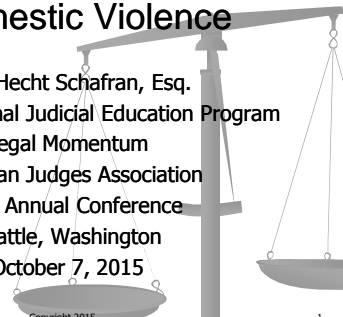



## Intimate Partner Sexual Abuse: The Hidden Dimension of Domestic Violence

Lynn Hecht Schafran, Esq.  
Director, National Judicial Education Program  
Legal Momentum  
American Judges Association  
2015 Annual Conference  
Seattle, Washington  
October 7, 2015



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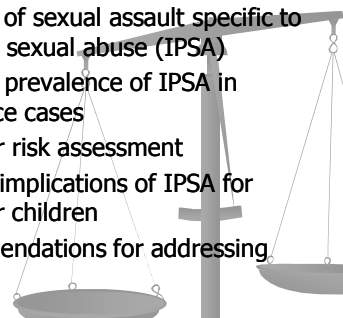
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## Learning Objectives

- Identify aspects of sexual assault specific to intimate partner sexual abuse (IPSA)
- Learn about the prevalence of IPSA in domestic violence cases
- Identify IPSA for risk assessment
- Understand the implications of IPSA for victims and their children
- Discuss recommendations for addressing IPSA



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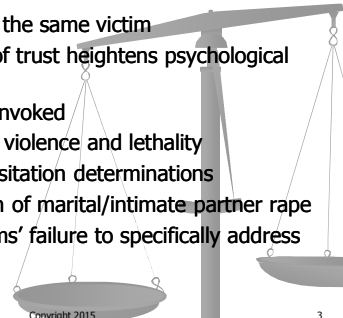
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## IPSA-Specific Aspects of Sexual Assault Cases

- Repeated rapes of the same victim
- Extreme betrayal of trust heightens psychological harm
- Cultural defenses invoked
- Risks of escalating violence and lethality
- Risks in custody/visitation determinations
- Jurors' trivialization of marital/intimate partner rape
- Treatment programs' failure to specifically address IPSA



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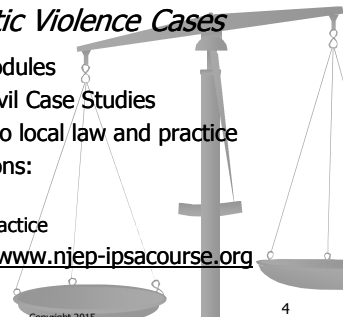
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**Web Course:**  
*Intimate Partner Sexual Abuse:  
 Adjudicating This Hidden Dimension of  
 Domestic Violence Cases*

- 13 Interactive Modules
- 8 Criminal and Civil Case Studies
- Can be adapted to local law and practice
- Current adaptations:
  - Minnesota
  - Tribal law and practice
- Available free at [www.njep-ipsacourse.org](http://www.njep-ipsacourse.org)



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**2010 National Intimate Partner and Sexual Violence Survey\***

- Nearly 1 in 10 women in the U.S. has been raped by an intimate partner
- 17% of women and 8% of men have been subjected to sexual violence other than rape by an intimate partner

\*Michele C. Black, et al., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY(NISVS): 2010 SUMMARY REPORT at [http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_Report2010-a.pdf](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf).



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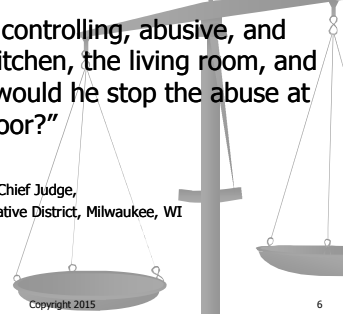
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**Question**

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

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



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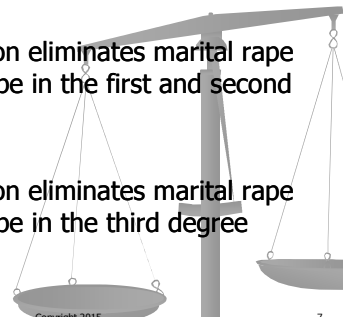
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### Marital Rape Exemption in Washington

•1983: Washington eliminates marital rape exemption for rape in the first and second degree.

•2013: Washington eliminates marital rape exemption for rape in the third degree



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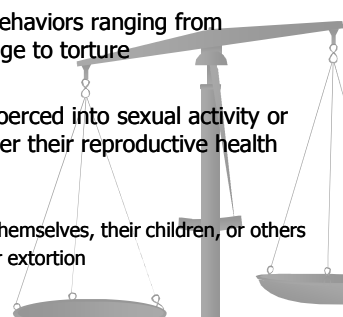
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### What is Intimate Partner Sexual Abuse/Assault?

- A continuum of behaviors ranging from degrading language to torture
- Victims may be coerced into sexual activity or denied control over their reproductive health through
  - Verbal coercion
  - Threats against themselves, their children, or others
  - Financial or other extortion
  - Physical violence



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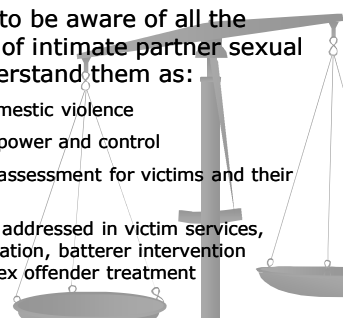
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### What is Intimate Partner Sexual Abuse/Assault?

- It is important to be aware of all the manifestations of intimate partner sexual abuse and understand them as:
  - An aspect of domestic violence
  - An assertion of power and control
  - Factors for risk assessment for victims and their children
  - Behaviors to be addressed in victim services, prevention education, batterer intervention programs and sex offender treatment



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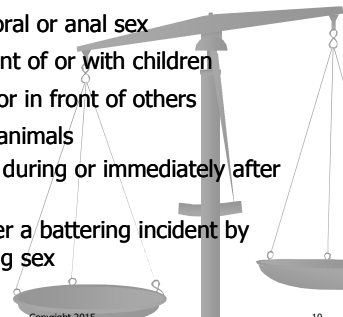
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### Forced Sex and Battering in Relation to Sex

- Forcing vaginal, oral or anal sex
- Forcing sex in front of or with children
- Forcing sex with or in front of others
- Forcing sex with animals
- Battering before, during or immediately after forced sex
- "Apologizing" after a battering incident by coercing or forcing sex



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### Reproductive Health Issues

- Coercing sex without protection against pregnancy or sexually transmitted infections
- Coercing pregnancy
- Attacking partner when she becomes pregnant
- Coercing abortion



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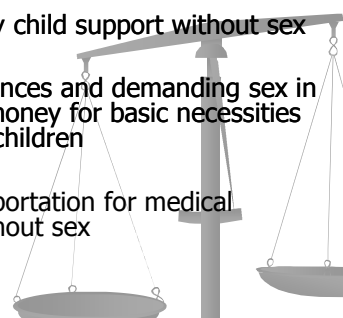
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### Extorting Sex in Exchange for Necessities

- Refusing to pay child support without sex
- Controlling finances and demanding sex in exchange for money for basic necessities for victim and children
- Refusing transportation for medical necessities without sex



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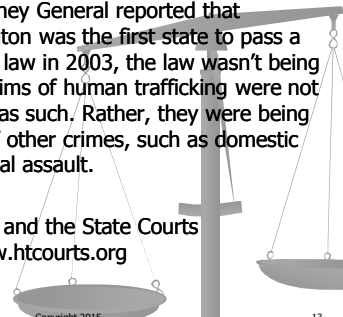
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## Trafficking

- Washington Attorney General reported that although Washington was the first state to pass a human trafficking law in 2003, the law wasn't being used because victims of human trafficking were not being recognized as such. Rather, they were being seen as victims of other crimes, such as domestic violence and sexual assault.
- Human Trafficking and the State Courts Collaborative, [www.htcourts.org](http://www.htcourts.org)



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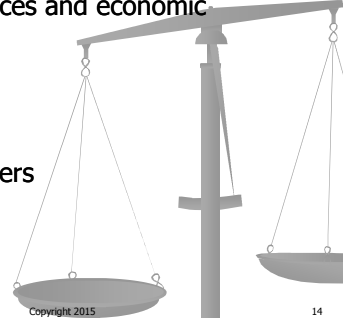
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## Who Are the Victims?

- Women of all races and economic backgrounds
- Teens
- Elders
- Same-Sex Partners
- Children



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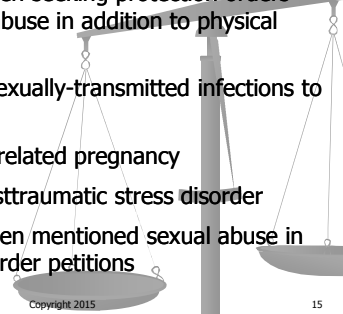
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## Study of Battered Women in Houston

- 68% of 148 women seeking protection orders reported sexual abuse in addition to physical violence
- 15% attributed sexually-transmitted infections to the sexual abuse
- 20% had a rape-related pregnancy
- High levels of posttraumatic stress disorder
- None of the women mentioned sexual abuse in their protection order petitions



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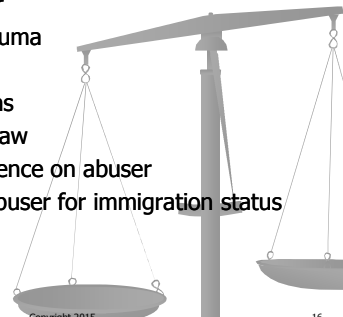
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### Some Barriers to Reporting

- Fear of the abuser
- Overwhelming trauma
- Shame and denial
- Credibility concerns
- Ignorance of the law
- Economic dependence on abuser
- Dependence on abuser for immigration status
- No one asked



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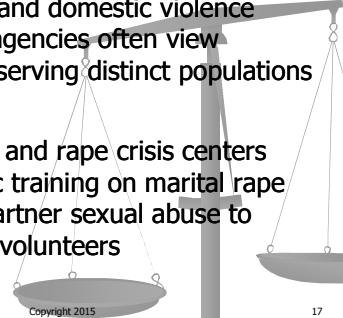
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### Barriers to Reporting: Inadequacy of Victim Services

- Sexual assault and domestic violence victim service agencies often view themselves as serving distinct populations
- Not all shelters and rape crisis centers provide specific training on marital rape and intimate partner sexual abuse to advocates and volunteers



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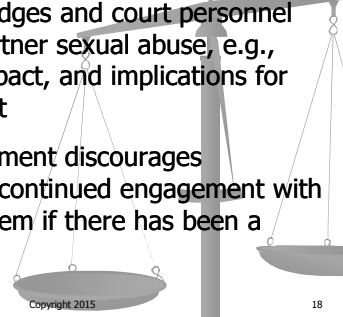
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### Inadequacy of Justice System

- Lack of training for law enforcement, prosecutors, judges and court personnel on intimate partner sexual abuse, e.g., prevalence, impact, and implications for risk assessment
- Hostile environment discourages disclosure and continued engagement with the justice system if there has been a disclosure



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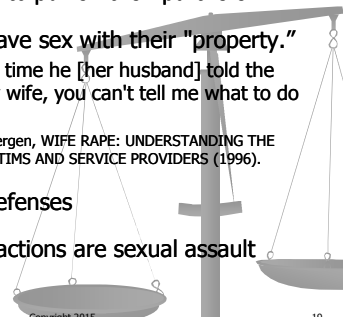
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## Offenders

- Use sexual abuse to punish their partners
- Feel entitled to have sex with their "property."
  - "I remember one time he [her husband] told the judge, 'That's my wife, you can't tell me what to do with her.'"
  - Raquel Kennedy Bergen, *WIFE RAPE: UNDERSTANDING THE RESPONSE OF VICTIMS AND SERVICE PROVIDERS* (1996).
- Invoke cultural defenses
- Don't think their actions are sexual assault



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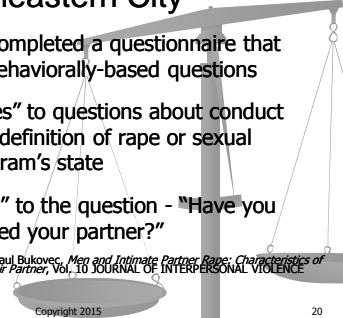
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## Study of Men in a Batterers Intervention Program in a Northeastern City

- 229 diverse men completed a questionnaire that included specific behaviorally-based questions
- 53% answered "yes" to questions about conduct that met the legal definition of rape or sexual assault in the program's state
- 8% answered "yes" to the question - "Have you ever sexually abused your partner?"

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



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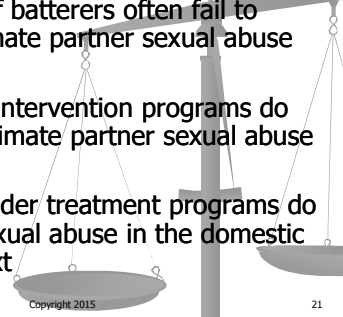
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## Assessment and Treatment of Offenders

- Assessments of batterers often fail to assess for intimate partner sexual abuse
- Many batterer intervention programs do not address intimate partner sexual abuse
- Many sex offender treatment programs do not address sexual abuse in the domestic violence context



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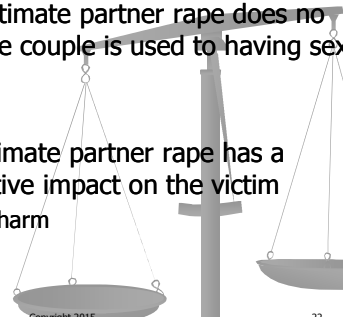
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### Victim Impact

- **Myth:** marital/intimate partner rape does no harm because the couple is used to having sex with each other
- **Fact:** marital/intimate partner rape has a profoundly negative impact on the victim
  - Psychological harm
  - Physical harm



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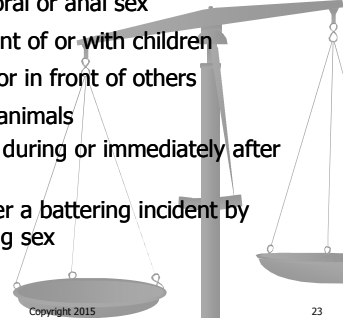
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### Forced Sex and Battering in Relation to Sex

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- Forcing sex with animals
- Battering before, during or immediately after forced sex
- "Apologizing" after a battering incident by coercing or forcing sex



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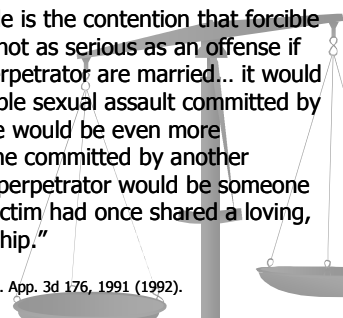
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### Victim Impact: Psychological

"Equally untenable is the contention that forcible sexual assault is not as serious as an offense if the victim and perpetrator are married... it would seem that a forcible sexual assault committed by a person's spouse would be even more traumatic than one committed by another individual as the perpetrator would be someone with whom the victim had once shared a loving, intimate relationship."

- People v. M.D., 231 Ill. App. 3d 176, 1991 (1992).



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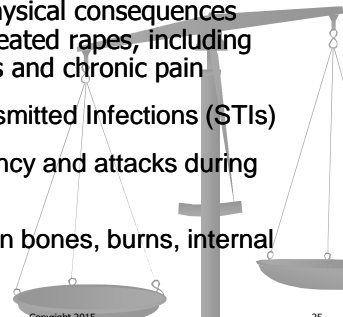
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### Victim Impact: Physical

- Long-lasting physical consequences because of repeated rapes, including internal injuries and chronic pain
- Sexually -Transmitted Infections (STIs)
- Forced pregnancy and attacks during pregnancy
- Bruising, broken bones, burns, internal injuries



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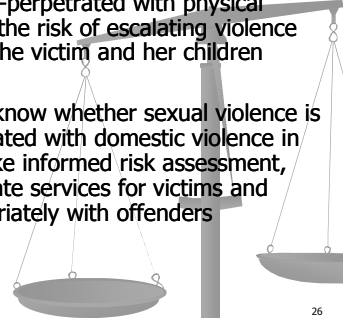
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### Risk Assessment

- Sexual assault co-perpetrated with physical abuse heightens the risk of escalating violence and lethality for the victim and her children
- It is essential to know whether sexual violence is being co-perpetrated with domestic violence in order to undertake informed risk assessment, provide appropriate services for victims and intervene appropriately with offenders



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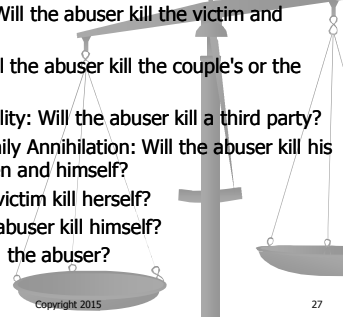
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### Eight Types of Potential Lethality

1. Femicide: Will the abuser kill his victim?
2. Murder/Suicide: Will the abuser kill the victim and himself?
3. Child Murder: Will the abuser kill the couple's or the victim's children?
4. Third Party Lethality: Will the abuser kill a third party?
5. Familicide or Family Annihilation: Will the abuser kill his victim, his children and himself?
6. Suicide: Will the victim kill herself?
7. Suicide: Will the abuser kill himself?
8. Will the victim kill the abuser?



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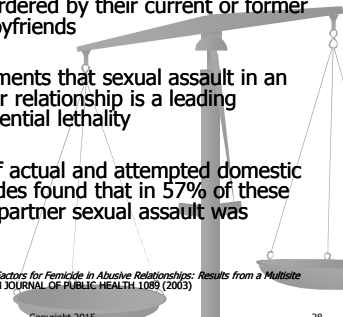
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## Femicide

- On average each day in the U.S. more than three women are murdered by their current or former husbands or boyfriends
- Research documents that sexual assault in an intimate partner relationship is a leading indicator of potential lethality
- 11-city study of actual and attempted domestic violence femicides found that in 57% of these cases intimate partner sexual assault was perpetrated

\*Jacquelyn Campbell, et al, *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 AMERICAN JOURNAL OF PUBLIC HEALTH 1089 (2003)

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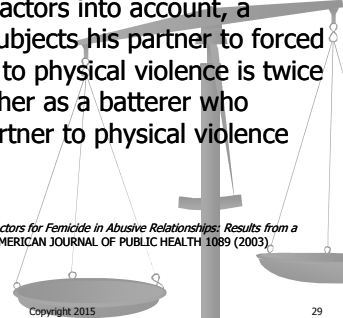
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## Femicide

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

• Jacquelyn Campbell, et al, *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 AMERICAN JOURNAL OF PUBLIC HEALTH 1089 (2003).

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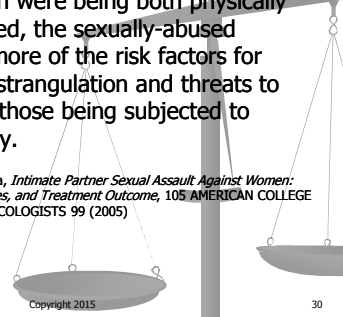
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## Femicide

In the Houston study cited previously in which 68% of the women were being both physically and sexually abused, the sexually-abused women reported more of the risk factors for femicide, such as strangulation and threats to children, than did those being subjected to physical abuse only.

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

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

– David Adams, *WHY DO THEY KILL?* (2007) at 171-172.



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### Idaho Risk Assessment of Dangerousness in Domestic Violence

**Idaho Domestic Violence Supplement**

Risk Assessment of Dangerousness (Part of the Risk Assessment of Victim Safety) for Domestic Violence Perpetrators

1. Information: Name, Address, Date of Birth, Sex, Race, Ethnicity, Marital Status, Employment, Education, Religion, etc.

2. History: Previous Domestic Violence, Criminal History, Mental Health, Substance Use, etc.

3. Current Situation: Relationship Status, Frequency of Contact, Threats, etc.

4. Risk Factors: Stalking, Harassment, Intimidation, etc.

5. Protective Orders: History of Protective Orders, Compliance, etc.

6. Other: Any other relevant information.

7. Assessment: Overall Risk Level, Recommendations, etc.



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### Risk Assessment: Custody and Visitation Implications

“[T]he sexual abuse of a parent has been seriously neglected – despite its potentially severe traumatic impact on children and association with greater risk to the safety and well-being of children and adult victims.”

– Kathryn Ford, *Children’s Exposure to Intimate Partner Sexual Assault*, 3 SEXUAL ASSAULT REPORT 15 (2007).



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### Recommendations

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



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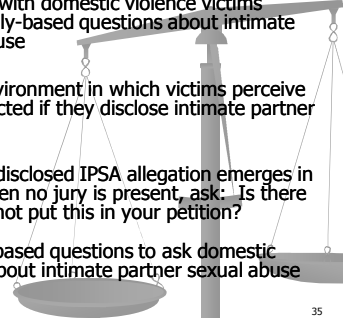
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### Recommendations

- Ensure that court intake forms and risk assessment instruments used with domestic violence victims include behaviorally-based questions about intimate partner sexual abuse
- Create a court environment in which victims perceive they will be respected if they disclose intimate partner sexual abuse
- If a previously undisclosed IPSA allegation emerges in the courtroom when no jury is present, ask: Is there a reason you did not put this in your petition?
- Use behaviorally-based questions to ask domestic violence victims about intimate partner sexual abuse



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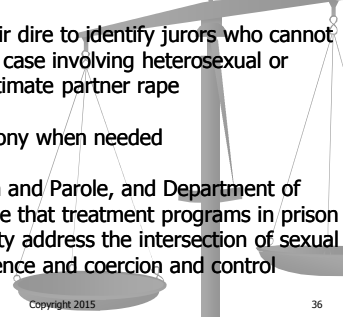
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### Recommendations

- Consider allegations of forced sex when evaluating dangerousness for purposes of bail
- Allow a thorough voir dire to identify jurors who cannot deliberate fairly in a case involving heterosexual or same-sex marital/intimate partner rape
- Admit expert testimony when needed
- Work with Probation and Parole, and Department of Corrections to ensure that treatment programs in prison and in the community address the intersection of sexual abuse, physical violence and coercion and control



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New York, NY 10004  
(212)-413-7518  
[lschafran@legalmomentum.org](mailto:lschafran@legalmomentum.org)  
[www.njep.org](http://www.njep.org)



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