

Counterintuitive Behavior and the Impact of Trauma on Victims of Violence

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Topics:

- ▶ Sexual and Domestic Violence Myths
- ▶ Potential impact of victim's "behavior(s)" on decision making throughout criminal justice process, including jury verdicts
- ▶ Effects of trauma on victims of crime (afternoon session)
- ▶ Determining if, when and what type of expert is needed in sexual and domestic violence prosecutions

Rape and Domestic Violence Myths

"Attitudes and beliefs that are generally false but widely and persistently held...best conceptualized as stereotypes..."

(Lonsway & Fitzgerald, 1994)

General Categories:

- ▶ Myths that blame the victim
- ▶ Myths that express disbelief in claims of rape
- ▶ Myths that exonerate the perpetrator
- ▶ Myths that suggest only certain types of victims are raped
- ▶ (Eyssel & Bohner, 2011)

Media Portrayal of Sexual Assault and Domestic Violence

- ▶ Sensationalism
- ▶ Unusual cases
- ▶ Focus on force & severe acts of violence (versus control and manipulation of power)
- ▶ Presents victims as “good girls or bad girls”
- ▶ Content Analysis – print media

Reporting Decisions are impacted by rape myths and stereotypes

Do Myths Really Exist?

- ▶ Studies of mock jurors reflect myths continue to exist
- ▶ Studies with large samples (e.g. college students) reflect myths continue to exist
- ▶ Little doubt that myths and stereotypes impact jury verdicts
- ▶ Case law (notes; law review articles regarding need for expert testimony)

- ▶ Left without an explanation, a victim's behavior(s) before, during and after a sexual or domestic violence assault can become compelling evidence to jurors that the **victim lacks credibility**
- ▶ Individual victim responses can be "counterintuitive" to public perception of how a "real victim" would behave

(Long, 2007; APRI; NDAA)

- ▶ There is a need for prosecutors to explain victim behavior to jurors (either through the victim) or through expert testimony so that jurors understand the context in which behaviors occur
- ▶ Courts have recognized that expert testimony is necessary to prevent jurors from misjudging victim credibility based upon their misperception of victim's behavior(s)

Examples of Sexual Violence Myths

- ▶ Rapists are strangers who attack victims in dark alleys. (Reality: Common for victim to have some level of acquaintance with the perpetrator)
- ▶ "Real" victims of sexual assault immediately report their assault to the police (Reality: Delayed reporting and generally not to police first)
- ▶ There will be genital injuries evident on the victim and DNA of rapist available with "real" victims of sexual assault (Reality: Multiple factors dictate the presence or absence of injuries/DNA)

Sexual Assault Myths (continued)

- ▶ Victims of sexual assault will fight off their attackers (*to be discussed this afternoon*)
- ▶ Victims of “real” sexual assault are highly emotional (distressed) when reporting the assault or when recounting it during trial
(Reality: Variety of presentations, including flat affect and devoid of emotion)

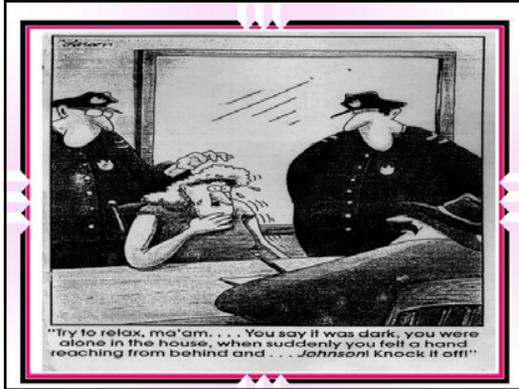
Domestic Violence Myths

- ▶ Domestic Violence is caused by drugs or alcohol
- ▶ Domestic Violence is caused by stress
- ▶ Domestic violence is “out of control” behavior
- ▶ Problems of domestic violence are exaggerated
- ▶ Victims of domestic violence provoke abuse and like it – otherwise they would leave
- ▶ Victims of domestic violence “stick to their story” and are willing to testify in court

Sexual & Domestic Violence Myths

- ▶ Defense capitalizes on misconceptions about victim behavior
- ▶ Myths can also impact decision making in all phases of the criminal justice system (e.g. law enforcement, attorneys, jurors, judges) may lack knowledge of common victim responses to sexual and domestic violence)

(Long, J., August, 2007; APRI; NDAA, OVV)



Sexual Assault Myths

- ▶ "Rape myths" include misperceptions about what "real" victims look like and "who can be raped"

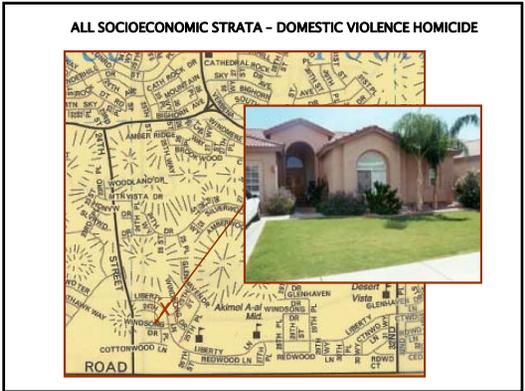
We all have perceptions of what we think someone looks like....

Rape Myth - Who Is "usually" sexually assaulted?

"the provocatively dressed "
Or
"the drunk girl who shouldn't have been at the party to begin with..."

REALITY

- All Ages
- All races
- All sexes



Rape Myths Exist: Who is "rapeable?"

- ▶ Hypercom
- ▶ C.R.S. accused top executive, Jairo Gonzalez, of raping her on three occasions; she did not report to police
- ▶ Hypercom struck a deal with her and had her sign a contract to "keep the assaults quiet"
- ▶ C.R.S. later sued Hypercom; Hypercom countersued

Who is "rapeable?" (continued)

- ▶ **Testimony from George Wallner of Hypercom in reference to his knowledge of another female employee who claimed Gonzalez attacked her**
- ▶ **Wallner:** "Yes, but I can't see that happening. She's not a good looking woman."

Myth: Immediately call police

- ▶ "She spoke to a rape crisis hotline counselor several times but balked at calling police for fear she'd lose her job or that Gonzalez would further harm her."

Delayed Reporting:

- ▶ It is not one factor (e.g. injury) but the mix of social and psychological factors that make it difficult for a victim to report, escape or to effectively protect her/himself from abuse
- ▶ “The Context”

Myth: Victim will resist or fight back

C.R.S. testified:

“I was terrified...it was like I was out of my mind. I was hoping he wouldn't be there and when he was and started doing his thing and he overpowered me. I just let him. I didn't fight and I didn't tell anyone afterward.”

Resistance:

- ▶ Victims commonly “freeze” become “immobilized” or rely on “habits” of coping/survival
(discussed later this afternoon)
- ▶ **Mock Juror Impressions:** When the amount of resistance of the victim was modified in this study - victims were viewed more positively when they provided more resistance to the attacker (Sims, Moel, & Maisto, 2007)

Expert Testimony in Hypercom:

- ▶ Testimony based on education, **experience** and knowledge of research
- ▶ Women don't commonly report rapes in the workplace and when they do report, it is generally not initially to police
- ▶ Reasons women don't report (economical survival; guilt; shame)

Expert called by Hypercom testified that the testimony was "unethical" as "had not evaluated" the victim"

Court's Ruling:

- ▶ "As abhorrent as Gonzalez' assaults on the plaintiff, and Hypercom's retention of him - they were not the issues the court was called upon to decide.."

Court's Ruling:

- ▶ "Although the court finds that [CRS's]conduct during the period Murphy was negotiating with her was consistent with that of a rape victim, and that she was in a vulnerable emotional and financial state, it does not find sufficient clear and convincing evidence to submit the issue of whether [CRS] signed the agreement under legal duress placed upon her by a Hypercom employee to a jury..."

Myths exist with regard to particular populations, cultures, offenses and other case specific circumstances

Expert Testimony: focus on relevance (e.g. acute trauma; chronic DV; Behaviors)

For example:

- Sexual Assault in the Workplace
- Young adult dating and courtship violence (Title 9 issues)
- Sexual assault in the workplace
- Partner Violence (can be broken down further – DV/SA of persons with disabilities; DV/SA during pregnancy; DV/SA of Elders)
- Trafficked Victims Etc.

Historically – Expert Testimony

- ▶ Opinions based on diagnostics related to the specific victim
- ▶ Pioneering efforts of Lenore Walker – Battered Woman Syndrome (BWS); Initially used by defense to explain why battered women killed their “husbands”
- ▶ BWS “does not reflect the broad range of experiences of battered women and empirical knowledge available regarding battering”
(See: The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials (USDO, 1996);

Other “Syndrome” Testimony

- ▶ Rape Trauma Syndrome (1974); “two phase pattern” (not supported by subsequent research and clinical experiences)

- ▶ Posttraumatic Stress Disorder (generally requires assessment and diagnosis of the victim; violates privacy interests/treatment records; may be useful in civil matters - IMEs)

“Syndrome” testimony is not well suited with the goal of explaining a victim’s behavior (in sexual and domestic violence prosecutions)

Explaining Victim’s Behavior in Sexual and Domestic Violence Prosecutions:

Counterintuitive Behavior

“It defines the public’s perceptions of victim’s behavior and the failure of the public’s expectations to match actual victim behavior”

NOT a psychological term nor does it “diagnose” a victim based on their behaviors

(Long, 2007; APRI; NDAA, p. 11)

Counterintuitive Behavior

“Actions or statements made by victims in the aftermath of assault which appear to others as illogical or poor decisions”

“Behaviors of a victim that are not what the average person would expect from a victim”

Jurors’ perceptions of victim behavior - rather than the behavior itself as described by the court [sic] or other scholars

(See Long, 2007; APRI; NDAA; p. 11)

Analyses – Counterintuitive Behavior:

What is the behavior that juror’s will likely perceive as counterintuitive?

- ▶ 911 calls
- ▶ Police reports
- ▶ Victim Statements
- ▶ Medical reports
- ▶ Witness Statements/Descriptions of victim
- ▶ Defendant’s statements

Decisions (continued):

- **Can the victim explain her/his behavior?**
- Will you need an expert?
- Determine which expert and scope of testimony (focus on factors relevant to case)

Example: Victim did not immediately seek medical attention

Who will be your expert? (Sexual Assault Nurse Examiner; Victim Advocate; ED Physician, Social Worker; Psychologist; etc.)

In addition to experience, education, training, it is helpful to be aware of the relevant, current research:

Carr, M et al. (2014). Debunking Three rape Myths. *Journal of Forensic Nursing*. P. 217-225

Some dilemmas with opening the door to research:

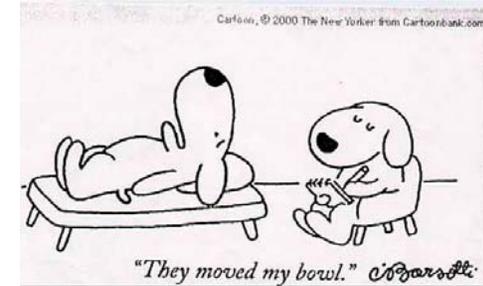
- ▶ Expert must be knowledgeable regarding limitations of studies (e.g. sample size; methods)
- ▶ Terms and definitions differ
- ▶ Review of studies on IPV/SA – use of 14 different terms and 29 different definitions (e.g. dating violence; intimate partner sexual violence; rape; partner rape, intimate partner rape; marital rape; sexual aggression; sexual assault; sexual coercion. sexual victimization; unwanted sexual contact, force....physical? nonphysical? etc.)

Expert Testimony

- ▶ “Although expert testimony may include current research or articles related to victim behavior, the most effective qualification often will be **extensive experience working with sexual assault and/or domestic violence victims.**”
- ▶ **Expert** is NOT offered as expert in “**counterintuitive behavior**” but rather, an expert in **common behaviors of victims** (based on observations in other victims with whom they have worked or about which they have studied or read)

(Long, 2007; APRI; NDAA; p. 24)

Expert: Not The Professional Treating the Victim



If Expert Testimony is warranted:

- ▶ general discussion of sexual or domestic violence
- ▶ common myths associated with the type of violence
- ▶ common victim responses to trauma or common victim behaviors in these types of circumstances

Example – Domestic Violence

- ▶ Victim Advocates; Social Workers; Specialists on Crisis Lines; Nurses; Psychologists; etc.

Potential Scope of Testimony:

- General dynamics of domestic violence
- Common behaviors of domestic violence victims (e.g. remaining with abusers; reasons for remaining with abusers; not uncommon to later deny or minimize abuser's conduct)

Delayed Reporting (or no formal reporting)

- ▶ Threats to harm children, pets, or victim
- ▶ Threats to kill
- ▶ Presence or use of weapons
- ▶ Previous Injury
- ▶ Control over aspects of daily life (e.g. money and food, sexuality including SA – or where, when and how often)
- ▶ Control over social relationships (primary friends, family)



Selecting Experts : Sexual Assault and Domestic Violence Myths:

- ▶ Be thoughtful regarding selection of an expert
- ▶ Ensure that you have met with the expert witness and discussed "issues" (e.g. expert's background; experience with relevant issues; experience in courtroom, etc.)

VIDEO CLIP

Complexity of Issues: Multiple Solutions

- ▶ Public Awareness
- ▶ Training at all levels of criminal justice system
- ▶ Continued synthesis of the work of researchers, clinicians, leaders in the criminal justice field
- ▶ Draw on knowledge from a range of disciplines: (e.g. Neurobiology; Psychology - such as research regarding ways to reduce cognitive bias; etc.)

- ▶ For decades we have recognized the dangerousness of domestic violence and sexual assault
- ▶ Significant as a source of personal suffering, family breakdown, injury and potentially death

"We are compelled to provide evidence to debunk sexual and domestic violence myths"

As long as one believes that the evil man wears horns, one will not discover an evil man."

Eric Fromm
