles*, 8/30/06) NOTE: In recent years it has been realized that abusers often abuse and kill the victim's or family's pets as a warning to the victim of what can happen to her or to punish her. See *The Humane Society of the United States, Animal Cruelty and Family Violence: Making the Connection* available [here](#), and see, National Coalition Against Domestic Violence, [Pets and Domestic Violence](#) (PDF 174KB).
- *Castle Rock v. Gonzales*, 125 S. Ct. 2796 (2005) In this case, which went to the U.S. Supreme Court on the issue of the police department's inaction, an estranged husband abducted and murdered his three daughters one evening, then parked his truck with their bodies in it in front of the police station early the next morning. He died that morning in a shootout with the police.
- John Battaglia, a Louisiana accountant with a long criminal record of brutal abuse against his first and second wives, was nonetheless awarded generous unsupervised visitation with his daughters from both marriages. In 2001, he received the death penalty for murdering his two daughters by his second marriage during visitation. The entire case is described in the 2003 book by IRENE PENCE, NO DADDY DON'T: A FATHER'S MURDEROUS ACT OF REVENGE.



Thus, any situation that heightens the risk of lethality for the mother heightens the risk of lethality for the couple's children.

**Module III: Risk Assessment****Third Party Lethality****The abuser may kill a third party.**

In the course of trying to kill their wives/partners, abusers sometimes kill third parties: relatives of the woman trying to leave, individuals coming to her aid, bystanders or court personnel. As the following recent cases show, the abuser's pursuit of the victim, particularly in a public square, can be deadly to her, to their children, and to anyone else who crosses the abuser's path.

- Police: Man Kills Friend of His Wife / Angel Sanchez of Polk City is also accused of shooting his estranged wife. (*The Ledger*, 5/28/07)
- Ridgeway Trial: Victim Relives Shooting Rampage Wounded / Cousin of Lanerra Streater Recounts Night of Terror in Applewalk (*The Niagara Gazette*, 5/25/07)
- Mack Ordered To Stand Trial In Killing Of Wife, Shooting Of Reno Judge (*KTVU News.com*, BayInsider 8/30/06)
- North Carolina Man Kills his Daughter and Two Others When his Wife Decides to End Thirty Years of Abuse (*The News & Observer*, Raleigh, NC 8/23/06)

## Module III: Risk Assessment

### Suicide

#### The abuser may kill himself.

As the headlines above and those to be found in newspapers almost any day demonstrate, it is commonplace for abusers to perpetrate murder/suicide in which they first kill the woman trying to escape them and then themselves.

30% of femicides are murder/suicides.

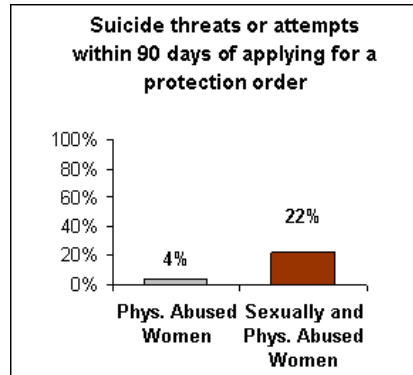
National Institute of Justice Journal, 2003

#### The victim may kill herself.

As described in the earlier section on victim impact, sexual violence in intimate partner relationships is even more psychologically damaging to victims than physical violence alone. In one study, 22% of sexually assaulted battered women reported suicide threats or attempts within 90 days of applying for a protection order, compared to 4% of physically-abused only women.

(McFarlane & Malecha, [Sexual Assault Among Intimates](#) (PDF 991KB), 2005 at 36).

In another study "[m]ore than half of the women mentioned considering or attempting suicide at some point." (BERGEN, WIFE RAPE, 1996 at 59). These data make clear the profound impact of intimate partner sexual abuse and the need for the court system to treat sexual assault within an intimate partner relationship with utmost seriousness.



## Resources

### Nonperiodical Literature

- Raquel Kennedy Bergen, WIFE RAPE: UNDERSTANDING THE RESPONSE OF SURVIVORS AND SERVICE PROVIDERS (1996)
- Judith McFarlane, Ann Malecha, National Institute of Justice, [SEXUAL ASSAULT AMONG INTIMATES: FREQUENCY, CONSEQUENCES AND TREATMENTS](#) (October 2005)

### Articles

- National Institute of Justice, *Intimate Partner Homicide*, VOL. ISSUE #250 NATIONAL INSTITUTE OF JUSTICE JOURNAL (2003)

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### Homicide

#### The victim may kill the abuser.

According to the Bureau of Justice Statistics, 3% of male murder victims are killed by an intimate partner (BUREAU OF JUSTICE STATISTICS, [HOMICIDE TRENDS IN THE U.S.: INTIMATE HOMICIDE](#), 2005).

In a case that became famous through a book and a movie, *THE BURNING BED*, a wife repeatedly raped by her husband ultimately doused their bedroom with gasoline while he slept and set it alight (FAITH McNULTY, *THE BURNING BED*, 1980), about the case of Francine Hughes). The first major study of battered women who kill their abusers was described in a book by Angela Browne titled *WHEN BATTERED WOMEN KILL* (1987). Browne found that three-quarters of her sample reported having been raped at least once by their abusers.



Raquel Kennedy Bergen interviewed 40 victims of intimate partner sexual abuse and reported that more than half had thoughts of killing their abusers, though only three thought this might actually happen. Bergen described one victim's situation:

"Rhonda is among the most visibly traumatized by the rape. She lives in constant terror of her husband's return . . . She told me, 'I live in constant fear of him. All the time. And every day I think of how to kill him, and I pray to God it doesn't happen.'"

— Quoted in BERGEN, *WIFE RAPE* (1996) at 59-60.

In the case of Mary Winkler [noted earlier](#), she was ultimately convicted of the voluntary manslaughter of her husband, a prominent pastor from Tennessee. At trial she testified about her husband's preoccupation with pornography and what she described as "unnatural" sex acts and how deeply his conduct disturbed her. Visibly embarrassed, she displayed for the jury garments he insisted she wear during their encounters, and described him forcibly anally raping her. When she protested that these acts hurt her, he replied that if she sustained injuries, she could have them surgically repaired. Because of her family's position in the community, she felt it impossible to seek help for her situation because it would require her to reveal his conduct. (EMANUELLA GRINBERG, *COURT TV NEWS*, "Pastor's wife says she shot husband after years of physical, sexual, emotional abuse," April 17, 2007).

The case provides a vivid example of how the stigma of sexual abuse can complicate significantly the capacity of a victim to seek help. The court seemed to take Ms. Winkler's difficult situation into account in sentencing her to a term of just 210 days' incarceration, most of which had been served pre-trial.

## Resources

### Nonperiodical Literature

- Raquel Kennedy Bergen, *WIFE RAPE: UNDERSTANDING THE RESPONSE OF SURVIVORS AND SERVICE PROVIDERS* (1996)
- Bureau of Justice Statistics, [HOMICIDE TRENDS IN THE U.S.: INTIMATE HOMICIDE](#) (2005)
- Angela Browne, *WHEN BATTERED WOMEN KILL* (1987)
- Faith McNulty, *THE BURNING BED* (1980)

### Newspapers

- Emanuella Grinberg, *Pastor's wife says she shot husband after years of physical, sexual, emotional abuse*, *COURT TV NEWS* (April 17, 2007)

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### Risk Assessment Instruments

These data have clear implications for policy and safety planning, but the reality is that the variable of forced sex is missing from most risk assessment instruments. *The Danger Assessment Instrument* developed by Professor Campbell addresses this issue with the question: "Has he ever forced you to have sex when you did not wish to do so?" (Professor Jacqueline Campbell, [Danger Assessment](#) (PDF 13KB)).

A risk assessment instrument that asks about types of forced sex in order to assess level of risk was developed by the Minnesota Center Against Violence and Abuse. Its [Domestic Violence and Probation Dangerousness-Lethality Checklist](#) begins with a Questionnaire for Victims of Domestic Violence that asks about numerous forms of abuse including sexual violence.

**Questionnaire for Victims of Domestic Violence**

**Question 8. Sexual Assault**

Check one:

- Has your partner ever coerced or forced you to have sex?
- Has your partner ever forced you to have sex in ways you didn't want to or when you didn't want to?
- Has your partner ever threatened to sexually abuse the children or actually abused them?

After the victim completes this questionnaire, the Probation Officer is instructed to use it to check any items on the Dangerousness-Lethality Checklist that match reported acts of abuse by the perpetrator.

**Dangerousness-Lethality Checklist**

**Question 8. Sexual Assault**

Check one:

- Extreme sexual abuse such as inflicting severe pain during sex, having sex right after a beating or soon after surgery or childbirth, forcing her to have sex with other people or animals, beating her to force her to have sex
- Uses force to have sex; threatens to sexually abuse children
- Uses coercion or threatens force in order to have sex

The checklist then provides a Severity of Violence Matrix which plots "Increasing Risk and Dangerousness" under three headings: Serious Risk, Severe Risk, Acute and Severe Risk. The matrix assigns risk levels according to the type of intimate partner sexual abuse.

## Resources

### Articles

- Jacqueline Campbell, [Danger Assessment](#), (2004)

### Online

- [Domestic Violence and Probation Dangerousness-Lethality Checklist](#)

	<b>Serious Risk</b>	<b>Severe Risk</b>	<b>Acute and Severe Risk</b>
<b>Sexual Assault</b>	Uses coercion or threatens force in order to have sex	Uses force in order to have sex; threatens to sexually abuse children	Combines sex and use of force and/or deliberately inflicts pain in sexual activity; inflicts group or public sexual degradation. Sexually abuses children--may force spouse to watch

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#### Risk Assessment Instruments (cont'd)

A highly-detailed guide to risk assessment that cites forced sex as an indicator is published by The British Columbia Institute Against Family Violence. It provides both a handbook and a spousal assault risk assessment checklist that includes the following item:

**"ITEM #12: PAST SEXUAL ASSAULT/SEXUAL JEALOUSY**

**Definition:** "Sexual assault" includes sexual assault with a weapon, but excludes threats; "serious" means that the jealousy has been the focus of inpatient or outpatient psychiatric treatment in the past, or that it has substantially impaired social functioning; "intimate partner" includes any wife, common-law spouse or girlfriend.

**"Rationale:** Typologies of spouse assaulters often indicate that the most severe patterns involve sexual assault and extreme sexual jealousy. Moreover, men who have sexually assaulted their partners and/or have demonstrated significant sexual jealousy are more at risk for violent recidivism."

— P. RANDALL KROPP, ET AL. SPOUSAL ASSAULT RISK ASSESSMENT GUIDE

The importance and limitations of well-crafted risk assessment instruments that include forced sex as a factor are explored in Dr. Neil Websdale's *Lethality Assessment Tools: A Critical Analysis*. Dr. Websdale also cautions that "[r]isk assessment scores should not substitute for listening to battered women and learning about the complexities of their lives and broader social circumstances" (Websdale, [Lethality Assessment Tools](#), 2000 at 5).

#### Resources

##### *Nonperiodical Literature*

- P. Randall Kropp, *Spousal Assault Risk Assessment Guide*

##### *Online*

- Neil Websdale, Bahney Dedolf, [Lethality Assessment Tools](#), NATIONAL ONLINE RESOURCE CENTER ON VIOLENCE AGAINST WOMEN, 200 AT 5

**Resources*****Nonperiodical Literature***

- David Adams, WHY DO THEY KILL?: MEN WHO MURDER THEIR INTIMATE PARTNERS (2007)
- [POSITION PAPER ON SAFETY AND ACCOUNTABILITY: STATE COURTS AND DOMESTIC VIOLENCE](#) (November 2004)

**Module III: Risk Assessment****Intimate Partner Sexual Abuse Presages Lethality****Intimate Partner Sexual Abuse Presages Lethality**

Courts must be attuned to the danger victims face from taking court action when leaving the abuser. In his book, WHY DO THEY KILL?: MEN WHO MURDER THEIR INTIMATE PARTNERS, David Adams found that victims are particularly fearful of the offenders' adverse responses to court actions. He cites a study of 350 domestic violence cases handled in Quincy Massachusetts courts, which found:

"[V]ictims' dissatisfaction [with initial police or court response] was strongly correlated with whether they believed that their concerns were respected by the police, prosecutors, and judges. *Paramount among these concerns was the victim's safety and fears of offender retribution in response to court actions...* The Quincy study found that, overall, victims were satisfied with strong and consistent court actions, since these appear to deter ongoing violence by their partners and ex-partners..." (emphasis added).

— ADAMS, MEN WHO MURDER THEIR INTIMATE PARTNERS (2007) at 261-262.

The evidence from all the studies and materials cited in this module is overwhelming. Abusers who sexually assaulted their intimate partners during the relationship often continue to do so post-separation. Men who were only physically violent during the relationship may initiate sexual violence when the victim tries to or does leave. And, in a last drastic step to maintain control over the victim, the abuser may go so far as murder. Intimate partner sexual abuse heightens the risk of escalating violence and all types of lethality — femicide, child murder, suicide of the victim and the abuser and murder of third parties — when the victim tries to leave the relationship. Thus, courts need to know whether there is sexual violence in the relationship in order to undertake informed risk assessment at all points in the proceeding. See [Orders of Protection, Pretrial Release and Dispositions](#).

Eliciting information about this aspect of domestic violence can be difficult, but as the Conference of State Court Administrators observed in a recent policy paper, "In order to craft meaningful court orders, judges, attorneys and court administrators must have a full picture of the cases in front of them." (CONFERENCE OF STATE COURT ADMINISTRATORS, POSITION PAPER ON SAFETY AND ACCOUNTABILITY: STATE COURTS AND DOMESTIC VIOLENCE, November 2004).

**Module III: Risk Assessment****Self-Test and Answers: Risk Assessment**

**Leaving or attempting to leave the relationship heightens the risk of intimate partner sexual abuse.**

- a. True
- b. False

**Risk assessment in a domestic violence case means assessing the likelihood that the abuser will kill his victim.**

- a. True
- b. False

**Sexual violence co-occurring with physical violence is a leading indicator of femicide.**

- a. True
- b. False

**Most risk assessment instruments are comprehensively drafted and include questions about intimate partner sexual abuse.**

- a. True
- b. False

See Answers

**Module III: Risk Assessment****Reflection Questions: Risk Assessment**

*Where the reflection question includes multiple questions, please answer one at a time, and click the "Save and See Comment" button for the question you're answering. From the answer page you can click the "Return to Questions" button to go back and answer the other questions, or to modify your answer. Unlike the self-tests, your reflection question answers are saved so that you can come back to them at a later time.*

**Given the data on how intimate partners sexual abuse in the context of domestic violence heightens the risk of several types of lethality, what steps should the court system take to minimize this risk?**

## Module III: Risk Assessment

### Key Points: Risk Assessment

- Risk assessment is a difficult, but crucial, part of domestic violence cases – particularly because the risk for sexual assault and lethality increase when the victim tries to leave the abuser.
- In abusive relationships, much of the worst physical violence and most murders occur at or after separation. Often times the abuser sexually assaults the victim for the first time post-separation.
- Stalking is a critical risk factor that should never be ignored or downplayed.
- The risk for lethality extends beyond the risk that the abuser will kill the victim. There are six risks for lethality in intimate partner sexual abuse and domestic violence cases:
  - The abuser may kill the victim.
  - The abuser may kill the couple's children.
  - The abuser may kill a third party.
  - The abuser may kill himself.
  - The victim may kill herself.
  - The victim may kill the abuser.
- **Research overwhelmingly shows that intimate partner sexual abuse co-occurring with domestic violence heightens the risk for all these lethalties.**
- It is essential that risk assessment instruments inquire about forced sex. **However**, even the most accurate risk assessment instrument is no substitute for the victim's sense of her own danger from the abuser.
- Intimate partner sexual abuse co-occurring with physical violence is a leading indicator of femicide. A physically-abused woman also experiencing forced sex is over seven times more likely than other abused women to be killed.
- Any situation that heightens the risk of lethality for the mother heightens the risk of lethality for the couple's children. Often times meetings with the abuser to exchange custody may be lethal to both the victim and her children.
- In the course of trying to kill their wives/partners, abusers sometimes kill third parties: relatives of the woman trying to leave, individuals coming to her aid, bystanders, or court personnel.
- Studies show that victims of intimate partner sexual abuse are more likely to consider and attempt suicide because there is greater prevalence of post-traumatic stress disorder and depression among these victims
- Studies show that many battered women who have killed their intimate partners were also sexually assaulted by those partners.
- The court needs to know whether there is sexual violence in the relationship in order to undertake informed risk assessment, including setting bail.