Domestic Sexual Assault: A New Opportunity for Court Response

BY JUDITH BERMAN

ABSTRACT

Based on research conducted for the State Justice Institute, this article examines the invisibility of domestic sexual assault—also known as intimate partner sexual assault or spousal, wife, or marital rape—from the perspective of community and court responses to domestic violence and sexual assault. The article identifies the consequences of invisibility of domestic sexual assault, including the potential for lethality, and offers suggestions to courts for improving outcomes for victims and perpetrators. Areas explored include data collection and analysis, judicial leadership, and specialization in victim response systems, law enforcement and prosecution, court management, and offender intervention.

INTRODUCTION

Empirical research has found that sexual abuse is a common experience among domestic violence victims (Bergen, 1996; Browne, 1993; Campbell, 1989; Russell, 1990). Experiences of battered women at the hands of their partners include oral, anal, or vaginal sex forced through violence or threats of violence, penetration with objects, and forced sex following violent episodes. Research has further shown that women raped by their partners are likely to be raped multiple times before they can escape the violence (Bergen, 1996; Finkelhor & Yllo, 1985; Russell, 1990). Few if any states, however, require batterer intervention providers to receive training in sexual assault, nor do these states require that psycho-sexual or sexual behavior histories, a pre-requisite of virtually all sex offense treatment, be taken on batterer program participants.

This service gap is one manifestation of the separate developmental paths taken by domestic violence and sexual assault response systems. At this time, neither specialty has fully assumed responsibility for addressing the specific needs of perpetrators or victims of domestic sexual assault (also referred to as intimate partner sexual assault or, less inclusively, wife, spousal, or marital rape). The following article looks at the impact of this specialization and separation of domestic violence and sexual assault on the ability of the criminal and civil justice systems to respond to domestic sexual assaults. The article argues that the separation has helped make domestic sexual assault invisible, and has left us with insufficient information about effective responses. The article provides suggestions for how courts can take a leadership role in guiding their communities to a more informed place from which to respond to this common but overlooked crime.

Invisibility of Domestic Sexual Assault

Domestic sexual assault (a term used to emphasize the connection between this act of domestic violence *and* sexual assault) is an act of forced sex by a perpe-

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trator who is in an intimate relationship with the victim. The perpetrator may be a husband or ex-husband, boyfriend or ex-boyfriend, or person with whom the victim has a child in common. In most states, changes to rape laws to include spousal rape have occurred since the late 1970s, however, it was not until 1993 that all 50 states and the District of Columbia had outlawed forcible marital rape (National Center for Victims of Crime, 2004). Domestic sexual assault has been obscured by layers of cultural and legal myths. Marital rape was long considered a contradiction in terms, since marriage was presumed to grant a husband unlimited sexual access to his wife. While cultural and legal myths equally obscure other forms of violence, such as elder abuse and child sexual abuse, one important difference is that many individuals affected by domestic sexual assault are already involved with the court, most commonly as victims or perpetrators of non-sexual domestic violence.[1]

Existing advocacy and law enforcement systems do not identify these individuals as sex offenders or victims of sexual assault, or help them to identify themselves. Underreporting by victims is a problem, but the fact that the victims and perpetrators appear in courtrooms every day suggests a different problem. We need to understand the reasons that domestic sexual assault remains hidden.

Courts have made progress toward reducing the historic bias against female victims of violent crime perpetrated by their intimate partners. Courts responded to the documentation of bias against women in the courts, and the criticisms made by advocates for victims of domestic violence and sexual assault. They developed strategies to enable victims of these crimes to participate in the criminal justice system, and to use the civil justice system to obtain protection for themselves and their children. The result of these changes is also to hold sex offenders and domestic violence offenders accountable and prevent them from victimizing others.

These strategies included improvements in the ways victims access safety resources through law enforcement and the courts, improvements in court identification and management of domestic violence and sexual assault cases, and increased availability and use of sanctions specific to domestic violence and sexual assault perpetrators.

It is ironic, therefore, that domestic sexual assault, a crime that exemplifies both domestic violence and sexual assault and that may be among the most common forms of sexual assault against adult women, is not addressed by the current service system.

The phenomenon of domestic sexual assault has been explored by prominent researchers Diana E. H. Russell, David Finkelhor, and Jacqueline Campbell. It has not, however, been studied to the same extent as other aspects of domestic violence or sexual assault. In "Sexual Assault in Marriage: Prevalence, Consequences and Treatment of Wife Rape" in *Partner Violence: A Comprehensive Review of 20 Years of Research,* Patricia Mahoney and Linda Williams (1998) comment this is a "long neglected issue [that] deserves the attention of all professionals who come into contact with families" and especially of those who come into contact with battered women (p. 116).

Mahoney and Williams (1998) estimate that, "one in ten to one in seven married women will experience rape by a husband" (p. 122). When looking at women in violent relationships, however, the likelihood of sexual assault by their intimate partners is substantially higher. Studies using clinical samples of battered women reveal that between one-third and one-half of battered women are raped by their partners at least once (Bergen, 1996; Browne, 1993; Campbell, 1989). A recent sample of domestic violence protection order petitioners by Dr. Judith McFarlane (personal communication, December 2003) found that nearly two-thirds had experienced domestic sexual assault.[2] Thirty-one percent of women who were stalked by an intimate partner were also sexually assaulted by the same partner (Tjaden & Thoennes, 1998). Nonetheless, as many as two-thirds of the states still retain some form of exemption for husbands for non-consensual sexual contact with their wives, such as different reporting requirements, requiring force or threat, requiring that they live apart and are in the process of separation or divorce, or including spousal exemptions for certain types of sexual assault (National Center for Victims of Crime, 2004).[3]

In a recent effort to learn how courts using a specialized approach to domestic violence manage domestic sexual assault cases, the State Justice Institute (SJI) supported the development of a survey instrument sent to a sample of these courts around the country.[4]

The survey was sent to 69 individuals in 47 jurisdictions identified through *Specialization of Domestic Violence Case Management in the Courts: A National Survey* (Keilitz, 2000) as having specialized management of domestic violence misdemeanors and/or felonies, and/or having a domestic violence intake process that identified related criminal and civil cases. Surveys were sent to court personnel and, where possible, to local domestic violence and/or sexual assault advocacy programs in the relevant jurisdiction. The survey sought both qualitative and quantitative information on overlaps between cases of domestic violence and sexual assault. Questions included what number of domestic violence criminal cases involved sexual assaults, and what number of cases managed as sexual assaults involved intimate partners. Also of interest was how cases of domestic sexual assault were identified, what supports were in place for victims, and what general protocols were followed in sentencing perpetrators. The survey sought to identify jurisdictions achieving some success in identifying and managing domestic sexual assault, so that lessons from these jurisdictions could be shared.

Response to the survey was limited.[5] Several recipients who did not complete the survey responded that they did not have the data or did not have the time to compile the data the survey was seeking. Some respondents listed the many different offices they had to contact to compile the data. One concluded that "I don't believe anyone really has the information you are looking for" (survey response, Dec. 2, 2003). These responses suggest that data on the overlapping phenomena of domestic violence and sexual assault are hidden by the separation of domestic violence and sexual assault cases in court systems, prosecutors' offices, and police departments.

Emerging Issues for the Courts

Data Collection and Analysis of the Problem

Organizations such as SJI and the National Center for State Courts have been advocating uniform data collection strategies among courts for many years.[6] Part of their motivation is to assist courts with administrative matters, such as case distribution and management, and part is to overcome the current challenges to comparing data across jurisdictions, often within states as well as between them. Domestic violence and sexual assault data specifically came into focus with passage of the Violence Against Women Act in 1994, which called for studies on how states could centralize their data collection on sexual and domestic violence offenses (VAWA, 42 U.S.C. §13962) and "the feasibility of requiring that the relationship between an offender and victim be reported in Federal records of crimes of aggravated assault, rape, and other violent crimes" (VAWA, 42 U.S.C. §14015).

The first data collection report to Congress under the Violence Against Women Act in July 1996 (Justice Research and Statistics Association [JRSA], 1996) found that 35 states collected some data on domestic violence while 30 collected some data on sexual assault. The information was far from uniform, however, and the researchers believed that more complete data on these phenomena would require collaboration with other service systems besides criminal justice. The data are incomplete and fragmented. The split noted here between domestic violence and sexual assault (35 collecting on domestic violence, 30 collecting on sexual assault) highlights the problem preventing identification of domestic sexual assault: Is it captured by the domestic violence statistics? Is it noted as "domestic" in the less commonly collected sexual assault data? How do we frame the question so that we can get accurate answers?

The 1996 report to Congress noted the inadequacy of the Uniform Crime Reporting (UCR) system to capture domestic violence data, because the level of detail is insufficient (JRSA, 1996). An unpublished report submitted to the National Institute of Justice in September 1999, "Domestic Violence and Sexual Assault Data Collection Systems in the States, Final Report," states that incident-based reporting systems provide significant enhancements over the UCR summary system in terms of the level of detail they provide about domestic violence and sexual assault. Only about half of the states and territories, however, had implemented either National Incident-based Reporting System (NIBRS)-compatible systems, a State Crime Incident-based Reporting System, or a Specialized Incident-based Reporting System (Orchowsky & Johnson, 1999).[7]

The 1999 report points out too that NIBRS is missing "several possible relationship codes that could be relevant in domestic violence cases," such as former

boyfriend/girlfriend (Orchowsky & Johnson, 1999, p. vi). States can include this information in their own systems, but it will not be captured at the federal level. Further, implementation of incident-based reporting has been slower than expected. Most states planned to implement systems that meet the NIBRS standards but have been hampered by a number of real and perceived obstacles, including funding (Implementing the NIBRS, 1997).

The dialogue about incident-based reporting is important in terms of the ability of states and the federal government to aggregate data and give more accurate information about the incidence and prevalence of domestic violence and sexual assault crimes. It is also important, however, in terms of recognizing that domestic violence and sexual assault are considered separate categories of crime for the purpose of federal and most state data collection (Orchowsky & Johnson, 1999, Appendix A, Table A). In fact, the language in the Violence Against Women Act that addresses NIBRS refers to domestic violence, intimidation, and stalking but does not refer to sexual assault (42 U.S.C. § 14038).[8] While NIBRS provides the opportunity to look at a range of possible relationships between victims and perpetrators of crimes, including sexual assault, it nonetheless allows intimate partner sexual assault to be separated from the category of domestic violence, replicating and perhaps reinforcing the split that exists within the laws of many states. Many states do not include sexual crimes among their domestic violence incidents, even when the sex crime is defined by the marital relationship between perpetrator and victim, such as spousal rape.

A revealing piece of evidence for the invisibility of sexual domestic violence generated by such practices is a survey response from one California jurisdiction. The respondent included a printout of domestic violence incidents by charge/California Penal Code (sections 243 and 273.5-273.6) and by area of the county. The list did not include any charges under the sexual assault or sex offender management statutes (sections 261-269, 281-294), including spousal rape (section 262).

Specialization of Domestic Violence and Sexual Assault

This split between domestic violence and sexual assault manifests in local practice as well. The development of domestic violence courts or specialized management of domestic violence cases has been a tremendous success. Jurisdictions with sufficient staff and funds have created specialized units in law enforcement agencies, prosecutors' offices, probation departments, and victim services programs. Other jurisdictions have designated staff in those offices to handle all domestic violence cases. In addition to specialized courts, many jurisdictions have coordinated community response (CCR) teams to address ongoing issues for domestic violence victims and perpetrators. These teams have promoted training, policy changes, and collaborative solutions for many of the challenges that domestic violence victims face both in court and in the community where housing, employment, and other important matters can be affected by domestic violence victimization. Some of these same jurisdictions have separate CCR teams to address sexual assault. These teams too have focused on training, policy changes, and collaborative problem-solving and often include specialists from law enforcement, prosecutors' offices, probation departments, and victim services who handle the jurisdiction's sexual assault cases.

While specialization plays an important role in effective management of these cases and in protecting the victims, the division has left a crack through which domestic sexual assault frequently falls. In addition to the data issues, this division manifests itself in some of the following ways:

- Domestic violence cases get charged as misdemeanors while sexual assault cases are charged exclusively as felonies.
- There are inconsistencies in sentencing, depending upon whether the case is managed as a domestic violence or sexual assault case.
- It is not clear who among the specialists has responsibility for learning about the dynamics of these cases and the unique needs of the victims and perpetrators.

Is it possible that we have defined these specialties in ways that do not reflect the realities of those perpetrating and those victimized by these crimes? What would the courts look like if, for example, there was a specialty in "family violence," and included not only

physical assaults between partners, but domestic sexual assault, incest, stalking, child abuse, and elder abuse? (What would happen to stranger or acquaintance sexual assaults or stalking or harassment by acquaintances?) What if there were a specialized court that handled "all crimes of violence against women and children"? (Where would male sexual assault victims go for help?) Or what if there were a "one family/one judge" approach that handled all of the criminal and family matters occurring within a single household? (What if some of the perpetrator's victims were outside the household?) Clearly every approach has its strengths and limitations.

Specialization within the court is related to specialization by advocates who organized themselves to address specific problems victims faced with law enforcement, courts, and medical institutions. In many communities, however, advocacy for victims of domestic violence and sexual assault evolved along different timelines and involved different people and priorities. For a variety of reasons, domestic violence as a phenomenon has grown to receive significantly more official attention, which has translated into dollars for survivor services and increasing visibility on the local, state, and national levels. Rape crisis centers have tended to lag in their resources and influence, and only more recently have received a boost through recognition of sexual violence as a public health crisis. Despite the understanding within domestic violence advocacy circles that sexual abuse is often used as a tool by batterers, and within sexual assault advocacy circles that most sexual violence is committed by men who are known to their female victims, neither field has consistently made it a part of its business to understand the unique dynamics of intimate partner sexual assault in the context of a battering relationship, and neither is sufficiently familiar with the tools available to address the other problem (Bergen, 1996).

Historically, domestic violence advocates established safe home networks and shelters and developed legal advocacy programs that focused on protection orders, while rape crisis centers dealt primarily with counseling and support, evidence collection, and prosecution. More recently, domestic violence advocates and researchers have turned their attention to economic issues, and the impact of domestic violence on poverty, housing, and employment. These are serious issues for sexual assault victims, but they have not received the same level of attention within sexual assault advocacy or research circles (most likely due to funding). Sexual assault victims often experience a need for safe shelter, but shelter programs have not been a high priority in the sexual assault advocacy movement, nor have sexual assault victims been a high priority population for shelters oriented toward assisting domestic violence victims (Bergen, 1996).[9] Many in the two fields have increased their collaborations over the years, and many organizations serve victims of both types of crime (albeit sometimes with different staff and/or separate offices, and often at the expense of resources dedicated to sexual assault issues [Koss, 2000]). Nonetheless, there are many victims who do not disclose their sexual victimization to their domestic violence advocate, or who find themselves having to turn to more than one organization to get their needs fully met (Bergen, 1996).[10] According to Bergen's research, fewer than half of rape crisis centers and battered women's shelters routinely ask women about experiences of marital rape. Specifically, her research found that only 17% of rape crisis centers routinely ask about rape by a partner (Bergen, 1996). One hopes that the numbers have increased in the years since her research was conducted.

The point here is not to blame the hard-working advocates in either field, whose skill and perseverance have saved the lives of countless women and children. The point is simply to acknowledge ways in which victim advocacy as a movement has unintentionally contributed to a fractured system that makes it more rather than less difficult for victims to disclose their experience with this particular crime. When the victims are not identified, neither are the perpetrators. One consequence of this split is that some of the most dangerous perpetrators are not held accountable or actively prevented from re-offending. According to research underway by Professor Judith McFarlane of Texas Women's University School of Nursing, 62% of 150 women applying for a protection order responded positively to an interview question of whether they had been sexually assaulted (defined as forced vaginal, oral, or anal sex) (personal communication, December 2003). This percentage does not include less overtly violent or non-

intercourse-related sexual assaults that are common in relationships in which violence and abuse have broken the bonds of trust necessary for a safe and fully consensual sexual relationship. Not a single one of McFarlane's 150 subjects, including the 62% who disclosed to the interviewer, referred to sexual abuse in their protection order petition. All protection order requests were for non-sexual physical abuse. McFarlane's preliminary observations are that most of the women did not know that they could qualify for a protection order because of sexual abuse, and many more women do not know that forced sex by their intimate partner is against the law.

Categorizing sexual crimes is challenging because of the range of victims—children and adults, males and females, strangers, acquaintances, friends, and family members—and the range of sexually criminal behavior. Thus far, we have been discussing very narrow definitions of sexual assault. We have, in effect, "excluded a broad range of harmful behaviors experienced by women" such as sexual assaults accomplished through economic threats or blackmail, sex out of obligation or to prevent potentially dangerous conflict, or in full view of children (DeKeseredy & Joseph, 2003, p. 7). It needs to be noted that where there is battering and/or sexual abuse between partners, children are at risk of being directly sexually victimized. Daughters of batterers are more likely to be victims of incest (Bancroft & Silverman, 2002, cited in Rothman, Allen, & Raimer, 2003). Incest-perpetrating batterers tend to use highly psychological forms of abuse against their adult partners, and to use only low-to-medium level violence that may not raise particular concern among law enforcement or the courts (Rothman et al., 2003). Studies have found that as many as 50% of adjudicated female sex offenders acted in concert with a co-offender, in most cases a coercive, often violent, male partner who forced the female to procure victims or directly participate in the sexual victimization of children (Mathews, Matthews, & Speltz, 1989; see also Hunter & Mathews, 1997). In addition to these family relationships, there is also the question of sexual motivation behind other, non-explicitly sexual crimes, such as burglary or breaking and entering.[11] It would be difficult to justify inclusion of breaking and entering under a specialized sexual crime prosecution or adjudication process, but it demonstrates the need to be cognizant of what is included and what is excluded when specialty lines are drawn.

Potential Consequences of Invisibility

There are particular reasons to be concerned by the relative invisibility of domestic sexual assault to the criminal justice system. In a curriculum on intimate partner sexual abuse for batterer intervention program facilitators published by the Massachusetts Executive Office of Public Safety, Programs Division, the authors cite a number of studies that suggest that women who report sexual abuse by intimates experience more severe physical violence than those who report either physical or emotional abuse alone (Rothman et al., 2003, esp. pp. 9-16). Other studies suggest that men who physically and sexually abuse their partners are more likely to kill or severely injure their partners than men who perpetrate non-sexual physical abuse only (Rothman et al., 2003). Another study found an association between intimate partner rape and perpetration of homicide by the victim (Rothman et al., 2003).

It is not clear what the overall impact would be of better identification of these perpetrators and victims, but these cases deserve attention because of their severity and potential lethality. It is also worth noting that sex offender research has indicated a high degree of crossover behavior among sex offenders; that is, while it was formerly assumed that sex offenders offended only against a single primary category of victim (defined by age and gender), it is now believed that a large proportion of sex offenders offend against multiple types of victims (Heil, Ahlmeyer, & Simons, 2003). This includes sex offenders commonly known as date rapists who, according to research by David Lisak (2000), commit a variety of additional offenses including sexual abuse against children, physical abuse against children, battery of adult intimate partners, and other forms of sexual abuse against peers. In total, 58% of Lisak's sample committed acts of interpersonal violence in addition to rape or attempted rape against a peer.[12] Therefore, if domestic sexual assault offenders are similar to other rapists and sex offenders, they may be at risk for offending against related and unrelated children as well as other women.

Courts can play a critical role in unmasking this hidden connection between domestic violence and sexual assault. For example, the court can routinely order pre-sentence investigations for domestic violence perpetrators that specifically look for information about sexually violent behavior. Pre-sentence investigators should ask victims about sexual aggression, and ask victims if they believe the perpetrator might benefit from counseling for aggressive sexual behavior, much as they might ask questions about alcohol and drug use, or the availability of weapons. Courts might need to consider a scenario in which new crimes are uncovered in this process, or new treatment/intervention services are required in the community. In civil proceedings, including protection order hearings or family case hearings, judges can listen for those half-stories—the ones that start with a struggle and do not seem to be quite finished. Judges can ask, "What happened next?" and "next?" The answer will often lead to a story of sexual assault. Victim safety is, of course, a major concern, and care should be taken to ensure that the victim is not placed in danger through this kind of questioning. Judges can also use opportunities on domestic violence or sexual assault coordinating councils to encourage law enforcement officers, prosecutors, and advocates to look harder at cases for evidence that sexual abuse may be part of the dynamics of a violent relationship.

Understanding Appropriate Offender Intervention

Once the court has identified a domestic violence perpetrator as a sexual offender, the issue is not entirely resolved. It is unclear what type of intervention best addresses the perpetration of domestic sexual assault, since separation of batterer intervention providers and sex offender treatment programs, as well as specialization within probation departments and institutional treatment programs, are commonplace.

The Duluth Model, the group education model on which many batterer intervention programs are based, addresses the topic of domestic sexual assault from the perspective of "sexual respect" (Pence & Paymar, 1993, pp. 132-145). This approach calls for participants to examine their beliefs about sexual relationships, but does not require facilitators to have any specialized knowledge of sexual offending behavior. The curriculum published by the Massachusetts Executive Office of Public Safety is clearly an attempt to bridge the knowledge gap among batterer intervention/treatment providers and to provide some concrete strategies for introducing the topic of sexual violence into existing domestic violence offender programming. The divisions between batterer intervention and sex offense treatment, however, tend to run deeper than knowledge alone and include the paradigm through which the intervention or treatment is conceived and delivered. The fact that the domestic violence community tends to reject the language of "treatment," which is used in sex offender management, in favor of the less clinical term "intervention," speaks volumes.

Perhaps because domestic violence was long understood as a private affair, perpetrators were not considered a threat to public safety as much as a threat to the individual victim with whom they were intimately involved. And perhaps because sexual assault was mistakenly perceived as primarily perpetrated by and against strangers, sexual offenders who came to the criminal justice system's attention were readily identified as threats to public safety. This perception has raised the stakes for anyone identified as a perpetrator of sexual offenses. Highly publicized cases of child sexual assaults and murders by known sex offenders led to a spate of legislation throughout the country in the 1990s mandating sex offender registration, community notification, and other sex offender-specific requirements.[13]

Less well known than sex offender registration and community notification laws (the Jacob Wetterling Act and Megan's Law, respectively) was the inclusion in the Violence Against Women Act of 1994 of funds to improve supervision of sex offenders in the community (42 U.S.C. §13941). This funding was used to create the Center for Sex Offender Management,[14] and to provide grants that support implementation of comprehensive sex offender management strategies in local jurisdictions throughout the country. Many jurisdictions are now working to develop a comprehensive approach to the management of known sex offenders, and to integrate registration and notification into a coordinated set of practices, including specialized treatment, designed to minimize the risk of further victimization by sex offenders.[15] Perhaps the single greatest difference

between the current trend in sex offender management and domestic violence offender management is the recognition of the threat posed by sex offenders to a wide range of potential victims, in addition to the victim(s) of the crime(s) for which they were convicted. Unlike most domestic violence perpetrators, for example, sex offense perpetrators are routinely forbidden unsupervised contact with all children, including their own, at least until they have demonstrated that they do not pose a risk.[16]

Many of these developments in sex offender management represent great progress toward the goal of ending victimization by known offenders, but victim advocates point to the unintended consequences of practices like notification on incest offenders whose victims are indirectly identified along with the perpetrator (Walker, 2001). Similarly, if domestic sexual assault perpetrators were convicted of sex crimes, spousal assault victims might find themselves indirectly identified through the registration/notification process along with their partner/rapist.

How would victims feel if their partner/perpetrator was identified as a sex offender? How would they feel if he was required to register his whereabouts with police every few months or was potentially subject to lifetime supervision? Would they be relieved? Feel safer? Or would they feel that it was more punishment than they wanted to see inflicted? And would it serve as incentive or disincentive to report the crime? Would they be better served by the type of treatment intervention and conditions of probation that typically accompany a domestic violence conviction? Or a sex offense conviction? Does it matter whether the community has done any work toward assessing and implementing a comprehensive approach to sex offender management and/or domestic violence? Clearly there are many unanswered questions here, perhaps the most significant of which is what would be most effective in preventing future victimization by perpetrators of domestic sexual assault.

Suggestions for Practice

The issue of domestic sexual assault can serve as an invitation to examine practices that have become routine. With data supporting the frequency of sexual assault among domestic violence victims, and data supporting the heightened danger posed by perpetrators of domestic sexual assault, there is solid ground on which to stand in making this a higher priority. At this time, we may have more questions than answers, but the questions are worth asking. The court is in a position to take a leadership role in guiding the community to a more informed place from which to make necessary changes in data collection, specialization strategies, offender intervention, and victim services.

Courts can:

- **Recognize that domestic sexual assaults are occurring at greater rates than are being seen by the court.** Research has shown that as many as two-thirds of battered women are raped by their batterers. Court personnel should recognize that many battered women they see are victims of sexual abuse, and that the children of these battered women are at high risk for sexual abuse as well.
- **Request staff to compile data on sexual assaults involving domestic relationships (however they are defined in your state) and domestic violence cases that involve sexual crimes; learn about the challenges to uncovering this data that are present in your system and make an effort to address them.** To uncover the particular obstacles to visibility in the jurisdiction, courts may need to examine both the ways the court and its supporting agencies are organized as well as how database systems are organized.
- **Examine how the separation of domestic violence and sexual assault has played out in the jurisdiction.** Review the community's victim services structure from the perspective of common ground among the victims and perpetrators to whom the justice system responds. This review may be useful in helping to identify where special efforts at cross-specialty communication and information sharing are essential.
- **Charge the local domestic violence fatality review committee with investigating the sexual assault histories of domestic violence homicide victims and perpetrators. If sexual assault experts are not represented on the committee,**

take the necessary steps to include them. Because every jurisdiction manages domestic sexual assault differently, it is important to learn whether domestic sexual assault victims are disproportionately represented among homicides, and whether the system has gaps for these victims that can be closed.

- **Communicate with domestic violence and sexual violence advocates in the community and in the criminal justice system that the court is interested in this issue, and involve advocates in developing strategies for improving the court and community response to victims.** Issues may include strategies for increasing disclosure of domestic sexual assault; sharing information with survivors about treatment and sentencing options that are available for both domestic violence perpetrators and sexual offenders; developing a "no wrong door" approach so survivors receive appropriate support and services wherever they choose to seek help; and making available essential domestic sexual assault-specific services such as support groups.
- **Communicate with law enforcement, especially with investigators and domestic violence and sexual assault specialists, that the court is interested in this issue, and involve law enforcement in discussing strategies for improving evidence collection and other practices that can help support the successful prosecution of cases of domestic sexual assault.**
- **Ask questions in safe and appropriate court settings that will encourage domestic sexual assault survivors to disclose the information, and ensure that information about available civil and criminal remedies is provided.** Judges have tremendous power to recognize and validate victims of sexual assault and to send the message that victims should not be ashamed or afraid to use the court as a remedy for the wrong that has been done to them. Communicating to survivors that they are not alone in having been sexually victimized, and are not alone in bringing the issue before the court, can bolster the ability of survivors to participate in the justice system.
- **Consider integrating questions on intake forms and information on protection order information packets to make clear that sexual assault can be a form of domestic violence and can be grounds for either criminal charges or protection orders, or both.** Years of work with victims of these crimes has demonstrated that survivors will often deny their victimization many times before they eventually disclose it. It is important, therefore, that information and opportunities to disclose be available in multiple sites and formats.
- **Bring together practitioners who provide intervention/treatment for domestic violence perpetrators and sex offenders, including the probation and parole supervisors who handle these cases, to exchange information about best practices for managing these perpetrators and preventing further victimization.** Domestic violence and sex offender intervention models have strengths and limitations. It may be that addressing the issue of domestic sexual assault can help to identify and promote the strengths of both. These providers should also be consulted about their data on this issue and encouraged to identify "domestic rapists" on their caseload. This data can provide the court useful feedback in terms of both sentencing practices (i.e., with no systematic plan in place, are we satisfied with where offenders have ended up?) and effective intervention strategies.

We have come a long way since husbands were legally allowed to abuse their wives and children, but our collective record on domestic sexual assault suggests that we still have a way to go. If domestic sexual assault is to be taken as seriously as it should be, there are many tasks ahead, including:

- a commitment of funding to improve data collection on crossover areas like domestic sexual assault at the local and state levels;
- a wider exploration of how courts are managing these cases, especially courts that are doing so successfully, to produce models that others can use;

- a broad, national discussion among domestic violence and sexual assault perpetrator intervention practitioners, researchers, and victim advocates, to explore best practices and set a research agenda;
- an increase in research with victims of domestic sexual assault to identify the interventions that best meet their immediate and long-term needs; and
- a national legislative agenda to eliminate all spousal exemptions for sexual assault crimes.

Domestic sexual assault can serve as a catalyst for re-visioning the challenges posed to courts by intimate and family-based violent crimes. The justice system has risen to these challenges in the recent past with initiatives and innovations that have transformed many lives. This challenge holds the promise of taking the system to its next level of effectiveness and responsiveness to victims of violence.

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END NOTES

1 Clinical samples suggest that approximately one-third to one-half of battered women experience sexual assault by their partner. While there is no study that specifically indicates what portion of these particular women use criminal or civil justice interventions to respond to their victimization, typical help-seeking behaviors by abused women, such as those documented by the Chicago Women's Health Risk Study (2000), suggest that many of the most severe cases will end up in court. Judith McFarlane's research with restraining order petitioners cited elsewhere in this article (personal communication, December 2003) also supports this contention.

2 McFarlane, with co-investigators Ann Malecha and Pamela Schultz, is currently at work on a research project for the National Institute of Justice (2002-WG-BX-0003) called "Sexual Assault Among Intimates: Frequency, Consequences, and Treatments."

3 States used essentially three different strategies to criminalize spousal rape: removing the exemption in the definition of rape without adding any additional language; replacing language that named marriage as a defense for certain crimes with language that explicitly excludes marriage as a defense; or making spousal rape a separate crime (National Center for Victims of Crime, 2004).

4 The survey is available at http://www.cepp.com/dvsa-survey.

5 Survey results included eight completed surveys, for a 17% survey completion rate.

6 For information about the Court Statistics Project, a joint project of the National Center for State Courts, SJI (1987-2001), the Conference of State Court Administrators, and the Bureau of Justice Statistics, see http://www.ncsconline.org/D_Research/csp/CSP_Main_Page.html.

7 The remaining states continue to use summary systems like the UCR (Orchowsky & Johnson, 1999).

8 "Not later than 2 years after September 13, 1994, the Attorney General, in accordance with the States, shall compile data regarding domestic violence and intimidation (including stalking) as part of the National Incident-Based Reporting System (NIBRS)" (42 U.S.C. § 14038).

9 Bergen (1996) points out that only 54% of surveyed battered women's shelters house marital rape victims. Only 8% of rape crisis centers provide shelter services to these victims which, she says "is not surprising, given that most don't have shelters or safe homes available" (pp.104 and 109, footnote 9).

10 Bergen (1996) describes two phenomena: one she calls "shuttling" in which women are referred from one agency to another and sometimes back to the first in order to address their marital rape victimization; and another which she describes as "incorporating wife rape survivors into the organizational agenda" as traditional battered women without attention to their specific needs around sexual victimization. See especially pp. 86-92.

11 The question of the relationship between the crimes of burglary/breaking and entering and sexual assault continues to be investigated and debated. See Terry (2004).

12 Lisak's (2000) research is unusual in that his sample consists of 122 rapists who were never reported, prosecuted, or otherwise "detected." Given that most acquaintance and date rapes are not reported, his argument is that his sample represents a more "typical" rapist than is usually seen in the criminal justice system. His sample of 122 men committed a total of 1,126 acts of interpersonal violence, including 386 rapes or attempted rapes against peers.

13 The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (The Wetterling Act) which called for sex offender registries was passed in 1994 and was amended by Megan's Law in 1996 to require community notification, and by the Pam Lychner Sexual Offender Tracking and Identification Act of 1996 to increase registration requirements for aggravated or multiple sex crimes.

14 The Center for Sex Offender Management (CSOM) provides training and technical assistance to policy makers and practitioners on effective management of sex offenders. Additional information about CSOM, including written materials on a variety of sex offender-related topics and information about how to apply for technical assistance, can be found online www.csom.org.

15 The Sex Offender Management Discretionary Grant Program is currently managed by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

16 Many in the court system maintain that children's best interests are served through regular contact with both parents even when one parent is a perpetrator of domestic violence and resources for supervised exchange and/or contact are unavailable. Research in the past decade has consistently pointed to the harm to children of exposure to domestic violence, including but not limited to physical injury, and an increasing number of states have codified a rebuttable presumption against child custody for batterers. One response to the problem has been an increase in the number of supervised visitation programs. Karen Oehme, Program Director of the Clearinghouse on Supervised Visitation at Florida State University School of Social Work, estimates the number of supervised visitation programs in the United States at approximately 350, with the highest concentration of programs in California, Florida, New York, and New England, with most states having only two or three programs each. (Karen Oehme, personal communication, April 2004). Clearly this does not meet the existing need, and most judges are continuing to make child placement decisions in the absence of such a resource.

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