

## Module VI: Institutional Responses

### Table of Contents: Institutional Responses

(19 Pages)

#### Learning Objectives:

This module will enable a judge to:

- Become aware of how the many institutions with which a victim or offender may interact over the issue of intimate partner sexual abuse can hinder the victim from securing safety or support the offender in justifying his conduct.
- Address the way courts sometimes contribute to these barriers.

#### Table of Contents

- [Is it Domestic Violence or Sexual Abuse?](#)
  - [Victim Services Agencies](#)
- [Clergy](#)
- [Police](#)
  - [Dual Arrest](#)
- [Prosecutor Response](#)
- [Child Protective Services](#)
- [The Courts](#)
  - [Judges Need Substantial Knowledge About Sexual Abuse](#)
  - [Relation Between Criminal and Family Court Proceedings](#)
- [Self-Test Answers](#)
- [Reflection Questions](#)
- [Key Points: Institutional Responses](#)

**Resources****Module VI: Institutional Responses****Is It Domestic Violence or Sexual Abuse?**

When domestic abuse and sexual assault overlap, specialized counselors, prosecutors and other responders trained in only one or the other aspect may not provide sufficient support to victims of intimate partner sexual abuse. Few responders have been trained in the subject of intimate partner sexual abuse. Counselors, police officers and prosecutors trained in one area – sexual assault or domestic violence – may not be conversant or comfortable conducting investigations that overlap with the other area.

For many, the clergy may be their primary avenue of support. Some clergy are unsupportive of victims of domestic violence; even those who are supportive may be uncomfortable dealing with sexual (as opposed to physical) violence. This can have a chilling effect on victims who seek guidance from them.

Most fundamentally, the court system's structure and environment do not encourage or support disclosure of intimate partner sexual abuse, even in cases where the victim may have disclosed such abuse to a responder. The advent of domestic violence courts has often had the unintended consequence of fracturing consideration of physical and sexual violence. If a victim alleges rape, she may be turned away from Family Court and directed to file a criminal complaint, since a felony sex offense is not within the jurisdiction of civil family court.

This module discusses how the policies and practices of victim services agencies, clergy, police, prosecutors, child protective services and the courts may undermine or support victims of intimate partner sexual abuse, and best practices for improving the response of these institutions.

## Resources

**Nonperiodical Literature**

- Raquel Kennedy Bergen, *WIFE RAPE: UNDERSTANDING THE RESPONSE OF SURVIVORS AND SERVICE PROVIDERS* (1996)
- Raquel Kennedy Bergen, Elizabeth Barnhill, VAWnet, [\*Marital Rape: New Research and Directions\*](#) PDF 0.8MB

**Module VI: Institutional Responses****Victim Services Agencies**

Victim services agencies typically address sexual assault and domestic violence as unrelated offenses. Historically, rape crisis centers and domestic violence safe homes were different facilities, organized and run by groups with distinct policy interests, training, and problem-solving visions. While specialization can lead to effective management of many of these cases, with good results for some victims, the reality for victims of intimate partner sexual abuse is that neither type of agency may feel capable of helping. The ongoing safety issues of domestic violence victims may exceed the capabilities of a rape crisis center; the trauma flowing from sexual assault may seem beyond the expertise of a domestic violence counselor. While domestic violence advocates may be expert in securing orders of protection and formulating safety plans for a woman and her children, they often lack the expertise in evidence collection and support through prosecution of a sex offense that their counterparts at a rape crisis center have.

Most women are reluctant to disclose sexual abuse. Without sensitive, patient, and thorough interviews – often multiple interviews – the issue is frequently missed altogether. Women have reported being turned away from both types of agencies in their quest for help.

While collaboration and cross-training are becoming more widespread, a 2005 survey revealed that less than half of battered women's shelter programs and rape crisis centers provide training on marital rape to staff members and volunteers. (BERGEN, *MARITAL RAPE*, 2006 at 7.) Only 5% of such centers offer a support group specifically for marital rape survivors. *Id.* From her study of victim service agencies' response to intimate partner sexual abuse, Raquel Kennedy Bergen gives this example of a woman being passed from a rape crisis center to a domestic violence shelter and why the center did not fully address her needs.

"I called [the rape crisis center] and they couldn't help me. They told me they didn't have any openings [for shelter] and gave me another number to call.' The reason that Emily was denied shelter was written in her file: 'Per [the director] I explained we were unable to take her because we don't handle domestic violence.' After writing this, the staff member who received the call turned to another worker and explained, 'It was a domestic violence case, but she knew we were a rape crisis center, so she talked about the rape.' Emily was referred back to the battered women's shelter, and a few days later, when space became available, she was accepted into the shelter as a battered woman."

— BERGEN, *WIFE RAPE* (1996) at 65.

**In New Mexico...**

The New Mexico Coalition of Sexual Assault Programs is the statewide agency whose mission is to educate and advocate on behalf of all New Mexicans on the dynamics, incidence, statutes, effects and solutions regarding sexual violence in New Mexico, for the purpose of an eventual decline in sexual violence. The Coalition does not provide direct services to victims, but it does serve as a centralized clearinghouse of information, training, reports, and outreach materials relating to sexual violence.

## Module VI: Institutional Responses

### Victim Services Agencies (cont'd)

Although the battered women's shelter noted her history of sexual abuse in her file, there Emily was only treated for domestic violence. While she was grateful for the protection the shelter provided for herself and her children, she felt inadequately helped by its services because they did not address her painful history of sexual assault (BERGEN, WIFE RAPE, 1996).

An excellent training resource for victim advocates and others is PRIVATE NIGHTMARES, PUBLIC SECRETS: SEXUAL ASSAULT BY INTIMATE PARTNERS, developed by the Jane Doe Institute for the Massachusetts Coalition Against Sexual Assault and Domestic Violence. This is a 40-page manual that provides guidance for developing interactive presentations for groups on the topic of intimate partner sexual abuse. See Resources for information about how to obtain the manual.

## Resources

### *Nonperiodical Literature*

- Raquel Kennedy Bergen, WIFE RAPE: UNDERSTANDING THE RESPONSE OF SURVIVORS AND SERVICE PROVIDERS (1996)
- [PRIVATE NIGHTMARES, PUBLIC SECRETS: SEXUAL ASSAULT BY INTIMATE PARTNERS, MASSACHUSETTS COALITION AGAINST SEXUAL ASSAULT](#) (1999)

## Module VI: Institutional Responses

### Clergy

One of the reasons women stay in abusive relationships is pressure from their clergy and religious communities. A 2001 study showed that most battered women first seek the advice of religious advisers. When the abuse includes marital rape, clergy are not often prepared to respond.



"Many women do not feel comfortable contacting the police, and alternatively choose to speak with their religious advisers. Researchers have found that support for women in violent relationships is not always forthcoming from religious advisers. In a study of battered women, Bowker (1983) found that they ranked clergy members as the least helpful of those to whom they had turned for assistance. The emphasis of some religious institutions on wives' responsibility "to obey their husbands" and the sinfulness of women's refusal to have sexual intercourse with their husbands, perpetuate the problem of marital rape. Thus, it is particularly important for religious leaders to hold men accountable for their sexually violent behavior and to challenge ideology that perpetuates victim-blaming (Adams, 1993; Bennice & Resick, 2003). There is a particular need for religious leaders to end the silence surrounding rape in intimate relationships and publicly "name" this form of violence and acknowledge its prevalence within their communities (Adams, 1993). There are several recommendations offered by Yllo and LeClerc (1988) and Adams (1993) for religious advisors to assist marital rape survivors, including: inviting women to speak about their experiences of sexual violence, helping women to name their experiences "rape", focusing on the responsibility of the abuser not the wife, and working to challenge social conventions that perpetuate marital rape."

—Marital Rape: New Research and Directions, Raquel Kennedy Bergen

As noted in [Why Victims Don't Report: Denial or Difficulty Recognizing Conduct as Rape](#), some sexual abuse of women takes place under the guise of obedience to the husband, with reliance on scripture to justify abusive conduct. Such a belief system cannot serve as a legal justification for abuse.

"Being Catholic, I talked to a priest who said I should go back if he [her husband] says he's sorry. I was supposed to, but I said I couldn't do it any more... It was emotionally rough because you feel compelled to keep the marriage together, and yet his behavior really dissolves [sic] you of that responsibility because he raped you."

— Karen, quoted in BERGEN, WIFE RAPE (1996) at 52.

"A recent survey showed that out of a 158 [sic] Islamic Centers in the state of New York, only a handful provided specific services to women. The religious community...tend to advise women who experience violence in their lives to be patient and give in to the will of the husband. In contrast, no clear stand is taken against a man who is violent. Violence in marriage is generally condemned, but when it does happen, the religious community offers no clear consequences for the abuse. Furthermore, the Islamic religious community tends to condemn any woman who seeks legal protection from an abusive spouse. Her actions are considered disloyal to the husband and the family."

— Ayyub, *Many Faces of Domestic Violence* (2007) at 31.

See [Why Victims Don't Report: Religious Constraints](#)

### Resources

#### *Nonperiodical Literature*

- Raquel Kennedy Bergen, WIFE RAPE: UNDERSTANDING THE RESPONSE OF SURVIVORS AND SERVICE PROVIDERS (1996)
- Ruksana Ayyub, *Many Faces of Domestic Violence* ed: Shamita Das Dasgupta, BODY EVIDENCE: INTIMATE VIOLENCE AGAINST SOUTH ASIAN WOMEN IN AMERICA (2007)

#### *Articles*

- Jane P. Sheldon, Sandra L. Parent, *Clergy's Attitudes and Attributions of Blame Towards Female Rape Victims*, VOL. 8 VIOLENCE AGAINST WOMEN 233 (2002)

## Resources

**Nonperiodical Literature**

- ["GOD IS NOT ABUSIVE: THREE FAITHS ADDRESS DOMESTIC VIOLENCE"](#) (2007)
- [Enhancing the Response of the Justice System: Criminal Remedies](#) TOOLKIT TO END VIOLENCE AGAINST WOMEN 9-20 9-20 (2001)
- [Chapter 12: Engaging Religious, Spiritual and Faith-Based Groups and Organizations](#) TOOLKIT TO END VIOLENCE AGAINST WOMEN, PDF 112KB

**Module VI: Institutional Responses****Clergy (cont'd)**

Excellent resources for clergy of all faiths seeking to end violence against women is available from the [FaithTrust Institute](#), an organization which provides communities and advocates with tools and knowledge to address the religious and cultural issues related to sexual and domestic violence, urges that religious leaders hold men accountable for sexually violent behavior, and challenge conventions that allow a husband to dominate his wife.

The TOOLKIT TO END VIOLENCE AGAINST WOMEN, developed by the National Advisory Council on Violence Against Women and the Department of Justice Office on Violence Against Women includes a chapter titled [Engaging Religious, Spiritual and Faith-Based Groups and Organizations](#) (PDF 112KB).

STAND! Against Domestic Violence is a domestic violence agency in Contra Costa County, California, which in 1999 convened the Faith Community Taskforce to End Domestic Violence as a partnership of religious, governmental, civic, and community-based organizations dedicated to ending domestic violence with faith communities. Their 2005 publication *GOD IS NOT ABUSIVE* addresses scripture in the Torah, the Christian Bible, and the Qur'an and states:

"Religious teachings can serve as either a resource or a roadblock in addressing the issue of domestic violence. As religious communities, our responsibility is to minimize any barriers facing abused members of our congregations and maximize the resources that exist within our religious traditions."

— STAND! AGAINST DOMESTIC VIOLENCE FAITH COMMUNITY TASK FORCE, *GOD IS NOT ABUSIVE: THREE FAITHS ADDRESS DOMESTIC VIOLENCE* (2007).



## Module VI: Institutional Responses

### Police

A large body of research documents the inadequate response of the police to both domestic violence and sexual assault. The limited research on the question of police response to marital rape reveals an equally flawed practice. Bergen's interviews with marital rape survivors reveal that when officers learn that the assailant is the woman's husband, they may fail to respond to a call from a victim of marital rape, discourage her from filing a complaint, and/or refuse to accompany her to the hospital to collect medical evidence (BERGEN, MARITAL RAPE, 2006 at 55-58).



Recommendations for police departments include educating officers about the reality of wife rape and intimate partner sexual abuse; teaching officers how to sensitively ask women about sexual violence when responding to domestic violence calls; challenging attitudes that assume women are the property of their husbands and thus not entitled to decline sexual contact; holding police departments accountable for their non-responsiveness; and involving more women police officers in domestic violence and rape cases.

An excellent resource for police training is the TOOLKIT TO END VIOLENCE AGAINST WOMEN published by the National Advisory Council on Violence Against Women and the Department of Justice Violence Against Women Office, now called the Office on Violence Against Women. [Chapter 4. Enhancing the Response of the Justice System: Criminal Remedies](#) (PDF 343KB) recommends that law enforcement personnel be provided with training on nonstranger sexual assault investigations that enable them to "work well with victims" and that "discussions of marital rape [should be included] in all sexual assault trainings." *Id.* at 4.

### Resources

#### *Nonperiodical Literature*

- Raquel Kennedy Bergen, Elizabeth Barnhill, VAWnet, [Marital Rape: New Research and Directions](#) PDF 0.8MB
- [Enhancing the Response of the Justice System: Criminal Remedies](#) TOOLKIT TO END VIOLENCE AGAINST WOMEN 9-20 9-20 (2001)

## Module VI: Institutional Responses

### Dual Arrest

Following an effort by domestic violence advocates to impress upon police the need to arrest alleged batterers rather than dismiss the incident as a "private matter," many jurisdictions implemented mandatory arrest policies in domestic violence cases. Increasingly, however, when officers observed injury to both parties, both parties were placed under arrest.

Determining which party was the "primary" or "dominant" aggressor and which was acting in self-defense is crucial to ensuring victim safety and batterer accountability. Yet these decisions are often repeatedly passed on to the next highest authority—police to prosecutor, prosecutor to judge. A judge may accept pleas from both parties and issue mutual orders of protection, unwilling or unable to sort out the underlying facts. Avoiding determination of the underlying facts, however, can place a victim at



risk of deportation if her immigration status is affected by a criminal conviction, can lead to child protective proceedings against her and can create a false picture for custody proceedings. Such outcomes do not serve families well.

The better practice is to insist that prosecutors engage in a thorough "primary aggressor" assessment. Among the relevant inquiries:

1. Height and weight of parties
2. Who is fearful of whom
3. Detail of statement and corroboration
4. Use of alcohol, drugs
5. Whether either party is subject to a restraining order or on probation for domestic violence
6. Pattern evidence
7. Injuries consistent with reported statement
8. Offensive/defensive injuries

## Module VI: Institutional Responses

### Prosecutor Response

In criminal matters, the prosecutor holds the key to the courthouse door, and, as with victim services agencies, prosecutors not trained to deal with co-occurring sexual and physical violence cases may turn victims away. In 2005 the New York Appellate Division First Department and the Lawyers Committee Against Domestic Violence sponsored a two-day symposium titled "Domestic Violence and Sexual Assault: Integrating Insights and Practice." A key concern was prosecutors' inadequate response to these cases.

Attorney Sunita Rampersad described litigating a case which included almost every element described in previous modules about the many forms of intimate partner sexual abuse and the reasons victims don't report. See [Defining Intimate Partner Sexual Abuse and Assessing its Prevalence](#), and [Why Victims Don't Report](#).

The victim was a conservative, religious, Dominican woman whose children were the center of her life. She stayed with her abuser for fifteen years so her children would not have to choose between parents. The husband verbally abused his wife and beat, kicked and punched her, including while she was pregnant. He forced her to masturbate in the tub while he watched; have threesomes with a female employee of his with whom he was having an affair; have sexually explicit conversations with his friends and write sexually explicit letters to them, all of which he dictated; perform oral sex on him which she hated; and be videotaped simulating a sex act with a cucumber, while demanding that she look as though she was enjoying it. He beat her and threatened to hurt her mother and sister if she refused to do everything that he demanded. He threatened to kill her if she called the police.



She finally escaped and obtained a three-year order of protection and sole custody of her children. But when Attorney Rampersad tried to pursue a criminal prosecution for rape, the assistant district attorney refused to take the case, claiming the victim had not demonstrated sufficient force used against her to sustain the charge. The ADA claimed that the victim did not look fearful in the video, ignoring the husband's demand that she look like she was enjoying it. He ignored the fact that she complied with her husband's sexual demands out of extreme fear based on years of physical assaults when she refused. The ADA said the threats to kill her if she called 911 were not adequate force. Attorney Rampersad described the prosecutor's response as "a slap in the face" of the victim. "It sent her a message that her husband could do anything in the world to her including kill her with impunity. She was sobbing—didn't they understand I didn't want to do this."

The conference speakers urged that prosecutors be educated to understand how integral sexual assault is to domestic violence, how reluctant victims are to talk about it; how painful it is to relive; the role that cultural pressures and religious factors play in reinforcing shame and making it taboo to speak out and report; and the necessity of understanding what constitutes force in a violent relationship.

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

- [\*Chapter 4: Enhancing the Response of the Justice System: Criminal Remedies\*](#) TOOLKIT TO END VIOLENCE AGAINST WOMEN (2001)

**Module VI: Institutional Responses****Prosecutor Response (cont'd)**

In addition to educating themselves about the dynamics of intimate partner sexual abuse, prosecutors, like judges, have an obligation to educate the community and potential jury pool. Prosecutors can collaborate with law enforcement and advocacy organizations to educate the public about the services offered by their offices and the laws about sexual abuse.

Sexual abuse cases are notoriously difficult to prosecute because of [juror bias](#), stereotypical notions about what constitutes rape, and victim credibility issues. [Chapter 4 of the TOOLKIT TO END VIOLENCE AGAINST WOMEN](#) (PDF 343KB), referenced earlier under "Police," provides many practical suggestions for prosecutors litigating these complex cases. Prosecutors are encouraged to "organize vertical prosecution units that include prosecutors with advanced training in handling sexual assault, domestic violence and stalking cases" (*Id.* at 7). Whenever possible, prosecutors should maintain control of a case from intake to sentencing. This allows the prosecutor to thoroughly familiarize him or herself with a victim's case and work with the victim to secure safety for herself and her family so that she feels comfortable testifying.

If prosecutors are concerned about juror bias in a particular case, they should "file motions to poll the jury for beliefs that might raise concerns of gender bias" (TOOLKIT at 7), [see also Jury Selection: Developing Voir Dire Questions](#). Using [expert witnesses at trial](#) will also help educate jurors about the complexity of these issues.

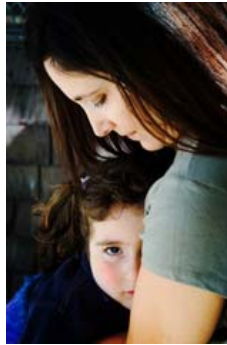
Prosecutors should also collaborate with law enforcement to establish procedures for evidence collection in intimate partner sexual abuse cases. Having corroborative evidence will ease the prosecution of these difficult cases. If prosecutors proactively take on these difficult cases they send a message to the community that this type of egregious violence against women will not be tolerated.

## Module VI: Institutional Responses

### Child Protective Services

While there is no question that exposure to domestic violence poses risks to children's emotional and physical well-being, and that such risk only increases when one parent is sexually assaulting the other, mothers victimized by intimate partner sexual abuse may not report because they fear harmful intervention from child protective services that actually undermines child safety and well-being.

In some jurisdictions, a parent who seeks assistance in securing her own safety from domestic violence and protecting her children may find herself facing charges of "engaging in domestic violence" and have her children removed from her custody, ostensibly to "protect" them. Such an approach is not the preferred response, and increasingly courts and legislative bodies have recognized that the harm to children of sudden removal from a loving, nonabusive parent can far outstrip any harm to them that may come from "witnessing" domestic violence. One state's policy of presumptively removing children was found unconstitutional in the landmark opinion of the New York State Court of Appeals, *Nicholson v. Scoppetta*, 3 NY 3d 357, 820 N.E.2d 840 (2004).



### Resources

#### Cases

- *Nicholson v. Scoppetta*, 3 NY 3d 357, 820 N.E. 201 840 (2004)

## Module VI: Institutional Responses

### Child Protective Services (cont'd)

Children of domestic violence often blame themselves for the abuse. Separating children from their non-abusive parent can heighten this tendency for self-blame. Children already feeling separation anxiety will experience intensification of those feelings when faced with true separation. Keeping victims and their children together while addressing emotional and safety issues can reduce, rather than intensify, the trauma to children from their exposure to domestic violence (Clarke, *Strictly Liable*, 2006).

A mother may stay with an abusive partner because she is aware that attempting to leave may escalate the risk to herself and her children. Recall from [Risk Assessment: The Abuser May Kill the Couple's Children](#) that batterers who murder their wives often murder their children as well. If a mother experiencing domestic violence also faces the threat of losing custody of her children if she turns to the authorities, she will be further deterred from using the resources that are available to her. If, however, child welfare workers and police focus instead on perpetrators, and holding them accountable for the harm to children caused by their violent acts, then the justice system becomes an important and positive resource for victims of domestic violence.

## Resources

### Articles

- Sharon Clarke, Note, *Strictly Liable: Governmental use of the parent-child relationship as a basis for holding victims liable for their child's witness to domestic violence*, VOL. 44 FAMILY COURT REVIEW 149 (2006)

## Module VI: Institutional Responses

### Child Protective Services (cont'd)

While there may be unusual cases in which a mother is unable to extricate herself from a situation that is potentially harmful to her children and which may require further State intervention, removal of a child should almost never be the *first* governmental response to a mother's cry for help. Many experts on domestic violence and child welfare agree that keeping mothers safe is one of the most effective ways of protecting children from domestic violence. They encourage coordinated responses by child welfare agencies, courts, law enforcement personnel, and domestic violence programs in order to support victims, hold batterers accountable, and allow children to remain with their non-offending parent whenever possible (Christian, [Children's exposure to domestic violence: Is it child abuse?](#) (PDF 250KB), 2002).

The Former Director of the Department of Justice Office on Violence Against Women, U.S. Attorney Mary Beth Buchanan, explains:

"We have learned that the effects of domestic violence [on children] can be mitigated by their mother's ability to protect them. Children benefit from protective, loving adults in their lives. That is why our legal responses must include safety and stability for mothers. By focusing on the safety of adult victims, we are able to increase safety and the comprehensive services for their children."

— Runge, *Domestic Violence and Children* (2007) at 5.

Victims may also fear that the court will award visitation or custody to the abuser without regard to the history of domestic violence. Seeking assistance in the courts for violence in the home may lead the victim down an unwanted path in which she is ordered to make her children available to the abuser at regular intervals, exposing her children and herself to further harm. See [Defining Intimate Partner Sexual Abuse and Assessing its Prevalence](#), [Risk Assessment](#) and [Custody and Visitation](#).

## Resources

### Articles

- Robin Runge, *Comprehending the Link between Domestic Violence and Children*, THE JUDGES' JOURNAL 4 (Summer 2007)

### Nonperiodical Literature

- Steve Christian, National Conference of State Legislatures, [CHILDREN'S EXPOSURE TO DOMESTIC VIOLENCE: IS IT CHILD ABUSE?](#) (January 2002)

## Module VI: Institutional Responses

### The Courts

Judith Berman's article *Domestic Sexual Assault: A New Opportunity for Court Response*, explores the shortcomings in the court system's current response to intimate partner sexual abuse, such as inadequate data collection and analysis, unintended fracturing of the system as courts specialize in domestic violence, and insufficient attention to the potential lethality of domestic sexual assault. (Berman, [Domestic Sexual Assault](#) (PDF 117KB), 2004). Berman also provides many suggestions for improving the court system. See [Recommendations](#).

Courts can do much to ensure that they are a safe, welcoming and secure place for victims of intimate partner sexual abuse in which they will be willing to disclose the full extent of the violence against them. The Judicial Center of New Mexico offers several suggestions to make the court process safer for the complainant and thereby make her more willing to testify. See JUDICIAL EDUCATION CENTER OF NEW MEXICO, DOMESTIC VIOLENCE BENCHBOOK, [§10.4.2](#). According to a National Institute of Justice study, "[I]n several courts, judges report that battered women are more willing to cooperate and testify when they receive information, emotional support, community referrals, and trial preparations from victim advocates (GOOLKASIAN'S, CONFRONTING DOMESTIC VIOLENCE, 1986)."

Model domestic violence courts around the country have had increasing success with securing stability for litigants. Sensitivity to the many aspects of life that may tie a victim to her batterer—such as children, finances, lack of an alternative home, fear, posttraumatic stress disorder, and love—can only help courts reach better results. Courts can do much through implementation of policy and protocols to ensure that obstacles within the judicial system are identified and removed.

Judges should also set the tone of the proceedings from the outset. Hold a pretrial conference with both parties to lay the ground rules about conduct in the courtroom with respect to questioning, language, and demeanor. Such gestures let both the victim and the offender know that the judge is in control of the proceedings and may help increase the victim's sense of safety.

### Resources

#### Articles

- Judith Berman, *Domestic Sexual Assault: A New Opportunity for Court Response*, JUVENILE AND FAMILY COURT JOURNAL 23 (Summer 2004)

#### Nonperiodical Literature

- Judicial Education Center of New Mexico, [10.4.2 Victim Reluctance or Refusal to Testify: Options for the Court](#) DOMESTIC VIOLENCE BENCHBOOK (2006)
- Gail Goolkasian, *Confronting Domestic Violence: A Guide for Criminal Justice Agencies*, NATIONAL INSTITUTE OF JUSTICE (1986)

## Module VI: Institutional Responses

### Judges Need Substantial Knowledge About Sexual Abuse

A critical barrier to fairly adjudicating intimate partner sexual abuse is some judges' lack of knowledge about how a victim of sexual assault may behave during and after the attack. When a judge adheres to rape myths, such as the belief that a "real" rape victim would immediately report to the police, the case cannot be adjudicated fairly. In *State v. Brown*, 394 N.J. Super. 492, 927 A. 2d 569, N.J. Super. LEXIS 247 (2007), for example, a woman sought an order of protection against her boyfriend who allegedly punched her in the face during what appeared to begin as a consensual sexual encounter. After one judge granted a temporary order of protection, another refused to make it permanent. In denying her application, the judge cited profoundly flawed reasons such as the alleged victim's failure to scream for help during the attack (even though the only person who might have heard her was her child sleeping in the next room), and a delay of twelve hours prior to reporting the assault.

An expert witness can explain such reactions to a jury, see [Evidentiary Issues: Expert Witnesses](#), but judges must be able to dispel commonly held myths for themselves, because most often the issues will present themselves in circumstances where there is no opportunity to hear from an expert. A comprehensive overview of the substantive knowledge about sexual assault that judges need for themselves is available in Lynn Hecht Schafran, [Writing and Reading About Rape](#) (PDF 4.08MB) and The National Judicial Education Program's DVD, [UNDERSTANDING SEXUAL VIOLENCE: THE JUDGE'S ROLE IN STRANGER AND NONSTRANGER RAPE AND SEXUAL ASSAULT CASES](#).

## Resources

### Articles

- Lynn Hecht Schafran, [Writing and Reading about Rape: A Primer](#), VOL. 66 ST. JOHN'S L. REV. 979 (1993) 4.2MB
- Judith Berman, *Domestic Sexual Assault: A New Opportunity for Court Response*, JUVENILE AND FAMILY COURT JOURNAL 23 (Summer 2004)

### Videos

- National Judicial Education Program, [Understanding Sexual Violence: The Judge's Role in Stranger and Nonstranger Rape and Sexual Assault Cases](#), VIDEO RESOURCE GUIDE (2005)

### Cases

- *State v. Brown*, 394 N.J. SUPER. 492; 927 A. 2D , N.J. SUPER.

## Module VI: Institutional Responses

### Relation Between Criminal and Family Court Proceedings

The defendant in *Brown*, following indictment for the sexual assault that had been the subject of the earlier family court ruling, claimed that the criminal matter was collaterally estopped because the prosecutor had assisted the alleged victim in obtaining medical care and filing for a protective order. Although the trial court agreed, the appellate court reversed, holding that collateral estoppel did not apply. The appellate court noted that the New Jersey Prevention of Domestic Violence Act provides that a domestic violence victim must be informed of the right to file a criminal complaint against the attacker and that filing a complaint in the Family Part alleging domestic violence shall not prevent the filing of a criminal complaint for the same act. The court noted that the prosecutor did not directly participate in the domestic violence hearing in any way and thus the interests of the alleged victim but not the State were litigated there.

"To preclude a criminal prosecution merely because a prosecutor's office has assisted a victim in a domestic violence proceeding might result in victims not pursuing restraining orders for their protection or victims' assistance units of prosecutor's offices declining to assist them. Such actions would run contrary to the public policy of the State of New Jersey as Embodied in the Act."

— State v. Brown, 394 N.J. Super. 492; 927 A. 2d , N.J. Super. LEXIS 247

## Resources

### Articles

- Judith Berman, *Domestic Sexual Assault: A New Opportunity for Court Response*, JUVENILE AND FAMILY COURT JOURNAL 23 (Summer 2004)
- Lynn Hecht Schafran, *Writing and Reading about Rape: A Primer*, VOL. 66 ST. JOHN'S L. REV. 979 (1993) 4.2MB

### Videos

- National Judicial Education Program, *Understanding Sexual Violence: The Judge's Role in Stranger and Nonstranger Rape and Sexual Assault Cases*, VIDEO RESOURCE GUIDE (2005)

### Cases

- *State v. Brown*, 394 N.J. SUPER. 492; 927 A. 2D , N.J. SUPER.

**Module VI: Institutional Responses****Self-Test and Answers**

**It is now standard practice for battered women's shelters and rape crisis centers to provide training on marital rape to staff and volunteers.**

- a. True
- b. False

**Clergy asked for advice about intimate partner sexual abuse sometimes advise women to remain in abusive relationships.**

- a. True
- b. False

**Police officers responding to domestic violence incidents are taught how to sensitively question women about possible sexual violence when responding to domestic violence calls.**

- a. True
- b. False

**In cases where physical violence and sexual assault co-occur, prosecutors may show sensitivity to the physical violence but be dismissive of the sexual abuse.**

- a. True
- b. False

**Recent studies show that the witnessing domestic violence is more harmful to children than removing them from the protective parent and placing them with child protective services.**

- a. True
- b. False

**The development of specialized domestic violence courts has resulted in increased awareness intimate partner sexual abuse.**

- a. True
- b. False

See Answers

**Module VI: Institutional Responses****Reflection Questions: Institutional Responses**

*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.*

**As a judge, how can you detect signs of co-occurring physical violence and sexual assault, when the police did not ask about it and the prosecution did not bring it forward?**

Save and See Comment

**Is there a coordinated community response for victims of intimate partner sexual abuse in your jurisdiction, and is there more you can do, within the code of judicial conduct, to strengthen relationships among stakeholders, such as police, prosecutors, victim services and batterers programs?**

Save and See Comment

## Module VI: Institutional Responses

### Key Points: Institutional Responses

- All agencies and institutions to which victims turn for support need training on intimate partner sexual abuse.
- Despite frequent co-occurrence of domestic violence and sexual assault, victim advocates, prosecutors, and other responders are typically not cross-trained to address both offenses, and are therefore unable to provide adequate support for victims of intimate partner sexual abuse.
- Victims of co-occurring sexual and physical violence report being turned away from both domestic violence shelters and rape crisis centers because of the complex nature of their experiences.
- Victims often seek advice from their clergy. Some religious leaders have encouraged victims to “obey their husbands” and submit to gendered conventions. Such belief systems cannot serve as a legal justification for abuse.
- Research documents the inadequate response of police to domestic violence and sexual assault, and the even greater deficiencies in the response to complaints of intimate partner sexual abuse.
- Police, prosecutors and judges often make or let stand unwarranted dual arrests and then issue mutual orders of protection. Negative consequences can include the risk of deportation for immigrant victims and baseless challenges in custody proceedings.
- Prosecutors need training in co-occurring domestic violence and sexual assault in order to appreciate the seriousness of these crimes and how to prosecute these cases.
- While witnessing domestic violence and intimate partner sexual abuse can seriously affect a child's emotional and physical well being, having child protective services suddenly remove a child from a loving, nonabusive parent causes unnecessary harm.
- Even courts that are sensitive to domestic violence and sexual assault may not apply that knowledge when the parties present issues of custody and visitation. A victim may sense that the court is placing her and her children in danger because of such rulings.
- The court system's response to co-occurring domestic violence and sexual assault has been inadequate, with insufficient attention to potential lethality in these cases.