

A Brief History of Counterintuitive Testimony

The earliest iteration of counterintuitive behavior was *Rape Trauma Syndrome* (RTS). In 1976 Ann Wolbert Burgess (a nurse) and Lynda Lytle Holmstrom (a sociologist) proposed that rape victims experience symptoms related to physical, emotional, cognitive, and interpersonal behaviors. RTS reactions were believed to occur for months or years after the initial assault. RTS eventually morphed with post-traumatic stress disorder (PTSD), with many symptoms in common.

Prosecutors began using RTS behaviors to persuade jurors that unusual behaviors on the part of the victim were actually an adaptive reaction to their trauma. But criticisms by the scientific community began to challenge the validity of the RTS concept.

- Despite its popularity, there was no subsequent scientific validation of the theory since its introduction in 1976.
- It was vague in important details and proponents used ambiguous terms that did not have a basis in science.
- It was unclear what its boundary conditions were.
- It failed to articulate relationships between different variables (i.e., how would RTS for a victim of a single rape compare to a victim of a prolonged series of rapes?).
- Psychological research had difficulty distinguishing symptoms of rape-related PTSD from those potentially created by previous traumatic events (abuse in childhood, earlier sexual assaults).
- Proponents of RTS demonstrated allegiance effects (bias) in favor of purported victims so as to conform victim behaviors as symptoms of RTS.
- RTS never achieved consensus in the scientific community.
- It was not falsifiable.
- It ignored possible mediators (race, gender, extent of the sexual assault).
- RTS was not culturally sensitive.
- RTS was being used by prosecutors as a dispositive tool (truth-telling instrument) to infer that rape had occurred.
- PTSD eventually became a superior argument since empirical examination of the PTSD model had been extensive, unlike RTS.

By the early part of this century, *Rape Trauma Syndrome* started to fall into disfavor in the courtroom. The astute reader will note that many of the criticisms of RTS listed above are applied to the concept of *Counterintuitive Behavior* in this resource (because they are essentially the same concepts). Please see the “Critique of Counterintuitive Claims” section.

The Rise of Counterintuitive Behavior

While *Rape Trauma Syndrome* testimony had faded in popularity the concept found its rebirth as *Counterintuitive Behavior* (CIB). The American Prosecutor’s Research Institute (2007) describes the role of expert witness testimony regarding counterintuitive behaviors as follows.

“An experienced expert can explain behaviors that jurors often find baffling. Specifically, an expert can explain that a victim’s failure to scream out or resist during her attack may result from her shock and subsequent inability to focus. Experts can also explain that rape victims seldom report their assaults immediately because of their confusion, guilt or shock about the assault. Some may not identify the traumatic experience they just endured as rape, especially if their attacker did not use a weapon. It is also common for victims to blame themselves for their rapes if they were drunk, engaged in some consensual sexual behavior with their offenders or traveled to an isolated area with them. Victims may also fail to report immediately out of a fear that they will not be believed, particularly if their rapist is a “respected” member of the community. Victims may also become reckless and promiscuous after a sexual assault in an attempt to regain control over their lives. Finally, although the public would not expect

rape victims to come into contact with their perpetrators after an assault, it is not uncommon for victims to seek out their assailants in an attempt to master their situations or to regain control over their lives. . .

The jury's ability to understand a victim's behavior is intertwined with its ability to judge a victim's credibility. The behaviors described above, if left unexplained, can cause judges and jurors to disbelieve a victim's allegations. For example, the public often mischaracterizes a domestic violence victim's coping mechanisms as evidence of her complicity in or responsibility for her abuse. As a result, victims who recant are viewed as liars whose original reports to police were baseless accusations concocted to manipulate the system, or, in the alternative, they are perceived as pathological women with low self-esteem who enjoy or perhaps deserve their abuse. Either interpretation has equally devastating consequences as both often result in a not guilty verdict in a criminal prosecution." Jennifer Gentile Long, (2006). Explaining counterintuitive victim behavior in domestic violence and sexual assault cases. *American Prosecutors Research Institute*, Vol 1, number 4, p.2.

More recently experts have dropped the label "*Counterintuitive Behaviors*." Having learned from the past, prosecutors and CIB experts are reticent to use the actual phrase and will tend to refer to specific victim behaviors as the focus of their testimony. These behaviors can include:

- Not fighting or resisting during the assault (*Tonic Immobility, Freeze-Flight-Fight*).
- Acting "normal" the next morning; shopping, partying, going to work.
- Not telling, delayed telling, or "piecemeal" disclosure.
- Continued contact with the offender ("*Trauma Bonding*"; having sex, positive texting, dates after the instant event).
- Inconsistent, piecemeal, changing, or incomplete memories.
- Recantation.

But "*a rose by any other name would smell as sweet*." Whether in whole or in part, overstating the dynamic of CIB can introduce significant challenges on cross.

In our exploration of CIB we're seeking a delicate balance between reactions of actual victims of sexual assault but we're also trying to account for false reports. This document is designed as a dynamic resource that evolves with time. Also, please contact me with successes or failures that can be incorporated into this web resource.