

## Victims and Violence

# Crime Victims and Psychological Injuries

Beth G. Baldinger and D. Thomas Nelson

In 1992, a jury awarded "Jane Doe" \$2.46 million in civil damages against her father for incestuous abuse and against her mother for failing to protect her from it.<sup>1</sup>

In 1993, a jury awarded \$12.6 million dollars in damages to a woman suffering from post-traumatic stress disorder after witnessing her son's death. He was shot by a tenant in their apartment complex.<sup>2</sup>

In 1994, a jury awarded \$900,000 to a 33-year-old woman who suffers from post-traumatic stress disorder and multiple personality disorder caused by a former Sunday school teacher who sexually molested her between the ages of 8 and 16.<sup>3</sup>

These awards exemplify a new class of civil cases being brought on behalf of crime victims. Traditional legal principles are being reinterpreted to help people who have been victimized by crime.

Victims are not recognized parties in the prosecution of criminal offenders, and restitution in the criminal forum often falls far short of just compensation for expenses related to medical procedures, rehabilitation, counseling, and lost

wages. Therefore, civil litigation can be used to obtain justice for crime victims.

Representing crime victims presents formidable challenges, not the least of which is proving the psychological trauma caused by criminal acts. This is necessary to recover damages other than for physical injuries.

The civil suit expresses the victim's fear, agony, emotional distress, and psychological injuries as legitimate compensable claims. Victims of incest, rape, domestic violence, elder abuse, and child abuse—as well as their spouses and relatives—are suing for intentional and negligent infliction of emotional distress and outrage to recover damages for psychological trauma.<sup>4</sup> To be successful in these claims, lawyers must understand psychological trauma and have a sound strategy for presenting it to the jury.

### Psychological Trauma

According to Dr. Judith Lewis Herman, author of *Trauma and Recovery*,

Psychological trauma is an affliction of the powerless. At the moment of trauma, the victim is rendered helpless by overwhelming force. When the force is that of nature, we speak of disasters. When the force is that of other human beings, we speak of atrocities. . . . Traumatic events are extraordinary, not because they occur rarely, but rather because they overwhelm the ordinary human adaptations to life. Unlike commonplace misfortunes, traumatic events generally involve threats to life or bodily integrity, or a close personal en-

counter with violence and death. They confront human beings with the extremities of helplessness and terror, and evoke the responses of catastrophe.<sup>5</sup>

The most prevalent classification of psychological injury in crime victim cases is post-traumatic stress disorder (PTSD). Related psychological traumas include Rape Trauma Syndrome,<sup>6</sup> Battered Woman Syndrome,<sup>7</sup> and dissociative disorders.<sup>8</sup> Many courts now allow evidence of post-traumatic stress disorder as substantive proof that an individual suffered a traumatic event.<sup>9</sup>

*Post-traumatic stress disorder.* PTSD can result when a person experiences a markedly distressing event that includes actual injury or threat of harm to oneself or someone close.<sup>10</sup>

There are three major groups of measurable symptoms of PTSD. One group involves persistent intrusive and distressing recollections of the traumatic event in dreams or flashbacks.

Another group involves persistent avoidance of stimuli associated with the trauma. For example, a victim may avoid thoughts of the crime, withdraw from activities or situations that arouse recollections of it, experience a feeling of detachment or estrangement from others, and be unable to have loving feelings.

A third group involves persistent symptoms of increased arousal. For example, a victim may experience sleep disorders, irritability or outbursts of anger, difficulties in concentrating, hypervigilance, or exaggerated startle response.<sup>11</sup>

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timony about this condition is generally admissible in civil cases to help a jury evaluate the rape survivor's actions after the crime. The diagnosis can also prove that the victim experienced trauma.

For example, RTS testimony might be admitted to explain the victim's delay in reporting the crime. Otherwise, the jury could misconstrue delay and conclude either that the rape did not occur or that the victim was not traumatized.

**Battered Woman Syndrome (BWS).** A distinctive characteristic of this condition is that victims with BWS usually have experienced a pattern of traumatic abuse rather than a single violent event.

Previously used as a "self-defense" argument for women accused of murdering their abusers, BWS has taken on a new dimension in the civil context. This syndrome has recently been recognized as a cognizable civil cause of action, the elements of which are

- involvement in a marital or marital-like intimate relationship;
- physical or psychological abuse over a significant period of time;
- injury caused by the abuse; and
- past or present inability to change or improve the situation.

Moreover, as BWS is the result of a continuing pattern of abuse, it should be treated as a "continuing tort" for statutes-of-limitation purposes. It may be asserted that BWS constitutes a "mental disability" sufficient to toll the statute of limitations or that the duress inflicted by the defendant is such that the defendant should be equitably estopped from asserting the statute of limitations as a defense.<sup>12</sup>

**Other psychological disorders.** Commonly seen diagnoses of crime victims, including survivors of childhood abuse, are somatization disorder, borderline personality disorder, and multiple personality disorder. They share many common characteristics: depression, agoraphobia or panic, psychosomatic complaints, difficulties with close relationships, and varying levels of dissociative capabilities. These disorders are recognized as complex or chronic forms of PTSD.<sup>13</sup>

**Psychological syndromes.** At the other end of the spectrum from recognized disorders is a wave of newly defined psychological syndromes. Some of these are the Parental Alienation Syndrome, Lying Child Syndrome, Confusional Arousal Syndrome, and Child Sexual Abuse Accommodation Syndrome.

- The Parental Alienation Syndrome

parent/child behavior: a parent's manipulation of a child's feelings for the other parent, a parent unconsciously rewarding a child for "turning away" affection for the other parent, a child alienating herself or himself for fear of a loss of a parent's love, and a child alienating herself or himself because of situational factors.<sup>14</sup>

- The Lying Child Syndrome might be proffered to explain the propensity of a child to give untruthful statements about an authority figure in order to manipulate events.<sup>15</sup>

- The Confusional Arousal Syndrome has been considered physiological rather

[REDACTED]

*Details of the crime allow  
the jury to appreciate the  
victim's emotional trauma.*

[REDACTED]

than psychological. It is associated with those who suffer from sleep apnea, a defect in breathing patterns. People with Confusional Arousal Syndrome may awaken during a period of depressed mental functioning and may become violent.<sup>16</sup>

- Child Sexual Abuse Accommodation Syndrome describes commonly seen characteristics in sexually abused children: secrecy, helplessness, delayed and unconvincing disclosure, and retraction or recantation.<sup>17</sup>

When evidence of a novel psychological syndrome is proffered, it is necessary to determine whether it is diagnostic or nondiagnostic. Testimony about diagnostic disorders may be admissible to prove causation. Evidence on nondiagnostic syndromes, though not permissible as proof of causation, may be potentially admissible to explain reactions to known causes. The central issue is whether the presence of symptomatic behavior reasonably shows that the existence of a certain cause is more probable.<sup>18</sup>

Pre-trial judicial screening will disallow psychological syndromes that are not sufficiently reliable as evidence. If found reliable, determination as to whether the syndrome is diagnostic or nondiagnostic will ensure that this evidence is introduced for the appropriate purpose.

#### Assessing Psychological Harm

The degree of psychological harm the victim experiences is most strongly related to the character of the traumatic event.<sup>19</sup> The harm is also influenced by

factors.<sup>20</sup>

Four primary factors can describe the victim's emotional injury to a jury: the nature and extent of physical violence, the victim's pre-incident relationship with the assailant, the location of the crime, and the victim's emotional condition before the crime occurred.

**Nature and extent of physical violence.** The degree of bodily violation or disfigurement and/or the victim's perception of it are often leading factors in communicating the emotional impact of the crime. Some acts of violence leave visible scars that are easily shown. Others leave no physical evidence.

Physical brutality can be extremely destructive to a victim's sense of competence, self-image, personal safety, and physical integrity. To understand the effect of physical intrusion on a victim, consider how someone standing within one's "personal" space (usually 1½ to 2 feet) or an unexpected physical gesture within this space can evoke feelings of encroachment and uneasiness. Now imagine the sense of violation a woman feels when she is trapped, pinned, and raped.

**Victim's pre-incident relationship with assailant(s).** Violence perpetrated by someone who the victim knows can be experienced more intensely than violence committed by a stranger. When victims are violated by people they trust, respect, or love, the betrayal has impact in addition to the violation itself.

This can be devastating to the victim's sense of self-esteem and identity. Violations of personal trust are paramount in civil cases of incest, domestic violence, and sexual abuse committed by professionals or the clergy.

**Location of the crime.** Where the act of violence took place is often a highly influential factor in a crime victim's psychological injury. For example, victims suddenly awakened in bed to face a gun may be more traumatized than people who are attacked on a street. People usually assume they will be safe inside their homes and at their places of work. When the sanctity of these places is violated, the experience can be shattering, resulting in phobic reactions.

Victims injured at their workplace may not be able to return to the same workstation, if they are able to return to the same employer at all. People violated in their own homes may eventually move, but their psychological injuries often go with them, bringing fears of intrusion to their new surroundings.

*Victim's prior emotional condition and susceptibility to harm.* Children and people who are elderly, infirm, or generally dependent on others before victimization may be more likely to suffer psychological injuries from a violent crime. A significant factor in a victim's ability to cope with the aftermath of a crime is a sense of control over events. Those who had little control over their daily activities before the crime are likely to be more susceptible to psychological injury.<sup>21</sup>

People with rigid personalities or those who were emotionally fragile before the crime may also suffer greater psychological impact.<sup>22</sup> "Traumatic life events, like other misfortunes, are especially merciless to those who are already troubled."<sup>23</sup>

### Psychological Trauma Claims

Significant damage awards for psychological trauma are based on several key elements: aggravating conditions of the defendant's actions, insensitivity of defense counsel, clear testimony on causation from the plaintiff's expert, and lay witnesses who credibly establish the victim's deteriorated condition.

Working with crime victims suffering from psychological trauma requires extraordinary patience, understanding, and sensitivity. Victims are often apprehensive and overwhelmed by the demands of a civil suit.

Obtaining the necessary information often requires several meetings. Every effort should be made to accommodate special needs for safety and comfort. For example, it is often helpful to give these people a sense of control by asking simple questions about where they want to sit, what name they prefer to be called, and who they want present during the consultation.

To help assuage the client's fears of the unknown, the attorney should explain what to expect during a civil lawsuit, particularly during depositions and expert examinations. The attorney must be forthright about the impact of broad civil discovery rules—what can be protected against disclosure/admissibility and what cannot.

During the last 10 years, a wealth of technical and anecdotal information has been published about crime victim psychological trauma. The attorney should be familiar with this literature and speak to victim service professionals. If possible, the attorney should arrange to attend a support group meeting. True believers make the best convicers.

The attorney should compile detailed

pre-incident, incident, and post-incident histories of the victim. The pre-incident history should include information about family, school, occupation, social and recreational activities, medical and psychological treatment, and accidents or other traumas. The attorney must obtain all relevant records.

An exhaustive incident report of the crime is crucial. This information goes much further than merely establishing liability; it forms the basis for the expert's testimony on trauma causation. The horrific details develop compelling evidence that allows a jury to appreciate the victim's emotional trauma.

For the post-incident history, an ongoing dialogue with the client, therapist, and others in the client's support network provides the means to monitor the nature and extent of the trauma. It is common to learn that the victim has engaged in self-destructive or anesthetizing behavior (alcohol or drug abuse, suicide attempts, self-infliction of injuries, eating disorders). For purposes of civil litigation, these negatives can be turned into positives. "Abnormal" behavior is normal when it arises from "abnormal" circumstances. Juries should judge a victim from the victim's perspective.

The attorney must find common ground with psychologists on the best way to present the victim's emotional trauma in court. Legal and mental health professionals must operate as a team.

What will be expected of the therapist? To treat the client? Testify as an expert? Both? The attorney and experts must find a way to effectively communicate mental health findings in the courtroom. They must communicate with each other and with the client to avoid surprises.

It may be to the client's advantage to have the attending psychologist focus on treatment and to retain an appropriate expert to testify about the cause of the psychological injury. If this option is chosen, the expert should be retained early and should examine the client as soon as possible to establish an accurate post-incident, baseline assessment of the client's condition. Periodic reevaluations by the causation expert strengthen the expert's testimony, especially in comparison with the defendant's expert, who will usually see the client only once.

The expert will need all prior and ongoing medical and psychological counseling records and reports. The attorney must be aware of the interrelationship between the victim's physical and psychological injuries. Oftentimes, severe

psychological trauma will manifest itself into physical conditions such as nervous disorders, rashes, or unexplained fevers. These should be put into context for the jury by expert testimony.

### Presenting Damages at Trial

The attorney may consider using a three-step approach for presenting psychological injuries to the jury: develop a theme, present proofs in a "building-block" style, and submit specific jury instructions on psychological injury.

*Theme.* The character of the traumatic event and the victim's pre-incident and post-incident histories can serve as a framework for the theme. For example, a single working mother who had lived a full and active life, once raped, developed agoraphobia and became a prisoner in her own home. The theme here might be one of being trapped or wrongfully imprisoned.

If possible, before trial the client could write a letter to the attorney describing how the traumatic event has affected her or his life. The letter can be a useful tool for counsel in determining a case theme.

Despite expert testimony, there is rarely anything more powerful than the voice of the victim. The theme of the case can be intensified and the jury's awareness heightened by creating images. For example, when a rape victim describes how she had her lover move out of the bedroom because she couldn't bear to look into his eyes at night and tell him, "Not yet, I can't," *that* is powerful.

*Building blocks.* Expert testimony should begin with the treating physicians, because they usually refer victims to psychologists or counselors. A treating physician can testify to the onset of the client's physical and emotional symptoms.

Next, the treating psychologist will be able to provide a detailed account of the victim's subjective complaints and furnish a psychological diagnosis. The psychologist can describe areas where the client has difficulty, where improvements have been observed, and where the client continues to decline.

An expert psychologist on causation can then explain the victim's psychological trauma. The testimony must be communicated clearly in a step-by-step manner, with minimum scientific terminology for the maximum effect.

The victim should testify only briefly. The attorney may want to consider having the plaintiff outside the courtroom while psychological proofs are presented, because it is difficult for victims to listen

to this testimony. The attorney should discuss this option with the client, the treating psychologist, and the physician.

If the plaintiff is not going to be present during this part of the trial, the jury should be informed that this is due to doctor's orders and with the court's permission. Members of the victim's family

in the courtroom will usually compensate for the victim's absence by "standing in" for the victim. This helps to illustrate the seriousness of the case to the jury.

The presentation of testimony should conclude with several credible lay witnesses. Spouses, friends, relatives, coworkers,

and others with personal knowledge can testify about the plaintiff's fears and attest to altered behavior.

*Jury instructions.* The attorney should draft jury charges before trial and keep them in mind while presenting the case. It is helpful to be especially well prepared on issues of aggravation of preexisting

## The Effects of Rape

Sexual assault, particularly rape, is one of the fastest growing crimes in the United States and also one of the most misunderstood. There are many myths and misconceptions about how and why the crime happens, how and why victims are chosen, and the impact on victims.

The sexual part of the assault, which defines it as rape, is actually not the most traumatic aspect of the experience. The helplessness and powerlessness the victim feels in the context of a life-threatening situation and the loss of safety and control are more traumatic. Victims of attempted rape often have the same traumatic reactions as assault victims do.

Sexual assault has both immediate and long-term effects on the survivor. These reactions have been termed the Rape Trauma Syndrome because they are experienced, to some degree, by almost all survivors.

The syndrome, as identified by Ann Burgess and Linda Holmstrom in 1974, involves behavioral, physical, and psychological reactions of victims who experience sexual assault as a life-threatening event. The syndrome is cyclical, not linear. Therefore, the length of time that victims suffer from it is incalculable.

Victims seen soon after the assault are in crisis. They usually appear outwardly, but deceptively, calm. They experience numbness, shock, and disbelief. They often say, "I never thought this could happen to me." They appear dazed, subdued, and distracted. Instructions or requests may have to be repeated.

Survivors also often have a strong need to deny the experience. They may engage in routine conversation, resist talking about the assault, or have difficulty giving the history to a physician. These defenses can be adaptive and protective for the survivor. By

postponing the feelings, the survivor gives herself time to prepare for them.

The seemingly calm demeanor, though characteristic of rape trauma, is just the opposite of most people's expectations. This behavior, however, is a normal initial response to the overwhelming nature of the experience.

Victims verbalize their brush with death, expressing shock, disbelief, and relief. Survivors frequently say, "I'm just glad I'm alive!" Other common feelings include fear, anxiety, guilt, and shame. These feelings may be reflected in nonverbal behavior, such as trembling and avoiding eye contact.

During this period, survivors have pragmatic concerns about the impacts of the assault. These include possible pregnancy, exposure to AIDS and venereal disease, the seriousness of physical injuries they may have sustained, the reactions of significant others, the implications of reporting, and the psychosocial effects of the assault on the victim's ability to resume a normal life.

In the days and weeks following the assault, most survivors experience acute stress and disruption of their normal life-style. Fear remains the predominant feeling. Other responses to the assault include sleep disturbances, such as dreams with violent content; recurrent flashbacks; preoccupation with thoughts about the assault; and other symptoms of emotional distress, such as anxiety, irritability, crying spells, and depression.

Survivors may initially withdraw from sexual activity. Sexual encounters may provoke painful flashbacks of the assault. This withdrawal is also related to a need to draw inward to achieve and reaffirm the sense of self and autonomy. Although survivors may not wish to be sexually active for a while, they still feel the need for physical closeness and comfort.

Some survivors develop longer-term problems with intimacy and trust. Sexual fears or feelings of contamination and ruin persist.

In the longer term, the impacts of sexual assault are determined by the survivor's eventual resolution of the issues raised and the losses sustained. Sexual assault precipitates a reevaluation of the victim's views of life and of self.

For many survivors, feelings of vulnerability are long-lasting. These effects may be seen in marked life-style changes, such as moving to a new residence. Most victims also report that the assault affected their spontaneity and imposed a cautiousness in their approach to people and situations.

Although every survivor experiences Rape Trauma Syndrome, not all experience it alike. Many factors may increase the severity of the experience. Some of these factors are the race and culture of the victim, the level of violence of the perpetrator, and the orifices that were penetrated.

The response of significant others in the victim's life is very important. When her normal support system does not provide support, the severity of emotional response will increase. The support system is one of the key factors to recovery.

For many victims, the emotional responses of the assault continue. The short-term disorganization becomes long-term, and the effects become debilitating. Some of the responses—nightmares, fear and avoidance, feelings of unreality, and physical symptoms—indicate post-traumatic stress disorder. Recovery is only a long-term hope.

—Cassandra R. Thomas

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tion to emotional trauma. The attorney should take a full offensive position on these issues. Tailoring the proofs to the jury charges will help focus the jury's attention on the preferred evidence.

#### Forum for Justice

For crime victims with psychological injuries, civil litigation can be a healing process. It can furnish a restorative sense of empowerment.

Civil actions grant victims a forum to receive justice, regardless of the outcome of a criminal prosecution. The significance of this cannot be understated.

Civil judgments or settlements give victims and the public a confirmation that others were responsible for the violence perpetrated against them. Victims often blame themselves for being in the wrong place at the wrong time. They may be overcome by "if only I . . ." misgivings. Particularly for victims suffering from psychological injuries, a judgment can go a long way toward healing their irrational feelings of guilt.

Finally, jury verdicts are respected for their power to send strong messages about safety, crime, and societal change. Verdicts for crime victims can foster the hope that defendants have learned a les-

that others might not have to endure the same kind of violence.

#### Notes

- 1 Doe v. Doe, No. 91-03635 (Minn., Scott County Dist. Ct. Oct. 2, 1992), 36 L. REP. (ATLA) 55 (1993).
- 2 Arnett v. Linda Manor Ltd. Partnership, No. A-300222 (Nev., Clark County Dist. Ct. Mar. 10, 1993), 37 L. REP. (ATLA) 23 (1994).
- 3 Doe v. Komarek, No. 91-5870 (Mass., Middlesex Super. Ct. Feb. 22, 1994), 37 L. REP. (ATLA) 312 (1994).
- 4 See generally Annotation, *Modern Statutes of Intentional Infliction of Mental Distress as Independent Tort: Outrage*, 38 A.L.R. 4th 998 (1985); Cheryl M. Bailey, Annotation, *Sexual Child Abuser's Civil Liability to Child's Parents*, 54 A.L.R. 4th 93 (1987).
- 5 JUDITH L. HERMAN; TRAUMA AND RECOVERY 33 (1992).
- 6 Ann W. Burgess & Lynda L. Holmstrom, *Rape Trauma Syndrome*, 131 AM. J. PSYCHIATRY 981 (1974); see also Cohn v. State, 849 S.W.2d 817 (Tex. Crim. App. 1993). Illinois law states: "In a prosecution for an illegal sexual act . . . testimony by an expert . . . relating to any recognized and accepted form of post-traumatic stress disorder shall be admissible as evidence." ILL. ANN. STAT., Ch. 725, para. 5/115-7.2 (Smith-Hurd 1992).
- 7 LENORE E. WALKER, THE BATTERED WOMAN'S SYNDROME (1984).
- 8 HERMAN, *supra* note 5, at 115-29.
- 9 Gregory G. Sarno, *Admissibility of Criminal Prosecution of Expert Testimony on Rape Trauma Syndrome*, 42 A.L.R. 4th 879 (1985).
- 10 AMERICAN PSYCHIATRIC ASS'N, DIAG-

MENTAL DISORDERS (DSM-IV) 209 (1994).

- 11 *Id.* at 209, 210.
- 12 Cusseau v. Pickett, No. L-6086-92 (N.J., Bergen County Super. Ct. Aug. 4, 1994); leave to appeal denied.
- 13 HERMAN, *supra* note 5, at 122-29; see also INCEST RELATED SYNDROMES OF ADULT PSYCHOPATHOLOGY (Richard P. Kluff ed., 1990).
- 14 RICHARD A. GARDNER, THE PARENTAL ALIENATION SYNDROME AND THE DIFFERENTIATION BETWEEN FABRICATED AND GENUINE CHILD SEX ABUSE (1987). See Weiderholt v. Fischer, 485 N.W.2d 442 (Wis. Ct. App. 1992).
- 15 Jennette v. State, 398 S.E.2d 734, 737 (Ga. Ct. App. 1990).
- 16 People v. Cegers, 9 Cal. Rptr. 2d 297 (Ct. App. 1992).
- 17 Roland C. Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 CHILD ABUSE & NEGLECT 177 (1983); see also State v. J.Q., 617 A.2d 1196 (N.J. 1993).
- 18 FED. R. EVID. 401; JOHN E.B. MYERS, EVIDENCE IN CHILD ABUSE AND NEGLECT §4.32 C (2d ed. Supp. 1994).
- 19 HERMAN, *supra* note 5, at 57.
- 20 See Diana S. Everstein, *Psychological Trauma in Personal Injury Cases*, in PSYCHOTHERAPY AND THE LAW 27 (Louis Everstein & Diana S. Everstein eds., 1986).
- 21 HERMAN, *supra* note 5, at 60.
- 22 Everstein, *supra* note 20, at 33.
- 23 HERMAN, *supra* note 5, at 60, citing Margaret S. Gibbs *Factors in the Victim That Mediate Between Disaster and Psychopathology: A Review*, 2 J. TRAUMATIC STRESS 489-514 (1989).