Arizona Forensic Services, LLC
Paul Simpson, Ed.D.
Forensic Psychologist
Arizona License #1967
2292 W. Magee Rd., #220, Tucson, AZ 85742
Office: (520) 355-1000, Fax: (520) 355-2000
doc@psy.law / www.psy.law

COUNTERING Counterintuitive Testimony for Claims of Adult Sexual Abuse: What Every Attorney Should Know
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Today's seminar is an effort to better equip Defense attorneys to challenge expert testimony regarding Counterintuitive Behavior (CIB). This can be done in a pre-emptive *Daubert* challenge, during cross-examination in the trial phase, or both. Also consider that a thorough expert deposition can be very impactful in discouraging testimony. Government is often not tracking on how their expert's testimony might backfire. Be sure to check out Appendix A for a discussion on Daubert related to psychological concepts.

There is a critical balance to bear in mind while reviewing this paper. Much of CIB testimony can be legitimate and apply to victims who have truly been sexually assaulted. But there is a tendency for CIB experts to overstate the science and make claims that cannot be backed up from research. This excess, without a humble recognition of the limits of the current science, is where problems arise. This author has testified numerous times for the Government regarding victim behaviors; and chances are I'll continue doing so in the future. This paper isn't about the complete elimination of CIB testimony; it is about finding a healthy balance in professional testimony and how to best assist the trier-of-fact, the accused and the complaining witness.

A Brief History

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 paper (because they are essentially the same concepts). Please see Appendix B for an overview of research on RTS.

The Rise of Counterintuitive Behavior

While RTS testimony had faded in popularity the concept found its rebirth as *Counterintuitive Behavior* (CIB). The American Prosecutor's Research Institute 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 this paper we will examine CIB claims in whole (Part I) and in its parts (Part II).

In our exploration of CIB we're seeking a delicate balance between reactions of actual victims of sexual assault while also accounting for false reports. This document is designed as a dynamic resource that evolves with time. Pay attention to the date on the first page to insure you have the latest version. If you have doubts, go to my website – www.ArizonaForensics.com - or send me an email and I'll get you the latest one. Also, please contact me with successes or failures that can be incorporated into the next version. Your feedback in <u>critical</u> to better equip future Defense JAGs who are grappling with this testimony.

Part I. General Critique of Counterintuitive Testimony

1. A Cure for a Non-problem

An important first step is to understand whom counterintuitive behavior (CIB) actually applies to and why expert testimony is needed. The focus on counterintuitive behavior is jurors' perceptions of how a victim should react, not the complaining witness's behaviors. This distinction is potentially confusing but is a critical starting point. The *National District Attorneys Association* has published a definitive summary of counterintuitive theory and research, titled ***"Victim Responses to Sexual Assault: Counterintuitive or Simply Adaptive?"*** **(**Patricia Fanflick, August 2007, American Prosecutors Research Institute**).**

- *"counterintuitive is used to explain how a juror may perceive a victim's behavior and not the behavior itself."* (p.3).
- *"Sexual victimization, unlike other crimes, involves not only victimization but also attitudes toward sex-role behavior and sexuality. Therefore, . . attitudes toward traditional sex roles might influence … perceptions and attitudes about the crime of rape"* (p. 2).
- *"Studies exploring the dynamics surrounding sexual assault victims suggest that 'something unique about how society perceives sexual assault may lead people to make negative responses to women disclosing these experiences.'"* (p.3)

Pause for a moment to consider this point. At the start of voir dire the members state under oath they do not believe there are any standard reactions for a victim of sexual assault. Their questioning will often include specific aspects of the case, i.e.; delayed reporting, continuing to have sex with the accused after the event, or continued positive social media exchange. If Government doesn't ask these specific questions, be sure to ask them in yours. You'll want the members' sworn responses so you can challenge the CIB expert on this point later on.

The Bottom Line:

If members have already said they do not hold counterintuitive beliefs, why is testimony needed on counterintuitive behavior? Are the members lying under oath? Why is a cure needed for a non-problem? What fact of consequence does the testimony make more-or-less probable where the expert is not testifying about the complainant specifically, and the members have already agreed all victims might react differently to an assault? Don't underestimate this point for *Daubert* or on cross in the trial phase.

2. *In CIB research, there is no independent determination to ensure victims' sexual assault claims were true, unproven, or false.*

There are true victims of sexual assault that demonstrate a variety of reactions, including those described in this paper. But there is a tendency for CIB experts to overstate the science, ignore "*false positives*" and insinuate that counterintuitive behaviors are dispositive indicators that the complaining witness's testimony is truthful. In a sentence; CIB lacks "*discriminant validity*" – its overly "*sensitive*" at the cost of "*specificity*" (it fails to account for false reports of sexual assault). Let's try to unpack that dense sentence.

Sensitivity vs. Specificity

In medical diagnosis, test sensitivity is the ability of a test to correctly identify patients with a particular disease (true positive rate), whereas test specificity is the ability of a test to correctly identify those without the disease (true negative rate)

For instance, if a physician suspects a patient has strep throat, she might administer a "*Rapid Antigen Test*" (RAT). This test can detect strep bacteria in minutes and will correctly identify 100% of patients suffering from strep. In scientific terms, the RAT has high sensitivity to detecting strep in a patient.

However, the RAT also has a high "*false positive*" rate, meaning it will often show positive results for a person that does not have strep throat. In scientific terms, the test is overly sensitive and has a high level of "*false positives*". Another way of stating this is the RAT lacks specificity.

If the implications of a false positive are low risk, an overly sensitive test might be acceptable. For instance, treatment for strep (prescribing antibiotics) is a low-risk intervention. So, a physician might not worry about prescribing antibiotics for a person who actually does not have strep. But as the implications of a false diagnosis become more serious (i.e. diagnosing cancer or being falsely accused of a sex crime) a higher level of specificity is required.

From a scientific standpoint, CIB symptoms can be overly "*sensitive*" and lack "*specificity*".

Diagnostic sensitivity: "*Can this symptom rule in a reaction to a true sexual assault?*"

Diagnostic specificity: "*Can this symptom rule out a false claim of sexual assault?*"

Rate of Unproven and False Reports

Research on CIB typically involves anecdotal surveys about reactions to self-reported sexual victimization in the past. And herein lies one of the fundamental flaws in CIB research - there is no accounting for subjects who are mistaken or lying about sexual assault. So, in *Daubert* or in the trial phase, consider working to establish research's findings for what percent of sexual assault claims are proven, unproven or false.

We begin with a basic question: "*What percent of sexual assault claims have been found to be unproven or false?*" Unproven is different than false. You'll need to decide which of these concepts you want to include in your cross.

A) "*What percent of sexual assault claims have been found to be unproven?*"

This is intuitively the best way to ask the question. Law enforcement investigates a suspected crime and gives their findings to prosecutors, who then determine whether to move forward with charges. The American legal system doesn't seek to prove the negative – i.e. a jury does not determine "*a defendant is innocent of the crime in question*." Our legal system affirms the positive – the accused did or did not commit the crime and is innocent until proven otherwise.

What percent of sexual assault claims are ultimately unproven? Since 2003 the Department of Defense has produced an "*Annual Report on Sexual Assault in the Military*". In 2018; 482 completed cases of sexual assault were preferred for action. Of this number, **42% of the charges**

were proven and **58% remained unproven** in a court of law (acquitted, preemptive discharge, or charges dismissed).

An important distinction made in the 2018 report is that the 42% conviction rate was for penetration, sexual contact or *lesser* charges. Drilling down into the details; of trials in 2018 involving charges of penetration or sexual contact that resulted in conviction;

a) 55% were convicted of penetration or sexual contact; and
b) 45% were convicted of lesser charges.

Adding in this additional data, an interesting picture emerges. In 2018, 482 complaints of sexual assault were thoroughly investigated and resolved. Of those cases, 111 (23%) concluded with a trial conviction of penetration or sexual contact. Alternately just over three-quarters (77%) of preferred sexual assault claims were ultimately determined to be unproven ["*Other Offense*": (19%), "*Acquitted*" or "*Dismissed*": (39%)]. Bear in mind this statistic considers preemptive discharge leaves the charge unproven [RILO / DILO: (19%)]. See Appendix C for a description of this data.

B) "*What percent of sexual assault claims have been found to be false?*"

It is difficult to estimate the proportion of true-to-unfounded-to-false accusations, due in part to inconsistent definitions of what constitutes an unfounded or false accusation (Saunders, 2012). But research has discovered mistaken or false reports occur on a regular basis. Here's some of the more prominent studies.

Kanin (1994) – This ground-breaking and respected research found *41% of the total disposed rape cases (n = 109) in a Midwest community were officially declared false during a 9-year period.* Interestingly, the researchers did a follow-up study at two large Midwestern universities over a three-year period (1986-1988) and found that 50% of the reported forcible rapes were determined to be false accusations (32 of the total 64).

Peter Neufeld and Barry C. Scheck - Co-founders of the *Innocence Project* note:

- *"Every year since 1989, in about 25 percent of the sexual assault cases referred to the FBI where results could be obtained, the primary suspect has been excluded by forensic DNA testing. Specifically, FBI officials report that out of roughly 10,000 sexual assault cases since 1989, about 2,000 tests have been inconclusive, about 2,000 tests have excluded the primary suspect, and about 6,000 have "matched" or included the primary suspect."*
- The authors continue, *"these percentages have remained constant for 7 years, and the National Institute of Justice's informal survey of private laboratories reveals a strikingly similar 26 percent exclusion rate."* If the foregoing results can be extrapolated, then the rate of false reports is roughly between 20 percent (if DNA excludes an accused) to 40 percent (if inconclusive DNA is added).
- But that percentage is likely much higher because the presence of the accused's DNA fails to rule out consensual sexual activity. For instance, someone who has been in alcohol blackout might sincerely be mistaken that they were sexually assaulted.

Rumney (2006) conducted a review of 20 studies of false reporting in the US, New Zealand and the UK. The studies' findings of false rape allegations ranged from 1.5% to 90%. He draws two conclusions from his review of the literature. First, the police continue to misapply the "no-crime" or "unfounded" criteria. Rumney's second conclusion is that it is impossible to *"discern with any degree of certainty the actual rate of false allegations"* because many of the studies of false allegations have adopted unreliable or untested research methodologies.

Ferguson (2016) did a meta-analysis of seven studies and found that false reporting was a minimum of 5%, but the total false reporting rate would be greater if both confirmed false reports and equivocal cases were included.

Be sure to read Appendix D for a more in-depth review of false reports of sexual assault.

Bottom Line:

- How have the studies the expert is citing accounted for the demonstrated high rate of unproven or false sexual assault reports?
- How has the expert accounted for an unproven / false sexual assault report that might exist in this trial?

Remember, in the trial phase the judge won't allow for actual statistics to be discussed. But they can be described in a Daubert hearing. You can get a copy of the Lundregan article at the "*Articles you should have*" at my website. When crossing the CIB expert during Daubert, consider asking *"What is the percentage of unfounded and false sexual assault claims?"*

- *"You are aware that the 2018 Annual Report on Sexual Assault in the Military reported that 58% of sexual assault claims were unproven, correct?*"
- *"Further, the 2018 Annual Report found just over three-quarters (77%) of preferred sexual assault claims were ultimately unproven."*
- According to FBI DNA statistics, the *false* reporting rate for sexual assault claims is at least 20-40%.
- The highly regarded Kanin study showed false claims of sexual assault range from 41%-50%.
- *"How have you accounted for that high rate of unproven or false sexual assault allegations when forming your opinion that . . . [e.g., that sexual assault victims will 'often times' engage in subsequent consensual sexual activity with their alleged assailant]?"*

Consider making the **Convicted by Juries, Exonerated by Science, Lundregan, et al., U.S. Dept of Justice, June 1996.** a defense exhibit that you can use during your cross of the expert. Defense cannot simply pre-admit articles or studies during cross-examination. However, under MRE 803(18), the *Learned Treatise Exception*, a defense counsel can make the expert aware of the articles and then ask them about the findings. Remember, in the trial phase the judge won't allow for actual statistics to be discussed. But they can be described in a Daubert hearing.

A tip for prosecutors – The most logical way this comes out in court is if an expert testifies on CIB as a means to rehabilitate the alleged victim's testimony. Then the MJ must find that a fair cross-examination on that testimony necessarily includes the ability to challenge the research upon which the expert is basing their opinion and how that research factors in proven/unproven allegations. Therefore, the members should only be able to consider the evidence to that end, and not for an impermissible purpose i.e. that most 120s result in NG, so this allegation is probably not true.

If you're a prosecutor and you think the Defense is going to present this kind of cross of your expert in front of members, consider asking for a closed hearing prior to cross to get a ruling on whether the MJ is going to allow this challenge based on how the direct went.

Prior to trial you can get these online or email me and I'll send you these reports/studies. Please see Appendix C in this document for a more complete review. Also, be sure to read Rumney's article "*Purported False Allegations of Rape, Child Abuse and Non-Sexual Violence: Nature, Characteristics and Implications*" in the Journal of Criminal Law (2017). If you can't find the article online, email me and I'll send you a copy.

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3. *CIB Symptoms are not Falsifiable*

The previous section described how CIB research fails to account for the ratio of true-to-unfounded-to-false reports of sexual assault. In a similar vein, the symptoms that are purported to reflect CIB also suffer the same flaw. All scientific hypotheses or theories must be falsifiable (Popper, 1957). This is a central tenet in a *Daubert* challenge. In plain language – the expert must be able to demonstrate instances in which CIB symptoms are <u>not</u> indicators of abuse. This is a particularly important vulnerability for the expert. In their guide, the *American Prosecutors Research Institute* provide a list of common responses to sexual trauma:

Physical Reactions

- Aches and pains like head, back, and/or stomach aches
- Sudden sweating and/or heart palpitations (fluttering)
- Changes in sleep patterns, appetite, interest in sex
- Constipation or diarrhea
- Easily startled by noises or unexpected touch
- More susceptible to colds or illnesses
- Increased use of alcohol or other drugs and/or overeating

Emotional Reactions

- Shock and/or disbelief
- Fear and/or anxiety
- Grief, disorientation, denial
- Hyper-alertness or vigilance
- Irritability, restlessness, outbursts of anger or rage
- Emotional mood swings (e.g., crying then laughing)
- Worrying or ruminating (i.e., intrusive thoughts of the trauma)
- Nightmares
- Flashbacks (i.e., feeling as if the trauma is currently happening)
- Feelings of helplessness, panic, feeling out of control
- Increased need to control everyday experiences
- Minimizing the experience
- Attempts to avoid anything associated with the trauma
- Tendency to isolate oneself
- Feelings of detachment
- Concern with burdening others with problems
- Emotional numbing or restricted range of feelings
- Difficulty trusting and/or feelings of betrayal
- Difficulty concentrating or remembering
- Feelings of self-blame and/or guilt
- Shame
- Diminished interest in everyday activities or depression
- Unpleasant past memories resurfacing
- Loss of a sense of order or fairness in the world; expectation of doom and fear of the future (p.4-5)

Notice how expansive, vague and disconnected these CIB symptoms are. Yet the *American Prosecutors Research Institute* offers <u>no</u> scientific substantiation for a single symptom. Is there a single behavior that is demonstrated by every victim of sexual assault? How about 90%? Half? "*If all roads lead to Rome, which one leads to Paris?*" Some CIB advocates testify meaning an

expansive list of symptoms confirm sexual assault occurred, but never rule it out. This is a critical over-reach that goes well beyond what science has revealed.

Think about this – if someone has constipation, diarrhea, a cold or "illness", is that a result of sexual assault or simply reflects being a normal human being? Scientists call this error a lack of "*Discriminant Validity*". Every behavioral response described above can also be consistent with the reactions of someone who has never been sexually assaulted or has made a false report of sexual violence. And herein lies an important question on cross – *How have CIB surveys regarding behavioral reactions accounted for true, unfounded, or false reports?*

I recently consulted for the Defense team in a USMC court-martial. Government's expert was a respected and well-published college professor who specialized in CIB research. He gave a long and eloquent tutorial on CIB. On cross, Defense utilized many of the points in this paper and closed with a devastating last question – "*Dr. Jones, is there a single symptom you can name that would not be consistent with a person who has been sexually assaulted?*" I watched as the expert stared in confusion and the members leaned in to hear his response. After a long pause, the doctor replied *"I can't think of one."* The defendant was acquitted of all charges.

4. Motivations for Intentional False Reporting

Research shows that intentional false accusations can reflect a variety of motives.

- Kanin's (1994) highly respected study categorized false accusations into three motivations:
  - Alibis (50%)
  - Revenge (30%)
  - Attention-seeking (20%).

- The *Bavarian Police Study of False Rape Allegations* (2000) identified motivations related to:
  - Conflicts/problems in family or partnerships (20.7%)
  - Hiding sexual relationships (12.9%)
  - Puberty crisis cover / first sexual experience (10.7%)
  - Attracting compassion and attention (11.4%)
  - Justification for misconduct (10%)
  - Shame / embarrassment (3.6%)
  - Fear of pregnancy (1.4%)
  - Countersuing / revenge (7.5%)
  - Cerebral organic disturbance / alcoholism / drug dependency / psych disease (22.1%)
  - Motive not discernible (2.1%)

- The *FBI Law Enforcement Bulletin* (2012) identifies motivations that include:
  - Mental illness / depression
  - Attention / Sympathy
  - Financial / profit
  - Alibi
  - Revenge

- Zutter did a recent review on this issue (*Motives for filing a false allegation of rape*, 2018). Motivations included:
  - Material gain
  - Alibi
  - Revenge
  - Sympathy
  - Attention
  - Disturbed mental state
  - Relabeling
  - Regret
  - 20% of complainants didn't know why they filed false allegations.

Bottom Line:

See if you can get any of these motivations in through your expert or theirs. Remember that the military has a couple unique motivators – 1) Expedited transfer, and 2) PTSD due to sexual assault trauma (VA benefits). Tie specific motivations to your theory of the case. You want to ask the CIB expert what they know about motives to fabricate false allegations. How has the expert accounted for those motivations in this case? Aren't the CIB behaviors in this case consistent with someone who has a motive to lie?

5. *Failure to Account for Confounding Variables*

The *American Prosecutors Research Institute* (2007) states;

- *"The victim's personal characteristics coupled with multiple external factors make it virtually impossible to predict how an individual might react following a sexual assault. As such, this monograph will explore different psychological (e.g., depression, anger, or anxiety) and behavioral responses (e.g., not fighting back during a rape, continuing to date an assailant, or not reporting the sexual assault until months later) to sexual violence and why these responses appear to be "counterintuitive" to the general public."* (p.3)
- *Although many victims report distinctive psychological post-rape responses such as heightened fear, avoidance, re-experiencing the traumatic event, and anxious arousal, not all victims will have these specific post-rape reactions. Of those that do experience these reactions the frequency and duration may vary considerably from victim to victim.* (p.3)
- *"Although it is important to identify common reactions to a traumatic event, 'there is tremendous variability in the extent to which women are affected'. . . . Different psychological responses manifest different behavioral patterns or coping strategies for each survivor of sexual assault. In addition, external factors such as victim social support network, severity of the assault, or a victim's relationship to the assailant may also have an impact on a victim's psychological functioning after a sexual assault . . . A complex combination of individual characteristics and external factors influence how a woman will react to sexual victimization."* (p.5)
- *"Yet, there is a paucity of research that explores what factors curtail or intensify the most traumatic aspects of sexual victimization (Koss & Burkhart, 1989). Given the number of potential influences on a victim's response following a sexual assault, no comprehensive model of coping among sexual assault victims exists (Littleton & Radecki, Breitkopf, 2006). Frazier and Burnett (1994) surmise that the most common coping strategies for victims are difficult to assess because researchers define and measure "coping" differently across studies. . . . Factors such as past life experiences, developmental level, spiritual beliefs, social support systems, content and intensity of the event and genetic predisposition may all influence a victim's reaction to sexual assault"* (p.7)
- *"Littleton and colleagues (2006) report that sexual assault victims engage in "fairly extensive coping efforts in managing the assault" (p. 770). Yet, there is a paucity of research that explores what factors curtail or intensify the most traumatic aspects of sexual victimization (Koss & Burkhart, 1989). Given the number of potential influences on a victim's response following a sexual assault, no comprehensive model of coping among sexual assault victims exists (Littleton & Radecki Breitkopf, 2006). Frazier and Burnett (1994) surmise that the most common coping strategies for victims are difficult to assess because researchers define and measure "coping" differently across studies."* (p.7)
- *"As there is nothing normative about being sexually victimized, there cannot be a 'normal' reaction to such a traumatic event. Victims are caught between societal expectations and personal feelings in an attempt to cope with the experience."* (p.9)

"*Confounding variables*" get a bit technical but join me in the weeds on this one. There are internal, external, cultural, and gender factors that impact how research subjects react to claimed sexual assault. In this section we'll also explore the influence of alcohol and alcohol blackouts on mistaken or false reports.

A. Subject (internal) Variables

The *American Prosecutors Research Institute* cautions:

> *"Additionally, there is research to suggest that victims who experienced prior mental health problems . . . and prior victimization such as child physical and/or sexual abuse . . . experienced more severe post-rape responses. In fact, Kaltman et al., (2005) concluded*

that victims who experienced a sexual assault were at greatest risk for developing psychopathology, poor social adjustment, and engaging in risky sexual behaviors." (p.10-11)

"*Subject variables*" asks the question "*What is going on <u>inside</u> a person that impacts their reactions?*" CIBs cannot be assumed to be exclusively caused by a sexual assault. Symptoms can be due to a wide assortment of personal factors. But experts testifying about CIB typically have failed to conduct a clinical assessment of the complaining witness and to account for other psychopathology that may better explain CIB symptoms (e.g., anxiety, depression, psychosis, or personality disorders).

- Some clinical symptoms and conditions, including antisocial personality disorder, borderline personality disorder, histrionic personality disorder, delirium, psychotic disorders, dissociation and intellectual disability, have been proposed as pathways to false sexual assault accusations (Engle & O'Donohue, 2012).
- Personality traits and trauma intensity have been shown to account for up to 43% of the variance in PTSD severity with a notable significant interaction between trauma intensity and neuroticism (Lauterbach & Vrana, 2001).
- CIB theory does not distinguish between child, adolescent and adult victims. It is not clear how CIB generalizes across ages or developmental stages.

All of these <u>internal</u> conditions may have existed long before the purported sexual assault in your case. How has the CIB expert accounted for the presence or absence of these psychological conditions in the complaining witness? Could these psychological conditions be a better explanation for the odd behaviors or a false report?

B. *Possible <u>External</u> Mediators*

How have <u>external</u> events impacted a person displaying CIBs?

- Are symptoms better or worse if a complaining witness reports their sexual assault right away as compared to delaying for several months?
- Does getting therapy change the CIBs?
- What about talking with friends?

The *American Prosecutors Research Institute* states:

"Littleton and colleagues (2006) report that sexual assault victims engage in "fairly extensive coping efforts in managing the assault" (p. 770). Yet, there is a paucity of research that explores what factors curtail or intensify the most traumatic aspects of sexual victimization (Koss & Burkhart, 1989). Given the number of potential influences on a victim's response following a sexual assault, no comprehensive model of coping among sexual assault victims exists (Littleton & Radecki Breitkopf, 2006). Frazier and Burnett (1994) surmise that the most common coping strategies for victims are difficult to assess because researchers define and measure "coping" differently across studies." (p.7)

What research can the expert point to that accounts for important mediating factors?

- Was there information regarding whether research participants did or did not receive any type of treatment between the initial assault and subsequent research interview?
- How did counseling (if any) influence the relationship between sexual assault and CIB symptom severity?
- Research has shown that social support and coping styles impact CIB symptom development and severity (Ullman, Relyea, Peter-Hagene, & Vasquez, 2013; Wright, Kelsall, Sim, Clarke, & Creamer, 2013). How has the expert accounted for these influences in this particular victim?

- In published research there is typically no information about how recent the claimed sexual assaults had occurred.
- There are various levels of sexual assault. The Sexual Experiences Survey (SES; Koss & Gidycz, 1985), is a measure frequently used in sexual trauma research (Marx & Soler-Baillo, 2005; Wilson, Calhoun, & Bernat, 1999; Yeater & O'Donohue, 2002). The SES distinguishes between sexual contact, attempted penetration and completed penetration, as well as the types of penetration. Proponents of CIB describe reactions in victims of sexual assault but make no distinctions between various levels of sexual assault (i.e., digital penetration of the vagina versus anal intercourse) and how these might be related to CIB.

C. *CIB Is Not Culturally or Gender Sensitive*

The *American Prosecutors Research Institute* cautions:

> *"In attempting to adjust or find meaning in the traumatic event, victim behavior may vary considerably from person to person. In addition, responses may also be varied when compared across different racial and ethnic minority groups."* (p.10)

- There is little in the research literature on the cultural sensitivity of CIB, meaning advocates have failed to describe how CIB symptoms differed across ethnicities. This is problematic because members of different cultures report different symptoms of the same disorder (e.g., somatic versus cognitive symptoms of depression; Kirmayer, 2001).
- There is little description for how men and women differ in their response to sexual assault.

D. Alcohol Consumption and Alcohol Blackout effects on the Complaining Witness's Perception of the Instant Event.

For the past four years I have been an instructor for the Advanced Sexual Assault Litigation Course (ASALC) at Maxwell. One of the topics I teach is *Alcohol Blackouts and Sexual Assault*. For an in-depth primer on this topic, please go to my website – http://www.drpaulsimpson.com/seminars. Here's some of what is discussed in the handout:

Alcohol combined with claims of sexual assault are a frequently occurring phenomenon.

- Approximately half of sexual assault claims are associated with alcohol use by the accused, victim, or both. (Abbey, et al., 2001)
- Up to 75% of acquaintance rape claims involve alcohol. (Crowell & Burgess, 1996)

If your case involves alcohol consumption on the part of the complaining witness, consider the following.

Alcohol is a central nervous system depressant

- Confusion
- Memory loss
- Impaired judgement
- Behavioral changes
- Cognitive impairment
- Reduced inhibitions

Alcohol's Impact on Memory of Criminal Events (non-blackout)

- Alcohol affects women's reports more than men's, which may be because alcohol affects attention and memory consolidation more clearly at a lower dose for women than for men. (Karlén, 2015)
- Moderately and highly intoxicated individuals are less complete when recollecting crime details. (van Oorsouw, 2012)

- One study suggests that a second interview 24-hours after intoxication can produce additional details of a crime. (La Rooy, 2013)
- Severely intoxicated participants display a greater tendency to go along with suggestive cues compared with sober participants. Researchers found intoxication impaired memory and increased suggestibility during an immediate interview, and both effects persisted when sober again. (Van Oorsouw, 2015). But, see Gawrylowicz, 2017.

Underestimation of Alcohol Consumption

- People underestimate their own consumption by increasing amounts when engaging in heavy drinking. (Northcote, 2011)
- Young people and women are more likely to underestimate how much they drank. (Martin, 2016)
- Female students who reported typically drinking larger amounts of alcohol in party settings were more likely to make errors when estimating their intoxication for moderately high numbers of drinks. (Mallett, 2009)
- Accurate estimation of peer's drinking decreased significantly with increasing personal consumption. (Stock, 2014)

Alcohol Blackouts

- Episodes of amnesia during which a person can actively participate in events. (Goodwin 1995)
- Does not erase memories that were formed before (retrograde) (White 2003 p. 1)
- Inhibits memory of events after the level of intoxication reaches critical mass (anterograde) (Westrick 1988; Mintzer and Griffiths 2002; White 2003, p. 1 & 4;)
- *Blacking out* is different than *passing out*.

Blackout vs. Passed Out

- Blackout is…
    - Things a person does while drunk
    - They are CONSCIOUS!
    - The person is capable of carrying out complex and goal-directed behaviors (including sexual behaviors)
- Passed out is...
    - A person falling asleep or becoming unconscious.
    - They are NOT CONSCIOUS!
- You can have a blackout and then pass out.
    - "Blackout" tends to occur during *ascending* BAC. (Goodwin 1970; White 2003, p.6)
    - "Pass out" tends to occur during *descending* BAC.
- People can't tell the individual is in a blackout state. They just see the behaviors the person is doing.
- They can't see the person's hippocampus.

General Points regarding Alcohol Consumption and/or Alcohol Blackout

1. While in an alcohol-induced blackout, a person maintains the ability to engage in a wide array of complex and goal-directed activities, such as carrying on a conversation, driving, or having sexual intercourse. They maintain the functional capacity to engage in these activities but simply not encoding those memories; thus, memory for parts or the totality of an event is jeopardized (including consenting to sexual activity. Individuals in the midst of an alcohol-induced blackout remain conscious (as opposed to being passed out and unconscious) while maintaining the functional and behavioral capacity to engage in a wide

array of complex, goal-directed behaviors. Thus, their actions are engaged in while in a conscious state. Given that there is no way of knowing that an individual is in the midst of a blackout, their behaviors and actions appear fully volitional and intentional to an observer (and still can be 100% volitional and intentional).

2. The recollection of events (i.e., memory recall) is a reconstructive process. In other words, when an individual is asked to recall an event, it is not as if they go into their brain and pull an exact, carbon copy recording of what occurred. Rather, memories are recalled as a result of a reconstructive process. It is also well-established in the psychological literature that when individuals are asked to describe or explain events or actions they may not readily recall, they may be prone and vulnerable to filling in the blanks when constructing their memories. This has been repeatedly demonstrated in experimental, empirically-validated studies.

3. Alcohol can cause a person to perceive information inaccurately. It can also cause what is referred to as "alcohol myopia," which refers to the phenomena where a person will narrowly focus only on salient immediate stimuli at the expense of other contextual information. Thus, when this occurs, much of the contextual information is never encoded and subsequently will not be remembered.

4. Source misattribution is a psychological concept in which a person does not accurately link the original source of a memory to what is later recalled and retold to others. There are many potential causes of source misattribution. A basic example would be an eyewitness hearing from the police that a suspect was carrying a gun and later coming to believe that the suspect was carrying a gun without actually having seen a gun. The use of alcohol increases the risk and vulnerability of a source misattribution error. This becomes even more pronounced when a person is in a fragmentary blackout state.

5. The concept of transience of memory is that memory generally deteriorates and gets worse over time. Research has shown that a significant percentage of people experience major errors in their memory over the course of time, even for events that could be considered memorable or important. The memory issues associated with alcohol use can increase the potential for memories to be altered when recalled.

6. Suggestion and suggestibility refer to the psychological concept that memories can be affected and distorted by suggestion that is external to the individual. A well-intentioned non-witness can suggest or insist that something occurred in a particular way or that an event should be conceptualized in a certain way. This "suggestion" can potentially lead a witness to recall their memories in a new light and cause distortion in their memory to conform with the suggestion. When external suggestion is applied to a situation that occurred when an individual was under the influence of alcohol or in a blackout state, the individual may be even more prone to suggestion because research has shown that individuals who are less certain of events are more prone to suggestion regarding those events.

7. Hindsight bias is the concept that a person will restructure their beliefs or understandings about an event in order to conform with information later obtained. There is significant research on the subject of hindsight bias that shows that a memory can be reconstructed to fit that person's current beliefs or knowledge. The context provided by the new information can restructure that person's understanding and beliefs about what they remember occurring.

8. Motivated memory refers to several different concepts in which a person may consciously or unconsciously have a motivation to distort a memory. Embarrassment, shame, or self-justification are factors that can motivate a person to reconceptualize past events or create

inaccurate memories in order to prevent negative feelings and conform with other beliefs that individuals may have about themselves. The memory issues associated with alcohol can make this more likely to occur since an individual's memory of an event may be incomplete and/or distorted.

9. Imagination inflation is a concept in which a person thought about or imagined something occurring which did not actually occur, however, the individual later remembers that thing having occurred. A basic example of this would be someone intending to say something during a conversation but forgetting to say it. Later, falsely believe they actually said that thing during the conversation. The use of alcohol or being in an alcohol-induced blackout state have the potential to increase the risk of this occurring due to other memory issues being experienced by someone in those states.
10. It is important to note that none of these aforementioned psychological concepts operate in a vacuum. Multiple concepts can interact to distort an individual's memory. For example, suggestion, hindsight bias, and motivated memory can all be applicable to a situation and lead a person to have a false and/or inaccurate memory about an event that occurred. Furthermore, alcohol—and the resulting memory issues that accompany its use—exacerbates the likelihood and vulnerability of memory distortions in these situations.

If the complaining witness in your case was consuming alcohol; how has the CIB expert accounted for these effects? Be sure to go to the author's website – www.ArizonaForensics.com - for a seminar handout on *Alcohol Blackouts and Sexual Assault Claims* (under the picture of me in the desert holding a mandolin, click on >*CLE Seminar*s< and the handout is the first in the list).

Bottom Line:
In your cross of the expert you want to challenge him/her on *subject (internal) variables*:

- What has CIB research discovered about how internal factors impact CIBs?
- How has the expert accounted for these in the victim?
- Over 50% of sexual assault claims have been determined to be unproven or false. How does this impact research on CIBs? How has the research distinguished between true and unproven claims of sexual assault?
- How does a complaining witness who is lying impact their CIBs?

What about *external* mediating factors?

- How does CIB research distinguish between various degrees of sexual assault, time since the assault, number of sexual assaults, getting therapy versus no therapy, disclosing to friends, etc.
- How has the expert accounted for these in the present case?

What about cultural and gender issues?

- How did the CIB researchers control for different ethnicities in their studies?
- How do men and women differ in their reactions?
- How does gay, lesbian or heterosexual orientation impact CIBs? If a gay man is sexually assaulted by another man, is that different than a straight man who is sexually assaulted by a man?

How has the expert accounted for the consumption of alcohol and/ or alcohol blackout in the reactions of the complaining witness?

A tip for prosecutors – Remember that all this applies to the accused as well and can be a good area of cross for the Government.

6. *Confirmation Bias*

"*Confirmation Bias*"

> *"the tendency to process information by looking for, or interpreting, information that is consistent with one's existing beliefs. This biased approach to decision making is largely unintentional and often results in ignoring inconsistent information. Existing beliefs can include one's expectations in a given situation and predictions about a particular outcome. People are especially likely to process information to support their own beliefs when the issue is highly important or self-relevant."* (The Encyclopedia Britannica, britannica.com/science/confirmation-bias)

"When the only tool you have is a hammer, every problem looks starts to look like a nail."

Psychological science has found that experts tend to find what they "expect" to find. This goes by different names: "*Confirmatory Bias*", the "*Rosenthal Effect*" ("*Pygmalion Effect*"), the "*Rosenhan Experiment* (*Sane in Insane Places*)", "*Mental Set*", "*Primacy Effect*", or "*First Impressions*" dynamic. The CIB expert needs to demonstrate they are cognizant of this phenomenon that adversely affects objective decision-making and show reasonable steps have been taken to avoid the various pitfalls. For example - the tendency for information gathering to be influenced by first impressions or a bias. There is a natural (albeit it unintentional) tendency to accept the essential accuracy of the self-reports of subjects in a study.

- Confirmation biases can occur through a researcher engaging in hypothesis-confirming information seeking and interpretation, overweighting confirmatory signs and underweighting dis-confirmatory signs, especially in unstructured interviews.
- Interviewers' characteristics and biases can influence how interviewers interpret information and determine subsequent queries (Tanaka-Matsumi, 2004).
- A lack of training and experience on the part of the research interviewers can result in erroneous information and weaken the validity of their findings (Bootzin & Ruggill, 1988).
- Data gathered from interviews can be biased due to social desirability and participants' own discomfort with disclosing personal information (Guinn et al., 2010). Self-report data can be accurate, but also can be an exaggeration or a minimization (Haynes, Mumma, & Pinson, 2009; Haynes, O'Brien, & Kaholokula, 2011).
- Because the interview method requires retrospective recall, information gathered is prone to memory errors and recall biases (Graham, Catania, Brand, Duong, & Canchola, 2003)."

Psychological research frequently uses techniques for mitigating the effects of confirmation biases, called "*blind*" or "*double-blind*" experimental protocols (Gluud, 2006). This is where the interviewer and/or the interviewee do not know the underlying purpose of the study. This helps to eliminate confirmatory bias. This writer doesn't know of a single CIB study that has used "blind" interviewers or interviewees. This is an important failure that undermines research into CIB.

CIB Should Not Be Used to Infer That Sexual Assault Has or Has Not Occurred

The Defense attorney should never allow CIB to be an implied "*dispositive tool*" (truth-telling instrument). As already described, the data reported in anecdotal CIB studies do not distinguish between true, unfounded, or false reports of sexual assault. In addition, because no determination was made to gain additional assurance that sexual assault indeed had occurred, few if any quantitative relations of symptoms or stages have been developed. There can be many other pathways to the symptoms found (other trauma, past childhood abuse, etc.). These symptoms were not shown in CIB studies to be unique to sexual assault. Thus, it would be improper to reason backward in an attempt to conclude that because features of the CIB were or were not found in an individual case that the person was or was not sexually assaulted.

A Logical Error

CIB experts can sometimes insinuate a flawed logic in cause-and-effect. Here's how it works.

Situation A

a) Bob went snow skiing,
b) While doing so, he broke his foot. (Forward logic - "a" led to "b")
c) I see a number of people day-to-day who have a broken foot.
d) THEREFORE, they must have broken it while skiing. (Backwards logic – a broken foot means the person was skiing)

Situation B

a) A person is sexually assaulted.
b) That person goes on to display a number of maladaptive behaviors in the future, like staying in the abusive relationship and delaying disclosure of the abuse. (Forward logic – "a" leads to "b")
c) The complaining witness in this case stayed in the relationship with the accused and delayed disclosing until after they broke up.
d) This is behavioral proof that the victim was sexually assaulted. (Backwards logic)

This is a logical fallacy termed **"*affirming the consequent*."** In the first situation backwards logic would lead the jury to conclude all individuals with a broken foot did so while skiing. In the second situation a complaining witness staying with her assailant is proof that the abuse happened. When examined rationally the conclusion is nonsensical. However, jurors might accept this line of reasoning because it *sounds* logical, when in fact it is completely illogical. Counterintuitive Behaviors are not dispositive as to whether sexual abuse actually occurred.

Counterintuitive Behaviors are never evidence that the sexual abuse actually occurred. The proper use of Counterintuitive Behavior testimony is to educate the court so that the court does not instinctively conclude that the sexual abuse did not occur based solely on a victim acting in a manner that the court believes is inconsistent with how a "real" victim of sexual assault would behave.

An example might be to compare intuitive behaviors and counterintuitive behaviors: If the evidence demonstrates that a sexual assault victim scratched the face of her attacker; that would likely be considered an "intuitive behavior" and would be evidence that the attack actually occurred. If the evidence demonstrates that the victim made no attempt to physically prevent the sexual assault, that would likely be considered a counterintuitive behavior and is NOT evidence that the attack actually occurred. The relevance of CIB testimony is to point out that, even though you might think they would, not every victim of sexual assault physically resists the unwanted sexual act. Expert testimony is meant to ensure that the factfinder does not put too much weight on that one fact – the lack of physical resistance – when considering the evidence. Unfortunately, the government tries to use CIB to "corroborate" an alleged victim's allegations. That is inconsistent with the science and the law.

Bottom Line:
CIB claims are prone to confirmation biases because proponents of the theory conducted all of their study interviews and were not blind to their own hypotheses. Consider asking the expert:

- What is confirmatory bias?
- How do researchers correct for confirmatory bias?
- Can you name a single CIB study that has included a blind or double-blind format?
- Did the gathering of psychological data systematically rule out rival explanations? What contradictory points of data were found?
- Did researchers believe the self-reports of subjects were factual truths?

7. The Devil is in the Details

I was recently in a trial working with the Defense team. Government's CIB expert was asked to opine about an alleged sexual assault between two men who had a platonic friendship before the night in question and remained friends after the event. They only had the one sexual encounter. Government needed to explain why the male victim would remain friends with the accused after the alleged assault and didn't report the event until more than 1½ years later. The Defense's theory of the case was this was an instance of consensual exploration between two male friends and the complaining witness was embarrassed when the encounter was discovered. Keep these basic facts in mind as we review the expert's testimony in this case and the four studies she submitted as the basis for her opinion.

Study #1: Ferguson (2016). Assessing Police Classifications of Sexual Assault Reports: A Meta-Analysis of False Reporting Rates.

Government worked to establish that the false-reporting rate for sexual assault is very low. On direct, the CIB expert said with confidence the false-reporting rate for sexual assault was 5% based on Ferguson's findings. On cross, she was asked to read out loud the following quotes from the study:

> *"The objective of the study was to determine, through meta-analysis, the rate of confirmed false reports of sexual assault to police. . . The total false reporting rate, including both confirmed and equivocal cases, would be greater than the 5% rate found here."* (p.1185)

> *"A proportion of cases in the studies included here were equivocal, where the researchers simply could not determine whether the accusation was false. Certainly, there are likely to be cases where the accusation is indeed false, but the falsity could not be proven. The sometimes high number of cases which were in doubt but not confirmed as false in the studies included here supports this assertion."* (p.1192)

Next the Defense attorney posed a question about the FBI's findings on false and unfounded sexual assault claims. During a seven-year period they cataloged over 10,000 DNA submissions to their laboratories. Their results showed that 20% of sexual assault claims were proven false and 20% were inconclusive. The CIB expert had never heard of the FBI data.

In an effort to repair the damage, on re-direct Government noted that none of the studies reviewed in the Ferguson article included male victims, so the results didn't apply to this trial (actually four of the seven studies had included males, but Defense wasn't going to correct Government's mistake). Appreciate this moment – Government is correcting their own expert by saying the study she relied upon didn't apply to the trial. Imagine being one of the members while Government explains that their own expert misled the court. In this short line of questioning Defense was able to frame the CIB expert as uninformed, deceptive and demonstrate that the false and unfounded rate of sexual assault claims were at least 40%.

Study #2: Edwards, 2012 – Predictors of Victim-Perpetrator Relationship Stability Following a Sexual Assault: A Brief Report

In a second study the expert cited Edwards (2012) in which researchers assessed the predictors of victim-perpetrator relationship stability following a sexual assault. On page 28 of their report, the authors state:

> *"Further, relationships where women were assaulted by a steady dating partner were more likely to remain stable post-assault than relationships where women were assaulted by a friend or a casual dating partner."*

Can you spot the two major problems with citing this study?

1) There were no female victims alleged in this trial.
2) The victim and the accused had never been in a previous dating relationship together.

This study literally had nothing to do with the trial.

Study #3: Sawatsky (2015). Consensual Victim–Perpetrator Intercourse after Nonconsensual Sex: The Impact of Prior Relationship.

On the first page of the report, the authors describe their findings:

> *"Intercourse is more likely during nonconsensual sex when the victim and perpetrator have previously had a sexual relationship; thus, subsequent consensual intercourse may simply be a continuation of that prior relationship. . . victims who had intercourse with perpetrators prior to the nonconsensual sex event were significantly more likely than other victims to experience nonconsensual intercourse and to engage in subsequent consensual intercourse with the perpetrator."*

Again, can you spot the major problem with this study?

1) The victim and the accused had never been in a sexual relationship prior to the instant event. They did not have a sexual relationship subsequent to the instant event. What does this study have to do with the actual facts at trial? Absolutely nothing. But an astute Defense attorney could flip this studies' results:
    a. If the victim and the accused did <u>not</u> have a <u>subsequent</u> sexual relationship, then;
    b. the study suggests their initial sexual encounter was a onetime, consensual exploration. (I know, this hurts your brain. But think about this for a moment).

Study #4: Lee Ellis, (2009). Perpetrators of Sexual Assault Continuing to Have Sex with Their Victims Following the Initial Assault Evidence for Evolved Reproductive Strategies.

> *"Among a sample of college students, roughly 30% of the women and 12% of the men reported having been the victim of a sexual assault sometime in their lives. Of the assault victims, approximately 23% of both sexes stated that they had sexual intercourse with their assaulters on at least one subsequent occasion."* (page 1)

How does two men who had a one-time sexual encounter qualify as a reproductive strategy?

Bottom Line:

The devil is in the details. Of the studies the CIB expert submitted as the basis of her testimony, all four had nothing to do with the actual case. In your case have Government's expert provide you the titles and actual copies of the research articles they are basing their opinion upon. <u>Don't let him/her dump them on you last minute</u>. Then be sure that you and your own expert read through each study to identify ways in which it might not apply to your case and the cautions/limitations that are always described at the end of the article (Scientists call this "*lack of generalizability*.") In Part II of this paper, an extensive list of research abstracts is provided for the most common CIB reactions. Identify the specific behaviors the expert is going to testify about and do your own research for studies that are contradictory.

Part II: An Examination of Specific CIB Behaviors

In this section we'll examine specific behaviors that are the focus of CIB testimony, including:

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

The Government 's expert will tell you which behaviors s/he is going to testify about. For each of these behaviors you want to make sure to utilize one-or-more of the strategies in Part 1 of this paper.

1. Why are they proposing a cure for a non-problem?
2. How did the studies they are citing account for sexual assault claims that were true, unfounded, or false?
3. Can they give a single example in which this particular symptom has been shown to be falsifiable?
4. How has the research and expert's testimony accounted for motivations for false reporting?
5. How has the expert's research studies, and testimony accounted for confounding variables?
    - Subject-Variable interactions
    - Possible external mediators
    - Cultural or gender issues
    - Alcohol consumption and alcohol blackout
6. How has the expert's research studies, and testimony accounted for confirmation bias?
    - Blind / double-blind
    - CIB lacks predictive ability
    - It should not be used to infer that rape has or has not occurred
7. The Devil is in the Details. The Government 's CIB expert must provide you the titles and actual copies of the research articles they are basing their opinion upon. Then be sure that you and your own expert read through each study to identify ways in which the study doesn't apply to your case and the cautions/limitations that are always described at the end of the article. This section of the paper includes a multitude of research abstracts for each of these six areas of counterintuitive behaviors listed above. Read through the ones relevant to your case and look for the studies that contradict the expert's.

CIB #1: *Freeze-Flight-Fight* or *Tonic Immobility*

Why didn't the victim fight off their assailant? The CIB expert will tend to testify:

- Fear, frozen, or terror (*Freeze-Flight-Fight-Faint*)
- *Tonic Immobility* - an involuntary "defensive strategy" seen in animals when unavoidable threat is perceived.
- Disbelief that this is happening
- Belief that it will be worse to fight
- Socialization to passivity
- Blames self for being in the situation or encouraging their assailant
- Protection of others
- Greater PTSD associated with elicitation (victims exposed to triggers of past trauma)

Freeze-Flight-Fight Response

The flight or fight response, also called the "*acute stress response*" was first described by Walter Cannon in the 1920s as a theory that animals react to threats with a general discharge of the sympathetic nervous system. The response was later recognized as the first stage of a general adaptation syndrome that regulates stress responses among vertebrates and other organisms.

The onset of a stress response is associated with specific physiological actions in the sympathetic nervous system, primarily caused by release of adrenaline and norepinephrine from the medulla of the adrenal glands. The release is triggered by acetylcholine released from preganglionic sympathetic nerves. These catecholamine hormones facilitate immediate physical reactions by triggering increases in heart rate and breathing, constricting blood vessels and tightening muscles. An abundance of catecholamines at neuroreceptor sites facilitates reliance on spontaneous or intuitive behaviors often related to combat or escape.

Normally, when a person is in a serene, unstimulated state, the "firing" of neurons in the locus ceruleus is minimal. A novel stimulus, once perceived, is relayed from the sensory cortex of the brain through the thalamus to the brain stem. That route of signaling increases the rate of noradrenergic activity in the locus ceruleus, and the person becomes alert and attentive to the environment.

If a stimulus is perceived as a threat, a more intense and prolonged discharge of the locus ceruleus activates the sympathetic division of the autonomic nervous system (Thase & Howland, 1995). The activation of the sympathetic nervous system leads to the release of norepinephrine from nerve endings acting on the heart, blood vessels, respiratory centers, and other sites. The ensuing physiological changes constitute a major part of the acute stress response. The other major player in the acute stress response is the hypothalamic-pituitary-adrenal axis. (*Psychologistworld.com)*

"A term introduced by the US physiologist Walter Bradford Cannon (1871 – 1945), and popularized in his book *The Bodily Changes in Pain*, *Hunger, Fear and Rage* (1929), for the syndrome of physiological responses of an organism confronted with a situation that evokes fear, pain, or anger, such responses being mobilized by the secretion of adrenaline (epinephrine) from the adrenal medulla, preparing the organism to fight or to flee. It includes increase blood pressure, accelerated heart rate, deep respiration, increased sweating, dilation of the pupils, diversion of blood flow from the digestive tract to the skeletal muscles and cessation of digestive processes, release of sugar from reserves in the liver, and closure of the sphincter of the bladder, leading to retention of urine." (Oxford Dictionary of Psychology, Andrew M. Colman, 2006, p. 283).

Reach out to Dr. Simpson for a description of questions that can be asked on cross of the CIB expert regarding **Freeze-Flight-Fight / Tonic Immobility**.

Research Articles on Freeze-Flight-Fight and/or Tonic Immobility

Fight, flight or freeze: Implications of the passive fear response for anxiety and depression.

Hamilton, Laurie

Phobia Practice & Research Journal, Vol 2(1), Spr-Sum 1989. pp. 17-27.

Abstract:

Introduces the General Inhibition Syndrome (GIS) as a stress response that is as important as the General Adaptation Syndrome (GAS) in its relationship to anxiety and depression. GIS is a reaction to psychobiological stress that leads to a fugue state, either for a period of recuperation, or as a passive fear response (PFR). PFR involves the cessation of movement, bradycardia, and depression of the metabolism in response to threat. Animal telemetry studies indicate that perception of helplessness, defensive capabilities, proximity of a safe place, and the perception of danger predicate whether an animal will have a passive (GIS) or active (GAS) fear response. Treatment implications of PFR are discussed.

Brain systems that mediate both emotion and cognition.

Gray, Jeffrey A.

Cognition and Emotion, Vol 4(3), Sep, 1990. Special issue: Development of relationships between emotion and cognition. pp. 269-288.

Abstract:

Neurobiological research with animals suggests that the brain systems mediating emotion overlap with those mediating **cognition** to such a degree that it is difficult to maintain any clear distinction between them. Possible reasons for this overlap are discussed, using examples from 2 related fields: behavioral effects of drugs and studies of brain damage. A model of brain systems that simultaneously subserve emotion and cognition is presented. The model postulates the existence of 3 fundamental systems of this kind in the mammalian brain: a behavioral approach system, a fight/flight system, and a behavioral inhibition system. The neuropsychology of each system is briefly presented.

Freeze, Flight, Fight, Fright, Faint; Adaptationist Perspectives on the Acute Stress Response Spectrum.

Bracha, H. Stefan

CNS Spectrums, Vol 9(9), Sep, 2004. pp. 679-685.

Abstract:

This article reviews the existing evolutionary perspectives on the acute stress response habitual faintness and blood-injection-injury type-specific phobia (BI1TS phobia). In this article, an alternative evolutionary perspective, based on recent advances in evolutionary psychology, is proposed. Specifically, that fear-induced faintness (eg, fainting following the sight of a syringe, blood, or following a trivial skin injury) is a distinct Homo sapiens-specific extreme-stress survival response to an inescapable threat. The article suggests that faintness evolved in response to middle paleolithic infra-group and inter-group violence (of con-specifics) rather than as a pan-mammalian defense response, as is presently assumed. Based on recent literature, freeze, flight, fight, fright, faint provides a more complete description of the human acute stress response sequence than current descriptions. Faintness, one of three primary physiological reactions involved in B11TS phobia, is extremely rare in other phobias. Since heritability estimates are higher for faintness than for fears or phobias, the author suggests that trait-faintness may be a useful complement to trait-anxiety as an endophenotype in research on the human fear circuitry. Some implications for the forthcoming Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition as well as for clinical, health services, and transcriptomic research are briefly discussed.

Does 'fight or flight' need updating?

Bracha, H. Stefan, Ralston, Tyler C., Matsukawa, Jennifer M., Williams, Andrew E.

Psychosomatics: Journal of Consultation Liaison Psychiatry, Vol 45(5), Oct, 2004. pp. 448-449.

Abstract:

The authors propose the adoption of an expanded and reordered version of W. Cannon's term "fight or flight", coined in 1929. "Fight or flight" mischaracterizes the ordered sequence of responses that mammals exhibit as a threat escalates or approaches. In addition to the omission of the initial

freezing response, other important fear responses have remained obscured, in part because of their omission from "fight or flight," and these other fear responses have important clinical implications as well. Tonic immobility is a clinically relevant survival response observed in humans and mammals. More recent research suggests the phrase "freeze, flight, fight, or fright" is a more complete and nuanced alternative to the original "fight or flight".

Tonic immobility as an evolved predator defense: Implications for sexual assault survivors.

Marx, Brian P., Forsyth, John P., Gallup, Gordon G., Fusé, Tiffany, Lexington, Jennifer M.

Clinical Psychology: Science and Practice, Vol 15(1), Mar, 2008. pp. 74-90.

Abstract:

This article reviews research concerning the possible relationship between tonic immobility (TI) and human reactions to sexual assault. This review includes a description of the characteristic features of TI and a discussion of the most widely accepted theoretical explanation for TI. The possibility that humans may exhibit TI is explored and conditions that might elicit TI in humans are identified. In particular, we focus on TI in the context of sexual assault, because this form of trauma often involves elements that are necessary for the induction of TI in nonhuman animals, namely, fear and perceived physical restraint. The important similarities and differences in how TI manifests in humans and nonhuman animals are highlighted, future research directions are offered, and clinical implications are suggested

Differentiating defensive and predatory aggression: Neuropsychological systems and personality in sex differences.

Corr, Philip J., Perkins, Adam M.

Behavioral and Brain Sciences, Vol 32(3-4), Jun-Aug, 2009. pp. 274-275.

Abstract:

Comments on an article by John Archer (see record 2009-17488-001). We draw a distinction between defensive and predatory forms of aggression, and how these forms relate to basic neuropsychological systems, especially the Fight-Flight-Freeze-System (FFFS; putatively related to defensive aggression), and the Behavioral Approach System (BAS; putatively related to predatory aggression). These systems may help further to account for proximal brain processes and personality influences in the context of sex differences.

Dissociation following traumatic stress: Etiology and treatment.

Schauer, Maggie and Elbert, Thomas

Zeitschrift für Psychologie/Journal of Psychology, Vol 218(2), 2010. pp. 109-127.

Abstract:

We postulate that the cascade 'Freeze-Flight-Fight-Fright-Flag-Faint' is a coherent sequence of six fear responses that escalate as a function of defense possibilities and proximity to danger during life-threat. The actual sequence of trauma-related response dispositions acted out in an extremely dangerous situation therefore depends on the appraisal of the threat by the organism in relation to her/his own power to act (e.g., age and gender) as well as the perceived characteristics of threat and perpetrator. These reaction patterns provide optimal adaption for particular stages of imminence. Subsequent to the traumatic threats, portions of the experience may be replayed. The actual individual cascade of defense stages a survivor has gone through during the traumatic event will repeat itself every time the fear network, which has evolved peritraumatically, is activated again (i.e., through internal or external triggers or, e.g., during exposure therapy). When a parasympathetically dominated ‘‘shut-down’’ was the prominent peri-traumatic response during the traumatic incident, comparable dissociative responses may dominate responding to subsequently experienced threat and may also reappear when the traumatic memory is reactivated. Repeated experience of traumatic stress forms a fear network that can become pathologically detached from contextual cues such as time and location of the danger, a condition which manifests itself as posttraumatic stress disorder (PTSD). Intrusions, for example, can therefore be understood as repetitive displays of fragments of the event, which would then, depending on the dominant physiological response during the threat, elicit a corresponding combination of hyperarousal and dissociation. We suggest that trauma treatment must therefore differentiate between patients on two dimensions: those with peritraumatic sympathetic activation versus those who went down the whole defense cascade, which leads to parasympathetic dominance during the trauma and a

corresponding replay of physiological and dissociative responding, when reminded. The differential management of dissociative stages ('fright' and 'faint') has important treatment implications.

Adult male rape and sexual assault: Prevalence, re-victimization and the tonic immobility response.

Coxell, Adrian W. and King, Michael B.

Sexual and Relationship Therapy, Vol 25(4), Nov, 2010. pp. 372-379.

Abstract:

Fifteen years ago we summarized research on what was known about the sexual assault of men and its effects. Here we present evidence from epidemiological research that demonstrates that the sexual assault of men is observed in many countries—demonstrating the widespread existence of the sexual assault of men and the need for further research. We also present research to show that the association between child sexual abuse and sexual assault in adult females has also been found in a variety of studies on men. Finally, we also consider the phenomenon of tonic immobility as this has important implications for the well-being of victims of sexual assault.

Freeze for action: neurobiological mechanisms in animal and human freezing

Karin Roelofs

Philos Trans R Soc Lond B Biol Sci. 2017 Apr 19; 372(1718): 20160206.

Abstract

Upon increasing levels of threat, animals activate qualitatively different defensive modes, including freezing and active fight-or-flight reactions. Whereas freezing is a form of behavioral inhibition accompanied by parasympathetically dominated heart rate deceleration, fight-or-flight reactions are associated with sympathetically driven heart rate acceleration. Despite the potential relevance of freezing for human stress-coping, its phenomenology and neuro-biological underpinnings remain largely unexplored in humans. Studies in rodents have shown that freezing depends on amygdala projections to the brainstem (periaqueductal grey). Recent neuroimaging studies in humans have indicated that similar brain regions may be involved in human freezing. In addition, flexibly shifting between freezing and active defensive modes is critical for adequate stress-coping and relies on fronto-amygdala connections. This review paper presents a model detailing these neural mechanisms involved in freezing and the shift to fight-or-flight action. **Freezing is not a passive state but rather a parasympathetic brake on the motor system, relevant to perception and action preparation.** Study of these defensive responses in humans may advance insights into human stress-related psychopathologies characterized by rigidity in behavioural stress reactions. The paper therefore concludes with a research agenda to stimulate translational animal–human research in this emerging field of human defensive stress responses. This article is part of the themed issue ‘Movement suppression: brain mechanisms for stopping and stillness’.

Research Articles on Fight/Flight/Freeze and Gender

Gender Differences in Responses to Stress: It Boils Down to a Single Gene
Fight-or-Flight vs Tend-and-Befriend

Psychology Today Online. Posted Mar 17, 2012

You are walking alone in a dark alley late at night when, all of a sudden, you feel the barrel of a gun pressed to the back of your neck and hear a voice saying: "Give me your wallet or I will kill you." What do you do? The answer is: it depends on whether you are a man or a woman. If you are a man, you either run away as quick as you can or you turn around and punch the guy in the face. If you are a woman, you try to talk yourself out of the situation: "Are you sure you want to do this?" you ask the robber, or "If you put the gun away, we can talk about the situation and I will see what I can do to help you."

According to some psychologists, there is basic difference in the way men and women respond to social stress: for men, it's either "fight or flight" while for women it's "tend and befriend." Physiologist Walter Cannon - a pioneer of research on stress - argued in the 1930s that "fight-or-

flight" is a universal physiological response to stress shown not only by all humans, but by animals as well. This response is controlled by the sympathetic nervous system - the part of our nervous system that deals with automatic functions such as breathing. Under stress, this system is activated, increasing heart rate and blood pressure, hastening breathing, and otherwise readying you to face down your enemy or to run. Thousands of studies inspired by Cannon described and documented this response in a variety of species and situations. The vast majority of these studies, however, were conducted with males.

In 2000, UCLA social psychologist Shelley Taylor and her colleagues wrote an influential article in *Psychological Review*, which Taylor later expanded into a book called *The Tending Instinct,* to propose that when it comes to stress, women are different from men. Instead of getting ready to fight or to flee, women become more likely to express affiliative social behavior, either to befriend the enemy - if there is an enemy and is causing the stress - or to seek social support from their family members or friends. Physiologically, instead of releasing large amounts of norepinephrine and cortisol into the bloodstream the way men do, Taylor argued that women respond to stress by secreting more endorphins - neurochemical substances that help alleviate pain and make us feel good about social interactions - and oxytocin, a neurohormone that is linked to the motivation to behave in a friendly manner to children or close social partners.

In support of Taylor's hypothesis, I can tell you from experience that if you put two adult male rhesus monkeys who have never met before in a small cage, they will fight and try to kill each other. In contrast, if you put two females in a cage, they will reduce the tension and awkwardness of the situation by exchanging grooming behavior (grooming is the main form of affiliation in monkeys and is known to cause a release of endorphins and to reduce stress in the receiver - not unlike receiving a body massage from your favorite masseuse).

A new study conducted in Australia suggests that the difference between men and women in their responses to stress may boil down to a single gene. The authors of this study argued that the SRY gene that men have on their Y chromosome - right between the gene for flipping through TV channels with the remote control and the gene for not putting the toilet seat down after peeing - causes their fight-or-flight response, while women use different genetic and physiological mechanisms to deal with stress.

The SRY gene was previously thought to be involved only in the development of male genitalia in the womb, but the proteins produced by this gene have now been found also in the brain and other organs. It turns out that these SRY proteins regulate the secretion of neurotransmitters known as catecholamines, which include norepinephrine, dopamine, and serotonin, and play an important role in neural activity, cardiovascular function, and movement. The SRY gene and its proteins may contribute to the release of large amounts of norepinephrine in the blood stream and the increase in blood pressure and motor activity occurring after stress in men, which in turn, facilitate the expression of the fight-or-flight response. Since women don't have the SRY gene, their responses to stress are regulated by other genes and other physiological changes involving estrogen hormones and, as previously mentioned, oxytocin and endorphins. These physiological changes, in turn, facilitate the expression of the tend-and-befriend response.

Obviously, women too show increases in catecholamines and in blood pressure after stress. These physiological processes are controlled by multiple genes, with the result that male and female physiology are generally more similar than Australian researchers might think. This is true also for other physiological gender differences, where men differ on average from women but there is overlap in the distribution of the trait. For example, although men have, on average, much more testosterone in their body than women, there are women whose testosterone is as high as, or even higher than men's testosterone. Recent studies conducted in Australia have shown that when these high-testosterone women respond to stress, particularly stress caused by men such as being held

at gunpoint by a guy in a dark alley, they show the unique and highly effective "kick-the-man-in-the-groin" response.

Taylor, S. E., et al. (2000). Biobehavioral responses to stress in females: tend-and-befriend, not fight-or-flight. Psychological Review, 107: 411-429.

Taylor, S. E. (2002). *The Tending Instinct: How Nurturing is Essential to Who We Are and How We Live*. New York: Henry Holt.

Lee, J., Harley, V. (2012). The male fight-flight response: A result of SRY regulation of catecholamines? *BioEssays*, published online on March 8th

Biobehavioral responses to stress in females: Tend-and-befriend, not fight-or-flight.

Authors:

Taylor, Shelley E., et al.

Psychological Review, Vol 107(3), Jul, 2000. pp. 411-429.

Abstract:

The human stress response has been characterized, both physiologically and behaviorally, as 'fight-or-flight.' Although fight-or-flight may characterize the primary physiological responses to stress for both males and females, we propose that, behaviorally, females' responses are more marked by a pattern of 'tend-and-befriend.' Tending involves nurturant activities designed to protect the self and offspring that promote safety and reduce distress; befriending is the creation and maintenance of social networks that may aid in this process. The biobehavioral mechanism that underlies the tend-and-befriend pattern appears to draw on the attachment-caregiving system, and neuroendocrine evidence from animal and human studies suggests that oxytocin, in conjunction with female reproductive hormones and endogenous opioid peptide mechanisms, may be at its core. This previously unexplored stress regulatory system has manifold implications for the study of stress.

Sex differences in cortisol excretion during anticipation of a psychological stressor: Possible support for the tend-and-befriend hypothesis.

Ennis, Michael. Kelly, Kimberly. Lambert, Paul L.

Stress and Health: Journal of the International Society for the Investigation of Stress, Vol 17(4), Jul, 2001. pp. 253-261.

Abstract:

Examined gender differences in the effects of cognitive expectations of anticipated stressors on neuroendocrine responses. Ss were 58 18–44 yr old college students (38 male, 20 female). Hypothalamic-pituitary-adrenal activation was assessed for Ss making a 'threat appraisal' vs a 'challenge appraisal' of an academic examination. Self-reported anxiety in relation to these variables was also examined. Urinary cortisol was assessed at baseline (at least 1 wk before the examination) and at pre-test (immediately before the examination). Results show there was, contrary to hypothesis, an unexpected sex–time interaction that was particularly robust in Ss making a challenge appraisal. Males in the challenge appraisal group had a significant increase in cortisol excretion from baseline to pre-test, with greater reported anxiety than the threat appraisal group. In contrast, females had a decrease in cortisol excretion that was significant only for the challenge appraisal group, although reported anxiety between the challenge and threat groups was not different. Results may suggest that the female stress response has evolved differently than that of males, or they may reflect sex differences in production of corticosteroid-binding globulin.

Sex differences in behavioral and hormonal response to social threat: Commentary on Taylor et al. (2000).

Authors:

Geary, David C.. Flinn, Mark V.

Psychological Review, Vol 109(4), Oct, 2002. pp. 745-750.

Abstract:

Taylor and colleagues proposed that women uniquely respond to stressors by tending to children and befriending other women rather than by fighting or fleeing (S. E. Taylor et al., 2000). In this article, the authors expand Taylor et al.'s evolutionary frame and incorporate several unique aspects of human social dynamics. First, humans are characterized by extensive paternal investment, and

thus men's tending is predicted and observed in some stressful contexts. Second, the dynamics of women's befriending suggest an evolutionary elaboration of the mechanisms that support reciprocal altruism. Third, coalitional male-male competition indicates that men's befriending is a predicted component of their fight-or-flight response. Finally, men's tending should result in the evolution of female-female competition over this form of parental investment.

Tend and Befriend Versus Fight or Flight: Gender Differences in Behavioral Response to Stress Among University Students.

Turton, S., Campbell, Carol.

Journal of Applied Biobehavioral Research, Vol 10(4), 2005. pp. 209-232.

Abstract:

Taylor et al. (2000) proposed that female behavioral responses to stress are characterized better as 'tend and befriend' than 'fight or flight.' Q methodology was adopted to investigate different responses to stress. A Q set of 61 statements was sorted by 40 participants (18 male, 22 female) using principal components factor analysis. Four factors were extracted, accounting for 53.5% of the total variance. The 4 factors corresponded with fight, flight, tend, and befriend stress responses. Females were more likely to portray a tend-and-befriend response to stress. The implications of these findings are discussed in relation to past research that has been conducted with participants, predominantly of a single gender and for future stress research studies.

Tend and Befriend: Biobehavioral Bases of Affiliation Under Stress.

Taylor, Shelley E.

Current Directions in Psychological Science, Vol 15(6), Dec, 2006. pp. 273-277.

Abstract:

In addition to fight-or-flight, humans demonstrate tending and befriending responses to stress--responses underpinned by the hormone oxytocin, by opioids, and by dopaminergic pathways. A working model of affiliation under stress suggests that oxytocin may be a biomarker of social distress that accompanies gaps or problems with social relationships and that may provide an impetus for affiliation. Oxytocin is implicated in the seeking of affiliative contact in response to stress, and, in conjunction with opioids, it also modulates stress responses. Specifically, in conjunction with positive affiliative contacts, oxytocin attenuates psychological and biological stress responses, but in conjunction with hostile and unsupportive contacts, oxytocin may exacerbate psychological and biological stress responses. Although significant paradoxes remain to be resolved, a mechanism that may underlie oxytocin's relation to the health benefits of social support may be in view.

Effects of sexual assaults on men: Physical, mental and sexual consequences.

Tewksbury, Richard

International Journal of Men's Health, Vol 6(1), Spr, 2007. pp. 22-35.

Abstract:

Research addressing the sexual assault of men is a fairly recent development in the medical, health care, psychological and sociological literature. Research in both community and institutionalized populations has focused on documenting the existence of this phenomenon and establishing prevalence or incidence rates, however, understandings of effects on male victims lag behind those regarding women. Only recently have the consequences of sexual assault victimization for men been thoroughly addressed. This review summarizes the research literature concerning the physical, mental health, and sexual consequences of sexual assault victimization for men. The literature suggests a range of possible/occasional consequences, but no well-established patterns of injuries, psychological/emotional reactions or sexual responses/adjustments for male sexual assault victims.

Adult male rape and sexual assault: Prevalence, re-victimization and the tonic immobility response.

Coxell, Adrian W. and King, Michael B.

Sexual and Relationship Therapy, Vol 25(4), Nov, 2010. pp. 372-379.

Abstract:

Fifteen years ago we summarised research on what was known about the sexual assault of men and its effects. Here we present evidence from epidemiological research that demonstrates that the sexual assault of men is observed in many countries—demonstrating the widespread existence of the sexual assault of men and the need for further research. We also present research to show that the association between child sexual abuse and sexual assault in adult females has also been found in a variety of studies on men. Finally, we also consider the phenomenon of tonic immobility as this has important implications for the well-being of victims of sexual assault.

Gender differences in stress response: Role of developmental and biological determinants
Industrial Psychiatry J. 2011 Jan-Jun; 20(1): 4–10.
Rohit Verma, Yatan Pal Singh Balhara, and Chandra Shekhar Gupta
Abstract

Peritraumatic tonic immobility in a large representative sample of the general population: Association with posttraumatic stress disorder and female gender.
Kalaf, Juliana., Vilete, Liliane Maria Pereira., Volchan, Eliane., Fiszman, Adriana., Coutinho, Evandro Silva Freire., Andreoli, Sergio Baxter., Quintana, Maria Inês., de Jesus Mari, Jair., Figueira, Ivan
Comprehensive Psychiatry, Apr 9, 2015.
Abstract:

BACKGROUND: Tonic immobility is an involuntary response to inescapable life-threatening events. Peritraumatic tonic immobility has been reported in convenience samples of female victims of sexual assault and in mixed-gender victims of different types of trauma. This study evaluated peritraumatic tonic immobility in a representative general population sample and its association with posttraumatic stress disorder (PTSD) and gender. METHODS: 3231 victims of traumatic events aged 15–75 years responded to the Tonic Immobility Scale. PTSD and traumatic events were assessed using the Composite International Diagnostic Interview (CIDI 2.1). We calculated the means and the standard deviations of Tonic Immobility Scale scores stratified by PTSD and gender. The association between tonic immobility scores and gender was explored controlling for potential confounders through a multiple linear regression model. RESULTS: Tonic immobility scores were more than double in those who met criteria for PTSD and were almost four points higher in women. Gender differences remained statistically significant even after adjustment for confounding variables. LIMITATIONS: The cross-sectional and retrospective design may have given rise to recall bias. Results presented here may not apply to small and medium rural areas and the CIDI 2.1 can lead to a certain degree of misclassification. CONCLUSIONS: We have expanded the scope of previous investigations on peritraumatic tonic immobility which were based on convenience samples only, showing its occurrence in victims of traumatic events using a large representative sample of the general population. Furthermore, we confirmed in an unbiased sample the association between peritraumatic tonic immobility and PTSD and female gender.

Cortisol modulates men's affiliative responses to acute social stress.
Berger, Justus, et al.
Psychoneuroendocrinology, Vol 63, Jan, 2016. pp. 1-9.
Abstract:

The dominant characterization of the physiological and behavioral human stress reaction is the fight-or-flight response. On the other hand, it has been suggested that social affiliation during stressful times ('*tend-and-befriend*') also represents a common adaptive response to stress, particularly for women. In the current study, we investigate the extent to which menmay also show affiliative responses following acute stress. In addition, we examine a potential neuroendocrine modulator of the hypothesized affiliative response. Eighty male students (forty dyads) were recruited to undergo either the Trier Social Stress Test for Groups (TSST-G) or a non-stressful control situation. Subsequently, participants completed a dyadic interaction task and were then asked to report their feelings of psychological closeness to their interaction partner. Although participants assigned to the stress condition did not differ overall on psychological closeness from participants assigned to the control condition, participants with high cortisol responses to the stressor showed significantly higher ratings of psychological closeness to their interaction partner than participants with low cortisol responses. Our findings suggest that men may form closer

temporary bonds following stressful situations that are accompanied by a significant cortisol response. We suggest that the traditional characterization of the male stress response in terms of 'fight-or-flight' may be incomplete, and that social affiliation may in fact represent a common, adaptive response to stress in men.

Sex differences in the effects of acute stress on behavior in the ultimatum game.

Youssef, Farid F., et al.

Psychoneuroendocrinology, Vol 96, Oct, 2018. pp. 126-131.

Abstract:

Acute stress affects human decision making. It has been argued that there are systematic sex differences in behavioral responses to acute stress, with males showing a ‘fight or flight’ and females showing a ‘tend and befriend’ response. A ‘tend and befriend’ response would suggest that women become more cooperative under acute stress, while men do not. We investigated the effects of acute stress on social behavior. We induced stress via the Trier Social Stress Test (TSST) and then immediately after measured how participants reacted to offers made in the ultimatum game by a male proposer. We found that female participants were less likely to reject offers under stress ($n = 25$) vs. no stress ($n = 37$), $p = 0.009$, independent of how fair these offers were, cooperative behavior consistent with the ‘tend and befriend’ hypothesis. Male participants when stressed ($n = 30$) did not show differences in rejections rates compared to the control condition ($n = 26$), $p = 0.41$. Our results provide support for a qualitatively different behavioral response to acute stress among men and women.

CIB #2: Acting "Normal" following the Alleged Assault

The CIB expert will sometimes opine on the lack of a traumatic response in the complaining witness after the event.

- Partying, Seeming "normal"
- Doing "fine" afterward
- Discussing the event with friends without calling it "rape"
- Acting "as if" nothing happened
- Having no trauma at all
- Not remembering after time passes after having vivid recall initially

Research Articles on Post-Assault Behaviors

Acute posttraumatic stress in sexual assault survivors: Factors predicting acute posttraumatic symptomatology.

Harb, Gerlinde C.

Dissertation Abstracts International: Section B: The Sciences and Engineering, Vol 67(9-B), 2007. pp. 5403.

Abstract:

Research on posttraumatic stress has produced many important findings in the last few decades. Recently, the importance of the period of acute reactions immediately following a traumatic event and the new diagnosis of acute stress disorder (ASD) have received increased attention. Investigations of acute posttraumatic stress are important because of the potential for the early identification of individuals at risk for developing chronic posttraumatic symptomatology. However, there is currently only limited literature on the nature of problems experienced by individuals shortly after a traumatic event, in particular, after sexual assault. The current study was designed to examine the symptomatology and emotional functioning of recent sexual assault survivors and to investigate two models of the relationship between risk factors for ASD and ASD severity. In particular, the study evaluated the relationships between ASD symptom severity and emotional expressivity, intensity of emotional experience, and purposeful withholding of emotions. Further, it was hypothesized that because emotional expressivity is an essential ingredient in the natural process of emotional processing, it would play an important role in ASD symptomatolog, namely that it would moderate the relationship between social support and symptom severity and mediate the relationship between trauma history and symptom severity. The results of tests of both the moderation and mediation hypotheses were not as predicted. First, while better social support since the assault was related to less severe ASD symptoms, participants' tendency to express emotions did not moderate this relationship. Second, prior trauma history was related to more severe acute stress; however, it was not related to a decreased tendency to express emotions, as expected. These results may be indicative of an absence of the predicted relationships, or they may be due to several psychometric limitations of the study, including measurement issues and small sample size. The study added to knowledge about ASD in sexual assault survivors in several important ways, including providing data on incidence rates of ASD in this population as well as information about the emotional functioning of sexual assault survivors, the social support they receive, and the differences between those who meet and do not meet diagnostic criteria for ASD.

Psychosocial correlates of PTSD symptom severity in sexual assault survivors.

Ullman, Sarah E., Filipas, Henrietta H., Townsend, Stephanie M., Starzynski, Laura L.

Journal of Traumatic Stress, Vol 20(5), Oct, 2007. pp. 821-831.

Abstract:

This study's goal was to assess the effects of preassault, assault, and postassault psychosocial factors on current posttraumatic stress disorder (PTSD) symptoms of sexual assault survivors. An ethnically diverse sample of over 600 female sexual assault survivors was recruited from college, community, and mental health agency sources (response rate=90%). Regression analyses tested the hypothesis that postassault psychosocial variables, including survivors' responses to rape and social reactions from support providers, would be stronger correlates of PTSD symptom severity than

preassault or assault characteristics. As expected, few demographic or assault characteristics predicted symptoms, whereas trauma histories, perceived life threat during the assault, postassault characterological self-blame, avoidance coping, and negative social reactions from others were all related to greater PTSD symptom severity. The only protective factor was survivors' perception that they had greater control over their recovery process in the present, which predicted fewer symptoms. Recommendations for intervention and treatment with sexual assault survivors are discussed.

Emotional reactions during and after trauma: A comparison of trauma types.

Amstadter, Ananda B., Vernon, Laura L.

Journal of Aggression, Maltreatment & Trauma, Vol 16(4), 2008. pp. 391-408.

Abstract:

Peri- and posttraumatic emotional responses have been understudied, and furthermore, have rarely been compared among trauma types. The current study compared college students' retrospective self-reports of peri- and posttraumatic responses of fear, shame, guilt, anger, and sadness among four types of traumatic events: sexual assault, physical assault, transportation accident, and illness/injury. Overall emotional responding was generally high for all trauma types, and for those in the sexual assault group, emotion increased sharply from the peri- to posttraumatic time point. Generally, fear was higher during the trauma compared to after the trauma, whereas the other emotions tended to remain stable or increase posttrauma. The sexual assault group tended to report higher levels of posttrauma emotion than the other trauma type groups.

Predictors of acute stress symptoms in rape victims.

Elklit, Ask, Due, Louise, Christiansen, Dorte M.

Traumatology, Vol 15(2), Jun, 2009. pp. 38-45.

Abstract:

Victims of traumatic experiences such as rape often report a variety of symptoms in the acute aftermath of trauma. Reactions to trauma may take the shape of acute stress disorder (ASD), which may later develop into posttraumatic stress disorder, or they may be symptoms of more general distress. The purpose of the present cross-sectional study was to test the hypothesis that symptoms of ASD and general stress, though correlated, represent two independent ways of reacting to trauma. Acute reactions to trauma were examined in a population of 150 female victims of sexual assault. Respondents were interviewed about demographic data and peritraumatic factors and filled out self-administered questionnaires concerning pretraumatic and posttraumatic factors including two dissociative items, ASD symptoms measured by the Acute Stress Disorder Scale and symptoms of general distress measured by a modified version of the Trauma Symptom Checklist. Two separate regression analyses were carried out to examine whether ASD and general distress are mediated by the same variables in the aftermath of rape. Dissociation significantly predicted ASD severity but not general distress, whereas relational problems and functional impairment emerged as significant predictors of general distress but not of ASD symptoms. Thus, even though symptoms of ASD and general distress were highly related to one another, the finding that the variables predicting ASD were different from those predicting general distress supports the assumption that ASD and general distress represent distinct trauma reactions. This finding is in accordance with previous research

Posttraumatic sequelae associated with military sexual trauma in female veterans enrolled in VA outpatient mental health clinics.

Luterek, Jane A., Bittinger, Joyce N., Simpson, Tracy L.

Journal of Trauma & Dissociation, Vol 12(3), May, 2011. pp. 261-274.

Abstract:

The purpose of this study was to explore the relationship between military sexual assault (MSA) and posttraumatic stress disorder (PTSD) and other symptoms associated with trauma, referred to as disorders of extreme stress not otherwise specified (DESNOS) or complex PTSD within a Veterans Affairs (VA) Medical Center outpatient mental health treatment–seeking sample. The present results focus on female Veterans only because of the low rates of endorsement of MSA among male Veterans resulting in a sample too small to use in analyses. Compared with those who

did not endorse MSA, those who did reported greater frequency of other potentially traumatic events; PTSD symptoms; and symptoms characteristic of DESNOS, such as difficulties with interpersonal relationships, emotion regulation, dissociation, somatization, and self-perception. When childhood and other adulthood interpersonal trauma were both taken into account, MSA continued to contribute unique variance in predicting PTSD and DESNOS symptoms. VA patients reporting MSA may represent notably heterogeneous groups that include more complex posttraumatic reactions. Treatment interventions focused on complex PTSD may be warranted for a subset of female veterans who endorse MSA.

Reactions to a survey among those who were and were not sexually assaulted while serving in the military.

Sandberg, Alicia A., Murdoch, Maureen, Polusny, Melissa A., Grill, Joe

Psychological Reports, Vol 110(2), Apr, 2012. pp. 461-468.

Abstract:

Surveys are among the most common methods for evaluating military sexual assault experiences among members of the U.S. military; however, little research has examined how receiving surveys about such sexual assaults might affect recipients In the present sample of 530 active duty and veteran military personnel, just 10% reported unexpected upset, 11% reported regretting participation in the survey, and 22%, reported benefit ting from that participation overall. A minority of respondents with a history of sexual assault while in the military reported unexpected upset, although the prevalence was three times higher than that of participants without such history (24% vs 8"'o). There were no statistically significant differences in perceived regret and benefit of participation in the survey between those with and without a history of sexual assault while in the military. Although limited in number, male military sexual assault survivors (n = 8) were significantly more likely than female survivors to report being more upset by the survey than they had anticipated. Implications for future research are discussed.

Trajectories of PTSD symptoms following sexual assault: Is resilience the modal outcome?

Steenkamp, Maria M., Dickstein, Benjamin D., Salters-Pedneault, Kristalyn. Hofmann, Stefan G., Litz, Brett T.

Journal of Traumatic Stress, Vol 25(4), Aug, 2012. pp. 469-474.

Abstract:

Theoretical frameworks positing qualitatively distinct trajectories of posttrauma outcome have received initial empirical support, but have not been investigated in cases of severe interpersonal trauma. To address this limitation, we conducted latent class growth analysis with longitudinal data collected from 119 female sexual assault survivors at 1-, 2-, 3-, and 4-months postassault. Participants' mean age was 33 years; 63% were White. We hypothesized that given the severity of exposure associated with sexual assault, resilience would not be the modal course of adaptation. Four distinct PTSD growth trajectories, representing unique latent classes of participants, best fit the data: a high chronic trajectory, a moderate chronic trajectory, a moderate recovery trajectory, and a marked recovery trajectory. Contrary to previous studies and recent theoretical models, resilience and resistance trajectories were not observed, as high levels of distress were evident in nearly all participants at 1-month postassault. These results suggest that theoretical models of posttrauma response positing resilience as the modal outcome may not generalize to cases of sexual assault.

Assimilation, accommodation, and overaccommodation: An examination of information processing styles in female victims of adolescent and adult sexual assault.

Varkovitzky, Ruth Luba

Dissertation Abstracts International: Section B: The Sciences and Engineering, Vol 74(2-B)(E), 2013.

Abstract:

Social-cognitive information processing theorists posit that the way in which adolescent and adult sexual assault (ASA) victims categorize information about ASA in the context of their previous experiences can influence posttraumatic symptoms. Cognitive processing theorists have proposed that three information processes describe the integration of traumatic memories into preexisting schemas: assimilation, accommodation, and overaccommodation. The purpose of the present study

was to validate a measure capturing assimilation, accommodation, and overaccommodation (the Personal Beliefs and Reactions Scale - Revised; PBRS-R) and to generate data bearing on the validity of the PBRS-R subscales by testing hypotheses regarding relationships between each information processing style and related posttraumatic outcomes (specifically, posttraumatic stress symptoms, coping styles, perceived control over recovery, and self-blame). Study 1 addressed measure development issues. Seventeen expert raters categorized items on the PBRS-R as representing accommodation, assimilation, overaccommodation, or neither information processing style. It was hypothesized that expert raters would exhibit at least 70% consistency in identifying PBRS-R items. Results produced two possible scale sets, one representing 80% agreement and the other representing 70% agreement among the expert raters. The two Study 1 PBRS-R item sets were used in Study 2 to examine information processing styles in a sample of college females (N = 387). Of the initial sample, 181 (46.8%) reported ASA. It was hypothesized that the subscales identified by expert raters would be confirmed in responses provided by ASA victims. Confirmatory factor analysis indicated that scales created based on 70% expert rater agreement evidenced the best model fit. Study 2 included specific hypotheses about potential associations between information processing styles, posttraumatic stress symptoms, coping styles, and posttraumatic cognitions as reported by ASA victims. Results indicated that overaccommodation was associated with increased posttraumatic stress symptoms, avoidant coping, and self-blame and decreased perception of control over recovery. Assimilation was associated with increased avoidant coping and self-blame. Accommodation was not significantly associated with any of the outcome variables. Implications for understanding information processing among ASA victims are discussed.

Risk factors for PTSD and depression in female survivors of rape.

Mgoqi-Mbalo, Nolwandle., Zhang, Muyu., Ntuli, Sam.

Psychological Trauma: Theory, Research, Practice, and Policy, Vol 9(3), May, 2017. Sexual Assault in South Africa. pp. 301-308.

Abstract:

Objective: To investigate association of the sociodemographic factors, characteristics of rape and social support to the development of depression and posttraumatic **stress** disorder at 6 months after the rape. Method: A cross-sectional survey with female survivors of rape was carried out in 3 provinces of South Africa 6 months after the rape. Results: One hundred female survivors s of sexual assault were interviewed. More than half (53%) were from Limpopo, 25% from Western Cape, and 22% from KwaZulu-Natal (KZN). 87% reported high levels of PTSD and 51% moderate to severe depression post-rape. The major risk factors for PTSD and depression were the unmarried survivors of rape and those living in KZN. The female survivors of rape in KZN province were 7 times more likely to experience symptoms of depression compared to other provinces, while married/cohabiting female rape survivors were 6 times less likely to report symptoms of depression compared to the unmarried female rape survivors. Conclusion: These findings add support to existing literature on PTSD and depression as common mental health consequence of rape and also provide evidence that survivors' socio- demographics—marital status, employment status—are significant contributors to the development of symptoms of depression and PTSD after rape. The results have research and clinical practice relevance for ensuring that PTSD and trauma treatment focuses on an in-depth understanding of the various aspects of the sociodemographic factors and rape characteristics that contribute to survivors' mental state and how these compound stress and depression symptoms over time post-rape victimization.

CIB #3: Delayed Disclosure

The CIB expert will often address why the complaining witness delayed disclosing or provided "piecemeal" disclosure.

- Not sure it was rape
- Fear
- Belief that it will not do any good
- Anger comes later or from another party (e.g., best friend) who encourages reporting
- Indirect or encouraged disclosure
- Culture and socialization to systems
- Potential Consequences

Research Articles on Delayed or Piecemeal Disclosure

Minimizing negative experiences: Women's disclosure of partner abuse.

Dunham, Katherine, Senn, Charlene Y.
Journal of Interpersonal Violence, Vol 15(3), Mar, 2000. pp. 251-261.

Abstract:

This study documented the prevalence of omitting information about abuse that occurred in intimate relationships in disclosures to friends and relatives and explored factors that might predict minimization. 306 female college students (aged 17–51 yrs) were recruited for the study. The results revealed that 36.1% of women who disclosed abuse to friends and relatives omitted information. A stepwise logistic regression indicated increased severity of abuse, more accepting attitudes toward physical abuse, and delayed disclosure were each positively associated with minimization. The authors tentatively suggest that this phenomenon can be viewed as an attempt to manage confidants' reactions to disclosure of abuse and enhance the likelihood of social support. Whether providing an incomplete picture of the situation serves to facilitate or undermine the quality of social support received is an empirical question that must be explored.

What factors predict women's disclosure of sexual assault to mental health professionals?

Starzynski, Laura L., Ullman, Sarah E., Townsend, Stephanie M., Long, LaDonna M., Long, Susan M.
Journal of Community Psychology, Vol 35(5), Jul, 2007. pp. 619-638.

Abstract:

Although many sexual assault survivors seek support from mental health sources for adverse psychological symptoms due to sexual assault, many do not. A diverse sample of adult sexual assault survivors was surveyed about their sexual assault experiences, social reactions received when disclosing assault, attributions of blame, coping strategies, and psychological symptomatology. Statistical analyses were run to identify demographic, assault, and postassault factors differentiating women who disclosed from those who did not disclose sexual assault to mental health sources. Both demographic (race, sexual orientation, and age) and postassault factors (posttraumatic stress disorder [PTSD] symptom severity, number of informal support sources told, receipt of tangible aid0information support) significantly predicted assault disclosure. Implications of the results are discussed.

Why, how often, and to whom do women disclose, and what factors influence whether disclosure is healing?

Ullman, Sarah E.
Talking about sexual assault: Society's response to survivors. Ullman, Sarah E.; pp. 41-57. Washington, DC, US: American Psychological Association, 2010. x, 210 pp.

Abstract:

(from the chapter) Before considering the effects of social reactions to victims of rape, it is important to step back and consider what we know from empirical research about women's disclosure of sexual assault. Although in chapter 2 I discussed various theories and models for disclosure, it is important to listen to women to understand their decisions about disclosing. This

may reveal why women often decide not to talk about rape and what actually happens when they do disclose to others. Such investigation can provide critical information about the societal context that needs to be addressed to improve rape prevention and treatment. There are significant data that address why women do and do not talk about and report sexual assault to others, including formal authorities. In this chapter, I review several topics, including women's reasons for disclosing or not disclosing, prevalence of disclosure, factors related to likelihood and timing of disclosure, and the effects of disclosing sexual assault.

Barriers to reporting sexual victimization: Prevalence and correlates among undergraduate women.

Zinzow, Heidi, Thompson, Martie,

Journal of Aggression, Maltreatment & Trauma, Vol 20(7), Oct, 2011. pp. 711-725.

Abstract:

This study examined the frequency and correlates of barriers to reporting sexual victimization to law enforcement. Participants were 127 female undergraduate sexual assault victims who completed self-report surveys. The most frequently reported barriers were "I handled it myself" and "I didn't think it was serious enough." Factor analysis of the reported barriers items revealed two factors: shame/not wanting others involved and did not acknowledge the event as a crime/handled it myself. Shame/not wanting others involved was positively associated with physical injury, being victimized by a relative, and self-blame. Acknowledgment/handled it myself was negatively associated with being victimized by a relative. Findings suggest that intervention efforts should focus on increasing acknowledgment, decreasing negative reactions to disclosure, and decreasing victims' self-blame

To whom do college women confide following sexual assault? A prospective study of predictors of sexual assault disclosure and social reactions.

Orchowski, Lindsay M., Gidycz, Christine A.,

Violence Against Women, Vol 18(3), Mar 2012. pp. 264-288.

Abstract:

A prospective methodology was used to explore predictors of sexual assault disclosure among college women, identify who women tell about sexual victimization, and examine the responses of informal support providers (N = 374). Women most often confided in a female peer. Increased coping via seeking emotional support, strong attachments, and high tendency to disclose stressful information predicted adolescent sexual assault disclosure and disclosure over the 7-month interim. Less acquaintance with the perpetrator predicted disclosure over the follow-up, including experiences of revictimization. Victim and perpetrator alcohol use at the time of the assault also predicted disclosure over the follow-up. Implications are presented.

Expressed sexual assault legal context and victim culpability attributions.

Miller, Audrey K., Markman, Keith D., Amacker, Amanda M., Menaker, Tasha A.

Journal of Interpersonal Violence, Vol 27(6), Apr, 2012. pp. 1023-1039.

Abstract:

Legal scholars have argued that laws have an expressive function, specifically that sexual assault laws may convey social-level messages that victims are culpable for crimes against them. In a university sample, we conducted the first experimental test of legal scholars' proposal, hypothesizing that legal messages—specifically their clarity and effectiveness in conveying that sexual assault is a crime—affect victim culpability attributions. Results demonstrated that greater culpability was attributed to a victim of sexual assault within a context expressing unclear and ineffective sexual assault law than within a context clearly and effectively expressing that sexual assault is a crime. We also garnered empirical support for a mediation model, that is, negative affective reactions to a victim statistically accounted for the relationship between expressed legal context and victim culpability attributions. Implications for future psycholegal research and potential legal reforms are discussed.

College students' social reactions to the victim in a hypothetical sexual assault scenario: The role of victim and perpetrator alcohol use.

Untied, Amy S., Orchowski, Lindsay M., Mastroleo, Nadine, Gidycz, Christine A.
Violence and Victims, Vol 27(6), 2012. pp. 957-972.

Abstract:

College students' responses to a hypothetical sexual assault scenario involving alcohol use by the victim and/or perpetrator were examined (N = 295). Participants reported on victim/ perpetrator responsibility, the extent to which the scenario would be considered rape, and their likelihood of providing positive or negative responses to the victim. Compared to women, men indicated that they would provide more negative and less positive social reactions to the victim, were less likely to identify the scenario as rape, and endorsed less perpetrator responsibility. When the victim was drinking, participants endorsed greater victim responsibility and lower perpetrator responsibility for the assault. Participants indicated that they would provide the victim with less emotional support when only the perpetrator was drinking, compared to when both the individuals were drinking.

Mock juror sensitivity to forensic evidence in drug facilitated sexual assaults.

Schuller, Regina A., Ryan, Alison, Krauss, Daniel, Jenkins, Gwen
International Journal of Law and Psychiatry, Vol 36(2), Mar-Apr, 2013. pp. 121-128.

Abstract:

Mock jurors' reactions to variations in the quality of toxicological evidence regarding the presence of drugs in a sexual assault trial were examined. In Study 1, participants received a trial summary in which a negative test result, a negative test result plus expert testimony, or no test result was presented. The time taken by the complainant to report the alleged sexual assault was manipulated. The negative test result influenced participants' judgments, but this effect was minimized by the presence of expert testimony. The complainant's delay in reporting had little impact on judgments. In Study 2, complainant time to report was again manipulated along with the outcome of the test result (negative finding and no result). Results revealed that men were less conviction prone when the negative test result was obtained early as opposed to late. In contrast, when the test result was unavailable, men were more conviction prone when the complainant reported late as oppose to early.

The effects of receiving a rape disclosure: College friends' stories.

Branch, Kathryn A., Richards, Tara N.,
Violence Against Women, Vol 19(5), May, 2013. pp. 658-670.

Abstract:

Research suggests that college women are at greater risk for rape and sexual assault than women in the general population or in a comparable age group. College women, away from home and family, may turn to friends for support. Friends may experience emotional reactions that affect their own functioning and may not feel they have anywhere to turn. In this study, we interviewed male and female college students who had received a rape disclosure from a friend. Their unique stories provide insight into the secondary effects of rape disclosure on friends. Implications of these findings for college campuses are discussed.

What is the typical response to sexual assault? Reply to Bonanno (2013).

Steenkamp, Maria M., Litz, Brett T., Dickstein, Benjamin D., Salters-Pedneault, Kristalyn, Hofmann, Stefan G.,
Journal of Traumatic Stress, Vol 26(3), Jun, 2013. pp. 394-396.

Abstract:

Reply by the current author to the comments made by George A. Bonanno (see record 2013-20001-012) on the original article (see record 2012-21102-017). We respond to Bonanno's (2013) comment on our longitudinal evaluation of sexual assault survivors. Bonanno posits that minor disruption in functioning is the modal response to any stressor or trauma, yet most women we studied had marked initial symptoms in the immediate months following assault, which gradually improved over time. We argue that sexual violence is one example of intentional and malicious victimization, which differs from other experiences studied by Bonanno, such as spinal cord injury. Our study also differed from most previous studies in that it specifically examined the acute reactions period, which is the only period that can distinguish between resilience and recovery: Both trajectories ultimately involve good adaptation, but are distinguished by the degree of initial

postevent disruption. We address Bonanno's contention that our results should be dismissed on methodological and statistical grounds. Our findings suggest that prior research about the frequency of resilience may in part be confounded by the degree and type of stress exposure

Predictors of delayed disclosure of rape in female adolescents and young adults.
Bicanic, Iva A. E.., Hehenkamp, Lieve M., van de Putte, Elise M., van Wijk, Arjen J., de Jongh, Ad.
European Journal of Psychotraumatology, Vol 6, May 11, 2015. ArtID: 25883

Background: Delayed disclosure of rape has been associated with impaired mental health; it is, therefore, important to understand which factors are associated with disclosure latency. The purpose of this study was to compare various demographics, post-rape characteristics, and psychological functioning of early and delayed disclosers (i.e., more than 1-week post-rape) among rape victims, and to determine predictors for delayed disclosure. Methods: Data were collected using a structured interview and validated questionnaires in a sample of 323 help-seeking female adolescents and young adults (12—25 years), who were victimized by rape, but had no reported prior chronic child sexual abuse. Results: In 59% of the cases, disclosure occurred within 1 week. Delayed disclosers were less likely to use medical services and to report to the police than early disclosers. No significant differences were found between delayed and early disclosers in psychological functioning and time to seek professional help. The combination of age category 12—17 years [odds ratio (OR) 2.05, confidence intervals (CI) 1.13—3.73], penetration (OR 2.36, CI 1.25—4.46), and closeness to assailant (OR 2.64, CI 1.52—4.60) contributed significantly to the prediction of delayed disclosure. Conclusion: The results point to the need of targeted interventions that specifically encourage rape victims to disclose early, thereby increasing options for access to health and police services.

Avoidance symptoms and delayed verbal memory are associated with post-traumatic stress symptoms in female victims of sexual violence.
Shin, Kyoung Min., Chang, Hyoung Yoon., Cho, Sun-Mi., Kim, Nam Hee., Chung, Young Ki.
Journal of Affective Disorders, Vol 184, Sep 15, 2015. pp. 145-148.
Abstract:

Background: Victimization by sexual violence is strongly associated with the development of posttraumatic stress disorder (PTSD). While several psychological and cognitive factors are known to be associated with PTSD prognosis, multivariable analysis is scarce. This study examined factors affecting the severity of PTSD symptoms in early stage of traumatic experience of sexual violence, including initial post-traumatic symptoms and cognitive characteristics. Methods: Participants were recruited from the center for women and children victims of violence in a university hospital. Thirty-four sexual assault victims were assessed at the baseline and the second visit one to five months after the baseline. At the baseline, an array of posttraumatic symptoms and cognitive functions were measured: at follow-up, PTSD symptoms were determined by Clinician Administered PTSD Scale. Results: Stepwise multiple regression showed that avoidance symptoms ($\beta = 0.551$, $P < 0.01$) and delayed verbal memory ($\beta = -0.331$, $P < 0.05$) at early stage of trauma predicted the severity of PTSD symptoms one to five month later. The regression model, factoring in avoidance and delayed verbal memory, showed a 34.9% explanatory power regarding the PTSD symptom severity. Conclusion: This study suggests that avoidance symptoms and verbal memory at the early stage of trauma are associated with later PTSD symptoms. It is also suggested that early intervention targeting avoidance symptoms may be beneficial in decreasing PTSD symptoms

Don't tell: Military culture and male rape.
O'Brien, Carol., Keith, Jessica., Shoemaker, Lisa.
Psychological Services, Vol 12(4), Nov, 2015. Special Issue: Military **Sexual** Trauma. pp. 357-365.
Abstract:

The issue of sexual assault that occurs during military service has been a focus of attention over the past several years. Although approximately 50% of survivors of military sexual assault are men, virtually all of the literature focuses on the assault of female service members. Research has demonstrated that cultural variables are robust correlates of the sexual assault of women. This paper proposes that cultural variables are equally important when examining the rape of men, especially when this assault occurs in military contexts. We discuss male rape myths and related constructs

as they are expressed within military culture. The results of data analysis from a treatment sample of veterans with military sexual trauma (MST)-related posttraumatic **stress** disorder (PTSD) and clinical case examples are presented to further explore the concepts. We conclude that male rape myths and related beliefs that arise from cultural norms and are further amplified and modified by military culture impact male MST survivors and delay or obstruct their recovery. Suggestions for clinical application and future research are offered to encourage further efforts in this important area of practice.

CIB #4: Continued Relationship with the Accused

This is a common issue for the CIB expert to address. Typical explanations from the expert can include:

- Shock or disbelief
- Rush to normalization
- Relationship to offender
- Prior history of assault or abuse
- Attachment, love
- "Pretend Normal"
- Relief/Return to safety/Tension Free
- Lack of resources
- Fear of leaving

Trauma Bonding

- The process by which the victim gets highly attached and bonded to the offender
- Connection to the unpleasant
- Idea/belief in responsibility for the crimes
- Hope
- Comfort from the abuser
- Reliance on the abuser
- Adapted from J. Hindman (1989) Just Before Dawn. Ontario: Oregon, Alexandria Associates.

"*When victims have a certain dysfunctional attachment that occurs in the presence of danger, shame, or exploitation" (Carnes, 1997, p. 29). "A traumatic bond is created when pain is inflicted into the attachment. This bond is stronger than a non-traumatic bond. The more traumatic the bond, the harder to get out" (Anderson, 2009). "The process by which the victim gets attached to trauma or the perpetrator of trauma" (Hindman, 1989). "When person, male or female, has suffered harsh, painful treatment over an extended period of time, he or she naturally feels a flood of love and gratitude towards anyone who brings relief, like the surge of affection one might feel for the hand that offers a glass of water on a scorching day. But in the situation of abuse, the rescuer and the tormentor are the very same person*." (Bancroft, 2002, p.220).

Research on Trauma Bonding / Continued Relationship with the Accused

The battered woman syndrome: Effects of severity and intermittency of abuse.

Dutton, Donald G. and Painter, Susan

American Journal of Orthopsychiatry, Vol 63(4), Oct, 1993. pp. 614-622.

Abstract:

Assessed 3 major sequelae of battered woman syndrome: trauma symptoms, self-esteem deficits, and traumatic bonding or paradoxical attachment to the former male partner. This was done to establish the extent to which these factors intercorrelate and thus constitute a syndrome. The strengths of these sequelae were then related to power differentials and to intermittency of abuse, which were believed to be central features of long-term abusive relationships. Ss were 50 battered women and 25 emotionally abused women who had recently left their relationships. Ss were assessed soon after leaving the relationship and again 6 months later. For all Ss, the essential features of the syndrome were present and were significantly interrelated. Dynamic features of the prior abusive relationship correlated significantly with these sequelae. Intermittency, rather than predictability of abuse, forecast post-relationship distress

Perpetrators of Sexual Assault Continuing to Have Sex with Their Victims Following the Initial Assault: Evidence for Evolved Reproductive Strategies

Lee Ellis, Alan Widmayer, Craig T. Palmer
Criminology & Criminal Justice, Vol 53, Issue 4, 2009

Abstract

Among a sample of college students, roughly 30% of the women and 12% of the men reported having been the victim of a sexual assault sometime in their lives. Of the assault victims, approximately 23% of both sexes stated that they had sexual intercourse with their assaulters on at least one subsequent occasion. Female victims of a completed sexual assault were significantly more likely to continue being sexually active with their assailants than were female victims who managed to block the assault, while no such difference was found for male victims. This would imply that some men are using assaultive tactics to secure sex partners beyond a single sexual episode, thereby enhancing their potential reproductive success in evolutionary terms. Also, men who committed sexual assault reported having had more lifetime sex partners than did sexually experienced men with no sexual assault history. Overall, the idea that sexual assault is part of an evolved reproductive strategy is consistent with findings from this study.

Predictors of Victim-Perpetrator Relationship Stability Following a Sexual Assault: A Brief Report

Edwards, Katie M; Kearns, Megan C; Gidycz, Christine A; Calhoun, Karen S.
Violence and Victims; New York Vol. 27, Iss. 1, (2012): 25-32.

Abstract:

The researchers assessed the predictors of victim–perpetrator relationship stability follow- ing a sexual assault. Participants included 254 women sexually assaulted by a friend, casual dating partner, or steady dating partner. Results suggested that most victim–perpetrator rela- tionships (75%) continued following the sexual assault. Greater trauma symptomatology, less perpetrator blame, and nondisclosure of the assault by victims predicted relationship continuation with the perpetrator. Additionally, the odds of continuing the relationship were greater following acts of sexual coercion than following acts of completed rape. Close rela- tionships (steady dating partner) were more likely to continue following the sexual assault than less close relationships (friends and casual dating partners). Unexpectedly, the odds of relationship stability were greater for women without histories of childhood sexual abuse than women with histories of childhood sexual abuse. Implications for future research and intervention are discussed.

Bonding after trauma: On the role of social support and the oxytocin system in traumatic stress.

Olff, Miranda.
European Journal of Psychotraumatology, Vol 3, Apr 27, 2012. ArtID: 18597

Abstract:

This paper outlines the state of affairs in psychobiological research on psychotrauma and PTSD with a focus on the role of the oxytocin system in traumatic stress. With a high prevalence of trauma and PTSD in the Netherlands, new preventive and therapeutic interventions are needed. The focus is on the role of social support and bonding in coming to grips with psychological trauma, about the oxytocin system as a basis for reducing the stress response and creating a feeling of bonding, about binding words to painful emotions in psychotherapy, and about the bonds between researchers and clinicians.

Consensual Victim–Perpetrator Intercourse after Nonconsensual Sex: The Impact of Prior Relationship

Megan L. Sawatsky, Samantha J. Dawson & Martin L. Lalumière
Journal of Sex Research, 53(2), 194–203, 2016

Abstract:

Some female victims of nonconsensual sex subsequently have consensual sexual intercourse with the perpetrator and are more likely to do so if intercourse occurred during the nonconsensual sex than if it did not. Some evolutionary psychologists have postulated that there is something significant about nonconsensual intercourse that causes women to subsequently have a sexual relationship with the perpetrator (e.g., risk of pregnancy). In this study, we investigated a parsimonious explanation that has previously been overlooked: Intercourse is more likely during

nonconsensual sex when the victim and perpetrator have previously had a sexual relationship; thus, subsequent consensual intercourse may simply be a continuation of that prior relationship. A sample of 945 women completed an Internet-based survey, of whom 41% had experienced nonconsensual sex since age 14. As expected, victims who had intercourse with perpetrators prior to the nonconsensual sex event were significantly more likely than other victims to experience nonconsensual intercourse and to engage in subsequent consensual intercourse with the perpetrator. When considering only the small subsample of victims who never had a prior romantic or sexual relationship with the perpetrator, the odds of subsequent consensual intercourse were still significantly greater following nonconsensual sex with intercourse versus without intercourse.

Victim-Offender Relationships in Sexual Assault and Subsequent Disclosure and Reporting Styles

Amy R. Ramapuram

Student Theses John Jay College of Criminal Justice, Spring 5-26-2017

Abstract

There is a discrepancy between the number of perpetrated sexual assaults and the number of reported sexual assaults. Past research has shown that one factor that could contribute to this discrepancy in reporting and disclosure of sexual assaults is the victim- offender relationship. Furthermore, there is evidence that victims of sexual assault minimize when describing their offense and their offender, which could further impact reporting and disclosure. The current study seeks to look into whether the victim-offender relationship influences the disclosure, reporting, and use of minimization, in reference to sexual assault. The victim-offender relationships that were analyzed were “stranger”, “friend/acquaintance”, “partner”, and “familial”. Findings showed no significant differences among these victim-offender relationships in disclosure, reporting, or use of minimization. The results were further analyzed through looking at the frequencies in each of the victim-offender categories, in relation to the three dependent variables, in which observed differences were discussed.

Stockholm syndrome: Held hostage by the one you love.

Logan, Matthew H.

Violence and Gender, Vol 5(2), Jun, 2018. pp. 67-69.

Abstract:

On August 23, 1973, two machine-gun carrying criminals entered a bank in Stockholm, Sweden and took four hostages for 131 h. The hostages were rescued 5 days later and despite threats and abuse, including being strapped with dynamite, they were surprisingly supportive of their captors. Amazingly, one woman later became engaged to one of the hostage takers and another developed a legal defense fund to assist their captors. The concept should receive more attention in the arena of domestic abuse and in the study of trauma. It is, in fact, represented in these domains under the title of Trauma Bonding and Narcissistic or Psychopathic Victim Abuse. These terms are much more descriptive and germane to those who are thriving despite having been in the grip of an abuser or those who currently are in an abusive relationship.

CIB #5: Inconsistent, Piecemeal, Changing, or Incomplete Memories

The CIB expert is often asked to explain why the memory recall for the complaining witness varies. Typical explanations from the expert can include:

- What appears inconsistent might just be normal or memories are retrieved or triggered •
- Victims withhold or lie about elements because they
    - Fear blame or culpability
    - Are ashamed
    - Are trying to protect the listener or others
    - Are trying to protect self
    - Are triggered by the detail
- Trauma profoundly impacts how events are sequenced, encoded and recalled – often chaotic

Research on Trauma and Memory

Dissociation and the fragmentary nature of traumatic memories: Overview.
Bloom, Sandra L.
British Journal of Psychotherapy, Vol 12(3), Spr 1996. pp. 352-361.
Abstract:

Reviews studies of people's memories of highly stressful and of traumatic experiences, focusing on the differences between recollections of these 2 types of events. Research shows that accuracy of memory is affected by the emotional valence of an experience such that highly personal events are remembered more accurately. However, trauma can lead to extremes of remembering and forgetting that can be categorized into 4 sets of functional disturbances: traumatic amnesia, global memory impairment, dissociative processes, and the sensorimotor organization of traumatic memories. The evidence for dissociation as the central pathogenic mechanism that gives rise to posttraumatic stress disorder (PTSD) is reviewed. Brief clinical material from various groups, including combat soldiers, is provided.

Memory for acute stress disorder symptoms: A two-year prospective study.
Harvey, Allison G. and Bryant, Richard A.
Journal of Nervous and Mental Disease, Vol 188(9), Sep, 2000. pp. 602-607.
Abstract:

Examined the accuracy of memory for acute trauma symptoms by comparing the symptoms reported by motor vehicle accident (MVA) victims within 1 mo posttrauma with the recall of these symptoms at 2 yrs posttrauma. 92 consecutive MVA admissions (aged 17–63 yrs) were assessed for the presence of acute stress disorder (ASD) within 1 mo posttrauma. At 2 yrs posttrauma, 56 Ss were reassessed for posttraumatic stress disorder (PTSD) and for accuracy of recall of the symptoms reported during the 1st assessment. At least 1 of the 4 ASD diagnostic clusters was recalled inaccurately by 75% of patients. High levels of posttraumatic stress severity and high subjective ratings of injury severity at 2 yrs posttrauma were associated with errors of addition (i.e., recalling the presence of acute symptoms 2 years posttrauma that were not reported during the first assessment). Low levels of posttraumatic stress severity and low subjective ratings of injury severity at 2 yrs posttrauma were associated with errors of omission (i.e., omitting to recall acute symptoms 2 yrs posttrauma that were reported during the 1st assessment). These results suggest that retrospective reports of acute stress symptoms should be interpreted cautiously because of the influence of current symptoms on recall of acute symptoms.

'Review and critique of the new DSM-IV diagnosis of acute stress disorder': Comment.
Bryant, Richard A. and Harvey, Allison G.
The American Journal of Psychiatry, Vol 157(11), Nov, 2000. pp. 1889-1890.
Abstract:

Comments on the article by R. D. Marshall et al (see record 1999-01651-001) which raised considerations regarding the diagnosis of acute stress disorder. The present authors question the evidence on which Marshall et al base their conclusions that dissociation should be removed as a core diagnostic feature of acute stress disorder. The retrospective studies of acute trauma reactions that Marshall et al cite are flawed because mood-related memory bias renders renders the accuracy of retrospective reports as questionable. Only one of three prospective studies cited employed a validated diagnostic measure of acute stress disorder. Four key studies not cited found that 78%–83% of individuals with acute stress disorder subsequently developed posttraumatic stress disorder (PTSD). Rather than prematurely deciding the worth of acute stress diagnosis at this juncture, it is important to conduct prospective studies that employ standardized measures that will define the optimal criteria for acute stress disorder.

Posttraumatic stress disorder following assault: The role of cognitive processing, trauma memory, and appraisals.

Halligan, Sarah L., et al.

Journal of Consulting and Clinical Psychology, Vol 71(3), Jun, 2003. pp. 419-431.

Abstract:

Two studies of assault victims examined the roles of (a) disorganized trauma memories in the development of posttraumatic stress disorder (PTSD), (b) peritraumatic cognitive processing in the development of problematic memories and PTSD, and (c) ongoing dissociation and negative appraisals of memories in maintaining symptomatology. In the cross-sectional study (n=81), comparisons of current, past, and no-PTSD groups suggested that peritraumatic cognitive processing is related to the development of disorganized memories and PTSD. Ongoing dissociation and negative appraisals served to maintain PTSD symptoms. The prospective study (n=73) replicated these findings longitudinally. Cognitive and memory assessments completed within 12-weeks postassault predicted 6-month symptoms. Assault severity measures explained 22% of symptom variance; measures of cognitive processing, memory disorganization, and appraisals increased prediction accuracy to 71%.

Autobiographical memories of anxiety-related experiences.

Wenzel, Amy, et al.

Behaviour Research and Therapy, Vol 42(3), Mar, 2004. pp. 329-341.

Abstract:

Ninety-nine undergraduate students retrieved three memories associated with each of the five emotional experiences: panic, trauma, worry, social anxiety, and feeling content. Subsequently, they answered 24 questions assessing properties of each memory, including the vividness and perceived accuracy of the memories and sensory, emotional, and anxiety-related experiences during retrieval. Memories were coded for affective tone and specificity. Results indicated that panic-related and trauma-related memories were rated similarly as content memories, but that they generally were associated with more imagery and emotional experiencing than worry-related or social anxiety-related memories. Participants experienced panic and worry symptoms to the greatest degree when they retrieved panic-related and trauma-related memories. All anxiety-related memories were characterized by more negative tone than content memories. Panic-related and trauma-related memories were more specific than worry-related, social anxiety-related, and content memories. These findings can explain partially why individuals with some, but not all, anxiety disorders experience enhanced memory for threatening material.

Traumatic memories are not necessarily accurate memories.

Laney, Cara and Loftus, Elizabeth F.

The Canadian Journal of Psychiatry / La Revue canadienne de psychiatrie, Vol 50(13), Nov, 2005.

Abstract:

Some therapists, as well as other commentators, have suggested that memories of horrific trauma are buried in the subconscious by some special process, such as repression, and are later reliably recovered. We find that the evidence provided to support this claim is flawed. Where, then, might these memory reports come from? We discuss several research paradigms that have shown that various manipulations can be used to implant false memories--including false memories for

traumatic events. These false memories can be quite compelling for those who develop them and can include details that make them seem credible to others. The fact that a memory report describes a traumatic event does not ensure that the memory is authentic.

The influence of emotion on memory in forensic settings.

Reisberg, Daniel and Heuer, Friderike.

The handbook of eyewitness psychology, Vol I: Memory for events. Toglia, Michael P., (Ed); Read, J. Don, (Ed); Ross, David F., (Ed); Lindsay, R. C. L., (Ed); pp. 81-116; Mahwah, NJ, US: Lawrence Erlbaum Associates Publishers; 2007. xii, 703 pp.

Abstract:

Being the witness or victim of a crime is in most cases a highly emotional experience--during the crime itself and in the minutes (or months) afterward. If the crime involves or threatens violence, the witnesses and victims are likely to feel fear. Other crimes will leave the witnesses and victims feeling angry, and still other crimes might trigger an episode of emotional disturbance (e.g., anxiety or depression) that continues long after the crime itself. And in some cases, these emotional reactions will be quite strong--perhaps rising to the level we call trauma. How will these various aspects of emotion influence the witness's or victim's memory? How will they influence the completeness, accuracy, or longevity of the memory, or the ease with which the memory can be retrieved later on? These issues set the agenda for this chapter. In the chapter's first section, we review evidence that indicates that moderate levels of emotion promote memory--at least for an event's central aspects or gist. In the next section, we turn to evidence that suggests that the same levels of emotion may have the opposite effect, undermining memory, for more peripheral aspects of an event. In the following section, we consider the memory effects of stronger emotion and trauma. We next consider at length the memory effect of stress. We then turn to a different issue, asking how emotion, experienced during an event, can influence the ease with which the event can be recalled; we move from this to a consideration of the highly contentious claim that emotion during an event can cause that event to be 'repressed' later on, and thus not available for recall. We then shift our focus and examine emotional memories in a group often of special interest for the legal system: children. Finally, we turn to a different issue--namely, the potential use of emotionality, associated with a memory, as a means of distinguishing which memories are correct and which are not.

New insights in trauma and memory: A special issue of Memory.

Geraerts, Elke, et al.

Memory, Vol 16(1), Jan, 2008. Special Issue: New insights in trauma and memory. pp. 1-2.

Abstract:

This special issue opens with three papers reporting research in people who have experienced traumatic events like combat or sexual abuse. The first article reports a prospective study examining the consistency papers reporting research in people who have experienced traumatic events like combat or of retrospective accounts of traumatic events reported by Dutch soldiers deployed to Iraq. This theme is continued in the next article which compares characteristics of traumatic memories for sexual violence with other types of emotional experiences. Third article examines memory functioning in people who report that they have forgotten being sexually abused as a child, only to recover it later in life. The next article presented is a critical review literature on retrospective accounts from adults reporting childhood sexual abuse (CSA) experiences from their childhood, as well as studies of children undergoing forensic evaluation for CSA. The second theme in this special issue relates to manipulation of memory functioning to address questions in the field of trauma and memory. An article examines the effect of emotional stress on voluntary and involuntary (intrusive) memories. Next, two other papers study the effects of manipulation on memory accuracy and the creation of false memories.

Trauma and memory: Effects of post-event misinformation, retrieval order, and retention interval.

Paz-Alonso, Pedro M. and Goodman, Gail S.

Memory, Vol 16(1), Jan, 2008. Special Issue: New insights in trauma and memory. pp. 58-75.

Abstract:

The present study concerned effects of misinformation, retrieval order, and retention interval on eyewitness memory for a traumatic event (a vivid murder). Relations between misinformation acceptance and compliance were also examined. The classic three-stage misinformation paradigm (Loftus, 1979) was employed, with a multi-component recognition test added. Either immediately or 2 weeks after viewing a distressing film, 232 adults read a narrative (misleading or control) about the murder and then took a recognition test that tapped memory for central and peripheral details. Test-item order either matched the chronology of the film or was randomly determined. Significant misinformation effects were obtained. Moreover, control participants were more accurate in response to questions about central than peripheral information; however, this was not so for misinformed participants. Sequential but not random retrieval order resulted in a higher proportion of correct responses for central as opposed to peripheral misinformation questions. Compliance was significantly related to misinformation effects. Delay increased participants' suggestibility, impaired memory accuracy, and produced higher confidence ratings for misinformed participants compared to controls. Findings indicate that even for a highly negative event, adults' memory is not immune to inaccuracies and suggestive influences.

The organization of autobiographical and nonautobiographical memory in posttraumatic stress disorder (PTSD).

Jelinek, Lena, et al.

Journal of Abnormal Psychology, Vol 118(2), May, 2009. pp. 288-298.

Abstract:

Disorganized trauma memory seems to play an important role in the pathogenesis of posttraumatic stress disorder (PTSD). However, it is unclear whether memory organization of nonautobiographical material (i.e., sequence memory) is also impaired in PTSD. A novel task designed to assess nonautobiographical memory for content and order information was administered to trauma survivors with (n = 26) and without PTSD (n = 55) as well as to nontraumatized healthy adults (n = 30). In addition, traumatized participants were asked to give a detailed narrative of the traumatic event and an unpleasant autobiographical event. Transcripts of both types of narratives were analyzed with regard to disorganization. Results indicated that trauma memories were more disorganized than memories of an unpleasant event in the PTSD group in comparison with the non-PTSD group. However, no differences were found for memory organization of nonautobiographical material among trauma survivors with and without PTSD and nontraumatized controls. With regard to memory accuracy of nonautobiographical material, group differences were more strongly associated with trauma exposure than with PTSD.

Effect of personal involvement in traumatic events on memory: The case of the Dolphinarium explosion.

Nachson, Israel, et al.

Memory, Vol 18(3), Apr, 2010. pp. 241-251.

Abstract:

The association between memories of the terrorist explosion at the Dolphinarium discotheque in Tel Aviv and the level of personal involvement in the explosion was investigated. Memories of injured victims, uninjured eyewitnesses, and uninvolved controls who learned about the explosion from the mass media were compared. It was expected that memory of the explosion would be most and least detailed and accurate among the victims and the controls, respectively. The participants responded to an open-ended question about the explosion, as well as to specific and multiple-choice questions. Data analyses showed that the victims and the eyewitnesses remembered more details than the controls, and that the victims remembered both central and peripheral details more accurately than the other participants. Degree of involvement in the same traumatic experience was thus shown to be differentially associated with memory accuracy.

The effects of expressive and experiential suppression on memory accuracy and memory distortion in women with and without PTSD.

Moore, Sally A., et al.

Journal of Experimental Psychopathology, Vol 3(3), 2012. pp. 368-392.

Abstract:

Specific emotion regulation strategies impinge on cognitive resources, impairing memory accuracy; however, their effects on memory distortion have been largely unexamined. Further, little is known about the effects of emotion regulation on memory in individuals with posttraumatic stress disorder (PTSD), who exhibit both emotion regulation and memory difficulties. We examined the effects of expressive suppression (i.e., concealing visible signs of emotion), experiential suppression (i.e., suppressing the subjective emotional experience), and control instructions on memory accuracy and distortion in trauma-exposed individuals with PTSD, those without PTSD, and psychologically healthy controls. Expressive and, to a lesser degree, experiential suppression led to poorer memory accuracy and both expressive and experiential suppression led to less memory distortion compared to control instructions. Participants with and without PTSD did not significantly differ. Under high cognitive load, irrelevant details may receive more processing, potentially leading to lower accuracy but improved processing of source information, preventing memory distortion.

Credibility of asylum claims: Consistency and accuracy of autobiographical memory reports following trauma.

Memon, Amina.

Applied Cognitive Psychology, Vol 26(5), Sep-Oct, 2012. pp. 677-679.

Abstract:

Comments on an article by Jane Herlihy, Laura Jobson & Stuart Turner (see record 2012-25654-001). Herlihy and colleagues (current issue) review the literature on the characteristics of autobiographical memory in asylum seekers who are presenting evidence of their traumatic experiences in the immigration courts with a view to finding a safe haven. In this commentary, I briefly discuss how the quality of the memory report may influence reliability and credibility judgements in individuals whose memories may be subject to post-traumatic stress disorder.

Attentional and executive functions are differentially affected by post-traumatic stress disorder and trauma.

Flaks, Mariana K., et al.

Journal of Psychiatric Research, Vol 48(1), Jan, 2014. pp. 32-39.

Abstract:

Background: Among the neurocognitive impairments observed in patients with Post-traumatic Stress Disorder (PTSD), attentional and executive dysfunctions appear to correlate with negative effects on education, work, daily life activities, and social relations, as well as the re-experiencing, avoidance, and hyperarousal symptoms of PTSD. However, there is no consensus regarding which aspects of attentional and executive functions are impaired in PTSD patients. Methods: Attentional and executive functions were assessed using the digit span (WAIS-III) and spatial span (WMS-III) tests under forward and backward recall conditions, the Stroop Test, and the Wisconsin Card Sorting Test (WCST). Our sample was composed of victims of urban violence who developed PTSD (PTSD+) (n = 81), victims of urban violence who did not develop PTSD (PTSD-) (n = 70), and healthy controls not exposed to trauma (HC) (n = 50). Results: The PTSD+ group had poorer performance on the spatial span forward subtest ($p = 0.023$; $eta^2 = 0.038$) and poorer execution time ($p = 0.023$; $eta^2 = 0.042$) and accuracy ($p = 0.019$; $eta^2 = 0.044$) on the Stroop Test compared to HC. Conclusions: These data suggest that there are few differences between the PTSD+ and HC groups, which are restricted to less complex measures of attentional and executive functional processes (short term capacity, selective attention, processing speed, and inhibitory control) and are related to visual stimuli. Therefore, cognitive impairments directly correlated with the manifestation of PTSD.

Perspective: I believe what I remember, but it may not be true.

Morgan, Charles A. and Southwick, Steven.

Neurobiology of Learning and Memory, Vol 112, Jul, 2014. pp. 101-103.

Abstract:

A growing number of research findings have challenged the conception that memory for traumatic events is highly accurate or even indelible in nature. Research involving soldiers indicates that realistic levels of high stress decrease the accuracy of eyewitness memory. In addition, recent

findings from several studies show quite clearly that memories for stressful events—including those from combat trauma—are malleable and vulnerable to alteration by exposure to misinformation. Under high stress, our brains facilitate the formation of 'gist' memories that allow us to avoid future dangers but which may not contain the detail and precision demanded by the judicial system. Although mental health professionals ought to play a role in educating the courts about mental illness and trauma, it is unwise for them to become advocates for the idea that traumatic memories are indelible, factual accounts of events.

The legal system and memory for analogue traumatic experiences.

Segovia, Daisy A.. City U New York, US

Dissertation Abstracts International: Section B: The Sciences and Engineering, Vol 76(3-B)(E),

Abstract:

Trauma and its consequences are ubiquitous in the courtroom. Research on memory for trauma suggests there is reason to suspect that traumatized people may be prone to memory errors. Additionally, jurors' views of witnesses are important as they tend to mistrust evidence given by witnesses they believe to be not credible. If traumatized people are prone to errors, is there a way to safeguard against those errors and make jurors more trusting of their memory reports? In Part One, I polled participants on their views toward traumatized people and trauma memory (Study 1). Results of this study suggest people have somewhat positive views of traumatized people's memory and competency to testify. Results from Study 2 imply that these views may be unsubstantiated. In Study 2, participants watched a traumatic film with missing scenes. Some saw the scenes unfold in their correct temporal sequence; others saw a random sequence. I manipulated participants' conscious processing of that film via an instruction: some were told to focus on the meaning of the event (conceptual), some on the sensory details (data-driven), and some received no instruction (control). A week later, I gave participants a memory test. False recognition of missing clips was high but did not differ across groups. However, experimental participants were more likely than controls to falsely remember the traumatic, compared to non-traumatic, missing clips. Moreover, self-reported disorganization appeared more important to the malleability of people's trauma memories than objective measures. In Part Two (Study 3), I investigated whether cross-examination safeguarded participants' memory reports. Participants watched the same film used in Study 2. Then, participants underwent direct examination, which included misleading questions. Participants were accurate on specific questions, but they frequently yielded to misleading questions.Two days later, participants returned for an unexpected cross-examination and memory recognition test. Participants' interview and recognition accuracy worsened after cross-examination. Participants misremembered clips that were asked about in cross-examination more often than clips that were not. This research lends further evidence for the malleability of trauma memories and the need for the general public to be educated about this issue. Possible theoretical and practical implications are discussed.

Threat of death and autobiographical memory: A study of passengers from flight AT236.

McKinnon, Margaret C., et al.

Clinical Psychological Science, Vol 3(4), Jul, 2015. pp. 487-502.

Abstract:

We investigated autobiographical memory in a group of passengers onboard a transatlantic flight that nearly ditched at sea. The consistency of traumatic exposure across passengers, some of whom developed posttraumatic stress disorder (PTSD), provided a unique opportunity to assess verified memory for life-threatening trauma. Using the Autobiographical Interview, which separates episodic from nonepisodic details, passengers and healthy controls (HCs) recalled three events: the airline disaster (or a highly negative event for HCs), the September 11, 2001, attacks, and a nonemotional event. All passengers showed robust mnemonic enhancement for episodic details of the airline disaster. Although neither richness nor accuracy of traumatic recollection was related to PTSD, production of nonepisodic details for traumatic and nontraumatic events was elevated in PTSD passengers. These findings indicate a robust mnemonic enhancement for trauma that is not specific to PTSD. Rather, PTSD is associated with altered cognitive control operations that affect autobiographical memory in general.

False memories for an analogue trauma: Does thought suppression help or hinder memory accuracy?

Oulton, Jacinta M., et al.

Applied Cognitive Psychology, Vol 30(3), May-Jun, 2016. pp. 350-359.

Abstract:

In the current study, we investigated whether suppression can produce an amplified memory for a traumatic experience. Participants viewed a distressing film depicting a multi-fatality car accident. We broke the film down into several short clips, some of which were removed. After viewing the film, we instructed participants to (i) suppress and monitor film-related thoughts, (ii) think freely and monitor film-related thoughts or (iii) just think freely. Twenty-four hours later, participants completed a recognition test. Memory distortion was comparable across conditions; however, suppression and monitoring of trauma-related thoughts removed the typical bias to falsely remember the most critical and traumatic clips of the film over the least critical clips. Our data suggest that suppression may be effective in reducing trauma-related cognitions and, therefore, does not predict a more 'amplified' memory for trauma. Instead, suppression and thought monitoring encourage an unbiased, although inaccurate, memory for trauma.

Trauma memories on trial: Is cross-examination a safeguard against distorted analogue traumatic memories?

Segovia, Daisy A., et al.

Memory, Vol 25(1), Jan, 2017. pp. 95-106.

Abstract:

Trauma memories can feel more disorganised than more mundane memories. That may be problematic in legal contexts. Here we examined: (a) whether that disorganised feeling makes people more susceptible to suggestive questioning during direct examination; and (b) whether cross-examination is the safeguard it is purported to be: that is, we examined whether cross-examination can uncover and correct distorted trauma memories. We showed participants a film depicting a graphic car accident. For some participants, the film unfolded in a temporally disorganised way. We then interviewed participants immediately after the film regarding what they had seen: this 'direct examination' included free recall, cued recall and yes/no questions, some of which were misleading. Then, 48 hours later, a second interviewer cross-examined participants. Contrary to our predictions, neither manipulation of the film's temporal organisation, nor participants' self-reported feelings of event disorganisation significantly affected their accuracy of the film during direct or cross-examination nor their recognition memory of the film. Instead, we found that regardless of whether participants' memories were distorted by the direct examination, the suggestive nature of the cross-examination introduced sufficient doubt that participants were willing to change their answers. We conclude that traumatic memories are vulnerable to suggestive questioning and, unfortunately, cross-examination is not the legal system's fail-safe corrective influence.

CIB #6: Recantation

What if a complaining witness recants her allegation? Typical explanations from the expert can include:

- Some studies indicate up to 80% of victims recant. (Meier, 2006)
- Recantation is associated with:
    - Financial dependence on offender;
    - Crime "not so bad" and doesn't deserve jail;
    - Victim substance abuse; • Lack of victim support or access to advocates;
    - Poor perception or experience of criminal justice system;
    - Offender's apology, influence or promised change

'Meet me at the hill where we used to park': Interpersonal processes associated with victim recantation.
Bonomi, Amy E., et al. Social Science & Medicine, Vol 73(7), Oct, 2011. pp. 1054-1061.

Research Related to Recantation

Prosecutorial Use of Expert Testimony in Domestic Violence Cases: From Recantation to Refusal to Testify

Audrey Rogers
J. Gender & L. 67 (1998), http://digitalcommons.pace.edu/lawfaculty/319/

Abstract

This article discusses the use of expert testimony in prosecuting those charged with domestic abuse. Part I provides a background on the need and nature of expert testimony in domestic violence cases and the requirements for the admission of such expert testimony. It traces the development of the role of expert testimony in domestic violence cases from its initial exclusive use as a defense tool to support self-defense claims to its present use by prosecutors to explain a complainant's recantation or other puzzling behavior. Part II discusses the appellate cases that have addressed the admissibility and scope of expert testimony offered by the prosecution in domestic abuse cases. It then analyzes the proper uses of the expert testimony, including when the State may introduce the testimony and what guidelines courts should follow to ensure that its probative value outweighs any prejudicial effect on the defendant. Part III applies the existing case law to the uncharted issue of whether the courts should allow expert testimony to explain a complainant's outright refusal to testify. It explains that law enforcement needs to change the prototype of a domestic abuse prosecution from being victim-propelled to one where sufficient independent evidence of the crime is gathered to enable prosecutors to proceed without the victim's cooperation or participation. Concomitant with this shift in focus, prosecutors, such as those in the Moon case, should view expert testimony as an integral component of a victimless prosecution. Part III explains that courts should allow expert testimony to explain the characteristics of battered women to help the jury properly assess the state's evidence in light of the complainant's absence. By limiting the expert to explaining general aspects of battering and its effects, rather than addressing the particular victim or specific acts of violence, the courts will safeguard the defendant against undue prejudice. Over time, the propriety of defense use of expert testimony has been unanimously accepted by the courts. The same judicial acceptance is developing for prosecutorial use of expert testimony on battering. The relevance of the expert testimony is identical in both situations: It aids the jury in assessing the evidence by explaining the effect of battering on the witness. This article concludes that the developing trend of prosecutorial use of expert testimony is an appropriate and necessary tool in successfully prosecuting domestic violence cases.

Court-involved battered women's responses to violence: The role of psychological, physical, and sexual abuse.

Dutton, Mary Ann, et al.
Violence and Victims, Vol 14(1), Spr 1999. Special Issue: Psychological Abuse in Domestically Violent Relationships. pp. 89-104.

Abstract:

This study examined the role of psychological abuse, physical violence, injury, and sexual abuse in predicting court-involved women's (1) prior attempts to seek help from the justice system and to leave the battering relationship, (2) use of criminal prosecution and civil protection orders, and (3) traumatic stress reactions. Ss were 149 18–58 yr old women who sought assistance from a domestic violence intake center located in the court. At the univariate level, each abuse variable was significantly associated with at least one strategic response and all traumatic responses to violence. Multivariate analyses revealed that strategic responses were largely predicted by injury and physical assault, whereas traumatic responses were mainly predicted by psychological abuse. Findings demonstrate the important role of both physical and psychological abuse in shaping women's responses to domestic violence.

Obstacles to victims' cooperation with the criminal prosecution of their abusers: The role of social support.

Goodman, Lisa, et al.

Violence and Victims, Vol 14(4), Win 1999. pp. 427-444.

Abstract:

Examined social support factors related to domestic violence victims cooperating with authorities. In the prospective study 92 women (age 18–46 yrs) who appeared at a domestic violence intake center the day after their alleged abuser was arrested completed a series of questionnaires, including the Revised Conflict Tactics Scales (M. A. Straus et al, 1996), the Interpersonal Support Evaluation List (S. Cohen, et al, 1985), and tests to measure depression, emotional dependence on the abusive partner, and alcohol and drug abuse. Results show that 90% of Ss reported at least 1 instance of severe physical violence at the hands of the defendant and over half reported severe injury. Those more likely to cooperate with the prosector were more severely injured and had tangible support, such as financial help and babysitting for court appearances. The relationship between emotional support and cooperation was not significant. Those who were abused by the father of their children were 4 times more likely to cooperate. Findings suggest tangible ways in which advocates and prosecutors can increase support of abused women.

Introduction: Making domestic violence victims testify.

Berliner, Lucy.

Journal of Interpersonal Violence, Vol 18(6), Jun, 2003. pp. 666-668.

Abstract:

This section offers an introduction to the special commentary examining willingness of domestic violence victims to testify. Specifically, this commentary addresses the approach taken in many jurisdictions of pursuing prosecution even when victims refuse to cooperate.

Davis/Hammon, Domestic Violence, and the Supreme Court: The Case for Cautious Optimism

Joan S. Meier

105 Mich. L. Rev. First Impressions 22 (2006). Available at:
https://repository.law.umich.edu/mlr_fi/vol105/iss1/23

Abstract

The Supreme Court’s consolidated decision in Davis v. Washington and Hammon v. Indiana offers something for everyone: by “splitting the difference” between the two cases—affirming one and reversing the other—the opinion provides much grist for advocates’ mills on both sides of this issue. While advocates for defendants’ rights are celebrating the opinion’s continued revitalization of the right to confrontation, which began in Crawford v. Washington, advocates for victims have cause for celebration as well: the decision is notable for its reflection of the Court’s growing—albeit incomplete— awareness and understanding of the dynamics of domestic violence and their implications for justice. This acknowledgment is embodied in both the text of the opinion and in the Court’s jurisprudential compromise, which ensures that some victims at risk from testifying can still be protected by the criminal process. This Essay explains this perspective and suggests important avenues for advancing the jurisprudence to continue to better integrate the realities of domestic violence into constitutional standards.

What Do Battered Women Want? Victims' Opinions on Prosecution.
Hare, Sara C..
Violence and Victims, Vol 21(5), Oct, 2006. pp. 611-628.
Abstract:

Prosecutors have increasingly adopted mandatory prosecution in domestic violence criminal cases. There is little empirical evidence, however, that the policy is a good match for victims' needs. Interviews with 94 battered women, whose cases were randomly selected from prosecutors' files, focused on their opinions of prosecuting. A logistic regression explores the factors that predict whether victims favor or oppose prosecution. Open-ended responses are coded into themes using the goals of sentencing literature as a framework. Previous published works are also tentatively grouped into the same themes to look for trends in the field. The most frequent reason why victims oppose prosecution is that the crime is too minor to justify a penalty.

The significance of the victim advocate for domestic violence victims in municipal court.
Camacho, Christina M., et al.
Violence and Victims, Vol 23(3), 2008. pp. 288-300.
Abstract:

Previous research has examined factors that influence felony case prosecution in domestic violence cases, but few have analyzed how victim participation, or lack thereof, may affect the defendant’s case outcome in misdemeanors. This study used 384 municipal cases from a specialized domestic violence court to examine the role of the victim advocate and variables that had an impact on victim participation with prosecution and case disposition. To ensure that decisions in all cases were consistent, all decision makers in the sample involved the same group: the court advocate, prosecutor, and judge . The analysis found that victim cooperation after arrest coupled with services provided by shelter court advocates were a strong predictor of victim cooperation at disposition and case outcome.

'Meet me at the hill where we used to park': Interpersonal processes associated with victim recantation.
Bonomi, Amy E., et al.
Social Science & Medicine, Vol 73(7), Oct, 2011. pp. 1054-1061.
Abstract:

Our study used live telephone conversations between domestic violence perpetrators and victims to answer novel questions about how and why victims arrive at their decision to recant and/or refuse prosecution efforts. From October 2008 to June 2011, we conducted a qualitative study involving 25 heterosexual couples, where the male perpetrator was being held in a Detention Facility (in the U.S.) for felony-level domestic violence and made telephone calls to his female victim during the pre-prosecution period. We used 30-192 min of conversational data for each couple to examine: 1) interpersonal processes associated with the victim’s intention to recant; and 2) the couple’s construction of the recantation plan once the victim intended to recant. We used constructivist grounded theory to guide data analysis, which allowed for the construction of a novel recantation framework, while acknowledging the underlying coercive interpersonal dynamic. Our results showed that consistently across couples, a victim’s recantation intention was foremost influenced by the perpetrator’s appeals to the victim’s sympathy through descriptions of his suffering from mental and physical problems, intolerable jail conditions, and life without her. The intention was solidified by the perpetrator’s minimization of the abuse, and the couple invoking images of life without each other. Once the victim arrived at her decision to recant, the couple constructed the recantation plan by redefining the abuse event to protect the perpetrator, blaming the State for the couple’s separation, and exchanging specific instructions on what should be said or done. Our findings advance scientific knowledge through identifying, in the context of ongoing interactions, strategies perpetrators used—sympathy appeals and minimization—to successfully persuade their victim and strategies the couple used to preserve their relationship. Practitioners must double their efforts to hold perpetrators accountable for their actions, and efforts made to link victims to trusted advocates who can help them defend against perpetrators’ sophisticated techniques.

Conclusions

Nothing in all the world is more dangerous than sincere ignorance and conscientious stupidity.
Martin Luther King, Jr., *Strength to Love*, 1963

CIB testimony is meant to address an important question: *"What are a person's reactions to being sexually assaulted?"* But the first question implies a second: "*What are a person's reactions who is making a mistaken or false claim of sexual assault?*" The answers to these questions are critical in bringing about justice for a true victim of sexual assault and avoiding a miscarriage of justice against someone falsely accused.

As I mentioned at the start of this paper; much of CIB testimony can be legitimate and apply to victims who have truly been sexually assaulted. But there is a tendency for CIB experts to overstate the science and make claims that cannot be backed up from research. This excess, without a humble recognition of the limits of the current science, is where problems arise.

- How does CIB research and the expert's testimony distinguish between true, unproven and false reports of sexual assault?
- Are CIB symptoms falsifiable?
- Has the research and the expert accounted for motivations to make an intentional false report of sexual assault?
- How has CIB research and the expert accounted for subject-variable interactions, external mediating factors, cultural and gender issues, and consumption of alcohol and/or alcohol blackout?
- How have CIB research and the expert actively worked to overcome confirmatory bias?

APPENDIX A: The Daubert Standard

I. Overview of Daubert

"From the bar, attorneys are more likely to challenge expert testimony by filing motion in limine and objecting more often at trial to limit or exclude testimony from an opposing expert ... When successful, these efforts often lead to motions for summary judgment. Attorneys also report that Daubert has prompted them to take a more proactive approach in selecting their own experts and preparing for trial testimony..." (McAuliff & Groscup, in *Psychological Science in the Courtroom: Consensus and Controversy* by Jennifer L. Skeem, Kevin S. Douglas and Scott O. Lilienfeld, May 8, 2009, p. 27)

Judge is Gatekeeper: The task of "*gatekeeping*" or assuring that scientific expert testimony truly proceeds from "scientific knowledge", rests on the trial judge.

Relevance and Reliability: This requires the trial judge to ensure that the expert's testimony is *"relevant to the task at hand"* and that it rests *"on a reliable foundation".* Put simply, courts applying *Daubert* are encouraged to ask two questions of experts: "*Why should we believe you?*" and "*Why should we care?*" (Dvoskin and Kane, *Evaluation for Personal Injury*, [2011]. Oxford University Press.)

Scientific knowledge = scientific method/methodology: *Scientific knowledge* qualifies if it is the product of sound "*scientific methodology*" derived from the scientific method. The Court defined "*scientific methodology*" as the process of formulating hypotheses and then conducting experiments to prove or falsify the hypothesis, and provided a nondispositive, nonexclusive, "flexible" test for establishing its "*validity*":

A. Empirical testing: the theory or technique must be falsifiable, refutable, and testable.
B. Subjected to peer review and publication.
C. Known or potential error rate.
D. The existence and maintenance of standards and controls concerning its operation.
E. Degree to which the theory & technique is generally accepted by a relevant scientific community.

A. Formulating Hypotheses and Falsifiability

(See the next section on Rule 702 for these topics)

B. Subjected to Peer Review and Publication

C. Known or Potential Error Rate

Validity and Reliability. Psychologists emphasize both "**validity**" and "**reliability**" when talking about research studies or psychological testing.

Test validity concerns the test and assessment procedures used in psychological testing and the extent to which these measure what they purport to measure. Although classical models divided the concept into various "validities," such as content validity, criterion validity, and construct validity, the modern view is that validity is a single unitary construct.

Repeatability or **test-retest reliability** is the variation in measurements taken by a single person or instrument on the same item and under the same conditions. A less-than-perfect test-retest reliability causes **test-retest variability**. Such variability can be caused by, for example, intra-individual variability and intra-observer variability. A measurement may be said to be *repeatable* when this variation is smaller than some agreed limit.

Error Rate. When talking about "error rates", scientists use different **Significance Levels**. For instance – a particular scientific study uses a significance level of at least <.05. That means that less than 5 times in a hundred attempts to replicate the test will produce different results. The reverse of this equation is

the **error rate**. Setting an acceptable error rate accounts for confounding variables or chance. A consultant can help on this.

D. Standardized Controls
Psychological Testing
The use of psychological testing moves the evaluation closer to a scientific standard.

- Reliability is built into the instrument
- Evidence of construct validity
- Standardizes the assessment process
- Idiosyncratic contributions of interviewer are minimized
- Correlated with specific psycho-legal issues in a body of research as opposed a single study
- Clinical prediction, diagnoses, and classifications governed by same decision rules

E. General Acceptance

II. Shifting to a New Standard: Rule 702

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Three different reliably tests were identified by *Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 714 (Tex. 1997). Reliability requires the trial court to scrutinize not only the principles and methods used by the expert, but also whether these principles and methods have been properly applied to the facts of the case and any data, studies, or facts that underlie, or form the foundation of, the expert's opinion.

A. The testimony is based upon sufficient facts or data (collecting the dots)
B. The testimony is the product of reliable principles and methods (the dots are authentic)
C. The witness applied principles & methods reliably to the facts of the case (connecting the dots).

A. The Testimony is Based Upon Sufficient Facts or Data (Collecting the Dots)

Knowing the Case
First-and-foremost, the expert has to know about the specific case they are testifying about. Are there details about the case that make it categorically different than the studies being referenced?

The **Null Hypothesis** (The foundation of science and the American legal system.)
The practice of science involves formulating and testing *hypotheses*, assertions that are capable of being proven false using a test of observed data. The **null hypothesis** typically corresponds to a default position. For example, in a forensic assessment the null hypothesis might be that there is no mental health condition that influenced the instant event. From that position, the evaluator sets out to disprove the null with alternate hypotheses ("*The defendant has a long-standing thought disorder that is reflected in collateral sources. This condition was evident at the time of the instant event*.").

"*Confirmatory Bias*"
Psychological science has found that **researchers tend to find what they "expect" to find**. This goes by different names: "*Confirmatory Bias*", the "*Rosenthal Effect*" ("*Pygmalion Effect*"), the "*Rosenhan Effect*" ("*Sane in Insane Places*"), "*Mental Set*", "*Primacy Effect*", or "*First Impressions*" dynamic. The forensic evaluator needs to demonstrate they are cognizant of this phenomenon that adversely affects objective decision-making and show reasonable steps have been taken to avoid the various pitfalls. For example - the tendency for information gathering to be influenced by first impressions. There is a natural (albeit it unintentional) tendency to accept

the essential accuracy of the fact pattern as it is provided by the retaining attorney or by the defendant. Some questions to ask of the expert:

- Did the gathering of psychological data systematically rule out rival explanations? What contradictory points of data were found?
- Did the forensic evaluator believe retaining counsel told him/her the factual truth about these events? (1st contact bias?)
- There should be evidence that the expert planned what data to gather from which sources. This corroboration could take the form of signed consent forms for collateral contacts, asking for contacts that might have a different story to tell, or asking the subject of the evaluation to bring certain sources of data to the evaluation session.
- What percent of the time does the evaluator produce an opinion/report that is not helpful to the retaining attorney or doesn't fit the theory of the case?

B. The Product of Reliable Principles & Methods (The Dots are Authentic)

Are the methods used by the expert sufficient to support the opinion offered in a given case? There are three primary sources of principles & methods:

1. Has the forensic evaluator applied the principles of Science?

Physical Sciences vs. Social Sciences

Physical sciences take direct measurements while social sciences measurements are almost always "proxies" for the desired information. Human behaviors involve complex multi-factorial causation. Control over all the relevant variables is difficult at best.

Falsifiability

From Renaissance times the idea of falsifiability has been refined; it means, "*Can you show that your idea is wrong?*" From that emphasis comes the modern method of beginning with the **null hypothesis**. In order to be valid, expert testimony must demonstrate this "show me" attitude in the process of the investigation. To comply behaviorally with the concept of falsifiability, the expert must show an active search for information that might refute the position of the retaining attorney.

2. Is there an adequate review of research and use of psychological testing?

Acts of *Omission* vs. Acts of *Commission*

Often what is missing from the evaluation is more important than what is present. Which studies were not listed? Are there objective psychological tests that could have been applied? Why are these absent from the evaluation? This is where professional consultation can help.

Review of Research

- As mentioned in the previous section; access "PsychINFO" and scholar.google.com for a review of the professional literature on a subject. A consultant can help on this.
- Who were the subjects? How were they obtained? Random sampling?
- Do these subjects adequately resemble the defendant or victim?
- What was the level of ecological validity? How generalizable are the results of each study?
- Has a study been replicated?

3. Professional training and experience

Professional training and experience can be a strong guide for the forensic evaluator. But this can also be a source of significant bias. Remember, witch hunters and recovered "memory" experts had years of training and experience.

C. Applied the Principles & Methods Reliably to the Facts of the Case.

(Connecting the Dots)

Law of Parsimony (Occam's Razor)

"*When you hear hoof beats, think horses not zebras*." **Occam's razor** (also written as **Ockham's razor**) is the law of parsimony, economy or succinctness. It is a principle urging the scientist to select amongst competing hypotheses which makes the fewest assumptions and thereby offer the simplest explanation of the effect. In applying the rule, one should proceed from simpler theories unless simplicity can be traded for greater explanatory power. A critical question becomes whether the expert adequately accounted for more obvious alternative explanations (i.e. the defendant was drunk at the time of the instant event as compared to a complicated theory involving PTSD and object-relations theory).

Inferential Leap

Forensic experts/evaluators don't have the tools to say specifically what happened in the past or to predict exactly what will be in the future. So they make inferential leaps based on the best research, testing, and professional experience.

III. Additional Direction on Daubert

The Advisory Committee on the Federal Rules of Evidence (2000) added five additional suggested areas of consideration based on court rulings after *Daubert:*

1. Whether experts are *"proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying." Daubert v. Merrell Dow Pharmaceuticals, Inc.,* (9th Cir., 1995, p. 1317).
2. Whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion.
3. Whether the expert has adequately accounted for obvious alternative explanations.
4. Whether the expert "is being as careful as he would be in his regular professional work outside his paid litigation consulting." *Sheehan v. Daily Racing Form, Inc.,* (7th Cir., 1997, p. 942).
5. Whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.

A leading forensic psychologist, Dr. Joel Dvoskin, shares the following:

> It should be noted that the Supreme Court, in *Barefoot v. Estelle* (1983), ruled that the testimony of a psychiatrist on the basis of clinical experience was admissible, because "*the rules of evidence generally extant at the federal and state levels anticipate that relevant, unprivileged evidence should be admitted and its weight left to the fact finder, who would have the benefit of cross-examination and contrary evidence by the opposing party*" (p. 898). Sales and Shuman (2005) suggested that a Texas federal court decision provides criteria that could be used in a *Daubert* analysis of clinical testimony [Antoine-Tubbs *v. Local 513 Air Transp. Div.* (N.D. Texas, 1998]:
>
> - personal examination of the plaintiff by the doctor;
> - personally taking a detailed medical history from the plaintiff;
> - using differential diagnosis and etiology;
> - reviewing tests, reports and opinions of other doctors;
> - reviewing other facts or data reasonably relied on by medical experts in forming opinions or inferences as to medical causation;
> - reference to medical literature; and
> - utilizing the doctor's training and experience.
>
> Similarly, a forensic mental health expert would be expected to do a personal examination, take

a detailed history, construct a differential diagnosis, review tests, reports and opinions of relevant clinicians, review information reasonably relied upon by psychological experts in assessing causation, referring to the psychological and medical literature, and utilizing the expert's training and experience.

The Gatekeeper. The Supreme Court made it clear in *Daubert* and its two progeny [General *Electric Company v. Joiner* (1997) and *Kumho Tire Co. v. Carmichael* (1999)] that trial court judges are to exercise their gatekeeping functions. It should be noted, though, that trial judges are not required to question expert testimony. It is up to attorneys to bring *motions in limine* [i.e., a motion to exclude "matters which are irrelevant, inadmissible and prejudicial" (Black's *Law Dictionary,* 1979, p. 914)] if they wish to have proposed testimony excluded, or to address the proposed testimony during trial testimony.

Put simply, courts applying *Daubert* are encouraged to ask two questions of experts: "*Why should we believe you?*" and "*Why should we care?*" The first speaks to the credibility, reliability, and validity of experts' opinions and the facts and logic upon which they are based. The second addresses the need for the expert to identify the relevance of the opinions to be offered to the specific questions at bar. Consistent with long traditions of Anglo-American law, this probative value must then be weighed against any prejudicial effects of the opinions to be offered (Dvoskin & Guy, 2008).

(Special thanks to Joel Dvoskin and Andrew Kane, *Evaluation for Personal Injury*, (2011). Oxford University Press. Personal communication to Dr. Simpson)

APPENDIX B: Rape Trauma Syndrome

Case Law related to Rape Trauma Syndrome

Rape trauma syndrome. *United States v. Carter,* 26 M.J. 428 (C.M.A. 1988):

Rape trauma is a subcategory of PTSD in the DSM-IV. The psychiatric community recognizes it as valid and reliable. Evidence may assist factfinder by providing knowledge concerning victim's reaction to assault. Rape trauma syndrome evidence will also assist the trier of fact in determining the issue of consent. This would be particularly true where members would likely have little or no experience with victims of rape. *See also United States v. Cox*, 23 M.J. 808 (N.M.C.M.R. 1986); *United States v. Hartford*, 50 M.J. 402 (C.A.A.F. 1999).

Impermissible Testimony. *United States v. Bostick*, 33 M.J. 849 (A.C.M.R. 1991):

Psychologist impermissibly expressed an opinion concerning the rape victim's credibility by discussing the performance of the victim on a "Rape Aftermath Symptoms Test" (RAST) and by stating that the victim did not fake or feign her condition. The expert thus became a "human lie detector." The RAST failed to meet the requirements for admissibility of scientific testimony (lack of foundation). Despite lack of defense objection, the court finds plain error and sets aside findings and sentence.

United States v. Rynning, 47 M.J. 420 (C.A.A.F. 1998):

Not plain error for expert to testify about characteristics of sexual abuse victims in carnal knowledge, sodomy, indecent acts case where the accused raised issues of late and incomplete reporting and other counterintuitive behavior, such as continued affection toward her father, by victim.

United States v. Flesher, 73 M.J. 303 (2014):

Expert testimony about the sometimes counterintuitive behaviors of sexual assault victims/rape trauma syndrome is admissible because it assists jurors in disabusing themselves of widely held misconceptions. However, expert testimony cannot be used solely to bolster the credibility of the government's fact witnesses by mirroring their version of events.

Research Related to Rape Trauma Syndrome

Coping behavior of the rape victim
Ann Wolbert Burgess, Lynda Lytle Holmstrom
American Journal of Psychiatry, 133: 4, April 1976
Abstract:

The coping behavior of rape victims can be analyzed in three distinct phases – the threat of attack, the attack itself, and the period immediately thereafter. The authors analyzed the reported coping behavior of 92 women diagnosed as having rape trauma. Most of the women used verbal, physical, or cognitive strategies when threatened, although 34 were physically or psychologically paralyzed. The actual rape prompted coping behaviors in all but 1 victim. Escaping the situation or the assailant is the primary task immediately after the attack. In counseling the rape victim, it is important to understand her indivicual style of coping, to be supportive of it, and to suggest alternative for future stressful situations.

Of slithy toves, Rape-Trauma Syndrome, burn-out, etc.
Wright, Rogers H.
Psychotherapy in Private Practice, Vol 3(1), Spr 1985. pp. 99-108.
Abstract:

Discusses the diagnosis of rape trauma syndrome (RTS). It is argued that RTS is indistinguishable from posttraumatic shock syndrome. The inconsistency of symptomatology and the posttraumatic course of RTS limit its usefulness as a clinical diagnosis. The nonprofessional uses of the RTS diagnosis, discovered in a review of 35–45 articles, included attempts to provide objective verification that a rape occurred. It is concluded that mental health professionals have an obligation to speak out against the misuse of the diagnostic process by unqualified individuals or agencies.

Rape trauma syndrome: Is it probative of lack of consent?
Graham, Ernest S.
Law & Psychology Review, Vol 13, Spr 1989. pp. 25-42.
Abstract::

Argues that research on the rape trauma syndrome is not probative of consent to prior sexual intercourse, and cannot be used in courtroom settings to corroborate an alleged victim's accusation that prior sexual intercourse with a defendant was nonconsensual. The question of the admissability of rape trauma syndrome is discussed in terms of 3 facts examined in research (consent, prior trauma, and the cause of the alleged victim's current behavior). Analysis of these facts involves the distinction between structural and functional analyses and between experimental and correlational research designs.

Rape trauma syndrome: A review of case law and psychological research.
Frazier, Patricia A., Borgida, Eugene
Law and Human Behavior, Vol 16(3), Jun, 1992. pp. 293-311.
Abstract:

Reviews recent case law on the admissibility of rape trauma syndrome (RTS) evidence and psychological research relevant to concerns raised about its scientific reliability, helpfulness, and prejudicial impact. Results indicate that (1) specific concerns raised by the courts about the reliability of RTS evidence may not be warranted, (2) expert testimony on RTS could be helpful in educating jurors, and (3) expert testimony on RTS does appear to exert some influence on jury decision making in rape trials, but does not appear to unfairly prejudice the defendant.

Rape trauma syndrome in the military courts.
Young, Stephen A.
Bulletin of the American Academy of Psychiatry & the Law, Vol 23(4), 1995. pp. 563-571.
Abstracts:

Indicates that the military courts have developed a rich case law tradition in the area of rape trauma syndrome testimony. These cases are particularly important in the context of a military that is both increasingly female and increasingly sensitive to mixed gender relationships. The military court's approach to rape trauma testimony over the past 15 yrs is reviewed. The approach to testimony at one military medical center is analyzed and a testimony model for the forensic psychiatrist who testifies in a military setting is offered.

Effects of a defense psychological expert witness in acquaintance rape trials.
Burnstein, Victor Joel.
Dissertation Abstracts International: Section B: The Sciences and Engineering, Vol 56(10-B), Apr, 1996. pp. 5830.
Abstract:

This study explored the ramifications of the prosecution's use of a rape trauma syndrome psychological expert in an acquaintance rape trial. Subjects were 207 (92 females, 115 males) University of Texas undergraduates, who listened to one of four versions of an audiotaped simulated acquaintance rape trial. Subjects in the Control Condition listened to the direct and cross-examination of the complainant, several prosecution witnesses, and the defendant. Subjects in a One-Expert Condition also heard the testimony of a prosecution psychiatrist who testified that he had conducted a psychological examination of the complainant and that in his opinion she suffers symptoms consistent with a diagnosis of rape trauma syndrome. Subjects in the Narcissistic Condition heard the testimony of the prosecution expert and a defense psychiatrist, who testified that he had conducted a psychological examination of the complainant and that in his opinion she does not suffer from rape trauma syndrome but rather suffers from a Narcissistic Personality Disorder that might well cause her to bring false rape charges against a man who has rejected her. Subjects in the Borderline Condition heard the testimony of the prosecution expert and a defense psychiatrist, who testified that he had conducted a psychological examination of the complainant and that in his opinion she does not suffer from rape trauma syndrome but rather suffers from a Borderline Personality Disorder that might well cause her to bring false rape charges against a man who has rejected her. Subjects in the Narcissistic Condition and in the Borderline Condition were

significantly more likely to render not guilty verdicts and reach defense-oriented decisions than subjects in the Control Condition. There were no significant differences between Control and One-Expert Condition subjects. These results indicate that the prosecution's introduction of a psychological rape trauma expert may backfire and may result in an increased lik

Rape trauma experts in the courtroom.
Boeschen, Laura E., Sales, Bruce D., Koss, Mary P.
Psychology, Public Policy, and Law, Vol 4(1-2), Mar-Jun, 1998. Special Issue: Sex Offenders: Scientific, Legal, and Policy Perspectives. pp. 414-432.
Abstract:

This article analyzes the scientific legitimacy of using expert testimony relating to psychological sequelae of rape victimization in the courtroom and attempts to determine boundaries within which such testimony should remain to respect the limitations of current knowledge. Descriptions of the rape-related diagnoses currently used in expert testimony are followed by a discussion of the problematic issues associated with using rape trauma syndrome in the courtroom and a review of the validity and reliability issues associated with diagnosing posttraumatic stress disorder in forensic settings. The authors consider the scientific appropriateness of admitting different levels of rape expert testimony on the basis of the limitations of the scientific knowledge discussed

Reactions to rape: A military forensic psychiatrist's perspective.
Ritchie, Elspeth Cameron.
Military Medicine, Vol 163(8), Aug, 1998. pp. 505-509.
Abstract:

Discusses rape allegations in the military legal system from a psychiatric perspective. The original definition of 'rape trauma syndrome' and subsequent psychiatric thinking about the diagnosis are briefly outlined. Common reactions seen in military victims in this era are described. A prototypical military case is presented. An adequate evaluation of an alleged victim is outlined. Credentials and preparation of an expert witness are also briefly discussed, with cautions about the use of expert testimony in cases of alleged sexual assault and rape trauma syndrome

Rape trauma syndrome: An examination of standards that determine the admissibility of expert witness testimony.
Biggers, Jacquelyne R., Yim, Chong I..
Journal of Forensic Psychology Practice, Vol 3(1), 2003. pp. 61-77.
Abstract:

Specialized literature on women's reactions to rape was virtually non-existent before the emergence of the women's movement in the early 1970s. By speaking out publicly, however, advocates of the civil rights reform compelled the conception of rape trauma syndrome and a proliferation of research regarding the psychological reactions of rape trauma victims. This growth of psychological knowledge regarding the reaction of rape victims forced the courts to reexamine the standards relating to the admission of expert testimony as developed in the case Frye v. United States. As a result of this reexamination, courts have relied upon opposing standards of proof to determine the admissibility of rape trauma evidence such as those developed in section 403 and 702 of the Federal Rules of Evidence and those outlined in the case of Daubert v. Merrell Dow Pharmaceuticals, Inc. The purpose of this paper is to examine rape trauma syndrome as it is commonly understood by both the psychological community and the judicial system and to assess its applicability to the admissibility of expert testimony.

Pathways to false allegations of sexual assault.
Engle, Jessica., O'Donohue, William.
Journal of Forensic Psychology Practice, Vol 12(2), Mar, 2012. pp. 97-123.
Abstract:

Not all allegation**s** of sexual assault are true. Unfortunately, there has been little work on understanding the prevalence of false allegations or pathways to these. This paper proposes 11 pathways to false allegations of sexual assault: (a) lying, (b) implied consent, (c) false memories, (d) intoxication, (e) antisocial personality disorder, (f) borderline personality disorder, (g) histrionic personality disorder, (h) delirium, (i) psychotic disorders, (j) dissociation, and (k) intellectual

disability. These pathways originate in the psychological diatheses of the individual. Further research is needed into the frequency of these pathways, ways to accurately detect these, and whether other pathways exist.

Rape trauma syndrome.

Tannura, Tammi A.,

American Journal of Sexuality Education, Vol 9(2), Apr, 2014. pp. 247-256.

Abstract:

When the topic of sexual assault is presented in high school and college health courses, it is mostly from a prevention perspective. Rarely do such courses include the mental and emotional health issues suffered by the rape survivor. Knowledge about rape trauma syndrome helps significant people in the victim's life understand the full range of reactions to the traumatic experience of rape. This lesson describes survivors' behaviors and reactions after a rape, otherwise known as rape trauma syndrome. Included in this lesson is the federal definition of rape, a summary of rape trauma syndrome, lyrics to a song with relevant applications to the phases of rape trauma syndrome, and a rubric for grading a reaction paper related to the lesson. Three National Health Education Standards are addressed via the lesson as well.

Examining the scientific validity of rape trauma syndrome.

O'Donohue, William, Carlson, Gwendolyn C., Benuto, Lorraine T., Bennett, Natalie M.

Psychiatry, Psychology and Law, Vol 21(6), Nov, 2014. pp. 858-876.

Abstracts:

Rape trauma syndrome (RTS) was first described by Burgess and Holmstrom (1974) who argued that there was little information that described the physical and psychological effects of rape, associated therapy and provisions for protection of the victim from further psychological harm. Since then, there have been several critiques of RTS and empirical evidence exists that RTS is not generally accepted by the relevant scientific community. Despite this, RTS is still used in courts. As such, in this article, we comprehensively evaluated RTS and determined that it is vague and imprecise, its evidential status is questionable, it is inconsistent with the most common sequelae of trauma, it ignores important mediating variables and it may not be culturally sensitive. In light of these critiques, we recommend no further use of this model in courts or in clinical practice.

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APPENDIX C: Data Gleaned from the Department of Defense 2018 Annual Report on Sexual Assault in the Military

Case Dispositions Completed in 2018[a]

Case depositions completed 2018	**482**
Proceeded to trial	**307 (64%)**
Discharge or Resignation in lieu of trial	**90 (19%)**
Charges dismissed	**85 (18%)**

Proceeded to Trial for 2018

Proceeded to trial	**307**
Convicted of any charge	**203 (66%)**
Acquitted of all charges	**104 (34%)**

Proven vs. Unproven for all Case Dispositions for 2018

Case dispositions completed this year	**482**
Proven (convicted of any charge)	**203 (42%)**
Unproven (acquitted, discharged, or dismissed)	**279 (58%)**

Total Proven Guilty for All Unrestricted Reports for 2018

Completed unrestricted reports this year	**4002**
Proven guilty for all unrestricted this year	**203 (.05%)**

a. Department of Defense Annual Report on Sexual Assault in the Military for Fiscal Year **20<u>18</u>**: Appendix B: Statistical Data on Sexual Assault. **Page 14 and 24.**

Court-Martial Charges Preferred for Sexual Assault Charge
668 Case Dispositions – FY18

Penetrating Offense Charged – 437 Case Dispositions (65%)

113 cases not completed in F18 (26%)^
324 cases completed in FY18 (74%)^
63 Dismissed Cases (19%)*
209 Proceeded to Trial (65%)*
123 cases convicted of some charge (59%)
71 convictions for a penetrating offense (58%)
12 convictions for sexual contact offenses (10%)
40 convictions for other offense (33%)
86 cases were acquitted (41%)
52 RILO/DILO (16%)*

*As a percentage of Cases Completed
^As a percentage of Case Dispositions

Sexual Contact Offenses Charged - 205 Case Dispositions (31%)

49 cases not completed in F18 (24%)^
156 cases completed in FY18 (76%)^
22 Dismissed Cases (14%)*
97 Proceeded to Trial (62%)*
79 cases convicted of some charge (81%)
28 convictions for sexual contact offenses (35%)
51 convictions for other offense (65%)
18 cases were acquitted (19%)
37 RILO/DILO (24%)*

*As a percentage of Cases Completed
^As a percentage of Case Dispositions

Convictions for Penetration and Sexual Contact combined total 202.
123 cases convicted for penetrating offense
79 cases convicted for sexual contact
71 convictions for a penetrating offense (35%)#
40 convictions for sexual contact offenses (20%)#
91 convictions for other offense (45%)#

#As a percentage of Convictions for Penetration and Sexual Contact

Bottom Line:
In trials involving charges of penetration or sexual contact (202 completed trials) in FY18 that resulted in conviction:
111 were convicted of penetration or sexual contact (55%)
91 were convicted of lesser charge (45%)

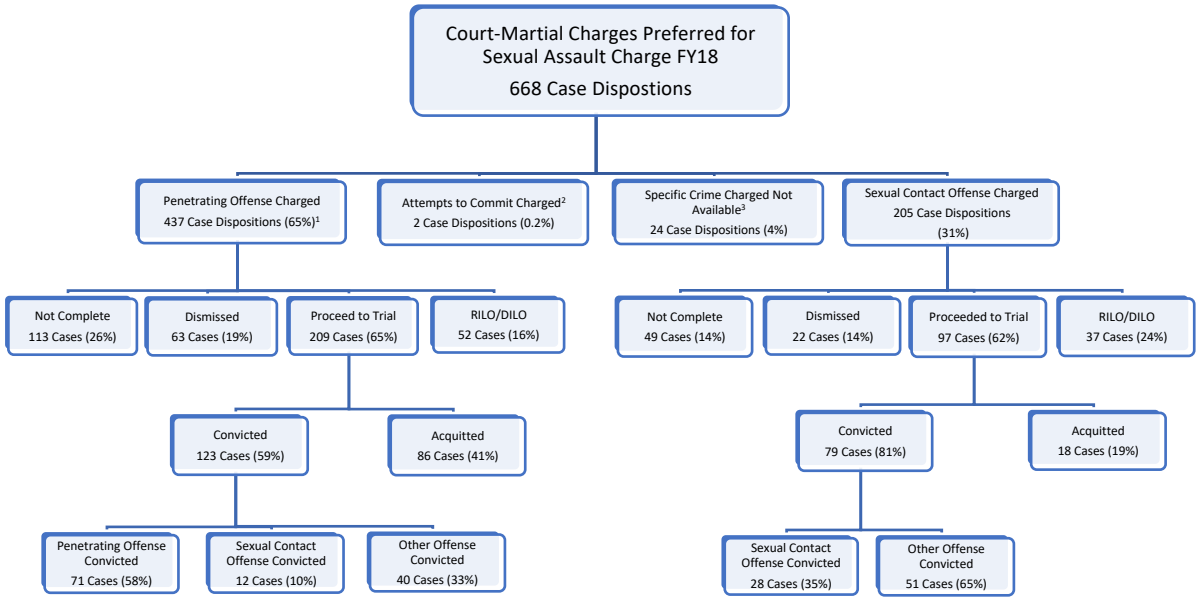

Figure 13. Dispositions of Cases with Sexual Assault Court-Martial Charges Preferred by Crime Charged, FY18

Notes:

1. Percentages for some categories do not sum to 100 percent due to rounding. Punishments do not sum to 100 percent because subjects can receive multiple punishments.
2. One allegation for an attempt to commit a sexual assault was charged, proceeded to trial, and convicted at court-martial. The other allegation for an attempt to commit a sexual assault resulted in a resignation/discharge in lieu of court-martial.
3. In FY18, 24 cases were preferred for court-martial, but the crime charged data was incomplete. These cases are pending and will be reported out next FY.

Table 4. Case Dispositions Reported in FY18 (p.18)

Case Disposition Category	Count of Case Dispositions	Share of Case Dispositions
Sexual Assault Investigation That Can Be Considered for Possible Action by DoD Commanders	2,854	N/A
Evidence Supported Command Action	1,845	65%
Sexual Assault Offense Action	1,211	66%
Court-Martial Charge Preferred (Initiated)	668	55%
Nonjudicial Punishment (Article 15, UCMJ)	267	22%
Administrative Discharge	118	10%
Other Adverse Administrative Action	158	13%
Non-Sexual Assault Offense Action	634	34%
Court-Martial Charge Preferred (Initiated)	72	11%
Nonjudicial Punishment (Article 15, UCMJ)	339	53%
Administrative Discharge	96	15%
Other Adverse Administrative Action	127	20%
Unfounded by Command/Legal Review	74	3%
Commander Action Precluded	935	33%
Victim Died	0	0%
Victim Declined to Participate in the Military Justice Action	173	19%
Insufficient Evidence to Prosecute	735	79%
Statute of Limitations Expired	27	3%

Note: Victims who were assaulted by multiple subjects are counted only once to correspond with the subject who received the most serious disposition.

Evidence Supported Command Action (p.21)

In 1,845 cases, commanders had sufficient evidence and the legal authority to support some form of disciplinary action for an alleged sexual assault offense or other misconduct (Figure 9, Point S). When a subject in an investigation receives more than one disposition, DoD reports only the most serious disciplinary action. The possible actions, listed in descending order of severity, are court-martial charges preferred, nonjudicial punishment, administrative discharge, and other adverse administrative action.

The following outlines the command actions taken in the 1,211 cases for which it was determined a sexual assault offense warranted discipline:

- 55 percent (N=668) of cases were associated with court-martial charges preferred (initiated).
- 22 percent (N=267) of cases entered proceedings for nonjudicial punishment under Article 15 of the UCMJ.
- 23 percent (N=276) of cases received an administrative discharge or other adverse administrative action.

In 634 cases, evidence supported command action for other misconduct discovered during the sexual assault investigation (e.g., making a false official statement, adultery, underage drinking, or other crimes under the UCMJ), but not a sexual assault charge. Command actions for these cases follow below:

- 11 percent (N=72) of cases were associated with court-martial charges preferred.
- 53 percent (N=339) of cases entered proceedings for nonjudicial punishment.
- 35 percent (N=223) of cases received an administrative discharge or other adverse administrative action. (Percentages do not sum to 100% due to rounding).

Military Justice (p.21)

The information in this section describes the process that follows a military subject's commander having sufficient evidence to take disciplinary action (Figure 11). Each action taken is based on the evidence identified during a thorough investigation. In addition, since June 2012, initial disposition decisions for the most serious sexual assault crimes have been withheld to the O-6 level (Colonel or Navy Captain), who is also at least a Special Court-Martial Convening Authority (SPCMA). This allows more senior officers to review and decide which initial action should be taken in these cases.

Court-Martial for a Sexual Assault Offense (p.22-23)
As noted previously, 668 cases involved court-martial charges preferred. Figure 12 illustrates what happened to these cases after their commanders preferred court-martial charges. Of the 668 cases with a preferral of court-martial charges for at least one sexual assault charge in FY18, the Military Services completed 482 court-martial outcomes by the end of the FY.

Of the 307 cases that proceeded to trial, 203 (66 percent) resulted in a conviction of at least one charge at court-martial. That conviction could have been for a sexual assault offense or for any other misconduct charged. Most convicted Service members received at least four kinds of punishment: confinement, reduction in rank, fines or forfeitures, and a discharge (enlisted) or dismissal (officers) from service. In FY18, 108 subjects of a sexual assault offense were required to register as a sex offender by law. According to the UCMJ, Service members convicted of a sexual assault who do not receive a punitive discharge at court-martial must receive an administrative discharge. In FY18, the Military Services processed 28 convicted subjects that did not receive a punitive discharge or dismissal for administrative separation from Military Service.

Court-martial charges in 85 cases were dismissed; however, commanders used evidence gathered during the sexual assault investigations to impose nonjudicial punishment for other misconduct in 12 of the 85 cases. The punishment may have been for any kind of misconduct for which there was evidence. Five subjects who received nonjudicial punishment for other misconduct after court-martial charges were subsequently discharged from military service.

DoD approved 89 cases for a resignation or discharge in lieu of court-martial (RILO/DILO) and 1 case was approved for cadet/midshipman disenrollment in lieu of court-martial. In FY18, all DILO cases involving enlisted members received a separation Under Other Than Honorable Conditions (UOTHC), the most serious administrative characterization of discharge possible. The UOTHC discharge characterization is recorded on a Service member's DD Form 214, Record of Military Service, and significantly limits separation and post-service benefits from DoD and the Department of Veterans Affairs.

DoD grants requests for RILO/DILO in certain circumstances, occurring only after court-martial charges are preferred against the accused. For such an action to occur, the accused must initiate the process. Requests for a RILO/DILO must include:

- A statement of understanding of both the offense(s) charged and the consequences of administrative separation;
- An acknowledgement that any separation could possibly have a negative characterization;
- An acknowledgement that the accused is guilty of an offense for which a punitive discharge is authorized or a summary of the evidence supporting the guilt of the accused.

These statements are not admissible in court-martial should the request ultimately be disapproved. DILOs involving enlisted personnel are usually approved at the SPCMA level. The Secretary of the Military Department approves RILOs. Figure 12 (on page 24 of Appendix B of Statistics printout) presents the case outcomes for which court-martial charges were preferred and Figure 13

(on page 25 of Appendix B of Statistics printout) shows the outcomes by the type of crime charged (i.e., penetrating versus sexual contact crimes).

Nonjudicial Punishment (p.26)
Commanders administer nonjudicial punishments in accordance with Article 15 of the UCMJ, which empowers commanding officers to impose penalties on Service members when there is sufficient evidence of what the law considers to be a relatively minor offense under the UCMJ. Nonjudicial punishment allows commanders to address some types of sexual assault and other misconduct by Service members that may not warrant prosecution in a military or civilian court. Some of the corrective actions within a commander's purview to administer include demotions, forfeitures, and restrictions on liberty. Nonjudicial punishments may support a rationale for administratively discharging military subjects with a less than honorable discharge. The Service member may demand trial by court-martial instead of accepting nonjudicial punishment by the commander, unless the subject is attached to or embarked on a vessel.

Of the 1,211 cases dispositions that were associated with disciplinary actions on a sexual assault offense, 267 cases were addressed with nonjudicial punishment. Figure 14 displays the outcomes of nonjudicial punishment actions taken against subjects on a sexual assault charge in FY18. In FY18, 86 percent of the 207 cases with completed nonjudicial punishment proceedings were associated with guilty verdicts under the authority of Article 15 in the UCMJ. Nearly all the administered nonjudicial punishments were for sexual contact offenses. Most cases with a nonjudicial punishment received the following punishments: a forfeiture of pay, reduction in rank, and/or extra duty. Available Military Service data indicated that for 74 cases the nonjudicial punishment served as grounds for a subsequent administrative discharge.

Characterizations of the 74 discharges are outlined below.

Honorable	5 Cases
General	33 Cases
Under Other Than Honorable Conditions	24 Cases
Uncharacterized	12 Cases
Total:	**74 Cases**

Administrative Discharges and Adverse Administrative Actions (p.27**)**
A legal review of evidence sometimes indicates that the court-martial process or nonjudicial punishments are not appropriate means to address allegations of misconduct against the accused. However, commanders have other means at their disposal to hold alleged offenders appropriately accountable. Commanders may use an administrative discharge to address an individual's misconduct, lack of discipline, or poor suitability for continued military service. There are three characterizations of administrative discharges: Honorable, General, and UOTHC. General and UOTHC discharges may limit those discharged from receiving full entitlements and benefits from both DoD and the Department of Veterans Affairs. In FY18, 118 cases in sexual assault investigations were associated with an administrative discharge.

Characterizations of the discharges are outlined below.

Honorable	0 Cases
General	36 Cases
UOTHC	48 Cases
Uncharacterized	24 Cases
Pending	10 Cases
Total:	**118 Cases**

In FY18, commanders took adverse administrative actions in 158 cases that were investigated for a sexual assault offense. Commanders typically use adverse administrative actions when available evidence does not support a more severe disciplinary action. Adverse administrative actions can have a serious impact on a Service member's military career, have no equivalent form of punishment in the civilian sector, and may consist of Letters of Reprimand, Letters of Admonishment, Letters of Counseling, or discharge. These actions may also include, but are not limited to: denial of re-enlistment, cancellation of a promotion, and cancellation of new or special duty orders.

Probable Cause Only for a Non-Sexual Assault Offense (p.28)
Sometimes the sexual assault investigations conducted by MCIOs do not find sufficient evidence to support disciplinary action against the subject on a sexual assault charge but do uncover other forms of chargeable misconduct. In FY18, commanders took action in 634 cases that MCIOs originally investigated for sexual assault allegations, but for which evidence only supported action on non-sexual assault misconduct, such as making a false official statement, adultery, assault, or other crimes (Figure 15).

Figure 12. Case Dispositions with Sexual Assault Charges Preferred FY18 (p.24)

Case Disposition Category	Case Dispositions	Share of Case Dispositions
Court-Martial: Sexual Assault Charges Preferred in FY18	668	
Case Dispositions Not Completed in FY18 (to be reported in the future)	186	
Case Dispositions Completed in FY18	482	
Proceeded to Trial (at least one sexual assault offense charged)	307	64%
Convicted of Any Charge at Trial	203	66%
Confinement	157	77%
Reductions in Rank	152	75%
Fines / Forfeitures	111	55%
Punitive Discharge / Dismissal	137*	67%
Restriction	17	8%
Hard Labor without Confinement	8	4%
Reprimand	22	11%
Acquitted of All Charges	104	34%
Discharge or Resignation Granted in Lieu of Court-Martial	90	19%
Officer Resignations	5	
Cadet Disenrollment	1	
Enlisted Discharges (Under Other than Honorable Conditions)	84	
Court Charges Dismissed	85	18%
Nonjudicial Punishment Initiated, but Dismissed Based on Evidence Discovered During Sexual Assault Investigation	1	
Nonjudicial Punishment Imposed Based on Evidence Discovered During Sexual Assault Investigation	12	
Correctional Custody	0	0%
Reductions in Rank	9	75%
Forfeitures	9	75%
Restriction	5	42%
Discharge Subsequent to Nonjudicial Punishment	5	42%
Extra Duty	3	25%
Admonition / Reprimand	4	33%

Note: Victims who were assaulted by multiple subjects are counted only once to correspond with the subject who received the most serious disposition.

*Note: DoD requires convicted subjects that were not adjudged a punitive discharge or dismissal to be processed for separation. Service reports indicate that 28 convicted Subjects were processed for administrative discharge subsequent to court-martial conviction in FY18.

Data Gleaned from SAPR Annual Reports 2012-2018

	2012[a]	2013[b]	2014[c]	2015[d]	2016[e]	2017[f]	2018[g]	Totals
Case depositions completed this year	460	707	735	813	619	663	**482**	4,479
Proceeded to trial	302 (66%)	484 (68%)	496 (67%)	543 (67%)	389 (63%)	406 (61%)	**307 (64%)**	2,927 (65%)
Discharge or Resignation in lieu of trial	70 (15%)	90 (13%)	90 (12%)	159 (22%)	133 (22%)	152 (23%)	**90 (19%)**	784 (17%)
Charges dismissed	88 (19%)	133 (19%)	149 (28%)	111 (14%)	97 (16%)	105 (16%)	**85 (18%)**	768 (17%)

Proceeded to Trial for that Year

	2012[a]	2013[b]	2014[c]	2015[d]	2016[e]	2017[f]	2018[g]	Totals
Proceeded to trial	302	484	496	543	389	406	**307**	2,927
Convicted of any charge	238 (79%)	370 (76%)	359 (72%)	413 (76%)	261 (67%)	284 (70%)	**203 (66%)**	2,128 (72%)
Acquitted of all charges	64 (21%)	114 (23%)	137 (28%)	130 (24%)	128 (33%)	122 (30%)	**104 (34%)**	799 (27%)

Proven vs. Unproven for all Case Dispositions for that Year

	2012[a]	2013[b]	2014[c]	2015[d]	2016[e]	2017[f]	2018[g]	Totals
Case depositions completed this year	460	707	735	813	619	663	**482**	4,479
Proven (convicted of any charge)	238 (52%)	370 (52%)	359 (49%)	413 (51%)	261 (42%)	284 (43%)	**203 (42%)[h]**	2,128 (47%)
Unproven (acquitted, discharged, or dismissed)	222 (48%)	337 (48%)	376 (51%)	400 (49%)	358 (58%)	379 (57%)	**279 (58%)**	2,351 (53%)

Total Proven Guilty for All Unrestricted Reports for that Year

	2012[a]	2013[b]	2014[c]	2015[d]	2016[e]	2017[f]	2018[g]	Totals
Completed unrestricted reports this year	1,714	3,234	3,520	3,386	3,677	4,779	**4002**	24,312
Proven guilty for all unrestricted this year	238 (14%)	370 (11%)	359 (10%)	413 (12%)	261 (.07%)	284 (.06%)	**203 (.05%)**	2,128 (.09)

a. Department of Defense Annual Report on Sexual Assault in the Military for Fiscal Year **2012**: Volume 1. **Page 79.**
b. Department of Defense Annual Report on Sexual Assault in the Military for Fiscal Year **2013**. Provisional Statistical Data on Sexual Assault. **Page 77 and 83.**
c. Department of Defense Annual Report on Sexual Assault in the Military for Fiscal Year **2014**. Provisional Statistical Data on Sexual Assault. **Page 8 and 23.**
d. Department of Defense Annual Report on Sexual Assault in the Military for Fiscal Year **2015**. **Page 8 and 24.**
e. Department of Defense Annual Report on Sexual Assault in the Military for Fiscal Year **2016**: Appendix B: Statistical Data on Sexual Assault. **Page 15 and 24.**
f. Department of Defense Annual Report on Sexual Assault in the Military for Fiscal Year **2017**: Appendix B: Statistical Data on Sexual Assault. **Page 14 and 25.**
g. Department of Defense Annual Report on Sexual Assault in the Military for Fiscal Year **2018**: Appendix B: Statistical Data on Sexual Assault. **Page 14 and 24.**
h. This is a calculation of 203 / 482 as compared to the studies 203 / 307

APPENDIX D: False and Unfounded Sexual Assault Allegations

A false accusation of sexual assault is the intentional reporting of a crime where no crime has occurred. It is difficult to assess the prevalence of false accusations because they are often conflated with non-prosecuted cases under the designation "*unfounded*" and not all jurisdictions have a distinct classification of false accusation. As such, there are many reasons that can result in a sexual assault case being closed as unfounded or unproven. A good starting point is to review the following article by Rumney. If you can't find the article online, email me and I'll send you a copy.

Purported False Allegations of Rape, Child Abuse and Non-Sexual Violence: Nature, Characteristics and Implications

Philip Rumney, Kieran F McCartan

The Journal of Criminal Law, First Published December 19, 2017

Abstract

The subject of false rape allegations is a subject shrouded in anxiety, confusion and misunderstanding. Despite a growing body of quality research there continue to be significant gaps in our knowledge about the topic, including the phenomenon of false allegations beyond rape and other sexual offences. The purpose of this article is to seek to deepen our understanding by examining a unique dataset comprising 701 cases involving individuals who purport to have been the subject of false accusations of rape, child sexual abuse, child abuse/neglect and other forms of wrongdoing. This article aims to provide an insight into the nature and characteristics of these allegations and explore the implications of the data for several research and policy questions. It will also critically examine some of the current literature and scholarly claims in this area, particularly around the commonality of false allegations and critique claims that discussion of this topic is dangerous and best avoided. Finally, the article sets out a future research agenda in which the complex issues raised by false allegations can be carefully considered, and the scale, impact and pathways to accusation can be better understood.

Estimates of Prevalence of False Rape Allegations

DiCanio (1993)

States that while researchers and prosecutors do not agree on the exact percentage of false allegations, they generally agree on a range of 2% to 10%.

Kanin (1994)

"False Rape Allegations" by Eugene J. Kanin Ph.D.

Eugene J. Kanin of Purdue University investigated the incidences of false rape allegations made to the police in one small urban community in the Midwest United States (population 70,000) between 1978 and 1987. He states that unlike in many larger jurisdictions, this police department had the resources to "*seriously record and pursue to closure all rape complaints, regardless of their merits.*" He further states in each investigation "*the complainant must admit that no rape had occurred. She is the sole agent who can say that the rape charge is false.*"

Kanin's findings - "*Regarding this study, **41% (n = 45) of the total disposed rape cases (n = 109) were officially declared false** during this 9-year period, that is, **by the complainant's admission that no rape had occurred and the charge, therefore, was false***." The researchers verified, whenever possible, for all of the complainants who recanted their allegations, that their new account of the events matched the accused's version of events.

After reviewing the police files, Kanin categorized the false accusations into three broad motivations: **alibis, revenge, and attention-seeking**. These motivations were assigned prevalence of roughly 50%, 30%, and 20% respectively. This categorization was supported by the details of complainant recantations and other documentation of their cases.

In their conclusion, Kanin and colleagues caution:

> *Most problematic is the question of the generalizability of these findings from a single police agency handling a relatively small number of cases. Certainly, our intent is not to suggest that the 41% incidence found here be extrapolated to other populations,*

particularly in light of our ignorance regarding the structural variables that might be influencing such behavior and which could be responsible for wide variations among cities. But a far greater obstacle to obtaining "true" incidence figures, especially for larger cities, would be the extraordinary variations in police agency policies (see Comment, 1968; Newsweek, 1983; Pepinsky and Jesilow, 1984); variations so diverse, in fact, that some police agencies cannot find a single rape complaint with merit, while others cannot find a single rape complaint without merit. Similarly, some police agencies report all of their unfounded rape cases to be due to false allegation, while other agencies report none of their unfounded declarations to be based on false allegation (Kanin, 1985). . . ***On the other hand, a degree of confidence exists that the findings reported here are not exaggerations produced by some sort of atypical population, that is, nothing peculiar exists about this city's population composition to suggest that an unusual incidence or patterning of false rape allegations would occur.*** *This city is not a resort/reveling area or a center attracting a transient population of any kind, attributes that have been associated with false rape reporting (Wilson, 1978).* ***The major culprit in this city may well be a police agency that seriously records and pursues to closure all rape complaints, regardless of their merits. We may well be faced with the fact that the most efficient police departments report the higher incidence of false rape allegations. In view of these factors, perhaps the most prudent summary statement that is appropriate from these data is that false rape accusations are not uncommon.*** *Since this effort is the first at a systematic, long-term, on-site investigation of false rape allegations from a single city, future studies in other cities, with comparable policies, must assess the representativeness of these findings.* (p. 86)

Interestingly, the researchers did a follow-up study with similar results. They investigated the combined police records of two large Midwestern universities over a three-year period (1986-1988) and found that **50% of the reported forcible rapes were determined to be false accusations** (32 out of 64 total). No polygraphs were utilized, the investigations were the sole responsibility of a ranking female officer, and a rape charge was only counted as false under complainant recantation. In this sample, the motivations mentioned above were roughly evenly split between alibi and revenge, with only one case characterized as attention-seeking.

Lundregan (1996)

Convicted by juries, exonerated by science: Case studies in the use of DNA evidence to establish innocence after trial. Connors E, Lundregan T, Miller N, McEwen T. June 1996. **U.S. Department of Justice and National Institute of Justice.**

According to a 1996 Department of Justice report, "**in about 25% of the sexual assault cases referred to the FBI, ... the primary suspect has been excluded by forensic DNA testing. It should be noted that rape involves a forcible and non-consensual act, and a DNA match alone does not prove that rape occurred. So the 25% figure substantially underestimates the true extent of false allegations**.

The research conducted a study of documented 28 cases which, "with the exception of one young man of limited mental capacity who pleaded guilty," consist of individuals who were convicted by juries and, then, later exonerated by DNA tests. At the time of release, they had each served an average of 7 years in prison.

From the Report's Introduction:

The principal purpose of the study, initiated in June 1995, was to identify and review cases in which convicted persons were released from prison as a result of post-trial DNA testing of evidence. As of early 1996, researchers had found 28 such cases: DNA test results obtained subsequent to trial proved that, on the basis of DNA evidence, the convicted persons could not have committed the crimes for which they were incarcerated.

(p.12) *All 28 cases involved some form of sexual assault…All alleged assailants were male. All victims were female: most were adults, others teenagers or children. All but one case involved jury trial.*

(p.15) *The 28 cases shared several common themes in the evidence presented during and after trial.* ***Eyewitness identification****. All cases, except for homicide, involved victim identification both prior to and*

*at trial. Many cases also had additional eye witness identification, either placing the defendant with the victim or near the crime scene… **many defendants presented an alibi defense, frequently corroborated by family or friends… the alibis apparently were not of sufficient weight to the juries to counter the strength of the eyewitness testimony**…A majority of the cases involved non-DNA-tested forensic evidence that was introduced at trial.*

The article included quotes from Peter Neufeld and Barry C. Scheck, prominent criminal attorneys and co-founders of the Innocence Project that seeks to release those falsely imprisoned. They stated,

> *"Every year since 1989, in **about 25 percent of the sexual assault cases referred to the FBI where results could be obtained, the primary suspect has been excluded by forensic DNA testing.** Specifically, FBI officials report that out of roughly 10,000 sexual assault cases since 1989, about 2,000 tests have been inconclusive, about 2,000 tests have excluded the primary suspect, and about 6,000 have "matched" or included the primary suspect."*

The authors continued, "**these percentages have remained constant for 7 years, and the National Institute of Justice's informal survey of private laboratories reveals a strikingly similar 26 percent exclusion rate**." **If the foregoing results can be extrapolated, then the rate of false reports is roughly between 20 (if DNA excludes an accused) to 40 percent (if inconclusive DNA is added).** The relatively low estimate of 25 to 26 percent is probably accurate, especially since it is supported by other sources.

Specific <u>Quotes</u> from Lundregan
Connors, Lundregan, Miller and McEwen. Convicted by Juries, Exonerated by Science, U.S. Dept of Justice, June 1996. <u>Pages 19-20.</u>,

> ***DNA testing**. The DNA testing phase of these cases also has common characteristics. Nearly all the defendants had their tests performed by private laboratories. The tests were conducted using blood from defendants, blood or blood-related evidence from victims, and semen stains on articles of the victims' clothing or on nearby items (a blanket was tested in one case). In over half the cases, the prosecution either conducted a DNA test totally independent of that of the defense or sent test results obtained by the defendant's laboratory to a different one to determine whether the laboratory used by the defense interpreted test results properly.*
>
> *Eight laboratories used Restriction Fragment Length Polymorphism (RFLP) DNA testing, 17 conducted Polymerase Chain Reaction (PCR) testing, and 2 used both tests. For one case, the type of DNA test conducted is unknown.*
>
> *Preservation of evidence. In some cases, evidence samples had deteriorated to the point where DNA testing could not be performed. In Brison, the laboratory could not test cotton swabs from the rape kit but, instead, tested a semen stain from the victim's underwear. In Daye, after the appellate court affirmed the defendant's conviction and the State Supreme Court denied certification, the evidence was about to be destroyed when Daye's attorney filed to stay the destruction in order to conduct DNA testing.*
>
> *The chain of custody in some of the cases also demonstrated a lack of adherence to proper procedures. Authorities on the subject note that the "mishandling of real evidence affects the integrity of the factfinding process."4 In Dabbs, the defendant's attorneys reported that the defense was initially advised by the prosecution that the evidence (victim's underwear that contained a semen stain) had been destroyed (a conclusion based on failure of authorities to find the evidence in police or court custody). Eventually, the defense found the evidence at the county crime laboratory.*
>
> ***Results of DNA Laboratory Survey***
> *Conducted in June 1995, the nationwide telephone survey of 40 public and private laboratories that performed DNA tests sought answers to such questions as: From the time the laboratories began DNA testing, how many cases have they handled? Of that number, what percentage yielded results that excluded defendants as sources of the DNA evidence or were inconclusive?*

The 40 surveyed laboratories yielded 19 whose available data were sufficient for the purposes of this study. The 19 included 13 at the State/local level, 4 in the private sector, an armed forces laboratory, and the FBI's laboratory.

Most of the laboratories had initiated DNA testing only within the previous few years. Twelve began testing between 1990 and 1992. Three of the four private laboratories began in 1986 or 1987, while the FBI started DNA testing in 1988.

Seven of the laboratories reported using RFLP testing; four, PCR testing; and eight, both types of tests.

The 19 laboratories reported that, since they began testing, they had received evidence in 21,621 cases for DNA analysis, with the FBI accounting for 10,060 cases. Three of the 4 private laboratories averaged 2,400 each; the State and local laboratories averaged 331 each.

In about 23 percent of the 21,621 cases, DNA test results excluded suspects, according to respondents. An additional 16 percent of the cases, approximately, yielded inconclusive results, often because the test samples had deteriorated or were too small. Inconclusive results aside, test results in the balance of the cases did not exclude the suspect.

*The FBI reported that, in the 10,060 cases it received, DNA testing results were about 20 percent inconclusive and 20 percent exclusion; the other 18 laboratories (11,561 cases) reported about 13 percent and 26 percent, respectively.**

> *If inconclusive cases were omitted, the exclusion rate for the FBI would be approximately 25 percent, and the average exclusion rate for the other 18 laboratories would be about 30 percent.*

FBI statistics (1995-1997)

In the United States, the FBI *Uniform Crime Report* in 1996 and the United States Department of Justice in 1997 reported that 8% of the rape accusations had been thoroughly investigated and determined to be false, a rate higher than that for any other indexed crime.

- 1995 - *The "unfounded" rate, or percentage of complaints determined through investigation to be false, is higher for forcible rape than for any other Index crime. In 1995**, 8 percent of forcible rape complaints were "unfounded,**" while the average for all Index crimes was 2 percent.*
- 1996 - *The "unfounded" rate, or percentage of complaints determined through investigation to be false, is higher for forcible rape than for any other Index crime. **Eight percent of forcible rape complaints in 1996 were "unfounded**," while the average for all Index crimes was 2 percent.*
- 1997 - *A higher percentage of complaints of forcible rape are determined "unfounded," or found by investigation to be false, than for any other Index crime. While the average of "unfounded" rates for all Crime Index offenses was 2 percent in 1997, **8 percent of forcible rape complaints were "unfounded" for the same timeframe**.*

a. Federal Bureau of Investigation (FBI). (2007). Methodology. *Uniform Crime Report: Crime in the United States*, 2006. Washington, D.C.: U.S. Department of Justice, Federal Bureau of Investigation. Retrieved from http://www.fbi.gov/ucr/cius2006/methodology.html
b. Federal Bureau of Investigation (FBI). (2008a). Crime Clock, 2007. *Uniform Crime Report: Crime in the United States*, 2007. Washington, D.C.: U.S. Department of Justice, Federal Bureau of Investigation. Retrieved from http://www.fbi.gov/ucr/cius2007/ about/crime_clock.html
c. Federal Bureau of Investigation (FBI). (2008b). Estimated number of arrests, U.S., 2007. (Table 29). Uniform Crime Report: Crime in the United States, 2007. Washington, D.C.: U.S. Department of Justice, Federal Bureau of Investigation. Retrieved from http://www.fbi. gov/ucr/cius2007/data/table_29.html
d. Federal Bureau of Investigation (FBI). (2008c). Offense analysis, U.S., 2003-2007. (Table 7). *Uniform Crime Report: Crime in the United States*, 2007. Washington, D.C.: U.S. Department of Justice, Federal Bureau of Investigation. Retrieved from http://www.fbi. gov/ucr/cius2007/data/table_07.html
e. Federal Bureau of Investigation (FBI). (2008d). Percent of crimes cleared by arrest or exceptional means, 2007. (Clearance Figure). *Uniform Crime Report: Crime in the United States*, 2007. Washington, D.C.: U.S. Department of Justice, Federal Bureau of Investigation. Retrieved from http://www.fbi.gov/ucr/cius2007/offense/ clearances/index.html#figure

Greenfield (1997)

L.A. Greenfield, Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault (US Department of Justice 1997), p. 7.

> In the United States, law enforcement agencies make a distinction between rape reports that are 'founded' and 'unfounded'. The Federal Bureau of Investigation's Uniform Crime Reports has stated that '*unfounding'* refers to the '*percentage of complaints determined through investigation to be false*'. The US Department of Justice, Bureau of Justice Statistics report from 1997 on sex offences and offenders has published data from more than 16,000 local, county and state law enforcement agencies. The Bureau found that '[l]*aw enforcement agencies indicated that about 8% of forcible rapes reported to them were determined to be unfounded and were excluded from the count of crimes'*. **The FBI Uniform Crime Reports have shown an unfounding rate between 1966 and 1994 of 8%–20% for rape** and between 2%–4% in other 'index crimes' such as murder or robbery.

Bavarian Police Study of False Rape Allegations (2000)

Elsner, Erich, and Wiebke, Steffen. (Munchen, 2005). Studie "Vergewaltigung und sexuelle Nötigung in Bayern" (Study: Rape and sexual assault in Bavaria). Bayerisches Landeskriminalamt. 1. Auflage. ISBN 3-924400-16-4.

> 1894 complaints of rape and sexual assault were filed to police in the state of Bavaria in 2000. The **consensus estimate of all responsible officials was that over 50% of accusations were false**. Even when accusations were very dubious, police still filed rape/sexual assault proceedings with prosecutors. Interestingly, of all the cases that were eventually dropped by the prosecution for lack of evidence, 64% of these cases had originally been considered to be false accusations by the police official in charge of the initial complaint.
>
> **Only in 7.4% of the false complaints (1 in 13, N= 140) did prosecution propose legal action against the accuser for false accusations**, when there was clear proof or confession. The results of this meticulous 320-page research about rape and sexual assault in Bavaria replicate a less rigorous study in Schleswig Holstein state in 1994/1995, where **7.6% of complaints led to filing of false police report**s. Dr. Simpson has accessed the original Bavarian study (Elsner), and viewed partial summaries of the report in English. These include:
>
> Motivations for 140 false allegations included (pp. 187-212):
>
> - Conflicts/problems in family or partnerships – 20.7% (N=29)
> - Hiding sexual relationships - 12.9% (N=18)
> - Puberty crises cover / first sexual experiences - 10.7% (N=15)
> - Attracting compassion and attention - 11.4% (N=16)
> - Justification for misconduct - 10.0% (N=10)
> - Shame/embarrassment - 3.6% (N=5)
> - Fear of pregnancy - 1.4% (N=2)
> - Counter-suing/Revenge - 7 5.0% (N=7)
> - Cerebral Organically Disturbance /Alcoholism/Drug Dependency/Psych Disease - 22.1% (N=31)
> - Motive not discernible - 2.1% (N=3)
>
> The study differentiated four types of traumatic stress situations (p. 217). It turned out that among the false accusers; only 20% suffered none, 43% one, and 35% two to four of the following stress situations:
>
> 1. Family trouble, like violence, sexual abuse, neglect, foster homes, alcoholics in the family, change in important family relationships, or a dysfunctional family
> 2. Psychological problems: psychiatric treatment, drug abuse, alcohol dependency
> 3. Other problems like being runaways, making suicide attempts, or being prostitutes
> 4. More than one police registration for past crimes

Jordan (2004)

J. Jordan, ''Beyond Belief? Police, Rape and Women's Credibility'' (2004) 4 Criminal Justice. 29.

An analysis of the New Zealand police, this research examines how police officers determined a complaint to be false. Jordan examined 164 reports of rape and sexual assault, which included analysis of police files which allowed her to examine the basis upon which officers recorded reports of rape. 98 Jordan found that **38% of cases were deemed by police to be 'possibly true' or 'possibly false', 33% were deemed as false and 8% were cases where the complainant said the allegation was false.** Only 21% of cases, based on the file analysis, were viewed as genuine. **Thus 41% of cases were deemed false and a further 33% could not be positively categorized as either true or false**. In her analysis of the reasons for why so many cases were deemed false, Jordan found a number of factors were prominent. Delays in reporting were linked to 'credibility concerns', with **'86% of complainants who had delayed reporting being viewed suspiciously'**.

Other characteristics which were found in cases that were deemed false, included situations where the complainant was **'intellectually impaired' or 'psychologically disturbed', where there was concealment of information or lying, previous sexual victimization, intoxication, complaint withdrawal or where officers perceived the complainant as 'sluttish' or 'promiscuous'**. Like earlier studies that have analyzed police recording practice, Jordan concludes: While false complaints do occur, approximately three-quarters of the incidents concluded by the police to be false appeared to have been judged to some extent at least on the basis of stereotypes regarding the complainant's behavior, attitude, demeanor or possible motive. Suspicious file comments were made by the detectives regarding a woman who laughed while being interviewed, others who were seen as 'attention seeking,' and some who were said to be 'crying rape' for revenge or guilt motives.

Jan Jordan acknowledged the limitations of her study, which was based on case file analysis. In discussing police skepticism of rape complainants, she stated: 'It is virtually impossible to tell from the file evidence available whether or not such skepticism is well founded in reality or simply emanates from a police occupational trait of general suspiciousness'."

British Home Office study (2005)

A 2005 study, "*A gap or a chasm? Attrition in reported rape cases*" was a large study commissioned by the British Home Office on UK rape crime, from the initial reporting of a rape through to legal prosecutions. The study was based on 2,643 sexual assault cases (Kelly, Lovett, and Regan, 2005). Of these, police departments **classified 8% as false reports**.

Rumney (2006)

Rumney, P. (2006) False allegations of rape. The Cambridge Law Journal, 65 (1). 125 -158. ISSN 1469-2139

Philip N.S. Rumney conducted a review of studies of false reporting in the US, New Zealand and the UK. The studies' findings of false rape allegations ranged from 1.5% to 90%. Rumney draws two conclusions from his review of literature. First, the police continue to misapply the "no-crime" or "unfounded" criteria. Rumney's second conclusion is that it is impossible to "discern with any degree of certainty the actual rate of false allegations" because many of the studies of false allegations have adopted unreliable or untested research methodologies.

A selection of findings on the prevalence of false rape allegations. Data from Rumney (2006).

Study	Number	False reporting rate (%)
Philadelphia police study (1968)	74 out of 370	20%
New York Rape Squad (1974)	n/a	2%
Hursch and Selkin (1974)	10 out of 545	2%
Clark and Lewis (1977)	12 out of 116	10.3%
Geis (1978)	n/a	3–31% (estimates given by police surgeons)
McCahill *et al.* (1979)	218 out of 1,198	18.2%
Maclean (1979)	16 out of 34	47%
Stewart (1981)	16 out of 18	90%
Chambers and Millar (1983)	44 out of 196	22.4%
Smith (1989)	17 out of 447	3.8%
Theilade and Thomsen (1986)	1 out of 56 4 out of 39	1.5% (minimum) 10% (maximum)
Grace *et al.* (1992)	80 out of 335	24%

Kanin (1994)	45 out of 109	41%
Gregory and Lees (1996)	49 out of 109	45%
Harris and Grace (1999)	53 out of 483 123 out of 483	10.9% ("false/malicious" claims) 25% (recorded by police as "no-crime")
U.S. Department of Justice (1997)	n/a	8%
HMCPSI/HMIC (2002)	164 out of 1,379	11.8%
Lea *et al.* (2003)	42 out of 379	11%
Jordan (2004)	68 out of 164 62 out of 164	41% ("false" claims) 38% (viewed by police as "possibly true/possibly false")
Kelly *et al.* (2005)	67 out of 2,643	3% ("possible" & "probable" false allegations) 22% (recorded by police as "no-crime")

Police in Victoria, Australia (2006)

A study of 850 rape accusations made to police in Victoria Australia between 2000 and 2003 found that 2.1% were ultimately classified by police as false, with the complainants then charged or threatened with charges for filing a false police report.

Lisak (2010)

David Lisak's study, published in 2010 in *Violence Against Women*, classified as false 8 out of the 136 (5.9%) reported rapes at an American university over a ten-year period Applying IACP guidelines, a case was classified as a false report if there was evidence that a thorough investigation was pursued and that the investigation had yielded evidence that the reported sexual assault had in fact not occurred. A thorough investigation would involve, potentially, multiple interviews of the alleged perpetrator, the victim, and other witnesses, and where applicable, the collection of other forensic evidence (e.g., medical records, security camera records). That conclusion would have been based not on a single interview, or on intuitions about the credibility of the victim, but on a "preponderance" of evidence gathered over the course of a thorough investigation.

Crown Prosecution Service report (2011–2012)

A report by the Crown Prosecution Service (CPS) examined rape allegations in England and Wales over a 17-month period between January 2011 and May 2012. It showed that in 35 cases authorities prosecuted a person for making a false allegation, while they brought 5,651 prosecutions for rape. The qualification of prosecution in determining a "false allegation" would have kept the true incidence of false accusations artificially low because many such cases are never prosecuted.

False Allegations of Adult Crimes (2012)

James McNamera and Jennifer Lawrence, FBI Law Enforcement Bulletin, Sept. 2012.

Offender Motivations

Perpetrators of false allegation crimes have various underlying motivations that fall into one or more categories. Investigators may encounter cases involving more than one motivation.[2]

- Mental illness/depression
- Attention/sympathy
- Financial/profit
- Alibi
- Revenge

A significant life problem (e.g., marital, financial, employment) that the offender does not have the skills to resolve drives the motivation. Many perpetrators have multiple life difficulties. Rather than seeking appropriate assistance from family members, coworkers, clergy members, or mental health professionals, offenders develop a self-victimization plan. These individuals may realize temporary relief from their life problems due to immediate attention and support from family, neighbors, and coworkers. And, more often than not, false allegation offenders do not consider the serious, long-term law enforcement investigation or significant media coverage that reveals the truth. In the long run, offenders are worse off than before the false allegation crime report and even may face prosecution.

Typically, female offenders want to gain attention and sympathy and will falsely allege offenses, such as interpersonal violence (e.g., sexual assault), more likely to achieve that result. While the desire for attention and sympathy also can motivate males, they tend to opt for nonsexual offenses, such as physical assault or attempted murder. Offenders who falsely allege more impersonal crimes, like theft or vandalism, more likely will have financial or profit motives. And, in cases where the perpetrator has no motive or incentive, mental health issues may prove significant.

Possible Clues

Several indicators can help investigators identify a false allegation case. While none of these signs by themselves indicate a false allegation case, investigators should strongly consider a two-prong investigation with the corroboration of two or more. The offender may:

- continue to make inconsistent statements conflicting prior claims by the individual or information provided by witnesses;
- offer descriptions or circumstances of the reported offense that do not seem plausible or realistic;
- show deception on a polygraph or refuse to take one;
- have a history of mental and emotional problems or false allegations;
- make the allegation after a similar crime received publicity (suggesting modeling or a copycat motive in which the similarity to the publicized crime offers credibility); or
- provide an allegation that lacks substantiating forensic, physical, or medical evidence and does not agree with laboratory findings.

For the FBI Bulletin (above) McNamera draws from his earlier published research.

Characteristics of false allegation adult crimes.

McNamara, James J., McDonald, Sean.

J Forensic Sci, May 2012, Vol. 57, No. 3

Abstract:

The purpose of this study was to identify common factors in false allegation adult crimes, by examining the dynamics involved in 30 confirmed false allegation cases. The authors conducted a comprehensive review of these adjudicated cases and then completed a collection instrument to capture offender demographics, offense characteristics, and motive. **The results indicated that most false allegation crimes were committed by women (73.3%) and Caucasians (93.3%). Data indicated that more interpersonally violent allegations were primarily motivated by attention/sympathy needs (50.0%), whereas more impersonal offenses involved other motivations such as providing an alibi (16.7%) or profit (13.3%).** Offenders tended to be younger, high school graduates with no higher education (43.3%). A total of 23.3% of offenders had a prior criminal history. Male offenders appeared as likely as women to be motivated by attention/sympathy; however, men tended to select more violent, nonsexual offenses (e.g., attempted murder) than women.

Research Abstracts on False / Unfounded Sexual Assault Claims

Detecting the true nature of allegations of rape.

De Zutter, André. Horselenberg, Robert., Koppen, Peter J.

Journal of Police and Criminal Psychology, Jun 23, 2016.

Abstract:

A study was conducted to test whether it is possible to build a model to distinguish true and false allegations of rape based on the theory of fabricated rape. The theory is based on the principle that a false complainant of rape has not been raped and has to fabricate a story while the story of a true victim is based on recollections of the event. Consequently, false complainants will behave as liars do, construct their story based on their own sexual experiences and on mental representations, beliefs of how such a crime would happen (De Zutter et al. in Eur J Psychol Appl Leg Context. doi: 10.1016/j.ejpal.2016.02.002 , 2016). To test the theory and to build a model to discriminate between true and false allegations of rape, a police sample of true and false allegations was studied. A total of 129, 72 true and 57 false, allegations of rape fulfilled the stringent criteria of the current study,

among others on ground truth. Fifty-four allegations of rape, 27 true and 27 false, were used to build a prediction model based on the theory of bounded rationality by Gigerenzer (2002). The remaining 75 cases, 45 true and 30 false, were blindly categorised as either true or false based on the model. The model was able to predict the true nature of the majority of allegations with an accuracy rate of 91 %. Thus, it seems possible to discriminate to a considerable extend between true and false allegations of rape

Encyclopedia of Violence: frequent, commonplace, unexpected.
DiCanio, Margaret. May, 2004.
Book:

Arranged in an A to Z format and cross-referenced, Encyclopedia of Violence by Margaret DiCanio, Ph.D. provides an overview. Entries include: violence management systems; health; law enforcement; judicial; and corrections. Strengths and flaws are revealed, particularly in juvenile and assembly-line justice. Explored are such seemingly unrelated types of crime as organized and corporate crime, both hidden from public view. Murder in various guises is described. While mass murders and serial murders by individuals capture public attention, more common are murders resulting from domestic abuse, barroom brawls, and petty squabbles. Classroom violence is covered, as is campus violence. Violence is expensive, economically, socially, and psychologically. Unlike many other nations, United States keeps relatively accurate crime statistics. Violence is not just a criminal justice problem; it is the world's major global public health problem, draining financial and human resources. Appendixes trace the roots of America's drug traffic, and provide resources.

Pathways to false allegations of sexual assault.
Engle, Jessica., O'Donohue, William.
Journal of Forensic Psychology Practice, Vol 12(2), Mar, 2012. pp. 97-123.
Abstract:

Not all **allegations** of **sexual assault** are true. Unfortunately, there has been little work on understanding the prevalence of **false allegations** or **pathways** to these. This paper proposes 11 **pathways** to **false allegations** of **sexual assault**: (a) lying, (b) implied consent, (c) **false** memories, (d) intoxication, (e) antisocial personality disorder, (f) borderline personality disorder, (g) histrionic personality disorder, (h) delirium, (i) psychotic disorders, (j) dissociation, and (k) intellectual disability. These **pathways** originate in the psychological diatheses of the individual. Further research is needed into the frequency of these **pathways**, ways to accurately detect these, and whether other **pathways** exist.

False rape allegations: An assault on justice.
Gross, Bruce. The Forensic Examiner, Vol 18(1), Spr 2009. pp. 66-70.
Abstract:

A certain percentage of rape complaints are classified as 'unfounded' by the police and excluded from the FBI's statistics. For example, in 1995, 8% of all forcible rape cases were closed as unfounded, as were 15% in 1996. According to the FBI, a report should only be considered unfounded when investigation revealed that the elements of the crime were not met or the report was 'false'. The term 'unfounded' is not a homogeneous classification and, to date, there is not a formalized, accepted definition of 'false rape allegations.' The designation of false allegation might best be used exclusively for those cases in which it is determined that the accuser intentionally fabricated the allegation of rape. That is, the accuser claims an incident of forced sexual contact took place when no such incident occurred, or the contact that did occur was consensual. In addition, this would include cases in which a rape was committed, but the victim knowingly identified the wrong person as the perpetrator.

Differentiating genuine and false rape allegations: A model to aid rape investigations.
Hunt, Laura. Serious Crime Analysis Section, National Policing Improvement Agency, England
Bull, Ray. Psychiatry, Psychology and Law, Vol 19(5), Nov, 2012. pp. 682-691.
Abstract:

The aim of this study was to compare the victimology, offence demographics and offence behaviours of genuine and false allegations of rape in order to develop a model that could be used to aid in differentiating between genuine and false rape allegations. Eighty false allegations of rape were compared with 160 genuine allegations of rape, obtained from the Serious Crime Analysis Section (SCAS). Data were taken directly from complainant statements and 62 variables were dichotomously coded. Chi-square, odds ratios and Mann-Whitney U tests were initially completed and then the more significant variables were entered into a backwards stepwise logistic regression. The resultant logistic regression model classified 91.7% of the sample correctly. The model was validated using an additional 12 cases, with an 83% success rate. This study found that a number of factors successfully discriminated between genuine and false rape allegations. It thus offers a tool that might aid police investigations, crime analysts and behavioural investigative advisors in the veracity assessment of rape allegations.

Beyond belief? Police, rape and women's credibility.
Jordan, Jan. Criminal Justice: International Journal of Policy and Practice, Vol 4(1), Feb, 2004. pp. 29-59.
Abstract:

This article reviews issues concerning perceptions of women's credibility in the context of police responses to sexual assault complainants. It is based on both quantitative and qualitative data drawn from detailed analysis of police rape and sexual assault files. Particular attention is paid to identification of the principal factors affecting police perceptions of rape complainants, addressing such issues as demeanour, intoxication and concealment. Problems arising from the misinterpretation of significant 'cues' are identified, and consideration given to possible ways in which miscommunication between rape complainants and police officers occurs. The article argues that many rape complainants must still battle to gain credibility in the eyes of some police investigative officers, and that stereotypically based judgements continue to impact negatively on police perceptions and decision making. The overall aim of the article is to prompt critical, constructive evaluation of police culture and practice in order to enhance the quality of police responses to victims of sexual violence and abuse.

False Rape Allegations.
Kanin, Eugene.
Archives of Sexual Behavior, Feb. 1994, v23, n1, p81(12)
Abstract

With the cooperation of the police agency of a small metropolitan community, 45 consecutive, disposed, false rape allegations covering a 9-year period were studied. These false rape allegations constitute 41% the total forcible rape cases (n = 109) reported during this period. These false allegations appear to serve three major functions for the complainants: providing an alibi, seeking revenge, and obtaining sympathy and attention. False rape allegations are not the consequence of a gender-linked aberration, as frequently claimed, but reflect impulsive and desperate efforts to cope with personal and social stress situations.

False allegations of rape revisited: a replication of the kanin study.
Kennedy, Daniel..
Journal of Security Administration; June 2000; 23, 1; pg. 41
Abstract

Behavioral scientists interested in the "dark figure" of unreported crime can claim with empirical support that only 30% of rapes are made known to the police (Rand, 1998). There is far less agreement on the extent to which certain rapes may be "overreported." Do false allegations of rape occur with sufficient frequency to constitute an appreciable threat to the administration of justice? If so, are there any patterns which may be identified and motivations which may be uncovered?

False allegations of wrongdoing can have severe consequences for the American justice system. Several studies have documented the extent to which suspects have been wrongfully convicted for crimes they did not commit (Huff, Rattner, & Sagarin, 1996). Allegations of child molestation are often leveled between waning spouses in an attempt to win custody of their children (Robin,1992). Finally, to the extent that investigative authorities understand the nature of false reports of

victimization, true victims of rape will not be confused with dissemblers and denied appropriate system support (McDowell & Hibler,1993).

False allegations of sexual assault: An analysis of ten years of reported cases.
Lisak, David.,Gardinier, Lori., Nicksa, Sarah C., and Cote, Ashley M.
Violence Against Women, Vol 16(12), Dec, 2010. pp. 1318-1334.
Abstract:

One of the most controversial disputes affecting the discourse related to violence against women is the dispute about the frequency of false allegations of sexual assault. In an effort to add clarity to the discourse, published research on false allegations is critiqued, and the results of a new study described. All cases (*N*=136) of sexual assault reported to a major Northeastern university over a 10-year period are analyzed to determine the percentage of false allegations. Of the 136 cases of sexual assault reported over the 10-year period, 8 (5.9%) are coded as false allegations. These results, taken in the context of an examination of previous research, indicate that the prevalence of false allegations is between 2% and 10%.

Characteristics of false allegation adult crimes.
McNamara, James **J**., **McDonald**, Sean.
Abstract:

The purpose of this study was to identify common factors in false allegation adult crimes, by examining the dynamics involved in 30 confirmed false allegation cases. The authors conducted a comprehensive review of these adjudicated cases and then completed a collection instrument to capture offender demographics, offense characteristics, and motive. The results indicated that most false allegation crimes were committed by women (73.3%) and Caucasians (93.3%). Data indicated that more interpersonally violent allegations were primarily motivated by attention/sympathy needs (50.0%), whereas more impersonal offenses involved other motivations such as providing an alibi (16.7%) or profit (13.3%). Offenders tended to be younger, high school graduates with no higher education (43.3%). A total of 23.3% of offenders had a prior criminal history. Male offenders appeared as likely as women to be motivated by attention/sympathy; however, men tended to select more violent, nonsexual offenses (e.g., attempted murder) than women.

The truth, the half-truth, and nothing like the truth: Reconceptualizing false allegations of rape.
Saunders, Candida L.. British Journal of Criminology, Vol 52(6), Nov 2012. pp. 1152-1171.
Abstract:

There is a longstanding dispute between criminal justice professionals on the one hand and researchers and commentators on the other regarding the prevalence of false allegations of rape. Prevalence, however, is contingent upon definition. If the various protagonists' definitions of a 'false allegation' do not coincide, it is virtually inevitable that their estimates will diverge. Drawing on original empirical data from in-depth research interviews conducted with police and Crown Prosecutors, this article explores the following important but much-neglected question: When criminal justice professionals tell us that false allegations of rape are common, what precisely are they talking about? What 'counts' as a false allegation?

Unfounding sexual assault: Examining the decision to unfound and identifying false reports.
Spohn, Cassia., White, Clair, Tellis, Katharine. Law & Society Review, Vol 48(1), Mar 2014. pp. 161-192.
Abstract:

One of the most controversial—and least understood—issues in the area of sexual violence is the prevalence of false reports of rape. Estimates of the rate of false reports vary widely, which reflects differences in way false reports are defined and in the methods that researchers use to identify them. We address this issue using a mixed methods approach that incorporates quantitative and qualitative data on sexual assault cases that were reported to the Los Angeles Police Department (LAPD) in 2008 and qualitative data from interviews with LAPD detectives assigned to investigate reports of sexual assault. We found that the LAPD was clearing cases as unfounded appropriately most, but not all, of the time and we estimated that the rate of false reports among cases reported to the LAPD was 4.5 percent.We also found that although complainant recantation was the strongest predictor

of the unfounding decision, other factors indicative of the seriousness of the incident and the credibility of the victim also played a role. We interpret these findings using an integrated theoretical perspective that incorporates both Black's sociological theory of law and Steffensmeier, Ulmer, and Kramer's focal concerns perspective.

Motives for filing a false allegation of rape.
Zutter, André W. E. A., et al.
Archives of Sexual Behavior, Vol 47(2), Feb, 2018. pp. 457-464.
Abstract:

The list of motives by Kanin (1994) is the most cited list of motives to file a false allegation of rape. Kanin posited that complainants file a false allegation out of revenge, to produce an alibi or to get sympathy. A new list of motives is proposed in which gain is the predominant factor. In the proposed list, complainants file a false allegation out of material gain, emotional gain, or a disturbed mental state. The list can be subdivided into eight different categories: material gain, alibi, revenge, sympathy, attention, a disturbed mental state, relabeling, or regret. To test the validity of the list, a sample of 57 proven false allegations were studied at and provided by the National Unit of the Dutch National Police (NU). The complete files were studied to ensure correct classification by the NU and to identify the motives of the complainants. The results support the overall validity of the list. Complainants were primarily motivated by emotional gain. Most false allegations were used to cover up other behavior such as adultery or skipping school. Some complainants, however, reported more than one motive. A large proportion, 20% of complainants, said that they did not know why they filed a false allegation. The results confirm the complexity of motivations for filing false allegations and the difficulties associated with archival studies. In conclusion, the list of Kanin is, based on the current results, valid but insufficient to explain all the different motives of complainants to file a false allegation.

About Dr. Paul Simpson

- Extensive experience assisting military courts-martial through consultation with legal teams (Government and Defense), assisting with voir dire of potential members, and expert testimony.
- Has been a course instructor for the Air Force JAG School's Advance Sexual Assault Litigation Course since 2016.
- Has provided CLE trainings for the State Bar of Arizona, Air Force, Marine, and Navy JAG regarding:
  - *Child Sexual Abuse Allegations: What Every Attorney Should Know*
  - *Daubert Standard and Psychological Evaluations: What Every Attorney Should Know*
  - *Memory in the Courtroom: What Every Attorney Should Know*
  - *Mental Health Evaluations in Homicides and Crimes of Violence: What Every Attorney Should Know*
  - *Anatomy of a Psychosexual Evaluation: What Every Attorney Should Know*
  - *Online Sex Offense: What Every Attorney Should Know*
- Has been an instructor for the Arizona Supreme Court in training competency evaluators.
- A former case manager with Child Protective Services, Dr. Simpson has extensive experience working with victims and perpetrators of sex crimes, including over 1000 psychosexual evaluations of adults and juveniles. He is trained and/or certified in the Abel, Affinity 2.5, Look VTM, MEGA, Static 99R/2002R, Stable/Acute 2007, SVR-20, HCR-20, J-SOAP 2, ERASOR, and Limestone plethysmograph.
- A former Arizona officer for the Association for Treatment of Sexual Abusers (ATSA).
- Since 2003 has provided over 300 full-day trainings in all 50 states for professionals on assessing/treating sexual and Internet compulsions.
- Author of *Second Thoughts*, a book that was instrumental in helping expose the false claims and dangers of '*recovered memory therapy*.' Throughout the 1990's Dr. Simpson was a leading educator on *False Memory Syndrome* and trained thousands of counseling professionals on standards of practice. He also served as an expert consultant to the *Arizona Board of Psychologist Examiners.*
- Dr. Simpson has been a guest on *The Joan Rivers Show*, the *Leeza Gibbons Show*, *Parent Talk Radio*, *Focus on the Family*, *Frontline*, and *Fox News*. He has been a professional consultant to a number of national media, including *20/20*, *60 minutes*, *NBC News*, *Nightline*, *The Oprah Winfrey Show*, the *Chicago Tribune*, *Dateline*, *The Today Show*, *Focus on the Family*, and *Vanity Fair magazine*.

Dr. Paul Simpson
Arizona Forensic Services, LLC
(520) 355-1000

doc@psy.law
www.ArizonaForensics.com