

## **Integrating a Trauma-Informed Response In Sexual Violence Prosecutions**

*AEquitas*<sup>1</sup>: The Prosecutors' Resource on Violence Against Women

### **INTRODUCTION**

The most significant injuries suffered by victims of sexual violence are often those least visible. Perpetrators use pre-existing relationships, trust, a victim's alcohol or drug use, or perhaps a victim's engagement in criminal activity, to name a few, to create vulnerabilities that enable them to commit crimes or escape accountability. These vulnerabilities, the trauma associated with the experience of the assault itself, as well as the guilt, self-blame, embarrassment, fear, and other emotions, may have long-lasting psychological wounds deeper than most any physical injury the victim may have suffered during the assault.

Traumatic stress is often acknowledged as an expected or reasonable response to exposure to war or other forms of extreme violence, such as shootings or stabbings. Sexual assaults committed by strangers may be commonly accepted as the type of violent event that may trigger symptoms of trauma. But the trauma caused by nonstranger sexual assault, stalking<sup>2</sup> and intimate partner sexual assault, sexual assaults of unconscious or intoxicated victims, and sexual exploitation or trafficking, where coercion is often subtle. It is often misunderstood and mitigated or overlooked by even experienced professional responders. This disparity can discourage victims from reporting and from seeking help, and can also re-traumatize victims who do come forward if their disclosures are minimized, criticized, or not believed.

This article will discuss how prosecutors use trauma-informed approaches to sexual violence to support victims, build stronger cases, and pursue justice. It suggests strategies to more effectively integrate a trauma-informed response to the investigation and prosecution of sexual violence.

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<sup>1</sup> This article was adapted by Charlie Whitman-Barr, from Viktoria Kristiansson & Charlene Whitman-Barr, *Integrating a Trauma-Informed Response in Violence Against Women and Human Trafficking Prosecutions*, 13 STRATEGIES 1 (Feb. 2015), available at [www.aequitasresource.org/library.cfm](http://www.aequitasresource.org/library.cfm).

<sup>2</sup> Notably, there is a strong connection between domestic violence and stalking. "Seventy-four percent of individuals who were stalked by a former intimate partner experienced violence or coercive control during the relationship and eighty-one percent of individuals stalked by a former or current intimate partner experienced physical assault during the relationship." See Aily Shimizu, *Domestic Violence in the Digital Age: Towards the Creation of a Comprehensive Cyberstalking Statute*, 28 BERKELEY J. GENDER L. & JUST. 116, 117 (Winter 2013) (citing *Intimate Partner Stalking*, NAT'L INST. OF JUSTICE, <http://www.nij.gov/nij/topics/crime/intimate-partner-violence/stalking/welcome.htm> (last visited Dec. 15, 2014)).

## TRAUMA CAUSED BY SEXUAL VIOLENCE

Trauma is an experience or situation that is emotionally and/or physically painful and distressing, and includes a response that is characterized by intense feelings.<sup>3</sup> In the immediate short-term following trauma, typical reactions can include shock and denial.<sup>4</sup> In the longer term, reactions can include unpredictable feelings and emotions, flashbacks, headaches and nausea, and relationships that are strained.<sup>5</sup>

Victims of sexual violence experience trauma that manifests in many different ways, including fear, concern for the safety of themselves and others, embarrassment, shame, and self-blame that can overwhelm their ability to cope. Many “cope” by trying to ignore the victimization or to accept it as an inevitable part of their lives. For example, victims may report freezing<sup>6</sup> during the assault either because of fear, disbelief at the commission of the crime, or shock at the identity of their perpetrator. Some cope through efforts to deny the victimization.<sup>7</sup> As a result of the trauma and its short- and long-term impact, many victims of sexual violence are unable to seek help or report to authorities.<sup>8</sup>

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<sup>3</sup> Traumatic events are more extreme versions of stressful events and the effects of stress are alleviated when the stressor is removed. The effects of traumatic events continue well after events have passed, but the memory of the event lingers on. Shock and strain may continue, and often the body never fully recovers. Trauma can stay in the brain forever and this can impact the victim in different emotional and physical ways. See THE ISRAEL CENTER FOR THE TREATMENT OF PSYCHOTRAUMA, <http://www.traumaweb.org/content.asp?PageId=58> (last visited Dec. 19, 2014); KENNETH R. YEAGER AND ALBERT R. ROBERTS, DEP’T OF PSYCHIATRY, OHIO STATE UNIVERSITY, DIFFERENTIATING AMONG STRESS, ACUTE STRESS DISORDER, CRISIS EPISODES, TRAUMA, AND PTSD: PARADIGM AND TREATMENT GOALS (2003), <http://btci.edina.clockss.org/cgi/reprint/3/1/3.pdf>.

<sup>4</sup> *Trauma*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <http://www.apa.org/topics/trauma/> (last visited Dec. 19, 2014).

<sup>5</sup> *Id.*

<sup>6</sup> Webinar Recording by Rebecca Campbell, *The Neurobiology of Sexual Assault*, <http://nij.gov/multimedia/presenter/presenter-campbell/Pages/presenter-campbell-transcript.aspx> (recorded Dec. 3, 2012).

<sup>7</sup> See Sandra Bloom, *Understanding the Impact of Sexual Assault: The Nature of Traumatic Experience* in SEXUAL ASSAULT: VICTIMIZATION ACROSS THE LIFESPAN 405-32 (A. Giardino et al. eds., GW Medical Publishing 2003), [http://www.sanctuaryweb.com/PDFs\\_new/Bloom%20Understanding%20impact%20sexual%20assault.pdf](http://www.sanctuaryweb.com/PDFs_new/Bloom%20Understanding%20impact%20sexual%20assault.pdf); see also Audrey Rogers, *Prosecutorial Use of Expert Testimony in Domestic Violence Cases: From Recantation to Refusal to Testify*, 8 COLUM. J. GENDER & L. 67 (1998).

<sup>8</sup> See ANDREW R. KLEIN, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, PRACTICAL IMPLICATIONS OF CURRENT DOMESTIC VIOLENCE RESEARCH: FOR LAW ENFORCEMENT, PROSECUTORS AND JUDGES 5 (June 2009), <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>; “Most cases of domestic violence are never reported to the police.” NAT’L COALITION AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE FACTS (2007), [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf) (citing I.H. Frieze & Browne, A., *Violence in Marriage* (In L.E. Ohlin & M.H. Tonry eds., University of Chicago Press 1989)).

Over the last several decades, sexual violence prosecutors have carefully reviewed practices with the goal of better integrating an understanding of trauma into their responses. For example, a greater understanding of victim behavior has led to the passage of state statutes and other laws allowing for the introduction of expert testimony to explain victim behaviors to judges and juries.<sup>9</sup>

## THE TRAUMA-INFORMED APPROACH

### A trauma-informed response requires the following elements:

- Fully acknowledge the trauma caused by the current victimization and its impact on the victim and her/his family;
- Recognize professionals' and society's tendency to minimize gender based violence and human trafficking crimes involving nonstranger offenders, alcohol, sexually exploited victims, and crimes committed without using traditional weapons such as knives or guns;
- Consider the likelihood that the victim may also have experienced significant past trauma that may be independent or may cross over, or be otherwise related to the current victimization, and contemplate the impact of this past on the victim's current response to trauma; and
- Respond in a manner that fully supports the victim and avoids any re-traumatization.<sup>10</sup>

### Multidisciplinary Response Required

A multidisciplinary response is a core component of a trauma-informed approach throughout the continuum of the criminal justice response. In sexual violence cases, the multidisciplinary response often takes the form of a community-based sexual assault response team (SART). SARTs are an invaluable resource for prosecuting

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<sup>9</sup> See e.g., Brief of Amicus Curiae Pennsylvania Coalition Against Rape in Support of Appellant, Commonwealth v. Olivo, 127 MAP 2014 (Pa. 2014), <http://www.aequitasresource.org/Olivo-Amicus.pdf>; Commonwealth v. Olivo, 127 A.3d 769 (Pa. 2015).

<sup>10</sup> There are a number of resources available to help jurisdictions to build and/or refine their existing practices. For example, see Webinar Recording by Chic Dabby and Cindy Liou, *Survivor-Centered, Trauma-Informed Advocacy and Services for Human Trafficking Victims*, <http://www.apiidv.org/resources/webinars.php> (recorded Oct. 11, 2012); ALISA KLEIN, NAT'L SEXUAL VIOLENCE RESOURCE CENTER, LOUISIANA FOUNDATION AGAINST SEXUAL ASSAULT, SEXUAL VIOLENCE IN DISASTERS: A PLANNING GUIDE FOR PREVENTION AND RESPONSE, [http://www.nsvrc.org/sites/default/files/Publications\\_NSVRC\\_Guides\\_Sexual-Violence-in-Disasters\\_A-planning-guide-for-prevention-and-response\\_0.pdf](http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Guides_Sexual-Violence-in-Disasters_A-planning-guide-for-prevention-and-response_0.pdf); *Trauma-Informed Care Toolkits*, ACES CONNECTION, <http://www.acesconnection.com/blog/trauma-informed-care-toolkits-1> (last visited Dec. 19, 2014); *Module 1: Understanding the Impact of Trauma*, TRAUMA INFORMED CARE: PERSPECTIVES AND RESOURCES, <http://trauma.jbsinternational.com/traumatool/Module1.html> (last visited Dec. 19, 2014).

sexual violence crimes.<sup>11</sup> Many operate with input from survivors, which “can significantly enhance the effectiveness of the community’s response” to crimes by highlighting offender/victim behaviors and trends in a local community, keeping professionals’ focus on the survivor, and providing a level of comfort for other survivors.<sup>12</sup> Prosecutors should take a leadership role to identify and encourage collaboration with leading experts in these multidisciplinary fields in order to better understand the victim’s experience and to develop deeper insight into the evidence in a sexual assault case.<sup>13</sup>

Crimes involving non-stranger offenders, which constitute a significant percentage of sexual violence crimes, call for response teams to address victims’ specific needs and SARTs and other multidisciplinary teams offer specialized sexual assault intervention services.<sup>14</sup> These response teams “strategize, resolve problems, and make changes within the system in order to improve the community’s response to” these crimes, but they are not immune to their own challenges.<sup>15</sup> The challenges associated with trauma-informed care occur not because communities are not responding collaboratively, but because, even when trauma-informed, cases involving non-stranger offenders are still often misunderstood, minimized, or overlooked.

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<sup>11</sup> See, e.g., *Anti-Human Trafficking Task Force Initiative*, BUREAU OF JUSTICE ASSISTANCE, [https://www.bja.gov/ProgramDetails.aspx?Program\\_ID=51](https://www.bja.gov/ProgramDetails.aspx?Program_ID=51) (last visited Dec. 19, 2014); COMMUNITY ORIENTED POLICING SERVICES, COMMUNITY POLICING DEFINED, <http://www.cops.usdoj.gov/Publications/e030917193-CP-Defined.pdf> (last visited Dec. 19, 2014); and COMMUNITY POLICING CONSORTIUM, UNDERSTANDING COMMUNITY POLICING: A FRAMEWORK FOR ACTION (Aug. 1994), <https://www.ncjrs.gov/pdffiles/commpp.pdf>.

<sup>12</sup> Survivor input has many benefits beyond those mentioned in this article. See, e.g., *Survivor Led Organizations*, GEMS, <http://www.gems-girls.org/survivor-leadership/resources/survivor-led-organizations> (last visited Dec. 19, 2014). See also *supra* note 13.

<sup>13</sup> Rebecca Campbell et al., *Adolescent Sexual Assault Victims and the Legal System: Building Community Relationships to Improve Prosecution Rates*, 50(1-2) AM J COMMUNITY PSYCHOL 141-54 (2011); Rebecca Campbell et al., *Prosecution of Adult Sexual Assault Cases: A Longitudinal Analysis of the Impact of a Sexual Assault Nurse Examiner Program*, 18(2) VIOLENCE AGAINST WOMEN 223-44 (2012). See *Sexual Assault Justice Initiative Annotated Bibliography*, AEQUITAS (2017).

<sup>14</sup> SARTs have “a multidisciplinary interagency team of individuals working collaboratively to provide services to the community.” *Sexual Assault Response Teams*, NATIONAL SEXUAL VIOLENCE RESOURCE Center, <http://www.nsvrc.org/projects/sexual-assault-response-teams-sart-0> (last visited Dec. 19, 2014).

<sup>15</sup> *Coordinated Community Response Teams*, OKLAHOMA DISTRICT ATTORNEYS COUNCIL, [http://www.ok.gov/dac/Grants/Coordinated\\_Community\\_Response\\_Teams/index.html](http://www.ok.gov/dac/Grants/Coordinated_Community_Response_Teams/index.html) (last visited Dec. 15, 2014).

### **Practice Tip**

Across these coordinated efforts, however, the response may become siloed.<sup>16</sup> Professionals sometimes focus so much on their specific victim population that they fail to screen for co-occurring crimes or other victimization. This can occur, for example, when assault victims' responses indicate human trafficking and are not followed-up on, or when domestic violence victims are not asked about sexual violence.<sup>17</sup> A comprehensive trauma-informed approach should train triage professionals – who ask the questions about current facts and relevant history – as well as first responders to work with victims and avoid re-traumatizing them. Such trainings should take into account that all responders bring their own biases to the work that impact their ability to listen and to identify potential victimization. Even inadvertently, these biases may result in victim blaming and ultimately lead to a minimization of the offender's culpability.

### **Trauma-Informed Investigation and Prosecution**

Victims play a central role in the criminal justice process, but they are also individuals who come into the case with unique needs and life circumstances. A trauma-informed response recognizes this duality and applies practices that respect the singularity of every victim's experience. In the effort to individualize approaches with victims, it is important to assess their past experiences with the justice systems to reinforce the positive interactions and repair the harmful experiences. Victims may be reluctant to report, or they may be concerned that they will not be believed, will encounter harassment or retaliation by perpetrators, their families, or other associates. Investigators and prosecutors can take affirmative steps to understand a victim's feelings about their own victimization.

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<sup>16</sup> "Siloed approach" refers to the lack of a coordinated response to sex trafficking and interrelated violence against women.

<sup>17</sup> Opportunities to screen for types of victimization exist at various points of entry, such as when victims engage with medical professionals or when sexually exploited women present as defendants. It is incumbent upon medical and justice system professionals to tailor questions, responses, and follow-up in a trauma-informed manner that delves beneath the surface of existing health and other issues, and comprehensively explores the circumstances surrounding the patient, or arrest and history of the exploited defendant. See, e.g., Lynn Stevens, Barbara Sheaffer, *Screening for Sexual Violence: Gaps in Research and Recommendations for Change*, VAWNET.ORG, [http://www.vawnet.org/applied-research-papers/print-document.php?doc\\_id=1191](http://www.vawnet.org/applied-research-papers/print-document.php?doc_id=1191) (last visited Dec. 19, 2014); Nadejda Beshpalova, Juliet Morgan, & John Coverdale, *A Pathway to Freedom: An Evaluation of Screening Tools for the Identification of Trafficking Victims*, ACADEMIC PSYCHIATRY (Nov. 15, 2014).



Well-trained and experienced criminal justice professionals have the adequate foundational knowledge through which to process information shared by the victim before they begin interviewing the victim regarding these issues.<sup>18</sup>

Law enforcement officers and prosecutors, in particular, must consider the continuum of trauma that victims experience and should institute practices that avoid and minimize trauma. These two groups are crucial components of a holistic response to sexual violence, and they frequently assist victims in accessing other crucial services. The nature of the response by law enforcement officers and prosecutors might also have a direct impact on victim's ultimate feelings of whether s/he was provided with meaningful access to justice after engaging with the justice system.<sup>19</sup> This is because, more than any others, police and prosecutors are identified by victims as the face of the justice system. Their collective response, therefore, may have a greater impact on the victim's trauma recovery and view of the system's ability to help her/him than any other professionals.<sup>20</sup>

For law enforcement and prosecutors, the ongoing need to apply trauma-informed practices spans the case's progress through the justice system response. Decisions like collaborating with other professionals and experts, determining whom to interview and what to ask those potential witnesses, charging certain crimes, keeping in contact with the victim at every stage of the process, filing pretrial motions, and employing a certain trial strategy should all be approached with a consciousness of the impact that responders' choices have on victims and witnesses. For example, the filing of a pretrial motion to allow an advocate to sit near a victim when testifying can demonstrate that the prosecutor will pursue all available legal avenues to support the victim during the trial.<sup>21</sup> In addition, the prosecutor's referral of the victim to other service providers can demonstrate concern for the victim's overall health and well-being.<sup>22</sup> If law enforcement and prosecutors fail to respond in a trauma-informed manner, the victim's fears – that no one believes or supports her/him – may be realized.

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<sup>18</sup> See, e.g., *Trauma Informed Sexual Assault Investigation Training*, INTERNATIONAL ASSOCIATION OF CHIEFS POLICE, <http://www.theiacp.org/Trauma-Informed-Sexual-Assault-Investigation-Training> (last visited Dec. 19, 2014).

<sup>19</sup> Jennifer G. Long & Elaine Nugent-Borakove, *Beyond Conviction Rates: Measuring Success in Sexual Assault Prosecutions*, 12 STRATEGIES (Apr. 2014), available at [www.aequitasresource.org/library.cfm](http://www.aequitasresource.org/library.cfm).

<sup>20</sup> See, e.g., Bonnie Bucqueroux, *What Community Policing Teaches Us About Community Criminal Justice*, POLICING.COM, <http://www.policing.com/articles/pdf/ccj.pdf>.

<sup>21</sup> Contact AEquitas for assistance in developing motions.

<sup>22</sup> See, e.g., Kristiansson & Trujillo, *supra* note 27. Truly being trauma informed calls for more than a referral in the form of, for example, a pamphlet or a phone number. The prosecutor should offer privacy and time so the victim can call the agencies and offer to place the call from her/his office to ensure the victim is able to call in a timely manner.

During victim interviews and when preparing victims for direct and cross-examination, prosecutors should proceed with a consciousness that each of the stages may trigger traumatic memories that could exacerbate the trauma. Prosecutors must balance their need to elicit detailed information about the crime with the victim's comfort level. It can be helpful to have an advocate or other support person with the victim during interviews and at trial and, as much as possible, to pay attention to the victim's emotional state and identify when s/he may need a break. Victims must be prepared for aggressive cross-examination. Prosecutors should explain the role of the defense attorney, the goal of cross-examination (which is often to discredit the victim), and how questions will be phrased in a leading manner. Stress the importance of honesty and clarity, so if a defense attorney's leading question cannot be answered truthfully with a yes or no, the victim should simply say so.

Trauma is often shrouded in secrecy and denial around its roots, so the prosecutor should try to obtain an understanding of the victim's history, as it may help explain the victim's reactions to the assault and her/his processing of the associated trauma. It is important for the prosecutor to know about this information in advance of trial to prevent or minimize re-traumatization of the victim, and to elicit testimony about victim behavior and trauma from an expert so fact finders have the proper context through which to process victim testimony.

In the event of a conviction, sentencing is also a time to continue to plan for the victim's safety and ensure that s/he remains engaged with advocates and other professionals who can provide services and support.<sup>23</sup> To prepare the victim, the prosecutor should discuss the range of the possible sentence and explain what a sentence of jail, prison, parole, or probation would entail. Possible special conditions should also be discussed, as perhaps the victim has some requests or concerns.<sup>24</sup> The victim may share these concerns her/himself, or ask the prosecutor to share them with the court.<sup>25</sup>

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<sup>23</sup> Although many states have crime victim compensation programs that may cover medical bills, counseling, and other expenses related to crime victimization, the prosecutor should ask the victim for a list of expenses and those anticipated in the future so the prosecutor can seek restitution on the victim's behalf. Expenses may include dental care, medical care, prescriptions, counseling, rehabilitation, work lost, lost support, caregiver work loss, crime scene clean up, funeral or burial expenses, and other costs incurred as a result of victimization.

<sup>24</sup> See, e.g., *About Victim Rights*, OFFICE OF JUSTICE PROGRAMS: VICTIM LAW, <https://www.victimlaw.org/victimlaw/pages/victimsRight.jsp> (last visited Dec. 19, 2014).

<sup>25</sup> See, e.g., *Victim Impact Statements*, THE NATIONAL CENTER FOR VICTIMS OF CRIME, <http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/victim-impact-statements> (last visited Dec. 19, 2014).

## CONCLUSION

By viewing sexual violence cases through the lens of trauma, investigators and prosecutors can refine their responses and support victims throughout the criminal justice process and beyond. Responding in a trauma-informed manner minimizes the impact of a victim's past harms suffered while consciously avoiding causing additional trauma, and allows prosecutors to simultaneously focus on some of the most dangerous offenders. Law enforcement and prosecutors who conduct thoughtful and effective interviews will be better able to explain victim behavior to their multidisciplinary professional colleagues and partners, and, ultimately, to judges and juries. People who have experienced trauma in their lives can and do recover and heal, especially when the professionals charged with responding to traumatic crimes do so in a supportive and informed manner. Supporting victims is a moral and professional responsibility, and leads to better prosecution and, thus, improved community safety.

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