

Violence Against Women

Law and Litigation

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and Andrea Brenneke



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*For Amelia,
so that she may remain fearless.*

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Library of Congress Cataloging-in-Publication Data

Frazee, David.

Violence against women / David Frazee, Ann M. Noel and Andrea
Brenneke.

p. cm.

Includes index.

ISBN 0-8366-1127-6 (alk. paper)

1. Sex discrimination against women—Law and legislation—
United States. 2. Women—Legal status, laws, etc.—United States.
3. Women—Crimes against—United States. 4. Sex discrimination
in justice administration—United States. 5. Sexual harassment of
women—Law and legislation—United States. 6. Rape—United
States. 7. United States. Violence Against Women Act of 1994. I.
Noel, Ann M. II. Brenneke, Andrea. III. Title.

KF4758.F733 1997

342.73'0878—dc21

97-11012

CIP

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* By Lynn Hecht Schafran. The author acknowledges the fine assistance of National Judicial Education Program interns Sangita Gupta and Stacey Slater in the development of this chapter.

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§ 1:1 Introduction

Representing a victim of gender-based violence requires understanding the myths and facts about this kind of violence and how these myths can distort the judicial process. Despite all the discus-

sion, education, and press about issues such as rape, domestic violence, stalking, and incest, large segments of the population, including law enforcement personnel, attorneys, and judges, are either uninformed or believe the myths: rape victims ask for it, battered women enjoy it, and incest victims are Lolitas. Educating these people requires attorneys who are themselves grounded in the empirical data and able to communicate the data effectively.

This chapter summarizes the principal myths and literature about gender-based violence. It is divided into four subsections: rape, domestic violence, stalking, and child sexual abuse (with a concentration on incest). The footnotes create a bibliography for further reading in each of these areas.

§ 1:2 — The public's understanding of these issues

The public's acceptance of violence toward women distorts jury deliberations. In a 1995 domestic violence trial, a New York jury acquitted a college student who, furious with his girlfriend for ending their relationship, clubbed her with a length of four-inch wire cable and stabbed her in the head with four different knives.¹ After the verdict, one juror said, "Hey — men and women fight."² In the 1993 trial of a tyrannical judge charged with criminal violations of civil rights for sexually abusing and assaulting women litigants and court employees, a jury acquitted the judge of forcing his hand into the crotch of a court employee as she sat next to him on the bench. Jurors said that although the victim left the bench and told her boss at the first break, she had not stopped the judge when he first put his hand on her leg and, therefore, he did not know his advances were unwelcome. The jurors assumed the judge had the right to grope her until she said no. They showed no understanding of her shock, horror and confusion over what to do in a courtroom full of men while she was being assaulted by one of the most powerful men in the community.³

[Section 1:2]

¹ Stasi, *Men & Women Fight*, NY Post, May 15, 1995, at 4.

² *Id.*

³ O'Brien, *The Power to Harm* (forthcoming 1997). This judge was convicted on other counts and the conviction was first upheld, then reversed, on appeal. *United States v. Lanier*, 33 F.3d 639 (6th Cir. 1994) (affirming conviction), vacated, 73 F.3d 1380 (6th Cir. 1996) (reversing conviction), cert. granted, ___ U.S. ___, 135 L. Ed. 2d 1047, 116 S. Ct. 2522 (June 17, 1996)

§ 1:3 — The legal community's understanding of these issues

Members of the legal system are in many cases no better informed than the public. They, too, manifest gender bias, as fully documented in the nearly thirty reports of the state and federal circuit task forces on gender bias in the courts.¹ Rape cases are often viewed from the wrong end of the telescope, with the complainant rather than the defendant being put on trial. Her dress, demeanor, conduct, associations, and lifestyle, rather than his threats and use of force, become the focus. Some judges literally do not understand that rape is itself a violent act. They assume that if a rapist left no broken bones or stab wounds, there was no violence and the victim was not harmed.²

Courts show little understanding of the circumstances under which battered women survive and the ways in which the cycle of violence, economic dependence, lack of support from family and community, and fear of the batterer combine to keep women in these situations. Instead of focusing on why men batter and what can be done to stop them, some judges and court personnel ask battered women what they did to provoke the violence and subject them to demeaning and sexist comments. Although initial orders of protection are granted with greater frequency than they were in the past, violators are rarely punished in any meaningful way.³

§ 1:4 — Differences between men's and women's understanding of these issues

Georgetown Law Professor Robin West writes about the often strikingly different reactions of women and men to the statistics and specifics about violence and harassment against women.

[Section 1:3]

¹ Schafran, Overwhelming Evidence: Reports on Gender Bias in the Courts, Trial 30 (Feb. 1990). For information about obtaining these reports write: National Judicial Education Program, 99 Hudson Street, 12th floor, NY, NY 10013.

² Schafran, Maiming the Soul: Judges, Sentencing and the Myth of the Nonviolent Rapist, Fordham Urb LJ, 439 (1993).

³ Schafran, Overwhelming Evidence: Reports on Gender Bias in the Courts, Trial 30 (Feb. 1990). For information about obtaining these reports write: National Judicial Education Program, 99 Hudson Street, 12th floor, NY, NY 10013.

I attribute it to this: my reality — both internal and external — includes the violence, the pain it causes, and the fear it engenders. Not only have I lived it (and they haven't), but I talk to women (and they don't), and women talk to me (and not them). Like all women I know, I hear narratives of violence which are not heard by any man. . . . Women and men have widely different "ignorant" intuitions about the amount of danger, violence, and fear in women's lives because women live it and men don't and women tell other women and not men.¹

Nonetheless, it should *never* be assumed that women are more knowledgeable about or more understanding or condemning of violence against women than men. There are numerous examples that demonstrate otherwise. Katie Roiphe, a twenty-five-year-old Harvard alumna and graduate student at Princeton, wrote a widely discussed book entitled *The Morning After: Sex, Fear and Feminism on Campus*, which reveals the prevalence of misconceptions about date rape. Roiphe quotes approvingly a woman raped at knife point who says that although she feels bad for women raped by their former boyfriends she does not think their experiences should be equated with hers. In fact, nonstranger rape is more psychologically damaging than stranger rape because it destroys the victim's ability to trust anyone. A female juror at the William Kennedy Smith trial said she knew such a good looking guy did not need to use violence for a night out. In fact, the majority of rapists have active consensual sex lives.

In domestic violence cases, abused women who did not kill their husbands are often critical of women who did. Women who have never experienced domestic violence may simply not understand the kind of violence of which men are capable in the way that men do. A critical factor in any type of violence against women case is that women jurors may blame the victim as a way to distance themselves from their own vulnerability. For example, in a recent mock jury exercise at a California university about a rape case at a fraternity party, the majority of women students talked themselves through elaborate scenarios and demanded evidence of physical injury rarely found in rape cases, such as vaginal abrasions, to avoid acknowledging the possibility of rape.

[Section 1:4]

¹ West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 *Wis Women's LJ* 81, 96 (1987).

§ 1:5 — Attitudes toward women of color

Judges and jurors often trivialize violence against women of color. Battered women of color may encounter judges and court personnel who believe minority communities are “naturally” violent so nothing can or should be done to deter domestic violence. In a study of the implementation of the recommendations of the New York Task Force on Women in the Courts, when victim advocates were asked whether race played a role in domestic violence decisions, half the respondents answered yes. Echoing testimony to the gender bias task forces, one respondent said that judges tend to minimize abuse against women of color, and noted that although physical abuse is less visible on such women (bruises do not show up on women of color as vividly as they do on white women), judges nevertheless do not make the effort to look for evidence of abuse.¹

Black rape victims are even less likely to report sexual assaults than white victims for two reasons: an awareness of the bias that can affect black women and men in whatever capacity they may be involved with the justice system,² and an awareness of the stereotypes that devalue the rape of black women.³ A study of 331 jurors in

[Section 1:5]

¹ Eaton & Hyman, *The Domestic Violence Component of the New York Task Force Report on Women in the Courts: An Evaluation and Assessment of New York City Courts*, 19 *Fordham Urb LJ* 391, 480 (1992).

² Wyatt, *The Sociocultural Context of African American and White American Women's Rape*, 48 *J Soc Issues* 77, 86 (1992).

³ See, e.g., Higginbotham, *Race, Sex, Education and Missouri Jurisprudence*, 67 *Wash U LQ* 673, 680–88 (1989); Wriggins, *Rape, Racism, and the Law*, 6 *Harv Women's LJ* 103 (1983).

The origins of racist myths about black women's promiscuity date back to slavery. Black women and men, because they came from Africa, were thought by whites to be closer to “the animal” and therefore more highly sexed than whites. During slavery, black women were subject to repeated rape by slave owners and overseers. White society, to cover these crimes, generated a myth about black women as highly sexed. As prominent historian Gerda Lerner has written:

By assuming a different level of sexuality for all blacks than that of whites and mythifying their greater sexual potency, the black woman could be made to personify sexual freedom and abandon. A myth was created that all black women were eager for sexual exploits, voluntarily “loose” in their morals and, therefore, deserved none of the consideration and respect granted to white women. Every black woman was, by definition, a slut according to this racist mythology; therefore, to assault her and exploit her sexually was not reprehensible and carried with it none of the normal communal sanctions against such behavior.

Indianapolis rape cases revealed their adherence to stereotypes about black women as promiscuous and less harmed by forced sex, resulting in extreme dismissiveness of black victims' claims.⁴ In a recent New York case in which a white male gynecologist was acquitted of raping a black female patient who was on welfare, a white juror wrote to the prosecutor that the jurors believed "a black woman like that would be flattered by the attentions of a white doctor."⁵ Even where guilt is found, the injury to rape victims of color may be devalued during sentencing. A study of sentencing in Dallas, which employs jury sentencing in noncapital crimes, found that while the median sentence for a black man who raped a white woman was nineteen years and the median sentence for a white man who raped a black woman was ten years, white/white rape produced a median sentence of five years, Hispanic/Hispanic rape produced a median sentence of two and a half years, and Black/Black rape produced a sentence of one year.⁶

§ 1:6 — Statistics on violence against women

In an individual case, you may not be introducing extensive, or indeed, any, statistical data. However, it is important to become a critical consumer of statistics and methodology so that you can be alert to the strengths and flaws in these data when you need to use or oppose them. A critical analysis of statistical research should include a careful review of the definitions utilized, whether the researchers understood the social context of the abuse, whether they considered the intent and effects of the violent behavior, who was included in the study sample, whether the researchers relied on credible sources, and what conclusions were drawn from the data.

A prime example of how poor data collection skews our knowledge of violence against women is the Department of Justice, Bureau of

Black Women in White America: A Documentary History 163 (Lerner, ed., 1973).

⁴ LaFree et al., *Jurors' Response to Victims' Behavior and Legal Issues in Sexual Assault Trials*, 32 Soc Probs 389 (1985).

⁵ Telephone interview between Lynn Hecht Schafran, Director, NJEP, and Barbara Eggenhauser, Assistant District Attorney, Westchester County, N.Y. (Apr. 21, 1992).

⁶ Herndon, *Race Tilts the Scales of Justice*, Dallas Times Herald, Aug. 19, 1990, at A1. The article discusses the roles and interrelationship of race and class in all sentencing, pointing out that poor victims are generally devalued by the courts, and that being poor and black or Hispanic is "probably doubly bad." Id.

Justice Statistics' (BJS) statistics on rape. Until numerous complaints forced changes in the way the National Crime Victimization Survey is conducted, this survey had numerous methodological flaws. For example, it asked questions about assault— e.g., “Did anyone threaten to beat you up or threaten you with a weapon?”—but did not ask directly about rape or acts that are legally rape although the victim might not understand them as such. As a result, BJS publications vastly understated the incidence of rape and erroneously claimed that most rapes are committed by strangers.¹

Another example of misleading methodologies is discussed below: the myth that women's violent acts toward their partners are the equivalent of men's abuse of women. Additionally, in considering statistics on violence against women, one must always be alert to the vast underreporting of these cases, also discussed below.

§ 1:7 Myths about rape

Over the last two decades, research about rape and attitudes toward rape has revealed a chasm between perception and reality. In the stereotyped image, rape is an infrequent crime committed by a sex-starved, weapon-wielding stranger. The victim is a provocatively dressed woman out late at night when she should be at home. After the rape, the woman reports immediately to the police and is then admitted to the hospital for treatment of her savage physical injuries, sustained while resisting to the utmost. In reality, the vast majority of rapes are nothing like the stereotype. The overwhelming statistical profile of rape documents a commonplace crime committed by a man with an active consensual sex life on a woman he

[Section 1:6]

¹ S Rep No 545, 101st Cong 2d Sess 26, 31–32 (1992). When BJS revised its methodology, its estimate of the number of rapes per year went from 155,000 to 310,000 and nearly 200,000 other types of sexual assault were reported. The revised survey also found that, contrary to prior BJS claims that most rapists are strangers to their victims, 82 percent of rapes were committed by someone the victim knew. Bureau of Justice Statistics, Dep't of Justice, *Violence Against Women: Estimates from the Redesigned Survey*, Aug. 1995, at 5. Note that the National Crime Victimization Survey still has serious methodological flaws, which is why its estimate of rapes per year is lower than that in the Rape in America study cited in § 1:7, concerning rape, *infra*. The complete Violence Against Women report is in Appendix 1A together with a summary of its findings from the National Law Journal focusing on the domestic violence data.

knows, often in her own home. He uses no weapon, but she offers little, if any, physical resistance because she is terrified into passivity, fears serious physical injury or death, or was taken totally by surprise because she did not fear a "friend." The woman never reports the rape to the police. She sustains no physical injury other than the rape itself, but her psychological injuries are profound.

§ 1:8 — Committed mostly by strangers

Myth 1: Rape is a crime committed by men who are strangers to their victims.

Fact: The vast majority of rapes are committed by someone the victim knows.¹

The most current and complete study of the incidence of rape and sexual assault on female victims in the United States is *Rape in America*, conducted by the Crime Victims Research and Treatment Center of the Medical University of South Carolina and published in April 1992. For this study, a nationally representative sample of 4,008 women over age eighteen was interviewed once a year for three years. Respondents were asked four highly specific questions as to whether a man or boy had ever made them have vaginal sex, oral sex, anal sex, or had ever effected penetration with a finger or object against their will, using force or threat.²

The study's findings showed that only 22 percent of forcible rapes and sexual assaults are committed by strangers.³ As for the 78 percent of rapes committed by nonstrangers, the study found: 9 percent were committed by husbands or ex-husbands; 11 percent by fathers or stepfathers; 10 percent by a boyfriend or ex-boyfriend; 16 percent by other relatives; and 29 percent by other non-relatives

[Section 1:8]

¹ Crime Victims Research and Treatment Center, *Rape in America: A Report to the Nation 5* (1992). The study was funded by the National Institute of Drug Abuse because so many rape victims turn to alcohol and drugs to relieve their psychological trauma. To obtain this study, contact: National Victim Center, 2111 Wilson Boulevard, Suite 300, Arlington, Virginia 22201.

² *Id.* at 16.

³ *Id.* at 5. The redesigned National Crime Victimization Survey found that only 18 percent of rapes were committed by strangers. Bureau of Justice Statistics, Dep't of Justice, *Violence Against Women: Estimates from the Redesigned Survey*, Aug. 1995.

such as friends or neighbors.⁴

In sum, approximately 80 percent of rapes are committed by someone known by or related to the victim.

§ 1:9 — Penile/vaginal penetration

Myth 2: "Rape" means only penile/vaginal penetration.

Fact: Many state statutes today define rape as any type of sexual assault that involves forced penetration.

Those definitions include vaginal, oral, digital (or other body part), and object rape.¹ In the *Rape in America* study, 507 rape victims provided information about a total of 788 rape incidents they experienced as adults:

- 424 forced penile-vaginal penetration rapes;
- 122 forced oral penetration rapes;
- 53 forced anal penetration rapes;
- 189 forced digital/object penetration rapes.²

Of these several types of penetration, Dr. Nicholas Groth, a prominent expert on sex offenders, has written:

[F]rom a clinical rather than a legal point of view, it makes more sense to regard rape as any form of forcible sexual assault, whether the assailant intends to effect intercourse or some other type of sexual act. There is sufficient similarity in the factors underlying all types of forcible sexual assault—and in the impact such behavior has on the victim—so that they may be discussed meaningfully under the single term of rape.³

Dr. Anna Salter, a national expert in the treatment of sexual assault victims and offenders, reports that some victims forced to

⁴ Id. at 5. Three percent of the respondents were either unsure of their relationship to the rapist or refused to answer.

[Section 1:9]

¹ Twenty-five state statutes include all forms of forced sexual penetration as rape; two states include all but digital/body part rape; six states include all but digital/body part and object rape; two states include only vaginal and anal intercourse; one state includes any vaginal penetration; fifteen states include only vaginal intercourse. Memorandum from Rosemary Yu to Danielle Ben-Yehuda (Sept. 21, 1992) (on file with author).

² Letter from Dr. Bonnie Dansky, Medical University of South Carolina Crime Victims Research and Treatment Center, to Lynn Hecht Schafran, Director, National Judicial Education Program 1 (Aug. 15, 1992) (on file with author).

³ Groth, *Men Who Rape* 3 (1979).

perform fellatio or submit to cunnilingus or anal penetration suffer even more trauma than victims of penile/vaginal rape because of the shame many people feel about these kinds of sexual acts.⁴

§ 1:10 — Physical resistance

Myth 3: A woman who was truly being raped would offer intense physical resistance.

Fact: Many rape victims offer no physical resistance whatever.

Despite changes in rape law to eliminate the requirement for earnest resistance, the lingering demand by some judges and jurors for evidence of physical resistance reflects a lack of awareness of how rape usually happens. The fact is that men's greater size and strength are in themselves threatening to women and are often enough either to intimidate the victim or to overcome her resistance.¹ Even when no "force" is used beyond the intimidation factor of the man's greater size and/or strength, women experience considerable fear and indeed often fear for their lives. "I thought he was going to kill me" is a common statement from rape victims.² In the *Rape in America* study 49 percent of rape victims feared serious physical injury or death.³

Some women experience one of two terror-induced altered states of consciousness called "dissociation" and "frozen fright" which render them totally passive.

For some victims of both stranger and nonstranger rape the psychic stress is so extreme that they dissociate during the rape, saying later that they felt it was a terrible dream, or that it was as if the attack were happening to their body and they were watching it

⁴ Telephone interview with Dr. Anna C. Salter, Assistant Professor of Clinical Psychiatry and Maternal and Child Health, Dartmouth Medical School (June 8, 1992).

[Section 1:10]

¹ See, e.g., Russell, *The Politics Of Rape* 19 (1974) (describing how a rape victim can be totally immobilized by a man's size). In the stereotyped image of rape, a man jumps from the bushes with a knife or a gun. In fact, the majority of rapes involve no weapons at all. Approximately 80 percent of rapes are committed by nonstrangers. The Bureau of Justice Statistics found that a weapon was used in only 15 percent of nonstranger rapes. Harlow, U.S. Department of Justice, *Female Victims of Violent Crimes* 10 (1991).

² See, e.g., *State v. Rogers*, 519 So. 2d 246 (La. App. 1988) (victim believed attacker would kill her if she did not follow his instructions).

³ Crime Victims Research and Treatment Center, *Rape in America: A Report to the Nation* 5 (1992).

from the outside. As Judith Herman of Harvard Medical School writes:

Sometimes situations of inescapable danger may evoke not only terror and rage but also, paradoxically, a state of detached calm, in which terror, rage, and pain dissolve. Events continue to register in awareness, but it is as though these events have been disconnected from their ordinary meanings. Perceptions may be numbed or distorted, with partial anesthesia or the loss of particular sensations. Time sense may be altered, often with a sense of slow motion, and the experience may lose its quality of ordinary reality. The person may feel as though the event is not happening to her, as though she is observing from outside her body, or as though the whole experience is a bad dream from which she will shortly awaken. These perceptual changes combine with a feeling of indifference, emotional detachment, and profound passivity in which the person relinquishes all initiative and struggle. This altered state of consciousness might be regarded as one of nature's small mercies, a protection against unbearable pain. A rape survivor describes this detached state: "I left my body at that point. I was over next to the bed, watching this happen. . . . I dissociated from the helplessness. I was standing next to me and there was just this shell on the bed. . . . There was just a feeling of flatness. I was just there. When I picture the room, I don't picture it from the bed. I picture it from the side of the bed. That's where I was watching from."⁴

Other women do not resist because they are literally frozen with fright. To quote Dr. Herman again:

When a person is completely powerless, and any form of resistance is futile, she may go into a state of surrender. The system of self-defense shuts down entirely. The helpless person escapes from her situation not by action in the real world but rather by altering her state of consciousness. Analogous states are observed in animals, who sometimes "freeze" when they are attacked. These are the responses of captured prey to predator or of a defeated contestant in battle. A rape survivor describes her experience of this state of surrender: "Did you ever see a rabbit stuck in the glare of your headlights when you were going down a road at night. Transfixed — like it knew it was going to get it — that's what happened." In the words of another rape survivor, "I couldn't scream. I couldn't move. I was paralyzed . . . like a rag doll."⁵

⁴ Herman, *Trauma and Recovery* 42–43 (1992).

⁵ *Id.* at 42.

Dissociation and frozen fright were at the core of three recent cases in which the California Supreme Court “got it,” but the California appellate court and the Pennsylvania appellate and supreme courts did not. *People v. Barnes*⁶ and *People v. Iniguez*⁷ present thoughtful discussions of frozen fright. These decisions stand in sharp distinction to the appellate court’s opinion in *Iniguez* and the Pennsylvania appellate and supreme courts’ complete failure to understand dissociation in *People v. Berkowitz*.⁸ These cases bear out the observation of the Ninth Circuit in the well-known sexual harassment case, *Ellison v. Brady*, that “[m]en, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or underlying threat of violence a woman may perceive.”⁹

In *People v. Iniguez* there were no weapons, no physical assault apart from the rape and no threats. Indeed the rapist never said a word. But the victim was so frozen with fright that she not only offered no physical resistance, she did not even say “no.” She lay still and silent throughout the brief assault, yet the rape conviction was affirmed.

In *Iniguez* the victim was spending the night before her wedding at the home of a close family friend who was to stand in for her mother at the wedding. At dinner the victim met her friend’s boyfriend. She saw that he was tipsy and watched him drink more wine. She also saw that he was a very big man, weighing a hundred pounds more than she.

The victim went to sleep on top of a sleeping bag on her friend’s living room floor. During the night she was awakened by some movements behind her. She was lying on her stomach and she saw her friend’s boyfriend looming behind her, naked. Without a word he pulled off her pants and raped her. The victim testified that for the first seconds after she awoke she did not know what was happening; that she “was afraid, so I just laid there.” “You didn’t try to resist or escape or anything of that nature because of your fear?” asked the prosecutor. “Right,” the victim replied.¹⁰ The officer who inter-

⁶ *People v. Barnes*, 721 P.2d 110 (Cal. 1986).

⁷ *People v. Iniguez*, 872 P.2d 1183 (Cal. 1994).

⁸ *Commonwealth v. Berkowitz*, 641 A.2d 1161 (Pa. 1994). This case is discussed in Schafran, *Criminal Law: What is Forcible Compulsion?*, Judges’ J, Winter 1995, at 43.

⁹ *Ellison v. Brady*, 924 F.2d 872, 879 (9th Cir. 1991).

¹⁰ *People v. Iniguez*, 872 P.2d 1183, 1185 (Cal. 1994).

viewed the victim several days afterward testified, "She said she knew that the man had been drinking. She hadn't met him before; he was a complete stranger to her. She was afraid that if she said or did anything, his reaction could be of a violent nature. So she decided just to lay still, wait until it was over with and then get out of the house as quickly as she could."¹¹

Afterward, the victim was terrified that the defendant would come back for her. She telephoned a friend to come and get her, grabbed her purse and shoes, and hid in the bushes outside the apartment for half an hour until her friend arrived.

The defendant acknowledged to police that he had intercourse with the victim. He never claimed that she consented.

California law defines rape as "an act of sexual intercourse accomplished . . . against a person's will by means of force, violence, or fear of immediate and unlawful bodily injury on the person or another."¹² After Iniguez was convicted, the California Court of Appeal reduced his rape conviction to "sexual battery" on the ground that the evidence of force and fear of immediate and unlawful bodily injury was insufficient. That court wrote:

While the [defendant] was admittedly much larger than the small victim, he did nothing to suggest that he intended to injure her. No coarse or sexually suggestive conversation had taken place. Nothing of an abusive or threatening nature had occurred. The victim was sleeping in her aunt's house, in which screams presumably would have raised the aunt and interrupted the intercourse. Although the assailant was a stranger to the victim, she knew nothing about him which would suggest that he was violent.¹³

This last sentence is truly disturbing. A woman is awakened in the night by a naked man who is a virtual stranger to her hovering over her body. It seems intuitive that this situation spells danger, in capitals, yet this court did not see it. The court of appeal also stated that "[the] event of intercourse is singularly unusual in terms of its ease of facilitation, causing no struggle, no injury, no abrasions or other marks, and lasting, as the victim testified, "maybe a minute."¹⁴ The court's statement about the absence of injuries reveals adherence to one of the most pernicious myths about rape: the belief

¹¹ Id.

¹² Id. at 1187.

¹³ Id. at 1186.

¹⁴ Id.

that if a victim were “really” raped she would have physical marks from the assault. As discussed below in Myth 4 about rape, forced sexual intercourse usually leaves no physical traces distinct from those of voluntary sexual activity, and vaginal abrasions in rape cases are the rare exception rather than the norm.

The California Supreme Court reversed and reinstated the rape conviction in *People v. Iniguez*. It noted the testimony of the rape trauma expert who appeared at trial that victims respond in a variety of ways to being raped. Some try to flee, others are paralyzed by fear in the reaction known as “frozen fright.” The court addressed the objective and subjective components of the element of fear of immediate and unlawful bodily injury. With respect to the victim’s subjective fear, the court cited a 1951 California case which is remarkable for its early understanding of this much misunderstood crime. “The kind of physical force that may induce fear in the mind of a woman is immaterial . . . it may consist in the taking of indecent liberties or of embracing and kissing her against her will.”¹⁵

With respect to the objective component of the California court’s inquiry — was the victim’s fear reasonable under the circumstances, or, if unreasonable, whether the perpetrator knew of the victim’s subjective fear and took advantage of it — the California Supreme Court had a much different understanding than the Court of Appeals as to how a woman should assess a naked stranger looming over her in her sleep. The Court pointed out that Iniguez weighed twice as much as the victim, and that he accosted her while she slept in the home of a close friend, thus violating her enhanced level of security and privacy. The court continued:

Defendant, who was naked, then removed Mercy’s pants, fondled her buttocks, and inserted his penis into her vagina for approximately one minute, without warning, without her consent, and without a reasonable belief of consent. Any man or woman awakening to find him- or herself in this situation, could reasonably react with fear of immediate and unlawful bodily injury. Sudden, unconsented to groping, disrobing and ensuing sexual intercourse while one appears to lie sleeping is an appalling and intolerable invasion of one’s personal autonomy that, in and of itself, would reasonably cause one to react with fear.¹⁶

The California Supreme Court concluded, “[t]he Court of Appeal’s suggestion that [the victim] could have stopped the sexual assault by

¹⁵ *People v. Harris*, 238 P.2d 158 (Cal. 1951).

¹⁶ *People v. Iniguez*, 872 P.2d 1183, 1189 (Cal. 1994).

screaming and thus eliciting her aunt's help, disregards . . . the . . . elimination of the resistance requirement. *It effectively guarantees an attacker freedom to intimidate his victim and exploit any resulting reasonable fear so long as she neither struggles nor cries out.*"¹⁷

The power of the myth that a woman who is "really" being raped will offer intense physical resistance is vividly illustrated by a recent bench-trying sexual harassment case involving a rape and a victim who did not physically resist. In *Catchpole v. Brannon*¹⁸ the trial judge was so convinced of this myth that even though the attacker admitted the assault in a police monitored phone call, the judge subjected the plaintiff to a scathing interrogation and wrote in his "Statement of Tentative Decision" that the circumstances of the alleged rape were incredible, the plaintiff was at fault for not successfully resisting, it could be inferred that she sought the attentions of her supervisor, and the case was a waste of the court's time. The California Court of Appeal reversed and remanded for a new trial before a different judge specifically because of the trial judge's gender bias and adherence to rape myths. The Court of Appeal's analysis of the impact of gender bias on due process is outstanding and should be a critical point of reference when judicial gender bias is a problem in future cases.

§ 1:11 — Lack of serious physical injury equals absence of crime

Myth 4: A "true victim" is one who sustains serious physical injury such as knife wounds, broken bones, severe lacerations, heavy bruising or vaginal tears.

Fact: Physical injuries apart from the rape itself are rare and sexual assault leaves no physical "evidence" different from consensual sexual activity.

In the *Rape in America* study, 70 percent of victims reported no physical injuries; 24 percent of victims reported minor physical injuries; only 4 percent reported serious physical injuries.¹ Approximately one percent of rape victims have moderate to severe

¹⁷ Id. (emphasis added).

¹⁸ *Catchpole v. Brannon*, 36 Cal. App. 4th 235 (1995).

[Section 1:11]

¹ Crime Victims Research and Treatment Center, *Rape in America: A Report to the Nation* 5 (1992).

genital injuries.²

Many judges and jurors want evidence of physical damage, which they perceive as proof of the victim's lack of consent. They erroneously equate the victim's injuries with her level of resistance, which they in turn take to be a measure of the rapist's use of force. Some judges and jurors mistakenly assume that vaginal injuries are the *sine qua non* of forcible compulsion. As noted in the discussion of the *Iniguez* case discussed in conjunction with Myth 3 about rape, above, the California Court of Appeal reduced a first degree rape conviction to "sexual battery" on the ground that the evidence of force and fear of immediate and unlawful bodily injury was insufficient. The appellate court was particularly dubious because "the event of intercourse . . . [left] . . . no abrasions or other marks."³ In the California university mock jury study noted at the beginning of this chapter, in § 1:4, one group of women "jurors" was sure that because the victim had no injuries "there" where "you would expect to see them if she's been raped," there was no rape.

§ 1:12 — Lack of serious physical injury equals lack of injury

Myth 5: A woman who did not sustain serious physical injury during a rape was not injured.

Fact: Rape is a profound injury in and of itself.

Many people mistakenly assume that if a rape does not involve serious physical injury, there is no injury.¹ Nonstranger rape is particularly misunderstood and often perceived as nothing more than "bad sex."² This is especially true if the victim and the offender were having a sexual relationship or are or were married.

In fact, both stranger and nonstranger rapes, including marital rapes, produce severe, long-lasting psychological injury. Because the law has always understood "injury" as a broken arm or a knife wound, the psychological injury that rape victims sustain is some-

² Hampton, *Care of the Woman Who Has Been Raped*, *New Eng J Med*, Jan 26, 1995, at 234.

³ *People v. Iniguez*, 872 P.2d at 1186 (1994). The California Supreme Court reinstated the rape conviction. This case is discussed in § 1:10, *supra*, because it deals with the aspect of rape trauma syndrome called "frozen fright."

[Section 1:12]

¹ Schafran, *Maiming the Soul: Judges, Sentencing and the Myth of the Nonviolent Rapist*, *Fordham Urb LJ* 439 (1993).

² Hirsch, *The Trouble with Rape* 78 (1977).

times ignored or devalued. Failure to understand the devastating nature of the psychological injury of rape and the extended duration of this injury is a major factor in inappropriately lenient sentences for offenders.

Because rape is so prevalent and has such severe psychological consequences, it plays a highly damaging role in the mental health of American women. According to *Rape in America*, "3.8 million American women have had Rape-Related Post Traumatic Stress Disorder and an estimated 1.3 million American women currently have RR-PTSD."³

This study compared rates of depression among women who were victims of sexual assault and those who were not. Rape victims were three times more likely than non-victims of crime to have ever had a major depressive episode, more than four times more likely to have contemplated suicide, and thirteen times more likely to have made a suicide attempt. The report states, "The fact that 13 percent of all rape victims have actually attempted suicide confirms the devastating and potentially life threatening impact of rape."⁴ The findings of the 1992 *Rape in America* study corroborate the 1990 Final Report of the American Psychological Association's National Task Force on Women and Depression. That task force found that a major reason women have higher rates of depression than men is that they are responding to the high level of rape, battering, sexual harassment, and child sexual abuse in their lives.⁵

§ 1:13 — Reporting to police

Myth 6: A woman who was truly raped would immediately report to the police.

Fact: The widespread assumption that a true rape victim would immediately call the police is completely inaccurate.

³ Crime Victims Research and Treatment Center, *Rape in America: A Report to the Nation* 8 (1992).

⁴ Id. at 7. In a community study of crime victims reported by Dr. Judith Herman, of 100 female rape victims with an average of nine years elapsed since the rape, 19.2 percent had attempted suicide. Herman, *Trauma and Recovery* 49-50 (1992).

⁵ Crime Victims Research and Treatment Center, *Rape in America: A Report to the Nation* 15 (1992).

In the *Rape in America* study, only 16 percent of rapes were reported to police.¹ Of the small number of cases that were reported, one-quarter were reported more than twenty-four hours after the rape.² In a study of 1,000 rape victims who reported to the Beth Israel Hospital Rape Crisis Intervention Center in Boston over a ten-year period, the reporting time frames ranged from less than three hours to two weeks after the rape.³

Jurors often perceive a prompt complaint by the victim as crucial to her credibility. Therefore, when failure to report promptly is an issue in the case, it is important to have the victim explain why she did not report and have an expert witness explain why a delayed complaint is the norm rather than the exception for rape victims.⁴

There are many reasons why victims do not report a rape: not knowing the assault was legally rape, denial and suppression, psychogenic amnesia, fear of retaliation, fear of being disbelieved and blamed, fear of loss of privacy, and fear of the criminal justice system.

§ 1:14 — Ignorance of what is legally rape

The documentary film about nonstranger rape entitled *Someone You Know* opens with the story of a woman so viciously assaulted by the airline captain with whom she formerly lived that she cut off all her hair so no one would ever pull her around by it again. She reported to the police that she had been beaten, dragged around, and assaulted in many ways, but not that she had been raped. She said she did not know that you could be raped by someone you knew. The film's narrator reports that the jury did not know it either. The jury convicted the defendant of sodomy and assault, but not of the charged rape.¹

[Section 1:13]

¹ Id. at 6.

² Id. at 5.

³ Silverman et al., *Blitz Rape and Confidence Rape: A Typology Applied to 100 Consecutive Cases*, 145 Am J Psychiatry 1440, at Table I (1988).

⁴ Fischer, *Defining the Boundaries of Admissible Expert Psychological Testimony on Rape Trauma Syndrome*, 1989 Ill L Rev 691, 705-6; see, e.g., *People v. Taylor*, 552 N.E.2d 131 (N.Y. 1990) (allowing expert testimony on rape trauma syndrome to explain victim's conduct).

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¹ *Someone You Know: Acquaintance Rape* (Dystar Television, Inc. 1986). To obtain this film contact the distributor: Coronet/MTI Films and Video, 4350 Equity Place, Columbus, OH 43228; (800) 321-3106.

In a National Institute of Mental Health study of 3,187 female students on thirty-two college campuses, 489 women had been forced to engage in sexual activity that met the legal definition of rape, but only 57 percent of this group labeled their experience as rape.² The others did not realize that it is rape or sexual assault, regardless of whether the victim knows the rapist or if the forced acts were other than penile/vaginal penetration.

§ 1:15 — — Fear of retaliation

Many victims fear that the rapist will retaliate. In *People v. Panichas*,¹ for example, one of the rapist's many victims was the sister of his receptionist. The victim was terrified that if she told her sister what had happened, her sister would refuse to go to work, and the rapist would know she had told someone. That is why she initially told her sister and the police that a masked man had jumped into her car and raped her.

§ 1:16 — — Fear of being disbelieved or blamed

According to *Rape in America*, 69 percent of rape victims were somewhat or extremely concerned about people thinking the rape was their fault or that they were responsible.¹ Victims' fear of being disbelieved and blamed is powerfully illustrated in a videotape made by a Canadian rape victim named Shari Ulrich, a well-known singer in that country. She states that she was happy the rapist stabbed her after the attack, because she knew then that she would be believed.² Although the vast majority of rapes are committed by someone known to the victim, stranger rape is far more likely to be reported to police and rape crisis centers than nonstranger rapes. The victims of

² Koss et al., *Stranger and Acquaintance Rape*, 1 *Psychol Women Q* 1 (1988).

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¹ *People v. Panichas*, 1991 Cal. LEXIS 5440 (App. Aug. 30, 1991).

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¹ Crime Victims Research and Treatment Center, *Rape in America: A Report to the Nation* 6 (1992). See Berger, *Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom*, 77 *Colum L Rev* 10, 15-20 (1977) (describing incidence of questioning woman's chastity when she brings rape charges); Schwendiger & Schwendiger, *Rape and Inequality*, 17-29 (1983) (indicating that women defer reporting of sexual assaults due to traditional myths that blame victims).

² Video developed for Court of Queen's Bench of Alberta, Seminar on Gender Issues, November 16, 1990.

stranger rape are more likely to think of themselves as victims of a crime of sexual assault and think that police will believe them.³ Because nonstranger rape is so phenomenally underreported, experts in the field refer to it as "hidden rape."⁴

Fear of being disbelieved may play a particular role in black women's reluctance to report. A study of African American and white rape victims in Los Angeles found the former "significantly less likely to disclose incidents involving sexual assaults."⁵ The author posited that black women's lesser credibility as rape victims together with their negative experiences with and expectations of the police (who both dismiss black women's claims of rape more often than white women's and show bias against black male defendants in all types of cases) may be controlling factors in their willingness to report.

§ 1:17 — — Fear of loss of privacy

In the *Rape in America* study 71 percent of victims were somewhat or extremely concerned about their family's knowing they had been sexually assaulted; 68 percent were worried about people outside their families knowing; 50 percent worried about their names being made public by the news media.¹

Sexual assault is unlike any other crime. Mugging victims do not worry that neighbors will talk about what they did to invite the mugging or that everyone will think of them as stigmatized.² Many rape victims decide that it is in their best interests to hide the rape and try to go on with their lives as if nothing happened.³ This is

³ See MacKeller, *Rape: The Bait and Trap* 86-87 (1975) (victims of stranger rape are more likely to report rape and be believed).

⁴ See, e.g., *Acquaintance Rape: The Hidden Crime* (Parrot & Bechhofer eds., 1991).

⁵ Wyatt, *The Sociocultural Context of African American and White American Women's Rape*, 48 *J Soc Issues* 77, 86-87 (1992).

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¹ Crime Victims Research and Treatment Center, *Rape in America: A Report to the Nation* 6 (1992).

² See MacKeller, *Rape: The Bait and Trap* 79 (1975) (victims of stranger rape are more likely to report rape and to be believed; unlike victims of other crimes, victims of rape must prove the assailant guilty and defend their own innocence).

³ See Katz & Mazur, *Understanding the Rape Victim: A Synthesis of Research Findings* 185-86 (1979) (women tend not to report rape due to shame and embarrassment associated with being victims).

particularly true for victims of nonstranger rapes.⁴ This suppression leaves many psychological issues unresolved, causing problems in later life.⁵

§ 1:18 — Denial/suppression

Denial of all or part of the assault is an extremely common response. This behavior is consistent with an attempt to maintain a belief in normalcy and regain control of one's life.

For example, for sixteen years, actress Elizabeth Ashley blocked from her mind the fact that she had been gang-raped.¹ In the case of a woman who accused three Mets players of gang-rape, she said that after the attack, she made the bed and did not realize that she had been raped until three days later.² In another New York case, the Chief of the Sex Crimes Unit in Queens received a 6 a.m. telephone call from an Assistant District Attorney reporting that she had been attacked but that there had been no penetration. After meeting the Assistant District Attorney at the hospital, the unit chief learned that there had been oral, vaginal, and anal penetration.

The phenomenon of denial coupled with a severe state of shock can also cause victims to make inconsistent statements about crucial facts surrounding the assault. For example, the victim may acknowledge that she knew the rapist yet not be able to tell the police his name.

§ 1:19 — Psychogenic amnesia

Some victims completely block any memory of the assault from their minds and do not report until the memory returns because they did not "know" that anything happened to them.¹ Some victims may

⁴ Report of the Illinois Task Force on Gender Bias in the Courts 100 (1990).

⁵ Silverman et al., *Blitz Rape and Confidence Rape: A Typology Applied to 100 Consecutive Cases*, 145 Am J Psychiatry 1440, 1445 (1988).
[Section 1:18]

¹ Ashley, *Rape and Denial*, People, Aug. 16, 1993, at 99.

² Marriott, *State Attorney Says Mets Will Not Face Criminal Charges*, NY Times, Apr. 10, 1992, at B13; See Katz & Mazur, *Understanding the Rape Victim: A Synthesis of Research Findings* 215-31 (1979) (explaining various reactions victims must deal with in attempting to overcome the trauma).

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¹ See Stedman's Medical Dictionary 1164 (1982) (defining "psychogenic amnesia" as loss of memory resulting from severe emotional distress).

lose partial memory. In one New York gang-rape case, the victim could only remember the face of one attacker. A year later, she snagged her hair on something in her home, and her head was jerked backward in a motion similar to something that happened during the rape. This caused the mental picture of a second attacker to return. She reported it to the prosecutor, who went forward with a second indictment.²

§ 1:20 — Fear of the criminal justice system

A significant percentage of victims fear that if they report the assault, they will be humiliated and blamed by everyone in the criminal justice system from the police to the jurors. They have heard of women who have gone through with reporting the crime and who endured a trial experience appropriately described as a "second rape."¹

§ 1:21 — Rape by nonstrangers

Myth 7: Being raped by someone you know is far less traumatic than being raped by a stranger.

Fact: Rape by someone known to the victim is as traumatic, and often more traumatic, than stranger rape because self-blame is increased and the ability to trust others is destroyed.

"Blitz rape" and "confidence rape" are terms to describe stranger and nonstranger sexual assaults that were developed by the clinician/researchers who first used the phrase "rape trauma syndrome."¹ Blitz rape is "a sudden surprise attack by an unknown assailant." Confidence rape involves "some nonviolent interaction between the rapist and victim before the attacker's intention to commit rape emerges."² The term "confidence rape" derives from the notion of the rapist gaining the victim's confidence so she will not anticipate an assault and not be on her guard.

² Interview with Marjory Fisher, Esq., Chief, Special Victim's Bureau, District Attorney's Office, Queens, New York, New York (May 12, 1992).

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¹ Report of the Illinois Task Force on Gender Bias in the Courts 100 (1990).

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¹ These clinician/researchers were Ann Burgess & Linda Holmstrom.

² Bowie et al., Blitz Rape and Confidence Rape: Implications for Clinical Intervention, 64 Am J Psychotherapy 180 (1990).

Clinical experience indicates both similarities and differences in the issues, concerns, and symptoms of blitz and confidence rape victims. The surprising finding is that women raped by someone they know often have a harder time recovering than women raped by strangers. Women raped by nonstrangers are more likely to keep their rape secret because of guilt and shame, more likely to be blamed by themselves and others, and less likely to believe themselves deserving of sympathy and professional help.³

Nonstranger rape also has a unique effect on the victim's ability to form relationships. According to Dr. Veronica Reed Ryback, director of the Beth Israel Hospital (Boston) Rape Crisis Intervention Center, "Another name we give acquaintance rape is confidence rape because it's such a betrayal of confidence. The perpetrator has used the relationship to gain access to the victim, and the victim's beliefs about who she is and who she can trust are shattered."⁴ However, calling this type of rape "betrayal rape" may be a more accurate and evocative formulation because it immediately conveys how the victim feels.

§ 1:22 — Marital rape

Myth 8: There is no such thing as marital rape, and even if a man pressures his wife for sex, there is no reason she should find it as upsetting as rape by a stranger.

Fact: Even where there is no extrinsic violence, the psychological trauma of marital rape is especially profound because trust is shattered in the individual whom the woman normally has the most reason to trust.¹

One study found that "[W]omen raped by husbands or family members, particularly when compared with women raped by nonromantic acquaintances or casual dates, gave more severe ratings of their anger and depression and of the offender's aggression."² The fear of repeated attacks is especially severe because, unless the wife

³ Id. at 184-85.

⁴ Bass, "Date Rape" Victims Bear Scars Longer, Study Finds, *Boston Globe*, Sept. 30, 1991, at 1.
[Section 1:22]

¹ Kilpatrick et al., Rape in Marriage and Dating Relationships: How Bad is it for Mental Health?, in *Human Sexual Aggression: Current Perspectives* 335 (Prentky & Quinsey, eds., 1988).

² Koss et al., Stranger and Acquaintance Rape, 1 *Psychol Women Q* 1, 14 (1988).

immediately leaves or is able to force the man to leave, she must live with not only the rape, but the rapist.

Marital rape is the most misunderstood area of sexual assault. Some people simply do not believe that a man can rape his wife.³ Others assume that, since the couple is presumably accustomed to having sexual intercourse, the alleged rape is nothing more than "bad sex."⁴ Yet studies of marital rape have shown that these rapes sometimes involve levels of violence as high as that for stranger rape.⁵ For example, in a 1992 South Carolina case which resulted in an acquittal even though the husband recorded the rape on videotape, the defendant tied his wife to the bed, covered her eyes and ears with duct tape, slapped her genitals, and threatened her with a knife, which he later used to trace circles around her breasts before raping her.⁶

Marital rape occurs independently of and in conjunction with wife battering. Diana Russell, a sociologist and prominent researcher in the area of violence against women, reports the following statistics for marriages in which the wife was abused: in 23 percent of these marriages wife rape was the major or only problem; in 22 percent, wife rape and wife beating were problems of about equal significance.⁷ Russell also found that wife rape occurred frequently in higher income groups.⁸

§ 1:23 — Consequence to victim after initial shock

Myth 9: After the initial shock, rape victims can readily put the assault behind them and move on with their lives.

³ Cf. Russell, *Rape in Marriage* 17 (1990) (describing numerous cases of marital rape and noting that until recently rape law excluded marital rape by definition).

⁴ See Finkelhor & Yllo, *License to Rape: Sexual Abuse of Wives* 13–15 (1985).

⁵ See *id.* Cf. Russell, *Rape in Marriage* 17 (1990) (describing numerous cases of marital rape and noting that until recently rape law excluded marital rape by definition).

⁶ Prosecutor: *Man Taped Wife's Rape*, *The State*, Apr. 22, 1992, at 1A; 150 at *Capitol Protest Rape Verdict*, *The State*, Apr. 22, 1992, at 1A.

⁷ Russell, *Rape in Marriage* 77 (1990) (describing numerous cases of marital rape and noting that until recently rape law excluded marital rape by definition). See also Finkelhor & Yllo, *License to Rape: Sexual Abuse of Wives* 13–15 (1985).

⁸ Russell, *Rape in Marriage* 130–31 (1990) (indicating that marital rape is more common in lower income groups, but also occurs in higher income groups).

Fact: Numerous psychological studies have documented the long-term trauma of rape.

Six months after being raped, the majority of victims still experience what one researcher called a distinct "core of distress."¹ Another study documented that fifteen to thirty months after being raped, more than 40 percent of victims still suffered sexual dysfunction, restricted social interaction, suspicion, fears, and depression.² Three years after the rape, a variety of psychological symptoms persist, leading researchers to believe that many victims never recover completely. In one study of criminal victimization of a community-based sample of 391 women in Charleston, South Carolina, 23.3 percent of the women had been victims of completed rape. Of those women, 57 percent developed Post Traumatic Stress Disorder. At the time of the assessment, which was an average of fifteen years post-rape, 16.5 percent of the rape victims who had not had treatment had current symptoms of PTSD.³

Physical injuries of the traditional type, such as bruises and broken bones, usually heal in a relatively short time. The impact of rape, however, is like an invisible permanent disability. In the documentary film *Someone You Know*, a cross-section of female victims raped by boyfriends or friends describe the impact of the rape on their daily lives, their family and social relationships, their work and school work. As to their expectations for the future, one woman raped ten years before the film was made says, "How can I expect to marry when I'm too frightened to go on a date?"⁴

To communicate to jurors and judges the impact of the psychological trauma of rape it is important for the victim to detail how it affects her daily life. In *Someone You Know* the victims talk about being obsessed with making a safety plan for every situation (e.g., what would I do if someone attacked me on the bus or in the photo-

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¹ Kilpatrick et al., *The Aftermath of Rape: Recent Empirical Findings*, 49 *Am J Orthopsychiatry* 658, 668 (1979).

² Fischer, *Defining the Boundaries of Admissible Expert Psychological Testimony on Rape Trauma Syndrome*, 1989 *Ill L Rev* 691, 705-6 (citing symptoms experienced by victims up to two and a half years after assault).

³ Kilpatrick et al., *Criminal Victimization: Lifetime Prevalence, Reporting to Police, and Psychological Impact*, 33 *Crime & Delinq* 479 (1987).

⁴ *Someone You Know: Acquaintance Rape* (Dystar Television, Inc. 1986). To obtain this film contact the distributor: Coronet/MTI Films and Video, 4350 Equity Place, Columbus, OH 43228; (800) 321-3106.

copy room); having vivid flashbacks of the rape while making love; feeling unable to trust anyone in any situation; and feeling constant, generalized fearfulness.

Every victim responds individually and some victims appear to recover well. In one study, between 20 percent and 25 percent of untreated victims were relatively symptom-free one year post-rape, and some victims reported functioning better at this time than they did before the rape.⁵ But the absence of PTSD does not prove that nothing happened. Moreover, we are coming to understand that a one-year follow-up does not tell the full story; the reality is that psychological trauma has no specific end point. As Dr. Judith Herman writes in her book demonstrating the commonalities of the psychological trauma of combat, being taken hostage, torture, child abuse, child sexual abuse, incest, domestic violence, and rape:

Resolution of the trauma is never final; recovery is never complete. The impact of a traumatic event continues to reverberate throughout the survivor's lifecycle. Issues that were sufficiently resolved at one stage of recovery may be reawakened as the survivor reaches new milestones in her life.⁶

§ 1:24 — Victim's demeanor at trial

Myth 10: A woman who was truly raped would be very upset during trial.

Fact: Victims' behavior during trial varies widely according to their personalities, individual strategies for coping with trauma, stages of recovery, life situations, and many other factors.

⁵ Kilpatrick et al., *Effects of a Rape Experience: A Longitudinal Study*, 37 J Soc Issues 105, 119 (1981).

⁶ Herman, *Trauma and Recovery* 211 (1992). These milestones typically are marriage, divorce, a birth or death in the family, illness, or retirement.

The information coming to public attention about the way rape trauma fits into the spectrum of post-traumatic stress syndromes that affect men as well as women may promote understanding of the psychological trauma of rape. The example of Vietnam veterans who experience nightmares, flashbacks, and depression long after the war can help others to understand rape victims' nightmares, flashbacks, and depression long after the assault.

However, rape may continue to stand out among these traumatic events as the one whose harms will be more difficult to appreciate. Combat, hostage-taking, torture, child abuse, and domestic violence all involve readily understood fist-in-the-face violence. Child sexual abuse is generally condemned by society. But the fact that rape involves a sexual component and little traditional physical violence distorts understanding of this crime.

Any trial is stressful for the witnesses, but rape trials exact a unique toll on the complainant. As noted earlier, unlike a mugging case, a rape case involves shame for the victim. When a rape case comes to trial, usually within a year after the event, the victim is still fragile and recovering. At a time when she is still striving to overcome flashbacks and recurrent, intrusive thoughts of the rape, she must relive it and start the cycle again, and trial preparation must prepare the victim accordingly. She must publicly recount sexual acts which are normally kept private. She must do so in front of a defendant who not only terrifies her, but who may relish the public recital of his deeds and her humiliation. She is aware that as she tells her story on the witness stand, everyone in the courtroom is seeing that story unfold in his or her mind's eye. She feels she is being figuratively undressed and assaulted in the courtroom. This sense becomes particularly acute if she is left to sit on the witness stand while the judge and counsel engage in lengthy sidebars or even colloquies in chambers, or if she is asked to demonstrate on her own body how the assault occurred. These latter practices should be discouraged.

About half of victims demonstrate a "controlled style," which means they hide their feelings and appear calm. The other half demonstrate an "expressive style," which means they display fear, anger, and anxiety by crying, sobbing, smiling, or acting restless or tense. These response styles have ramifications for the victim's credibility in court because many judges and jurors have definite expectations about the way rape victims should behave on the witness stand.

Controlled victims may be disbelieved when they do not cry, because the judge and jury expect some tears. Expressive witnesses who cry "too much" may be dismissed as hysterical. Expressive victims who respond with anger may also be disbelieved because our culture is extremely uncomfortable with angry women. In a Queens, New York, case involving a sexual assault by several members of a university lacrosse team, the jurors said that among the reasons they disbelieved the victim was that on the witness stand she was angry and argumentative during cross examination.¹ One juror said the victim was disbelieved because her demeanor "just didn't coin-

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¹ Varchaver, *Inside the St. Johns's Jury Room*, Manhattan Law 16 (Sept. 1991), at 21.

cide with what we felt a victim should behave like.”² (The defendant who initiated that assault, and who was to be tried separately from the trial at which this happened, later took a plea and admitted the truth of all her allegations in his allocution.)³

The display of anger, however, is an initial step in recovery. As Professor Barry Burkhart writes, “At the beginning of [therapy], the client often can feel only the pain of her victimization. As she begins to affirm her victimization, her anger begins to be revealed. Anger provides energy to the work of coping and drives her toward new ways of being in the world.”⁴

Knowing all this, how does one prepare a rape victim to testify at trial? Like the advice given to fledgling attorneys to always be yourself and use your own style, not someone else’s, trying to make a victim testify as someone she is not can backfire by making her look stiff, uncomfortable, and therefore not credible. If your witness has so extreme a controlled style that you fear jurors will think nothing happened to her, consider asking her questions about how she feels about testifying, so you can elicit the fact that she is essentially holding herself together because to let go at all would open the floodgates.

With respect to exhibiting anger, however, it is important to make victims aware that defense attorneys may cross-examine them precisely to provoke anger and thereby discredit them with the judge and jury. In the Queens, New York case cited above, one of the defense attorneys later discussed his strategy in dealing with non-stranger rape cases. Essentially it is to be smooth, low key, and non-threatening, but to keep prodding and probing until the victim shows anger and becomes a “non victim” or “unworthy victim.” Thus, a victim should be prepared in such a way that she can resist being provoked to anger.

§ 1:25 — Rapist profiles

Myth 11: A rapist is a subhuman-looking monster, violent, mentally deranged, impulsive, with no access to consensual sex.

Fact: Rapists look like everyone else, come from all backgrounds, races and strata of society and are rarely violent in the sense of

² Id.

³ *Painful Odyssey*, NY *Newsday* (Feb. 13, 1992).

⁴ Burkhart, *Conceptual and Practical Analysis of Therapy for Acquaintance Rape Victims*, in *Acquaintance Rape: The Hidden Crime* 299 (Parrot & Bechofer, eds. 1991).

inflicting injuries apart from the rape itself. The vast majority of rapists have full access to consensual sex and they are not mentally diseased.

In the public mind there is an archetypal image of a rapist. While it may be comforting to believe that rapists are so different from the rest of the population that they are detectable on sight, this belief is completely contrary to fact.

§ 1:26 — — Violence in rapists

Most rapists are not "violent" in the traditional sense. In common parlance "violent" means someone who inflicts visible physical injuries. As earlier noted, in the *Rape in America* study 70 percent of victims reported sustaining no physical injury apart from the rape itself; 26 percent sustained minor physical injuries; and 4 percent sustained serious physical injuries.¹ It must always be remembered, of course, that rape is an intrinsically violent act that causes profound psychological injury to the victim.

§ 1:27 — — Mental state of rapist

Most rapists are not mentally diseased. Until recently, most discussions of rape took a psychopathological perspective that rape is the result of mental illness and often includes an uncontrollable impulse. Empirical studies refute this. Although there are some rapists who are mentally ill, research puts the figure of men who were psychotic at the time of the attack at approximately 5 percent.¹ In the words of Dr. William Pithers, director of the sex offenders treatment program at Northwest Correctional Center in St. Albans, Vermont, "Rape is a sick act committed by sane people."² The notion that rapists are mentally diseased is further disproved by the extensive research into sexual aggression by ordinary, middle class, white male college undergraduates. Studies of this population by Professors Barry Burkhart of Auburn University, Eugene Kanin of Purdue, Mary Koss of the University of Arizona and Neil Malamuth of the University of California, among others, demonstrate that

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¹ Crime Victims Research and Treatment Center, *Rape in America: A Report to the Nation* 5 (1992).

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¹ Abel et al., *Aggressive Behavior and Sex*, 3 *Psychiatric Clinics N Am* 133 (1980).

² Gelman, *The Mind of the Rapist*, *Newsweek*, July 23, 1990, at 46, 49.

between 12 and 15 percent of these young men have coerced women into having intercourse against their will.³

§ 1:28 — — Rapists' sexual activity

Another myth about rapists is that they have no access to consensual sex and turn to rape as a sexual outlet. Dr. Nicholas Groth, a pioneer in sex offender treatment who has assessed literally thousands of incarcerated rapists, has written, "All the offenders we have seen were sexually active males involved in consenting sexual relationships at the time of their offense."¹ When sociologist Diana Scully conducted extensive interviews with 114 incarcerated rapists, 89 percent estimated that before entering prison they had engaged in consensual sex at least twice a week; 42 percent indicated they had consensual sex at least once a day. Scully noted that if that frequency data seem high, one should bear in mind that the offenders were at their peak years of sexual activity.²

With respect to nonincarcerated, undetected date rapists, Professor Eugene Kanin studied seventy-one self-disclosed, nonincarcerated date rapists: all white, middle-class, undergraduate students. He found these rapists to be "dramatically more [sexually] active than the controls." Kanin concluded, "The evidence does not lend to stereotyping these men as the sexually deprived. . . . In fact, comparatively speaking, these men very successfully pursued a lively and positive interest in women, dating and sexual activity."³

§ 1:29 — — Childhood sexual abuse and rapists

The welcome and belated acknowledgment of the widespread reality of child sexual abuse and the trauma it causes¹ has also generated the mistaken belief that it is being sexually abused as a child that causes the child to become a rapist. When Diana Scully probed this issue in her interviews with incarcerated rapists she

³ This research is reviewed in Burkhart & Stanton, *Sexual Aggression in Acquaintance Relationships*, in *Violence in Intimate Relationships* (Russell, ed. 1988).

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¹ Groth & Hobson, *The Dynamics of Sexual Assault*, in *Sexual Dynamics of Anti-Social Behavior* 161 (Schlesinger & Revitch, eds. 1983).

² Scully, *Understanding Sexual Violence* 70-74 (1990).

³ Kanin, *Date Rape: Unofficial Criminals and Victims*, 9 *Victimology* 95, 99 (1984).

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¹ See, e.g., Salter, *Treating Child Sex Offenders and Victims* (1988)

found in this group of 114 felons that 50 percent reported growing up in nonviolent families, 66 percent reported no physical abuse as children and 91 percent reported no sexual abuse as children.²

§ 1:30 — — Alcohol and rapists

Many sexual assault cases involve situations in which the rapist or the rapist and the victim were drinking. Alcohol is perceived as a “cause” of rape, and of domestic violence, when it is not a cause but a *disinhibitor* for those inclined to commit rape and battering.¹ In one study of convicted rapists 45 percent said their deviant arousal was increased by alcohol.² Sometimes offenders use alcohol as a cover for their behavior even when it played no role in the origin of their crimes. One woman reported that she never understood why, when her husband — who turned out to be a rapist — sometimes splashed liquor on his face and clothes before going out for a walk.³

§ 1:31 — Role of sex and/or violence

Myth 12: Rape is only about sex or only about violence.

Fact: Whether rape is an expression of sex or an expression of violence is a constantly posed question. This question presumes a false dichotomy.

The problem is that the question does not ask from whose point of view — the rapist or the victim? Because the male fantasy of rape projects a woman first resisting but then enjoying the assault, any acknowledgment that rape is in part about sex — from the point of view of the rapist — may make the victim appear complicit. Rape is a violent, terrifying, degrading act for the victim even when, as in the vast majority of rapes, the rapist is someone she knows, there is no violence extrinsic to the rape itself, and she sustains no physical injury.¹ What rape means to the rapist, however, is a different story.

Sociologist Diana Scully analyzes the continuing debate:

² Scully, *Understanding Sexual Violence* 68–69 (1990).
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¹ Salter, *Treating Sex Offenders: A Curriculum for Corrections Mental Health Professionals* 229 (1989).

² *Id.*

³ *Id.* at 230.

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¹ Schafran, *Maiming the Soul: Judges, Sentencing and the Myth of the Nonviolent Rapist*, *Fordham Urb LJ*, 1018–19 (1993).

In an effort to change public attitudes that are damaging to the victims of rape and to reform laws seemingly premised on the assumption that women both ask for and enjoy rape, the feminist position has emphasized the violent and aggressive character of rape. Often these arguments disclaim that sex plays any part in rape at all. This contrasts with the psychopathological position which emphasizes the sexual nature of rape and ignores the violence. I argue, however, that both positions miss the mark. *Rape is a violent act, but it is also a sexual act, and it is this fact that differentiates it from other crimes.* . . . It is unfortunate that the rather swift public acceptance of the "rape as violence" model, even among groups who otherwise discount feminist arguments, has unintended implications. . . . [E]mphasizing violence — the victim's experience — is . . . strategic to the continued avoidance of an association between "normal" men and sexual violence. Make no mistake, for some men, rape is sex — in fact, for them, sex is rape. The continued rejection of this possibility, threatening though it may be, is counterproductive to understanding the social causes of sexual violence.²

Scully's assertion that for some men "rape is sex" and "sex is rape" is borne out by the experiences of those who treat sex offenders. One aspect of the cognitive-behavioral treatment model is an effort to replace attraction to deviant sexual arousal with attraction to normal sexual arousal. To accomplish this, offenders in treatment are asked to develop appropriate fantasies which they verbalize into a tape recorder while masturbating to orgasm. Roger Wolfe of Northwest Treatment Associates in Seattle has described the difficulty many sex offenders have in developing appropriate fantasies. According to Wolfe:

[The offenders'] perceptions of what is an appropriate fantasy are incredible. We have clients come in with their initial tapes and say, "I had a wonderful appropriate fantasy," and it turns out to be a tape describing what is essentially a rape!"³

Another reason the "rape equals violence" equation has gained such currency is that until the last few years, research into the psychology and motivations of rapists has been significantly distorted by the population of rapists to which researchers had access.

² Scully, *Understanding Sexual Violence* 142–43 (1990) (emphasis in original).

³ Interview with Roger Wolfe of Northwest Treatment Associates, in Seattle, WA (Sept. 30, 1981), quoted in Knopp, *Retraining Adult Sex Offenders: Methods and Models* 12 (1984).

Professor Eugene Kanin, who conducted the first study of undetected college student date rapists, points out that since only a small percentage of rapes is reported, few rapes end in arrest and even fewer in incarceration:

Our knowledge about the rapist . . . is essentially derived from the study of criminal failures, that very small percentage of offenders who are not only apprehended but also convicted. Furthermore, this extraordinary selectivity may also be responsible for leaving us with a relatively homogeneous population of rapists, that is, a population whose offenses are of such a nature, e.g. involving extrinsic violence, gang rape, object rape and stranger rape, that they are significantly more apt to be reported, prosecuted, and convicted. And this homogeneity may be disarmingly responsible for the parochialism regarding the nature of rape found in professional writings, namely, the perspective that categorically views rape as a nonsexual offense.⁴

§ 1:32 — Appearance and behavior of victim

Myth 13: Rape is caused by a “generic impulse” stimulated by the appearance or behavior of women.

Fact: Studies repeatedly show that rape is largely a planned and premeditated crime.¹

Although some “date rapes” occur in the heat of moment, it is also the case that many date and acquaintance rapists go on dates or pick up women with the absolute intention of having sex and with no intention of respecting the woman’s protests if she is not equally interested. There are even rapists who deliberately court their victims, develop a consensual sexual relationship, and then rape them.² In the words of one expert on sex offenders, “The choice of victim is predominantly determined by availability, accessibility, and vulnerability . . . [t]he aim of the offender is to capture, conquer, and control his victim. Sexual desire, in and of itself, is not the primary or paramount issue operating in this assailant.”³

⁴ Kanin, *Date Rape: Unofficial Criminals and Victims*, 9 *Victimology* 95–96 (1984).

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¹ See, e.g., Amir, *Patterns in Forcible Rape* (1971); Martin & Hummer, *Fraternities and Rape on Campus*, 3 *Gender & Soc’y* 4547 (1989).

² Hecht, *Stalking the Personals*, *NY Woman* (1991); see also Schwendiger & Schwendiger, *Rape and Inequality* 482 (1986).

³ Groth, *Men Who Rape* 29 (1979).

Gang rapes by fraternities or groups of athletes are notorious examples of planning.⁴ An example is the 1990 case referred to earlier involving a group of lacrosse players from St. John's University in Queens, New York. The ringleader pretended to befriend a female fellow student and offered her a ride to her home. On the pretext of needing money for gas, he drove her to the off campus house he shared with his teammates. Once there, he pretended that he had to make a phone call and invited her into the house to wait. Once she was inside, he forced liquor on her until she was incapacitated, at which point he assaulted her and then left her to his buddies. His teammates — some admittedly and some allegedly — forced the victim to have oral sex, slapped her in the face with their penises, and fondled her breasts.⁵

§ 1:33 Myths about domestic violence

Although the laws that permitted a man to "chastise" his wife with a stick no bigger than his thumb have been off the books for a century, and although the last twenty years have seen major advances in laws prohibiting domestic abuse, legal reform has had limited success in ending the epidemic form of violence against women called "domestic violence." Many men and women continue to believe that men have an inherent right to control their wives and partners and to use violence to do it. Others turn the issue on its head, making his battering her fault. They do not ask why he batters while society looks away, but why she does not leave. There is too much focus on the physical assault aspect of domestic violence and not enough on its full expression of coercive control through means such as isolation, entrapment, and denial of material necessities. There is little understanding of the complex forces, including, paradoxically, fear for their lives, that keeps women in abusive relationships. There is insufficient support and protection for those who leave.

⁴ See generally Sanday, *Fraternity Gang Rape* (1990).

⁵ See Frost, *Inside Stories Reveal Details of Sex Case*, Nat'l LJ 41 (June 24, 1991) (describing attack); Herr, *St. John's Lessons in Misogyny*, Wham! Frontliner 3 (Spring 1992); Solomon, *Unreasonable Doubt*, Village Voice, Aug. 6, 1991, at 2; Taylor, *Sex Suspect "Wasn't There,"* Newsday, Feb. 4, 1992, at 20; Varchaver, *Inside the St. John's Jury Room*, Manhattan Law 16, Sept. 1991, at 21.

§ 1:34 — Frequency and visibility of bodily injury

Myth 1: A battered woman is someone who is beaten up constantly and has serious injuries to show for it.

Fact: A battered woman is someone whose life is shaped by her partner's coercive control maintained by intermittent violence and "an ongoing strategy of intimidation, isolation and control that extends to all areas of a woman's life, including sexuality; material necessities; relations with family, children and friends; and work."¹

The mistaken belief that a battered woman is constantly beaten and visibly injured is what led Nicole Brown Simpson's sister, Denise, to initially claim that her sister was not a battered woman. It also leads judges and court personnel to ask why they don't see any injuries when a woman seeks an order of protection. When batterers are physically violent, they often injure only those parts of the body covered by street clothes and, as Nicole Brown Simpson demonstrated, battered women become adept at using makeup to cover those injuries that are visible. But as Evan Stark writes in a valuable article describing the shortcomings of Battered Woman Syndrome² to explain battered women's "learned helplessness" and why they remain in abusive relationships, "[w]ork with battered women outside the medical complex suggests that *physical violence may not be the most significant factor about most battering relationships*."³ Rather, it is the ongoing strategy of coercive control cited above. "Sporadic, even severe, violence makes this strategy of control

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¹ Stark, Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control, 58 Alb L Rev 973, 986 (1995).

² Id. Battered Woman Syndrome (BWS) is a theory developed by psychologist Lenore Walker to explain why women remain in abusive relationships. BWS says that battering has three phases — tension building, acute battery, remorse — which repeat over time and lead to "learned helplessness" on the part of the victim who feels her world is unpredictable and out of control. BWS is now generally classed as a form of post-traumatic stress disorder, which the Diagnostic and Statistical Manual of Mental Disorders describes as occasioned by exposure to events "outside the range of usual human experience." See American Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 247 (3d rev. ed. 1987); Lenore E. Walker, Stress Disorder in Women: Diagnosis and Treatment of Battered Woman Syndrome, 28 Psychotherapy 21 (1991).

³ Stark, Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control, 58 Alb L Rev 973, 986 (1995) (emphasis in original).

effective. But the unique profile of the 'battered woman' arises as much from the deprivation of liberty implied by coercion and control as it does from violence-induced trauma."⁴

Abusive men exert coercive control in many ways including isolation and psychological degradation. A batterer may deprive the woman of money, transportation and sleep; deny her access to her family, friends, medical care and telephones; and convince her by repeated psychological assaults that she is so stupid, worthless, and incompetent that she could never survive in the world without him, and that no one else would want to be with her or help her. *United States v. Bailey*,⁵ the first indictment and conviction under the Violence Against Women Act provision barring interstate travel for the purpose of committing domestic violence, is an example of the coercive control that permeates battering relationships. Defendant Chris Bailey sometimes bolted his wife into their home and removed the telephone cords to cut off her communication with the outside world. With his first wife, whom he also abused, he even controlled her access to cigarettes.⁶

In thinking about who is a battered woman, it is extremely important not to fall into the "one size fits all" trap. The concept of Battered Woman Syndrome is a valuable contribution to our understanding of domestic violence, but different women respond differently to physical assault and coercive control. When the paradigm of the battered woman is limited to the weak, passive, helpless, good wife, women who respond with anger are unfairly labeled aggressive and become unworthy victims or indefensible. This is particularly true for African-American and working class women. It is thus essential to avoid simplistic stereotypes and to understand each battered woman as having coping strategies that are a function of her own life experience and personality structure.⁷

⁴ Id.

⁵ *United States v. Bailey*, 886 F. Supp. 7 (W. Va. 1995); Man Guilty Under Federal Abuse Law, NY Newsday, May 24, 1995.

⁶ Betts, United States Attorney for West Virginia, Remarks to the Federal Magistrate Judges Workshop, June 15, 1995, at 13.

⁷ Stark, Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control, 58 Alb L Rev 981, 1019-26 (1995) ("Extending the Battering Defense to 'Rough' Women"); Ammons, Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman's Syndrome (1995) (to obtain manuscript contact the author at: Cleveland-Marshall College of Law, 1801 Euclid Avenue, Cleveland, Ohio 44115); Callahan, Will the Real Battered Woman

§ 1:35 — Frequency of domestic violence

Myth 2: Woman abuse is not common.

Fact: Although there is controversy about the exact number of women battered each year,¹ it is clear that the numbers are great and that if one looks at the number of women in battering relationships rather than those physically assaulted in a given year, the numbers are even greater.

Focusing only on the incidence of physical assault in a given year as the measure of woman abuse, a 1993 Louis Harris poll found that 1.1 million women had been kicked, bitten, or hit with a fist or some other object and 2.9 million women had been pushed, grabbed, shoved, or slapped by a partner.² The redesigned National Crime Victimization Survey (NCVS) found that approximately 1 million women a year experience violence at the hands of an intimate,³ and that for victims in a marital relationship, the victimization rate of women separated from their husbands was about three times higher than that for divorced women, and about twenty-five times higher than that of married women.⁴

Please Stand Up? In Search of a Realistic Legal Definition of Battered Woman Syndrome, 3 J Gender & L 117 (1994) (describing battered women as survivors as opposed to victims); Schneider, Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony in Battering, 14 Women's Rts L Rep 213 (1992) (suggesting that homicide cases in which expert testimony is offered to support a battered woman's self-defense claim "pose a dilemma of how we describe both victimization and agency in women's lives"); Gondolf & Fisher, Battered Women As Survivors: An Alternative To Treating Learned Helplessness (1988); Criter & Colker, What Therapists See That Judges May Miss: A Unique Guide to Custody Decisions When Spouse Abuse is Charged, Judge's J 9, 41 (Spring 1988) ("Anger and a new assertiveness are positive characteristics of the recovering abuse victim" yet they may be held against her by judges and therapists conducting evaluations for the court).

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¹ Newman, Trouble with Domestic Violence, Media Critic 67 (Winter 1994).

² The 1993 Survey on Women's Health was commissioned by the Commonwealth Fund and was conducted by Louis Harris and Associates.

³ Bureau of Justice Statistics, Dep't of Justice, Violence Against Women: Estimates from the Redesigned Survey, Aug. 1995, at 3.

⁴ Id. at 4. The Bureau of Justice Statistics notes that the NCVS reflects a respondent's marital status at the time of the interview and thus it is not possible to know whether a woman was separated or divorced at the time of the violence or if separation or divorce followed the violence. Id. at 4-5. However, these data comport with the fact that the most dangerous time for

A critical statistic is that women are six times more likely than men to be assaulted by an intimate.⁵ That is, men are assaulted by strangers and acquaintances, women are assaulted by men they know, often men they love. Approximately 30 percent of all women murdered in the United States each year are killed by current or former husbands and boyfriends.⁶

A study of hospital emergency room patients by a Yale research team using the largest sample of women ever assessed for domestic violence found that 18.7 percent of the female trauma patients had a history of domestic violence. Because battered women averaged almost three times the number of emergency visits as non-battered women, they accounted for 40 percent of all injuries presented by women to the hospital. This compared to 11 percent of injuries attributable to auto accidents.⁷ However, as these researchers point out, many people do “not grasp that a woman who was beaten up last year may be no less a victim of her partner simply because he has not beaten her this year. Numerous health consequences result from living with the stress of an abusive relationship. This is why the most important statistic is how many women are currently in battering relationships.”⁸ As described above in Myth 1 about battered women, batterers coerce and control their victims in many ways, instilling such fear that physical assault is rarely “necessary” to keep the victim in line.

§ 1:36 — Domestic violence equals physical assault

Myth 3: The violence in domestic violence only means physical assault.

Fact: Domestic violence often includes sexual assault.

Marital rape occurs independently of and in conjunction with wife battering. Diana Russell, a sociologist and prominent researcher in the area of violence against women, reports the following statistics for marriages in which the wife was abused; in 23 percent of these

an abused woman is when she tries to leave the relationship. See § 1:42 and discussion of the myth that women can easily leave abusers, *infra*.

⁵ Bureau of Justice Statistics, Dep’t of Justice, Violence Against Women: Estimates from the Redesigned Survey, Aug. 1995, at 3.

⁶ *Id.* at 4; Federal Bureau of Investigation, Uniform Crime Reports: Crime in the United States 13 (1988).

⁷ Press Release from The Domestic Violence Training Project, 900 State Street, New Haven, CT 06511, July 14, 1994.

⁸ *Id.* at 5.

marriages wife rape was the major or only problem; in 22 percent, wife rape and wife beating were problems of about equal significance.¹

§ 1:37 — Racial and socioeconomic factors

Myth 4: Domestic violence only occurs in the lower socio-economic groups and certain racial groups.

Fact: Domestic violence knows no socioeconomic, ethnic, racial, or religious boundaries.

Both the victim and aggressor come from all walks of life, from different races and ethnicities, from every socioeconomic level. These folks do all have one thing in common; they all function in and are influenced by the society in which they live. . . . Although poverty is a significant factor . . . I've seen victims and batterers who were physicians, attorneys, judges, professionals of all kinds.¹

Most studies indicate, however, that the more affluent battered women do not come forward as often, and when they do, they go to private psychotherapy and do not come to the attention of community groups.² Professional career women often do not report abuse due to feelings of guilt, a desire not to damage their abuser's career or their own, or a fear they will not be believed because society views the professional man as less likely to resort to violence.

§ 1:38 — Provocation by victim

Myth 5: Battered women provoke their partner's violence.

Fact: Studies demonstrate that women do not control a man's use of violence; he makes those decisions based on his mood and his needs.¹

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¹ Russell, Rape in Marriage 17 (1990) (describing numerous cases of marital rape and noting that until recently rape law excluded marital rape by definition). See also Finkelhor & Yllo, License to Rape: Sexual Abuse of Wives 13-15 (1985).

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¹ Bennetts, How Domestic Violence Hurts Kids, Parents 44 (Nov. 1994). See also Bureau of Justice Statistics, Dep't of Justice, Violence Against Women: Estimates from the Redesigned Survey, Aug. 1995.

² Walker, Abused Women and Survivor Therapy 62, 63 (1994).

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¹ Jacobson, et al., "Affect, Verbal Content and Psychophysiology in the Arguments of Couples with a Violent Husband," 62 J Consulting & Clinical

Women do frequently take responsibility for starting a battering incident as a means to protect themselves and others from future abuse and in the erroneous belief that if they can keep quiet when their partner is tense, he will not become violent.² The assumption that batterers are provoked to violence by the women in their lives raises the obvious question of why they confine their violence to these women. If these men are so readily provoked to violence, why is it that they do not assault supervisors, co-workers, and others who undoubtedly also provoke them in the course of the day? Batterers abuse their female partners because they know they are "safe victims" who are not likely to fight back and because their purpose is not simply to express anger but to exert control.

§ 1:39 — Pregnant victims

Myth 6: A man would not beat his pregnant wife.

Fact: Domestic violence often begins or escalates with pregnancy.

The abusive father wants the mother's total attention on him and is fearful and angry that the child will take it away. Testimony before Congress indicated that 50 percent of abusive husbands batter their pregnant wives, with the result that these women were four times more likely to give birth to low birth weight infants.¹ Low birth weight can produce many complications for the child's physical and mental health.

§ 1:40 — Effects on children

Myth 7: Domestic violence directed against mothers does not affect children.

Fact: Children who live in homes where a man abuses a woman become secondary victims, suffering increased physical and psycho-

Psychol (1994); Lindsay, McBride & Platt, Amend: Philosophy and Curriculum for Treating Batterers (1992); Sonkin, Martin & Walker, The Male Batterer (1985).

² Walker, Abused Women and Survivor Therapy 65-66 (1994).

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¹ Hearings on Women and Violence, Committee on the Judiciary, United States Senate, Ten Facts About Violence Against Women 78 (Aug. 29 and Dec. 11, 1990). "There is some evidence of low birth weight among women who have been abused during pregnancy, possibly due to physical trauma that initiates abortion, infections, or uterine contractions leading to early onset of labor." Kerns, Terman & Larson, The Role of Physicians in Reporting and Evaluating Child Sexual Abuse Cases, in Future of Children 130 (Spring 1995).

logical illnesses and learning the dangerous lesson that the abusive behaviors of their fathers are not only acceptable but deserving of reward.

Living with domestic violence is traumatic for children even if they are only witnesses to the abuse. They are aware of what is going on even when they are toddlers and suffer slowed development, sleep disturbances, helplessness, fear, depression, and anxiety. They also experience somatic symptoms; have more hospitalizations, colds, sore throats, and bedwetting than children from nonviolent homes. Parental battering can also be physically dangerous to children. They may be injured accidentally or attacked if they try to intervene. Sixty-three percent of American males ages eleven to twenty incarcerated for murder were convicted of killing their mothers' batterers. There is a high correlation between spouse abuse and child abuse.¹

A critical reality is that children living in homes where there is domestic violence are more likely than others to batter their partners when they grow up, or to view violence as the norm. Such children tend to identify with the aggressor and lose respect for the victim.² Domestic violence has been found in 20 to 40 percent of the families of chronically violent adolescents.³ Seventy-five percent of boys who witness domestic violence have demonstrable behavior problems.⁴ A major national study found that men who witnessed their fathers batter their mothers are three times more likely to hit their wives than those who did not witness such abuse growing up.⁵ Women who grew up in violent homes accept violence in their dating

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¹ See American Bar Association, *The Impact of Domestic Violence on Children* (1994) and citations therein. See also Fields, *The Impact of Spouse Abuse on Children and Its Relevance in Custody and Visitation Decisions in New York State*, 3 Cornell J L & Pub Pol'y 221 (1994) (an article by the Administrative Judge of the New York Family Courts which offers important practice suggestions.)

² See West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 Wis Women's LJ 81, 96 (1987).

³ Fagan & Wexler, *Family Origins of Violent Delinquents*, 25 Criminology 643, 651 (1987).

⁴ Jaffe et al., *Promoting Changes in Attitudes and Understanding of Conflict Resolution Among Child Witnesses of Family Violence*, 18 Canadian J Behavioral Sci Rev 356-66 (1987).

⁵ Strauss, et al., *Behind Closed Doors: Violence in the American Family* (1980). See also Hotaling & Sugarman, *An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge*, 2 Violence & Victims 1 (1986) (study found the only risk marker strongly associated with

and marital relationships because this is their paradigm for an intimate relationship. Full scale domestic violence in teenage dating relationships is commonplace.⁶

§ 1:41 — Pathological vs. patriarchal causes

Myth 8: Battering stems from individual pathology rather than from patriarchal social structure and practices.

Fact: Domestic violence is the extension of the socially constructed paradigm of the husband having domination and control over his wife.

Obviously the psychological makeup and life experience of the individual affect the extent to which he accepts and acts on cultural norms, and thus not all men coerce and control the women in their lives. But treating men who batter as mentally ill ignores the fact that domestic violence is intentional behavior with a historical, culturally sanctioned purpose, which was and is for men to keep their wives "in their place." Domestic violence is not a mental illness but a social phenomenon. It cannot be understood apart from the historical and cultural context of female subordination.

At the American Medical Association's 1994 National Conference on Family Violence, Michael Paymar, Director of the Duluth Battered Men's Program gave this short history of domestic violence through the ages.

The use of violence to subordinate women has deep historical roots which have been tolerated and supported by institutions for generations. In the Roman Empire a husband had absolute control over his wife. A wife could be beaten for drinking, going to public games without her husband's permission or walking outdoors without her face being covered. A husband could put his wife to death without trial for adultery

In the Middle Ages, a woman was considered the property of her husband. Because of this proprietary relationship, marriages were usually arranged. The accepted notion by both the state and the church that the wife was a commodity allowed the husband to beat, and at times kill . . . a wife for various indiscretions.

Much of American law was influenced by English Common Law which specifically addressed the right of "moderate chastisement"

men's later violence against women partners was witnessing domestic abuse as a child.)

⁶ Ingrassia, *Boy Meets Girl, Boy Beats Girl*, Newsweek, Dec. 13, 1993, at 66.

for the husband to maintain an obedient wife. These laws didn't change until the end of the 19th century. It wasn't until the mid 1970's that state legislatures drafted specific domestic assault statutes giving police arrest authority to make warrantless arrests and provide for civil remedies for victims.¹

Many men are still socialized to believe they are justified in using aggression and violence against women. Men are taught that a violent reaction to a situation is a proper reaction. Men are also more concerned with preserving their authority. Their willingness to use force, together with the commonly accepted view that men are meant to control women, leads to specific acts of aggression by men against their female partners. Social scientists have termed this "learned behavior." As noted earlier, batterers also learn to be selective, choosing "safe," culturally sanctioned victims who will not fight back. They do not beat up their bosses, transit cops, or other obvious sources of frustration, anger, and fear in their lives. Rather, they act out their obsession with control against one specific target, their girlfriends and wives.

A view of violence as something socially "normal" is widely accepted in the psychological literature on violence. "Human beings reward and encourage aggression in certain circumstances and settings."² Family violence does not occur only in deviant or pathological individuals or family structures. To the contrary, "men who assault their wives are actually living up to cultural prescriptions that are cherished in Western society — aggressiveness, male dominance, and female subordination — and they are using physical force as a means to enforce that dominance."³

§ 1:42 — Victim's freedom to leave

Myth 9: It is easy for a battered woman to leave her abuser.

Fact: There are many reasons why it is extremely difficult for a battered woman to leave her abuser, chief among them is that leaving is often the most dangerous step she can take.

Discussions of domestic violence typically focus on why the woman does not leave, rather than on why men batter and why society allows it. A variation on this is judges and others who say to the

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¹ Paymar, Building a Coordinated Community Response to Domestic Assault: An Overview of the Problem 5 (Mar. 1994).

² Dobash & Dobash, Violence Against Wives 22 (1979).

³ Id. at 24.

woman that the situation could not have been as bad as she claims or else she would have left. It is, therefore, essential to understand the many reasons women feel they have no choice but to remain in an abusive relationship.

§ 1:43 — — Escalation of abuse

Abuse escalates dangerously when women try to leave. The most dangerous time for a battered woman is when she leaves the relationship. Coercion and control are at the heart of domestic violence and the batterer is enraged and panicked when his victim refuses to be controlled by him any longer. Many male batterers stalk and harass women who leave.¹ More than 75 percent of the most serious injuries and deaths to battered women occur after they leave their abusers.² In *United States v. Bailey* the victim's husband beat her into a permanent vegetative state after she told him the marriage was over.³

Batterers tell their victims that if they leave, they will find and kill them and their children and their relatives. The victims know from the men's past behavior that these are not idle threats. Although it seems paradoxical, many battered women stay with or return to the batterer to protect their own safety and that of their children and other family members. In *Ricketts v. City of Columbia*, for example, after the victim moved with her five children into her parents' home, her husband threatened that if she did not return he would kill her or someone in her family. She did return in an effort to protect herself and her family from his threats. When the abuse worsened and she again moved out, her husband broke into her parents' home, killed his mother-in-law and abducted and raped his wife.⁴ As Evan Stark writes, "The positive value placed on leaving ignores the fact that domestic violence is a struggle for control and overlooks the extreme danger of separation."⁵

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¹ See discussion of stalking at § 1:51, *infra*.

² U.S. Justice Dept., U.S. Crime Survey, 1990; See Hart, State Codes on Domestic Violence: Analysis, Commentary and Recommendations, 43 Juv & Fam Ct J 34 (1992).

³ *United States v. Bailey*, 886 F. Supp. 7 (W. Va. 1995).

⁴ *Ricketts v. City of Columbia*, 36 F.3d 775 (8th Cir. 1994).

⁵ Stark, Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control, 58 Alb L Rev 973, 986 (1995), citing Martha R. Mahoney, Legal Issues of Battered Women: Redefining the Issue of Separation, 90 Mich L Rev 1, 60-63 (1991).

§ 1:44 — — Fear of losing children

"He said if I testified against him — or told anyone that he was threatening me — he'd take the kids and I'd never see them again!"¹ Batterers often threaten to take the children if the woman leaves and women frequently stay in abusive relationships because they believe it is the only way to keep their children. The women's fear is well-founded. Some men simply kidnap their children. In a custody case, many states have no statutes requiring judges to treat domestic violence as evidence of the batterer's unfitness for custody, and batterers are often awarded custody.² In *Patricia Ann S. v. James David S.*,³ the West Virginia Supreme Court upheld a custody award to a man who beat his children and his wife and, in a classic pattern of coercive control, did not permit his wife to have any money whatsoever, not even to buy groceries. This decision produced a sharp dissent from the chief justice about the continued existence of gender bias in the courts.⁴

§ 1:45 — — Financial dependence

Battered women who are not financially independent are often afraid to leave the abuser who provides family support. These women lack the skills to support themselves and their children and know that the welfare system will not adequately support them or treat them with respect. Battered women of color are even more affected by economic constraints than their white counterparts because their family and friends have fewer resources with which to assist them.¹

Domestic violence is a principal cause of poverty and homelessness for women and their children. One of the first things a woman gener-

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¹ Nebraska Domestic Violence Sexual Assault Coalition Newsletter, Improving the Justice System's Response to Domestic Violence, at 1 (June 1995).

² Schafran, Overwhelming Evidence: Reports on Gender Bias in the Courts, Trial 90 (Feb. 1990). For information about obtaining these reports write: National Judicial Education Program, 99 Hudson Street, 12th floor, NY, NY 10013.

³ Patricia Ann S. v. James David S., 435 S.E.2d 6 (W.Va. 1993).

⁴ Id. at 15, 23.

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¹ Crenshaw, Mapping the Margins: Intersectionality Identity Politics and Violence Against Women of Color, 43 Stan L Rev 1241, 1257 (1991).

ally does when fleeing an abusive situation is apply for welfare. Officials at battered women's shelters report that 60 to 95 percent of the women who come to them go on welfare.² The changes to the welfare laws adopted by Congress only aggravate the situation for abused women. For example, the two-tiered benefit system (adopted by some states with waivers to experiment), which forces a woman to receive benefits based on the cost of living in her home state, precludes many women from fleeing the state where her abuser lives. Additionally, work requirements dissuade the woman without child care from leaving her abuser.³

The funding for battered women's shelters is minimal. Tens of thousands of women and their children are turned away from these shelters every year, giving them the grim choice of using homeless shelters or returning to the abuser. In some surveys of women in homeless shelters, half attribute their homelessness to their need to flee from a violent partner and many of these women do return to him.⁴

When women who are on welfare try to begin work and attain economic independence, they are often beaten by their partners. Numerous job training programs report that many women cannot complete the programs because of their partners' abuse.⁵ Therefore, few develop the necessary education or skills to make it on their own. Women who are employed are often fired because of escalating time off to tend to injuries resulting from the abuse or to appear in court.

§ 1:46 — — Pressure from victim's family

Often when women turn to their families for support, they are pressured to stay in the abusive relationship. Their parents and siblings may see nothing wrong with wife beating because it is the norm in their own relationship. They may feel that divorce breaches their family, community, or religious mores. They may care more about protecting their social standing than protecting their daugh-

² Raphael, *Welfare Women, Violent Men*, *Christian Sci Monitor*, Apr. 20, 1995.

³ See Ehrenreich, *Battered Welfare Syndrome*, *Time*, Apr. 3, 1995, at 82.

⁴ *Id.*

⁵ U.S. GAO, *GAO/HEHS-95-28, Welfare to Work 12* (1994); Washington State Inst. for Pub. Policy, *Over Half of the Women on Public Assistance in Washington State Reported Physical or Sexual Abuse as Adults* (1992); Raphael, *Domestic Violence and Welfare Reform, Poverty & Race*, Jan./Feb. 1995, at 19.

ter. When Bess Myerson, a former Miss America and later New York Senatorial candidate, sought help from her parents to leave an abusive husband, her mother said, "But you've just bought new curtains."¹

§ 1:47 — Personal religious convictions and pressure from religious institutions

Some women from religious backgrounds stay in abusive marriages because they believe that leaving would be breaking their marriage vows and a sin.¹ While some clergy actively support women seeking to leave their abusers,² others tell women that they must stay with their batterers and preserve their marriage and family at all costs, even at the risk of their lives.³

The Church has helped to create and uphold a social climate that allows for such violence [against women]. . . . The Church's complicity in the problem of domestic violence is manifest in both its theology and practice. A theology focused on God's omnipotence suggests that God would stop the abuse unless the victim deserved it. A theology focused on Jesus's suffering and submission, rather than his power, suggests that victims, too, should submit to their own suffering and powerlessness.⁴

This theology results in pastoral practice in which clergy tell battered women, "Pray for your husband; God will protect you" and "Christ suffered and died for you on the cross. . . . Can't you bear some suffering, too?"⁵ Some rabbis also accuse battered women of provoking their husbands' violence, trivialize the assaults, and advise abused women to go home and submit to their husbands.⁶

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¹ Remarks of Bess Myerson to the NOW Legal Defense and Education Fund Leadership Council, June 6, 1994.

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¹ Ragsdale, *The Role of Religious Institutions in Responding to the Domestic Violence Crisis*, 58 Alb L Rev 101, 120 (1995).

² *Id.* at 109.

³ *Id.* at 104.

⁴ *Id.* at 104-5.

⁵ *Id.* at 106.

⁶ Spitzer, "Shalom Bayit" and Kabbalat Shabbat Service in Domestic Violence/ Family Violence Awareness: Rabbi Kit 8.

§ 1:48 — — Low self-esteem

The phrase “low self-esteem” has become such a cliché that it is difficult to bring its meaning into focus. Self-esteem is a critical aspect of personality development. It involves a sense of oneself as intelligent, competent, and able to cause positive things to happen through one’s own efforts. Self-esteem shapes one’s sense of self-worth and independence. Many battered women are deprived of self-esteem through repeated humiliations by their partner. They are repeatedly told that they are failures, that they are so useless and undesirable that no one else except the batterer would want to be with or help them. The destruction of self-esteem is a central aspect of the coercive control batterers exert. It is the reason why protocols of questions for lawyers to use in identifying battering include not only questions about physical violence and forced sex, but also, “Does your partner constantly criticize you and your abilities as a wife or partner, mother, or employee?”¹ Over time, many battered women come to believe their batterer’s propaganda. These women’s self-esteem is destroyed and they perceive themselves as unworthy, incompetent, and unable to survive in the world without the batterer.

Some cases in which battered women stay because they perceive themselves as failures are especially puzzling because to the outside world the woman functions extremely well. She may be an excellent mother, she may hold a demanding job. These spheres in which the battered woman is effective despite her own poor self-image are called “islands of functioning,” a phrase which clearly conjures the situation of someone otherwise adrift in a sea of helplessness.

§ 1:49 — — Insensitivity of the justice system

When battered women finally turn to the justice system for protection, they are often treated with derision. Police, prosecutors, court personnel (including some attorneys appointed by the court to represent them), and judges may trivialize their complaints as mere

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¹ New York State Office for the Prevention of Domestic Violence, OPDV Bull 6, 8 (1994). For a complete discussion of a protocol for lawyers for identifying battered women and the reasons battered women may refuse to tell their lawyers that they are being battered, see Waits, Battered Women and Family Lawyers: The Need for an Identification Protocol, 58 Alb L Rev 1027 (1995). See also Valente, Addressing Domestic Violence: The Role of the Family Law Practitioner, 29 Fam L Q 187 (1995) (special issue on domestic violence which also includes other valuable articles).

family matters that do not belong in court. Serious physical assaults often go unpunished. In some jurisdictions, even where orders of protection ordering batterers to stay away from the victim are issued, violations of those orders, including vicious assaults, may result in a mere slap on the wrist.¹ Police often ignore complaints by women who are being abused. They do not want to become involved in "family matters." In *Thurman v. Torrington*, a multi-million dollar judgment was entered against a Connecticut police department whose officers literally sat in a police car watching a man beat and stab his wife so severely that she became a quadriplegic.² There are many cases from all over the country where judges impose *de minimis* sentences on men who abuse, and even kill, their partners. For example, in 1994, a Baltimore judge sentenced a man who shot his wife in the head with a hunting rifle to eighteen months, to be served on work release. The judge sympathized with the defendant, who found his wife in bed with another man, and commented, "I seriously wonder how many married men . . . would have the strength to walk away without inflicting some corporal punishment. . . . I shudder to think what I would do."³

The clear message all these cases send to battered women is that they might as well stay with their abuser because police and the courts will not protect them. Women of color are particularly wary of turning to the justice system because they know all too well that some police, court personnel and judges assume that people of color are inherently more violent and not worth trying to protect.⁴

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¹ Schafran, *Overwhelming Evidence: Reports on Gender Bias in the Courts*, Trial 30 (Feb. 1990). For information about obtaining these reports write: National Judicial Education Program, 99 Hudson Street, 12th floor, NY, NY 10013.

² *Thurman v. Torrington*, 595 F. Supp. 1521 (D. Conn. 1984).

³ Reporter's Official Transcript of Proceedings (Sentencing) at 4-5, Peacock, (No. 94-CR-0943). See also Schafran, *There's No Accounting for Judges*, Alb L Rev 103, 104 (May 1995).

⁴ See Hawkins, *Devalued Lives and Racial Stereotypes: Ideological Barriers to the Prevention of Violence Among Blacks in Violence in the Black Family* 189-206 (1987), and Tong, *Black Perspective on Women, Sex and the Law in Women, Sex and the Law* 153 (1984).

§ 1:50 — Domestic violence committed by women against men

Myth 10: Domestic violence committed by women against men is equivalent to the domestic violence men commit against women.

Fact: Although some women do commit violent acts against men, women do not subject men to the coercive control, physical intimidation, chronic fear, isolation, entrapment, and stalking which are the hallmarks of battering.

The myth that there is a “symmetry” in the domestic violence engaged in by women and men, and that women are as violent as men, has become increasingly popular in recent years.¹ We can expect this myth to be played up as was the rough sex defense in several recent murder cases.² Indeed, this is already happening. Where these distortions can take us is illustrated by the New York case noted at the beginning of this chapter in which a college student angry at his girlfriend for breaking up with him clubbed her with a length of wire cable and stabbed her in the head. She had four knives in her head, while he had a small cut between two fingers. He pleaded self-defense and was acquitted.³

The myth of “symmetry” in domestic violence arises from a profoundly flawed research methodology predicated on a survey research instrument called the Conflict Tactics Scale (CTS). In this survey currently married⁴ women and men are asked such ques-

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¹ E.g., Dunn, Truth Abuse, New Republic, Aug. 1, 1994, at 16; Farrell, Spouse Abuse: A Two-Way Street, USA Today, June 29, 1994, at 15A; Brott, When Women Abuse Men, Wash Post, Dec. 28, 1983; Straus, Physical Assaults by Wives: A Major Social Problem, in Current Controversies on Family Violence 67 (Gelles & Loeseke, eds. 1993); McNeely & Robinson-Simpson, The Truth About Domestic Violence: A Falsely Framed Issue, Soc Work 485 (Nov.-Dec. 1987).

² See, e.g., Maximum Sentence in Woman's Strangling, NY Times, Dec. 13, 1994, at B9 (businessman claimed he choked his girlfriend accidentally during rough sex); Linden, The Preppie Killer Cops a Plea, Time, Apr. 4, 1988, at 22 (Robert Chambers, the first recent rough sex defendant).

³ Linda Stasi, Men & Women Fight, NY Post, May 15, 1995, at 4.

⁴ As discussed earlier, gathering data about domestic violence by questioning currently married couples ignores the fact that the large majority of the most serious assaults and murders occur when the woman tries to escape the abusive relationship. Bureau of Justice Statistics, Dep't of Justice, Violence Against Women: Estimates from the Redesigned Survey, Aug. 1995, at 3. Because the Conflict Tactics Scale asks only about violence used to resolve conflicts, it misses many serious cases in which the purpose of the

tions as, "Have you hit your partner in the last year?" Roughly equal numbers of women and men say yes. The problems with claims that the Conflicts Tactics Scale demonstrates a symmetry in women's and men's spousal abuse are at least threefold.

First, the CTS is administered to married couples only. The most and the worst domestic violence is inflicted on women who have left their husbands and boyfriends by men who cannot stand losing control over them. According to the new Bureau of Justice Statistics report, in 1992-1993 the victimization rate of women separated from their husbands was three times higher than that of divorced women and twenty-five times higher than that of married women.⁵ The CTS cannot capture the myriad stalking cases where men separated and divorced from their wives beat, rape and murder them.⁶

Second, the CTS focuses on whether couples use violence to resolve disputes. As Evan Stark points out, this means that many serious cases in which the purpose of the violence is to intimidate and control will be missed.⁷ No question on the CTS would capture Chris Bailey's locking his wife into their home and disconnecting the telephone lines,⁸ although legally this is false imprisonment. The CTS would not capture the myriad cases in which men use unpredictable violence as a tool to maintain control, assaulting their wives for no apparent reason and with no apparent pattern to keep these women off balance and remind them of who is boss.

Third, the CTS questions have no context. We do not know who hit whom with what: an open hand or a length of wire cable. We do not know the history of the relationship: was this the first time she

violence is solely to intimidate or coerce. See Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 Alb L Rev 983 (1995).

⁵ Bureau of Justice Statistics, Dep't of Justice, *Violence Against Women: Estimates from the Redesigned Survey*, Aug. 1995, at 4. This translates to one of every twelve separated women as compared to one of every 370 married women reporting violence by an intimate. *Attacks on Women Usually by an Intimate*, Nat'l L J, Aug. 28, 1995, at A14.

⁶ See discussion of stalking at § 1:51, *infra*.

⁷ Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 Alb L Rev 973, 986 (1995).

⁸ *United States v. Bailey*, 886 F. Supp. 7 (W. Va. 1995); *Man Guilty Under Federal Abuse Law*, NY *Newsday*, May 24, 1995; details of defendant Bailey's treatment of his victims also come from Rebecca Betts, U.S. Attorney for West Virginia, Remarks to the Federal Magistrate Judges Workshop, June 15, 1995, at 13.

struck back after years of his physical attacks? This context makes a vast difference in whether we should label these acts "violent" or see them as equivalent when committed by men and women. As one commentator notes, "The failure . . . to distinguish between a situation in which a temporarily angered woman slaps a man who laughs derisively at her futile gesture from the controlling slap that loosens a 'disobedient' wife's teeth ignores matters of motivation and consequence that are central to the understanding of family violence."⁹

These studies ignore the purposes for which women and men use violence in their relationships. For women, violent acts are usually an expression of emotion or an act of self-defense. These are qualitatively different purposes from coercion and control. Men's violence and threats of violence induce fear and terror in their female partners in a way that shapes these women's lives. This is rarely true of women's violent acts toward men.¹⁰ Women do use weapons more often than men, but it is most probably because the disparity in size and strength between men and women obliges women to use weapons for self-defense.

The most thorough explanation of why research utilizing the Conflicts Tactics Scale is unreliable is an article by Russell P. Dobash, R. Emerson Dobash, Margo Wilson, and Martin Daly titled "The Myth

⁹ Johnson, *A Woman's Place?*, *Mother Jones*, Jan/Feb 1995, at 8, Letter to the Editor.

¹⁰ This reality was documented in a recent study which sought to learn whether arguments in couples where the husband is violent differed from those in nonviolent couples. The study involved sixty couples experiencing husband-to-wife domestic violence and thirty-two whose marriages were troubled but not violent. In both types of marriages almost all the wives admitted to at least a low level of violence themselves. The researchers wanted to learn how violent behavior by a wife differs from violent behavior by a husband, what triggers the violence, what can end it, and how the other spouse feels about it. They found that: women were violent only in reaction to their husbands' violence; husbands became violent for multiple reasons and there was no action their wives could take to stop it; only the wives of abusers were frightened during arguments; and the abusers knew they frightened their wives. Neither the wives of nonabusive men nor any of the men in either type of marriage reported feeling fear when they argued with their spouses. The study concluded that abusive men deliberately use violence to control their wives and that there is no way their wives can stop them. Jacobson, et al., *Affect, Verbal Content and Psychopathology in the Arguments of Couples with a Violent Husband*, 62 *J Consulting & Clinical Psychol* (1994).

of Sexual Symmetry in Marital Violence.”¹¹ This article details the authors’ and others’ research into the methodological flaws in the CTS scale. For example, one researcher gave the CTS to 103 couples, and then conducted intensive interviews to check its meaningfulness. She concluded:

While CTS items appear behaviorally specific, their meanings still are open to interpretation. In one couple who endorsed the item “kicking,” for example, we discovered that the kicking took place in bed in a more kidding, than serious fashion. Although this behavior meets the criterion for severe abuse on the CTS, neither spouse viewed it as aggressive, let alone violent. In another couple, the wife scored on severe physical aggression while the husband scored on low-level aggression only. The inquiry revealed that, after years of passively accepting the husband’s repeated abuse, this wife finally decided, on one occasion, to retaliate by hitting him over the head with a wine decanter.¹²

“The Myth of Sexual Symmetry in Marital Violence” investigates the data respecting both the CTS scale and the data on partner homicides, which have also been used to claim a “symmetry” for men’s and women’s violence toward one another. The researchers conclude that “[t]he evidence is overwhelming that a large proportion of the spouse-killings perpetrated by wives, but almost none of those perpetrated by husbands, are acts of self-defense. Unlike men, women kill male partners after years of suffering physical violence, after they have exhausted all available sources of assistance, when they feel trapped, and because they fear for their own lives.”¹³

¹¹ Dobash, et al., *The Myth of Sexual Symmetry in Marital Violence*, 39 Soc Probs 71 (Feb. 1992). The myth of symmetry is also exposed by the new Bureau of Justice Statistics’ report. Bureau of Justice Statistics, Dep’t of Justice, *Violence Against Women: Estimates from the Redesigned Survey*, Aug. 1995, at 5. The average annual percentage of violent victimization by an intimate (a spouse, ex-spouse, current or former boyfriend or girlfriend) is 29 percent for women and 4 percent for men. *Id.*

¹² *Id.* at 79.

¹³ *Id.* at 81. The Bureau of Justice Statistics reports that “[f]emale victims of homicide were significantly more likely to be killed by a husband, ex-husband, or boyfriend than male victims were to be killed by their wife, ex-wife, or girlfriend. In 1992 approximately 28 percent of female victims of homicide (1,414 women) were known to have been killed by their husband, ex-husband, or boyfriend. In contrast, just over 3 percent of male homicide victims (637 men) were known to have been killed by their wife, ex-wife, or girlfriend,” Bureau of Justice Statistics, Dep’t of Justice, *Violence Against Women: Estimates from the Redesigned Survey*, Aug. 1995, at 4.

Finally, the myth that there is symmetry in the violence between men and women is completely shattered by a variety of studies on the incidence of partner violence and marital rape. For example, according to the National Crime Victimization Survey for 1992–1993, 29 percent of female victims as compared to 4 percent of male victims reported violent victimization by an intimate, meaning a spouse, ex-spouse, current or former boyfriend or girlfriend.¹⁴ Among female victims of rape and sexual assault, 26 percent reported rape by an intimate. Among male rape and sexual assault victims the percentage who reported rape by an intimate was statistically insignificant.¹⁵

Some women commit violent acts against men that are not acts of self-defense, and some of these acts result in serious injury. These cases are no less reprehensible because women are the perpetrators. When police and judges laugh off the men in these situations and tell them to hit back or take care of themselves, as does sometimes happen, it is no more acceptable than when violence against women is trivialized. Nonetheless, we should not be misled by individual cases into finding a symmetry between men's and women's violence toward one another which does not exist.

§ 1:51 Myths about stalking

Stalking is a widespread, apparently increasing and vastly misunderstood crime. For those who have never experienced it, many of the manifestations of stalking seem harmless. Why be afraid of a man who calls you repeatedly or parks his car outside your home or office for a few hours so long as he keeps his distance? But for those victimized by stalking, it is a form of terrorism that shapes the pattern of their entire lives. Although celebrity stalking gets the most press, the majority of stalking victims and those at greatest risk of physical assault and death are women who have ended relationships with abusive men. This is the group of stalking victims on which this discussion focuses.

§ 1:52 — Violence of stalking

Myth 1: Stalking is not a violent crime.

¹⁴ Bureau of Justice Statistics, Dep't of Justice, Violence Against Women: Estimates from the Redesigned Survey, Aug. 1995, at 3.

¹⁵ Id. Of course, male under-reporting of rape by intimate partners is a factor, but it is extremely unlikely to account for the dramatic disparity of these statistics.

Fact: The fact that stalking does not involve physical contact does not mean it does no violence to the victim. Stalking is a form of terrorism which inflicts profound psychological trauma and is often the prelude to physical assault, rape, and murder.

Stalking is usually defined as the willful, malicious, and repeated following or harassing of another person while making a credible threat that places that person in reasonable fear of death or great bodily injury. State statutes which focus on the victim's state of mind include, for example, Michigan's, which requires that to label a course of conduct stalking it must "cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested."¹

A victim seeking to utilize stalking statutes often finds that those to whom she turns for protection do not see the stalker's behavior as she does. They discount her fears, perceive no credible threat and label her unreasonable. Their reaction is similar to that criticized in the earlier cited sexual harassment case of *Ellison v. Brady*, where the court said "[m]en, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or underlying threat of violence a woman may perceive."² As the California Court of Appeal wrote in *People v. Romero*, "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."³

That stalking is a form of terrorism was recognized by both the California judge who initiated development of that state's stalking statute and the state senator who introduced it. The judge proposed that the statutory language be drawn from the California penal law defining terrorism. The senator wrote that the legislation was needed to "provide law enforcement with the tools necessary to arrest [stalkers] before they can make good their threats" and to indicate to stalkers that "the people of the State of California will no longer stand for the systematic terrorism of innocent victims."⁴

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¹ Mich Comp Laws § 600.2950(d).

² *Ellison v. Brady*, 924 F. 2d 872, 879 (9th Cir. 1991).

³ *People v. Romero*, 13 Cal. Rptr. 2d 332, 338 (Ct. App. 1992).

⁴ The legislative history of the California stalking statute is discussed in Bernstein, *Living Under Siege: Do Stalking Laws Protect Domestic Violence Victims?*, 15 Cardozo L Rev 525 (1993).

One commentator proposes that the menace of stalking by a former intimate partner is best understood as the fourth phase of the three-phase cycle of domestic violence described by Lenore Walker.⁵ As noted earlier, Walker describes battering relationships as having three phases. The first is a tension-building phase characterized by minor battering incidents in which the batterer acts out his suspiciousness, jealousy and need to control in order to bolster his low self-esteem. The second phase is the acute battery. The third phase is a period in which the batterer begs forgiveness and promises to reform.⁶

Stalking by a former partner can be seen as the fourth phase of this cycle which occurs after the victim has left the batterer — when he becomes obsessed with reestablishing the relationship and his control over her. It is well known that the most dangerous time for a battered woman is when she leaves the relationship, which is precisely why many stay.⁷ The women who do leave often spend the rest of their lives in fear and on the run.

If the wife does manage to escape, her husband often stalks her like a hunted animal. He scours the neighborhood, contacts friends and relatives, goes to all the likely places where she might have sought refuge, and checks with public agencies to track her down. . . . Unless she can afford to leave town and effectively disappear, a woman is never quite safe from a stalking husband.⁸

When stalking is understood as the fourth phase of the battering cycle, or in the context of the ongoing pattern of coercive control described by Evan Stark,⁹ stalking behaviors that observers perceive as annoying but innocuous take on a different meaning and the victims' fears become reasonable. A woman who has lived with a man who coerced and controlled her through physical and psychological abuse and threatened to find and destroy her if she ever left him knows how dangerous any contact with this man is. When he sends her roses after she has made it clear she wants no contact with him, appears in the doorway of her workplace, follows her home from work, parks outside her home, telephones her repeatedly, slashes her car tires and other "preliminary" behaviors, she understands his

⁵ Id.

⁶ Walker, *The Battered Woman Syndrome* (1984).

⁷ See § 1:43, *supra*.

⁸ Martin, *Battered Wives* 77 (1976).

⁹ Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 Alb L Rev 973, 986 (1995).

message and is right to be terrified. Instilling terror in another human being is a violent act.

Stalking is frequently a prelude to assault, rape and murder. Intimate partner stalkers rarely stop with no-contact behaviors. Rather, their actions escalate to property damage (e.g., tire slashing, break-ins, arson)¹⁰ and then to assault, rape, and murder. Cases revealing this pattern are legion. When a Tampa waitress broke up with her boyfriend he began by coming to her restaurant and staring at her, then phoned her repeatedly with threats to "hurt you like you hurt me," then moved on to tampering with her brakes before he was stopped.¹¹ The husband of a Baltimore woman with a stay-away order cornered her in a Laundromat and set her afire.¹² In *Thurman v. City of Torrington*,¹³ the victim, who also had a stay-away order, was repeatedly harassed, threatened, and assaulted until the day multiple stab wounds left her a paraplegic. A Utah man outraged over his divorce harassed his wife with threatening phone calls and letters, broke into her home, and upon "graduation" from a court ordered eight-hour anger management program broke into her home again and murdered her.¹⁴ *Ricketts v. City of Columbia*, described earlier, involved stalking that led to rape and murder.¹⁵ It is estimated that 90 percent of the women murdered by their former partners have been stalked.¹⁶

¹⁰ Arson, of course, can also be lethal. In 1990 a New York man angered that his girlfriend had ended their relationship set fire to the illegal social club in which she worked because he "wanted to get back together" with her. Eighty-seven people died. Wichers, *Male Violence the Real Cause of Bronx Fire*, NY Times, Letters to the Editor, Apr. 10, 1990, at A20.

¹¹ Tuten, *I Was Stalked*, McCall's, Aug. 1995, at 35.

¹² Hill, *Victims Urge More Protection Under Maryland Domestic Violence Law*, Wash Post, Feb. 25, 1992, at C5.

¹³ *Thurman v. Torrington*, 595 F. Supp. 1521 (D. Conn. 1984) (first case to impose municipal liability on police for failing to protect a domestic violence victim).

¹⁴ *Day One: Soft on Domestic Violence?* (ABC television broadcast, Feb. 2, 1995) (LEXIS, News Library, Curnws File). When the judge was asked why he had not treated the ex-husband's threats and break-in as the serious crimes they were, the judge said he, too, had been through a painful divorce and understood that Clark was angry, felt alone, and thought no one cared about him. *Id.*

¹⁵ *Ricketts v. City of Columbia*, 36 F.3d 775 (8th Cir. 1994).

¹⁶ Beck, *Murderous Obsession*, Newsweek, July 13, 1992, at 61.

§ 1:53 — Actual harm

Myth 2: Stalking itself does no real harm.

Fact: Being stalked is psychologically terrifying and turns the victim's life into a prison.

The harm that stalking itself does and the importance of making clear on the record just how it affects the victim is illustrated by the preliminary hearing in a Michigan case called *People v. Ransom*.¹ The defendant was the complaining witness's former boyfriend with whom she had had a child out of wedlock and a supervised visitation order. The defendant was charged with aggravated stalking because of his repeated telephone calls to the witness's home in which he said "he loved me and . . . he didn't want me to be with anyone else."² The prosecutor had the victim list the number of calls on the dates in question but asked only one question about how the calls made the witness feel. She answered, "Very threatened, nervous. Just basically drove me crazy and . . . he'd threaten me."³ The defense attorney elicited the fact that the defendant had pushed her but never actually hit her.

The judge, mindful of the need to document the victim's fears fully on the record so her perception of threat would be credible to others, asked the witness several questions about how the calls made her feel and whether they caused her to change her behavior.⁴ The judge learned that in these calls the defendant threatened to kill the witness because he did not want her to have anyone else,⁵ that she feared defendant because of his drug use and did not know what he

[Section 1:53]

¹ *People v. Ransom*, No. 95-CR-582 (D. Mich. Mar. 28, 1995).

² *Id.* (reporter's transcript).

³ *Id.* at 16.

⁴ *People v. Ransom*, No. 95-CR-582 (D. Mich. Mar. 28, 1995). The judge explained his detailed questioning of the witness by quoting the following statement from Schafran, *Credibility in the Courts: Why is There a Gender Gap?*, Judge's J 5-6 (Winter 1995):

[C]ontextual credibility is what I was looking for and by that I mean credibility that depends upon understanding the context of the claim. How can you assess someone's credibility if you literally do not know what she's talking about [,] which is often the case when the matter is about women's life experiences. Our justice system, like our entire society [,] is unused to hearing women talk about their lives. An individual has a hard time being perceived as credible when she is talking about an area about which people, both men and women, have few facts and many mistaken opinion[s].

(Reporter's transcript.)

⁵ *Id.* at 31.

was capable of,⁶ that when he was out of jail she always had someone follow her home because she feared his coming to get her,⁷ that she had developed ulcers,⁸ that she had placed locks on her windows and three deadbolts on her doors,⁹ and that while she once would have driven to the store and left her car door unlocked while she shopped, she would never do that now.¹⁰ These answers led to a question from the defense attorney which produced the information that when the defendant was in jail she called every few nights to be sure he was still there so she could go home in peace.¹¹

Obviously someone reading this transcript in *People v. Ransom* could still discount the witness's response as an overreaction to a string of annoying telephone calls and some hot air threats. But this transcript amply demonstrates how stalking behavior as "innocuous" as phone calls can be traumatizing for the victim.

§ 1:54 Myths about child sexual abuse/incest

Child sexual abuse cases are among the most difficult issues with which law enforcers, attorneys, judges, and jurors must deal. Just how difficult is captured by a therapist who says of his own profession's response to the feelings stirred up by these cases, "It's as if we don't want to know what can really happen to children. It's as if we're protecting our own image of childhood; our own image of a benign world."¹

The horror of child sexual abuse is elevated when the abuse occurs within the family, most painfully when the abuser is a parent. Incest challenges people's most cherished beliefs about what childhood and parenthood should be. The wish to see these beliefs reflected in every household is particularly strong when the abuser "looks like us." When an abuser shares the observer's economic class, race, gender, educational level, or other characteristic, it becomes even more painful to acknowledge that such a person could have deviated so far from the norm of what a parent should be. Indeed, the revulsion

⁶ Id. at 32.

⁷ Id. at 34-35.

⁸ Id. at 35.

⁹ Id.

¹⁰ Id. at 36.

¹¹ Id. at 37.

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¹ Pinus, UCLA School of Medicine, Healing Our Children (Baxley Media Group).

leads many people to assume that an incestuous parent must be “sick” in a way that would produce a finding of obvious abnormality on psychological tests. This thought process leads to a situation in which an accused who is not demonstrably “sick” (for example, psychotic) according to standardized psychological tests is perceived as not guilty.

Yet the reality is that “sickness” in this sense of a demonstrable psychological pathology is atypical of child sexual abusers and other sex offenders.² While revulsion and the assumption that a sexually abusive parent must be certifiably “sick” is an understandable response, it is not an informed response, and it leads to a failure to protect children and punish offenders.

§ 1:55 — Frequency

Myth 1: Child sexual abuse is rare and incest cases are one in a million.

Fact: At least 20 percent of American women and 5–10 percent of American men experienced some form of sexual abuse as children. Family members constituted one-third to one-half of the perpetrators against girls and 10–20 percent of the perpetrators against boys.¹

Our best information about the prevalence of child sexual abuse and incest comes from retrospective surveys in which a scientifically selected sample of individuals from the general population (i.e., not in therapy) are asked about their childhood experiences. A review of nineteen of these retrospective studies of adults yielded the figures cited above. Most of the abuse was committed by men (90 percent) and by persons known to the child (70–90 percent). Around 20–25 percent of cases involved penetration or oral-genital contact. The peak age of vulnerability was between seven to thirteen.²

² Abel, et al., *Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs*, 2 *J Interpersonal Violence* 3 (1987). The offenders in this study included 159 men who incestuously abused girls and 44 men who incestuously abused boys (id. at 19). The study found that contrary to stereotypes, these nonincarcerated sex offenders were well-educated and came from the full spectrum of socioeconomic levels (id. at 12–13).

[Section 1:55]

¹ Finkelhor, *Current Information on the Scope and Nature of Child Sexual Abuse*, in *Sexual Abuse of Children, The Future of Children* (Summer/Fall 1994).

² Id.

In sociologist Diana Russell's study of 930 randomly chosen women residents of San Francisco, 16 percent had been sexually abused by a relative before the age of eighteen, and 4.5 percent had been sexually abused by their fathers before this age. When incestuous abuse occurs, it is often repeated many times. In this study, such abuse occurred a single time in only 43 percent of the cases.³ In the *Rape in America* study described earlier in this chapter, 29 percent of all forcible rapes occurred when the victim was younger than eleven years old, while another 32 percent occurred between the ages of eleven and seventeen.⁴

The myth that child sexual abuse is rare and "incest cases are one in a million" gained currency because of a 1955 study by Max Weinberg which concluded that child sexual abuse was extremely rare and that incest victims numbered only one in a million in the English-speaking world.⁵ This study had tremendous influence even though it was contrary to long existing knowledge about the prevalence of child sexual abuse.⁶ As early as 1856 French forensic scientists documented tens of thousands of child sexual abuse and rape cases.⁷ They concluded that children's reports of sexual abuse were largely truthful even where the children exhibited no signs of physical abuse.⁸ Researchers also concluded that assaults against children were very frequent and that fathers and brothers were often the perpetrators.⁹ In addition, researchers noted that "higher education" did not inhibit men from committing such acts.¹⁰ In modern times, ongoing research since 1929 has documented high rates of

³ Russell, *Sexual Exploitation* (1984).

⁴ Crime Victims Research and Treatment Center, *Rape in America: A Report to the Nation* 13 (1992).

⁵ Olafson, Corwin & Summit, *Modern History of Child Sexual Abuse Awareness: Cycles of Discovery and Suppression*, 17 *Child Abuse & Neglect* 15 (1991).

⁶ Id. See also Salter, *Treating Child Sex Offenders and Victims* 22 (1988). The consequences of this myth are many, among them that clinicians trained as late as the 1970's were given no instruction in treating incest victims because, they were told, they would never see one in their practice.

⁷ Olafson, Corwin & Summit, *Modern History of Child Sexual Abuse Awareness: Cycles of Discovery and Suppression*, 17 *Child Abuse & Neglect* 9-10 (1991) (citing Masson, *The Assault On Truth: Freud's Suppression of The Seduction Theory* (1984)).

⁸ Id.

⁹ Id. at 10.

¹⁰ Id.

child sexual abuse.¹¹

§ 1:56 — Harm to victim

Myth 2: Incest is not harmful to the victim.

Fact: Although every child responds differently and there is no universal effect of sexual abuse experiences, child sexual abuse often results in short and long term harms to the victim. Incest is especially harmful.

According to Dr. Anna Freud, Sigmund Freud's daughter and an internationally respected authority on child psychiatry, "Where the chances of harming a child's normal developmental growth are concerned, [incest] ranks higher than abandonment, neglect, physical maltreatment or any other form of abuse. . . . It would be a fatal mistake to underrate either the importance or the frequency of its actual occurrence."¹

Today there is far greater understanding than in the past of the harm of child sexual abuse, yet the dismissive attitude that once prevailed has not been eliminated. In the 1950's, noted sex researcher Alfred Kinsey found that 24 percent of the women he surveyed reported child sexual abuse and that it had terrified and disgusted them, yet he expressed little sympathy for the victims. "It is difficult to understand why a child, except for its cultural conditioning, should be disturbed by having its genitalia touched."² Kinsey's associates continued to promulgate this view into the 1970's, with articles in magazines such as *Forum* and *Penthouse*.³ Perpetrators of abuse certainly see no harm in their actions, claiming, for example that they were doing their daughters a favor by teaching them about sex.

In fact, child sexual abuse may produce a wide range of harmful symptoms including: (1) for pre-schoolers: aggression, anxiety, depression, internalizing, externalizing, and inappropriate sexual behavior; (2) for school-age children: fear, neurotic and general mental illness, aggression, nightmares, school problems, hyperactivity, and regressive behavior; and (3) for adolescents: depression, withdraw, suicidal, or self-injurious behaviors, somatic complaints,

¹¹ See Salter, *Treating Child Sex Offenders and Victims* 22 (1988).
[Section 1:56]

¹ Freud, *A Psychoanalyst's View of Sexual Abuse by Parents in Sexually Abused Children and Their Families* 34 (Mrazek & Kempe, eds. 1981).

² Kinsey, et al., *Sexual Behavior in the Human Female* 121 (1953).

³ See Salter, *Treating Child Sex Offenders and Victims* 24 (1988).

illegal acts, running away, and substance abuse.⁴

There is a strong relationship between early incestuous abuse and later experiences of victimization. Research shows a connection between incest abuse and drug abuse, prostitution, suicide, mental illness, self-mutilation, alcoholism, running away from home, and later becoming a mother who is less able to protect her daughters from incest victimization.⁵

§ 1:57 — — Long-term effects

The harms of child sexual abuse and incest often continue into adult life.¹ One of the most important findings about the effects of child sexual abuse is that the impact may not be apparent until many years later. Studies show that many more serious outcomes are not observed until adolescence or adulthood.² Adults in the general population who have been sexually abused have more symptoms of depression, anxiety, somatization, and dissociation.³ Sexual abuse in childhood increases the risk of receiving certain psychiatric diagnoses as an adult.⁴

These observations have led researchers and clinicians to postulate a "sleeping effect" of sexual abuse experiences.⁵ In this conceptualization, the true impact of sexual abuse may not be determined based on children's initial responses. In some cases, children

⁴ Kendall-Tackett, Williams & Finkelhor, Impact of Sexual Abuse on Children: A Review and Synthesis of Recent Empirical Studies, 113 *Psychol Bull* 167 (1993); Walker, Abused Women and Survivor Therapy 62, 63 (1994).

⁵ Russell, The Secret Trauma: Incest in the Lives of Girls and Women 12 (1986).

[Section 1:57]

¹ Herman, Father-Daughter Incest (1971); Walker, Abused Women and Survivor Therapy 62, 63 (1994) (citation omitted).

² For example, in a 1988 study, the prevalence of incest was extremely high in adult patients who experienced the following symptoms: compulsive sexual behavior; chemical dependency; sadomasochistic sexual fantasy; sexual identity issues; chronic fatigue; and loss of interest in sex. Salter, Epidemiology of Child Sexual Abuse, in 1 *The Sexual Abuse of Children: Theory and Research* 131 (1992).

³ Briere & Runtz, Symptomatology Associated with Childhood Sexual Victimization in a Nonclinical Sample, 13 *Child Abuse & Neglect* 281 (1988).

⁴ Saunders, et al., Child Sexual Assault as a Risk Factor for Mental Disorders Among Women: A Community Survey, 7 *J Interpersonal Violence* 189 (1992).

⁵ Briere, Child Abuse Trauma (1992).

may employ coping strategies which suppress the psychological impact of the experience. Avoiding, forgetting, or denying may be adaptive as initial survival mechanisms, but become maladaptive over time. Certain aspects of abuse experiences cannot be addressed fully until the appropriate developmental stage has been reached. For example, the impact on sexual or intimate relationships is only relevant once children reach adolescence.

The nature of the sexual abuse experiences and aftermath also affect the level of psychological impact. Sexual abuse experiences involving violence, penetration, longer duration, greater frequency, and a close relationship to the offender are more damaging.⁶ Children who blame themselves have more symptoms.⁷ Negative characteristics of the family environment and lack of family support consistently correlate with more severe emotional effects.⁸

§ 1:58 — Post-Traumatic Stress Disorder (PTSD)

Many victims of child sexual abuse and incest experience Post-Traumatic Stress Disorder (PTSD) as adults. Researchers have outlined three groups of adult symptoms of PTSD. The first is cognitive disturbances, including intrusive and amnesiac memory disturbances. The second is high avoidance or depressive symptoms. The third is high arousal, anxiety, panic, and phobic symptoms.¹ These symptoms develop over time and the emotional impact tends to be more severe in adults than in children.² Often adult incest survivors experience PTSD-related flashbacks such as sudden, intrusive sensory experiences (i.e. visual, auditory, olfactory and tactile sensations) reminiscent of the abuse.³ These flashbacks are commonly triggered by sexual stimuli, abusive behavior by other adults, disclosure of one's abusive experiences to others, and reading and seeing sexual or violent media depictions.⁴

⁶ See, e.g., Conte & Schuerman, Factors Associated with an Increased Impact of Sexual Abuse, 11 Child Abuse & Neglect 201 (1987).

⁷ Morrow, Attributions of Female Adolescent Incest Victims Regarding Their Molestation, 15 Child Abuse & Neglect 477 (1991).

⁸ Everson et al., Maternal Support Following Disclosure of Incest, 59 Am J Orthopsychiatry 198 (1989).

[Section 1:58]

¹ Walker, Abused Women and Survivor Therapy 110 (1994).

² Id.

³ Briere, et al., Immediate and Long Term Impacts of Child Sexual Abuse,

⁴ Sexual Abuse of Children 55, 56 (1994).

⁴ Id.

Victims of child sex abuse do not inevitably experience permanent harm. In one study, many of the women who experienced child molestation but felt (and tested) well-adjusted as adults had supportive family members or friends who helped them overcome the trauma.⁵ However, in her own study, Dr. Herman found that:

All, without exception, felt somehow branded or marked by their experiences. . . . The most common complaint was a feeling of being set apart from other people. Many of the women . . . stated that they knew they could never be "normal," even though they might appear so to others. The sense of being an outsider, cut off from ordinary human intercourse, often reached extreme proportions. . . .⁶

Many women made an explicit connection between their feelings of isolation and the incest secret. Although they had been helpless as children to prevent the incest, they nevertheless felt that they had committed an unpardonable sin which left them permanently stigmatized. The feelings of shame did not dissolve easily once the incestuous "affair" had ended but persisted into adult life. Many women felt that what set them apart from others was their own evilness. . . . The incest secret formed the core of their identity.⁷

In one woman's words: "I put a vault around myself."⁸

Although isolated, many of the women reported that they had not learned to establish proper boundaries vis-à-vis their fathers. They often felt "watched over, invaded, or surrounded" by their fathers, even as grown women. One woman fantasized that whenever she was with a man, her father knew what she was doing and could come at any moment to drag her home.⁹

For these women, the feeling of isolation was intensified because of their inability to form trusting relationships. Depression, a negative self-image,¹⁰ promiscuity, alcohol and drug abuse, and further

⁵ Herman, *Father-Daughter Incest* 33 (1971).

⁶ *Id.* at 96.

⁷ *Id.* at 97.

⁸ *Id.* at 99.

⁹ *Id.* at 121.

¹⁰ "Cognitive distortions" refers to an individual's self-perception and assumptions about others. These perceptions are adversely affected by child sexual abuse. An incest survivor sees the world as a dangerous place and has low self-worth. For children raised in nonabusive homes, basic childhood learning concentrates on creating a positive self-image and a sense of hope for the child's future. When childhood experiences are negative, as in sexually abusive situations, the child's self-perceptions are significantly altered

victimization by men were often the result of feeling isolated.

§ 1:59 — — Depression and prevalence of mental disorders

Depression is the most common symptom reported by adults abused as children.¹ A 1984 Los Angeles study showed that sexual abuse among women was associated with a higher incidence of depression and a greater number of depressive episodes over time, and that sexually abused women were more likely to be hospitalized for depression.² Another Los Angeles study found a greater lifetime risk of major depression in women who were sexually abused as children than in those who were not abused.³

Many studies link child sexual abuse with various mental disorders experienced by women. Victims of rape or molestation during childhood are at substantially increased risk for developing depression, various anxiety disorders and sexual disorders.⁴ Many of these mental disorders, such as obsessive-compulsive disorders and agoraphobia, endure throughout the victim's lifetime.⁵

and replaced by feelings of self-blame, mistrust and low self-esteem. Briere & Runtz, Symptomatology Associated with Childhood Sexual Victimization in a Nonclinical Sample, 13 Child Abuse & Neglect 56 (1988).

Further, early interference with a child's growing self-awareness impedes the ability to hone coping mechanisms to use in times of crisis. Without a healthy, grounded sense of self, the victims of sexual abuse lack the ability to comfort themselves adequately during difficult times, often resulting in overreaction to stress. *Id.* at 58.

Low self-esteem encompasses feelings of being isolated and stigmatized. In a 1984 study, 64 percent of women abused as children reported feelings of isolation. The figure for those who suffered abuse from family members in this sample was about 73 percent. Finkelhor et al., Initial and Long-Term Effects: A Review of the Research, A Sourcebook on Child Sexual Abuse 156 (1982).

[Section 1:59]

¹ Walker, Abused Women and Survivor Therapy 152 (1994).

² *Id.* at 153.

³ Briere, et al., Childhood Sexual Abuse: Long-Term Sequelae and Implications for Psychological Assessment, 8 J Interpersonal Violence 321 (1993).

⁴ Kendall-Tackett, Williams & Finkelhor, Impact of Sexual Abuse on Children: A Review and Synthesis of Recent Empirical Studies, 113 Psychol Bull 167 (1993). Walker, Abused Women and Survivor Therapy 62, 63 (1994).

⁵ *Id.*

§ 1:60 — Lifelong psychological debilitation

Myth 3: Anyone sexually abused as a child is psychologically crippled for life.

Fact: Despite the harm that child sexual abuse can inflict, most victims grow up to lead normal, productive lives.

It is essential to keep in mind that every child sexual abuse victim reacts differently based on the individual circumstances of her life, family, personality, and the nature and duration of abuse. In some custody cases, the fact that the mother was abused has been used to paint her as unstable in efforts to deny her custody, even though she is functioning perfectly well as an adult and a parent.

§ 1:61 — Seduction by victims

Myth 4: Child sexual abuse and incest victims are seductresses who invite and provoke their abusers.

Fact: Children are not responsible for their own victimization.

Despite all the public education about child sexual abuse, many people still believe that men do not commit abuse and incest because they want to but because children, especially female children and teenagers, seduce them. The professional literature painting sexually abused children as seductive and blameworthy is detailed by Dr. Anna Salter in *Treating Child Sex Offenders and Victims*.¹ Salter points out that some of this victim-blaming results from the fact that victims of repeated sexual abuse become sexualized in their interactions with the abuser and others, leading observers to confuse cause and effect. Salter writes:

If [the sexualized] child then generalizes the behavior and approaches other adults as she has been taught, to exchange sex for affection, it would seem insupportable to label her as "provocative," rather than as injured by her experiences.²

§ 1:62 — Reporting of abuse

Myth 5: A child who was really abused would immediately report it to someone.

[Section 1:61]

¹ Salter, *Treating Child Sex Offenders and Victims*, in Chapter 2, *The Case Against the Victim and Nonoffending Family Members* (1988).

² *Id.* at 34.

Fact: Like adult victims of rape, victims of child sexual abuse rarely disclose to anyone.¹

According to Roland Summit, a prominent clinician and author in this field:

The average child never asks and never tells. Contrary to the general expectation that the victim would normally seek help, the majority of the victims in retrospective surveys had never told anyone during their childhood. Respondents expressed fear that they would be blamed for what had happened or that a parent would not be able to protect them from retaliation. Many of those who sought help reported that parents became hysterical or punishing or pretended that nothing had happened.²

Often children do not report because they are terrified into silence.³ For example, one woman told her therapist that she never told her parents that a babysitter was molesting her because at age seven she believed his threat that if she told he would lock her in the dark basement when he next babysat. The seven-year-old did not understand that if she told, he would not babysit again. In incest cases, the child is often silenced with threats such as "telling your mother will kill her" or "if you tell, I'll go to jail and it will be your fault." The child is made to feel guilty and to fear abandonment if she discloses.

[Section 1:62]

¹ See supra § 1:13.

² Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 *Child Abuse & Neglect* 177 (1983). Dr. Summit has determined through extensive, in-depth research into thousands of cases that many sexually abused children exhibit five characteristics while coping with their situation. These characteristics are secrecy, helplessness, accommodation (blaming themselves for what has happened), delayed disclosure, and retracting or recanting their story. This behavior was first thought to appear only in intrafamilial situations, but now has been seen to exist in extrafamilial situations as well. Note that Summit uses the word "syndrome" as a term of art. This syndrome does not appear in the *Diagnostic and Statistical Manual of Mental Disorders* (4th ed. 1995) as a diagnosis and is not intended as a forensic tool to determine whether abuse has occurred. The *Diagnostic and Statistical Manual of Mental Disorders*, known as the DSM-IV, is published by the American Psychiatric Association. It lists the profession's agreed-upon categories of mental disorders and their symptoms. There is substantial controversy over the reliability of some of its categories of mental disorders and whether they are manifestations of gender bias.

³ Salter, *Treating Child Sex Offenders and Victims* 34 (1988).

Even those children who do report sometimes recant. Courts permit expert witness testimony to explain delayed disclosure and recantation when these are raised to discredit the child. For example, in an Oregon case a fourteen year old girl accused her father of incest, then recanted. In approving the trial court's admission of expert testimony the Oregon Supreme Court stated:

It would be useful to the jury to know that not just this victim but many child victims are ambivalent about the forcefulness with which they want to pursue the complaint, and it is not uncommon for them to deny the act ever happened. Explaining this specifically bizarre behavior by identifying its emotional antecedents could help the jury better assess the witness's credibility.⁴

§ 1:63 — Victim's understanding of effects into adulthood

Myth 6: Anyone abused as a child or teenager would understand how this experience affected her emotional and psychological development into adulthood.

Fact: Many sexual abuse victims do not make the connection between the abuse and the psychological consequences it later causes in their lives.

There are some victims of child sexual abuse and incest for whom this victimization is the defining experience of their lives and who always understand its impact on them. This is not, however, true for everyone.

As earlier noted, many sexually abused children experience a large number of effects, including depression, guilt, learning difficulties, sexual promiscuity, running away and truancy, self-destructive behaviors, isolation, and dissociative disorders. For some, these effects begin at the time of the abuse, but others experience the delayed "sleeper effect" described earlier. Thus, an abuse survivor who experiences these delayed effects may recall the abuse clearly yet not realize the cause of these effects. Usually it is not until the individual enters therapy to deal with her symptoms (such as depression, inability to trust, and sexual dysfunction) that she learns that the cause of her symptoms is the sexual abuse she experienced in childhood.¹

⁴ State v. Middleton, 657 P.2d 1215, 1220 (Or. 1983).

[Section 1:63]

¹ Note that this discussion relates to adult survivors of child sexual abuse and incest who have always been fully aware that they were abused. The

§ 1:64 — Profiles of child sexual abusers

Myth 7: Child sexual abusers are dirty old perverts you can pick out in a crowd. Incestuous abusers come from lower economic classes and back woods environments.

Fact: Although it is comforting to demonize sex offenders and assume they are “sickies” who can be readily identified, this is simply not the case.

As Fred Berlin, co-director of the Biosexual Psychohormonal Clinic at Johns Hopkins Hospital in Baltimore, Maryland has said:

People often confuse issues of traits of character with issues of sexual orientation or the type of sexual interest an individual has. [Yet] [p]ersons who may be compulsive pedophiles, for instance, may obey the law in other ways, may be responsible in their work, may have concern for other persons. . . . Many people assume if you have a particular sexual orientation, such as the desire for children sexually, that you are “bad” in terms of your traits of character—that you do not care about others, that you are irresponsible in your vocation, that you have perhaps a long history of truancy and delinquency, and so forth. That is not at all necessarily true.¹

Sexual offenders are a heterogeneous group, although the overwhelming majority are male.² They may be of any age, ethnicity, or socioeconomic background. In her exhaustive study of father-daughter incest, Dr. Judith Herman found that the fathers included physicians, college professors, police, military officers, businessmen, and storekeepers.³ Most of the families were churchgoing and financially stable. In the notorious case of Susan Smith who drowned her two young sons, her stepfather acknowledged that he

question of recovered memories of child sexual abuse, that is, situations in which the victim represses this information from her conscious mind during childhood and only recalls it as an adult, usually as the result of therapy, is intensely controversial and beyond the scope of this chapter.

[Section 1:64]

¹ Knopp, Retraining Adult Sex Offenders: Methods and Models 9 (1984).

² One reason may be that men are socialized to be the dominant partner and initiator in the sexual context. Finkelhor et al., Abusers: A Review of the Research, in A Sourcebook on Child Sexual Abuse 95 (1986).

Although less is known about female offenders, there is currently no basis for assuming that they differ significantly from male offenders except they are far more likely to have a prior history of sexual victimization and to offend in conjunction with a male offender. About one-fourth of male offenders report having been sexually abused as children.

³ Herman, Father-Daughter Incest (1971).

had molested her when she was fifteen and had an incestuous relationship with her until six months before the murders, some eight years later. The stepfather, Beverly Russell, was a literal pillar of the community: a stockbroker, chair of the county Republican party, ranking member of the local Christian Coalition, and a prominent supporter of conservative presidential candidate Pat Robertson.⁴

§ 1:65 Conclusion

Litigating cases involving violence against women requires a knowledge of the empirical data and the ability to translate social science into a language acceptable and meaningful to the courts. This knowledge and skill are not likely to come with one's law school training. Fortunately, as the sources cited throughout this chapter demonstrate, for those committed to educating themselves and dispelling the myths that plague this area of the law, there is a substantial, growing and accessible body of empirical research available.

⁴ Hill, Susan Smith's Judgment Day, Wash Post, June 25, 1995, at C5.

APPENDIX 1A Violence Against Women: Estimates From the Redesigned Survey August 1995

U.S. Department of Justice
Office of Justice Programs

National Crime Victimization Survey

August 1995, NCJ-154348

Violence against Women: Estimates from the Redesigned Survey

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Estimating rates of violence against women, particularly sexual assault and other incidents which are perpetrated by intimate offenders, continues to be a difficult task. Many factors inhibit women from reporting these victimizations both to police and to interviewers, including the private nature of the event, the perceived stigma associated with one's victimization, and the belief that no purpose will be served in reporting it.

The redesign of the National Crime Victimization Survey

After an extensive 10-year redesign project, the National Crime Victimization Survey (NCVS) has been revised. A redesigned questionnaire was in wide use by January 1992. One goal of the redesign was to produce more accurate reporting of incidents of rape and sexual assault and of any kind of crimes committed by intimates or family members.

The new NCVS questionnaire encourages reporting of incidents in several ways. Questions were added to let respondents know that the interviewer

is interested in a broad spectrum of incidents, not just those involving weapons, severe violence, or violence perpetrated by strangers. New methods of cueing respondents about potential experiences with victimizations

Women age 12 or older annually sustained almost 5 million violent victimizations in 1992 and 1993. About 75% of all lone-offender violence against women and 45% of violence involving multiple-offenders was perpetrated by offenders whom the victim knew. In 29% of all violence against women by a lone offender, the perpetrator was an intimate (husband, ex-husband, boyfriend, or ex-boyfriend).

Women were about 6 times more likely than men to experience violence committed by an intimate.

Women annually reported about 500,000 rapes and sexual assaults to interviewers. Friends or acquaintances of the victims committed over half of these rapes or sexual assaults. Strangers were responsible for about 1 in 5.

Women of all races and Hispanic and non-Hispanic women were

increased the range of incident types that are being reported to interviewers. And behavior-specific wording has replaced criminal justice terminology to make the questions more understandable.

about equally vulnerable to violence by an intimate.

Women age 19 to 29 and women in families with incomes below \$10,000 were more likely than other women to be victims of violence by an intimate.

Among victims of violence committed by an intimate, the victimization rate of women separated from their husbands was about 3 times higher than that of divorced women and about 25 times higher than that of married women. Because the NCVS reflects a respondent's marital status at the time of the interview, which is up to 6 months after the incident, it is possible that separation or divorce followed the violence.

Female victims of violence by an intimate were more often injured by the violence than females victimized by a stranger.

A side-by-side comparison of the new and old screening questions as they relate to types of activities and types of situations and offenders is on page 8.

This report presents the first release of 1992-93 estimates of violence against women resulting from the new NCVS methodology. To illustrate how

patterns of victimization differ by the sex of the victim, the first section of the report provides rates of violence for both women and men.

Later sections contain more detailed information about the specific types and contextual characteristics of violence against women and the types of offenders most likely to victimize women. Definitions of terminology appear in *Methodology* on pages 6-7.

Rates of violence for women and men, 1992-93

Women annually reported about 500,000 rapes and sexual assaults, almost 500,000 robberies, and about 3.8 million assaults to NCVS interviewers (table 1). (As used in this report, *women* and *men* refer to persons age 12 or older.) Per capita rates of reported rapes and other sexual assaults against women were about 10 times higher than equivalent rates against men. The rates of robbery and aggravated assault against men were about double those against women.

Offenders acted alone in most violent victimizations (table 2). A greater percentage of victimizations against males than females were committed by multiple offenders. Multiple offenders committed 27% of the violent victimizations against men and 16% of those against women.

For both sexes, robberies were more likely than other offenses to involve multiple offenders: 34% of the robberies of women and 54% of the robberies of men. Among women, the lowest percentages of multiple offenders occurred for rape or sexual assault (10%) and for simple assault (13%). A fifth of the simple assaults of males involved more than one offender.

Violent victimizations against men involving multiple offenders were predominately committed by strangers (table 3). There was no significant difference between the extent to which multiple-offender victimizations against women involved known and unknown offenders. When considered by offense and the sex of the victim, simple assaults against women by multiple offenders involved a higher percentage of known offenders (57%) than strangers (43%). In contrast, simple assaults against men involving multiple offenders were more likely to be perpetrated by strangers (61% versus 39% known).

Table 1. Average annual rate of violent crime and number of violent victimizations, by sex of victim and type of crime, 1992-93

Type of crime	Average annual rate per 1,000 persons age 12 or older		Average annual number of incidents	
	Female	Male	Female	Male
Crimes of violence	43.7	64.9	4,748,500	6,602,100
Homicide	.04	.16	4,700	17,100
Rape/Sexual assault	4.6	.5	500,200	48,500
Robbery	4.4	8.6	475,900	870,600
Aggravated assault	8.0	16.9	863,000	1,715,400
Simple assault	26.7	38.8	2,904,700	3,950,400

Note: Average annual numbers have been rounded to the nearest 100. Homicides are not measured in the victimization survey; see the box on page 4 for the source.

Table 2. Violent victimization of females and males by lone or multiple offenders, by type of crime, 1992-93

Type of crime	Average annual percent of victimizations		Average annual percent of victimizations	
	Female victims		Male victims	
	Lone offender	Multiple offenders	Lone offender	Multiple offenders
Crimes of violence	84%	16%	73%	27%
Rape/Sexual assault	90	10	93	*
Robbery	56	34	46	54
Aggravated assault	79	21	69	31
Simple assault	87	13	80	20

Note: Excludes homicide; see the box on page 4. Excludes incidents in which the number of offenders was not ascertained.

*Ten or fewer sample cases.

Table 3. Multiple-offender violent victimization of females and males involving known or unknown offenders, by type of crime, 1992-93

Type of crime	Average annual percent of multiple-offender victimizations		Average annual percent of multiple-offender victimizations	
	Female victims		Male victims	
	Victim knew at least one offender	Victim knew none of the offenders	Victim knew at least one offender	Victim knew none of the offenders
Crimes of violence	45%	55%	31%	69%
Rape/Sexual assault	37	63	*	*
Robbery	20	80	20	80
Aggravated assault	46	54	29	71
Simple assault	57	43	39	61

Note: Excludes homicide; see the box on page 4.

*Ten or fewer sample cases.

Victim-offender relationship for lone-offender victimizations

Among victims of offenders acting alone, men were just as likely to be victimized by a stranger as by someone they knew (table 4). By contrast, women were more likely to be victim-

ized by known offenders than by strangers. About three-quarters of all lone-offender violence against women was perpetrated by an offender whom the victim knew. In 29% of all violence against women by a lone offender, the perpetrator was a husband, ex-husband, boyfriend,

or ex-boyfriend — an intimate. Compared to men, women were about 6 times more likely to experience violence committed by an intimate.

Violence at the hands of an intimate involved about 9 in 1,000 women annually (table 5). This rate translates into about 1 million women who became the victims of such violence every year.

Men were about twice as likely as women to experience acts of violence by strangers. Men were victims of almost 2 million acts of stranger-perpetrated violence annually, while women experienced about 800,000.

Table 4. Victim-offender relationship and sex of victim, by type of violent victimization committed by lone offenders, 1992-93

Victim-offender relationship	Total	Average annual percent of victimizations			
		Rape/Sexual assault	Robbery	Aggravated assault	Simple assault
Female victims					
Intimate	29%	26%	28%	28%	29%
Spouse	9	5	5	5	11
Ex-spouse	4	5	5	5	4
Boy/girlfriend (or ex-)	16	16	18	17	15
Other relative	9	3	5	7	11
Acquaintance/friend	40	53	19	35	41
Stranger	23	18	48	30	19
Male victims					
Intimate	4%	*	3%	5%	3%
Spouse	1	*	*	1	1
Ex-spouse	1	*	*	*	1
Boy/girlfriend (or ex-)	2	*	2	3	1
Other relative	3	*	2	4	3
Acquaintance/friend	44	54	26	40	49
Stranger	49	46	69	51	45

Note: Excludes homicide. Intimate includes spouse or ex-spouse, boyfriend or girlfriend, and ex-boyfriend or ex-girlfriend. Detail may not add to total because of rounding.
*Ten or fewer sample cases.

Table 5. Average annual rate of violent victimization, by sex of victim, victim-offender relationship, and type of crime committed by lone offenders, 1992-93

Type of crime	Average annual rate per 1,000 persons age 12 or older			
	Intimate	Other relative	Acquaintance/friend	Stranger
Female victims				
Crimes of violence	9.3	2.8	12.9	7.4
Rape/Sexual assault	1.0	.1	2.0	.7
Robbery	.7	.1	.5	1.2
Aggravated assault	1.5	.4	2.0	1.8
Simple assault	6.1	2.2	8.5	3.9
Annual average number of violent crimes	1,008,000	304,500	1,402,500	802,300
Male victims				
Crimes of violence	1.4	1.2	17.2	19.0
Rape/Sexual assault	*	*	.2	.2
Robbery	.1	.1	.9	2.4
Aggravated assault	.5	.4	3.8	4.8
Simple assault	.8	.7	12.4	11.6
Annual average number of violent crimes	143,400	122,000	1,754,000	1,933,100

Note: Excludes homicide. Intimate includes spouse or ex-spouse, boyfriend or girlfriend, and ex-boyfriend or ex-girlfriend. Average annual numbers have been rounded to the nearest 100.
*Ten or fewer sample cases.

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Table 6. Average annual rate of violent victimizations of women by a lone offender, by victim characteristics and victim-offender relationship, 1992-93

Victim characteristic	Average annual rate of violent victimizations per 1,000 females age 12 or older				
	Total	Intimate	Other relative	Acquaintance/friend	Stranger
Crimes of violence	35.1	9.3	2.8	12.9	7.4
Race					
White	35.2	9.1	2.6	12.5	7.1
Black	44.6	10.9	3.5	17.2	9.5
Other	27.8	6.5	4.5	8.4	5.7
Ethnicity					
Hispanic	33.9	7.3	3.2	10.0	9.0
Non-Hispanic	35.3	9.4	2.8	13.2	7.2
Age					
12-18	74.6	9.6	6.1	38.1	11.9
19-29	63.7	21.3	4.7	19.2	13.9
30-45	37.5	10.8	2.8	12.4	7.4
46-64	12.5	2.2	1.2	4.1	3.7
65 or older	4.8	1.2	0.3	1.1	1.2
Education					
Some high school or less	47.7	9.9	4.7	20.5	7.5
High school graduate	27.9	9.2	2.2	8.8	4.9
Some college or more	35.9	8.7	2.1	11.6	9.6
Annual family income					
\$9,999 or less	57.1	19.9	6.1	18.5	7.8
\$10,000-\$14,999	46.8	13.3	4.0	14.1	9.1
\$15,000-\$19,999	42.2	10.9	3.1	17.3	7.0
\$20,000-\$29,999	38.0	9.5	2.7	14.8	7.9
\$30,000-\$49,999	30.6	5.4	1.8	11.5	8.4
\$50,000 or more	24.8	4.5	1.8	9.7	6.3
Marital status					
Married	16.9	2.7	1.6	5.7	4.9
Widowed	10.4	1.9	0.6	3.6	2.5
Divorced	51.8	23.1	4.2	19.5	10.2
Separated	123.5	82.2	10.0	19.9	7.4
Never married	63.9	12.0	4.5	27.2	12.9
Location of residence					
Urban	45.4	10.7	3.0	15.9	10.8
Suburban	33.6	9.2	2.7	11.5	7.1
Rural	29.5	7.7	2.7	12.2	5.7

Note: Rates of violence for this table include rapes, sexual assaults, robberies, and aggravated and simple assaults from the NCVS. Rates exclude homicide victimizations. Relationship-specific rates do not add to the total because some victims did not identify their relationship to the offender.

Homicide of men and women

Because the NCVS is a survey of individuals about their victimization experiences, it does not gather data on homicides. The Uniform Crime Reports (UCR), collected by the Federal Bureau of Investigation, provides the number of homicides known to police.

The 1992 UCR reported the victim-offender relationship for 61% of the homicide incidents. The reported patterns of intimate perpetration for men and women were similar to those for other types of victimizations collected by the NCVS.

Female victims of homicide were significantly more likely to be killed by a husband, ex-husband, or boyfriend than male victims were to be killed by their wife, ex-wife, or girlfriend. In 1992 approximately 28% of female victims of homicide (1,414 women) were known to have been killed by their husband, ex-husband, or boyfriend. In contrast, just over 3% of male homicide victims (637 men) were known to have been killed by their wife, ex-wife, or girlfriend.

Demographic and contextual characteristics of violence against women

Violence against women perpetrated by intimates was consistent across racial and ethnic boundaries. No statistically significant differences existed between these groups. Black and white women and Hispanic and non-Hispanic women sustained about the same amount of violence by intimate partners (table 6).

Compared to all other age groups, women age 19 to 29 reported more violence by intimates. Women age 12 to 18 were more likely than women older than 18 to report violence against them by friends or acquaintances. In general, women age 65 or older were the least likely to experience an act of violence.

Women with an annual family income under \$10,000 were more likely to report having experienced violence by an intimate than those with an income of \$10,000 or more.

Among victims of violence committed by an intimate, the victimization rate of women separated from their husbands was about 3 times higher than that of divorced women and about 25 times higher than that of married women. Because the NCVS reflects a respondent's marital status at the time of the interview, it is not possible to determine whether a woman was separated or divorced at the time of

Homicide	Percent of all homicides in 1992	
	Female victims	Male victims
Victim-offender relationship		
Spouse/ex-spouse	18.0%	2.2%
Boy/girlfriend	10.3	1.4
Other relative	10.2	5.5
Acquaintance/friend	22.0	34.6
Stranger	8.6	15.0
Relationship not identified	30.9	41.3
Number of incidents		
Relationship identified	3,434	10,351
Relationship not identified	1,547	7,824
Total number of incidents	5,001	17,635

Note: Because in 41% of male homicides and 31% of female homicides the victim-offender relationship was not identified, readers are urged to use caution in interpreting these estimates.

Source: FBI, Uniform Crime Reports, 1992.

the violence or whether separation or divorce followed the violence.

In general, there was little variation in the extent to which women living in urban, suburban, and rural locations experienced violence by intimates. However, urban women were more likely than either suburban or rural women to experience violence by strangers.

Weapons and violence against women

About a fifth of all lone-offender violence against women involved a weapon. Compared to known offenders, violent offenders who were strangers to the female victim were more likely to carry or use a weapon.

	Percent of violent victimizations against women involving weapons
All lone-offender violent crimes	20%
Victim-offender relationship	
Intimate	18%
Other relative	17
Acquaintance/friend	16
Stranger	30

Injured female victims of crime

Women were more likely to be injured in violent incidents committed by intimates than in incidents committed by strangers. However, there was no significant difference across relationship categories in the extent to which injured victims required medical care. This lack of difference may reflect less severe injuries for intimate victims or may reflect factors which keep some women from seeking medical care.

	Sustaining injury	Percent of injured who required medical care
All lone-offender violent crimes	33%	41%
Victim-offender relationship		
Intimate	52%	41%
Other relative	38	35
Acquaintance/friend	26	43
Stranger	20	37

Women's injury and reporting to police

Compared to violence without injury, a higher percentage of violence against women involving injury was reported to police. Victimization that resulted in injury were equally likely to be reported to police regardless of the relationship between the victim and offender.

	Percent of violent victimizations against women reported to police
All lone-offender violent crimes	
Injured	54%
Not injured	39
Victim-offender relationship	
Intimate	
Injured	55%
Not injured	46
Other relative	
Injured	52
Not injured	39
Acquaintance/friend	
Injured	50
Not injured	33
Stranger	
Injured	56
Not injured	42

Rapes and other sexual assaults against women

The redesigned NCVS now obtains information on a broad scope of sexual assaults, ranging in severity from a completed rape to a verbal threat of sexual assault. Sexual assaults other than rape were not measured in the earlier victimization survey.

A completed rape is a report of a respondent physically forced or psychologically coerced to engage in sexual intercourse. Intercourse is an act of vaginal, anal, or oral penetration by the offender(s), including penetration by a foreign object. (For more information on NCVS methodology as it relates to rape and sexual assault, see *Methodology* on pages 6-7. Also see the forthcoming *Criminal Victimization in the United States, 1993*, NCJ-151657, Appendix.)

Victimizations not involving completed or attempted sexual intercourse but having some form of sexual behavior forced on the victim were categorized as sexual assault. These crimes in-

Table 7. Number and rate of rapes and sexual assaults of female victims age 12 or older, by type of assault, 1992-93

Type of victimization	Average annual number of incidents	Percent of all rapes/sexual assaults	Average annual rate per 1,000 females age 12 or older
Rape/Sexual assault	500,200	100%	4.6
Completed rape	172,400	34	1.6
Attempted rape	141,200	28	1.3
Sexual assault with serious injury	23,600	5	0.2
Sexual assault with minor injury	20,700	4	0.2
Sexual assault without injury	75,800	15	0.7
Verbal threat of rape	29,200	6	0.3
Verbal threat of sexual assault	37,300	7	0.3

Note: Detailed numbers and percentage distribution may not add to total because of rounding. Average annual numbers have been rounded to the nearest 100. This table does not include sexual contact without force.

Table 8. Victim-offender relationship in rapes and sexual assaults of female victims age 12 or older, by type of assault, 1992-93

Type of victimization	Percent of lone-offender victimizations against females				
	Total	Intimate	Other relative	Acquaintance/friend	Stranger
Rape/Sexual assault	100%	26%	3%	53%	18%
Completed rape	100	39	*	50	8
Attempted rape	100	24	*	49	23
Sexual assault with injury	100	23	*	42	28
Sexual assault without injury	100	13	*	75	*
Verbal threat of rape or sexual assault	100	*	*	53	42

Note: This table does not include sexual contact without force. Percentage distributions may not total 100% because some victims did not identify the offender's relationship to them and because of rounding.
*Ten or fewer sample cases.

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cluded assaults and threats, and they generally involved sexual contact, such as the offender's grabbing or fondling of the victim.

Sexual assaults also included incidents in which the offender's motive was not clear. If victims reported that they had been sexually attacked but could not or would not say that it was a rape or an attempted rape, the incident was classified as a sexual assault. (For more information about screening questions, see *Methodology* and the comparisons on page 8.)

Each year an estimated 500,000 women were the victims of some form of rape or sexual assault (table 7). Thirty-four percent of these victimizations were completed rapes, and an additional 28% were attempted rapes.

Women were more likely to report being raped or sexually assaulted by friends or other acquaintances than by intimates, relatives, or strangers (table 8). Friends and acquaintances committed about half of all rapes and sexual assaults. Intimates committed an additional 26%. Altogether, offenders known to the victim accounted for about three-quarters of all rapes and sexual assaults against women. Strangers committed 18% of such assaults.

Methodology

Except for homicide data provided by the Uniform Crime Reports, the tables in this report include data from the redesigned National Crime Victimization Survey (NCVS) for 1992 and 1993. The NCVS obtains information about crimes, including incidents not reported to police, from a continuous, nationally representative sample of households in the United States. Approximately 50,000 households and 100,000 individuals age 12 or older are interviewed for the survey annually. References in this report to "women" or "females" include adolescents, but not children under age 12. For more information about the NCVS sample, see *Criminal Victimization in the United States, 1993*, NCJ-151657, forthcoming, published in an annual series by the Bureau of Justice Statistics.

This report includes data on series victimizations. A series crime incident is defined by the NCVS as a crime in which a respondent experienced at least six similar victimization incidents during the given reference period (previous 6 months) but could not report the date and details of each clearly enough to report them separately. These incidents are recorded as one series incident and included in all tables. The characteristics of the incident are based on those represented in the last incident in the series.

The redesigned screening instrument

A goal of the NCVS redesign was to produce more accurate reporting of incidents of rape and sexual assault and other crimes committed by intimates and family members. The new NCVS methodology encourages respondents to report incidents of this nature in a number of ways. Questions were added to let respondents know that the interviewer is interested in a broad spectrum of incidents, not just those involving weapons, severe violence, or violence perpetrated by strangers. In addition to the new questions, new methods of cueing respondents about potential experiences with victimizations have also been added. For example, instead of the yes/no question-and-answer format of the previous screener, the new screener provides an extended list of cues regarding crime victimizations and situations in which victimizations might have occurred. (See page 8.) Another general change in the new screener has been the replacement of criminal justice terms with more behavior-specific language.

The redesign's enhanced ability to measure sexual assaults and intimate-perpetrated violence

To more accurately capture sexual assaults and intimate-perpetrated violence, two frames of reference have been added or more explicitly defined in the NCVS screener. The first relates to crimes being committed by someone the respondent knows, and the second relates to possible locations of a crime or activities the respondent may have been involved in.

In addition, explicit cueing for rape and other sexual assault is included in the new screening instrument.

Definitions of relationships

Intimates: Includes spouses or ex-spouses, boyfriends and girlfriends, or ex-boyfriends and ex-girlfriends.

Other relatives: Parents or step-parents, children or stepchildren, brothers or sisters, or some other relative.

Acquaintances/friends: Friends or former friends, roommates or boarders, schoolmates, neighbors, someone at work, or some other known nonrelative.

Strangers: Anyone not known previously by the victim.

Definitions of violent crimes

Rape: Carnal knowledge through the use of force or threat of force, including attempts; attempted rape may consist of verbal threats of rape. It includes male as well as female victims.

The definition from the NCVS interviewer's manual is as follows: "Rape is forced sexual intercourse and includes both psychological coercion as well as physical force. Forced sexual intercourse means vaginal, anal, or oral penetration by the offender(s). This category also includes incidents where the penetration is from a foreign object such as a bottle."

Respondents are asked a series of questions about attacks, rapes, attempted rapes, sexual attacks, and forced or coerced unwanted sex. These questions are asked directly and are accompanied by cues about the offender (casual acquaintance, co-worker, neighbor, friend, relative, and so on). If the respondent replies in the affirmative to any of these questions or cues, an Incident Report is filled out to gather details. In gathering these details, interviewers are instructed to ask "Do you mean forced or coerced sexual intercourse?" to determine whether the incident should be re-coded as a rape. If the respondent requests clarification of the terms

"rape" or "sexual intercourse," interviewers may read the above definition from the interviewer's manual.

Assault: An unlawful physical attack, whether aggravated or simple, on a person. It includes attempted assaults with or without a weapon, but excludes rape, attempted rape, and attacks involving theft or attempted theft (classified as robbery). Severity of assaults are classified into two major subcategories:

1. **Simple assault:** An attack without a weapon resulting either in minor injury (that is, bruises, black eyes, cuts, scratches, or swelling) or in undetermined injury requiring less than 2 days of hospitalization. It also includes attempted assault without a weapon and verbal threats of assault.

2. **Aggravated assault:** An attack or attempted attack with a weapon regardless of whether an injury occurred as well as an attack without a weapon when serious injury results. Serious injury includes broken bones, loss of teeth, internal injuries, loss of consciousness, and any injury requiring 2 or more days of hospitalization.

Sexual assault: A wide range of victimizations, separate from rape or attempted rape. These crimes include attacks or attempted attacks generally involving (unwanted) sexual contact between victim and offender. Sexual assaults may or may not involve force and include such things as grabbing or fondling. Sexual assault also includes verbal threats.

Robbery: Completed or attempted theft, directly from a person, of property or cash by force or threat of force, with or without a weapon.

Definitions of locations

To define the location categories, this report utilizes the Office of Management and Budget's concept of Metropolitan Statistical Areas (MSA's) and classifies units of analysis into three segments based on their relationship to an MSA: central city, outside central city, and nonmetropolitan area—labeled in this report as urban, suburban, and rural. A more detailed description of these areas follows:

Urban: The largest city, or grouping of cities, in an MSA. In this report, city areas are categorized as those portions of metropolitan areas located in "central cities."

Suburban: A county or group of counties containing a central city, plus any contiguous counties that are linked socially and economically to the central city. In this report, suburban areas are categorized as those portions of Metropolitan Statistical Areas situated "outside central cities."

Rural: A county or group of counties not located inside a Metropolitan Statistical Area. This category includes a variety of localities, including smaller cities with populations less than 50,000; however, it is primarily comprised of sparsely populated areas.

Definition of weapons

Items such as guns (pistols, revolvers, rifles, and shotguns) and knives are always considered weapons. Other objects are considered weapons when they are used as weapons or when respondents felt threatened by them.

Calculation of NCVS rates

The rates in this report were annual average rates for 1992-93. The numerator of a given rate was the sum of the estimated victimizations that occurred both years for each respective demographic group; the denominator was the sum of the annual population totals for these same years and demographic groups.

Application of standard errors

The results presented in this report were tested to determine whether the observed difference between groups was statistically significant. Most comparisons mentioned in the report passed a hypothesis test at the .05 level of statistical significance (or the 95-percent confidence level), meaning that the estimated difference between comparisons was greater than twice the standard error of that difference. However, some comparisons were significant at the 90-percent confidence level only. These comparisons

were qualified by phrases such as "somewhat" or "some evidence of a difference." Comparisons that failed the 90-percent hypothesis test were not considered statistically significant.

Although the data in this report were collected over a 2-year period, some estimates were based on a relatively small number of sample cases, particularly for certain demographic groups. The data tables note when estimates were based on 10 or fewer unweighted sample cases. Because standard errors cannot be accurately computed for such estimates, it is inadvisable to compare them to other estimates. Furthermore, caution should be used when comparing estimates not discussed in the text because since seemingly large differences may not be statistically significant at the 95-percent or even the 90-percent confidence level.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jan M. Chaiken, Ph.D., is the director.

BJS Special Reports address a specific topic in depth from one or more datasets that cover many topics.

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Appendix: Comparison of new and old screener questions

Screener questions for violent crimes

New (beginning January 1992)

1. Has anyone attacked or threatened you in any of those ways—
 - a. With any weapon, for instance, a gun or knife—
 - b. With anything like a baseball bat, frying pan, scissors, or stick—
 - c. By something thrown, such as a rock or bottle—
 - d. Include any grabbing, punching, or choking.
 - e. Any rape, attempted rape or other type of sexual assault—
 - f. Any face to face threat—
 OR
 - g. Any attack or threat or use of force by anyone at all? Please mention it even if you were not certain it was a crime.
2. Incidents involving forced or unwanted sexual acts are often difficult to talk about. Have you been forced or coerced to engage in unwanted sexual activity by—
 - a. Someone you didn't know before
 - b. A casual acquaintance OR
 - c. Someone you know well.

Screener questions for all types of crimes

New

1. Were you attacked or threatened OR did you have something stolen from you—
 - a. At home including the porch or yard—
 - b. At or near a friend's relative's, or neighbor's home—
 - c. At work or school—
 - d. In place such as a storage shed or laundry room, a shopping mall, restaurant, bank or airport—
 - e. While riding in any vehicle—
 - f. On the street or in a parking lot—
 - g. At such places as a party, theater, gym, picnic area, bowling lanes, or while fishing or hunting.
 OR
 - h. Did anyone ATTEMPT to attack or attempt to steal anything belonging to you from any of these places?
2. People often don't think of incidents committed by someone they know. Did you have something stolen from you OR were you attacked or threatened by—
 - a. Someone at work or school—
 - b. A neighbor or friend—
 - c. A relative or family member—
 - d. Any other person you've met or known?
3. Did you call the police to report something that happened to YOU which you thought was a crime?
4. Did anything happen to you which you thought was a crime, but did NOT report to the police?

Old (1972-92*)

1. Did anyone take something directly from you by using force, such as by a stickup, mugging, or threat?
2. Did anyone TRY to rob you by using force or threatening to harm you?
3. Did anyone beat you up, attack you, or hit you with something, such as a rock or bottle?
4. Were you knifed, shot at, or attacked with some other weapon by anyone at all?
5. Did anyone THREATEN to beat you up or THREATEN you with a knife, gun, or some other weapon, NOT including telephone threats?
6. Did anyone TRY to attack you in some other way?

*During 1992 half of the sampled households responded to the old questionnaire, and half to the redesigned survey.

Old

1. Was anything stolen from you while you were away from home, for instance, at work, in a theater or restaurant, or while traveling.
2. Did you call the police to report something that happened to YOU that you thought was a crime?
3. Did anything happen to YOU that you thought was a crime, but did NOT report to the police?

The table below compares results from this report, based on the redesigned NCVS methodology, with results from an earlier report, using data from the old questionnaire (*Violence against Women*, NCJ-145325, January 1994).

The new survey instrument captures more incidents of violence across all categories than did the old questionnaire. The extent of increase, however, does vary according to the sex of the victim and the victim-offender relationship.

	Average annual rate of violent victimizations per 1,000 persons	
	Female	Male
Old survey methodology, 1987-91		
Intimate	5.4	.5
Other relative	1.1	.7
Acquaintance/friend	7.6	13.0
Stranger	5.4	12.2
New NCVS methodology, 1992-93		
Intimate	9.3	1.4
Other relative	2.8	1.2
Acquaintance/friend	12.9	17.2
Stranger	7.4	19.0

The rates presented in this table are based on different time periods; however, analysis of data for overlapping periods confirms these patterns. (See *Criminal Victimization in the United States, 1993*, NCJ-151657, Appendix, forthcoming, by the Bureau of Justice Statistics.)

Appendix table