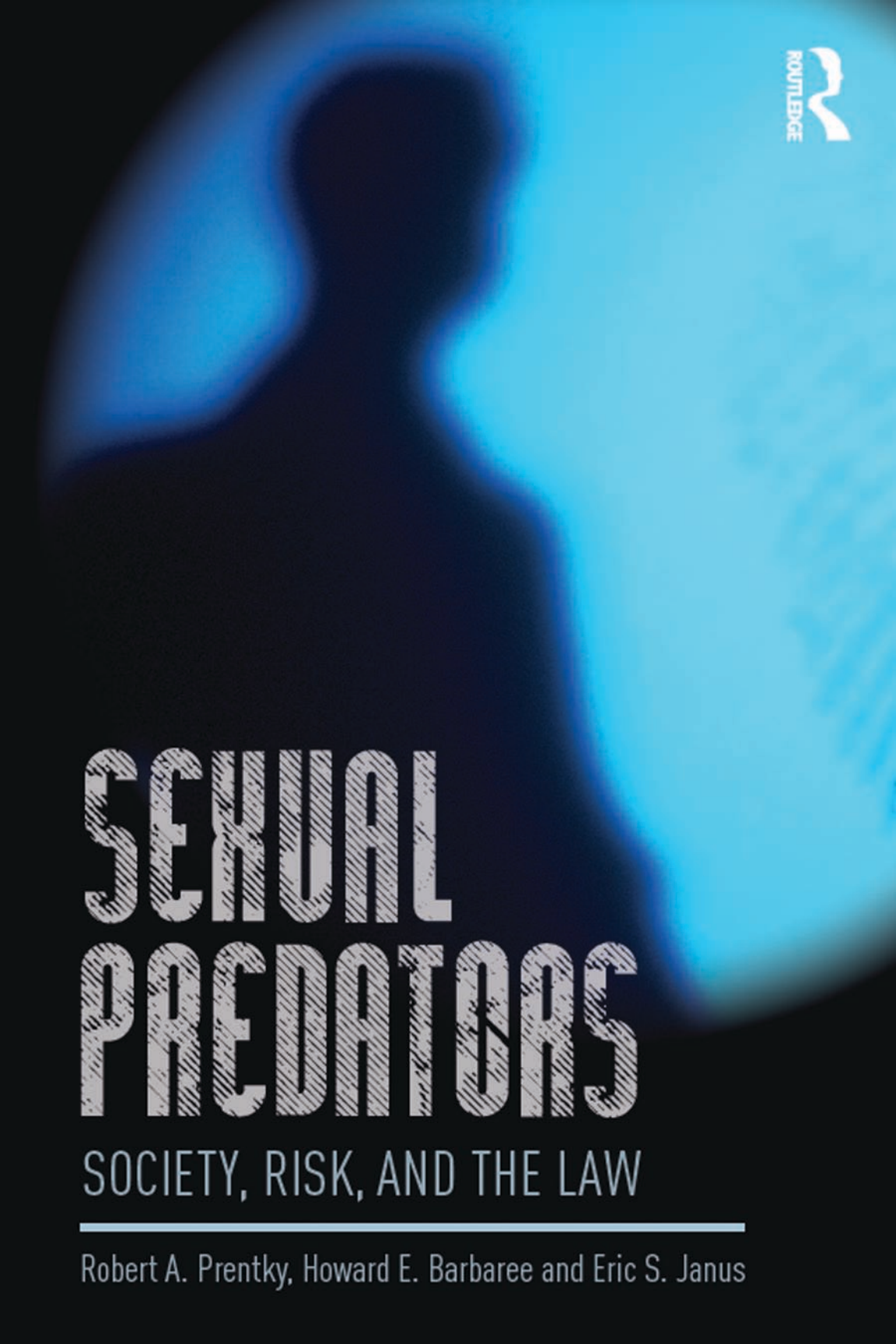
ROUTLEDGE
SEXUAL PREDATORS
SOCIETY, RISK, AND THE LAW
Robert A. Prentky, Howard E. Barbaree and Eric S. Janus

SEXUAL PREDATORS

Convicted sex offenders released from custody at the end of their criminal sentences pose a risk for re-offense. In many U.S. states, sexually violent predator (SVP) laws have been enacted that allow for the post-prison preventive detention of high-risk sex offenders. SVP laws require the courts to make dispositions that protect the public from harm while respecting the civil rights of the offender. This book describes these SVP laws, their constitutionality, and aspects of their operation. Courts hear expert risk testimony based heavily on the results of actuarial risk assessment. Problems associated with this testimony include the lack of a theory of recidivism risk, bias due to human decision-making, and the insularity of scholarship and practice along developmental lines. The authors propose changes in legal standards, as well as a unified developmental model that treats sexual violence as an "evolving" condition, with roots traceable to childhood and paths that extend into adolescence and adulthood.

Robert A. Prentky is Professor of Psychology and Director of Forensic Training at Fairleigh Dickinson University. He has been engaged in research and writing on sexual offenders for 35 years, evaluated or supervised the evaluation of 2,000+ sexual offenders, and has served as an expert witness for 20+ years. He is a Fellow of the American Psychological Association (2003) and the Association for Psychological Science (2006).

Howard E. Barbaree is a psychologist and Professor of Psychiatry at the University of Toronto and Vice President, Research and Academics, at Waypoint Centre for Mental Health Care. He received the 2001 Significant Achievement Award from the Association for the Treatment of Sexual Abusers and the 2011 Don Andrews Career Contribution Award from the Canadian Psychological Association. He was Editor-in-Chief of *Sexual Abuse: A Journal of Research and Treatment* from 2004 to 2010.

Eric S. Janus served as President and Dean of William Mitchell College of Law, St. Paul, MN. He is the author of *Failure to Protect: America's Sexual Predator Laws and the Rise of the Preventive State* (Cornell University, 2006). He served as co-counsel in extended litigation challenging the constitutionality of Minnesota's Sexually Dangerous Persons Act, and provided invited media commentary on sex offender policy both nationally and regionally.

This is a scholarly, thoughtful, and provocative piece of work, rich in facts and history. I had planned a quick skim, but became rapidly engrossed. Though written from a North American perspective, its arguments and messages are far from parochial, and challenge those who carry out risk assessments in legal settings as well as those who use them. It shines a spotlight on the floor where law and science attempt to dance, clearly depicting how each sways to its own music, but noting that the tune really comes from the orchestra of politics, the media, and public opinion. While the aim is "not to question the risk assessment enterprise, but … to improve it as a tool of the law", it would be an obtuse reader who did not begin to question their own practice, their reliance on a science that is young and uncertain, and their belief that they can "get it right" (or can even be sure of what "getting it right" means). In their preface the authors say, "We appreciate that there are those who will take marked exception to our perspective, and we look forward to constructive dialogue." So do I.

Don Grubin MD FRCPsych
Professor of Forensic Psychiatry,
Newcastle University, Newcastle upon Tyne, England
(Hon) Consultant Forensic Psychiatrist, Northumberland
Tyne and Wear NHS Found Trust

Prentky, Barbaree and Janus provide a unique, comprehensive, data-driven and compelling, yet remarkably even-handed, treatise on the history, public policy, and implementation of sex offender laws. They also offer a clear, rational and ethical roadmap for the future of sex offender evaluations and their use in the legal system. An invaluable tool for forensic evaluators, this extraordinary book should also be required reading for judges, lawyers, legislators, policymakers and anyone else concerned about the prevention of sexual offending.

Charles Patrick Ewing, JD, PhD
SUNY Distinguished Service Professor Past President,
American Board of Forensic Psychology Editor,
Behavioral Sciences and the Law

Robert Prentky, Howard Barbaree, and Eric Janus offer an essential analysis of the tangled morass of research dedicated to the difficult subject of sex offender recidivism. Against an environment of social panic, *Sexual Predators: Society, Risk, and the Law* constitutes a sober, interdisciplinary resource for any audience that provides needed perspective on appropriately assessing risk without succumbing to fear.

Corey Rayburn Yung, JD
Professor of Law
University of Kansas School of Law

Sexual Predators: Society, Risk, and the Law is an in-depth, scholarly and pedagogic textbook about the complex relationships between SVP legislation for the preventive detention of high-risk sexual offenders and mental health experts' testimony and risk assessments.

Written by three outstanding and experienced academics, the book patiently explains North American SVP laws and thoroughly reviews theoretical and empirical work on human decision-making and the theory and practice of recidivism risk assessment. One chapter specifically addresses the heuristics and biases related to assessing risk under uncertain conditions.

The authors cautiously and convincingly build their cases for changes in legal standards, theory-driven risk assessment, and a developmental model of sexual violence as a problem evolving throughout life.

Together with practical examples from productive professional careers and illustrative analogies, this is a rich and thought-inspiring text with theoretically and empirically well-grounded advice for clinical practice.

The book should be greatly interesting and generally useful to advanced students and active professionals in forensic mental health, criminal justice and policy making.

Niklas Långström, MD, PhD
Psychiatrist and Professor of Psychiatric Epidemiology,
Karolinska Institutet, Sweden and National
Scientific Advisor, Swedish Prison and
Probation Administration

In *Sexual Predators* the authors, three of the top individuals in this field, paint a nuanced, comprehensive picture of the sex offender assessment field. Although their primary focus is on sexually violent predator cases, they explore issues relevant to all sex offender evaluations. The authors provide clear explanations for what could otherwise be daunting topics—for example, the social and legal context of specialized sex offender statutes, the history and current status of sex offender assessment instruments, the role of cognitive heuristics in shaping our decisions, and the mathematical underpinnings of prediction. They propose sensible recommendations for both evaluators and legislators. The reader will be rewarded with an increased depth of understanding of the major controversies in sex offender assessment and management.

Philip H. Witt, PhD, ABPP
Past President – American Academy of
Forensic Psychology

Prentky, Barbaree and Janus's book represents the most comprehensive text to date on sexually violent predators. The authors integrate research findings, case law, statistics and clinical expertise through a lens that draws on parallels from a wide range of scientific and historical domains. This unique perspective brings clarity to the most challenging aspects of sexual offender risk assessment, such as the interpretation of test data and clinical decision-making. It's a must-have text for anyone working in the field of sex offender risk assessment.

Barry Rosenfeld, PhD Professor,
Department of Psychology and School of
Law Fordham University

The preventive detention of sex offenders is premised on risk of re-offense. This ambitious book explains how this risk is presently assessed, identifies systematic limitations, and offers well-supported directions for improvement. The book will prove invaluable for researchers, policy-makers, and participants in sex offender civil commitment and violence prediction generally.

Fredrick Vars, JD
Associate Professor of Law
The University of Alabama School of Law

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Robert A. Prentky, Howard E. Barbaree & Eric S. Janus

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SEXUAL PREDATORS

Society, Risk, and the Law

Robert A. Prentky
Howard E. Barbaree
Eric S. Janus

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To a dear friend, Dr. Doug Kirby, a kindred spirit who took calculated risks under conditions of uncertainty and left his heart in his beloved mountains—a passion we shared.

RAP

To my wife Lynn, who has supported my academic career for 40 years, by expanding my vision, challenging my intellect, and forgiving my distraction and absences associated with projects like this book.

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SERIES FOREWORD

The International Association of Forensic Mental Health Services (IAFMHS) is an interdisciplinary professional society representing forensic professionals engaged in research and practice in forensic mental health. Its membership includes psychologists, psychiatrists, social workers, nurses, and lawyers representing over 22 countries worldwide. Its goals are to promote education, training, and research in forensic mental health and to enhance the standards of forensic mental health services in the international community. IAFMHS holds an annual conference and publishes a journal (*International Journal of Forensic Mental Health*) and a book series (International Perspectives on Forensic Mental Health).

The goal of the book series is to improve the quality of health care services in forensic settings by providing a forum for discussing issues related to policy, administration, clinical practice, and research. The series covers topics such as mental health law; the organization and administration of forensic services for people with mental disorders; the development, implementation, and evaluation of treatment programs for mental disorders in civil and criminal justice settings; the assessment and management of violence risk, including risk for sexual violence and family violence; and staff selection, training, and development in forensic mental health systems.

Sexual Predators: Society, Risk, and the Law, by Robert Prentky, Howard Barbaree, and Eric Janus, is the latest book in the series. This book serves a number of purposes. It provides an analysis of sexual predator laws, which in the United States date back to the 1930s. The authors review the legislation and legal procedures as they have evolved since that time, and note that despite many challenges to these laws, provisions for the indeterminate confinement of sexual offenders found dangerous continue to be a major focus of society's response to managing sexual predators. They then turn to the role that risk assessment plays in determining which offenders should be committed under these laws. The authors acknowledge that the demand for risk assessments of sex offenders is high

and likely to continue for the foreseeable future, and one goal of the book is to ensure that best practices are used to provide empirically grounded opinions about the risk of future offending. They note that sex offender risk assessment has been largely atheoretical, and make the convincing case that the field will not progress without a clear theoretical framework. Their book provides such a framework, presenting a model for both practitioners and the courts to follow as a guide to risk assessments and how they are used in court. Their model relies on a foundation that assesses risk from multiple domains. They provide forensic evaluators with a critique of actuarial risk assessment instruments and their strengths and limitations as they are applied in sexual predator evaluations. Readers should find particularly valuable their discussion of how the broader research on the neuroscience of risky decision-making can be instructive in understanding the challenges to objectivity inherent in forensic risk assessments.

An impressive feature of this book is that it goes well beyond simply improving the current approach that favors the indeterminate confinement of sex offenders. The final chapters shift the focus away from assessment to an analysis of policy and practice. It is in these chapters that the book may have a substantive impact on the future of sexual predator assessment and treatment. They make the case that the problems associated with attempts to reduce the likelihood of re-offending "can only be addressed through policy changes that re-structure and re-prioritize demonstrated effectiveness of our interventions, be they treatment in prison or registration/notification in the community." They argue that policies emphasizing treatment of known sex offenders will not be effective in reducing sexual violence in our society. They point to research showing that the majority of sexual offenses are committed not by recidivists but by new offenders. As a consequence, placing the bulk of our resources into confining and treating sex offenders will have a limited impact on the incidence of sexual assaults. They advocate a primary prevention approach that would require a comprehensive public health plan to address the factors that promote expressions of unwanted sexual behavior. They comment, "Thus far, we appear to be quite content to focus only on the few bad actors that are caught. We seem remarkably resistant to primary prevention strategies that alter the calculus of sexually violent behavior *before* it occurs." It is the authors' hope that their book will serve as a catalyst for improvements in our current approaches to sex offenders as well as providing a blueprint for the future that will serve to markedly reduce sexual violence.

Ron Roesch
International Perspectives on Forensic
Mental Health Series Editor

PREFACE

For the past 75 years we have trodden a narrow path between protecting society from *dangerous* sexual offenders and guarding the due process rights of sexual offenders. Although there are of course those who would argue rather vociferously that we have strayed off the path too far in one direction or the other, a principal vehicle for managing *dangerous* sex offenders since the late 1930s has been a form of civil commitment. In the first incarnation of these laws, often designated "sexual psychopath laws," the civil commitment decision was often viewed as a diversion from the normal criminal process, applied to offenders who were viewed as "too sick" to punish. Some form of treatment was provided. During just one decade, roughly 1975–1985, widespread disapproval was successful in challenging and repealing many of these sexual psychopath laws. In the more recent incarnation of these laws (post-1990), sexual offenders found *dangerous* have been civilly committed at the expiration of their criminal sentence. These laws, generally referred to as sexually violent predator (SVP) laws, are based on the premise that some offenders are too dangerous to release from prison. Although aggressively challenged in court, these laws have been deemed constitutionally valid in the US. Although these SVP laws are found only in 20 states, they appear, at least for now, to be a solid fixture in the legal landscape for managing sex offenders.

This unusual "psycho-legal" management scheme has created a considerable cottage industry of practitioners tasked with servicing all facets of the laws, from adjudication (requiring attorneys possessing a unique knowledge and skill set required for these special commitment hearings) and forensic experts (more often psychologists, occasionally psychiatrists, who offer opinions about dangerousness) to therapists (typically Masters-level psychologists who provide treatment) and custodial staff who provide security for a clientele that technically are no longer "prisoners." This book was conceived primarily for forensic psychologists and psychiatrists who provide expert evaluations and expert testimony, and for the judges and lawyers whose roles require advocacy and judgment about the validity, relevance, credibility and weight of expert testimony.

Although our book is clearly focused on sex offenders, we trust that we have something to offer for the larger domain of violence risk assessment. We begin, in Chapters 1 to 3, by setting up the problem addressed by civil commitment legislation, and discussing briefly the background of these governing laws. The following four chapters form the corpus of the book, the core of our analysis, a critical examination of the state of the art with respect to risk assessment. Chapter 4 provides a brief historical context for the development of actuarial assessment and a conceptual framework within which to understand the empirical basis for actuarial prediction. Chapter 5 describes (1) the development of an actuarial instrument, (2) the evaluation of the quality of actuarial prediction, (3) the most commonly used actuarial instruments, and (4) the published literature containing independent cross-validation studies. Chapter 6 reviews the problems experienced in estimating the likelihood of recidivism with sex offenders and takes a critical look at attempts that have been made to solve these problems. Chapter 7 steps back to take a broader look at actuarial science, as practiced with sex offenders, and the important role of theory in a science of sex offender risk.

We acknowledge that the field has come a long way since the halcyon days in the 1950s when pronouncements were based on clinical instinct. We argue, however, that science is an evolutionary process, that *normal* science assumes that the scientific community knows (or thinks it knows) what the world is like, and that when a bolder vision changes the assumptions about the world, scientific paradigms may shift. We maintain that there have been no bolder visions, that the field of sex offender risk assessment remains atheoretical and *preparadigmatic*, and that a coherent, theoretical framework, when it comes, will presage the next generation of risk assessment.

One observation deriving from this basic assumption of *normal* science is apropos. With rare exception, there is a disconnect between the scientific community of investigators developing and validating risk assessment scales for sex offenders and the *relevant* world—the court system. The science of risk assessment is *practiced* in the courtroom under the watchful eye of a judge and jury and in accordance with the rules of prevailing law—not the rules of science. For science to more effectively enrich the legal system, there must be "common ground" (Petrila, 2009). Attorney Petrila's (2009) second "thought on the state of the field" was that "One of the most salutary developments in the field has been the creation of research-based assessment tools. However, even the best instrument does not automatically convert bad practice into good" (p. 391).

The symbiosis between good science and good practice must recognize, as an example, the inescapable reality of the "n of 1" in the courtroom. This familiar conundrum—the application of group-based data to one individual—is addressed in Chapter 10 (and much more eloquently by

Professor Slobogin (2007) in *Proving the Unprovable*). Common ground recognizes the distinctive needs of both law and science and proposes a mutually acceptable solution. The tool box that contains only a life table may be good science in some quarters but is bad practice in court. Common ground demands that the science that gets filtered into the courtroom must acclimate to the prevailing evidentiary rules and turbulence of cross-examination. Contorting the science to accommodate admissibility or survive cross-examination benefits neither the grace of science nor the sanctity of law. We appreciate that there are those who will take marked exception to our perspective, and we look forward to constructive dialogue.

Chapter 8 approaches the assessment of *dangerousness* (or risk) from a different perspective by infusing forensic practice with lessons learned from the seminal science on risky decision-making under conditions of uncertainty. These remarkable contributions from neurocognitive scientists have much to tell us about the error of our forensic ways. By focusing on the heuristics and biases that undermine objectivity, we hopefully offer broader insights for the practice of forensic assessment. We hope that this is one of the contributions we can make to the greater arena of forensic assessment of violence. In Chapter 9 we look at the nexus of public opinion, public policy, and enactment of legislation, posing a pivotal question: Are the costs of our preventive interventions justified by the benefits derived, and, in particular, do the benefits derived from SVP laws justify the cost of involuntary confinement, and the diversion of scarce resources from other forms of prevention? We conclude in Chapter 10 with wide-ranging recommendations for the use of science within the forensic arena, including risk judgments and communication, probabilistic vs. categorical expressions of risk, the challenges of innumeracy, unpacking risk, and suggestions for the next generation of risk assessment scales.

Our overall perspective is that the next generation of risk assessment will break loose from its atheoretical mooring and embrace a theory-driven model that takes a lifespan perspective on risk. The net result hopefully will be the first *paradigm* for violence risk assessment with sexual offenders.

R. A. Prentky
H. E. Barbaree
E. S. Janus

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Both as a forensic practitioner and as a researcher, I owe a deep debt of gratitude to the pioneers of the neurocognitive science of decision-making—Robyn Dawes, Baruch Fischhoff, Reid Hastie, Daniel Kahneman, Paul Meehl, Scott Plous, Paul Slovic, Amos Tversky and many others—from whom I have learned so much about my own field. I am further very much indebted to my many colleagues, chief among them Kirk Heilbrun, Charles Patrick Ewing, Neil Malamuth, John Monahan, Doug Mossman, and Phil Witt, for the remarkable clarity of thought and judgment that defines their scholarship.

I have been blessed with wonderful graduate students over the past several years who have been the backbone of my research, many of whom contributed, in their own inimitable fashion, to what has gone into this book—most notably, Dr. Anna Coward, Dr. Adeena Gabriel, and my postdoc who has been "stalking" me for seven years—Dr. Raina Lamade.

Robert A. Prentky

The data set we used to illustrate the points in Chapters 5 to 7 was the result of the work of a number of individuals. The data set represented information coded from clinical files and records from the Warkworth Sexual Behavior Clinic (WSBC), a treatment program for sex offenders at Warkworth Institution, a Canadian Federal Penitentiary at Warkworth, Ontario. These clinical records were compiled over the period from 1989 to 1996. Many thanks to Dr. Ed Peacock and other staff at the WSBC for their careful and detailed documentation of demographic information, developmental histories, treatment progress, criminal histories, and other critical information concerning the participants in the treatment program.

Many thanks to the participants in the treatment program who agreed to allow us to use their information for research purposes.

Calvin Langton conducted and supervised the coding of the data from the information in the clinical files, including the scoring of the actuarial risk assessment instruments and the recidivism data. At the time, Calvin

was a PhD candidate at the University of Toronto and an employee of the Centre for Addiction and Mental Health. Calvin used these data to complete his PhD dissertation under the supervision of one of the authors of this book (HB) and this data set has been the basis of numerous publications on issues relating to the issue of risk assessment. Articles listed in the References with an asterisk are empirical studies that used the WSBC data set. Many thanks, Calvin, for your work on this data set. Karl Hanson and Leslie Helmus were extremely helpful in providing advice and information concerning the use of Bayes' Theorem and Logistic Regression in actuarial prediction.

Many thanks also to Sonja Dey for assisting us with organizing the References.

Howard E. Barbaree

I want to acknowledge with gratitude the work of the research assistants, all students at William Mitchell College of Law, who assisted me in this project: Randall Cohn, Rachel Mowry, Nic Puechner, and Jacob Elrich.

Portions of my materials are based on previously published materials.

Eric S. Janus

1

HUMAN DANGEROUSNESS AND THE LEGACY OF FEAR MANAGEMENT

> Dr. Elizabeth Sinskey, Dan Brown's fictional Director-General of the World Health Organization in *Inferno*, observes that, "Only one form of contagion travels faster than a virus and that's fear."

Sexual violence is a national scourge. Indeed, for a country that champions human rights, it is a disgrace. The National Violence against Women Survey reported that close to one-fifth of all women report that they have been the victim of an attempted or completed rape at some point in their lives. More than half of that group reported that the sexual violence had occurred before age 18 (Patricia Tjaden and Nancy Thoennes, Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence against Women Survey). These estimates do not begin to reflect the untold number of unreported and thus "unknown" child and adult victims of sexual violence.

In commenting on the unalienable rights set forth in our Constitution, the Honorable Charles Gill (2005) observed that:

> The truths, the rights, justice and the blessings of liberty were not extended to all people by our fundamental documents. Slaves, children, and, to a large degree, women were excluded. They were property, mere chattel, in varying degrees. Slaves had no rights, since they were property, and the child-citizens, similarly, had no rights except to someday succeed to the rights of their fathers.
>
> (p. 4)

Like the original Constitution, our country's laws have historically failed to extend their writ to the protection of women and children, especially

from sexual violence. In this and the following two chapters, we address the laws and policies that have been adopted over the last two decades to remedy this historic failure. We return at the end of the book to a discussion of the efficacy of those laws and policies. Our ultimate goal is to enable the power of good law uniformly and consistently applied to mitigate sexual violence in all sectors of society. Primary prevention is instrumental, and law lies at the heart of primary prevention. Law itself, however, can be the victim of fear. When legitimate fear about sexual violence is magnified through the media, resulting laws and policies all too often lack the sober judgment and empirical grounding necessary for a comprehensive and systematic program of sexual violence prevention.

In this chapter, we seek to illuminate the way in which fear, often whipped up by the media, can distort public policy and sabotage the most constructive laws. We turn to historical examples of such "moral panics" to illustrate the power of fear and its potentially treacherous effects. But we caution our readers not to misinterpret this historical discussion. We do *not* equate sex offenders with the innocent victims of many prior fear-inspired waves of legislation. Nor do we mean to demean or minimize the fear that sexual violence engenders. That fear is real and legitimate. Rather, our point is that fear, especially when magnified by the political process, can hamper our efforts to make good public policy. When fear trumps science, when it silences good faith discussion of policy, it is prevention that suffers, in the present case, prevention of sexual violence.

Unfortunately, the law has *not* guided the development of comprehensive and systematic approaches to the prevention of sexual violence. Instead of identifying root causes and best-practice responses, our public policy has been reactive, driven by fear and the political exploitation of fear. Instead of encouraging robust accountability for effectiveness of our laws, all too often policy-makers ridicule or ignore science, resulting in countless resources allocated to reactive legislation that is rarely held to account for its effectiveness in preventing sexual violence.

It is time to conform our prevention policies to the reality of sexual violence, not the tabloid version. Policy-makers need the more accurate facts from the best science on the root causes of sexual violence, what perpetuates it, and what can mitigate it; to the point, policy-makers must be apprised of the most effective tools for combating rape and sexual assault. Good science must drive good public policy. Only in that way can we achieve the maximum prevention, not merely the maximum votes.

Though the science and law are admittedly an odd couple with occasional strains in their marriage, our primary point in the first three chapters is simple. Science and law must partner to markedly reduce sexual violence. But the partnership requires vigilance. Fear, politics, and the

heuristics of the imperfect human brain can readily undermine this goal. Insisting on empiricism and illuminating the role of fear do not diminish the importance of prevention, they advance it.

Like all other physical assaults, rape is a battery offense. Unlike most other *non*sexual battery offenses, rape is uniquely and profoundly violative (Moor, Ben-Meir, Golan-Shapira, & Farchi, 2013; Perilloux, Duntley, & Buss, 2012). It is at once both frightening—as all assault would be—*and* humiliating and demeaning. Almost 40 years ago, John Gunn (1976) noted that "rape is frequently a humiliating, terrifying, dangerous, and painful business for the victim" (p. 58). Moor and her colleagues referred to "a trauma of paralyzing dehumanization" (p. 1051), noting that "dehumanization and humiliation [are] highly prevalent and almost invariably predictive of a freeze response in rape" (p. 1051). The sequelae of nonsexual assault—cuts, bruises, black eye, bloody nose, broken bones, perhaps a concussion—heal with time and generally leave the victim with few serious long-term physical or emotional scars. By contrast, rape frequently leaves its victims with interminable emotional scars that are resistive to time and treatment. Moreover, although all crime instills, in varying degrees, feelings of vulnerability, there is no other crime that creates so profound a sense of vulnerability as rape. Rape crosses all boundaries of civil human interaction, ceding safety, undermining trust, and crippling future intimacy. It is in this way that rape is a very different "kind" of crime.

Rape is different in one other respect. It targets two segments of the population—women and children. Although, yes, there are adult male victims of rape (Turchik & Edwards, 2012), the overwhelming majority of adult victims are women. Controlling legislation, enacted predominantly by men, has been precipitated, with minor exceptions, by heinous sexual crimes against children, *not* women. Although our assertion may appear cynical, the essential point is that the threat of sexual violence sweeps across the entire population, frightening women, parents, and those who care for and about women and children. There is no other crime that casts so long and pervasive a shadow over society. In response, we have devised a variety of mechanisms for countering the perceived threat posed by sex offenders. All of these mechanisms require a determination of the "amount of threat" posed by individual sex offenders. This determination is, in essence, the subject of this book.

It is for this reason—to place sex offender legislation and risk analysis in context—we begin first by highlighting three historical instances in which fear precipitated untold injustice and irrational laws. We follow with an overview of the horrific sex crimes that precipitated the first wave of sex offender civil commitment legislation (Sexually Dangerous Person laws) beginning in the late 1930s, and conclude with a discussion of the

"cycle" of events, beginning with a widely publicized crime, typically a sexual homicide, and the ensuing fear that leads to a legislative response. This cycle, first articulated by Donald Sutherland in 1950, appears very much in evidence today.

A Laconic Historical Perspective of Social Fear

Some 2,500 years ago Sophocles wrote three plays dealing with Acrisius, the mythical king of Argos. Very little remains of these plays, save a few fragments. One such fragment is widely quoted as: "To him who is in fear, everything rustles." Fear is a deeply ingrained, hard-wired protective response to mortal threats when the earliest hominids lived in trees or caves and had ample to fear. Our preservation instinct remains alive and well. Indeed, our fascination with psychopathy may be attributable, in part, to the relative absence of this intrinsic feature of the human condition. Civilized human history, certainly since the time of Sophocles, is littered with the remnants of *fear gone awry*. Although fear may go awry by peculiar and uncertain biogenetic circumstance (e.g., psychopathy), the most frequent and far-reaching cause is humans, intentionally manipulating fear, typically for some social, political, or religious gain, occasionally resulting in witch hunts, vigilantism, and punitive statutory or ecclesiastic regulation of the feared objects.

"Witches" in Puritan New England

17th-century Puritan New England brings to mind images of pillories, stocks, and the infamous witch trials. In its report on *Psychiatry and Sex Psychopath Legislation: The 30s to the 80s*, the Group for the Advancement of Psychiatry (GAP) (1977) observed:

> Colonial Massachusetts during the 17th century can be taken as a prototype for illustration. . . . In early colonial days and continuing up to the late 18th century, Puritan criminal law was heavily infused with Mosaic law. Sin and crime tended to be equated, and hence the sinner was a criminal. Criminal law was the worldly application of the law of God. No separate ecclesiastical courts were required because religious notions involving sex were incorporated into the application of the civil law. In a broad sense, the primary goal of criminal law was the enforcement of the morals and religion of the people . . . .
>
> Whippings administered to secure reform were not paltry affairs. These punishments were carried out in the stern conviction that they were being administered with the ultimate goal of reforming wayward persons. By way of excluding sadistic elements, specific directions were given to set limits on the selection

> of those administering such punishments. Hence, no one who was "cruel or barbarous" would be permitted to do the whipping, and the number of lashes to be "laid on" was specified—usually 15 or 20. Even a "detestable offense" did not get more than the Biblical, 39, citing the authority of Paul's "second letter to the Corinthians." Whipping was also the chosen punishment for adulterers and for girls who delivered illegitimate children. . . . Old Testament language is still used, as witnessed in the current statutory definition of sodomy in Massachusetts as "the abominable and detestable crime against nature either with mankind or with a beast."
>
> (p. 847–849)

Offenses of a sexual nature continued to be punished by whipping well into the late 18th century. From 1692 until 1780, the crime of adultery was punished with 40 lashes and sitting in the gallows for one hour with a rope around one's neck as a reminder that the offense was "deadly serious" (GAP, 1977). Although initially the Puritans were reluctant to impose capital punishment without "scriptural authority" (GAP, 1977), by 1648 rape became a capital crime. In fact, rape was the only capital offense without Biblical justification (GAP, 1977). Adultery involving a married woman was a capital crime for both parties, but sexual relations between a married man and a single woman was mere fornication (GAP, 1977).

The crime for which Puritan New England, and Massachusetts in particular, was far more readily known—witchcraft—extended over a very brief period, about 14 months (February 1692–April 1693). During this period of a little over one year, roughly 160 people were accused of witchcraft and about 100 were imprisoned. Of that number, 20 were executed in 1692 by hanging (not by burning at the stake). Those accused of witchcraft were often social outcasts (e.g., Tituba was a slave, Sarah Good was a homeless beggar, and Sarah Osborne was a sickly, elderly woman). The Puritans feared Satan and believed that witchcraft was endemic. Prevailing wisdom was that Satan relied on the "weakest" among us—children, women, and the "insane"—to achieve his evil end. The sign of Satan was witchcraft, and the community, frightened by the dire warnings issuing from the theology of the "purified" (Puritan) Church of England, responded with hysteria. To be fair, European belief in witchcraft was centuries old. At its height, witches were actively "hunted" for a period of about 100 years, coinciding with the Reformation (1560–1660). Accused witches were treated equally (often torture) by the Protestant and Catholic Churches. Protestant beliefs (and solutions) on these matters are clearly articulated in *Malleus Maleficarum*, a treatise on witchcraft and the prosecution of witches, written in 1486 by a German Catholic clergyman (Heinrich Kramer). What occurred in New England was a predictable

response to the strict code of Puritan doctrine, the intense fear of Satan (or the Devil) and his servants on Earth, and the "ways" and powers of Satan, all reinforced by the elders and ministers of the Church.

Slavery

Slavery in the United States, on a vastly larger scale than the brief episode of witchcraft, defined an entire class of humans as sub-human solely by virtue of skin color. In characterizing slavery as "The Negro Holocaust," Gibson (1979) stated,

> Immediately following the end of Reconstruction (1865–1877), the Federal Government of the United States restored White supremacist control to the South and adopted a laissez-faire policy in regard to the Negro. The Negro was betrayed by his country. This policy resulted in Negro disfranchisement, social, educational and employment discrimination, and peonage. Deprived of their civil and human rights, Blacks were reduced to a status of quasi-slavery or second-class citizenship. A tense atmosphere of racial hatred, ignorance and fear bred lawless mass violence, murder and lynching.

Slavery effectively lasted in the United States for almost 250 years, from 1619 until the Thirteenth Amendment formally outlawed the institution of slavery in 1865. One year later, in 1866, the Ku Klux Klan was founded, and two years later (1868) the Opelousas Massacre or Opelousas Riot took place when African Americans sought to join a political group of the Democratic Party in the neighboring town of Washington (Louisiana); a local unit of the White supremacist group Knights of the White Camellia went to Washington to insure that that didn't happen. *Lynchings took place in the United States for another 100 years <u>after</u> the passage of the Thirteenth Amendment.*

Gibson (1979) stated,

> Most of the lynchings were by hanging or shooting, or both. However, many were of a more hideous nature, burning at the stake, maiming, dismemberment, castration, and other brutal methods of physical torture. Lynching therefore was a cruel combination of racism and sadism, which was utilized primarily to sustain the caste system in the South. Many White people believed that Negroes could only be controlled by fear. To them, lynching was seen as the most effective means of control.

Gibson described lynchings as an institutionalized method of terrorizing Blacks to maintain White supremacy, fueled by "deep-seated and all-pervading hatred and fear of the Negro." For 60 years, from 1880 to 1940, lynchings were a primary means of social control.

The root of terrorism according to Gibson was fear of Black social and economic advancement. Gibson quoted W. E. B. DuBois as saying in 1915 that "There was one thing that the White South feared more than Negro dishonesty, ignorance and incompetency, and that was Negro honesty, knowledge, and efficiency" (White, 1929, p. 97; cf. DuBois, 2008). As with the mythology that drove witchcraft hysteria, so too a deeply entrenched narrative enforced slavery and its violence (e.g., all Black men want to rape White women, Blacks, primarily Black men, are indolent, deficient in mentality, or criminals by nature). The narrative has been so reinforced over so many generations that it remains an endemic feature of American society. The same shrill racist narrative exists today; today, however, it is likely to be condemned as, if nothing else, politically incorrect. The *original* driving force, however, as articulated by W. E. B. DuBois and the many scholars that followed him, was *fear* of competition in the social and economic marketplace. Parenthetically, a very similar narrative was heard in Nazi Germany regarding the Jews. Although condemned as inferior, the fear reportedly stemmed from the dominance of Jews in systems of commerce and the news media.

McCarthyism and the McCarthy Era

The "Attorney General's List of Subversive Organizations" was a centerpiece of President Truman's "loyalty program," initiated in 1947, well before the "rise" of Senator McCarthy. The chief architects of McCarthyism were Senator Joseph McCarthy (Republican, Wisconsin), first elected in 1947, and J. Edgar Hoover, Director of the FBI. Senator McCarthy came to prominence in 1950 when he publicly asserted during a speech that he held a list of 205 card-carrying Communists in the U.S. State Department. He further claimed that Communists had infiltrated the U.S. Army and President Truman's Administration.

The House Committee on Un-American Activities (HUAC) was formed originally in 1938, turning from its original mission of investigating German-American Nazis during World War II to concentrating on Communists (e.g., the Federal Theater Project of 1938). HUAC's first high-profile case involved charges of espionage against Alger Hiss 1948. Hiss was ultimately convicted of perjury. HUAC's most notorious investigations involved those in the Hollywood film industry, beginning in 1947. At least 300 members of the film industry were "blacklisted" and denied work. Between 1949 and 1954, HUAC, along with the Senate Internal Security Subcommittee and the Senate Permanent Subcommittee on Investigations conducted 109 investigations. The so-called "Hollywood Ten" refused to testify, were held in Contempt of Congress and were sent to prison for periods of six months to a year. The infamous Red Channels, along with other newsletters, published

lengthy lists of individuals considered "leftist." Anti-Communist committees, panels, and "loyalty review boards" were established all over the country, at the state and local level as well as private agencies, all looking for Communists hiding in the workforce. Although the workforce, including the Armed Services, was the primary focus of "Communist hunts," McCarthyism was also concerned with a variety of public health services, including vaccinations, mental health care, and fluoridation, all of which were considered plots by Communists to poison or brainwash the American people. Ultimately, many thousands lost their jobs, including several thousand members of the Armed Services and longshoremen.

Many laws were passed by Congress to protect the United States, mostly from Communists. The Alien Registration Act of 1940 (referred to as the Smith Act) made it a criminal offense to "knowingly or willfully advocate, abet, advise or teach" activities advocating the overthrow of the Government of the United States. Under the Smith Act, hundreds of Communists and others were prosecuted between 1941 and 1957. The McCarran Act established the Subversive Activities Control Board, which had the mission of identifying organizations that were "fronts" for Communists. The Immigration and Nationality Act (McCarran-Walter Act) of 1952 required the government to deport immigrants or naturalized citizens engaged in subversive activities. Arthur Miller's play *The Crucible* in 1952 used the Salem Witch Trials as a metaphor for the McCarthyism of the time. In 1952, at the Republican National Convention, McCarthy proclaimed, "Our job as Americans and as Republicans is to dislodge the traitors from every place where they've been sent to do their traitorous work." The last piece of legislation, the Communist Control Act of 1954, was effectively an extension of the Internal Security Act of 1950.

On December 2, 1954 the United States Senate voted 65 to 22 to condemn Joseph McCarthy for "conduct that tends to bring the Senate into dishonor and disrepute." Senator McCarthy remained in office until his death in 1957, at age 48, from hepatitis, alleged to be related to alcoholism. The era of Senator Joseph McCarthy, although profoundly scarring on the national psyche, lasted a brief time, roughly from 1950 to 1955. The term "McCarthyism," coined originally by Herbert Block in a *Washington Post* political cartoon (dated March 29, 1950), has come to refer to wanton accusations of disloyalty, subversion, and treason, typically without regard for legitimate evidence. McCarthyism has come to represent in America the very worst of what can happen when blind dogma drives irrational fear to the brink of panic and becomes the catalyst for radical solutions to assuage fear.

Sexual Violence and Sexual Panic: 1930s–1940s

In America, "witches," African Americans, and Communists all came to represent sources of fear and repugnance so profound that panic ensued,

draconian laws were instituted, and vigilantism became a scourge on civil society. For a variety of reasons, any comparison with sex offenders is obviously flawed, indeed warped. Unlike "witches," African Americans, and Communists, sex offenders are criminals, not victims. Sex offenders constitute an extraordinarily heterogeneous group with only one "class" being the predominant target (child molesters), and the "relationship" of society to the loathed group is complex, with mixed messages regarding the sexuality of children common in the media and advertising. Nonetheless, the historical pattern repeatedly observed non-offending targeted groups holds true for sex offenders—fear driving rapid enactment of (often) ill-conceived, uninformed laws, and occasional vigilantism.

The focus of this book is on yet another source of fear and loathing—sex offenders.

A wave of gruesome murders, many "serial," occurred around the US during the 1930s and 1940s. With a few exceptions, most of the crimes included sexual assault, and many victimized children. Importantly, these crimes precipitated the first generation of sexual offender laws, to be discussed shortly in detail.

Perhaps the most infamous was the serial killer of children, Albert Fish. Fish, referred to in the press as the Gray Man, the Werewolf of Wysteria, the Brooklyn Vampire, the Moon Maniac, and the Boogey Man, claimed that he had victims in every state and estimated the number at 100. Fish's paraphilias and preferred sexual acts were said to include fetishes, cunnilingus, fellatio, anilingus (oral stimulation of the anus), sadism, flagellation (flogging, whipping, beating), coprophagia (consumption of feces), urophilia (deriving sexual pleasure from urine), masochism, cannibalism, infibulation (genital mutilation), piquerism (literally to "prick," sexual interest in penetrating the skin), exhibitionism, voyeurism, and, of course, pedophilia. Although his claims about the number of his victims were unsubstantiated, he was a suspect in five murders. Ultimately, he confessed to three murders and several stabbings. At trial he pled insanity, saying that he heard voices from God instructing him to kill children. Although his preferred victims were young boys (under age 6), he was convicted of the murder of a 10-year-old girl (Grace Budd), found sane by the jury, and executed by electric chair at Sing Sing in 1936.

The Cleveland Torso Murderer, also referred to as the Mad Butcher of Kingsbury Run, killed and dismembered at least 12 victims in the Cleveland, Ohio area during the mid- to late-1930s, mostly between 1935 and 1938. Although the official number of the killer's victims is 12, the actual number is uncertain. Of the 12 victims, 10 could not be identified and are referred to as John or Jane Doe. Seven of the victims were male and five female. All were adults. All of the victims were decapitated (hence, the "torso" murderer). Although there were two primary suspects, the killer was never apprehended.

Albert "Eddie the Sailor" Dyer lured three young girls into the woods near Inglewood, California, and sexually assaulted and strangled them. These crimes were in late June 1937. He was convicted and hanged at San Quentin Prison.

Jake Bird, the so-called Tacoma Axe-Killer, was a serial killer of women, reportedly murdering as many as 46 women throughout the 1940s. He was ultimately tried and executed for the axe murder of Bertha Kludt (age 53). Although he also murdered Bertha's daughter (Beverly June Kludt, age 17), he was not charged with her murder. He was executed by hanging at Washington State Penitentiary in 1948. Bird reportedly murdered women in Florida, Illinois, Iowa, Kansas, Kentucky, Michigan, Wisconsin, Nebraska, Ohio, Oklahoma, and South Dakota, in addition to Washington.

The Phantom Killer of Texarkana, or Moonlight Murderer, or Phantom Slayer, roamed isolated lover's lanes killing after dark, by moonlight. The killer attacked at least eight and is known to have murdered five in 1946. The victims were all young couples. The women were sexually assaulted. These murders inspired a movie and a play. The Texas Rangers made a valiant attempt to find the killer. Although Youell Swinney was suspected, there was insufficient evidence, and the crimes remained unsolved.

William Heirens, called the "Lipstick Killer," terrorized Chicago in the mid-1940s. Heirens' criminal career began at 13. He was known to police primarily as a serial burglar. After his arrest for one of his burglaries, he was sentenced to three years at the St. Bede Academy, operated by the Benedictine Monks. His test scores were so high that he was encouraged to bypass high school and apply directly to the University of Chicago's special learning program. He was accepted to the program and was to begin classes in fall 1945. He committed his first murder in June 1945, and his "lipstick" murder in December 1945. After he killed Frances Brown, on December 20, 1945, he left a message in lipstick on the wall of Brown's apartment: *For heaven's sake catch me before I kill more. I cannot control myself.* On January 7, 1946, 18 days later, he killed Suzanne Degnan, age 6. He was 16 years old. At the time he confessed to three murders, he was 17 years old. He confessed to the murders in 1946 and spent his life in prison, dying in custody on March 5, 2012 at the age of 83. Two of his victims were adult women.

The most famous single murder of the 1940s was that of Elizabeth Short, a 22-year-old aspiring actress whose body was found cut in half and mutilated near a park in Los Angeles on January 15, 1947. Short became known as the Black Dahlia. Her killer was never found, and her case remains one of the oldest cold cases in Los Angeles. As recently as 2013, the Black Dahlia was back in the news. An article in the *San*

Bernardino Sun (Girardot, 2013) reported an investigation that uncovered further incriminating evidence against Dr. George Hill Hodel. Hodel's son Steve, a former LAPD detective, apparently always believed that his father killed Short.

James Buchanan, age 27, raped and murdered Ilda Koogle, age 60, on April 28, 1948 in East Cleveland. He was arrested on June 30, 1948. Buchanan told the police that during the previous six months he had brutally attacked 16 women. The "Walk of Death" murders occurred on September 6, 1949 in Camden, New Jersey. The killer, Howard Barton Unruh, 28 years old, killed 13 people (including 3 children) during a 12-minute walk through his neighborhood. Unruh was diagnosed with paranoid schizophrenia, found to be "insane," and committed to Trenton Psychiatric Hospital. He died in 2009 at the age of 88.

What has been referred to as "Horror Week" occurred in November 1949. Three children, aged 6, 7, and 17 months, were sexually assaulted and murdered, all in less than one week. Glenda Joyce Brisbois, 7 years old, was kidnapped, raped, and murdered on November 18, 1949 in Burley, Idaho. Her body was left in an irrigation canal. Josephine Yanez, 17 months old, was kidnapped from her parents' car, sexually assaulted, and suffocated in the mud on November 19, 1949 in Fresno, California. Her body was covered with teeth marks. Paul Gutierrez, 25 years of age, was convicted and sentenced to death. Linda Joyce Glucoft, 6 years old, was raped, strangled, slashed, and stabbed to death on November 14, 1949 by Fred Stroble in a neighborhood near Los Angeles. A blood-stained axe, hammer, ice pick, and butcher's knife were recovered near her body. Stroble, a 68-year-old grandfather of the victim's playmate, was convicted of first-degree murder, sentenced to death, and executed on July 25, 1952 at San Quentin Prison. For the news media, Stroble in particular became a symbol of pure evil, and was referred to as a "Sex Fiend" and a "Weeping Werewolf."

It is easy to see how a string of extremely violent crimes could produce widespread fear, if not panic. With reference to Stanley Cohen's book *Folk Devils and Moral Panics*, Feeley and Simon (2008) observed:

> The social world of the USA and other societies at the beginning of the twenty-first century is one of pervasive insecurity that has been described in terms such as "culture of control," "culture of fear," and "governing through crime." In this social world, moral panics are part of the infrastructure of contemporary society.
>
> (p. 46)

Moral Panic

The notion of moral panic was first described by Stanley Cohen in 1972:

> A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right thinking people; socially accredited experts pronounce their diagnoses and solutions; and ways of coping are evolved or resorted to.
>
> (p. 9)

That we panic in response to perceived threats, exaggerate their importance, and express moral panic or outrage toward these "folk devils" (Cohen's term) is well understood and well researched (e.g., Ben-Yehuda, 2009; Cohen, 1972, 1980; Critcher, 2003; Downes, Rock, Chinkin, & Gearty, 2008; Feeley & Simon, 2008; Ferguson, 2010, 2013; Gauntlett, 1995; Goode & Ben-Yehuda, 1994; Jenkin, 1992, 1998; Salerno & Peter-Hagene, 2013; Selvog, 2001; Thompson, 1998; Welch, 2000). Simply stated, moral panic is exaggerated fear of a "folk devil" against which there is moral repugnance (Ben-Yehuda, 2009). Whether the "folk devil" (perceived threat) is Satan, the Black Man, the Jew, the Communist, or the marauding sexual predator, if the threat is seen as pervasive and dire, the consequence may be moral panic. Fear of imminent threat underlies moral panic.

The combination of fear and *anger* appears to underlie moral outrage. Salerno and Peter-Hagene (2013) demonstrated in two studies that the two emotions are interactive (i.e., interaction of anger and fear (or "disgust") predicted moral outrage). The element of anger—when panic turns to outrage—appears to be "associated with an implied culpability" (Szmukler & Rose, 2013, p. 125). That is, "moral outrage derives from what is seen as the cause of the hazard. Such causes include malice (as in terrorist attacks), recklessness, or negligence (as in failures to maintain a railway track)—someone is deemed culpable" (Szmukler & Rose, 2013, p. 126). Szmukler and Rose (2013) provided a clear example—a deer running across the road leads to a car crashing through a barrier onto a railroad track resulting in a derailment and the death of 15 passengers. In the second scenario, the train is derailed because of a faulty track, leading to 15 deaths. The latter scenario will lead to outrage, because it will be assumed that had the track been properly maintained there would have been no accident and hence no deaths. In the former scenario, the accident was strictly fortuitous, a tragic random act. If the tragedy could have been avoided but for the recklessness, negligence, or maliciousness of one or more individuals, the visceral response is anger. In the case of sexual

crimes, there are multiple potential targets for alleged negligence—those who freed the offender (the parole board, the court, the experts who pronounced the individual "low risk"), the probation officer, the police.

Moral panic ultimately degrades our principle of human fairness and our capacity for rational judgment. Moral panic can easily override our instinct for equity and justice and cloud our "pre-panic" knowledge that challenges the panic-driven beliefs. Society, as Ferguson (2013) remarked, "spins the moral panic wheel, with preexisting moral beliefs setting the stage for the rest of the process" (p. 67).

Lancaster (2011) captured cogently the "worst case" outcome of this process:

> When fear becomes the normative condition, it inaugurates a broken social order based on mistrust, resentment, and ill will. The pervasive assumption that anonymous, lurking others cannot be trusted undermines goodwill and feeds a sort of poisoned solidarity: we shall all be diligent in monitoring each other for signs of transgression. This rage to surveil and punish reverberates, internalized, in the psyche. It preaches an authoritarian, fear-based ethics that Vygotsky once described as the "policeman of the soul". . . . Fear induces a dread of the other, a tear in the social fabric, and a propensity toward violence . . . . The emergent republic of fear thus constructs an essentially negative sense of community, nation, and social good. . . . Citizenship becomes tantamount to vigilant surveillance, a conception Americans once ridiculed as a defining feature of totalitarian societies. . . . Procedures once deemed anathema to democratic governance become first thinkable, then necessary, and at last unavoidable.
>
> (p. 163)

Moral panic, as we will discuss, is a bad omen when it comes to legislating law. Any significant perturbation in our current *reality*, no matter how seemingly benign, can produce enough of Sophocles' "rustle" to ignite panic. Most panic is short-lived. We look back with the benefit of 20/20 hindsight and laugh at how silly we were. It is highly unlikely, for example, that there would a consensus of opinion today supporting legislation to try individuals accused of being witches. As Feeley and Simon (2008) put it, "Something triggers a threat and if conditions are right, a moral panic can suddenly appear, only to evaporate as suddenly as it arrived" (p. 42). In such a context, laws that emerge from moral panic are not deliberative but fear-driven and can reach a point of obsolescence quickly.

Perhaps a more plausible example than witchcraft was the widespread rustling of our moral feathers during the 1950s around fluoridation of water to reduce dental caries among children (cf. Mausner & Mausner, 1955).

Despite controlled studies over nine years in three communities revealing that fluoridation was safe and highly effective, and despite support from the American Dental Association, the American Medical Association, the National Research Council, and the United States Public Health Service, the widespread fear was that fluoridation held "unknown dangers," was poisonous, and that if everyone was required to drink treated water it was a step toward socialized medicine (Mausner & Mausner, 1955). J. Edgar Hoover, then head of the FBI, went so far as to warn the public to be on guard against the poisoning of public water supplies (AP Dispatch, February 27, 1951, cited in Mausner & Mausner, 1955). Mazur (2004) provides a comprehensive overview of this period.

If we fast-forward a half-century we see a similar modern-day rustling of our feathers around the use of genetic engineering to modify crops (genetically modified food, GMO). Advocates claim that it is our greatest hope to feed an ever-increasing, hungry world. Critics claim that it is a dangerous interference with nature; the foods have not been adequately tested to establish their safety, and there may be unknown deleterious side effects. Despite all of the controversy, GMO foods have now been in supermarkets for 15 years, and many of our most common purchases are foods subject to genetic engineering (e.g., tomatoes, rice, potatoes, corn, soy, and milk). The principal critical claim remains that food derived in part from GMO crops has been insufficiently tested over the long term for its safety. Entirely apart from the science of GMO and whatever hazards might legitimately be claimed, the "risk" has been "socially amplified" (cf. Frewer, Miles, & Marsh, 2002).

It is easy to see the many sources of moral panic seizing center-stage today—climate change (or the denial of the existence of climate change), the Tea Party's "panic" about Big Government (a bloated federal government that taxes and spends voraciously), and, of course, the Big Gorilla, terrorism (and with it, the infringement of individual rights). As always, some of these sources of moral panic have ideological underpinnings (climate change and Big Government). Others, notably bioterrorism and nuclear terrorism, cut across ideological divides, because they pose more obvious existential threats for everyone.

The most recent transpicuous manipulation of fear is intended to affect the outcome of the 2014 midterm elections. The current sources of fear weave together the Ebola (Ebola hemorrhagic fever) epidemic in West Africa deemed a homeland crisis after three cases in the United States *and* the march of ISIS (Islamic State in Iraq and Syria) through Iraq and Syria, also deemed a homeland crisis. Peters (October 9, 2014) reported in *The New York Times*,

> With four weeks to go before the midterm elections, Republicans have made questions of how safe we are—from disease, terrorism or something unspoken and perhaps more ominous—central

> in their attacks against Democrats. . . . Hear it on cable television and talk radio, where pundits and politicians play scientists speculating on whether Ebola will mutate into an airborne virus that kills millions. See it in the black-hooded, machine-gun-brandishing Islamic extremists appearing in campaign ads. . . . Republicans believe they have found the sentiment that will tie congressional races together with a single national theme. The National Republican Congressional Committee is running ads warning that terrorists are streaming across the Mexican border. Republicans . . . have accused Mr. Obama of leaving Americans vulnerable to the Ebola epidemic. Conservative media like . . . *The Daily Caller* has christened him President Ebola.

These fear-based claims are cloaked with a gossamer veil of legitimacy. Legitimate or not, fear is a profoundly potent driving force in motivating behavior, in this case to vote for Republican candidates.

For the present discussion, however, it is also easy to see how a relatively large number of horrific sexual crimes, many committed by "serial" offenders, set the stage for the first wave of Sexually Dangerous Person laws, beginning in the late 1930s. By no means did these sources of "sexual panic" vanish, or even diminish, in later years. As Lancaster (2011) recounted in his Introduction, aptly titled "Fear Eats the Soul,"

> First came the teen male prostitution scares of the 1970s, followed by the AIDS terrors and the satanic ritual abuse and day-care panics of the 1980s. Beginning in the 1990s we have suffered a veritable avalanche. Reportage on violent pedophile predators, the perils of the Internet, the priest abuse scandals, the Michael Jackson trial, and so on made sex crime stories part of the furniture on twenty-four-hour news services, local television news stations, and even newspapers of record.
>
> (p. 3)

Direct application of moral panic to sex offenders was made by McAlinden (2006) in her article "Managing Risk: From Regulation to the Reintegration of Sexual Offenders." Under the heading "The media, 'moral panic' and 'populist punitiveness'," McAlinden remarked that

> Newspaper reporting of sexual offences has given the impression that there has been an unprecedented explosion in sexual crime and that women and children are increasingly at risk of attack by sexual monsters. . . . The sexual offender is demonized as a monster or fiend and is singled out above other dangerous offenders in society.
>
> (p. 199)

Bribiesca (2007) noted, "Author McAlinden first offers an examination of the socio-political context in which the 'law and order debate' occurs. Chief among the most influential factors is the media's creation of a 'moral panic' that clouds effective strategies amid fear-driven rhetoric" (p. 7).

What is crystal clear is that we have a perverse love–hate relationship with sexual crimes. When we do not feel personally threatened—when the crimes are far away or target a victim group that we are not a part of—sexual offenders and their offenses hold some peculiar fascination, and the weirder or more morbid the offenses (e.g., highly atypical paraphilias), the more fascinated we are by them. We are drawn to read about them, which is precisely why the news media treats them as highly "newsworthy." The "lite side" of child molestation even has entertainment value, most notably in the Dateline NBC reality TV series *To Catch a Predator*. In the dozen episodes between 2004 and 2007, we were treated to sting operations in which decoys pretending to be underage adolescents (generally in the age range of 12–15) lured unsuspecting adult males to their homes under the pretense of sex.

By contrast, when we feel personally endangered or feel that our children are endangered, the threat can grow into panic. And from panic, or the equivalently strong emotion of rage, the demand for corrective action leads inexorably to rapid political responses, often in the form of new or amended laws.

Social Amplification of Risk

The Social Amplification of Risk Framework (SARF), first reported in 1988, was a joint project of Roger and Jeanne Kasperson, Paul Slovic, Nick Pidgeon, Ortwin Renn and their many colleagues (e.g., Kasperson, Kasperson, Pidgeon, & Slovic, 2003; Kasperson et al., 1988; Pidgeon, Kasperson, & Slovic, 2003; Renn, Burns, Kasperson, Kasperson, & Slovic, 1992). Initially, the framework sought to integrate the disparate threads of research on risk perception and risk communication. Hazardous (or risky) events are largely without widespread impact unless *communicated* broadly. Moreover, since some hazardous events have much higher signal value than others (Slovic, 1987, 1992), precisely what is communicated (how the nature of the "risk" is defined in all of its dimensions) influences how it is *perceived*. In the ensuing 15 years, the literature on social amplification of risk has mushroomed (for a poor choice of metaphors). The research literature has generally focused on global diffuse hazards (e.g., extreme meteorologic or geologic events), rare catastrophes (e.g., the explosion of the Challenger Space Shuttle in 1986, the Three Mile Island Nuclear Power Plant accident in 1979, the

Chernobyl Nuclear Power Plant disaster in 1986, and the 2011 earthquake, tsunami and nuclear power plant disaster in Fukushima, Japan), and biocidal hazards associated with the use of herbicides, pesticides, toxic solvents, preservatives and disinfectants.

The heart of SARF is communication. Kasperson et al. (2000) described the structure of SARF thusly: "Social amplification of risk denotes the phenomenon by which information processes, institutional structures, social-group behavior and individual responses shape the social experience of risk, thereby contributing to risk consequences" (p. 237). In this framework, "signal amplification in communications" is critical. Kasperson et al. (2000) stated that "information systems" can "amplify risk events" by "intensifying or weakening signals that are part of the information that individuals and social groups receive about risk; or filtering the magnitude of signals with respect to the attributes of the risk and their importance" (p. 237). As Kasperson et al. (2000) make clear, risk *cannot* be quantified in any "true" or absolute sense; by the same token, the socially amplified "distortion" of risk *cannot* be quantified in any absolute sense.

In the interest of full disclosure, SARF is not without its critics (e.g., Rayner, 1988; Rip, 1988). Rayner (1988), for instance, has criticized the use of amplification as a metaphor, suggesting that it implies the existence of a "true" baseline risk which is then "amplified" (distorted by magnification). Rip (1988) has expressed concern that a focus on "amplification" may have a secondary effect of exaggerating risk.

The impossibility of auguring "true" risk is most clearly evident in the case of criminal violence, wherein the assessment of the probability and magnitude of the behavior are subject to numerous factors that cannot be predicted with any precision (e.g., situational events and victim response). Similarly, distortion of risk is subject to two factors that render it unquantifiable in any meaningful sense: the nature of the distortion is highly variable across information systems, and the filtering of the same risk information by each individual will impact differently (by virtue of personal life experience and by virtue of social and group effects).

Application of SARF, or some variant of SARF, to criminal events is much more infrequent, though clearly as applicable. The overwhelming focus of the literature, criminology as well as psychology, has been on fear of victimization, typically gathering survey data from individuals. Most past analysis, then, has been on what might loosely be called *intra-psychic* amplification (i.e., individual fear of crime), rather than on *social* amplification. The distinction is real. Indeed, Warr (2000) questioned whether fear should—or could—be regulated or controlled (a societal intervention, not a therapeutic one). For Mark Warr, altering fear means altering perceived risk of crime. The goal, at least in theory, is making perceived

risk more congruent with objective risk (Warr, 2000). There are innumerable ways, some intentional, others presumably inadvertent, that fear is inflamed, and Warr (2000) discusses many of them:

> The mass media are thus a powerful amplifying mechanism when it comes to crime; information known only to a few can within hours or days become known to thousands or millions. What is the image of crime presented in the mass media? A number of forms of distortion in news coverage of crime have been identified and documented, distortions that tend to exaggerate the frequency and the seriousness of crime. In the real world, for example, crimes occur in inverse proportion to their seriousness; the more serious the crime, the more rarely it occurs. Thus, in the United States, burglaries occur by the millions, robberies by the hundreds of thousands, and homicides by the thousands. In news coverage of crime, however, the emphasis is on "newsworthiness," and a key element of newsworthiness is seriousness; the more serious a crime, the more likely it is to be reported. By using seriousness as a criterion, however, the media are most likely to report precisely those crimes that are least likely to occur.
>
> (p. 467)

> There are entire industries in the United States that rely on fear of crime to sell products and services, from home security systems, anti-auto theft devices, and travelers checks to personal security devices (sprays, alarms, and other weapons), property insurance, and cellular phones. Some firms are responsible and circumspect in the claims they make for their products. Others deliberately exaggerate or dramatize the risks of criminal victimization in an effort to frighten potential purchasers into buying products, some of which are of questionable utility.
>
> (p. 478)

There is no law, of course, against using fear of crime as a sales tool, and the rule of *caveat emptor* applies to crime prevention as much as any other realm of commerce.

But there is something deeply cynical about exploiting people's concern for their safety (and their loved ones) for monetary reasons. If only as a research question, it would be intriguing to know whether certain segments of the population—the aged, those who live alone (widows and widowers), students, young women—are targeted by such industries for special attention and the degree to which fraudulent claims are used to sell products and services. To be sure, one of the strange ironies of life is that, even if they *are*

> fraudulent and unnecessary, such products may actually function to reduce fear among those who decide to invest in them.
>
> If fear is useful as a sales device, it also has value to politicians, who are sometimes quick to exploit it as a political tool. By some accounts, the 1968 election campaign of Richard Nixon, with its emphasis on law and order, was the first to capitalize on crime and fear of crime for political advantage. In the Bush/Dukakis presidential contest, the infamous Willie Horton commercials appeared to play a pivotal role. Today crime continues to figure heavily in local and national political campaigns, and there appears to be little prospect for change. In a just world, the cynical exploitation of fear for political purposes would be appreciated for what it is. Yet, if nothing else, the eagerness of political figures to capitalize on public fear of crime is testimony to its central place in modern life.
>
> (p. 480)

With reference to Warr's (2000) admonition about exploiting fear of crime by marketing so-called crime prevention devices or products to a naïve public, there are many "anti-rape devices" that have been developed and marketed as well (Murano, 2013).[1] Most of these devices were created in India or South Africa, countries with exceptionally high rates of rape. Two of these devices come from Sweden (#2 and #4), and one comes from China (#3). Needless to say, it is highly unlikely that these devices have been "product tested." What is most remarkable is that *all* of these devices, except for #7, *require* intimate physical contact with the victim. In other words, the sexual assault has already begun. It is inexplicable why a victim would choose a device for protection that would require the assault to go that far (i.e., most of these devices require some degree of vaginal penetration for the device to work), when she could carry mace or a stun gun. Moreover, many of these devices are highly invasive and could cause physical injury to the victim (as well as to the rapist). Given the close physical "proximity" of the offender to the victim, the pain from these devices might well instigate a violent physical attack on the victim that results in further serious injuries.

As highlighted above, prevailing wisdom is that *experience* is a vital determinant of perceived risk (Slovic, Fischhoff, & Lichtenstein, 1982). Biased experiences often lead to inaccurate perception of risk. As Slovic et al. (1982) noted, "Unfortunately, much of the information to which people are exposed provides a distorted picture of the world of hazards" (p. 467). News media coverage of sexual crimes often falls squarely in the camp of biased experience. Warr's (2000) comments above point to the "bottom line" bias of the news media in covering horrific crimes—what draws readership enhances the bottom line, i.e., sales/revenue. When our

perceptions of risk of sexual assault are shaped by biased information, our judgment of the magnitude of the risk is likely to be "amplified." Indeed, the availability heuristic would suggest that the very discussion of sexual assault can have the effect of increasing its "imaginability," and thus its perceived risk. Does that mean we adopt the Ostrich strategy? No, of course not. Indifference is avoidance. *Informed* probabilistic judgment is required. In the area of sexual crime, however, informed judgment is more difficult than with most other areas where assessment of risk may be required (e.g., medical side effects of a drug, food contaminants, toxic chemicals in well or ground water, radiation hazards from X-rays, CT scans, or airport body scanners). There are no warning labels or package inserts when it comes to sexual assault, and few, if any, empirically informed, routinely updated, objective sources of information on sexual assault that are readily available. To make matters worse, what fills the vacuum of informed, unbiased information are chilling accounts of isolated crimes.

Sutherland Cycle: Crafting Law in Response to Panic

In his classic article on the diffusion of sex offender laws, Edwin Sutherland (1950a) described the pattern of events that lead to the enactment of these laws. The first event that Sutherland described is a "state of fear" that has "been aroused in a community by a few serious sex crimes committed in quick succession" (p. 144). More often than not, this "state of fear" or panic follows a particularly heinous sex crime, often the sexual murder of a child. The attention given to the crimes by the media exacerbates the fear, which then "readily bursts into hysteria" (p. 145). Sutherland argued that hysteria alone was insufficient to explain the enactment of these laws. Citizens driven by fear and outrage appeal to their legislators directly, or write letters to the news media, or complain vociferously to law enforcement, or band together in committees, or form community crime watches or crime patrols.

Politicians, reacting to public fear and outrage, set up ad hoc committees to "study the problem." These ad hoc committees (Sutherland's 3rd factor) consist of "experts," such as lawyers and mental health professionals. The committees' mission of gathering "facts" (Sutherland's quotation marks) conveys, in his opinion, an appearance of scientific credibility for the recommendations issued by the committee. The committee's recommendations are incorporated into statutes that are intended to address the problem. The role of the public as a catalyst for these laws was clearly evident in the 1940s and 1950s. Apfelberg, Sugar, and Pfeffer (1944) remarked that "the community demands swift, severe punishment for all sex offenders, even when there is little or no injury to society" and

Deutsch (1950) noted that "action against sex crimes usually evolves in an atmosphere of hysteria; such action is often useless and frequently harmful" (cited in Karpman, 1951). A 1948 Massachusetts Report stated that "after a particularly revolting sex crime, the public clamors for harsher penalties" (cited in Sadoff, 1964, p. 249). The cycle that Sutherland described, beginning with fear and outrage from one or more particularly horrendous sex crimes, leading to public outcry, resulting in ad hoc committees that make recommendations, and ultimately producing new laws, has one final stage. Once enacted, the laws are on the books for some lengthy time until the crimes that gave rise to the laws have long since faded in memory, and for a variety of reasons the laws are repealed—until the next horrendous sex crime when the cycle begins anew.

Cass Sunstein (2005) provided a somewhat more simplified version of Sutherland's cycle. Sunstein posed the following question: "Some statistically large risks do not cause a great deal of fear. In many communities, the risks associated with tobacco smoking (a killer of hundreds of thousands of Americans annually) are not salient at all. Why is this?" (p. 92). Sunstein's (2005) answer:

> The question suggests the need to attend to the social and cultural dimensions of fear and risk perception. In many cases of high-visibility, low-probability dangers, such as sniper attacks, shark attacks, and the kidnapping of young girls, the sources of availability are not obscure. The mass media focus on those risks; people communicate their fear and concern to one another; the widespread fact of fear and concern increases media attention; and the spiral continues until people move on.
>
> (pp. 92–93)

Sunstein characterized this in *Laws of Fear* (2005) as "Fear as Wildfire." The governing principle is the availability heuristic (discussed in Chapter 5), the ease with which we can conjure up thoughts or imagine possibilities about some event. The more readily such thoughts come to mind, the more important they must be. Although Galliher and Tyree (1985) were dismissive of Sutherland's explanation for the diffusion of sex offender legislation, there seems to be considerable evidence, experiential if not empirical, to support it. We acknowledge Galliher and Tyree's (1985) observation about the great diversity in media coverage of sex crimes; such diversity would be expected. The basic "elements" of the cycle, however, seem indisputable.

Indeed, the pivotal role of the media in promoting widespread public reaction to crime—often fear—and the connection between public response and legislation were noted in the Report by the President's