7th Annual Domestic Violence Symposium - "On Violence, Trauma and Culture"

Agenda – Thursday, September 10, 2015

TIME	Title of Program	Click on link for materials – if there is no link , no materials were received at the time of publication, or materials will be handed out in hard copy.
7:30 – 8:15	**Registration, Breakfast & Coffee**	
8:15-8:45	**Welcome & Introductions**	
8:45-9:30	**Plenary 1 – Praxis Makes Perfect**	Plenary 1 Materials
9:30-9:45	**Break**	
9:45-10:45	**Plenary 2 - The Impact of Physical and Sexual Violence: A Personal Journey Revealed**	Plenary 2 Materials
10:45-11	**Workshop Instructions and Coffee Break**	
11-12:30	**WORKSHOPS – Session 1**	
1A	**Exploring Trauma & Dissociation: What This Means for your Work**	Session 1A Materials
1B	**Buyer Beware: A Partnership to End Commercial Sexual Exploitation**	Session 1B Materials
1C	**What We Can Learn from Turned Around Custody Cases** *Will Repeat on Thursday, Session 3C*	Session 1C Materials
1D	**Shifting the Paradigm for Addressing Trauma Victimization: The Forensic Experiential Trauma Interview (FETI) Part I** *(Part II will take place in Session 2D; Will repeat on Friday, Sessions 5D/6D)*	
1E	**Poverty, Trauma and Self-efficacy: Applying an Empowerment Framework in Chronic Neglect**	Session 1E Materials
1F	**Cultural Differences as a Resource for All of Us: What does the US have to learn from Gender-based violence work in the Middle East?**	Session 1F Materials
1J	**Firearms Forfeiture: Safeguarding Victims and the Community While Protecting Defendant Rights** *Attendance restricted to judicial officers*	
12:30-1:30	**Lunch (provided onsite)**	
	Judicial Luncheon with Judge Berns	
1:30-3	**WORKSHOPS – Session 2**	
2A	**Representing Survivors who have Experienced Trauma**	Session 2A Materials
2B	**Real-World Strategies For Working With Domestic Violence Victims From Marginalized Communities**	
2C	**Working Effectively with Interpreters**	
2D	**Shifting the Paradigm for Addressing Trauma Victimization: The Forensic Experiential Trauma Interview (FETI) Part II**	
2E	**Key Concepts of Brain Development and Strengthening Executive Function Skills in Children Facing Adversity**	Session 2E Materials
2F	**Calling the Elephant Out: Uncovering Shame and Silence in African American Faith Communities**	Session 2F Materials
2G	**Self-Defense and Primary Aggressor Determination**	

(over)

"On Violence, Trauma and Culture"

Agenda – Thursday, September 10, 2015 (continued)

TIME	Title of Program	Click on link for materials – if there is no link , no materials were received at the time of publication, or materials will be handed out in hard copy.
3-3:15	**Break**	
3:15-4:45	**WORKSHOPS – Session 3**	
3A	**Best Practices for Law Enforcement: Immigrant Crime Victims, Language Access, and the U Visa**	Session 3A Materials
3B	**Firearms Forfeiture in Domestic Violence Cases: A Collaborative Approach to Protecting DV Survivors and Community Safety**	
3C	**What We Can Learn from Turned Around Custody Cases** *(Repeat from Session 1C)*	Session 3C Materials
3D	**Alcohol-facilitated Sex Assault** *(Will repeat in Session 4D)*	Session 3D Materials
3E	**How Can We Include ACEs in Trauma Assessments to Help Parents in Dependency Cases?**	
3F	**Gender-based Violence in Tribal Communities**	Session 3F Materials
3J	**Lessons Learned in Evaluation: A Case Study from LGBT Communities**	Session 3G Materials

NW Network ● Training & Technical Assistance

Praxis Makes Perfect

Experimentation and on-going learning are a central practice of anti-violence work. Learning from the margins and metabolizing trauma exposure will strengthen your work with all survivors.

The Anti-Violence field is first in nation to implement federal protections for sexual orientation and gender identity.

The Department of Health and Human Services and the Office on Violence Against Women have announced new requirements regarding access to services for LGBTQ survivors of domestic violence, sexual assault, dating violence and stalking.

The 2013 Violence Against Women Act (VAWA) reauthorization, championed by a national coalition of grassroots anti-violence programs, LGBTQ groups, Tribal leaders and Immigrant rights groups, marked **the first ever federal legislation to protect sexual orientation and gender identity** and created important new protections for Native American and immigrant survivors.

Similarly, Family Violence Prevention Services Act (FVPSA) grant programs now require grantees to demonstrate their commitment to LGBTQ accessibility through policies aimed at creating safe and welcoming environments for LGBTQ survivors.

As a result, the anti-violence movement is poised to provide historic leadership as the first field in any sector to implement federal statute protections for sexual orientation and gender identity nationwide. At a convening of State DV Coalitions and FVPSA grant administrators in Baltimore last year, leaders echoed the commitment at the grassroots, welcoming the opportunity to ensure access and to affirm the movement's commitment to safety and self-determination for all survivors.

The movement to end domestic violence and sexual assault can draw upon decades of work in the field.

The movement to end domestic violence and sexual assault can draw upon decades of work in our diverse movement. LGBTQ culturally specific programs, such as the NW Network, the Network/La Red, NYC AVP/NCAVP, CUAV, the LA Gay and Lesbian Center and others, have developed advocacy practices that center the needs of diverse LGBTQ communities while providing leadership and technical assistance to the entire field. Meanwhile, organizations such as API Chaya, Casa Esperanza and the Asian Women Shelter have demonstrated how LGBTQ survivors' needs can be met within programs that also serve heterosexual survivors. Since the 1970's, prominent anti-violence thinkers have addressed homophobia and binary gender as integral tools

of the sexism and racism that lie at the root of gender violence. These histories converge to create a ready environment for praxis learning and innovation.

Previously, federal anti-violence legislation did not explicitly authorize services for lesbian, bisexual, trans* and gay people. Many states and municipalities would not fund services aimed at LGBTQ survivors, or refused to designate LGBTQ people as an underserved community. Many mainstream programs at the local level who openly welcomed LGBTQ survivors faced backlash from community groups and local funders without political cover from federal policy. Culturally specific LGBTQ programs withstood even greater barriers to funding and support. The new provisions provide vital institutional support and legitimize local programs' work to ensure access for LGBTQ survivors, especially those programs facing hostility from the community-at-large.

While most anti-violence programs welcome the federal policies, barriers remain. Many programs are functioning beyond capacity and must turn survivors away, others lack the cultural competence to provide meaningful services or have outdated shelter facilities that cannot meet the needs of residents. Technical assistance, training, expansions in program capacity and changes to build environments are needed across the field.

King County, once again, is on the cutting edge. Our collective work to end violence in King County have been strengthened from efforts led by the margins…from KCCADV's groundbreaking Demonstrate Access Project to the emerging movement to innovate shelter options and reenergize advocacy. **Learning from the margins helps all survivors.** ***Connie Burk, 2014***

Learn from the Margin & Trans*form Your Work:

It Takes A Village, People! Advocacy, Friends & Family and LGBTQ Survivors of Abuse
Proceed! Legal Toolkit LGBTQ Legal Toolkit for Advocates
DV VS. Legal Language
Assessment Tool Overview
Five Domains Of Well Being Great Tools from the Full Frame Initiative
King County Trans* Resource Guide
Creative Interventions Toolkit 300 pages of tools to help every-day people step up and address sexual assault and abuse in their families and social networks. Mimi Kim's epic work!
FarOut.org Friends are reaching out!
Trauma Stewardship TED Talk Featuring King County's own Laura van Dernoot Lipsky
King County Demonstrate Access Go, King County!!!!

LGBTQ Access Series
brought to you by the
National LGBTQ Training & Technical Assistance Initiative
A project of
The NW Network
of Bisexual, Trans, Lesbian & Gay Survivors of Abuse
www.nwnetwork.org
206.568.7777

The Impact of Physical & Sexual Violence

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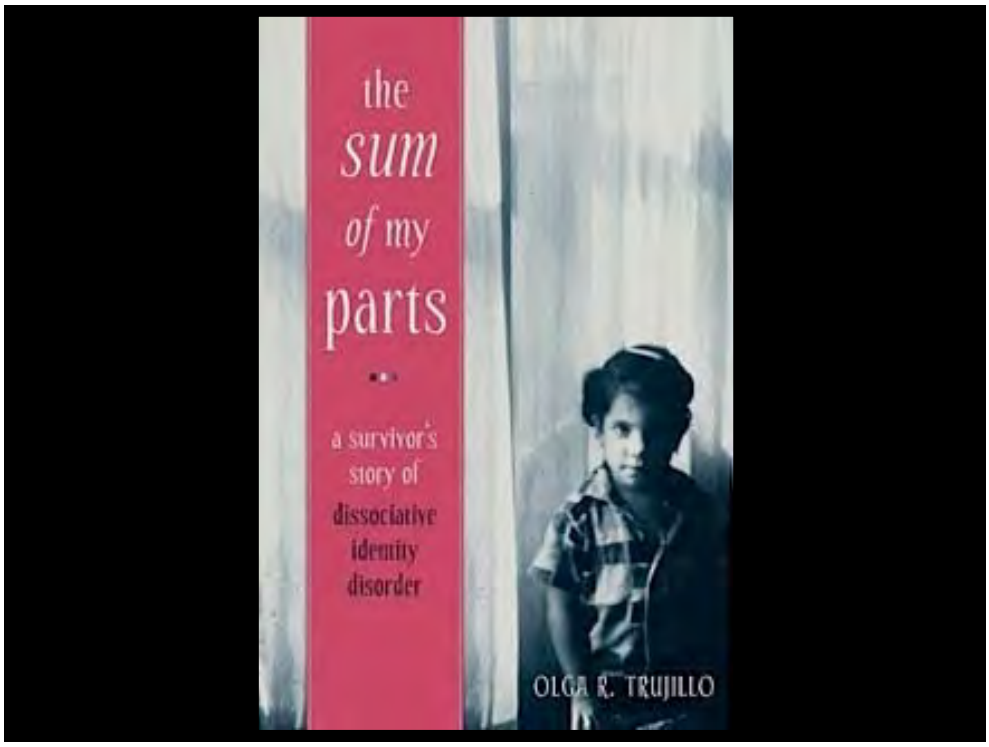
Examine the Impact

- Explore a lived experience of violence…
- Show pictures
  - What was happening in our home
  - What was happening outside our home
  - What was happening in my head
- Gently explore violence and trauma
- Show you how trauma sounds, looks and feels


the
sum
of my
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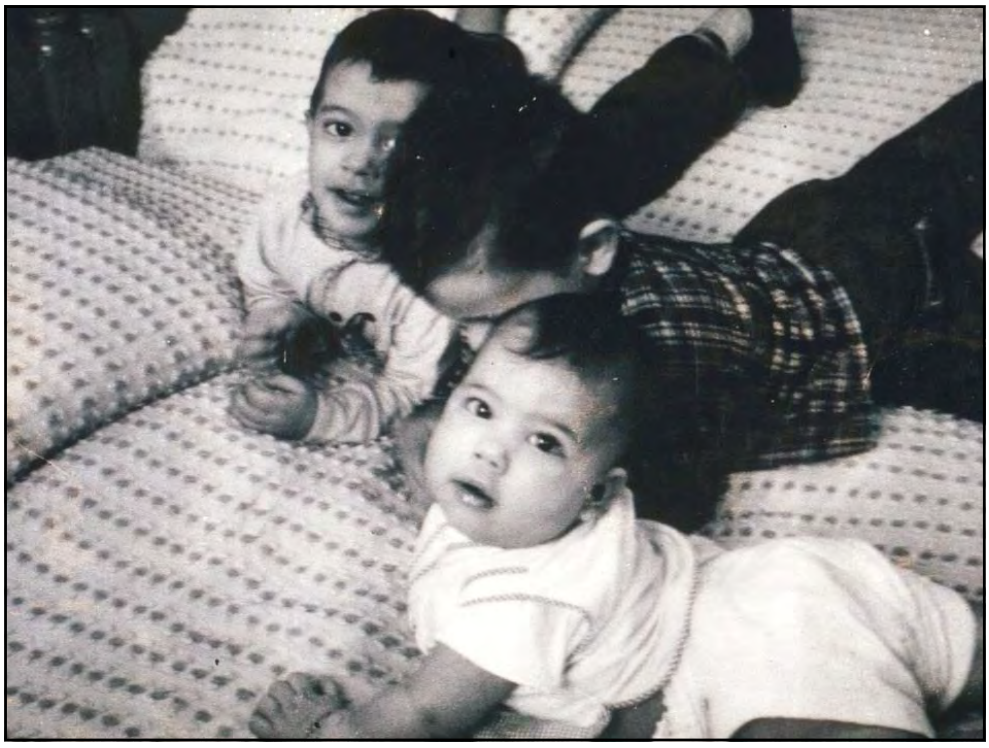
a survivor's
story of
dissociative
identity
disorder
OLGA R. TRUJILLO



A Couple of Points

- You make a big difference in people's lives
- Despite all they have been through they can have "normal" happy lives
- You can help (and you do help)
- You can't "fix it"

Questions

Exploring Trauma: What this Means for Your Work

Olga Trujillo

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Goals

- Enhance your knowledge of trauma
- Examine trauma from the outside and from the inside-out
- Explore the ways that you could better account for trauma in your work with survivors of violence

Psychological Trauma

Trauma is the unique individual experience of an event or enduring condition in which:

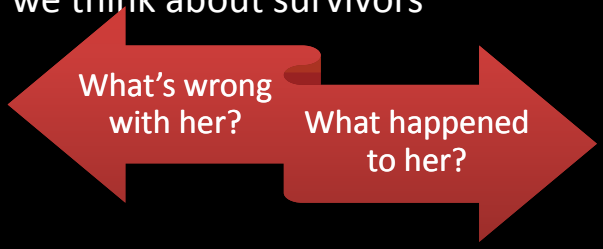
- The individual's ability to integrate his or her emotional experience is overwhelmed

OR

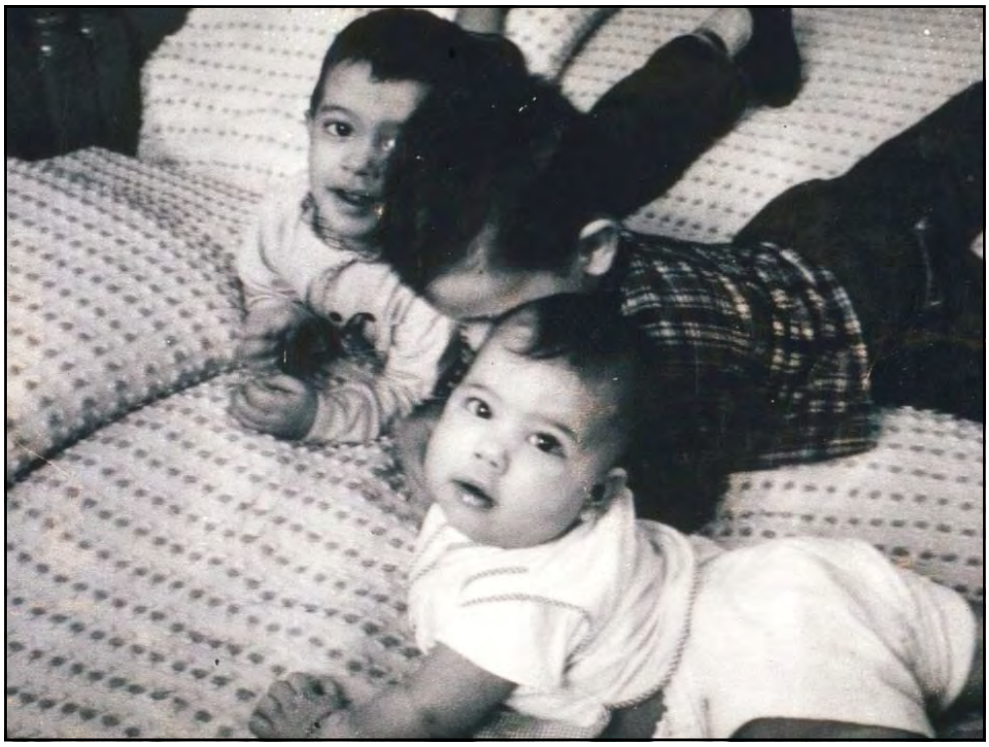
- The individual experiences a threat to life, bodily integrity or sanity

Why Consider Trauma?

- Understand normal human response to violence
- Shift how we think about survivors

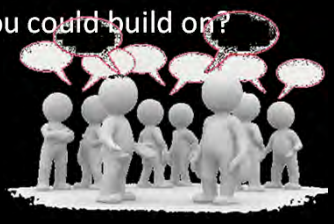


- We can identify biological, emotional, cognitive and interpersonal effects
- Improve our work with survivors

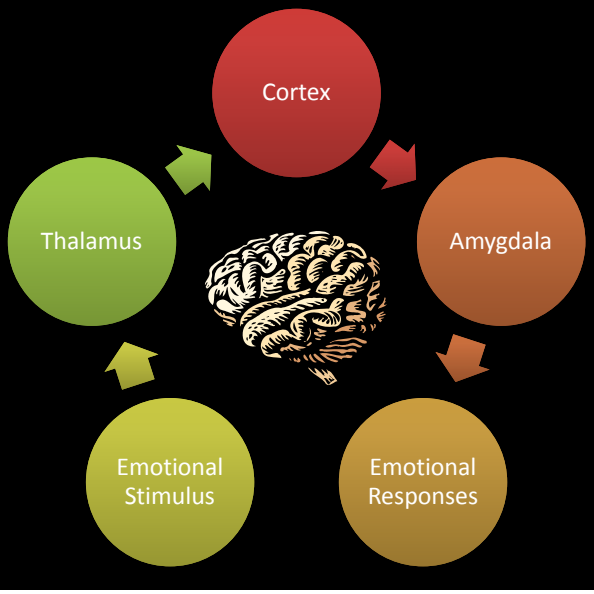


Discuss

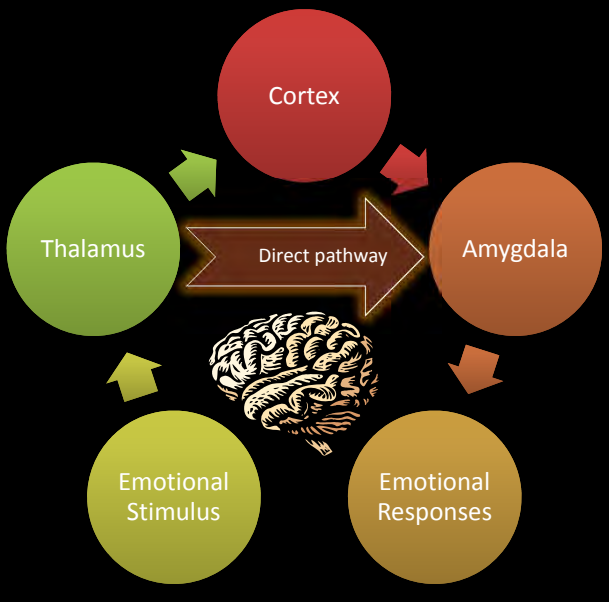
- If you were working with my family today, how would you come into our lives & what would your role be in our lives?
  - Example, You would come across me or my brothers as a teacher in grade school…
- What could you do to help?
- How do you get us to accept your help?
  - What are our strengths that you could build on?



Normal Stress Response



Trauma Stress on the Brain



Trauma on the Brain

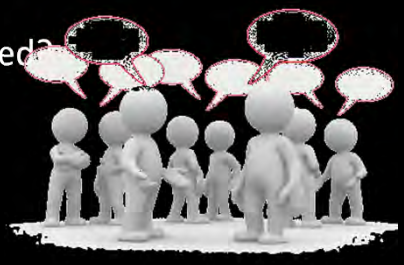
- Unmanageable stress
  - Intolerable distress
  - Environment feels intrinsically unsafe
- Can't modulate arousal (fear)
- Breakdown in capacity to:
  - Process, integrate and coherently categorize experience
  - Regulate internal states
- Difficulties with:
  - Regulating emotions, knowing what they feel
  - Verbalizing experiences and feelings; being comforted

Resilience

- Capacity for successful adaptation despite challenging or threatening circumstances
- Protective factors that promote resilience
- Responses of caregivers and other caring adults
- Social support or social fabric
- Individual's capacities and talents – special, smart, creative, capable
- Ability to positively engage others

Discuss

- Think about times you've worked with survivors that have acted in any of the ways described.
- At the time, how did you make sense of the ways they related to you or to others, the things they said or did or didn't do?
- Has your thinking changed?



Dissociation

- Non-traumatic
  - Driving our car to work and not remembering the ride
  - Getting lost in a book or movie or task and losing track of time and surroundings
- As an automatic coping response to a traumatic or overwhelming event
  - Become absorbed or go into a trance
  - Avoids painful experience
  - Cannot be integrated without help
  - Can intrude into or dominate everyday life when "triggered"

How Dissociation Appears

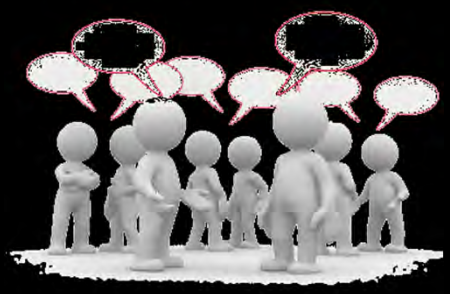
- Blank stare or spacey look
- Flat manner
- Appears to be bored, uninterested or not paying attention
- Fidgety, can't sit still or focus
- Singular focus, losing track of time or surroundings
- Angry, agitated or irritated
- Scattered talking – not linear or logical
- Unsteady when walking, unexplained bruises

How Dissociation Feels

- A numbing of emotions
- Slowing time
- Feeling of unreality or disconnected
- Quick or racing thoughts
- Spacey feelings that can't be controlled
- A sense of detachment from one's body
- Changing perceptions of people or surroundings
- Normal tasks become difficult
- Coping skills are decreased

Discuss

- What signs or symptoms of trauma have been most challenging to you?
- How did you deal with them?
- What do you think you could do differently?
- What else do you think you'd like to know?



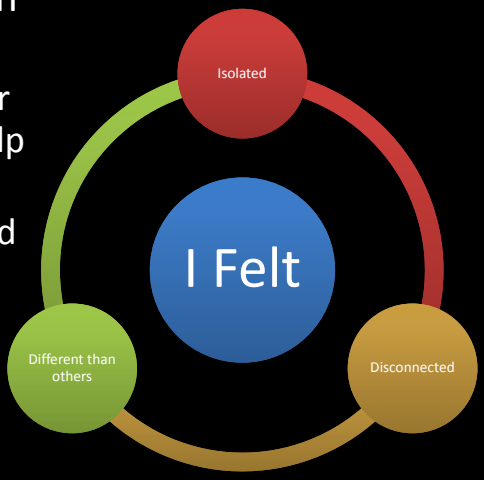
Discuss

- How do your multidisciplinary partners see the signs of trauma?
- How is the survivor's experience effected by their understanding?
- What do you think they should know to enhance their response?
- How would you help them deepen their understanding?

How Trauma Affects Survivors

Trusting other people can be challenging

- Hard to reach out for or respond to offers of help
- Hard to experience herself as deserving and worthwhile
- Lack of connection can make it hard for her to develop and feel empathy



How Trauma Affects Survivors

Coping strategies can create other difficulties

- Aggression
- Dissociation or avoidance
- Substance use
- Self-cutting
- Risky behavior

How Trauma Affects Survivors

Ability to manage feelings is compromised

- Recognize
- Tolerate
- Regulate
- Self-soothe
- Integrate
- Thoughtfully plan

What Helps?

- Create welcoming environments
- Assist with emotional safety as well as physical safety
- Understand the physical toll of violence and trauma
- Create routine
- Use different modes of learning
- Be flexible

What Helps?

- Start by Believing
- Know Trauma means:
  - We won't necessarily sound upset
  - We will cope and survive
    - Dissociate
    - Accommodate
    - Initiate
    - "Minimize" or "Deny"
  - We may not remember
  - We will remember and talk in fragments
  - We can't help it – It's the neurobiology of trauma

Create Trauma Informed Responses

- Trauma informed approach is one that attends to a survivor's emotional and physical safety
- Assists survivor in strengthening thier capacity to deal with the multiple complex issues she faces:
  - Accessing safety
  - Recovering from the traumatic effects of violence and other lifetime abuse
  - Rebuildingt thier lives
- All survivors of violence have access to advocacy services that are:
  - Inclusive
  - Welcoming
  - Destigmatizing and not re-traumatizing
  - Advocacy Initiated Response

Components of Trauma Informed Services

1. Provide survivors with information about the traumatic effects of violence
2. Adapt programs and services to meet survivors' trauma related needs
3. Incorporate Trauma into Your CCR

Provide Survivors with Information

Normalize what we may be going through

- Discuss the link between trauma and violence
- Discuss some of the common emotional or mental health effects of violence and ways our responses can interfere with accessing safety, processing information, or remembering details
- Discuss ways that trauma can make it hard to trust, manage our feelings and can affect the ways we feel about other people, ourselves and the world

Adapt programs and services

- Work to create programs, policies and settings that meet survivors where they are
- Be careful not to re-traumatize
  - Create a welcoming environment with a wide range of options for survivors needs and capacities – provide information in various ways to help the survivors hear it, integrate it and remember it - written, visual, audio …
  - Repeat information when asked and even if not asked
  - Schedule extra time
  - Help survivors know what to expect

Create Opportunities to Discuss

Once survivors understand the natural responses to trauma, it can be very helpful to think and talk about the ways in which this has happened to them.

- How has the violence changed her/his life?
- How does she/he feel or think about the changes?

CCR Considerations

- Assess for Risk
- Consider adopting advocate initiated response in your community
- Provide Language Access
- Consider Best Practice Assessments or Institutional Assessments

Offer Resources and Referrals

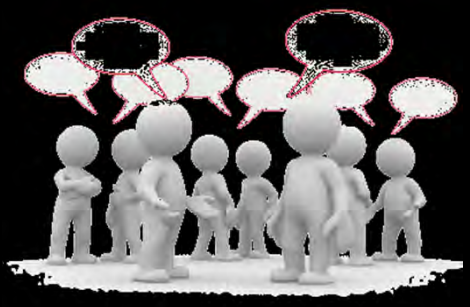
- How can you make resources and referrals available?
- Develop culturally relevant and community-based referrals and linkages.
- Let her know how you can help her access the referrals.

Reflect on your Practice

- Reflect on your responses to each individual survivor – how are those responses affecting her?
- Reflect on the impact of your work on your own life.
- Look for ways to discuss with colleagues.
- Look for tools to analyze how you can adapt services.

Discuss

- How is your work currently trauma informed?
- Discuss at your table and be prepared to discuss with group.



7th Annual Domestic Violence Symposium: On Violence, Trauma, and Culture

9.10.2015

Peter Qualliotine
Director of Men's Accountability
Organization for Prostitution Survivors

Understanding Prostitution as Gender Based Violence

The Social Construction of Gender

Andy Warhol - *John Wayne* - Courtesy of the Andy Warhol Museum

"Act Like a Man"

The "Good Girl/ Bad Girl" Dichotomy

www.seattleops.org

"Prostitution isn't like anything else. Rather, everything else is like prostitution because it is the model for women's condition."

-Evelina Giobbe
W.H.I.S.P.E.R.

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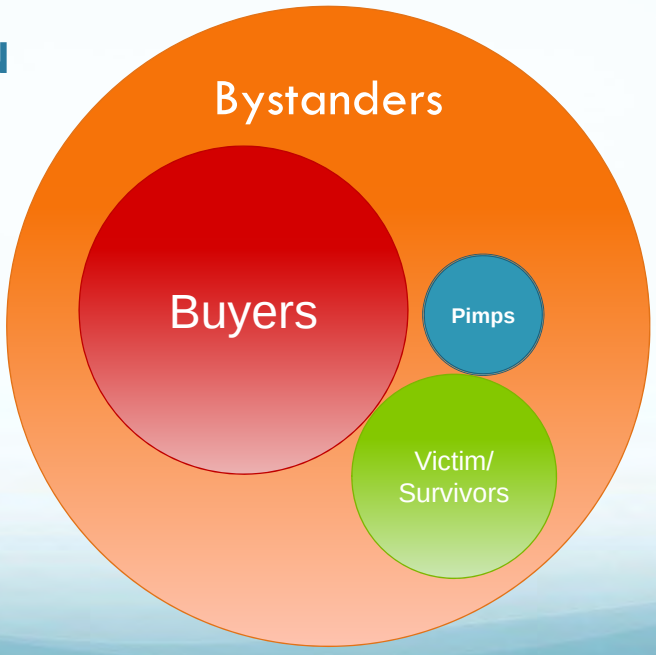
PROSTITUTION ECOSYSTEM



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OPS
Organization for Prostitution Survivors

Program Areas

- Survivor Services
- Community Education
- Men's Accountability

www.seattleops.org

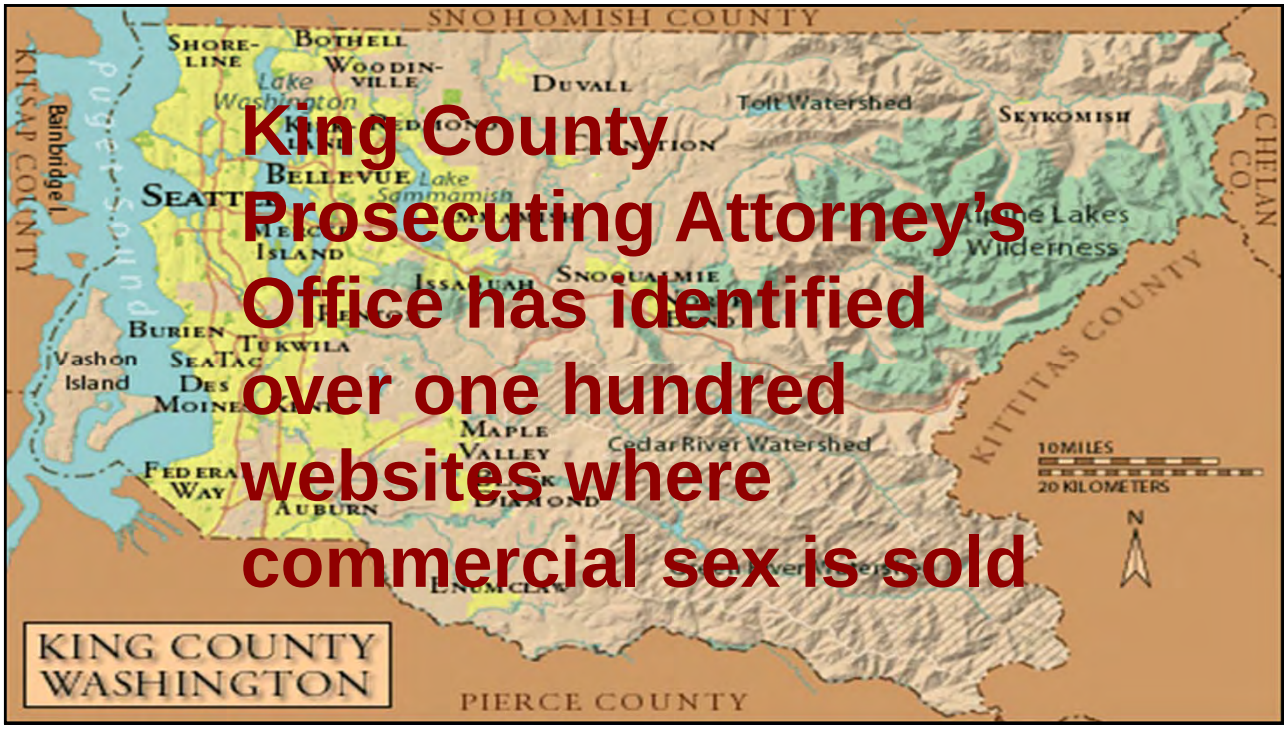
Robust exit services for victim/survivors (adults and children) should be the central focus of a coordinated community response to commercial sexual exploitation.

Demand Reduction, Prevention and Community Education programming should be survivor-informed and accountable to survivors.

Addressing Demand

- There is no Demand for Trafficking; Demand is for sexual access to the bodies of women and children in prostitution.
- Men's feelings of Entitlement drive Demand.

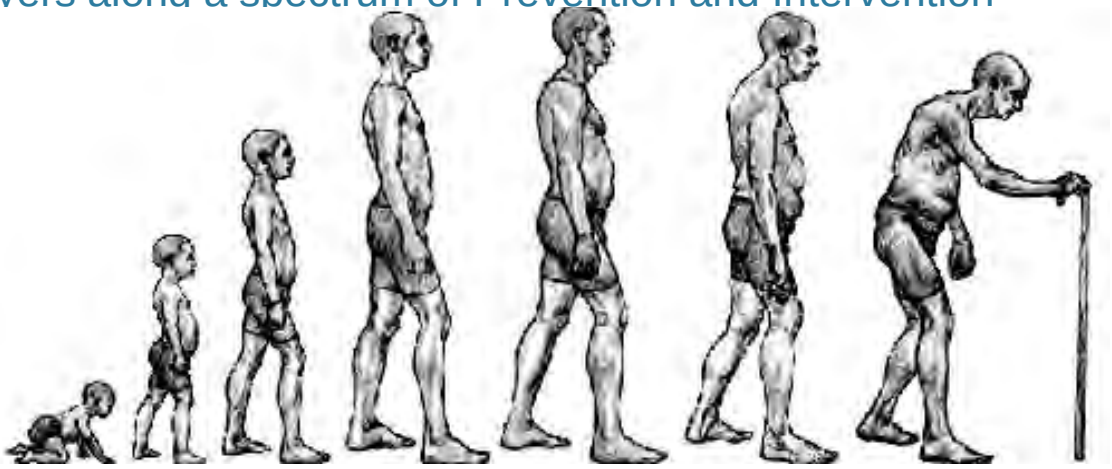
In a three-week period, men in King County, Washington searched online to buy commercial sex 107,000 times



King County Prosecuting Attorney's Office has identified over one hundred websites where commercial sex is sold

OPS and King County Prosecuting Attorneys Office received funding from Demand Abolition in 2014 to reduce Demand for Commercial Sex in King County by 20% in two years

Direct Interventions with Commercial Sex Buyers and potential Buyers along a spectrum of Prevention and Intervention



Spectrum of Direct Interventions focused on Individual Buyers and Potential Buyers

- Parenting Boys
- Teaching Empathy and Respect to Children
- Middle and High School Prevention Curricula
- Awareness promoting Men's Accountability
- Online Deterrence
- Outreach
- Interruption
- Arrest
- Prosecution and Conviction
- Post-Conviction Intervention Program

Primary Prevention

Secondary Prevention

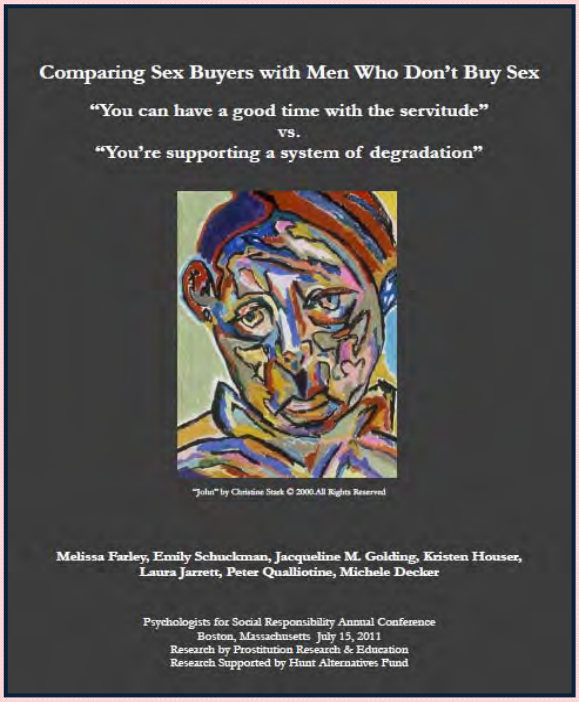
Tertiary Prevention/ Intervention

"Most men lead lives of quiet desperation and go to the grave with the song still in them."

-Henry David Thoreau

"I feel horrible. I realize that I was using prostitutes as receptacles for my own shame. They didn't deserve that"

- SSE Cohort 2 Participant



Comparing Sex Buyers with Men Who Don't Buy Sex

For the complete report visit:

www.prostitutionresearch.com

Comparing Sex Buyers with Men Who Don't Buy Sex:

summary of findings and recommendations

- As in other studies of sex buyers, sex buyers expressed ambivalence, guilt and negative thinking about buying sex. They felt just as many negative feelings after buying sex as they did before.
- Many sex buyers sought sex that lacked emotional connection. They had little objection if the woman they purchased pretended to like them or actively disliked performing the act of prostitution.
- Sex buyers repeatedly commented that they liked the power relationship in prostitution and that they liked the freedom from any relationship obligation.

Comparing Sex Buyers with Men Who Don't Buy Sex:

summary of findings and recommendations

- Both sex buyers and non-sex buyers evidenced extensive knowledge of the physical and psychological harms of prostitution.
- Two thirds of both the sex buyers and the non-sex buyers observed that a majority of women are lured, tricked, or trafficked into prostitution.
- Many of the men had an awareness of the economic coercion and the lack of alternatives in women's entry into prostitution.

Comparing Sex Buyers with Men Who Don't Buy Sex:

summary of findings and recommendations

- Almost all of the sex buyers and non-sex buyers shared the opinion that minor children are almost always available for prostitution in bars, massage parlors, escort and other prostitution in Boston.

Comparing Sex Buyers with Men Who Don't Buy Sex:
summary of findings and recommendations

- The knowledge that the women have been exploited, coerced, pimped, or trafficked failed to deter sex buyers from buying sex.
- Many of the sex buyers had used women who were controlled by pimps at the time they used her for sex.
- Sex buyers in this study seemed to justify their involvement in the sex industry by stating their belief that women in prostitution are essentially "different from non-prostituting women."

Comparing Sex Buyers with Men Who Don't Buy Sex:
summary of findings and recommendations

- Both sex buyers and non-sex buyers subscribed to the theory that prostitution reduces the likelihood of rape.
- Although half of the study's sample did not buy sex, many of them were tolerant of prostitution for men who did.
- These findings suggest that efforts to deter sex buyers should expand their focus from men who buy sex to the general public's attitudes that support prostitution.

"Why did we need a new model program?"

Traditional "John School"

- Diversion
- One class
- Large group
- lecture format
- Claims effectiveness
- "Shotgun Approach"
- Information based

"Stopping Sexual Exploitation: a Program for Men"

- Post Conviction
- Multiple sessions
- Individual and small group
- Interactive exercises
- Acknowledges limitations
- Clear pedagogical goals
- Process based

www.seattleops.org

Three Process-Based goals of SSE

"This class helped me take a good long hard look at myself and my relationships. I want to use this to make my relationship with my wife a mutual relationship rather than a controlling one where I am trying to control her."

- SSE Cohort 1 Participant

The program serves several specific target groups of men in King County, WA:

- Sex buyers who have been referred by the criminal justice system
- Sex buyers who choose to attend the program voluntarily
- Men who do not buy sex but want to learn more about how to reduce sexual exploitation and promote women's equality

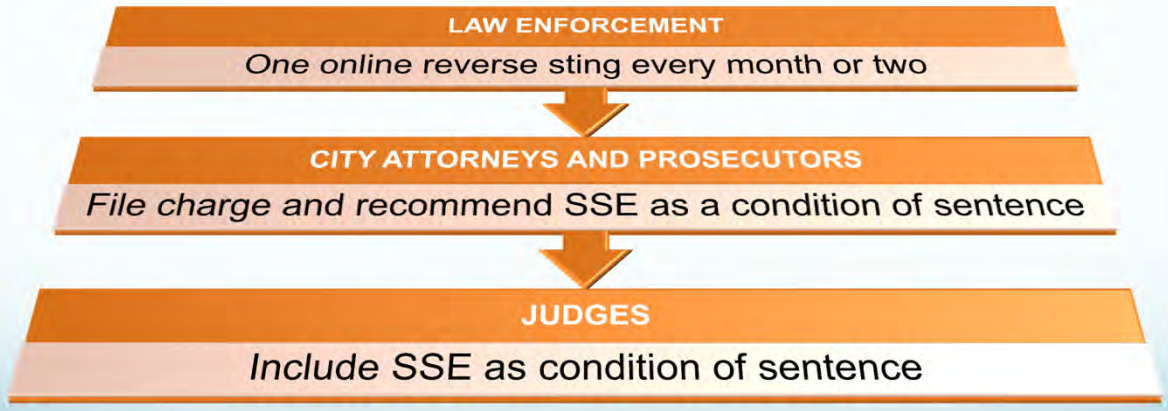
Some help from my friends

www.seattleops.org

"I signed up for this class because I wanted to understand more about what causes some men to want to buy sex and perpetuate violence against women and children in this manner. What I found is that we as men are all hurting inside to some degree or another and unless we understand and face our own pain we are destined to pass that pain on to others around us whether it is buying sex or behaving badly in our own personal relationships."

-SSE self-referred participant

What we are asking of our partners:



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Stopping Sexual Exploitation: a Program for Men

Apply
- Referred participant contacts OPS
- Registration and payment online

Individual Phone Telephone meeting with a counselor to determine admission to the program
- Motivational interviewing

Orientation (60 minutes)
- Individual learns more about the program and prepares for the weekly class
- Motivational Interviewing

Weekly Class (8 weeks)
- Attend weekly experiential education class
- complete weekly self-reflection assignments

Follow-up group (weekly)
- Option to attend weekly group voluntarily for ongoing support

The program consists of 2 sessions of Motivational Interviewing followed by an 8-week group class.

Motivational Interviewing Sessions

- Motivational Interviewing is a method that works on facilitating and engaging intrinsic motivation within the participant in order to change behavior. MI is a goal-oriented, client-centered counseling style for eliciting behavior change by helping clients to explore and resolve ambivalence.
- First session is by phone
- Second session (same counselor) is in person one week prior to group starting at the venue where group program will be held

The class consists of 8 modules designed to have participants explore the roots and motivations as well as the impact of the practice of sex buying.

1. Male gender socialization: Myths of Male Sexuality and the Construction of Male Sexual Identity
2. Female gender socialization and prostitution as gender based violence
3. Pornography, Sexual Objectification and the Sexual Violence continuum
4. Domestic Violence, Pimping and Prostitution
5. Oppression and Prostitution
6. Vulnerability
7. Mutuality and Consent
8. the Will to Change: Where do we go from here?

"I really liked this class, but eight weeks is not enough. We have been in this problem or years so eight weeks is not long enough, we need more."

- SSE Cohort 1 Participant

"This class opened my eyes to things about myself and my life that are hard to face. I related these things to myself, and the stuff that I thought didn't pertain to me. I learned how I can change myself which can help to change these things for others too. I never cared for or understood how these things really do affect me until now"

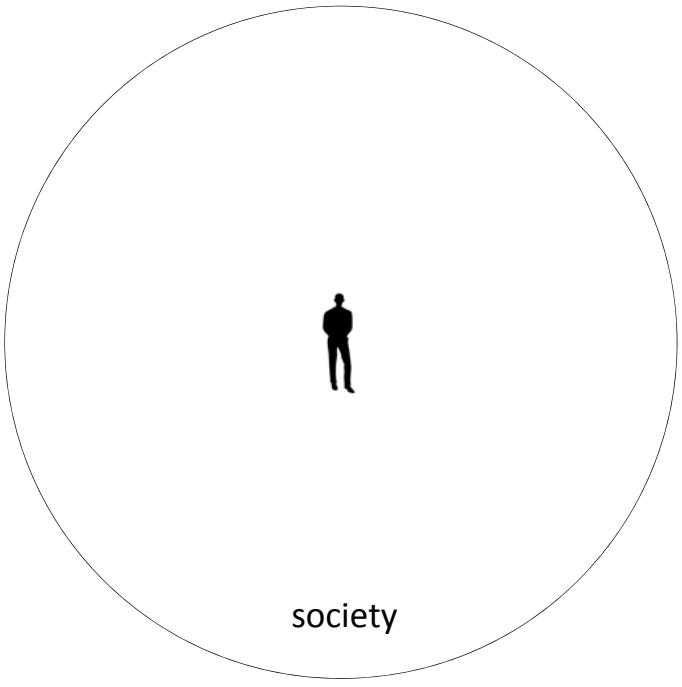
-SSE Cohort 1 Participant

"Most men think that sex will provide them with a sense of being alive, connected, that sex will offer closeness, intimacy, pleasure. And more often than not sex simply does not deliver the goods. This fact does not lead men to cease obsessing about sex; it intensifies their lust and their longing."

- bell hooks

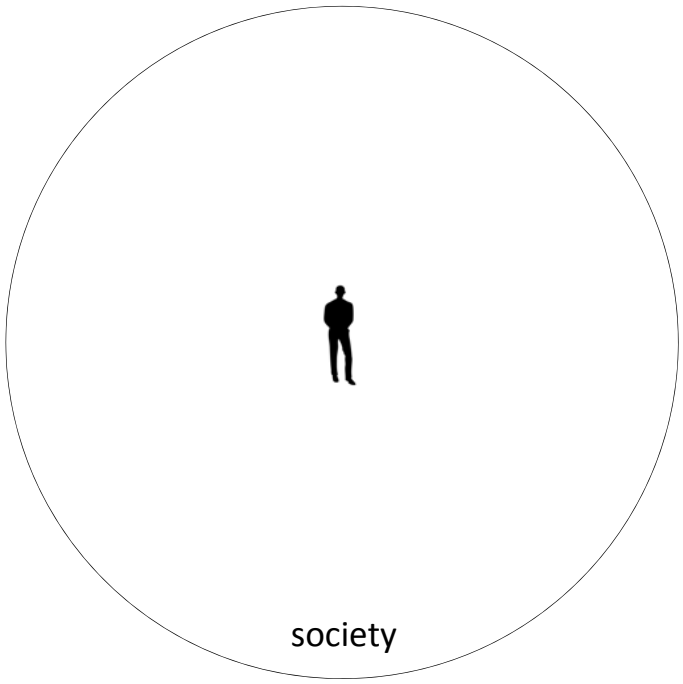
www.seattleops.org

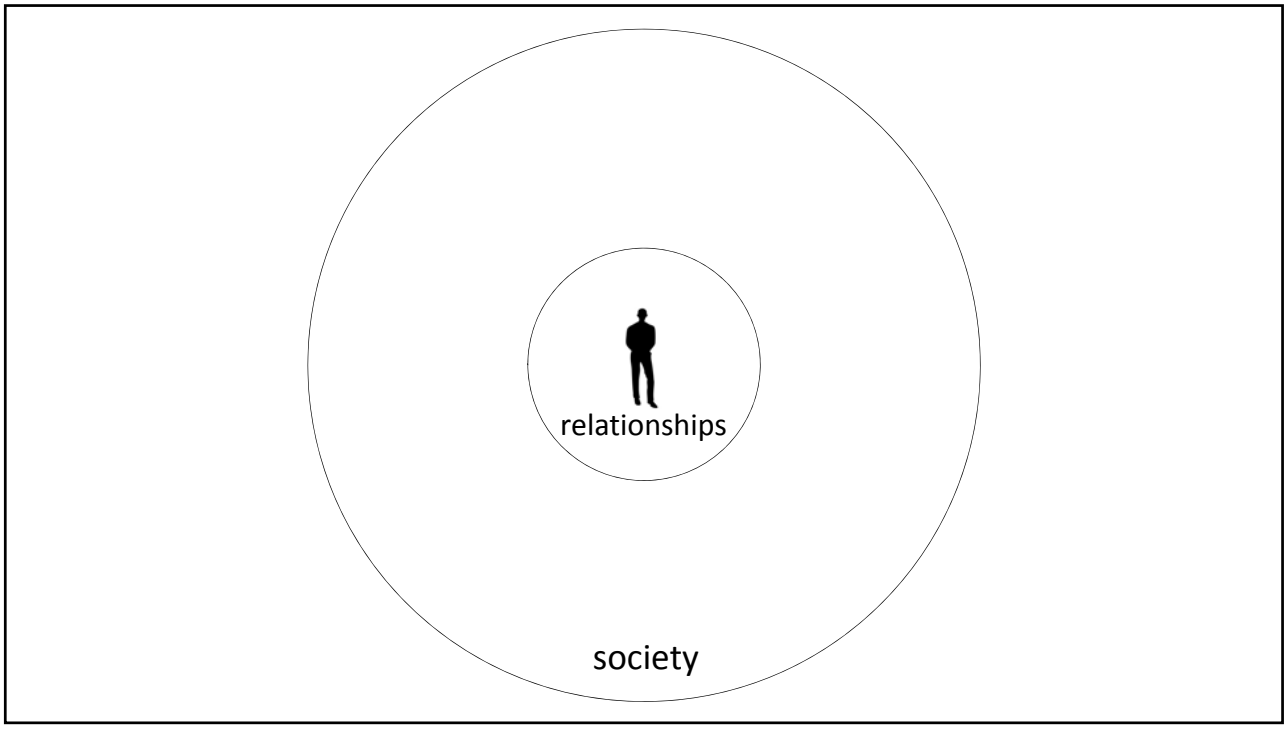
Commercial Sex Buying is an individual behavioral problem



Commercial Sex Buying is also a Social Problem.

Social Ecological Models bridge the gap between behavioral theories that focus on individuals and theories that focus on social and cultural norms change.

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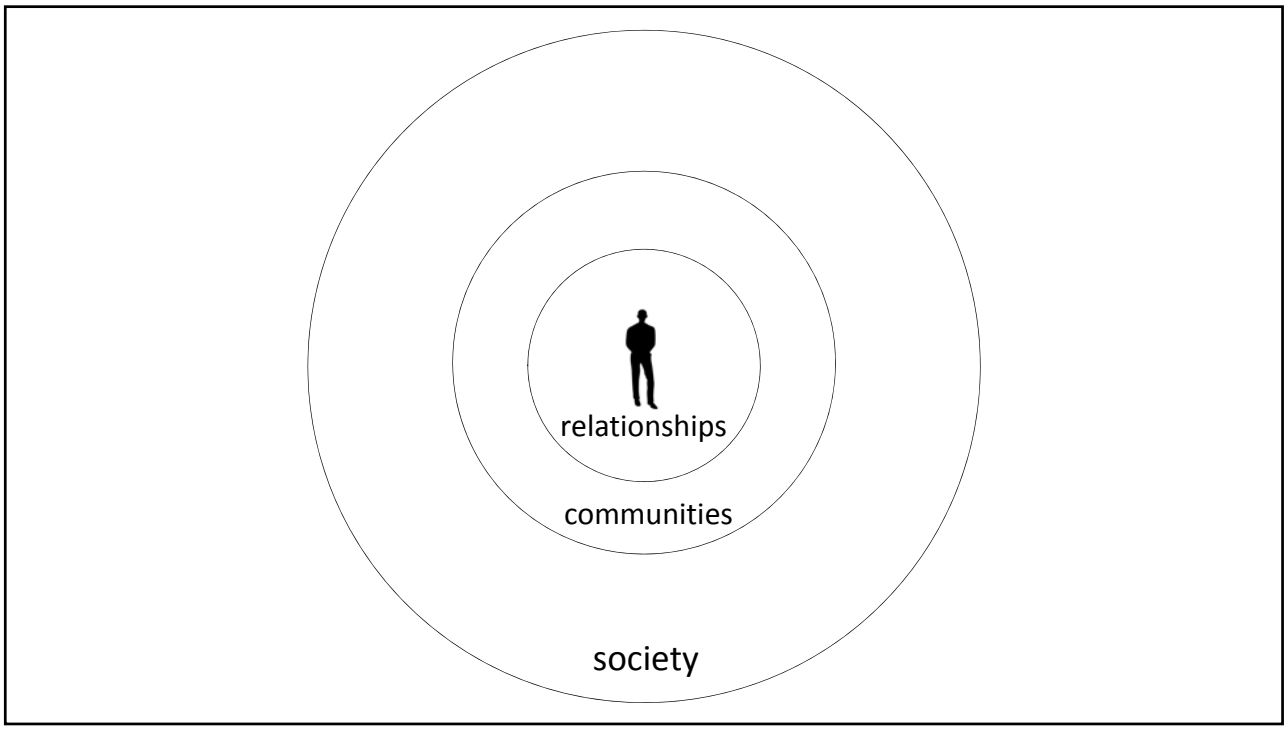
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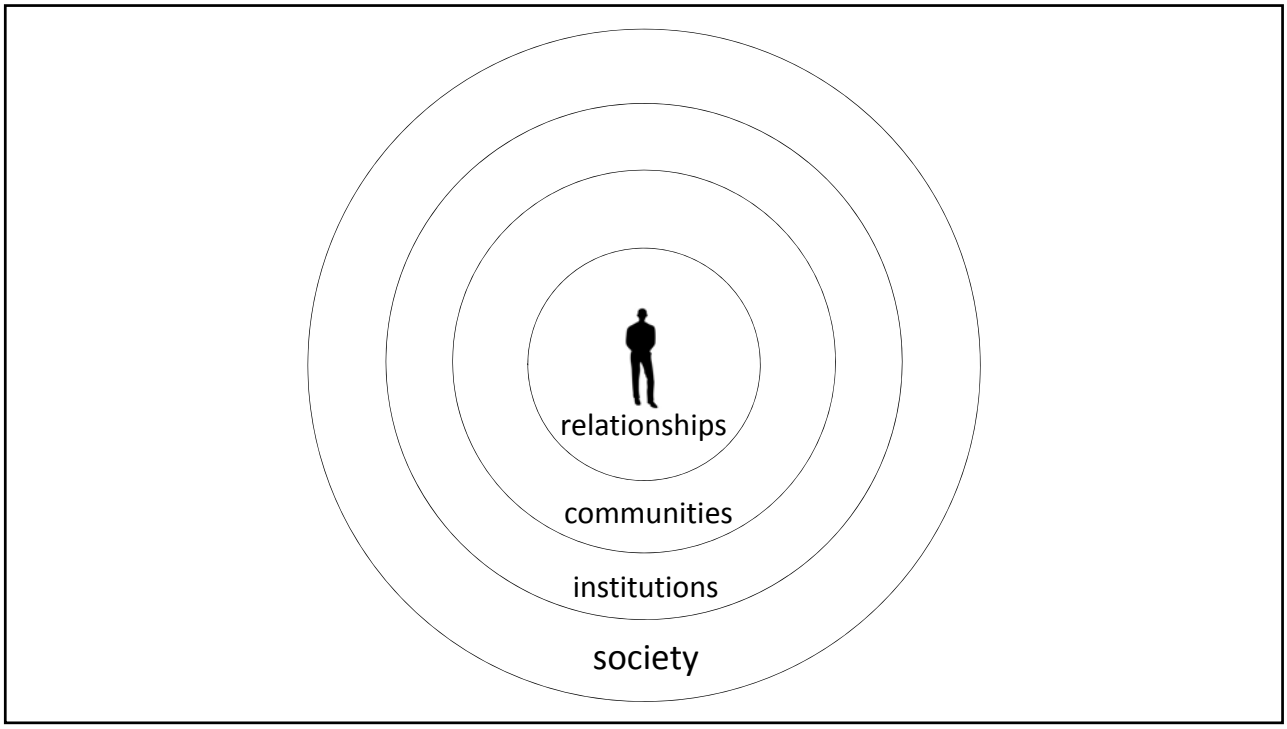
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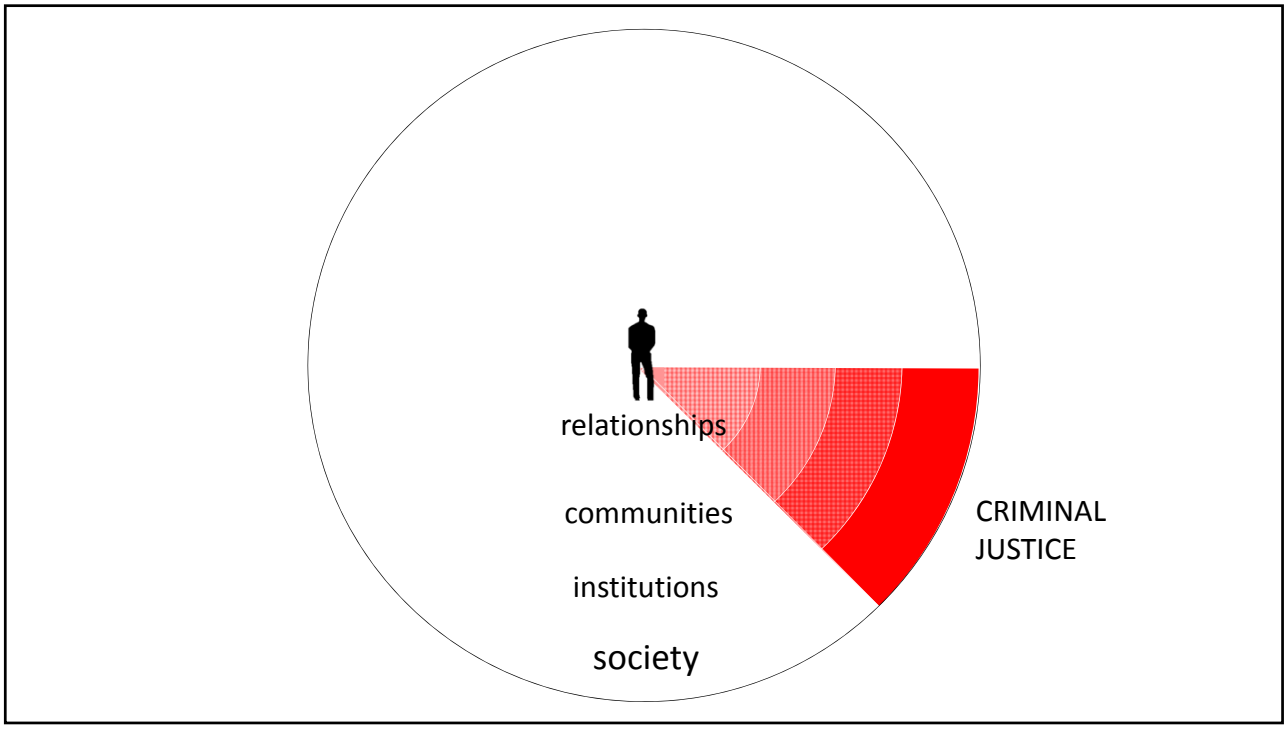
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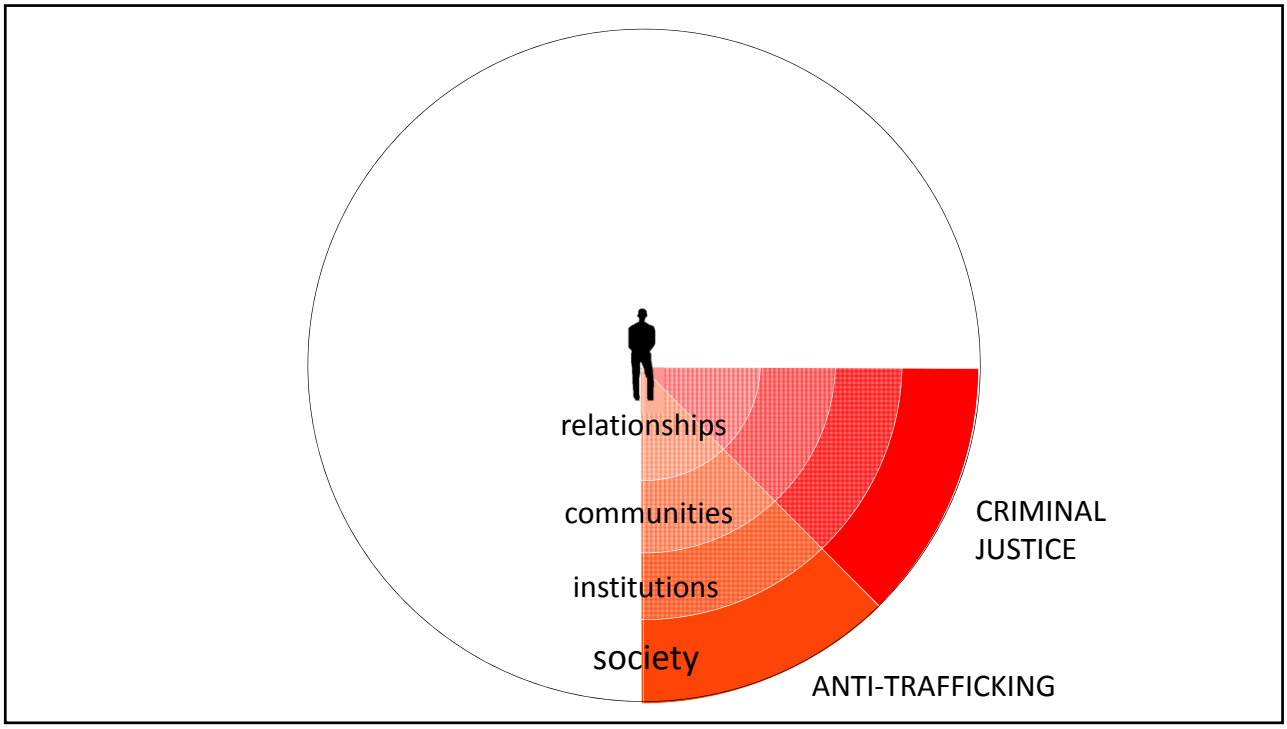
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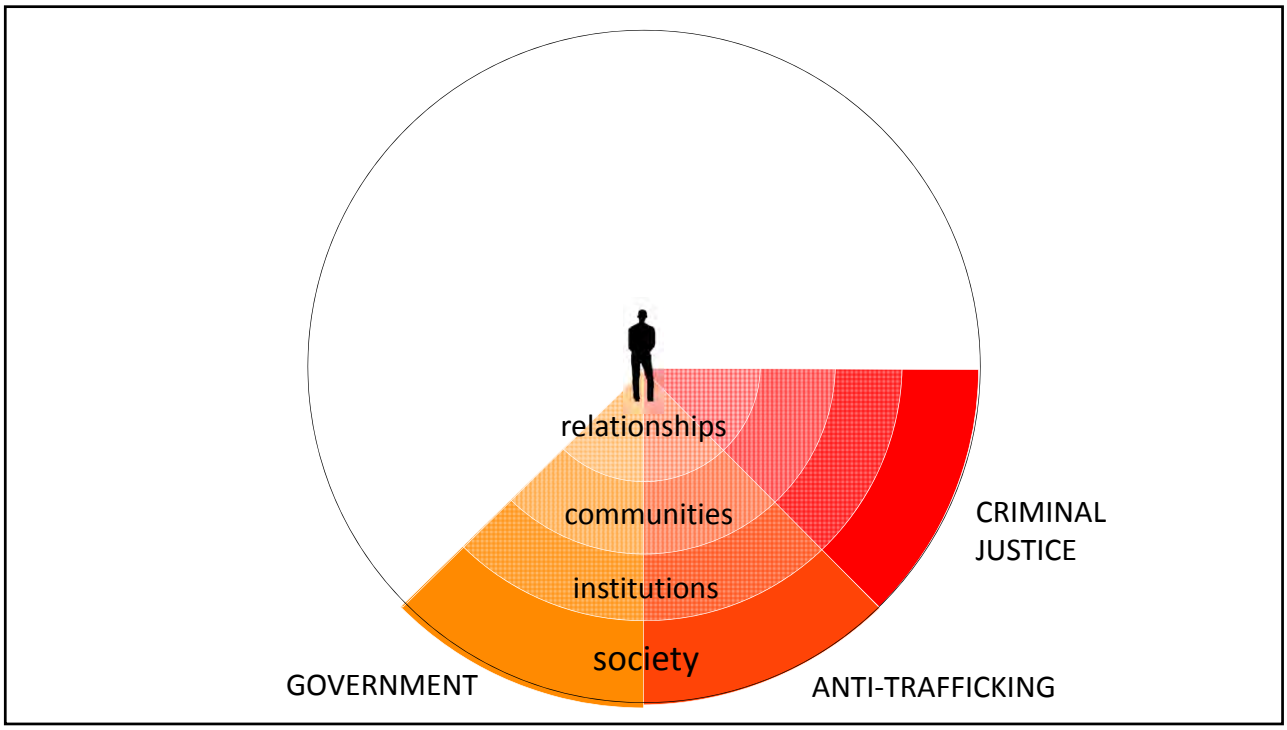
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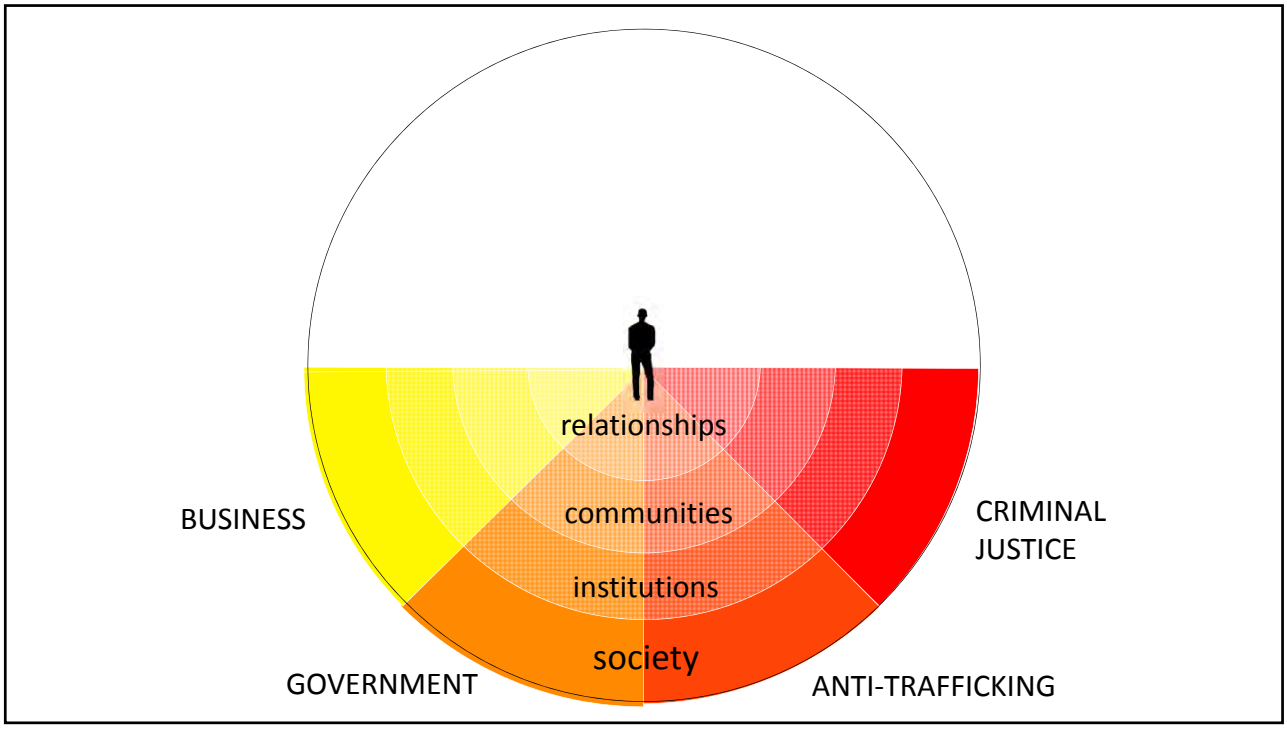
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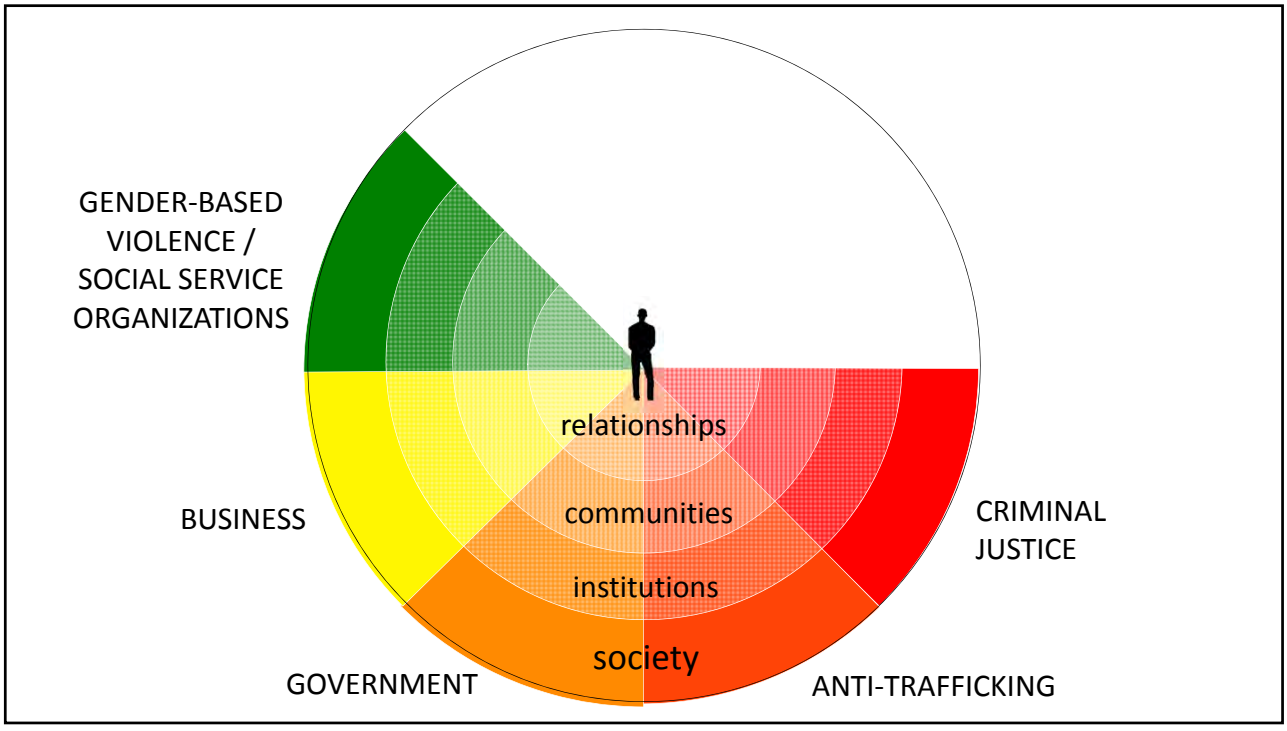
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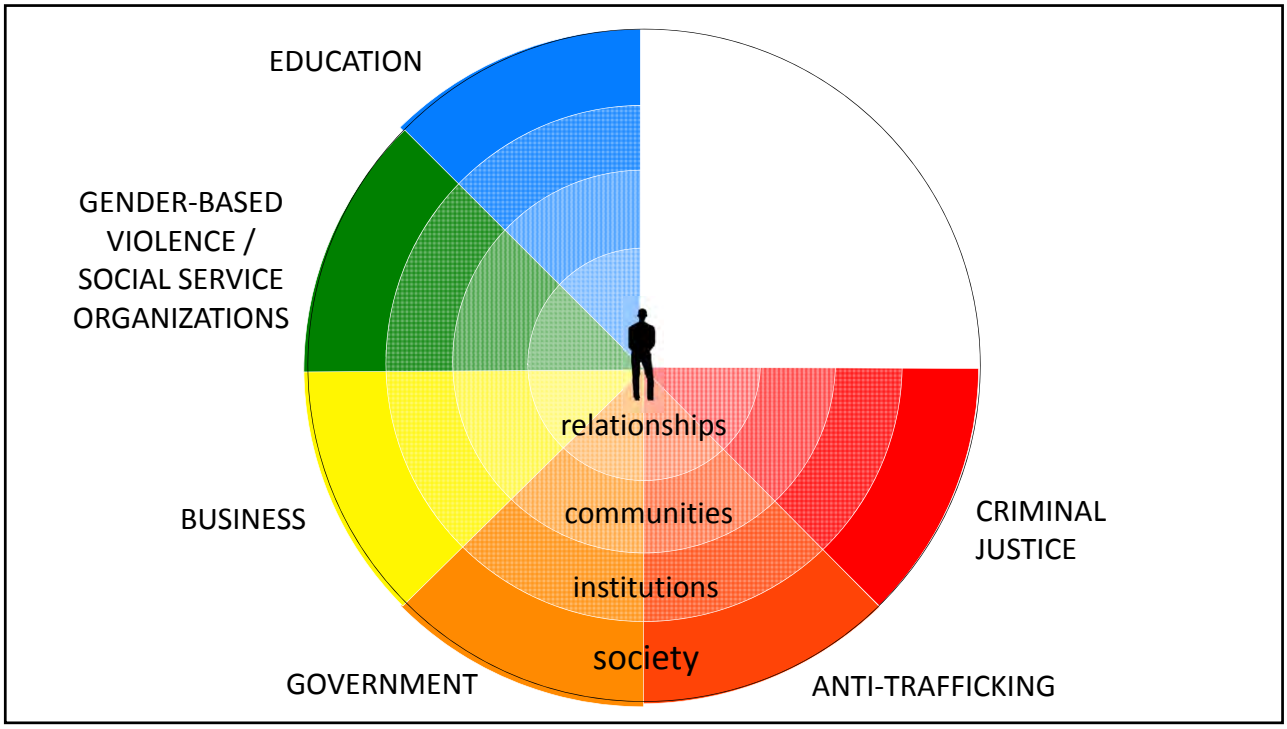
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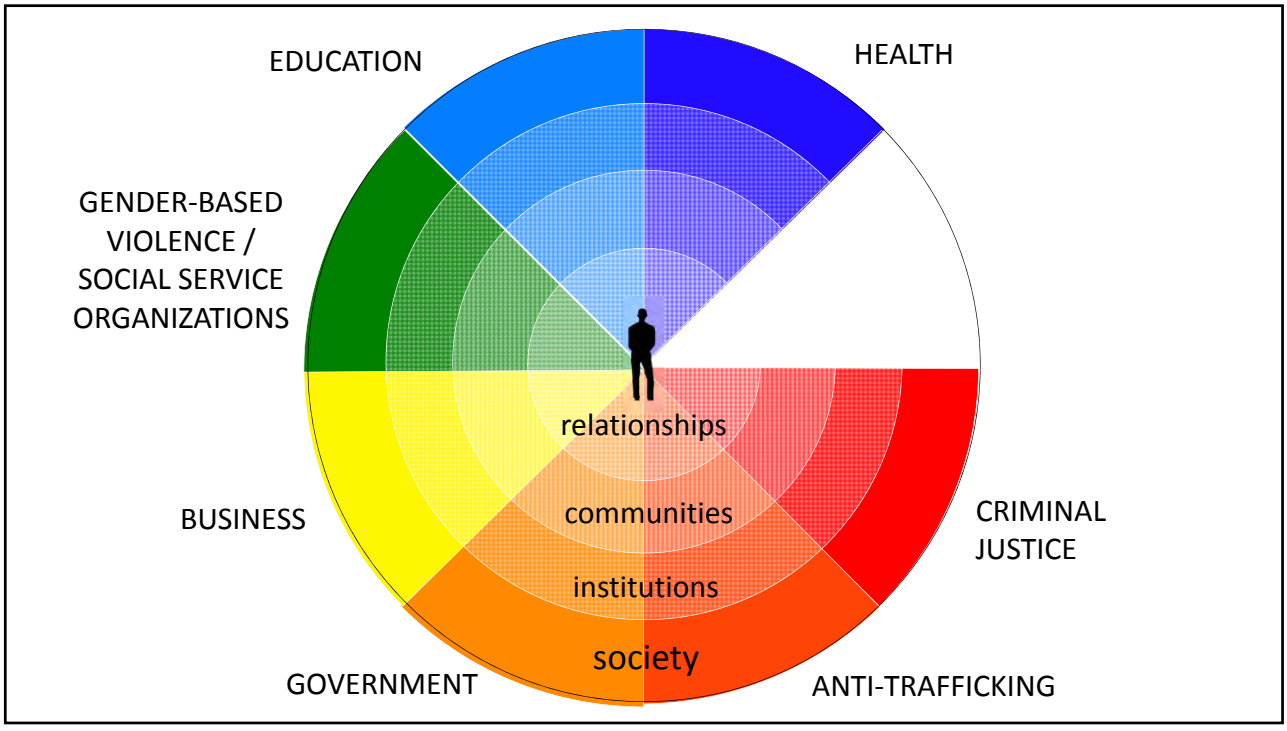
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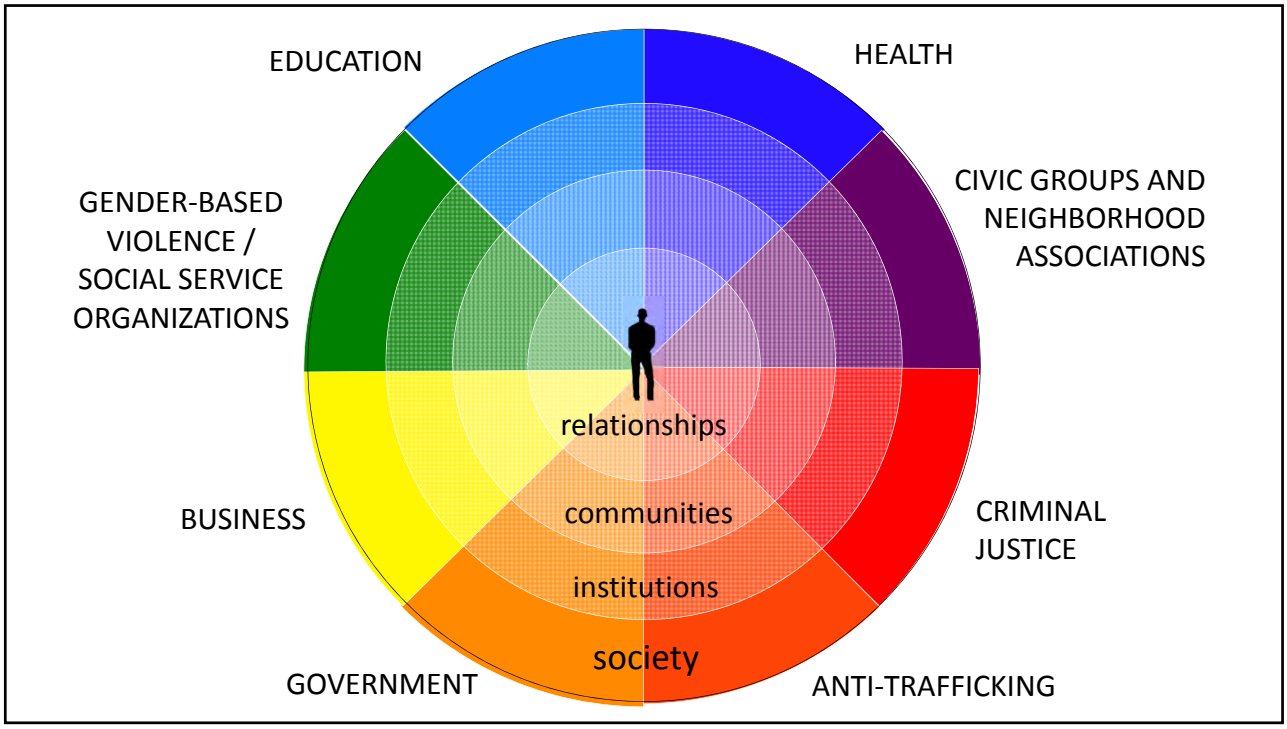
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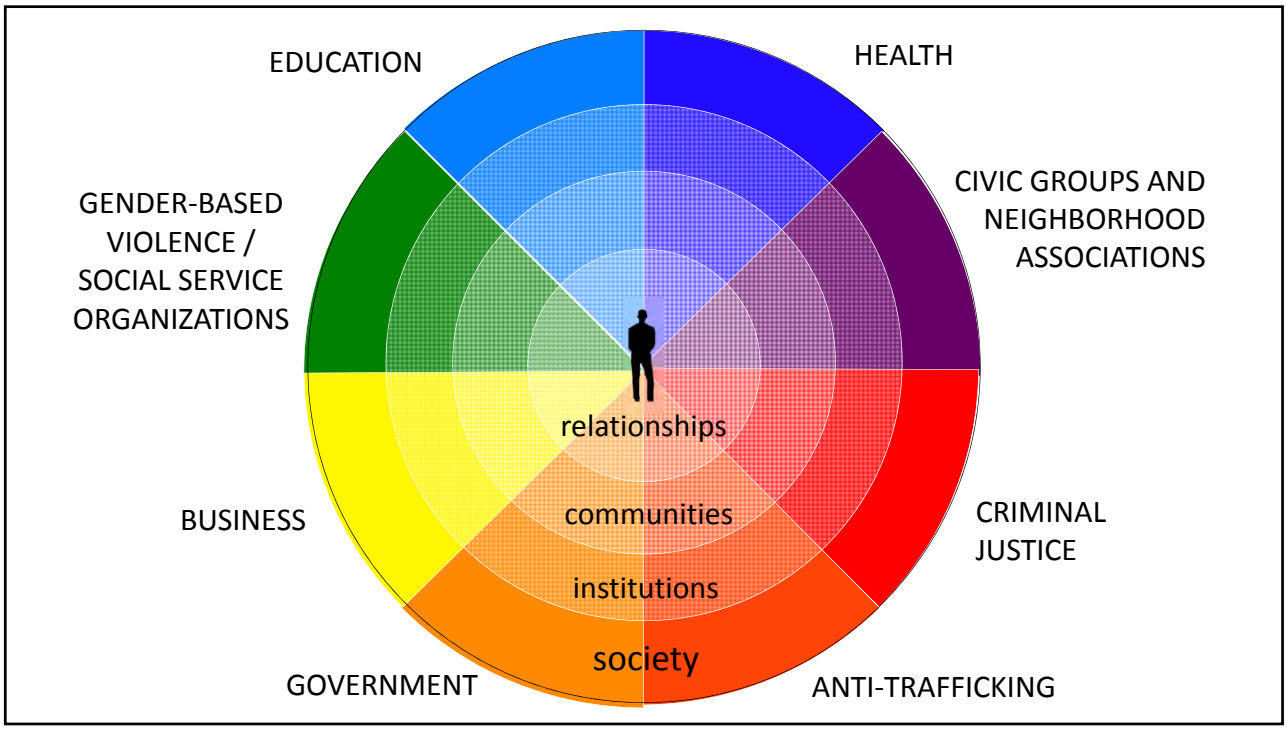
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"Once departing from false universals, unconscious identification with dominant ideologies, and fixed schemas of development, an interior sense of self that finds alternative orientations becomes possible"

-

Mary Watkins

www.seattleops.org

OPS

Organization for Prostitution Survivors

Peter Qualliotine

Director of Men's Accountability

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www.seattleops.org

What Can We Learn From Turned Around Cases?

September, 2015
Stephanie Dallam, RN, PhD
And Joyanna Silberg, PhD

What Can We Learn From Turned-Around Cases?

The DVLEAP-OVW Custody and Abuse TTA Project is supported by Grant No.2011-TA-AX-K006 awarded by the Office on Violence Against Women, U. S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

How did we know there was a problem with perpetrators gaining abuse?

- Emails flooding our website
- Newspaper articles, books
- Statements from children
- Scientific literature
- Reports from multiple non-profit organizations

Statements from Children

Scientific Studies

Faller (1995) examined 214 allegations of sexual abuse in divorce cases that were evaluated by a multidisciplinary team at a university-based clinic. 72.6% were determined likely, 20% unlikely, and 7.4% uncertain.

40 concerned parents experienced negative sanctions associated with raising the issue of sexual abuse.

These sanctions included:

- Being jailed;
- Losing custody to the alleged offender, a relative, or foster care;
- Limitation or loss of visitation;
- Admonitions not to report alleged abuse again to the court, Protective Services or the police;
- Prohibitions against taking the child to a physician or therapist because of concerns about sexual abuse in the future.

Scientific Studies

- Remarkably, *none* of the parents experiencing these sanctions were ones who were judged to have made calculated false allegations.
- In fact, sanctioned cases tended to score *higher* on a composite scale of likelihood of sexual abuse, and were *more likely* to have medical evidence than cases without sanctions.

Scientific Studies

- An annotated overview of research documenting protective parents losing custody to abusers can be found at

http://www.leadershipcc

How Many Children Are Placed with Abusers by Family Courts? Estimated Impact

Number of children affected by divorce each year	1,000,000
Number of families with allegations of child abuse and/or severe domestic violence (13%)	x .13 = 130,000
When investigated, percentage of cases found to be valid or suspected to be valid. (Studies vary but average is 60%)	x .60 = 78,000
Percentage of children ordered into either custody, partial custody, or unsupervised visits with abusive parent. (Studies vary between 56-90%, with most data showing the rate is closer to 90%. A conservative estimate is 75%)	x .75
Estimate of children of divorce in the U.S. left in care of abuser .	= 58,500

The Leadership Council On Child Abuse & Interpersonal Violence
http://www.leadershipcouncil.org/1/med/PR3.html

Purpose of the study

- To gather information from in-depth case analysis to identify what factors lead judges to put children in harm's way by granting violent parents unfettered access to their children

Research Questions:

1. What factors are associated with an erroneous legal decision to place children in the full or partial custody of their abuser;
2. What factors are associated with a later legal decision to protect the child?
3. What types of outcomes do the affected children experience?

Research Design

- Exploratory, multi-case study design
- Observational
- Data culled from public records
- Although the data will not allow us to make any causal determinations, we believe the data provide a useful insight into the little understood phenomenon of how family courts handle abuse cases.

Finding cases in which abuse is fairly certain

- To evaluate this problem we plan to focus on what we have termed "turned-around" cases.
- These are cases in which there has been a legal decision to reverse a previous order giving an alleged perpetrator custody or visitation without regard for the child's safety.

Turned Around Cases

- Definition:
  - The parent sought to protect his or her child or children from abuse by the other parent.
  - Evidence of abuse by the other parent was provided to family court during the course of the custody case.
  - The judge presiding over the case did not protect the child and ordered the child to spend unsupervised time with a parent alleged to have abused the child. (Time 1)
  - At a later time, a judge reversed the first decision and protected the child from abuse (Time 2). And/or the father was convicted for abusing the child or another child in a similar manner to what was alleged in family court at Time 1.

We scoured the country and have identified approximately 55 cases that have turned around in the last 10 years.

However, based on our best estimates, in those 10 years over half a million* children were court-ordered into the custody of, or unsupervised visitation with, a parent they claimed has abused them.

Turned Around Cases

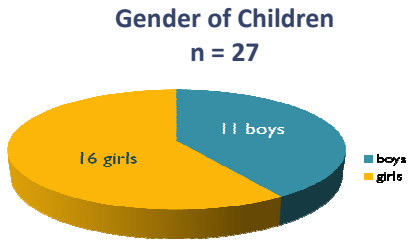
- These cases provide a living laboratory in which to evaluate how judges and evaluators make decisions about children's safety, how these decisions are informed by the types of evidence presented, and how the information is weighed

Results

- Note – these results are *preliminary* and will evolve as we collect more data
- We have identified over 50 cases thus far.
- We have fully analyzed 27 cases.
- These results are based on what we have learned from these cases

Cases have been collected from across the country

Demographics



Demographics

Child's Age At Court Decision Where Abuser Given Custody or unsupervised access (Time 1)	
Range	3-15 years
Mean	6.5 years
Median	6 years

Types of Abuse Reported to Court at Time 1

Abuse Type	%
Child Sexual Abuse	70%
Physical Abuse	52%
Emotional Abuse	41%
Neglect	7%
Medical Neglect	11%
DV Against Mother	59%)

*Note: More than one type was alleged in 38% of cases

To Whom Children Disclosed (n=25)*

	Time 1	Time 2
Protective Parent	100%	71%
Other Family Member	20%	25%
School Official**	8%	21%
Therapist	44%	46%
Other Professional (e.g., CPS, Police, Evaluator, etc)	60%	50%
Judge	0	17%
Other (e.g., babysitter, friend's parent, etc.)	8%	21%

*Note: data missing in 2 cases; **: At Time 1, some children were too young to be in school.

Judge's rationale for not protecting at Time 1

	N	% of total*
Pathology of the Protective Parent*	18	67%
-Parental Alienation	10	37%
-Mother and child viewed as enmeshed	2	7%
-Brainwashing or coaching	9	33%
-Obsessive	1	4%
Protective Parent not credible	14	52%
Accepts opinion of professional or GAL who does not believe child was abused	18	67%
-Professional	12	44%
-GAL	8	30%
Insufficient evidence of abuse	10	37%
Recantation of child	1	4%
Equality of problems on both sides	4	15%
Perpetrator provides more stable home	4	15%
Other (e.g., perpetrator more likely to comply with court orders, more "friendly" parent, etc.)	3	11%
* In most cases judges offered more than one rationale.		

Outcomes at Time 1

	N	% of total
Sole Custody to Perpetrator	17	59%
-PP Unsupervised Visits*	6	22%
-PP Supervised Visits	6	22%
-PP No Contact	2	7%
-Missing Data	3	11%
Joint Custody	3	11%
Custody to PP; Unsupervised Visits with Perpetrator	7	26%
*PP refers to the protective parent		

Time 1

67% of time, the protective parent was blamed for child's abuse allegations

In 78% of cases there were references in the judicial decision that called the mother's credibility into question.

Time 1

59% of the time, **full custody** was given to the alleged perpetrator.

Role of Mental Health Professionals and Custody Evaluators

85% of mental health professionals advising the judge either **failed to believe** the child and the protective parent…

Role of Mental Health Professionals and Custody Evaluators

85% of mental health professionals advising the judge either **failed to believe** the child and the protective parent…

…or believed them and **still** recommended that the child be forced into custody or unsupervised visitation with the perpetrator.

Role of Mental Health Professionals and Custody Evaluators

- When judges received reports from professionals who differed on their view of the credibility of the child's allegations, judges tended to accept the recommendations of a professional who did not believe the child,
- even when hearing testimony from other professionals who had more expertise in the matter or who had examined the child more contemporaneously to the abuse.

Role of GAL

- Judges presiding over child custody disputes often appointed a Guardian Ad Litem (GAL) to ensure that children's interests are adequately protected.
- GALs in the cases studied often contributed to children not being believed or protected from abuse.
- At time 1, the GAL sided with the perpetrator against the child 73% of the time.

Role of CPS

At Time 1, 93% of suspected abuse was reported to CPS.

- The abuse was judged unfounded or was ruled out by CPS in 63% of cases.
- Abuse was founded in only 22% of cases.

Reports to CPS started when child was 2.
This was the 8th report to CPS

Years Until Cases Turned Around

Amount of Time Child Was Court Ordered Into Abusive Home	
Range	4 months to 9 years
Mean	3.2 years

Mean age when 6.5 when time 1 ruling was made. (Range was 3-15 years)

During Intervening Years: Perpetrator Behaviors did not improve (n=24)

	Time 1	Time 2
Anger	15 (63%)	17 (71%)
Projection (blames PP for child's problems)	15 (63%)	16 (67%)
Boundary Violations	11 (46%)	7 (29%)
Minimizing evidence or implausible rationalizations	10 (42%)	12 (50%)
Substance Abuse	8 (33%)	5 (21%)
Child Pornography	5 (21%)	6 (25%)
Failure to appropriately address child's needs	4 (17%)	11 (46%)
Fabrication of documents	3 (13%)	1 (4%)
False report of PP to child welfare	3 (13%)	1 (4%)
Isolating	1 (4%)	3 (13%)
Daily functioning problems	1 (4%)	3 (13%)
Other (e.g., threats, controlling behaviors, false claims about the mother, criminal behavior, etc.)	16 (67%)	14 (58%)

During Intervening Years

- During these years the children continued to be abused
- For many children, the abuse became increasingly severe and their mental and physical health frequently deteriorated. One third became suicidal.
- Medical neglect became a prominent type of abuse reported at Time 2.
- This often took the form of the perpetrator failing to seek medical attention after having harmed the child or

Types of Abuse Reported to Court at Time 2

Abuse Type	Time 1	Time 2
Child Sexual Abuse	70%	54%
Physical Abuse	52%	58%
Emotional Abuse	41%	38%
Neglect	7%	12%
Medical Neglect	11%	27%
DV Against Mother	59%	8%

Child Symptoms Mentioned in Court Records (n=27)

Child Behaviors	Time 1 (n = 23)	Time 2 (n = 24)
Sexual Behaviors	11 (46%)	5 (21%)
Depression	4 (17%)	8 (33%)
Anxiety	11 (46%)	17 (71%)
Self Harm	1 (4%)	3 (13%)
Suicidal	3 (13%)	8 (33%)
School Problems	3 (13%)	6 (25%)
Anger	9 (38%)	5 (21%)
Regressive Behaviors	10 (42%)	8 (33%)
Reluctance to Visit Perpetrator	14 (61%)	17 (71%)
Other (e.g., problems sleeping, running away, eating disorders, etc.)	9 (38%)	10 (42%)

At Time 2

The custody ruling was reversed and 81% of children were **not required** to have any contact with the their alleged perpetrator.

Custody Rulings at Time 2

	N	%
Sole Custody to protective parent	22	81%
-Unsupervised to perpetrator	1	4%
-Supervised Visits with perpetrator	5	19%
-No Contact with perpetrator	9	33%
-Child's Choice Whether to Visit	4	15%
-Missing data	3	11%
Joint Custody (child older or given choice whether to visit)	3	11%
Minor Emancipated	1	4%
Custody to Safe Family Member	1	4%

Main Reasons Why Case Turned Around Based at Time 2

	%
Reports from Professionals	63%
Child's Mental Health is Deteriorating	30%
Persuasiveness of Child's Disclosure	22%
Child's Continued Refusal to Visit	22%
Appeal	19%
Perpetrator Arrested or About to Be Arrested	15%
Rejection of PAS	11%
Compelling Medical Evidence of Abuse	11%
GAL Recommendation	11%
Testimony of Neutral Witnesses	7%
Perpetrator's Bad Behavior in Court	4%
Other: (e.g., settlement, mediation, emancipation of minor, relinquishment)	15%

Main Reason Cases Turned Around

- The main reason that cases turned around was because protective parents were able to present evidence of the abuse and back the evidence up with reports by professionals who were able to dispel the misinformation and myths promulgated at Time 1 (mainly by custody evaluators and GALs).
- 78% of Time 2 cases included testimony by a professional. No custody evaluations were done at Time 2. Instead, the

In addition, perpetrator's true nature revealed over time

- Father convicted of molesting other children;
- Child porn found in father's possession;
- Court-ordered evaluation found abuse and father did not show up to trial after caught embezzling money;
- Father found to have made false accusations against mother;
- Judge recognized that father's ongoing actions against mother in court were a form of DV;
- Judge found out father lied about not having a job, was belligerent in court.

Legal Trends in Turned Around Cases

- Initially, judges relied heavily on court-ordered custody evaluators, which later judges disregarded.
- Protective parents at times lost custody in ex-parte hearings (which then became status quo).
- Court-ordered restrictions in reporting of abuse (e.g., abuse can be reported only to a special master or parent coordinator) caused delays in investigation.
- DV findings originally not admitted, later admitted.
- Self-advocacy of children was a key factor in being protected: Running away, filing their own motions, refusal to visit, going to ER, destabilizing when try to discharge from psychiatric hospital, etc.

Evaluator Assessment Errors

- More concerned about possible alienation by mother than abusive behavior by father.
- Ignored their own findings in psychological test data about the abusers: including evidence of antisocial, narcissistic, and controlling behaviors
- Picked abuser for residential custody due to apparent stability, wealth, likeability, or structure of abuser's household over child's psychological needs.
- Ignored or minimized "red flags" such as history of DV, and/or history of criminal behavior.
- Accepted alleged abuser's word at face value. Did not fact-check even when evidence was presented that alleged perpetrator was lying.

Evaluator Assessment Errors

Recent NIJ study that custody evaluators are very ill-informed about trauma.

Saunders, Ph.D., D. G. Faller, K. C. Tolman, R.L. Ph.D (2012) Child Custody Evaluators' Beliefs About Domestic Abuse Allegations https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf

Examples of Evidence Overlooked or Misinterpreted

1. Ignored adjudicated DV and credible reports of DV.
2. Hatred, anger, or extreme fear of abused child viewed as "alienation."
3. The behaviors of mothers seeking to protect their children were pathologized.
4. Specific disclosures or sexualized behaviors were ignored due to evaluator's lack of knowledge of sexual abuse.
5. Child's recantations after reunification with abuser given more weight than the abuse disclosure.

Common Justifications for Ignoring Abuse Disclosures and Symptoms:

- Sexualized behaviors in children believed to have little meaning
- Viewed mother's concerns about her child's safety as form of parental alienation
- DV viewed as "high conflict"
- Belief that parents can coach children to make detailed disclosures. (Coaching more common to induce children NOT to talk)
- Believed that PTSD symptoms can arise from false beliefs
- Believed children can create detailed abuse

Custody Evaluator Errors

- Pathologizing worried maternal behavior—taking notes, going to doctors, anger at lack of protection.

What Does an Evaluator Observe from a Mother Who Believes her Child Has Been Abused?

- Fear for her child and anger at anyone who hurt the child or is not helping to protect the child.
- Hostility against anyone who does not believe her child
- Certainty about what she heard or observed
- Anger at the abuser
- Increasing attempts to get evidence when she or the child is not being listened to – includes taking child for multiple examinations.
- These behaviors were often pathologized and viewed as signs that she is obsessed with abuse.

How Does A Traumatized Child Behave When Faced With The Source Of Trauma?

Expected Symptoms:	Interpreted as:
1. Fight, flight or freeze	1. Aggression, misbehavior, no affect
2. Regression	2. Attachment to safe parent viewed as enmeshment
3. Trouble distinguishing one incident from another	3. Inconsistency, lying
4. Hostility towards adults who do not protect or believe them	4. Rudeness, lack of discipline
5. Alternate between hopelessness and rage	5. Inconsistent responses, lying

Time 1: S. Family – Custody Evaluator's Recommendation

"Ms. S expressed that she is afraid of Mr. S. Mr. S. believes that there is nothing to be afraid of. Ongoing reports to Child Protective Services need to stop. For this reason, I would urge the Court to offer the parents a parental coordinator."

From Custody Evaluator report (Maryland)

Time 1: S Family - Custody Evaluator Recommendation:

"The [child's] therapist…could address any encopresis problems, sexual self-touching, parental boundary issues, or other problems raised by Ms. S. In my opinion, these problems, to the extent they may exist, are more a result of the parental separation than due to the conduct of Mr. S."

Custody Evaluator report con't (Maryland)

Time 1 -The custody evaluator:

- Discounts child's sexualized behavior.
- Accepts rule outs from social services.
- Does not seek collateral information regarding child's behaviors.
- Does not evaluate or ask about abuse.
- Does not attempt to interpret parental behavior except through lens of parental alienation.

Most importantly. . .

- Mother is pathologized as "obsessive compulsive," "intolerant," and "fixated" on father's potential abuse of son.
- Mother's pathology of focusing on potential abuse seen equal to father's history of DV, poor boundaries, social phobia, and paranoia.
- Father's pictures of two naked boys with underwear covering their heads that were found on his computer are not viewed as relevant.

Time 2: S Family – Judge's ruling

- "What I do find more persuasive is that if you look at his behavior, you look at what could not be ruled out by the medical doctors, you look at what has been provided by way of the collateral contacts, and it is overwhelming evidence that he was sexually abused by Mr. S."

Judge looks at the *actual evidence* rather than blindly accepting the

Example of Time 1 Ruling: Pathologizes Mother's Attempts to Protect

how her behavior impacts her child, how her behavior sexualizes the child, how her behavior is sexually inappropriate with the child, how her behavior coaches the child to say certain things, how her behavior alienates the child from the Father, how her behavior creates the problems in her child that she complains of and how her repeatedly taping and questioning the child colors, contaminates and creates the child's statements. … The above as well as, her enmeshment and lack of control of her child's behavior are harmful to the child."

Example of Time 1 Ruling con't

Mother lost custody of her daughter, at age 5.

Example of Time 2 Ruling: Focuses on Child's Disclosures

- Report by therapist, child was now 12.

"Child has consistently discussed a history of sexualized contact by her father since early childhood and the information that she has given has never wavered. These include being forced to sleep with her father for several years without having her own bed, having to bathe with him and have contact with his penis with a washcloth, remembering having her limbs tied while undressed and her father kissing her bottom, and remembering her father touching her genital area."

Time 2:

After therapist filed this report, father requested to terminate his parental rights. Father has since been indicted for child sexual abuse.

Custody Evaluator Errors: Ignoring evidence of father's violence

- "Several factors raise concerns about his ability to regulate his affect and effectively control his behaviors. A number of statements in his journal refer to the fact that he tells his daughters that their mommy is a liar and that he encourages them over the phone to disobey their mother, although they are in her care at the time. He also described in his journal and during his parent interview that there are a number of times he lost his temper in front of the girls and verbally or physically assaulted their mother. Nonetheless, the children's description of his violence lacks credibility."

Detailed Case Example: N Family and The Role of the GAL

The N Family

Parents married in early 1993

Twin boys born a year later

1996 - Mother seeks marriage counseling due to Mr. N's domestic violence, substance abuse and pornography fixation

1999 - Mother starts to work nights. Mr. N cares for boys alone for the first time. The boys become withdrawn and aggressive, begin drawing sexual pictures in daycare and exhibit sexual behavior.

Boys disclose that they saw naked people on father's computer and that he is taking naked pictures of them.

Ms. N moves away with the boys and obtains a DV restraining order.

The N Family

1999 - The boys see a therapist and disclose sexual abuse –therapist reports to DFS.

Mr. N pays 42K for an evaluation by a psychologist to determine that he is not a pedophile. The psychologist says that Ms. N is alienating the boys from him.

2000 - The children's therapist resigns due to threats against her made by Mr. N.

The N Family

2001 Mr. N. befriends a DCFS social worker who helps him draw up a fraudulent document claiming that DCFS held a hearing and determined that Ms. N was making false allegations – the document was then filed with the court.

The GAL recommends that the father receive sole custody.

The judge determines that all the abuse allegations were false. No evidence of child abuse was allowed.

Ms. N is fined $10,000 and her restraining order was vacated.

The judge orders joint custody.

Judge orders that any future abuse allegations

The N Family

2005 Ms. N and boys sue DCFS over fraudulent report but the suit is dismissed as being outside the statute of limitations.

Local sexual assault team evaluated boys. They report being sodomized and the team find the disclosures credible, they report to DCFS. Police medical team find the boys have red puffy anuses.

A new judge issues a protective order for the boys – which is then torn up by original judge.

2006 Boys continue to disclose abuse which is sent to the Special Master and never investigated.

Report by Court Appointed Minor's Therapist 2005

2005: "I have had 7 sessions with the boys. The boys exhibit great anxiety and distress when any attempt has been made to address their relationship with their father. They have adamantly stated they do not want any contact with their father"

"(Billy) immediately teared up and began to cry. He cried the whole 45 minutes and displayed regressive behavior of sucking his thumb.

"B. reports having daily stomach aches, no appetite and experiencing nightmares. He states, "I am angry at Dad …. I am scared of Dad because he is mean."

The boys disclose abuse but don't want to talk about it – because it is embarrassing.

The N Family

2006 - The boys become suicidal. They threaten to kill themselves if made to stay with their father.

The boys run away and report abuse to DCFS

The boys are returned to their father. DCFS is told by GAL that the reports are false.

The boys call the attorney that filed their case against DCFS and disclose abuse. He files a report with DCFS. The report is never investigated.

GAL recommends that custody be transferred to Mr. N's live in girl friend as evidence against Mr. N mounts. A no contact order is issued against Ms. N.

- The boys become increasingly angry at everyone involved in their case. The GAL notes in his report:
- "The children's anger towards me was voiced in terms of their frustration that neither the judge nor anyone else is listening to them…"
- The boys now begin to express anger at their mother (who has failed to protect them)

The N Family

- 2007 - The boys continue to experience multiple injuries (broken bones and sprains). When with their father.
- One of the boys becomes suicidal and diagnosed with Major Depressive Disorder and placed on Prozac.
- 2008 – Mr. N awarded sole custody after his girl friend asks to be relieved of custody.
- The boys experience more broken bones which doctors judge to not be accidental. The Orthopedic surgeon files abuse report # 14 saying that the boys are in mortal danger due

Time 2 Outcome: The N Family

Mother is able to get a hearing before a new judge.

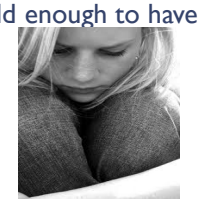
After hearing all the years of evidence the judge awards mother sole custody. He rules that the father has abused the boys and should have no contact.

Common Errors in CPS Evaluations

- Asking: "Who told you to say that?"
- Deferring to family court, and screening out case
- Blaming reporting parent for multiple reports and/or calling it alienation
- Ruling out new allegations because old ones were ruled out.
- Ignoring behavioral indicators.
- Ignoring the context of recantations (after reunification with abusers).

One Child's Thoughts on How She was treated in Family Court

- Why won't anyone believe me when I tell what happened in my house. They always ask, "Who is telling you to say that?" Don't they know I am old enough to have my own thoughts?



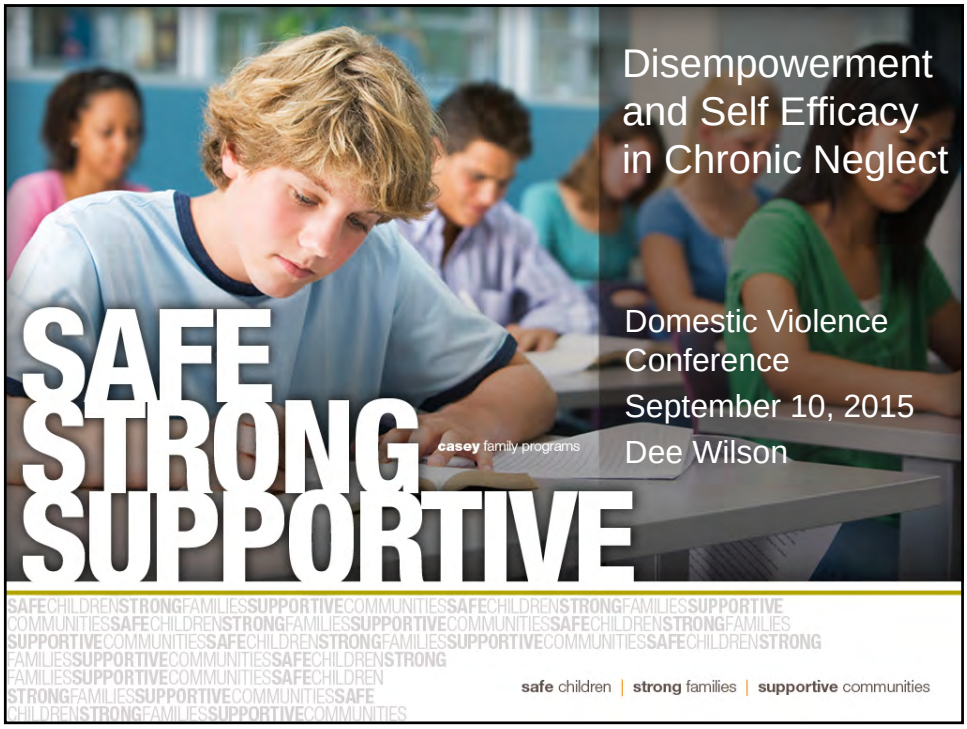
Lost In The System - Judge Salcido Part 1

- http://www.myfoxla.com/video?autoStart=true&topVideoCatNo=default&clipId=7824647
- Father given custody after daughter disclosed abuse that wasn't substantiated. Mother demonized for believing her daughter. Mother fled with daughter, was arrested and jailed. Given only limited contact. Six years later father arrested for molesting other girls his daughter's age. Custody returned to the mother.

72

Judge's Apology to protective mother

- "In 2003, while a Family Court Judge, I made a devastating error . . . I relied on other judges who taught me that I should be suspicious of any woman who makes an abuse allegation during a divorce proceeding. I implemented the policy of the court and as a result I made a horrific and devastating decision. It is too late for me to correct the mistake. Nor can I correct the harm that I caused to JM"



Neglect is the most common type of child maltreatment in the U.S. by far

- Substantiated victims of neglect outnumber physical abuse victims by 4 to 1 and sexual abuse victims by 9 to 1 in NCANDS data.

Neglect is the most recurrent form of child maltreatment as measured by CPS re-reports, multiple substantiations, failed reunifications.

A recent study of CPS reports involving infants in California found that 60% of infants named in CPS reports before 12 months of age were re-reported by age 5; and one-fifth of these infants had five or more CPS reports. Neglect was the most common type of maltreatment alleged in re-reports regardless of the type of maltreatment alleged in the first report.

Typology of Neglect

- Situational
- Sporadic
- Chronic
- Chronic maltreatment, i.e., combinations of abuse and neglect

Chronic neglect and chronic maltreatment are associated with chronically relapsing conditions, e.g., parental substance abuse and mental health problems along with patterns of DV, usually combined with poverty.

Dynamics in Chronic Neglect

Two dynamics are at work in chronic neglect and chronic maltreatment

- Erosion or collapse of social norms around parenting
- Loss of self efficacy

Depression plays a major causal role in chronic neglect, often as part of a co-occurring substance abuse/mental health disorder.

Groups with elevated rates of depression

- low income children and adults
- the elderly
- women vs. men
- trauma victims
- employees at the bottom of an organizational hierarchy

Co-occurring Disorders

- The most common co-occurring disorder among chronically neglecting parents is substance abuse and depression.
- Parents with co-occurring disorders usually have histories of early trauma, often compounded by domestic violence in young adulthood.

The most common mental health problem resulting from trauma is depression.

According to Judith Herman, depression and PTSD are mutually reinforcing:

- Hyperarousal and intrusive memories of PTSD combine with depression to produce insomnia, nightmares and psychosomatic symptoms.
- Dissociative tendencies (PTSD) exacerbate problems with concentration (depression).

According to Judith Herman, depression and PTSD are mutually reinforcing:

- Paralysis of initiative resulting from chronic trauma combines with the apathy and helplessness of depression.
- Debased self image of chronic trauma feeds the “guilty ruminations” of depression.
- Loss of faith which results from chronic trauma compounds the hopelessness of depression.

Effects of chronic trauma and complex trauma go well beyond common PTSD symptoms: intrusive memories, hyper-arousal, numbing and dissociation.

- Loss of initiative
- Self loathing
- Rage
- Bodily ailments; hard to describe aches and pains
- Loss of faith in a sacred order and in human beings
- Low threshold for anxiety attacks; sensitivity to threats
- Difficulty with emotion regulation; liability to meltdowns

Beliefs and Self Talk

Both severe depression and PTSD have powerful components; beliefs and dysfunctional self-talk sustain hopeless/ helpless perspectives. Self talk takes the form, " there is nothing I can do about -----."

Indicators of Demoralization

- Poor self care
- Filthy homes
- Apathy in the face of threat
- Acceptance of pariah status/ negative attributions of others
- Inability or reluctance to seek or accept help
- Limited ability to “regroup” and bounce back after adversity

Strategies for Engaging Demoralized Persons

- “Join to need”
- Non-judgmental curiosity
- Concrete services
- Ensuring safety
- Finding a spark of hope
- Taking the first step
- Meaning and purpose

Factors that Sustain Morale

- Social support
- Past success in dealing with adversity
- Financial resources
- Good health
- Membership in a faith community
- Sense of meaning and purpose

Use of coercion with trauma victims undermines therapeutic initiatives.

In his book, *The Body Keeps the Score*, Bessel van der Kolk states that:

" ... the mind of each of us is like a family in which the members have different levels of maturity, excitability, wisdom and pain. In trauma, the self-system breaks down, and parts of the self become polarized and go to war with one another."

Van der Kolk is a proponent of Internal Family Systems Therapy (IFS) which views the self as having three parts with distinct roles:

- Exiles – the toxic rejected parts of the person
- Managers – critical and perfectionistic
- Firefighters – emergency responders given to impulsive actions

According to Van der Kolk, all three parts have an important role to play in protecting the self from “the full terror of annihilation.”

Accepting Exiled Parts of the Self

The acceptance and integration of “exiles,” split off and/or suppressed parts of the self, leads to an infusion of energy and purpose. Examples from the movies, “Bulworth” and “Irrational Man”

Video – still face of mother and baby

Chronic Neglect Includes Lack of Nurturance

Unresponsive parenting is a part of chronic neglect.

Emotion Regulation

Children who are severely and chronically neglected and/or traumatized will often have difficulty with emotion regulation and will be susceptible to “meltdowns.”

In its extreme form, emotion dysregulation is a disability that compromises children’s futures.

- Caregivers need the knowledge and skills to help children control their emotional reactions and calm down.

The Importance of Structure

Bruce Perry emphasizes the importance of “patterned repetition” and reduced stimulation in helping traumatized and severely neglected children manage their emotions.

Body Awareness

Van der Kolk places great emphasis on slow conscious breathing and on other practices that increase body awareness, for example, meditation, massage, mindfulness, dance. All of these approaches have applications to both adults and children.

Attachment and Emotion Regulation

Both Deborah Gray and Anne Gearity emphasize the importance of working with children to seek out and use adult caregivers to help them calm down.

Premature independence from caregivers is not a good sign in child development.

Anne Gearity is the developer of a day treatment program, “Developmental Repair”, designed to help traumatized and neglected children learn how to control emotions. Gearity describes the common beliefs of these children:

- They expect adults to be harsh or unavailable, and they provoke the reactions they expect.
- Their feelings are easily triggered but confused by physical sensations that are called arousal.
- Ordinary social expectations threaten them so they wreck social experiences.

- They have low frustration tolerance so new learning is hard.
- They misread social cues and often assume retaliatory aggression has occurred when none was intended.
- They can't think about or explain their own experiences.
- They have poor language skills so they don't rely on words, but instead resort to kicking, spitting and swearing.
- They perceive danger with little or no reason and sometimes take preventive actions which threaten others.

Developmental Repair uses approaches called "hire" (adults) and "come back" (from dissociative states) to help these children.

Mechanisms by Which Adverse Childhood Experiences Influence Health and Well-being Throughout the Lifespan

Sources of Resilience

- Capacity for positive affiliation
- Capacity for self-regulation
- A strong ethical foundation
- Talents that bring positive social recognition

Intergenerational Transmission

Some research studies have found that the quality of interpersonal relationships in early adulthood is the best indicator of whether intergenerational cycles of child maltreatment will be maintained or broken.

One English study found that “only domestic violence between mother and her partner(s) was associated with increased probability that the cycle of abuse would be maintained rather than broken.”

In this study, socioeconomic advantage, high maternal warmth and “mother’s healthy relationship with a partner distinguished cycle beakers from cycle maintainers.”

Cultural Differences as a Resource: What Does the US have to learn from GBV work in the Middle East?

Leyla Welkin PhD LMHC
Cross-cultural Psychotherapist and Educator
Sept. 10, 2015
DV Symposium on Violence Trauma and Culture,
Seattle University

Gaziantep copper

Introductions

- Who am I?
- Who are you?

Culture: Individualist and Relational Cultures

- What is culture and why does it matter?
  - Meaning
  - Values
  - Expectations

What is culture and why does it matter?

- Narrative and trauma effects: The social/cultural dimension of experience.
  - Group rapport, stigma,
  - Expectations about family *"namus"*
  - The dilemma of incest in relational societies
  - Power, hierarchy and power distance

Islamic view of social history vs Eurocentric view

- "Blueprint for social life"
- Focus on individual self expression, self development and salvation.

Relational Concept of the Self

- Concentric circles of self: a sense of belonging
- Web of chosen activities and qualities: freedom of choice and action

The United States

- The most individualistic society on earth
  - Competitive
  - Individual achievement oriented
- We hold these truths to be self evident, all men are created equal. … Life Liberty and the Pursuit of Happiness."
  - Freedom for the Individual

Implications for Health and Violence

Health is a state of wellbeing defined by expectations and supported by a narrative aligned with values and social support.

Violence

Violence is defined by social norms and is shaped by the values and expectations of individuals and society.

Violence involves affects on

- Perpetrators,
- Victims
- Society as a whole.

Treatment or repair must involve all these dimensions.

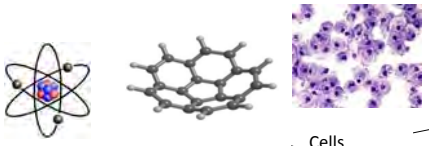
Systems Thinking An Ant's World // Nested Realities

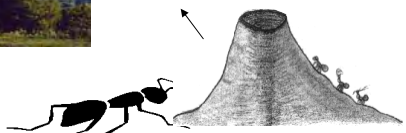
Solar System

Planet

Mountain

Forest





Ant Hill Colony

Ant

Atoms → Molecules → Cells

Based on Ken Wilber (2000) A Brief History of Everything.Boston Shambhala

Nested Realities

Gender Based Violence and Women's Rights

- A key to understanding and addressing culture change
- Balance and health
  - Rights embedded in a social world

Gender Based Violence and Women's Rights

- World Movement for culture change
  - Originated in Individualistic Cultures
  - Must be influenced and affected by Relational Cultures

Implications for GBV and Trauma work in the Pacific Northwest

- The example of Humanitarian Aid
  - Food aid
  - Asylum
  - Refugee flight and resettlement
  - Counting rights and honor
  - Political manipulation of groups for the benefit of the power elite
  - Resettlement issues in Europe and the US

Social Problems Require Social Solutions

- Embed individual solutions into a social fabric
- Include family and social network in the definition of health
- Frame violence not just as a violation of an individual's rights but also as a signal that the social fabric has broken down.
- View perpetrators as part of damaged social fabric.
- Question war and group violence as a dysfunctional approach to making social change. Violence breeds violence.

Discussion

- Questions, Answers, Comments

Thank you for your participation!

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Representing Survivors who have Experienced Trauma

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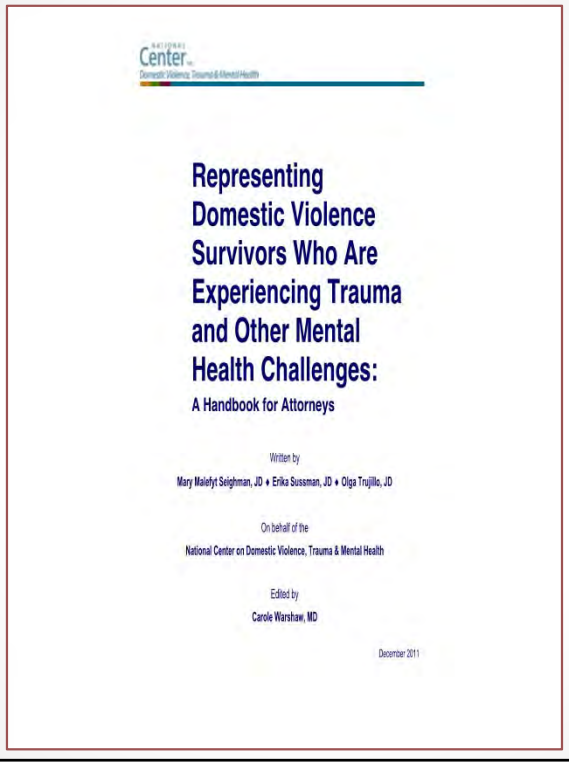

National Center on Domestic Violence, Trauma & Mental Health

Representing Domestic Violence Survivors Who Are Experiencing Trauma and Other Mental Health Challenges:

A Handbook for Attorneys

Written by

Mary Malefyt Seighman, JD • Erika Sussman, JD • Olga Trujillo, JD

On behalf of the

National Center on Domestic Violence, Trauma & Mental Health

Edited by

Carole Warshaw, MD

December 2011

National Center on Domestic Violence, Trauma & Mental Health

Preparing for Court Proceedings with Survivors of Domestic Violence

Tips for Civil Lawyers and Legal Advocates

Legal proceedings are often stressful for participants, whether or not they are survivors of trauma. Many survivors of domestic violence find the proceedings challenging in ways specific to the trauma they have experienced—ways that others may not be able to anticipate. Your ability to recognize and adjust to the challenges survivors experience will affect their ability to participate in and contribute to successful outcomes in their cases.

Interpersonal violence is usually traumatic to the survivor, especially when the perpetrator is someone who was loved and trusted. Although the experience of violence is subjective and varies from individual to individual, we know that the greater and more prolonged the trauma, the more likely a survivor is to experience some after-effects. Cases of domestic violence involve an ongoing pattern of coercion, intimidation, and emotional abuse, reinforced by the use and threat of physical or sexual violence. Thus, survivors will most likely have experienced more than one traumatic event.

Many lawyers and legal advocates find legal proceedings challenged or interrupted when a survivor is reminded of a traumatic experience. Reminders of previous trauma can be evoked by seeing people, by places or activities, or by experiencing the feelings and sensations associated with past traumatic events. These reminders can cause feelings of fear or distress or put people "on alert." They can also "restart" posttraumatic stress reactions or behavior even years after a traumatic event has occurred.*

These reminders can cause a literal re-experiencing of the event itself as well as the feelings and sensory associations with the trauma. The feelings associated with trauma may include panic, anger, disorientation, physical pain, grief, or numbing and shutting down. The sensory associations may be smells, sounds, or physical feelings. Moreover, in order to manage the painful feelings "triggered" by the reminder, survivors of trauma often cope in ways that are instinctive to them but confusing to other people: by dissociating, minimizing, or trying to control unrelated aspects of their environment.

Specific to the court environment, traumatic reminders come in many forms. This may be the first time the survivor has seen the person who abused them in a long time, and they may be triggered by being in the same room as their abuser, by a

* National Child Traumatic Stress Network. (November, 2011). *Emotional Responses to Trauma*. Retrieved from http://www.nctsn.org/content/resources-parents-and-caregivers.

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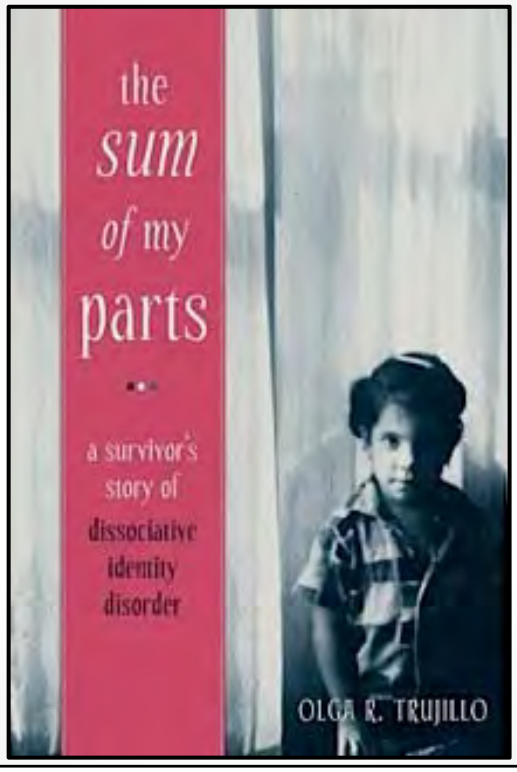


Goals

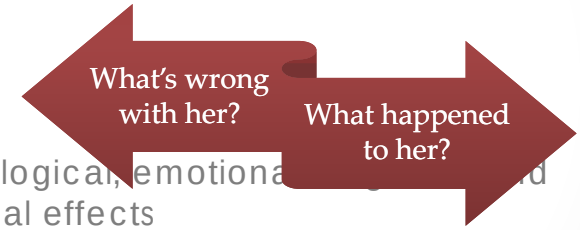
- Enhance your knowledge of trauma
- Examine how legal proceedings can impact survivors who have experienced trauma
- Explore how you can help survivors prepare for legal proceedings

What This Means for Your Work?

- Engaging in Trauma-Informed Legal Advocacy will enhance your cases, representation…

Why Trauma-Informed?

- Understand normal human response to violence
- Shift how we think about survivors



- Identify biological, emotional [illegible] interpersonal effects
- Improve our work with survivors

Why a trauma-informed approach to legal advocacy?

- Our interactions are trauma informed
- We can support survivors' emotional well-being throughout legal proceedings
- We know how to respond when responses to trauma reminders get in the way during court proceedings
- We can help survivors achieve their goals in the legal context

Slide 12

c1 This sentence is awkward. Can the phrase "response to trauma reminders" be made clearer and simpler?
cmcgee7@yahoo.com, 4/29/2013

What is Trauma

The unique individual experience of an event or enduring condition in which:

- The individual's ability to integrate his or her emotional experience is overwhelmed

OR

- The individual experiences a threat to life, bodily integrity or sanity

Dissociation

A protective coping mechanism used in the moment of trauma

- Often an automatic response to immediate danger
- A separation of mental and experiential contents that would normally be connected
- Prevents integration of ideas, information, affects, and experience

Dissociation

- Non-traumatic
  - Driving to work and not remembering the ride
  - Getting lost in a book or movie or task and losing track of time and surroundings
- As an automatic coping response to a traumatic or overwhelming event
  - Become absorbed or go into a trance
  - Avoids painful experience
  - Cannot be integrated without help
  - Can intrude into or dominate everyday life when "triggered"

Diagnoses Arising from Trauma

- Post Traummatic Stress Disorder (PTSD)
  - Nightmares
  - Nightsweats
  - Startle Response
  - Hypervigilance
  - Flashbacks
- Dissociative Disorders
  - Losing time
  - Numb
  - Spacey
- Anxiety and Panic Disorders
- Phobias – such as Agoraphobia & Claustrophobia

But how do I know when it's trauma?

- Look for the signs of dissociation

Abuse, and Hard Experiences

Even if an experience does not fall under the DSM definition of trauma…

- It might affect how people interact with the world around them
- They might have adopted physical or emotional survival strategies that make court proceedings difficult

Traumatic Triggers

- Reminders of a traumatic incident that cause a person to re-experience the incident
- Potential triggers
  - People
  - Smells
  - Colors
  - Expressions
  - Words and phrases
  - Feelings – e.g. stirred up by adversarial situations or closed-door meetings

Why you Need to Know

- Can disrupt participation in legal proceedings
- Can make the survivor look "crazy"
- Can make her feel unsafe
- Can cause a crisis for the survivor

What this Means for Your Work

- Adversarial dynamics can be triggering & emotionally re-traumatizing
- Traumatic experience may make it much harder
- Survivors who want to participate find it challenging at best

What You Can Do

- Prepare carefully
- Build trust
- Become a partner in legal advocacy
- Reflect signs of trauma
- Anticipate "triggers"
- Plan for the survivor's participation
- Help her know what to expect

Slide 22

c2 don't know what this means
cmcgee7@yahoo.com, 4/29/2013

c3 this feels a little vague? can we do without it or sharpen the point a little?
cmcgee7@yahoo.com, 4/29/2013

c4 took sub-bullets out of here and put them in notes - too much detail on slide? this point is also on next slide
cmcgee7@yahoo.com, 4/29/2013

Build in Support

- Who else can be there for her?
- Encourage the support person to participate in planning
  - Discussion of what to expect
  - Include in walk-through at the site
- Discuss with support person and survivor
  - What can help to minimize “triggers”
  - What helps her feel safe
  - What helps her if she gets “triggered”

Know What To Do in the Moment

- Discuss with survivor
  - What kinds of things are triggering for her?
  - What happens when she gets triggered?
  - How can you help ground her if she gets triggered?
- Discuss other ideas
  - Ask for a recess or break
  - Stand where she cannot see the abuser

NATIONAL Center on Domestic Violence, Trauma & Mental Health

Representing Domestic Violence Survivors Who Are Experiencing Trauma and Other Mental Health Challenges:

A Handbook for Attorneys

Written by

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- Mary Malefyt Seighman, Erika Sussman, and Olga Trujillo

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About the National Center on Domestic Violence, Trauma & Mental Health:

The mission of the National Center on Domestic Violence, Trauma & Mental Health is to ensure that all survivors of domestic violence and their children who are experiencing the mental health effects of trauma and/or living with a psychiatric disability can access the resources that are essential to their safety and well-being. To these ends, the National Center is committed to developing responses to the range of trauma-related issues faced by survivors and their children that are accessible, culturally relevant, and both domestic violence- and trauma-informed. The Center's work is survivor-defined and rooted in principles of social justice.

The efforts of the Center are organized into four strategic objectives:

- ***Raising public awareness** about the intersection of domestic violence, trauma, substance abuse and mental health through up-to-date analysis of research, policy and practice.*
- ***Building the capacity of systems and agencies** to address the traumatic*

effects of abuse and to facilitate healing and recovery.

- ***Promoting policies*** *that support collaboration and improve system responses to survivors and their children experiencing the impact of domestic violence and other lifetime trauma.*
- ***Contributing to research*** *that advances knowledge and builds the evidence base for responding to trauma in the lives of DV survivors and their children.*

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Introduction

In recent years, those who work with survivors of domestic violence have become increasingly aware of the connection between trauma and domestic violence, as well as other effects of domestic violence on a survivor's mental health. The release of relevant research findings and available technical assistance that address this intersection through specialized trainings, educational materials, and tailored consultations have influenced the perspectives and work of many domestic violence advocates. It has catalyzed changes in the ways that local domestic violence programs offer and provide services to survivors living with trauma-related and other mental health impacts of domestic violence, influenced program standards and policies promulgated by statewide domestic violence coalitions, and prompted advocates to begin or renew efforts to engage with mental health providers in order to make services more accessible and appropriate for survivors who seek them.

Still, survivors who turn to the legal system for protection from the abuser, custody of their children, and assistance with other civil legal needs encounter significant barriers. This can occur for different reasons. First, the processes in which a survivor must engage to achieve legal objectives can trigger the effects of trauma, making it difficult for a survivor to fully participate in her case. Second, in many cases, the opposing party proffers testimony or introduces other evidence about the mental health of the survivor in an attempt to use societal stigma about mental health for the purpose of damaging her credibility and/or raising doubt about her parenting abilities.

We envisioned this project as a vehicle for creating a tool to assist attorneys who represent survivors when trauma or other mental health challenges are a factor in a case. Specifically, we wanted to offer lawyers practical information about the ways in which trauma and mental health can intersect and impact the civil legal cases of survivors and provide guidance on how to partner with a survivor and zealously represent her. To support this work, the National Center on Domestic Violence, Trauma & Mental Health applied for and received Violence Against Women Act funding through the Technical Assistance Program of the Office on Violence Against Women, U.S. Department of Justice.[1]

As a first step in the project, the National Center convened a roundtable meeting of individuals who interact with survivors in the course of a legal case. Participants representing attorneys, domestic violence advocates, the judiciary, the research field, mental health peer support, and mental health providers gathered for a one-day meeting in

[1] For more information about the Office on Violence Against Women, go to www.ovw.usdoj.gov.

Chicago to offer their perspectives on the barriers that survivors face when trauma or other mental health challenges affect a legal case, share their experiences and strategies, and provide input on the kinds of materials that might be useful to attorneys.

While the input offered by the roundtable participants was useful in formulating ideas and learning about strategies, it also highlighted the need to gather more specific information about the barriers that individual survivors are facing in the legal system with regard to trauma and other mental health challenges.[2] To this end, we embarked upon the second phase of the project, in which we conducted telephone interviews with survivors for the purpose of learning about their experiences with the legal system when they were involved in a case in which trauma or other mental health challenges were a factor. We received the names and contact information for 50-75 women. We contacted and conducted a brief screening interview (either by phone or email, depending on the information that we received) with each person who expressed an interest in being interviewed. Of all of the women with whom we spoke or emailed, seven had the most relevant experience. Most of those whom we did not interview had not participated in a civil legal or criminal case against the abuser or had not done so within the last ten years. All of the survivors that we interviewed had been a party in a civil legal case against the abuser; all but one of these interviewees was also a victim in a criminal case against the abuser, and one was a survivor who was charged with a criminal offense against the abuser. During the interviews, which typically lasted two hours, we asked a variety of questions to capture information about survivors' perceptions of the strengths and weaknesses of the representatives of the various disciplines with whom they had interacted including community-based advocates, mental health providers, attorneys, custody evaluators, child protective services, judges, law enforcement, prosecutors, and victim-witness specialists. At the conclusion of the interview phase, we produced a summary of the interview findings, organized by discipline. We included a compilation of system gaps and needs, based on what we learned from the interviewees and the individuals who had participated in the roundtable meeting.

What we learned through these processes reaffirmed our belief that survivors encounter serious barriers when it comes to participating in legal cases and achieving the legal outcomes they desire, especially when trauma or other mental health challenges are a factor. In terms of attorneys, the survivors that we interviewed spoke about the positive attributes of the lawyers with whom they had worked – including their zealous advocacy, treating them as partners in the process, and their knowledge of domestic abuse. However, they also highlighted the ways in which attorneys fell short, including offering ineffective or harmful legal and strategic advice, failing to fight for the survivor, and exhibiting a lack of understanding about the intersection of trauma, mental health, and domestic violence. The

[2] While some of the meeting participants are survivors of domestic violence, none had been involved in a civil legal case against the abuser within the past ten years.

survivors with whom we spoke also offered recommendations about what is needed for attorneys to better work with and represent survivors. Their suggestions included a need for more information about working with survivors who have experienced trauma and building the case in a way that does not allow the mental health challenges to overshadow the domestic violence that they have experienced. In particular, survivors felt it was important for attorneys to be able to show that trauma and other mental health challenges are often caused by the domestic violence itself and therefore should not operate to penalize survivors in their legal cases. Additionally, survivors indicated that attorneys should listen to survivors more, view and include them as partners in the legal process, and recognize and value their expertise.

This handbook was created for the overall purpose of providing guidance to attorneys so that they can help survivors achieve their civil legal objectives when trauma or other mental health challenges are a potential factor in a case. We do this in two ways. First, it is our intent to help attorneys identify when trauma may be an issue so that they can partner with the survivor to craft personal and legal strategies that help her to stay safe, avoid circumstances that can potentially trigger the effects of trauma, and develop plans for when triggers do arise. Second, we offer guidance on each step of a civil case related to the possibility of the opposing party or others raising issues about the mental health of the survivor. The handbook is intended to help attorneys anticipate with their clients the kinds of mental health-related case theories and evidence that the opposing party may attempt to procure and introduce, respond to such attempts, deal with custody evaluators, decide whether to negotiate or proceed to trial, choose and utilize experts, cross-examine the opposing party, and craft a closing argument.

The handbook features strategies that aim to keep trauma and other mental health challenges from becoming the central focus or even a consideration in the survivor's case, and guidance for limiting it when mental health evidence is introduced by the opposing party. We do not advocate for the anticipatory introduction of mental health records or other evidence related to the mental health of the survivor in an effort to defuse attempts by the opposing party to use mental health information against her. The authors understand, though, that some attorneys have had some success in doing so. The handbook is grounded in survivor-defined advocacy – an adaptation of the "women-defined advocacy" model that Jill Davies, Eleanor Lyon, and Diane Monti-Catania wrote about in their 1998 book, *Safety Planning with Battered Women: Complex Lives/Difficult Choices* (Sage Publications); we advocate partnering with survivors to plan for safety, assess risks, develop strategies, and plot the course of her case.

Finally, a note about language. In this handbook, "survivor" means an individual who has experienced domestic violence. We use this term interchangeably with "client." For

purposes of brevity and simplicity, survivors/clients are referred to as female but we intend to be inclusive of both men and women. All abusers and opposing parties are referred to as male, but it is understood that there are also abusers who are women. We use the term "opposing party" to refer to an individual who perpetrated domestic violence upon the survivor and/or her children, and who is a party to a survivor's civil legal case.

Section One: Interviewing

Do Not Exacerbate the Harm or Risks

Lawyers working with survivors who are experiencing trauma and other mental health-related challenges should aim to ensure that their representation does not exacerbate the harm done to a client or create additional harms. Every domestic violence survivor faces risks. Some risks are batterer-generated; some risks are life-generated.[3] Survivors who are experiencing trauma or other mental health challenges may face additional risks when they come in contact with systems and individuals who are ill equipped to address their particular mental health needs. Thus, attorneys must take steps to ensure that their relationship with the client does not exacerbate the risks or further harm the mental health of the survivor.

Be Aware of the Signs of Trauma

Lawyers working with survivors of domestic violence should be aware of signs of trauma and mental health challenges, such as:

- The client does not talk about her experience(s) in a linear manner. She may go off on tangents or her speech may not seem coherent.
- What would seem to be highly emotional facets of her experience are expressed with little emotion both in terms of facial expression and body language, and in terms of the tone of her voice (sometimes referred to as "flat affect"). She may be intellectually present but emotionally detached.
- The client develops a deep, blank stare or an absent look during meetings with her; this could be a sign that she is dissociating.
- The client is unable to remember key details of the abuse.

If you notice any of the above signs, you will want to take steps to avoid triggering feelings that are disruptive to your client as you work together on her case. While an attorney cannot ensure that an individual remains present and does not dissociate or otherwise disengage, there are steps you can take to remove as many barriers as possible to help your client be psychologically present for her own advocacy.

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[3] See Jill Davies, Eleanor Lyon, and Diane Monti-Catania, *Safety Planning with Battered Women: Complex Lives/Difficult Choices* (Sage Publications 1998).

Survivor-Defined Representation When the Client is Living with Trauma-Related or Other Mental Health Conditions

Survivor-defined advocacy requires that attorneys tailor their advocacy approach to meet the individualized needs of survivors. For survivors facing mental health challenges, this means that lawyers must:

- Gain an understanding of the ways in which *this client's* challenges impact her ability to engage in the advocacy process, and
- Tailor interviewing and counseling approaches to meet the needs of and maximize the self-determination of each individual client.

Survivors facing mental health challenges will often require more time and resource-intensive advocacy than other survivors. To use their time and resources wisely, lawyers must consider how to tailor their advocacy approach to be responsive to the issues and needs of survivors experiencing trauma related conditions and mental health concerns.

Begin a Dialogue about the Survivor's Mental Health Needs

The lawyer should begin a dialogue with the survivor about her mental health needs as it relates to the lawyer/client relationship. This type of conversation provides a space for the survivor to explain her circumstances and for both lawyer and survivor to develop strategies for accommodating those challenges in the course of their relationship.

Lawyers need not, and should not, try to gather the client's entire mental health history at this stage in the process. Rather, these preliminary conversations about the client's mental health should focus upon how any mental health challenges affect her functioning. To get this conversation going, lawyers might ask, "Is there anything that I should know to help us work better together?" Or, "How can I, as your lawyer, accommodate what you need in this process?" For example, if the lawyer's office creates too much sensory stimulation or causes sensory overload, your client might suggest meeting somewhere else. If she has difficulty focusing for long periods of time, the attorney might suggest taking several breaks or scheduling shorter appointments.

It is best practice for lawyers working with survivors to take the time necessary to build relationships and trust with their clients. Trust is key to developing the type of lawyer-client relationship required for effective representation. There are times, however, when lawyers have a limited amount of time or are meeting clients just before a hearing. In these situations, you need to gather as much information as possible, as quickly as possible, in preparation for your case. It is important to know that, when working under such tight deadlines, your client may not feel comfortable enough yet to disclose details about trauma

and mental health conditions. In those situations, you are not likely to get complete and accurate information about this from your client. Under such circumstances, you may want to partner with an advocate who has been working with the survivor to assist in gathering this information and to provide you with the context necessary to understand and advocate for the comprehensive and individual needs of the survivor.

Techniques for Building Trust and Ensuring Informed Consent with Survivors Who Experience Trauma and/or Mental Health Symptoms

Survivor-centered interviewing skills are critical to providing comprehensive, individualized advocacy to survivors of domestic violence, whether or not a survivor has experienced trauma or mental health concerns. First, by offering a survivor the space to tell her own story, from her own perspective, an attorney can begin to lay the foundation for building trust. Second, when an attorney actively listens to a survivor's story, she gains a more comprehensive, contextual understanding of the survivor's needs. This rich understanding, when combined with a working relationship based on trust and respect for survivor agency, forms the basis of an effective survivor-attorney partnership that can work toward the expressed goals and objectives of the survivor.

Oftentimes in the lives of survivors, people were abusive or let them down, service providers responded ineffectively to them, and/or systems ignored or added to their pain. Each survivor has a unique perspective of these realities and lives with the effects of these negative experiences. A survivor's cultural background will also impact the way in which she perceives her prior experiences.

Many survivors who have experienced violence from an intimate partner and/or have trauma related concerns are often likely to accommodate what they think you want. This can play out in different ways. A client may ask you directly, "What do you think I should do?" Or, a client may intuitively pick up from your discussion with her what she believes you want her to do. You may think the survivor is making an informed decision when in fact she is trying to do what she thinks you want.

To overcome the distrust that survivors who are dealing with trauma-related or other mental health symptoms experience, lawyers must take steps to nurture a respectful working relationship with them. Lawyers should:

- Develop a basic understanding of trauma-related and mental health conditions that survivors may experience;
- Be skilled in listening and asking questions to understand a survivor's perspective and needs; and
- Know how to decide what information and options to offer to meet those needs.

It is within the context of a respectful relationship that lawyers can provide opportunities for survivors experiencing trauma and mental health challenges to access the resources they need and to exercise more control over their own lives.

Jill Davies has crafted a list of the ways in which advocates can offer concrete assistance to survivors who have experienced trauma resulting from multiple victimizations. Attorneys for survivors who are dealing with mental health challenges can assist clients by:

- Recognizing that survivors may be unable to access all of the details;
- Providing options and the time and space for survivors to make fully-informed decisions;
- Validating the survivor's feelings throughout the process;
- Being responsive to a survivor's requests for information and support, even if she asks for the same information several times;
- Partnering with survivors to identify alternative coping strategies, when they are engaging in self-harming behaviors;
- Finding supports for developing alternative or additional coping strategies;
- Connecting survivors who are experiencing a mental health crisis with a trusted mental health referral/resource; and
- Offering support to survivors who are using alcohol and/or drugs by safety planning and strategizing to the greatest extent possible at the time (including assessing risks and developing strategies that mitigate the risks posed by alcohol and drug use) and encouraging them to contact you again.[4]

[4] Adapted from Jill Davies, Helping Sexual Assault Survivors with Multiple Victimizations and Needs, A Guide for Agencies Serving Sexual Assault Survivors (July 2007).

Section Two: Client Counseling

Survivor-centered advocacy is based upon a partnership between the attorney and the survivor. The partnership draws upon the experience and knowledge of the survivor and the skills and resources of the attorney. The goal is to combine the expertise of both survivor and attorney to devise strategies that address the particular and comprehensive needs of the individual survivor. This partnership can proceed in three steps: (1) analyzing the risks, (2) reviewing previous/current safety plans, and (3) devising legal strategies.[5]

Work With The Survivor To Gain An Understanding Of Batterer-Generated And Life-Generated Risks.

Lawyers cannot begin to devise legal strategies for an individual client without gaining an understanding of the batterer-generated and life-generated risks she faces.

Trauma-informed legal advocacy takes time, but in the long run, it leads to more efficient, more effective legal advocacy for survivors. Here are some pointers for gathering the critical context:

- Be sure to schedule adequate client meeting time for you to gather this critical context.
- Give the client space to tell her story, so that she can identify her concerns as she prioritizes them.
- Use open-ended questions to facilitate information sharing.
- Listen more than you talk.

It is common for an abuser to attempt to use information about the mental health of a survivor to further the abuse and to gain advantage in a legal case. Develop an understanding of the ways in which the battering partner has used the survivor's mental health history in the past to further his power and control.[6] Examples might include a batterer:

- Using a psychiatric diagnosis to silence his partner (e.g., "Who will believe a woman who is bipolar?").
- Threatening to sue for custody of the children and use her mental health history against her during the custody proceedings.

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[5] Jill Davies, An Approach to Legal Advocacy with Individual Battered Women (2003).

[6] See Mary Malefyt Seighman & Erika Sussman, Interviews with Survivors of Domestic Violence Who Have Experienced Trauma or Mental Health: Reflections on Their Experiences in the Justice System: Summary and Recommendations (2010).

- Using a survivor's mental health history to convince systems (e.g., law enforcement, courts) that the survivor is not credible, that she is not a fit parent, that she needs to be institutionalized, etc.

Engage the client in analyzing the batterer-generated mental health risks that she faces now and in the future. Analysis of mental health risks may be complex. For example: a survivor who has suffered depression and anxiety as a result of her partner's abuse may suffer additional risks if her partner continues to abuse her upon her departure.

Battered women who lived with mental health conditions before they were with their partner may find that they have limited options available to them. For example: a survivor may face a greater risk of losing custody of her children, and she may be more vulnerable to future physical attack.

Partner With The Survivor To Devise Legal Options That Fit Within The Broader Context Of The Survivor's Safety Plan (Including Both Short And Long Term Goals)

The process of legal strategizing with survivors must take place within the broader context of safety planning. That context is what makes legal advocacy on behalf of survivors challenging; this is certainly true for survivors who are experiencing trauma-related and/or other mental health concerns.

Functionality and the Americans with Disabilities Act

Trauma-informed legal advocacy for domestic violence survivors requires that the lawyer work with the survivor to ensure that she can participate in the process fully. The Americans with Disabilities Act (ADA) is a critical piece of federal legislation that can assist survivors in accessing full participation.[7]

The ADA entitles individuals to protections stemming from their disabilities—related both to one's physical health as well as mental health.[8] Lawyers should think with their clients about how the ADA can assist a survivor in the course of the legal advocacy process. Clearly, just because an accommodation is available does not mean that a client will want to avail herself of the accommodation. Therefore, the lawyer and client must dialogue about

[7] Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§12101 *et seq.* (1990).
[8] Under the ADA, an individual with a "disability" is a person who has a physical *or mental* impairment that substantially limits a major life activity, has a record of such an impairment, or is regarded as having such an impairment. Under Title II of the Act, no qualified individual with a disability shall be unreasonably discriminated against, or excluded from participation in or benefits of the services, programs, or activities of state and local government, including the judicial branch.

the challenges she anticipates during the course of advocacy and in the courtroom and consider the risks and benefits of requesting particular accommodations.

Exploring Legal Options

Jill Davies suggests the following process to engage survivors in exploring the legal options that a survivor may have available.* Attorneys who have more recently begun working with survivors of domestic violence may especially wish to review this list.

Options—Consider the various legal remedies that are available to address the survivor's circumstances. For example: civil protection order, custody order, criminal charges, public benefits, VAWA self-petition, etc.

Requirements - Examine whether the survivor meets the legal requirements for the remedy. Who is eligible? What does the person need to prove to be eligible?

Legal Process - Know the legal process required to access the option. Which court? What forms are required? When is the court open? Are there unique requirements established by local court or judge?

Additional Considerations—Know about other considerations. Will the legal option enhance her safety and that of her children? Could seeking this legal option make things worse for her? Does she have control over whether to initiate the court case or is the case in the hands of someone else (i.e., a prosecutor)?

Examine each of the above steps in partnership with the survivor. The answers to many of the questions will have a direct impact upon the survivor's life and her safety plan. She will need to know about the specific practical realities so that both she and you can: identify the barriers, craft solutions that address the barriers, and determine whether the remedies can address and meet her individual risks and needs.

*Jill Davies, An Approach to Legal Advocacy with Individual Battered Women (2003).

Examining Accommodation Strategies

Engage in a nuanced conversation with your client about how her ability to function will come into play during a courtroom proceeding. The key question is: *does your client feel that she can participate in the litigation process?*

The answer to this question will depend greatly upon the challenges that your client anticipates and the types of accommodation strategies you and she develop together to address those challenges. The following are some ideas to consider:

- Practice direct and cross-examination of your client to help her feel more comfortable with the process.
- Bring a support person to the hearing or trial (family member, friend, therapist, advocate, etc.).
- If your client begins to dissociate or to look like she's shutting down, request a recess from the court.
- If you do take a recess, work with your client to explain what happened and re-orient her to where she is.
- If your client is unable to recover that day, connect her with a mental health practitioner who can help her to re-enter the courtroom space with less trauma and equip her with strategies to help her get through her testimony and fully participate in the process to the best of her ability.

Attorney Self-Assessment

All lawyers doing this work should partake in an honest self-assessment to determine whether they are prepared and able to address the particular needs of a survivor facing trauma and mental health challenges. It may be helpful to ask yourself the following questions:

- Do I have the desire, patience, temperament needed to advocate for survivors who are struggling with trauma and mental health challenges?
- Do I have the skills needed to support survivors when they find themselves triggered by the legal advocacy process?
- If I don't personally possess all of those skills, who can I collaborate with to ensure that my client is getting the accommodations and support that she needs to fully participate in the process?

When Your Client is Unable to Testify

Under some circumstances, courts may consider a person to be "unable to testify" under the rules of evidence, and therefore entitled to an out-of-court deposition. Such a deposition allows a witness to contribute her testimony while avoiding the trauma of testifying in the courtroom. It is generally permissible provided the testimony meets the

other applicable rules of evidence. Some state courts (e.g., Ohio and Rhode Island) have developed special provisions that allow for out-of-court testimony by victims of sex crimes, abuse, and neglect who live with mental disabilities, thereby helping them to avoid retraumatization in the courtroom.

Assessing the Risks and Benefits of Accommodations

Lawyers will want to discuss with survivors the pros and cons of requesting accommodations. At the very least, a request for accommodations requires that the litigant disclose her disability.

Pros of Requesting Accommodations:

- If your client anticipates that mental health will be raised during the course of the trial, disclosure may carry little risk.
- Accommodations may help your client to participate more fully in the proceedings by reducing the potential negative impacts of participation (e.g., triggering of the effects of trauma).

Cons:

- If mental health is unlikely to be raised otherwise, the risk of stigma or unwarranted prejudice may be greater.
- Disclosure may result in mental health or trauma being raised as a substantive issue by the opposing party.
- In a custody case, this additional attention drawn to the mental health of your client may influence the weight given to this factor in the best interest consideration.

The calculus has real implications for your client and the way that she will experience the legal process. Therefore, she must be involved in analyzing and ultimately making this important decision.

Collaborating with Trauma- And Domestic Violence-Informed Mental Health Professionals to Address The Survivor's Range Of Legal And Mental Health Needs

Even the most seasoned domestic violence lawyers cannot know all there is to know about mental health issues facing survivors. Nor can attorneys take on the role of mental health professionals. For these reasons, it is critical to develop relationships with qualified mental health providers. Note that it will be important, prior to taking on any one case, to identify individual mental health practitioners who understand the political and individual context of coercive control and have expertise in trauma-related mental health conditions. During the course of your representation, you may consult with this mental health provider in crafting safety plans, in identifying remedies, and, when needed, to serve as an expert

witness. As with all collaborations that an advocate builds, you must obtain the informed consent of the survivor prior to sharing any information with the mental health provider. Be sure to be specific with your client about the scope, content, and time frame of the consent she is providing.

Encouraging Survivor-Driven Decision-Making

Many survivors who have experienced violence from an intimate partner and/or have trauma related concerns are often likely to accommodate what they think their attorneys want. As the attorney of a survivor living with trauma, you may experience this in several ways. Your client may ask you directly, "What do you think I should do?" or, from your conversation, she may intuitively pick-up on what she *thinks* that you want her to do.

As a result, you may think the survivor is making a decision for herself, when in fact she is trying to do what she thinks you want her to do. This is a problem that many lawyers (and other "helping professionals") face. We are often asked what we think the client should do. We believe it is our job to answer this question. However, it is critical that we resist the temptation to tell our clients what to do. Knowing the law is not enough. You do not know the survivor's life circumstances well enough to make this judgment. Even you did, it is the survivor who will have to live with the consequences of the decision. Lacking such context, you may suggest something that is not safe for the survivor. Or the survivor may not be able, for other reasons, to take the steps that you are recommending; she may then lose trust in you. Indeed, she may stop working with you altogether, without explanation.

In any of these situations: If a survivor is trying to accommodate what you have suggested without thinking through how it impacts her own circumstances, then she is not determining the course of her legal advocacy.

To avoid this, and to promote her active decision-making, you might try the following:

- Do not present legal options until you have had time to gather a contextual understanding of your client's life circumstances and the abuse she has experienced.
- Make sure that you thoroughly discuss the choices. Do not move forward based upon a simple yes or a nod.
- When you present an option, engage your client in analyzing both the risks and the benefits, based on her individual life circumstances, as she anticipates them. You might ask:
  - If you were to do X, what about it might cause you to worry? What negative consequences can you foresee? What are the possible benefits?

- Once you have identified specific risks related to particular legal strategies, work closely with the survivor to create options that mitigate the risks she has identified. Then, engage her in considering the risks and benefits of those solutions.
- Give the survivor time outside of your meeting to make decisions, so that she can consider the options with the support of her family, friends, or an advocate.

Section Three: Discovery and Evidence

This section discusses important considerations related to mental health records and testimony on civil legal cases involving issues of domestic violence. It examines the implications of mental health treatment, the importance of conducting a risk assessment with your client about the disclosure of mental health information, and the development of strategies to respond to attempts by the opposing party to obtain and introduce mental health information about a client. Attorneys should consider the factors and strategies discussed below in light of the survivor's expressed needs and desired outcomes, the facts and circumstances of the case, and the culture of the court. The use of experts is covered in Section 6: Selecting and Preparing Expert Witnesses.

Consider the Implications of Mental Health Treatment on a Case

During your initial interview(s) with your client, you likely learned whether she has sought or is currently seeking treatment from a mental health care provider. The opposing party may try to seek release of information related to mental health treatment to impeach her credibility, and to demonstrate that she is emotionally or mentally unstable and therefore an unfit parent. Societal stigma related to mental health diagnoses and symptoms can carry significant weight in a case. Mental health may also be considered as a factor in the determination of the best interest of a child as part of a custody case.[9] If your client has ever received mental health services, you will need to work closely with her to consider the implications of the release of her mental health-related information and develop strategies to combat attempts by the opposing party to use it to damage your client's case.

In order to do this in a manner that continues to build trust and further solidify the partnership you are creating with your client, you will have to initiate and proceed with this conversation in a delicate manner. Remember that the stigma and shame of mental health-related conditions are often internalized. In your discussions about these issues, try to avoid feeding into that shame and stigma.

For example, you could say, "*I understand that you have been proactive in taking care of yourself and making sure you can be an even better parent for your child(ren). I admire your fortitude and courage in doing this work on your mental health concerns. Unfortunately, the other side may try to use your efforts to show that there is something wrong with you and that you are an unfit mother. So, let's talk about how we might address that possibility. First, do they know about your mental health concerns and your efforts to address them? Second,*

[9] Consult your state's family code for the factors that a court may consider in making custody decisions, and the weight given to particular items.

how do you feel about bringing it up before they do? Third, can we involve your therapist in our case as a witness on your behalf?

Taking this strength-based approach will help your client to see her efforts in a positive manner. If you continue to talk about it with her in this way you will reinforce what her therapist has likely also brought to her attention: that her foresight in dealing with these concerns is very positive and will help her to be the best parent she can be. Doing this will help her to respond better to the opposing party's efforts to attack her with information about her mental health challenges or treatment that she has sought.

Conduct a Risk Analysis with Your Client About Disclosure of Mental Health Information

If you or your client believe that your client's mental health will be a factor that will affect the case outcome, you will need to conduct a risk analysis related to mental health-related evidence.

A risk analysis considers:

- What evidence will potentially be available;
- How difficult or easy it will be for the opposing party to obtain it;
- What information it will contain;
- Whether it will be damaging and, if so:
  - To what degree;
  - What would the consequences be of the introduction of such evidence; and
  - Would introducing it affirmatively bolster the case and mitigate its harmful effects.

Conducting a risk analysis will help to prepare you and your client for the possibility that documentary and/or testimonial evidence of mental health challenges will be utilized by the opposing party. It will also help you to develop and implement a strategy to defeat the effect intended by the opposing party.

Affirmative release of mental health information

Potential Benefits:

Some attorneys believe that pre-emptive release of information about a client's mental health and providing up-front explanations about it can be beneficial to a case. This approach can be useful in certain circumstances. It can send a message to the court and the opposing party that you and your client are not concerned about your client's mental health and that you do not consider it to be damaging. For example, you may decide to

introduce direct testimony from a mental health provider who has treated your client in which she states that your client is completely functional; that she is a responsible and competent parent, employee, and member of the community; and that the trauma and/or mental health symptoms that she sometimes experiences do not negatively impact her life (or the lives of her children, in a custody or visitation case). This can work to the advantage of your client and can *normalize* the fact that your client lives with mental health challenges.

Potential Risks:

However, entering mental health records and other information or introducing mental health professionals' testimony, can result in unintended harmful consequences once they are in the hands of the opposing party. There may be information in mental health records, for example, that did not appear to be damaging when you examined it, but that is used to demonstrate that your client lacks credibility or has demonstrated poor parenting skills.

Analyzing Whether to Preemptively Disclose:

If, after you conduct a risk assessment, you determine that it is likely that the opposing party already has or will obtain potentially harmful information about your client's mental health, you will need to discuss with your client whether it is more likely than not that preemptively disclosing it would support your case, or whether it would have negative consequences for the desired case outcome, your client's life goals, the safety of your client or family members, her economic status, or her privacy.[10] Additionally, releasing mental health information about your client – if it has not already been raised by the opposing party – could possibly elevate your client's mental health to a central focus of the case rather than keeping it on the violence that the opposing party perpetrated.

As a first step, after consulting with your client about proceeding with the case, and with the permission of your client, it is important to obtain and examine your client's mental health records and assess them for aspects that may be helpful or harmful to the case. Factors in this decision will likely include: the type of case on which you are representing your client, the case timeline, the relative ease or difficulty of obtaining records, and cost. Conducting a risk analysis will help you to make a decision about and aid in the development of your overall case strategy with regard to mental health.

[10] Office on Violence Against Women grantees and subgrantees receiving Violence Against Women Act funds must protect the confidentiality and privacy of persons receiving services to ensure their safety and their families' safety. Check with your OVW program manager about the confidentiality requirements with which you/your agency may be required to comply.

Consider:

(1) **Types of evidence** that may be available about your client's mental health such as:

- Insurance records that include diagnoses and services provided, and medications prescribed to alleviate symptoms.
- Mental health treatment provider files including examination or assessment results, diagnoses, and clinician notes.
- File notes kept by victim service providers including domestic violence programs or organizations providing more general services to victims of crime.
- Children's school records.
- Testimony of your client's mental health provider(s) related to mental health diagnosis, symptoms, treatment, and concerns.

Discussing Evidence with Your Client

It is important to discuss the risks and the types of evidence with your client in a non-judgmental fashion. People living with mental health challenges are often encouraged to seek support from friends and family in addressing these issues. Talking about their diagnoses can help normalize the condition for the survivor and lead to acceptance. This is critical for healing. The manner in which you discuss these points will affect how they feel about their actions. Recognizing that a survivor was proactive in seeking help and support for mental health concerns is an important message to convey. The more you do this, the more a survivor will believe you and believe it of themselves. It also further strengthens your partnership and trust.

(2) **Statutory confidentiality and privilege provisions** that may apply, such as:

- What your state's code requires for insurance records to be released as part of a civil legal case or child protective services administrative proceedings.
- What your state's code requires for mental health records to be released as part of a civil legal case or child protective services administrative proceedings. Does the statute provide standards for release that are relatively difficult or easy to meet?
- Does your state code explicitly provide for a psychotherapist-patient or a counselor-client privilege? Who qualifies under the privilege? What are the exceptions?
- What do the rules of evidence say about release of information?

Applicable exemptions or exceptions related to statutory confidentiality and privilege statutes, which would allow disclosure or release of information to particular individuals or under certain circumstances such as:

- Family members or others who are participating in the diagnosis or treatment. If so, what information may have already been made available to them related to diagnoses, treatment goals, and medications?
- Hospitalization proceedings.
- Any breach of duty by the psychotherapist or the patient.
- When the mental state of a client is an element of a claim or a defense.
- Child custody cases when the mental state of a party is an issue and resolution of the issue requires disclosure.
- Counselors whose duties and role do not strictly meet the definition of counselor included in the statute.
- Suspected child abuse or neglect.
- Past civil or criminal proceedings in which the judge ordered a mental health assessment or examination, or which were required as part of a child protective services case.
- Collection proceedings for unpaid mental health services.

(4) Whether any of your client's **mental health information has previously been released** as part of another legal case or administrative proceedings, whether they are now considered part of the public record, and whether they can be accessed at the court that had jurisdiction over the case or elsewhere.

(5) Whether your client has signed any **blanket or limited releases** allowing a psychotherapist, counselor, or advocate to disclose information about her mental health or services provided, the information that may be released, and the circumstances under which information may be disclosed.

(6) Whether state statute or case law allows for a blanket **exception to mental health record confidentiality or psychotherapist or counselor privilege** pursuant to a subpoena, and how likely the court is to grant a request to subpoena your client's mental health records or the appearance of her/his mental health care provider(s).

(7) Whether your client's mental health treatment was ever covered by a **health insurance policy provided** by the opposing party's employer or which was privately purchased by the opposing party.

Developing Strategies Related to the Disclosure of Mental Health Information

If you believe that written records or the testimony of a mental health care provider or others will be available to the opposing party and you wish to prevent the opposing party from admitting them into evidence, you should discuss what actions you will take to prevent their inclusion and what your response will be if they are admitted. You will need to consider the culture of the court and the facts and circumstances of the case in determining whether to object to introduction of mental health evidence, and at what point in the case (i.e., pre-trial or during a hearing or trial).

You will need to prepare for the following possible circumstances:

- Attempts by the opposing party to obtain information about your client's mental health status or treatment – either informally (e.g., attempting to learn information about your client on the phone or via office visits with the mental health provider) or through formal channels such as by asking the court to issue a subpoena for the provider' records, testimony, or deposition.
- Attempts by a court-assigned evaluator to contact your client's mental health provider and interview him/her about your client, or obtain records.
- Attempts by a child protective services agency to contact your client's mental health provider to learn information about your client through records, an interview, deposition, or testimony.

Possible strategies that you consider with your client may include the following:

(1) Communicate with Your Client's Mental Health Provider(s)

Talk with your client about the reasons why she may want to inform her mental health provider that she is currently or will be a party to a civil legal case involving issues of domestic violence. This includes:

(a) Privilege and Confidentiality: The necessity of the mental health provider maintaining the privilege and/or confidentiality over communications and records regarding services provided to your client.

The provider may receive a subpoena for records or to appear at a deposition, hearing, or trial for the purpose of providing testimony about your client. You should request that the provider contact you immediately if the opposing party or anyone else makes any attempts to gather information about your client (whether by subpoena, phone call, email, or other means). Response to a

subpoena is generally required quickly (e.g., within ten days); the sooner you know, the more quickly you can generate a response and prevent the release of information.

(b) Record Keeping. The provider should consider the case context when she makes future records about your client. You, your client, and the mental health provider should be aware that all information is potentially discoverable. Talk with the provider about how notes of sessions with your client could be misinterpreted or used against her in the case.

(c) Preparation for Trial. If your client agrees, the mental health provider needs to be a part of the team that is preparing the case. The provider can contribute by helping your client to prepare documents that illustrate and demonstrate her positive attributes including her competence as a parent, her foresight in seeking and receiving mental health assistance when she needs it, and her contingency planning for the future. The provider can also help you craft arguments related to your client's mental health symptoms and how they do not impact her credibility related to the abuse or care for the child(ren).

(d) Waiver for Communication with Provider. If your client is willing, she can sign a written waiver allowing you to communicate directly with her mental health provider. Any such waiver should be very specific in terms of the information that can be disclosed and the time period for which it is operational.

Remember that these conversations need to be handled carefully so that your client is making a decision based on what she knows and believes, not on what she thinks you want her to do. You do not want your client agreeing to something simply to accommodate you. This is very important for maintaining the trust that you have built with her. It is also critical to her continued participation in the case that she think this through thoroughly. You may suggest that she talk it over with her advocate, a close friend, or her therapist. The risk in not taking the time here is that a decision to accommodate you could potentially derail your case at the last moment if she changes her mind. This is less likely to happen if it is truly her decision.

(2) Response to Subpoena. If the opposing party obtains a subpoena for the mental health records of your client, or for the deposition or trial testimony of your client's mental health, you can prepare and file a motion to quash that argues that the subpoena should be cancelled or nullified on the grounds that:

(a) *Production of the records or testimony of the individual would violate the counselor-patient privilege or confidentiality.* You should directly address all exceptions enumerated in the relevant state code section that could possibly apply in the case. Cite the relevant statutory authority – e.g., counselor-patient privilege, confidentiality of mental health and/or medical records – and/or case law.

(b) *It is unduly burdensome in terms of time or cost.* For example, you could argue that traveling to or appearing at a deposition or hearing would mean that the mental health provider would have to forego client appointments and fees, and that it would be financially burdensome to be required to do so.

(c) *The information requested is irrelevant to the case issues* because:

(i) The mental health of your client has not been shown to be at issue in the case.

(ii) The information sought is too old (e.g., older than one year) to be relevant to the case.

(iii) The information contained in the provider's records contains personal information that is not related to the case and could be misleading.

(d) *Release to non-professionals of raw psychological data (e.g., from personality inventories or other instruments, notes from therapy sessions) is unethical* because of the inability of the non-professionals to correctly interpret them and, as such, it may be unduly prejudicial.

(e) If you or your client believes that the opposing party is using this attempt to gain access to your client's mental health records as a continuation of his pattern of power and control over your client, you can argue that, in addition to being irrelevant in the case, *the opposing party is seeking the information for the purpose of attempting to intimidate your client and continue his pattern of abuse.*

The mental health provider can also file a separate motion to quash, as well, if he/she chooses.

(3) Response to Attempts to Introduce Mental Health Information. If the opposing party is successful in obtaining mental health information about your client (or already had the information in his or her possession) and attempts to introduce it into evidence, you can file a motion *in limine* to try to keep the evidence out. A motion *in limine* is a request that the court either exclude or include evidence. It can be a powerful tool that can be used to remove support for arguments that the opposing party was planning to rely upon and to

gauge whether the court will find information about your client's mental health to be probative.

The arguments included in a motion *in limine* can include those enumerated in the section on Motions to Quash, above. Additionally, if the opposing party is attempting to introduce evidence about your client's mental health status or treatment that he obtained while they were in a relationship, or through means other than subpoena, you can include additional or alternate arguments such as:

(a) The opposing party obtained the information improperly by manipulating the mental health provider as part of his pattern of abuse.

(b) The opposing party obtained the information by improperly accessing your client's private records, such as by opening her mail.

(c) But for the opposing party's abuse, your client would not have sought mental health treatment; inclusion of mental health evidence about your client would be prejudicial and unjust.

References and Additional Resources

American Psychological Association Committee on Legal Issues (2006). *Strategies for Private Practitioners Coping with Subpoenas or Compelled Testimony for Client Records or Test Data.* Professional Psychology: Research and Practice, 37 (2), 215-222.

Bennett, B.E., Bricklin, P.M., Harris, E., Knapp, S. VandeCreek, L., & Younggren, J.N. (2006). *Assessing and Managing Risk in Psychological Practice: An Individualized Approach*. Rockville, MD, American Psychological Association Insurance Trust.

Glosoff, H.L., Herlihy, S.B., Herlihy, B. & Spence, E.B. (1997). *Privileged Communication in the Psychologist-Client Relationship*. Professional Psychology: Research and Practice, 28, 573-581.

Inman, L. *Some Things Are Best Left Unsaid: Strategic Use of Motions In Limine*. Zaytoun Law Firm. Raleigh, North Carolina. http://www.ncatl.org/file_depot/0-10000000/0-10000/9208/folder/88887/Motions+in+Limine.pdf.

Koocher, G.P. & Keith-Spiegel, P. (2008). *Ethics in Psychology and the Mental Health Professions: Standards and Cases*, Third Edition. New York, Oxford University Press.

OVW Fiscal Year 2011 Grant Program Solicitation Reference Guide (Dec. 17, 2010). http://www.ovw.usdoj.gov/docs/resource-guidebook/fy11-ovw-resource-guidebook.pdf.

U.S. Department of Health & Human Services (2009). Court Orders and Subpoenas Under HIPAA.
http://www.hhs.gov/ocr/privacy/hipaa/understanding/consumers/courtorders.html

Section Four: Custody and Mental Health Evaluations

What is a Custody Evaluation?

A custody evaluator is generally appointed to conduct an "evaluation" of the parties and the circumstances of the case. The judge will often delineate specific questions that the evaluation should address, including what custody arrangement is in the best interests of the child. If the case includes issues of domestic violence or child abuse, the evaluator is often charged with making a determination as to whether any such abuse exists or poses a risk to the child. Custody evaluations can vary, but generally include psychological testing of both parents, interviews of collateral witnesses, interviews with the children, observations of parent/child interactions, and review of documents.

Objecting to the Use of Any Custody Evaluator

Many courts across the nation routinely order custody evaluations in every child custody case. However, custody evaluations are not warranted in many, perhaps most, cases involving domestic violence. Indeed, there is a great deal of data (both scientific and anecdotal) demonstrating that custody evaluations often result in dangerous outcomes for protective parents and their children.

Custody Evaluators and Domestic Violence

Even if an evaluator has performed numerous evaluations does not mean that she is qualified to address cases involving domestic violence. Such an evaluation requires specialized knowledge and understanding. For example, an evaluator must have an understanding of the ways in which battering impacts children and protective parents. When an evaluator lacks that qualification, he or she is likely to misinterpret information, perhaps even attributing adaptive or protective strategies to a psychopathology. For all of these reasons, attorneys may wish to consider whether to object to assignment of a custody evaluator at the start of the custody case. Factors to examine in this decisionmaking process include the culture of the particular court, the facts and circumstances of the case, and the laws of the jurisdiction.

The following may serve as the bases for an objection to an appointment of a custody evaluator:

(1) The Law Requires Grant of Custody. Under the law of many states, where there is evidence of domestic violence, no evaluation is needed to determine that a child's best interests are served by granting custody to the protective parent.[11] The custody determination should be driven by a statutory presumption against granting custody or visitation to an abusive parent or by the court's own determination that evidence of domestic abuse necessitates that custody be granted to the non-abusive parent. When there are no previous findings of domestic abuse or when public records do not exist, attorneys for survivors may argue that the current custody case provides a forum for each party to present evidence that enables the judge to make a finding regarding the presence of domestic abuse. This level of due process is what is required of the adversarial process. While courts may feel that additional information is necessary to inform a best-interest analysis, such information will be provided by the parties and must be subject to the rules of evidence, as required by constitutional law.

(2) Trauma Caused By the Abusive Parent Cannot Be Used Against Victims in Custody Case. Attorneys should consult with their local statutes to determine the law governing child custody evaluators. Some states have statutory provisions that state that the *effects of domestic violence cannot be used against victims in custody litigation*. Therefore, whether operating in a state that follows a best interest of the child framework or a presumption against ordering custody to an abusive parent, attorneys may invoke this statute to argue that the abusive parent cannot use the protective parent's alleged mental health condition (caused by the abusive parent's acts) to deprive her of custodial access.

> Example: In Louisiana, the Post-Separation Family Violence Relief Act creates a rebuttable presumption against awarding sole or joint custody to perpetrators of family violence. The section that sets forth the standard for rebutting the presumption further states, "the fact that the abused parent suffers from the effects of the abuse shall not be grounds for denying that parent custody." La. R.S. 9:364.

[11] National Council of Juvenile and Family Court Judges, Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide, at 13 (revised 2006).

Choosing an Evaluator[12]

Minimize the Risk

Once it is clear that the court will appoint an evaluator, attorneys should take steps to avoid or minimize the likelihood that an unqualified evaluator will be appointed:

You may ask the court for:

- The opportunity to submit the names of proposed evaluators;
- Time to investigate the proposed evaluator's qualifications; and/or
- Time to submit any appropriate objections to the court.

Assess the Qualifications of a Custody Evaluator

First, determine whether your jurisdiction has guidelines for designating evaluators with particular competence in domestic violence. For example, Louisiana requires that the custody evaluator have "current and demonstrable training and experience working with perpetrators and victims."[13] Attorneys should use these legal standards to advocate for qualified custody evaluators.

The National Council on Juvenile and Family Court Judges (NCJFCJ) recommends that courts consider the following in identifying a qualified custody evaluator:[14]

- Whether the evaluator has been certified as an expert in, or competent in, issues of domestic violence by a professional agency or organization, and the criteria for "certification" (including whether it involved a bona fide course of study or practice);
- What courses or training (over what period of time) the evaluator has taken that focused on domestic violence;
- The number of cases involving domestic violence that the evaluator has handled in practice or to which he or she has been appointed. *Remember, however, that such experience may simply reflect the mechanism used by the court in identifying potential evaluators, rather than any relevant expertise*; and
- The number of cases in which the evaluator has been qualified as an expert in domestic violence.

[12] Much of Section Four is drawn from training materials developed by Becki Truscott Kondkar for a teleconference training hosted by the Center for Survivor Agency and Justice in 2006. For a copy of the training materials and other resources on the topic of Custody Evaluators in Domestic Violence Cases, go to: www.csaj.org.

[13] La. R.S. 9:365

[14] Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide, *supra*, note 11.

Oppose the Evaluator Before the Evaluation Begins

Attorneys should oppose the custody evaluator before he or she begins the evaluation. The following are grounds for opposition:

- Qualifications/experience
- Costs/fees
- Limiting the scope of the evaluation to areas appropriate for the skills and expertise held by the evaluator
- Use of unreliable, untested, or unethical evaluation practices

Psychological Testing

According to the NCJFCJ's Guide to Navigating Custody Evaluations, "psychological testing is not appropriate in domestic violence situations."[15] Such testing has the potential to misdiagnose non-abusive parent's normal response to the abuse or violence as indicative of mental illness, diverting attention from the coercive behaviors of the abusive parent.[16]

The Guide suggests that courts consider the following relevant questions:

- What is the test being used to measure?
- How is the test relevant to issues of custody and visitation?
- Is the test valid for purposes for which it is being used?
- Is the test recognized and accepted by experts in the field?
- What are the qualifications necessary to use the instrument?
- Does the expert have those qualifications?

Relevance and Reliability of Psychological Testing

The NCJFCJ Guide emphasizes the following points with regard to the relevance and reliability of psychological testing in child custody cases:

- Research shows that "there are no psychological tests that have been validated to assess parenting directly."[17]
- There is no psychological test that can accurately determine whether someone is an abuser or has been abused.[18]
- Standard psychological tests measuring personality, psychopathology, intelligence or achievement do not address the issues most relevant to children or parents' child-rearing attitudes and capacities.[19]

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[15] Id.
[16] Id at 20.
[17] Id.
[18] Id.
[19] Such tests include: the Minnesota Multiphasic Personality Assessment Inventory (MMPI-2), Rorschach Inkblot Test, Children's Apperception Test (CAT), Thematic Apperception Test (TAT), Wechsler Adult Intelligence Scale (WAIS-III), and Wide Range Achievement Test (WRAT-3).

- Standard tests may confuse symptoms resulting from domestic violence with psychopathology.[20]
- Tests intended to address trauma (e.g. Trauma Symptom Inventory (TSI)) may assist in determining treatment, but are not appropriate to determine whether a traumatic incident occurred.[21]

Parental Alienation Syndrome Has Been Discredited

Parental Alienation Syndrome (PAS) has been discredited by the scientific community, and courts should not accept this testimony. Lawyers should object to the admissibility of such evidence, based on its lack of validity and reliability, as required by *Daubert* and *Frye*. The NCJFCJ Guidelines state:

> Unfortunately, an all too common practice. . . is for evaluators to diagnose children who exhibit a very strong bond and alignment with one parent and, simultaneously, a strong rejection of the other parent, as suffering from "parental alienation syndrome" or "PAS." Under relevant evidentiary standards, the court should not accept this testimony.[22]

Apart from the evidentiary problems it presents, PAS fails to recognize that a child's alignment with one parent or a parent's seemingly "alienating" behavior may in fact represent a parent's strategies aimed at protecting children from harm posed by the battering parent. Indeed, it is for that reason that the American Psychiatric Association determined that there was not sufficient scientific evidence supporting PAS to include it in the DSM V.

How to Proceed when the Evaluator Has Been Appointed and the Evaluation Has Been Performed

Reading the Evaluation

Attorneys representing survivors in child custody cases should familiarize themselves with acceptable evaluation practices.

- Know the ethical and professional guidelines that govern custody evaluations.
- Seek professional help in reading the evaluation.
- Receive training on how to read custody evaluations

[20] National Council of Juvenile and Family Court Judges, *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide*, (2004, Revised 2006).
[21] Id.
[22] NCJFCJ *Guidebook* at 24.

- Conduct research for each evaluation

Consult With the Following Sources for Professional and Ethical Guidelines for Custody Evaluations

- American Professional Society on the Abuse of Children
- American Psychological Association
- National Children's Advocacy Center
- State Licensing Board
- Statutory criteria in your state

Know the Red Flags

When reviewing a custody evaluation, be sure to look out for the following red flags:

- Dual Roles—The evaluator has acted as or suggested that he/she act as both an evaluator and as a therapist.
- Reliance on Discredited Science—The evaluator has relied upon professionals or theories that are discredited in the field.
- References to "bad science" (i.e., inappropriately applied theories and diagnoses, and problematic terms); examples include:
  - Parental alienation syndrome
  - Munchausen's
  - Enmeshment
  - Batterer Profiles
  - Sex offender or pedophile profiles
  - False Allegations
  - False Memory Syndrome or False Memory

Conduct Discovery

Lawyers for survivors should always conduct discovery to learn more about the basis for the evaluation and the evaluator. Discovery should inquire about:

- Training, qualifications, and experience of the evaluator.
- Testing procedures used in the evaluation. You should ask the following questions:
  - What protocols were followed in conducting the evaluation?
  - Where can those protocols be found in the professional literature?
  - What was the purpose of the evaluation?
  - What were the specific inquiries?
  - What was the purported purpose of the various tests administered?
  - Is that testing designed to specifically ascertain the information sought?

- ❖ What testing procedures were used?
- ❖ What are the qualifications of anyone else involved in administering the testing?

Sources of Information

Whenever possible, custody evaluators should base their evaluations not only on interviews with the parties, but also on corroborating sources of information. There are many reasons for this: the abusive partner may deny their use of violence and coercive control, and their assessment of their partner's parenting may be a reflection of their abusive criticism and/or manipulation; the survivor may present as emotionally unstable, when in fact their behavior is a result of their partner's abuse and/or the survivor is triggered; and a child may identify with the abusive parent out of self-protection.

Collateral sources may include:

- ♦ Other family members, friends, neighbors, co-workers of the abused parent, and former partners;
- ♦ Doctors, clergy, teachers, and counselors; and/or
- ♦ Domestic violence advocates and professionals who have become involved with the family due to the abuse.

Pertinent records may include:

- ♦ Police reports;
- ♦ Child protection reports;
- ♦ Court files in the present case and prior cases;
- ♦ Medical, mental health and dental records; and/or
- ♦ School records.

File a Motion in Limine

If your review of the evaluation and the evaluator yield troublesome findings, you may wish to file a *motion in limine* to exclude the evaluator's report, opinions, or testimony.

- ♦ If it appears that the evaluator has used "junk science" such as PAS, you should move to exclude the evaluator's report and testimony.
- ♦ Determine the evidentiary standard governing admissibility of scientific evidence in your jurisdiction. Most states follow some version of the *Daubert*[23] or *Frye*[24] standards.[25]

[23] *Daubert v. Merrell Down Pharmaceuticals*, 509 U.S. 579 (1993).
[24] *Frye v. U.S.* 293 F. 1013 (D.C. Cir. 1923).
[25] See Jennifer Hoult, The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law, and Policy, Children's Legal Rights Journal, 26(1) (Spring 2006)(analyzing PAS admissibility under Frye, Daubert, Kumho Tire, and Federal Rule of Evidence 702).

- *Daubert*/Federal Rule 702 standard: Reliable Principles and Methods
- *Frye* Standard: General Acceptance Test
- Note: "Any testimony that a party to a custody case suffers from PAS should be ruled inadmissible and/or stricken from the evaluation report under both the standard established in *Daubert* and the earlier *Frye* standard."

Discrediting/Impeaching an Incompetent Evaluator

When a motion *in limine* is not successful, you will want to use your cross-examination of the custody evaluator to discredit or impeach him or her. Tips include:

- Retain an expert of your own, and
- Impeach the evaluator by using authoritative professional literature (including, where possible, publications by organizations to which the evaluator belongs).

Mental Health Evaluations in General

Most state statutory schemes limit the circumstances under which you can ask for a mental health evaluation. Most statutes say that you must make a finding of good cause. Although some state statutes say that a request for child custody puts mental health at issue, it is the exception. Therefore, it is critical that attorneys for survivors in custody cases review their statutes. Remember: just because it is a custody case, does not necessarily mean the batterer or the court have the right to have your client's mental health evaluated. That said, you will want to consider whether to object to a mental health evaluation, based on the court and the particular facts of your case. Once a mental health evaluation enters into evidence, your job will be to analyze and formulate arguments regarding its relevance to the legal issues at hand.

References

American Bar Association, *Standards of Practice for Lawyers Representing Children in Custody Cases*, 37 Fam. L.Q. 131 (Summer 2003).

The APSAC Handbook on Child Maltreatment (2nd Ed. Sage, 2002).

Carol S. Brunch, *Parental Alienation Syndrome and Parental Alienation: Getting it Wrong in Child Custody Cases*, 35 Fam. L.Q. 527 (Fall 2001).

Clare Dalton et al., National Council of Juvenile and Family Court Judges, *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide* (Revised in 2005).

Richard Ducote, *Guardians Ad Litem in Private Custody Litigation: The Case for Abolition*, 3 Loy. J. Pub. Int. L. 106 (Spring 2002).

Robert Horowitz et al., American Bar Association Center on Children and the Law, *A Judge's Guide: Making Child-Centered Decisions in Child Custody Cases* (2001).

Violence and the Family: Report of the American Psychological Association's Presidential Task Force on Violence and the Family (1996).

www.leadershipcouncil.org (web site for the Leadership Council on Child Abuse and Interpersonal Violence, a non-profit organization that promotes the responsible use of science. This site provides a tremendous amount of citations to resources).

Section Five: Deciding Which Course to Take and Preparing Your Client for Mediation/Negotiation or Trial

As with all legal cases, those involving domestic violence and trauma require that you and your client weigh the pros and cons of mediation, negotiation, and pursuing a case in court. As an attorney, you consider the law, the court, the facts, and the risks of losing. Your client considers the risks that each of the proceedings could potentially present to her physical and mental health. Together, you and your client develop options that address the risks and optimize the chances of meeting her particular goals – both legal and otherwise. The survivor decides upon whether to pursue negotiation or trial, based upon all of the strategies that you and she have developed.

Know the Proceedings in Your Jurisdiction and Court

Make sure that you know the structure of the proceedings – negotiation, mediation, and trial – in your particular jurisdiction and under your particular judge. Lawyers for survivors must know more than just the legal remedies available. They must understand the legal requirements and the process for accessing the option. The legal process itself is often just as, and often more, important to a survivor's sense of safety and autonomy. For example, if a survivor feels that the courtroom will expose her to triggers, she may decide that the risks that trial presents to her mental health outweigh the potential legal benefits.

The following are common processes that are important to consider:

Mandatory Custody Mediation and Domestic Violence

Some jurisdictions require mediation in every child custody case. Many statutes waive this requirement in domestic violence cases, though others do not. Be sure to know the rules regarding domestic violence custody mediation in your jurisdiction. If there is an exception and your client wishes to avail herself of that exception, submit a motion or be prepared to articulate to the court why mediation is not appropriate in your client's case. You will need to prepare your client if mediation is required and/or if she wishes to pursue mediation. This is especially true in cases involving domestic violence and cases where a survivor has mental health concerns that could be exacerbated. See below for further discussion of how to prepare for negotiation.

Domestic violence exceptions to mandatory mediation came about for good reason. For years, advocates and lawyers have argued that the power dynamics inherent in relationships involving domestic violence make mediation ineffective and potentially dangerous for survivors. Abusers are likely to coerce and intimidate their former partners into accepting terms that they do not want and that are against their and their children's best interests. Attorneys should draw from their jurisdiction's rules and statutory provisions to illustrate the potential harm in the instant case. Despite the risks posed by mediation, some survivors, may choose this course to safeguard against the very real risks associated with trial. As an attorney, you must share the potential risks and benefits of each of these processes and discuss the implications for your client. Do not make assumptions based on generalizations about the litigation process. Rather think with your client about how the processes available are likely to play out in her life.

Mandatory Protection Order Negotiation

Some jurisdictions, such as the District of Columbia, require that parties to a civil protection order attempt to negotiate their case prior to moving to trial. There may be a "court negotiator" who talks to each of the parties and aims to strike a negotiated order to avoid the time and expense of the courtroom. Some may engage in a "shuttle negotiation," in which the court negotiator communicates with each party separately, while others may pull each of the parties into the same room and require that the survivor and abuser be present. Be familiar with the level of involvement required. In other words, some negotiations are a mere formality—a stepping stone before trial. Other jurisdictions require a genuine attempt to settle the matter and avoid the courtroom.

Other than the process concerns, attorneys for survivors should be cognizant of the impact that negotiated orders may have on their enforceability and on subsequent legal cases. Negotiated orders are not subject to an evidentiary proceeding and are, therefore, not subject to due process requirements. As such, the remedies are not supported by factual findings and cannot be used in future proceedings. For example, in jurisdictions that grant custody based on a finding of domestic violence, a negotiated protection order will not suffice as evidence of such abuse.

Testifying at Trial

While the outcome of a trial may be positive, the process may pose risks to the survivor that preclude it as a possibility altogether. This is particularly true for survivors who are experiencing trauma and other mental health challenges. Trials are inherently adversarial in nature. Indeed, the entire process is built upon each side's zealous case presentation. The trial process is likely to present challenges for your client. A range of strategies is discussed later in this section. However, it is worth noting that there are some jurisdictions and courts that allow for evidentiary exceptions that enable survivors to present testimony that

was obtained in advance of trial in lieu of trial testimony. For example, Ohio has enacted a provision that allows victims of sexual crimes, abuse, or neglect, or who have mental disabilities, to avoid the trauma of appearing in court by allowing them to be deposed out-of-court. These depositions may be introduced in court provided they meet the ordinary rules of evidence.

Consider the Risks and Benefits Depending Upon What the Survivor Wants and What She Knows About the Batterer and Herself

In cases where mediation/negotiation is not required, there are a number of factors to take into consideration to determine which route to take. For example:

- Is the survivor going to be at greater risk of harm from the abuser if you take this case to court?
- Is negotiating a settlement or is having a mediated resolution a safer course of action for the survivor and her child(ren)?
- Do the mediators have any expertise in domestic violence?
- Would a court proceeding be in the best interest of the child(ren)?

As you think about all these factors you want to also consider how a negotiation would impact the survivor's mental health concerns versus a court proceeding.

If you have noticed the symptoms of trauma, as discussed in Section Six (Selecting, Preparing and Challenging Experts) and you have discussed it with the survivor, her response should be a significant factor in your decision-making process.

For example, if she is aware of her symptoms but does not want her diagnosis disclosed, a trial could jeopardize her ability to keep that information from the opposing party.

If she is aware of her symptoms without any diagnosis, the opposing attorney may also capitalize on her symptoms to discredit her. He can use the symptoms that may come up – a deep, blank stare or an absent look, lack of coherent memory, flat demeanor and/or an overreaction to a comment, gesture, look, or smell – to discredit her. A judge or jury may be persuaded to think that the survivor is unstable, untruthful, or an unfit mother.

The risks to the survivor increase if she is unaware of her symptoms and has no diagnosis. It is possible that if you have noticed these symptoms, the opposing party has, as well. They may be planning to use them to portray the survivor as "crazy," and a trial could entail a psychological evaluation. This creates unpredictability for the survivor and for your case, depending on who is selected to conduct the evaluation, and how the evaluation is conducted. Oftentimes, symptoms of trauma and dissociation are not recognized as such

and survivors are misdiagnosed as having other, more stigmatized mental health conditions. While it may be easier to link the experience of abuse to diagnoses commonly associated with trauma (e.g., PTSD and other anxiety disorders, dissociative disorders, and depression) other mental health conditions can also be exacerbated by domestic violence and this should be made clear, as well.

If she is aware of her symptoms and is comfortable with disclosure, then you should prepare for how to address any mental health issues that may be raised at trial. You can have an expert normalize her symptoms as those of trauma and common coping mechanisms for the violence that she has suffered. In that case, what you can then focus on is preparing the survivor for trial and how to best manage what could happen so that you know how to help her to stay involved, engaged, and emotionally and physically safe.

Considering Negotiation

Negotiation may not be better for the survivor. Being in an intimate setting with the opposing party, the person who has abused her, may feel threatening and may be "triggering" for the survivor. It is something you will need to consider as you work with the survivor and contemplate whether to pursue negotiation or trial. The negotiation environment, or anticipation of it, could elicit trauma-related responses including dissociation, flashbacks, panic attacks, and/or depression. It could precipitate a mental health crisis or could exacerbate other mental health symptoms. Your client's response may appear to be an overreaction to a seemingly normal situation, but it is deeply rooted in the trauma caused by the abuse.

As you proceed, discuss the possible risks of negotiation carefully with the survivor. Once you have provided her with information about the negotiation process, partner with her to identify the risks and benefits. Explore the requirements of the jurisdiction you are in around mediation/negotiation and how they look and feel. Respectfully discuss with her the potential risks to her physically, to her case, and to her emotional and mental well-being. Strategize with her what is required and what may be waived, modified, or avoided. Figure out together what might be the best course of action given her situation. Come up with a plan with her as to how she might best proceed. Then, prepare your client for what you cannot control. Discuss with her what may arise during either process, the impact of mental health evidence on the case, the legal structure in your jurisdiction and whether there are exceptions to mediation/negotiation requirements. Examine the different types of negotiation and what may work best.

Preparing Your Client for Court

Once the survivor decides to pursue trial, you then need to prepare her for what to expect. When a survivor has mental health concerns, you may want to discuss the impact the court proceedings may have on her mental health.

Introduce the Court Process

Walk the survivor through each step of the court proceeding and help her to think about her possible reactions.

- If feasible, meet at the court where the case will be held. With each step, be sure to explain the things that could happen. There is a balance here of giving her enough information to help her know what to expect and giving her too much information, which could possibly overwhelm her.
- Let her guide you. Check in as you discuss each stage of the process and ask how certain things make her feel, whether she has concerns about the process, and whether there are strategies that you might employ to mitigate her concerns.
- Ask the survivor if she would like to have one or two supportive people at the court proceeding that can help, should she have a hard time with the process.

Attorney Tip

Some people who have experienced trauma need to know what to expect when proceeding with a totally new experience. It helps reduce anxiety and it builds trust. It is a very important step in preparing a survivor for court.

Discuss Strategies for Mental Health Symptoms in the Courtroom

If you haven't already, you should gently discuss with the survivor any symptoms that you have noticed during the course of your work together thus far. Make sure she understands that you are only sharing your observations to help the two of you strategize about the court proceedings – it is not due to a lack of confidence in her, or a lack of belief in her case. You are working with her to make sure the two of you are prepared for the court case. For example:

- If you notice that, when she recounts violent incidents that occurred, she has a flat tone and a deep, blank stare or an absent look, ask her about this. Often, this is a result of an overwhelmingly traumatic experience and the survivor has dissociated in order to cope with it. Her reporting of the experience will be from that safe distance and will lack the terror and physical pain.

- If she has noticed talk about how counsel for the opposing party may use this against her and say that she is lying, talk about how you might counter that claim.

If the survivor is aware of her affect, you can ask about it during the proceeding so that she may explain her lack of emotion to the court. If not, you may want to discuss using an expert to counter the opposing side's allegations (see Section Six: Determining Whether You Should Have an Expert Witness).

Develop Strategies to Address Your Client's Fears About the Court Process

In addition to the symptoms you have noticed, you also will want to discuss and plan for fears that the survivor may express about the court case. You should ask if the survivor has had panic attacks or if she feels intense fear when the opposing party is in the same room with her. Ask her if she has any strategies for dealing with those. If she has a clinician she sees, ask her to discuss with her therapist strategies to get her through the court proceeding and how you might be able to help.

Whether she has a mental professional helping her or not, suggestions you can offer include the following:

- Using your body to block the view to the opposing party as much as possible while she is in the courtroom, including while testifying. When you are not able to block his view she should look away from the other side, either focusing on you or a supportive person or advocate at the court.

- Asking the court for a recess when the survivor feels she needs one or when you notice some of the symptoms of trauma coming up (e.g., if she is dissociating and her responses to questions are slow and incomplete). This is usually a sign of a deeper level of dissociation usually brought on by intense fear or reliving of a particular attack or experience. Discuss whether she knows if this happens to her and how you can help.

- Once the court is adjourned, in a calm voice, ask her to take some deep breaths and ask her if she knows where she is and what day it is. This is useful for helping a survivor to ground herself in the present and bringing them out of the past. You may need to remind the survivor that she is in the courtroom, her abuser can't hurt her, the opposing attorney asked her a question intended to scare her, she got scared, she "went away," and nothing bad happened. A similar response can also help if the opposite reaction occurs and the survivor is triggered and she is crying uncontrollably or screams at the opposing party. A calm voice reminding the

survivor where she is and what just happened should help her to feel more calm and restore a sense of balance.

- ❖ Discuss this strategy with the survivor before trial. You may not be the best person to help her. Ask her if this would be helpful and if so who she would want to take her through this process. It may be better left to one of her support persons. If she asks you to conduct this exercise with her make sure you feel comfortable doing so. If you do not, it is important to let her know and tell her why. For example, if you are afraid you will not do it right and may cause her harm then it is important to tell her this. This kind of transparency builds trust. If she thinks you are the best person to do it or the only person she has, you may want to practice with her ahead of time.

You want to have extensive discussions with the survivor prior to the court proceedings to help both of you anticipate possible reactions. She is the expert on her own circumstances, so partnership is critical here. Ask her to guide you through any reaction she can think of that may happen.

Preparing your Client for Negotiations

Preparing a client for mediation or settlement negotiations follows a similar course. Walk her through the process step-by-step, so she knows what to expect. Carefully listen to any fears or concerns that she raises. Another important thing to know is that a lot of survivors will sound and talk about their experience as though it was not as bad as it was. This is again part of a coping strategy that helps the survivor deal with the high levels of fear she experienced. We don't always understand this as a coping mechanism. So listen to her concerns carefully. Do not disregard any of them because you do not hear or see a heightened concern on her part.

Discuss strategies for addressing those fears or concerns. For example:

- ♦ Shuttle Negotiation: If she wants to know if she has to be in the same room with the opposing party during the negotiation, see if shuttle negotiation is possible. The survivor may feel better being in another room with her advocate or a supportive friend or family. Arrange for this, if you can. If this is not possible, thoroughly discuss what she is afraid might happen and strategize with her about how you might help her.
- ♦ Breaks: Another strategy is to take breaks so she can get space away from the abusive partner.
- ♦ Support Person: Offer the survivor the opportunity to have her advocate or a support person present with her during negotiation.

- Attorneys Only: If your client wishes, see how much you can negotiate with the opposing attorney without the abuser and your client present.

The contextual, individualized strategizing described above takes time and patience. Listen carefully and respond to all of your client's concerns. This will help you to help her in the best way you can. Strategies that make her more comfortable and that mitigate the impact of the legal process on her mental health ensure more effective legal representation and better case outcomes.

Section Six: Determining Whether You Should Have an Expert Witness

In the course of representing a client who has survived domestic violence, child abuse, or other violent crimes, he or she may have trauma-related concerns requiring a specific and thoughtful strategy in court. This section will provide a number of strategies for thinking about the use of an expert. As with all stages of the litigation process, carefully consider whether these strategies fit the needs and desired outcomes expressed by your client, the culture of the court, and the laws of the jurisdiction.

Respect Your Client's Coping Skills

Your client is using valuable coping skills in response to trauma and you should respect them as such. *Do not ever try to force your client to feel or "face" what happened to her or connect the thoughts and feelings, even though you believe that this integrity of memory and emotion may help the legal proceeding—that it will make her seem more believable or that it will make it easier for her to assist you.* This form of coping with trauma is instinctive. It is the mind's way of protecting your client from fully knowing or feeling something that may overwhelm her consciousness. If you push her, you may end up with a client who is in crisis, with a diminished capacity to participate in her case or assist you.

Outward Signs of Trauma

Signs of trauma that you may notice personally are:

- Dissociating during conversations;
- Having a dazed look or a flat demeanor when describing violent events;
- Overreacting to seemingly benign situations or events;
- Startling easily and in a manner that doesn't seem to fit the situation; and/or
- Having an unusually poor memory for certain topics.

Your client may mention to you other signs of trauma, such as difficulty concentrating, difficulty sleeping, nightmares, and having disruptive flashbacks of a painful event sometimes accompanied by a dazed look or inattentiveness. Your client might mention signs of depression such as having trouble getting up in the morning, an inability to stop crying, a lack of energy, a feeling of hopelessness, feeling sad most of the time, or having thoughts of suicide.

Strategize to Optimize Her Coping Behaviors

Instead, proceed cautiously. If you have not yet discussed the signs you have observed with your client, do so at this point. If your client is aware of these symptoms as trauma-related, it will be a straightforward conversation. If your client is not aware of how she has been affected by her traumatic experiences, do not try to push her to see this. Restrict your discussion to a strategic analysis of what you see and how her demeanor may influence court proceedings. She may have heard similar observations about herself before. In either case, discuss what you have noticed in a gentle, nonjudgmental, and matter-of-fact manner.

For example, you may gently point out that you noticed that her demeanor changed during discussions about a particular incident, describing the violent situation in a flat tone, almost as if she was talking about someone else, and developing a deep, blank stare. You can ask her if she has noticed this, as well. It is very possible that she has not given it a second thought. You can tell her you are aware that this is a common coping mechanism, and that it has probably kept her safe and calm in times of crisis. Discuss also how others may misinterpret these signs of trauma, or that the opposing party's attorney may mischaracterize her coping skills as a problem in her ability to function.

Discuss the options she has in court for addressing this. As stated in Section Two, if the opposing party is not already aware of your client's way of coping with trauma, weigh the pros and cons of disclosure. Again, proceed in a respectful manner, valuing the coping mechanism as opposed to seeing it as a problem. This will help your client to see it this way as well, which will reflect positively in her testimony. Work diligently to avoid feeding into the stigma and shame associated with many mental health concerns.

At the same time, it will be important to account for the court's negative perception of individuals facing mental health challenges. Whether or not your client identifies as someone who is living with trauma-related or other mental health effects of abuse, it can be an issue that is raised by the opposing party for the purpose of gaining advantage in a case. Disclosing that your client has mental health concerns related to the trauma she has endured may leave the judge feeling that she is incapable of caring for her child(ren). It may also have an impact on your client's ability to get or keep a job - another factor that can be used against her. You have to plan for this to come up. Make your respect for your client and her resilience clear, while at the same time acknowledging and strategizing to address the realities presented by courts and other third parties.

The strategy that you and your client develop may include bringing in an expert who is familiar with the dynamics of domestic violence in general and trauma in particular. This expert may help explain that the signs the two of you have discussed is normal for someone

who has experienced trauma. Make sure your client has a chance to think about this strategy, ask questions, and discuss it with a friend, advocate, or other support person before deciding. This ensures that she is indeed in agreement and is not just accommodating your recommendation.

Finding the Best Expert Witness

If she decides that use of an expert is a good strategy to help normalize her behavior to the court, look for a trauma expert that is familiar with the dynamics of domestic violence, specifically the power and control aspects. There are many theories explaining domestic violence: the theory of power, control, and violence as being an entitlement of gender; the cycle of violence theory; psychological theories that hold that abusers suffer from low self-esteem, rage disorders, or simply lack good communication skills. Explore the working theory of any expert you consider and make sure it reflects your theory that domestic violence is a product of power and control and gender privilege. You don't want them contradicting your theory or your case. They need to understand that their role as expert is to normalize the symptoms of and responses to trauma, and help the court understand that these symptoms do not impair your client's ability to function or care for her child. Naturally, the expert must be careful not to pathologize your client's responses.

Can Testify to the Signs of Trauma

At a minimum, your expert should be able to testify to how your client's flat affect and dazed look indicates that your client dissociated when she was attacked, if applicable. The expert could explain how the terror must have been so high that your client instinctively put the attack into her subconscious and that is why her memory is not complete. The expert may be able to infer how terrifying the situation was to your client, given the signs of trauma that she displays when asked about these incidents.

Other expert characteristics to look for include the following:

(1) Can Testify Regarding Triggering. Ideally, the expert will also be able to show how an abusive party can "trigger" your client by his mere presence. The expert may be able to describe how the abusive party knows exactly how and what to say to cause your client to react in a manner that appears "crazy." An expert can explain how a look on the other party's face—or a gesture or smell—can cause your client to re-experience a traumatic incident through a flashback and thereby appear unreasonable, irrational, and even hysterical, when in fact she is actually a calm, creative, intelligent person who has been traumatized.

(2) Can Explain Coercive Control. It is ideal to introduce the opinions of an expert that can see through what appear to be benign comments or actions that are intended to manipulate the expert or intimidate and trigger your client. This type of expert is difficult to find. You are more likely to find someone who is familiar with trauma and other mental health concerns that can explain and normalize your client's actions, demeanor, and behavior. Carefully interview experts on their view of trauma and dissociation, but also on the dynamics of domestic violence. You do not want an expert that is unable to discern tactics of power and control; someone who minimizes interpersonal violence, coercion, and intimidation; or someone who believes that the actions of an abusive party are caused by both parties ("She made him do it." "She pushes his buttons." "It's not really so bad." "She started it."). In all likelihood, content of this nature will frame the opposing party's position. Rather, your expert should be able to articulate and reinforce your assertion that coercive control is a pattern of tactics designed to intimidate, terrorize, and maintain control over another, and that individuals who engage in coercive control should be held accountable for their abusive and violent behavior.

(3) Understands that Dissociation Arises from Traumatic Experiences. The expert's view of trauma and dissociation is important, as well. An expert who only sees trauma as Post Traumatic Stress Disorder (PTSD) may not understand the complexity of the client's dissociation. Dissociation is one component of Trauma or DESNOS (Disorders of Extreme Stress Not Otherwise Specified) as well as a central component of the Dissociative Disorders spectrum. Sometimes, a clinician may diagnose a survivor as having PTSD with multiple co-morbidities including anxiety disorders, phobias, Bipolar Disorder, Borderline Personality Disorder, or Schizophrenia to explain the symptoms that could be part of a dissociative disorder. You will want an expert that knows both trauma-related conditions and dissociative disorders and who also understands the power and control tactics of domestic violence.

Finding a Qualified Expert

In searching for a qualified expert, contact a local non-profit advocacy program that works with victims who have experienced trauma, such as a rape crisis center or a child abuse program. They tend to have a mental health approach to their programs and refer survivors for healing from the victimization that they have experienced. Local domestic violence programs and state domestic violence coalitions may have trauma experts that they can refer you to. Contacting your state's sexual assault coalition and/or state children's advocacy chapters may also be an option. You may also contact a national

resource center or referral program; there are a number of these that address trauma and dissociation.[26]

Make sure your selection process includes a meeting between any potential expert witness and your client. Your expert should treat your client with respect – modeling the attitude you want the court to take – and also recognize the importance of gaining her trust. Speak to your client privately after the meeting to determine if she is comfortable using this expert. You will have to be careful here to not influence her decision. If this is the only expert available, your discussion with her should center on what her concerns are about the expert and whether they are so strong that she would rather proceed without one. It may be that she does not like the expert's manner but is still willing to proceed. Make sure that you fully discuss the pros and cons of this decision and let her think about it before deciding.

After the meeting, interview the expert again. Ask her how she views your client. Questions might include:

- What symptoms did you notice?
- What do you believe is the client's mental health concern?
- How do these symptoms arise?
- Is this normal given the situation that the client was in?
- Does her mental health concern affect her ability to parent? If so, how?
- What resilience factors did the expert identify? What protective factors?
- What does the expert believe to be the best result in this case?
- Does she consider domestic violence (including coercion and intimidation) to be influencing your client's behavior?
- Is her response to domestic violence normal?

This discussion will let you know whether this is the expert you want to use in your client's case. If she sees trauma and dissociation as an explanation for behavior others would see as odd, and views domestic violence as a series of tactics to gain and retain power and control over your client, then you likely have an expert with whom you can work.

[26] The National Center on Domestic Violence, Trauma & Mental Health provides technical assistance on the intersection of trauma and domestic violence. Go to www.nationalcenterdvtraumamh.org. You can look for trauma experts through various web sites. The International Society for the Study of Trauma and Dissociation (ISSTD) has a directory of clinicians who practice in trauma and dissociation. See www.isst-d.org; Sidran Institute also maintains a list of clinicians, see www.sidran.org. See also the International Society for Traumatic Stress Studies (ISTSS) at www.istss.org.

Preparing the Expert Witness

The expert should meet with your client and her child(ren) in order to determine your client's ability to function and parent her child(ren), despite the trauma she endured. The central issue here is the well-being of the child(ren). If your client can parent well with some limitations, the expert should show the court how resilient and resourceful the client is and how she is showing her child(ren) how much she loves them. The expert should not enter into an analysis of her diagnosis outside of its relevance to her role as a parent.

Challenging the Opposing Party's Experts

You can use the same strategies in finding an expert to challenge the opposing side's witness. Is the witness an expert on trauma and dissociation? Does the expert know the meaning of a flat affect or dazed look? Is she only familiar with Post Traumatic Stress Disorder? This is only one of a number of issues that can develop when a person has been traumatized. Is your expert familiar with the concept of complex developmental trauma? Does the expert conduct clinical work? What kind of clients does the expert normally work with? If she does not routinely work with individuals experiencing trauma and dissociation, then hers may be a superficial analysis. A person who routinely works with clients experiencing trauma and dissociation is in the best position to normalize the behavior. Anyone else is likely to psychopathologize the behavior and conclude that the individual is limited. Does the expert understand both complex trauma and dissociation? Is he or she able to put trauma-related symptoms in context and recognize them as adaptations and as coping mechanisms to survive overwhelming trauma and to help the judge/jury make sense of the survivor's responses in the face of ongoing abuse? However, it is important to *not* raise this if your own witness does not meet this standard. If you do, you will impeach your own witness.

You may also challenge the expert's knowledge of interpersonal violence, and, in particular, the tools of power and control that abusers use. Be cautious here, though, if your expert is not familiar with these issues.

Section Seven: Cross-Examining the Opposing Party

In many custody and protection order cases, the opposing party will attempt to bolster his or her case and refute allegations of abuse by claiming that the survivor has mental health problems and therefore:

(a) She cannot be believed;
(b) She becomes out of control and violent and needs to be restrained; and/or
(c) She is an incompetent parent.

One way that the opposing party will try to demonstrate this is through his direct testimony. Below are some examples of testimony that an abuser may proffer:

- The opposing party may claim that he has observed the survivor behaving in bizarre, unusual, or unsafe ways due to mental illness.

- The opposing party may argue that, because the survivor has been diagnosed with a particular mental health disorder, she suffers from delusions that distort her perceptions and, therefore, her claims and testimony lack credibility.

- If there is evidence of an incident in which the opposing party used force or threatened the use of force against the survivor (e.g., police reports documenting an incident of abuse or the survivor's and/or another witness's direct testimony), the opposing party may claim that he only touched her to "restrain" her because she was "out of control" (leading him to believe that she would imminently assault him), she made direct threats to harm him, or to defend himself because she used force against him. While many judges understand the concept of the primary or predominant aggressor, they may be more likely to believe that the survivor acted in a violent manner when the mental health of the survivor has been raised as an issue. Given the stigma that is associated with mental health and the myth that individuals with mental illness are more likely to be violent, this can be a convincing argument to some judges.

- The opposing party may offer information about the kinds of medications that the survivor has been prescribed or has taken.

- He may claim that your client has engaged in self-harm due to her mental health symptoms.

- The opposing party may offer details of treatment that the survivor has received, including hospitalizations, and information about communications with her mental health provider(s).

- The opposing party may claim that your client is not capable of fulfilling her parental responsibilities due to mental health symptoms.

- Apart from the affirmative opportunity to tell her own story during direct examination, you can use cross-examination to discredit the opposing party's testimony. You can also use cross-examination to support aspects of your client's case.

Cross-Examination Points to Remember

- The scope is limited to areas about which the witness testified during direct-examination and, therefore, must be relevant. The judge has the discretion to determine the subject matter boundaries.
- If the questions you wish to ask are outside of the subject matter about which the witness testified during direct examination, you can recall the witness during presentation of your client's case-in-chief and question him as a hostile witness.
- Look for answers that will support closing argument statements.
- Craft your questions so that they are narrow and leading.
- Try to limit your questions to those that require a yes or no answer and avoid open-ended responses.
- Never ask a question that you don't know the answer to already.

Listed below are some areas to consider focusing upon during cross-examination. Depending on the facts of the case, the strategy you have developed with your client, and the direct testimony of the opposing party, you may not need to cover all of the following.

(1) The opposing party's abuse of your client.

(a) He was the predominant aggressor.

For example, if the opposing party has claimed that he used force against your client only to restrain her because she was threatening him, using violence, or was out of control, you can ask questions designed to demonstrate that he was the predominant aggressor such as circumstances that triggered his violence, his mood, and her injuries versus his.

Example:

She wasn't listening to you, right?
Her comments were disrespectful?
They made you angry?

(b) His lack of fear of your client.

If he claims that he had to use force against your client because he was afraid of her violence or threats, you can ask him to verify his height and weight and your client's, you can ask questions that demonstrate that he was not afraid and did not take action to keep himself safe.

Example:

You care about your health, right?
You work out at the gym?
You encourage your wife to exercise, too?
But she rarely does?
You are a big guy?
You are 6 feet tall, correct?
You weight about 200 pounds?
Your wife is about 5 feet, four inches tall?
She weighs about 130 pounds?

(c) Prior acts of abuse.

The opposing party may have provided direct testimony that he is not a domestic abuser and that your client has perpetrated violence. He may, for example, testify that he had to restrain her because she was "out of control" due to her mental health challenges and that her claims of his abuse against her are false. If you have collateral evidence of prior abuse against your client or another individual, you can

impeach him by asking him about past abusive behavior[27] including civil protection orders entered against the opposing party, criminal orders, or arrests or convictions for crimes of domestic violence. If the opposing party denies any of these, you can show the opposing party documentation of the prior act(s) and ask that it be entered into evidence.

Example:

When you met my client, you were dating another woman, correct?
Ms. Palmer?
You shared an apartment?
That relationship ended in 2000?
She ended it, didn't she?
She ended it because you had been physically abusive to her, right?
Regardless of it how ended, you did engage in acts of abuse against her, right?
Isn't it true that Ms Palmer obtained a Civil Protection Order against you?

If he answers no, proceed with the following impeachment:

I would like to show the witness a document marked Exhibit A for impeachment purposes. Your Honor, may I have permission to approach the witness?
Do you recognize this document?
This is a Civil Protection Order entered by this court in the year 2000, correct?
If you look at the top of the document that says Petitioner, it lists Lisa Palmer, correct?
You understand that Petitioner means the person seeking the Civil Protection Order, right?
Under Respondent, it has your name, right?
And Respondent is the person against whom protection is sought?
Isn't it true that on June 1, 2000, the Superior Court of XY entered an Order of Protection against you?

[27] In a custody case or protection order case, you may be able to enter evidence of prior acts of abuse, in your case-in-chief, as well, because many State custody statutes direct the court to consider domestic violence when conducting a best interest analysis, and evidence of past acts of abuse is often allowable in a protection order proceeding.

(2) The opposing party's manipulation of your client's mental health and exacerbation of mental health symptoms.

(a) Infliction of psychological abuse on your client.

If the opposing party testified that your client demonstrates symptoms of depression or other mental health conditions, you can ask questions designed to demonstrate that he has inflicted psychological abuse upon your client. For example, you can ask about attempts to shame, embarrass, or induce guilt in your client.

Example:

You were home on Sunday morning?
Your wife was in the kitchen, right?
She was making breakfast?
You smelled something burning?
You saw smoke coming from the frying pan?
Your wife had burnt the pancakes, right?
She wasn't paying attention?
She messes things up in the kitchen?
She doesn't know how to cook?
You told her that, right?
She doesn't know how to take care of her family?
You told her that, right?
She's a slow learner?

(b) Actions that were designed to trigger trauma and exacerbate mental health symptoms.

If the opposing party has testified about behaviors that he attributes to your client's mental health condition or diagnosis, you can ask questions that point to his manipulation of her mental health. For example, you can ask questions about how he has deprived your client of sleep, food or other basic necessities, prescription medications, or access to other treatment.

Example:

Your wife takes medications, right?
For her psychiatric condition?
You think she doesn't need the medications?
You try to help her?
You keep them in a safe place?

So that she's not tempted to take them?
She is supposed to see her psychiatrist once a month, right?
She needs you to drive her there?
Because you have the only car?
She has no other way to get there?
You took her there last year?
Two times?
She couldn't get her prescriptions refilled?
Because she needed to see her psychiatrist for that, right?

Additionally, you can ask questions designed to point to the opposing party's use of coercion, force, or other pressure on your client to use alcohol, illegal drugs, or prescription drugs that were not prescribed to her.

(c) Apparent self-harm by your client was actually perpetrated by the opposing party.
If the opposing party claims that any overdoses that your client experienced were the result of a suicide attempt, you can ask questions designed to point to the fact that your client suffered the overdose due to his use of force, coercion, duress, or fraud that compelled your client to take the drugs.

Example:

Your wife needed to get help?
She went to a psychiatrist?
The psychiatrist gave her pills?
You wanted her to feel better?
You encouraged her to take the pills?
You were standing there while she took the pills?
You got the water for her?
She took 20 of these pills?
While you were standing there?

(d) The opposing party's abuse led to or exacerbated your client's mental health symptoms.
You can ask questions designed to highlight the fact that your client did not suffer from trauma or other mental health challenges before she met and became involved with the opposing party. This goes to the fact that she developed symptoms of depression, anxiety, and/or trauma after beginning a relationship with the opposing party, and that they were natural reactions to and results of his abuse.

Example:

When you met your wife, you fell in love?
She was beautiful?
She was kind?
She was happy?
But, she has changed, hasn't she?
The changes started a couple of years ago?
She couldn't get out of bed some mornings?
She didn't go out as much?

(e) The opposing party attempted to manipulate mental health providers and your client by interfering with treatment or fabricating information designed to trigger her hospitalization.

The opposing party may have offered testimony in which he painted himself as a compassionate partner and who was concerned about the mental health of your client. You can ask questions designed to point to the opposing party's attempts to manipulate mental health providers and further his control over your client by providing false information to them.

Example:

You told the police that your wife had gone crazy, right?
That she had smashed the mirror?
That she had torn up the place?
Because she had mental health problems?
You were afraid that she was going to hurt you or the kids?
She had come after you?
You had to restrain her?
That's how she got those red marks?
You recommended that the police bring your wife to the hospital, right?
You knew they would keep her at the hospital for 36 hours, isn't that right?
Last time, the hospital held your wife for 36 hours?

(3) Your client's strength and resilience.

(a) Your client has excellent parenting skills that are not affected by any mental health challenge.

You can ask questions designed to refute any claims that the opposing party has made about your client's ability to parent the child(ren) because of her mental

health symptoms and his argument that she is not the primary caretaker. For example, you can ask leading questions that demonstrate and bolster your client's direct examination testimony that your client fulfills the majority of the parenting roles and takes care of the children/ren's physical needs (e.g., preparing meals, getting them ready for school, dropping off or picking them up at school or daycare, caring for them when they are ill, taking them to the doctor, overseeing their bedtime routine, reading to them or helping them with homework, taking them on outings, purchasing their clothing and school supplies, etc.), social-emotional needs (e.g., comforting, being affectionate, talking with the child(ren) about their day and about things that happened, discussing social expectations, etc.), and mental growth/schooling needs (e.g., answering questions about how the world works, providing help with homework, involvement with their school activities and attending parent-teacher meetings, etc.). You can ask questions designed to illustrate that your client has fulfilled these roles at times that the opposing party says that she was exhibiting mental health symptoms.

Example:

Your wife gets the kids up in the morning, right?
She makes them breakfast?
And helps them get dressed?
And makes their lunches for school?
She makes sure they brush their hair and their teeth?
She walks them to the bus stop and waits with them every morning, right?
In the afternoon she meets them at the bus stop?
And walks them home?
She helps them with their homework while she makes dinner, doesn't she?
She helps them get ready for bed and reads to them?
Etc.

(b) Your client has shown strength by seeking mental health support when necessary.

If the opposing party has testified that your client's mental health challenges prevent her from being a good parent to the child(ren), you can ask questions designed to illustrate that your client's help-seeking behavior is a strength. For example, you can ask leading questions about when your client first sought assistance from a domestic violence advocate or mental health provider.

Example:

Your wife was feeling tired?

She had trouble sleeping at night?
And she didn't know what was wrong?
She asked you to take her to the doctor?
And her doctor gave her a prescription, right?
She got the prescription filled at the pharmacy, didn't she?
She also went to see a social worker?
The social worker had been recommended by her doctor?
You didn't want her to go?
But she went anyway?

(c) Your client has anticipated times when her mental health symptoms may be exacerbated and has taken steps to ensure that her children will be cared for.
If your client has symptoms of or a diagnosis of a serious mental illness for which symptoms can recur, you can ask questions designed to draw out information about how your client has taken steps to ensure that the children are taken care of and have their needs met in the event that she becomes temporarily unavailable.

Example:

Your wife told you that if she needed to go to the hospital again, that she wanted her mother to take care of the kids, right?
She wanted to make sure that the kids would be cared for during that time?
She wanted you to take them to her mother's house?
Her mother agreed to this?
Her mother would take them to school?
And help them with their schoolwork?
And give them anything they needed?

Section Eight: Closing Argument

The closing argument is a summation of your case theory and the evidence that you have presented. Do not opt out of a closing argument, even if you think that the judge has all of the information that he or she needs to make a decision. The closing is the only opportunity you have to present your entire case theory along with the supporting evidence. In a custody case that involves allegations regarding your client's mental health, it is your final chance to articulate your legal argument regarding best interests of the child, to highlight your client's strengths, resilience, and parenting skills, and to remind the court that the opposing party has abused your client to the point of causing or exacerbating mental health symptoms. In a protection order case, you can use your closing argument to review the standard of proof, the elements of the protection order statute, and the testimony and other evidence that meet the criteria and demonstrate the need for the relief your client seeks.

Below are suggestions for closing arguments that specifically relate to cases in which the opposing party has raised the mental health of your client as a reason why her allegations of domestic violence should not be believed and/or why she the court should not award custody of the child(ren) to her. When crafting your argument, consider the culture of the court, the facts of the case, the laws of your jurisdiction, and the needs and desired outcomes expressed by your client.

Focus on Your Client's Strengths

When seeking custody, emphasize your client's fitness and competence as a parent – reiterate her skills as primary caretaker. Highlight her resilience. Depending on the type of mental health evidence that the opposing party introduced (through testimony, experts, or mental health records), review your client's protective parenting strategies and the strengths that your client and others presented in their testimony related to any mental health challenges. This includes her help-seeking behaviors and caring for her children even while experiencing symptoms. If relevant, review the ways that she has planned for mental health contingencies, such as through the preparation of advance directives.

Review the Legal Standard Governing Custody Cases Involving Domestic Violence

If your state has a presumption against an award of custody to a parent who has committed intimate partner abuse, articulate the presumption provision and highlight

the evidence of abuse in the case before the court. If your state requires that the court consider domestic violence in its best interest determination, highlight the statutory language for the court and illustrate the impact of the batterer's conduct on the child and the protective parent.

Remind the Court that the Opposing Party Caused Your Client's Mental Health Challenges

If the opposing party has introduced evidence about your client's mental health in an effort to discredit her testimony or impugn her parenting abilities, highlight the expert testimony or other evidence that shows that your client's trauma and/or other mental health challenges were created or exacerbated by the opposing party's abuse. Argue that the opposing party should not gain advantage in the case due to the trauma that he caused your client. If your state has a statutory provision that prohibits the effects of domestic violence from being used against a party in a custody case, reiterate the requirements of the code section. Refer to any social science research that you introduced during the course of the case demonstrating that the mental health of survivors improves when the abuse ceases.

Demonstrate How Your Expert's Opinions Support a Custody Award to Your Client

Review your expert's testimony regarding your client's strengths, resilience, and protective factors, and any other evidence that normalizes your client's mental health response to living with an abuser. If the opposing party introduced evidence of your client's mental health diagnosis, refer to expert testimony clarifying that this does not negate her ability to function as a stable, competent, and loving parent. Review your expert's testimony about the spectrum of mental health challenges and your client's ability to manage any symptoms she may experience in the future. Refer to testimony that explains your client's behavior in court or any behavior that the opposing party claims is indicative of instability.

Highlight Prior Acts of Abuse

While the focus of closing should not be entirely on the opposing party, you should highlight prior acts of abuse that you introduced, including the batterer's use of power and control, rulemaking, and the ways that he has manipulated your client's mental health.

Point Out False Statements

If the opposing party presented false or misleading testimony related to your client's mental health, the abuse, or any other factor, summarize the evidence that refuted it, including testimony that the opposing party gave during cross-examination as well as that which your client offered on rebuttal.

Discredit the Custody Evaluator's Findings

If the opposing party used an expert and/or if there was a custody evaluator, point out the lack of training or expertise in domestic violence and trauma (and their intersection), and/or bias. Demonstrate gaps in the evaluator's investigation or assessment, or other problems with the evaluation process (including improper use of psychological testing and misinterpretation of statements or behaviors). If the custody evaluator has relied upon Parental Alienation Syndrome or any other questionable theory, clarify that the evaluation findings (if the recommendation is for an award of custody to the opposing party) rest upon discredited or disproven theories.

Additional Resources

Materials

Deborah Bray Haddock, MEd, MA, LP, The Dissociative Identity Disorder Sourcebook (McGraw-Hill 2001).

Edward W. Gondolf, Assessing Woman Battering in Mental Health Services (Sage Publications 1997).
http://www.sagepub.com/books/Book6702

Frank W. Putnam, Dissociation in Children and Adolescents: A Developmental Perspective (Guilford Press 1997).

From Child Sexual Abuse to Adult Sexual Risk: Trauma, Revictimization, and Intervention (Linda J. Koenig, Lynda S. Doll, Ann O'Leary and Willo Pequegnat, eds., American Psychological Association 2004).

Jill Davies, Advocacy Beyond Leaving: Helping Battered Women in Contact with Current or Former Partners (Family Violence Prevention Fund 2009).
http://www.vawnet.org/summary.php?doc_id=2674&find_type=web_sum_GC

Jill Davies, An Approach to Legal Advocacy with Individual Battered Women (Greater Hartford Legal Assistance 2003).
http://www.csaj.org/documents/384.pdf

Jill Davies, Eleanor Lyon, and Diane Monti-Catania, Safety Planning with Battered Women: Complex Lives/Difficult Choices (Sage Publications 1998).

Jill Davies, Helping Sexual Assault Survivors with Multiple Victimizations and Needs, A Guide for Agencies Serving Sexual Assault Survivors (July 2007).
http://www.nsvrc.org/publications/guides/helping-sexual-assault-survivors-multiple-victimizations-and-needs-guide-agencie

Jill Davies, Safety Planning With Battered Women (Greater Hartford Legal Assistance 1997).
http://new.vawnet.org/Assoc_Files_VAWnet/BCS_SafePlan.pdf

The Journal of Trauma and Dissociation
http://www.isst-d.org/jtd/journal-trauma-dissociation-index.htm

Judith Herman, MD, Trauma and Recovery: The Aftermath of Violence – From Domestic Abuse to Political Terror (Basic Books 1997).

Lisa A. Goodman and Deborah Epstein, Listening to Battered Women: A Survivor-Centered Approach to Advocacy, Mental Health and Justice (American Psychological Association 2008).

Marlene E. Hunter, MD, Understanding Dissociative Disorders: A Guide for Family Physicians and Health Care Professionals (Crown House Publishing 2004).

Olga R. Trujillo, JD, The Sum of My Parts: A Survivor's Story of Dissociative Identity Disorder (New Harbinger Publications 2011).

Organizations and Web Sites

Center for Survivor Agency and Justice
www.csaj.org

The International Society for the Study of Trauma and Dissociation
www.isst-d.org

Judge David L. Bazelon Center for Mental Health Law
www.bazelon.org

National Center on Domestic Violence, Trauma & Mental Health
www.nationalcenterdvtraumamh.org

Sidran Institute
www.sidran.org

The Significant Other's Guide to Dissociative Identity Disorder
http://www.op.net/~jeffv/so1.htm

UPenn Collaborative on Community Integration
www.med.upenn.edu/psych/RRTC.html

When a Parent Has a Mental Illness: Child Custody Issues (Mental Health America)
http://www.nmha.org/go/information/get-info/strengthening-families/when-a-parent-has-a-mental-illness-child-custody-issues

NATIONAL Center on Domestic Violence, Trauma & Mental Health

PREPARING FOR COURT PROCEEDINGS WITH SURVIVORS OF DOMESTIC VIOLENCE

Tips for Civil Lawyers and Legal Advocates

Legal proceedings are often stressful for participants, whether or not they are survivors of trauma. Many survivors of domestic violence find the proceedings challenging in ways specific to the trauma they have experienced—ways that others may not be able to anticipate. Your ability to recognize and adjust to the challenges survivors experience will affect their ability to participate in and contribute to successful outcomes in their cases.

Interpersonal violence is usually traumatic to the survivor, especially when the perpetrator is someone who was loved and trusted. Although the experience of violence is subjective and varies from individual to individual, we know that the greater and more prolonged the trauma, the more likely a survivor is to experience some after-effects. Cases of domestic violence involve an ongoing pattern of coercion, intimidation, and emotional abuse, reinforced by the use and threat of physical or sexual violence. Thus, survivors will most likely have experienced more than one traumatic event.

Many lawyers and legal advocates find legal proceedings challenged or interrupted when a survivor is reminded of a traumatic experience. Reminders of previous trauma can be evoked by seeing people, by places or activities, or by experiencing the feelings and sensations associated with past traumatic events. These reminders can cause feelings of fear or distress or put people "on alert." They can also "restart" posttraumatic stress reactions or behavior even years after a traumatic event has occurred.[*]

These reminders can cause a literal re-experiencing of the event itself as well as the feelings and sensory associations with the trauma. The feelings associated with trauma may include panic, anger, disorientation, physical pain, grief, or numbing and shutting down. The sensory associations may be smells, sounds, or physical feelings. Moreover, in order to manage the painful feelings "triggered" by the reminder, survivors of trauma often cope in ways that are instinctive to them but confusing to other people: by dissociating, minimizing, or trying to control unrelated aspects of their environment.

Specific to the court environment, traumatic reminders come in many forms. This may be the first time the survivor has seen the person who abused them in a long time, and they may be triggered by being in the same room as their abuser, by a

[*] National Child Traumatic Stress Network. (November, 2011). *Emotional Responses to Trauma*. Retrieved from http://www.nctsn.org/content/resources-parents-and-caregivers.

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particular facial expression, a seemingly benign comment, the color of their abuser's clothes, or the way their abuser smells.[†] Encountering such reminders may cause a survivor to feel uneasy, afraid, or terrified. At that moment, the survivor may re-experience what they felt when they were initially traumatized, as if it is happening at that time. Also keep in mind that the abuser may be intentionally doing things or using the court process itself (e.g., filing motions unnecessarily for the purpose of creating opportunities for contact) in order to try and make the survivor feel uneasy, afraid, or terrified.

It is also helpful to remember that, generally speaking, the intent of perpetrators of domestic violence is to control what the survivor says, thinks, feels, and does. Even though confronting their abuser publicly may in the long run be empowering to a survivor, the contentious nature of the legal process requires them to participate in a very public challenge of their partner and often to tell others what has happened—these actions being in stark contrast to the usual dynamics of their relationship. This public confrontation may be intimidating to the survivor, particularly when standing up for themselves in the past led to retaliation. It may also trigger memories of previously attempted challenges that ended traumatically.

Acting Proactively to Prepare for Triggers

A good course of practice in your work with survivors of domestic violence is to anticipate some of the ways trauma can manifest itself. Start by creating a partnership, proactively providing information about trauma and how it can come up in court, and asking survivors if they would like to strategize with you around ways that the legal process might be triggering or retraumatizing. In general, work with survivors of domestic violence in ways that help them to identify and prepare for trauma triggers in every step of their legal case.

Engaging in even minimal planning steps will help all survivors of domestic violence. Advance planning helps to minimize surprises and unpleasant experiences during proceedings. However, while some survivors are very self-aware and open about their fears and potential triggers, others will not be able to share their fears ahead of time.

Here are some things to keep in mind as you prepare to minimize the

Starting the Conversation…

"For a lot of people, going to court can bring up a lot of uncomfortable or scary feelings. We can prepare for this, just like we will prepare for any other part of the case.
"If you want to, we can come up with a plan for what we will do if you start to feel overwhelmed or scared or 'checked out' while we are at court."

[†] We use the pronouns they/them to be inclusive of the experiences of all survivors, across gender identities.

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chances that a survivor will be triggered during the court proceedings:

- For some people who have experienced trauma, knowing what to expect with a new experience can help reduce anxiety. Discussing this with a survivor can also create emotional safety, which over time may help to build their trust in you. Consider incorporating a what-to-expect discussion into every survivor's routine preparation for court, whether or not you know them to experience any after-effects of trauma. Think through and discuss with the survivor the logistical details of the court proceeding, including where both parties will wait before court opens, where they will take breaks, and the location of restrooms. There is a balance here of giving them enough information to help them know what to expect and giving them too much information, which could potentially overwhelm them. Let them guide you. Check in as you discuss each stage of the process and ask whether they have concerns. If so, explore strategies that you might employ to mitigate their concerns. In some cases, you might find it helpful to meet at the court where the case will be held early (before the hearing begins) or even on an earlier date to discuss the steps in the process.

- Ask the survivor if they would like to enlist one or two people to help support them through the court proceeding. If the survivor so desires, coach their supportive people to be prepared to meet them at the parking ramp or bus stop, accompany them to the restroom, and help them manage unexpected events. Ask if they are working with an advocate, and if not, ask whether they would like to see if an advocate is available to accompany them.

- You can use your body to block the view to the opposing party as much as possible during the proceeding. The survivor may want to plan to look away when you are not able to physically block the abuser and to focus on you or a supportive person or advocate.

- If you have already noticed trauma responses or the survivor has expressed fear, discuss and develop a working strategy to manage any reaction they may experience during the proceedings. The survivor is the expert on their own circumstances, so partnership is critical. If they see a clinician, encourage them to discuss with their therapist strategies to get through the court proceeding and how you might be able to help.

Tips for Minimizing the Risks of Emotional Triggers…

1. **Go over "what to expect."**
2. **Team up with a domestic violence advocate.**
3. **Enlist support people that the survivor trusts.**
4. **Make a plan for how to deal with the abuser's presence in the courtroom.**
5. **Make a plan for what to do if the survivor is triggered during the court proceedings.**

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Managing Triggers that Occur During Proceedings

When a person is in the midst of being triggered, they may have a range of responses that affect their ability, at that moment, to participate in the legal process. For example, they may start crying uncontrollably, become angry, panic to the extent that conversation or cogent testimony is impossible, or dissociate to the point that they disengage from the testimony. Helping them to manage this emotional crisis may lessen the panic they feel, build their trust in you, and make subsequent proceedings go more smoothly.

- Ask the court for a recess when the survivor feels they need one or when you notice them experiencing a trauma response.

- If a survivor's answers to questions are slow and incomplete, this may be a sign of dissociation usually brought on by intense fear or reliving of a particular attack or experience. Once in recess, ask them in a calm voice to take some deep breaths. You may want to ask them if they know where they are and what day it is. This is useful for helping a survivor to ground themselves in the present and bring themselves out of the past. You may need to remind them where they are and that their abuser can't hurt them right now. You might say, for example, "Their attorney asked you a question intended to scare you. You did get scared, you 'went away,' and nothing bad happened."

- If you have taken a break because the survivor became upset or agitated, validate their feelings. Acknowledge that what's happening is very upsetting and that they are doing a great job.

- Follow your plan. If you didn't make a plan or if it's not working, ask the survivor what would help them to feel better and to continue. Sometimes just silently being with someone for a few minutes can help them to calm themselves and be prepared enough to continue.

Going to court can be challenging for anyone and can be even more so when the court process itself is retraumatizing. Our responses as lawyers and legal advocates helping survivors attend to and prepare for trauma triggers can make a tremendous difference to a survivor's experience in court, as well as their ability to follow through with their legal case, and ultimately to the success of their case.

References

M. Malefyt Seighman, JD, E. Sussman, JD and O. Trujillo, JD, *Representing Domestic Violence Survivors Who Are Experiencing Trauma and Other Mental Health Challenges: A Handbook for Attorneys*, The National Center on Domestic Violence, Trauma & Mental Health, January 2012.

Understanding Traumatic Triggers, The National Center on Domestic Violence, Trauma & Mental Health, December 2011.

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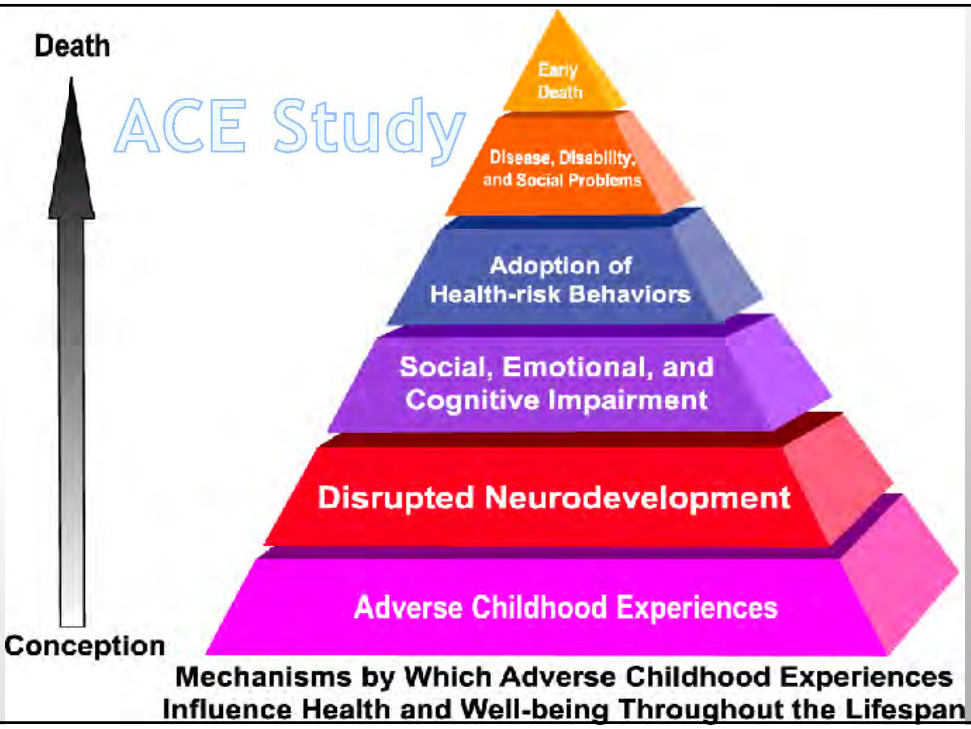
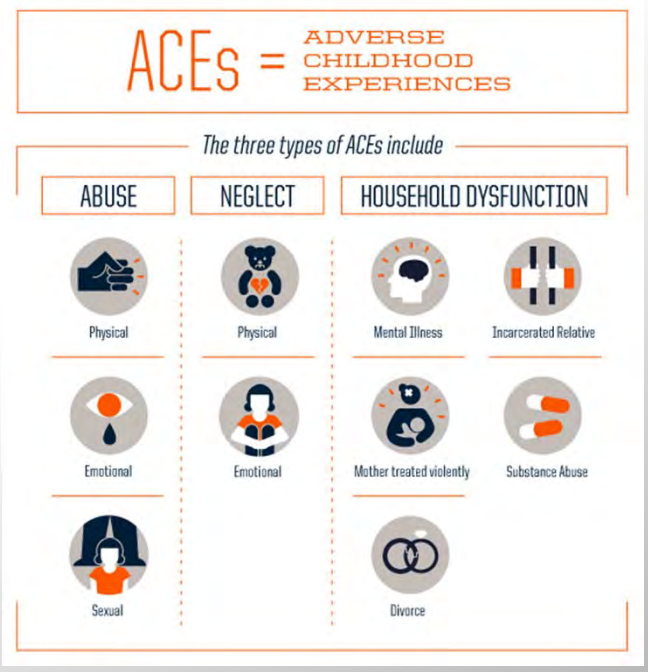
Key Concepts of Brain Development and Strengthening Executive Functioning Skills in Children Facing Adversity

Jason Gortney, Director Catalyst for Kids
Children's Home Society, and
Nell Robinson
Parenting Skills Program Manager, Childhaven



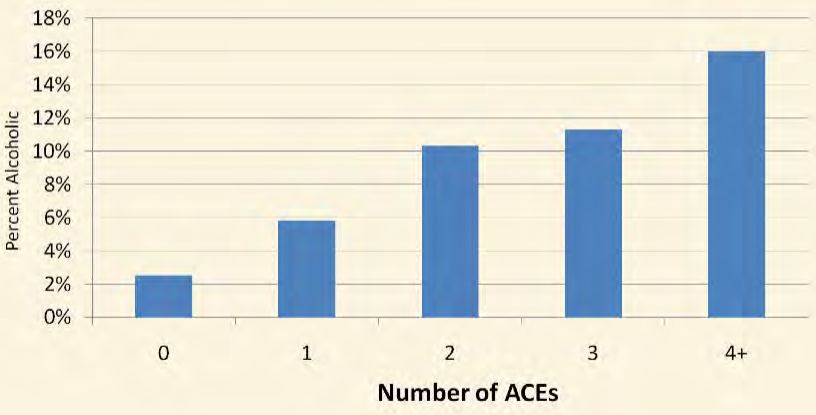
Mechanisms by Which Adverse Childhood Experiences Influence Health and Well-being Throughout the Lifespan



Source: Robert Wood Johnson Foundation

- Alcoholism/drug use
- Chronic obstructive pulmonary disease
- Depression
- Fetal death
- Ischemic heart disease
- Liver disease
- Risk for intimate partner violence
- Multiple sexual partners
- STD's
- Smoking
- Suicide attempts
- Unintended pregnancies

ACEs and Adult Alcoholism



Source: Huang, L. [PowerPoint presentation] *Strategic Initiative #3: Trauma and Justice.*

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Mechanisms by Which Adverse Childhood Experiences Influence Health and Well-being Throughout the Lifespan

TOXIC STRESS!

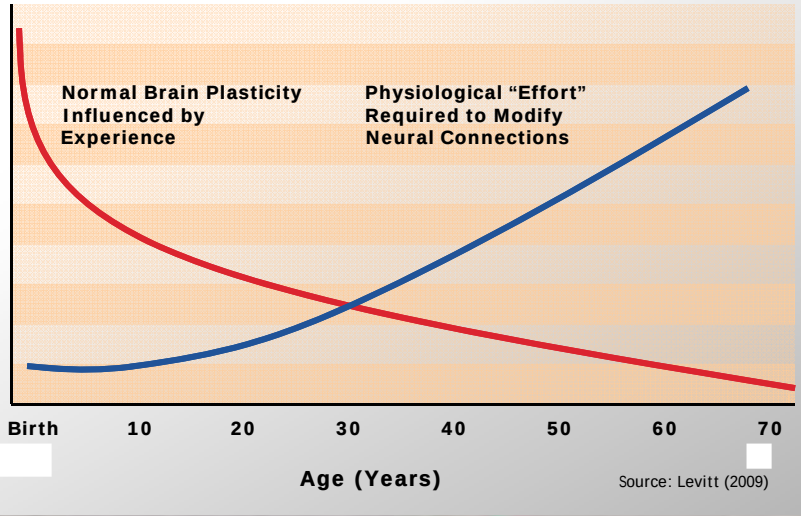
Three Core Concepts of Development

1. Brain Architecture Is Established Early in Life and Supports Lifelong Learning, Behavior, and Health
2. Stable, Caring Relationships and "Serve and Return" Interaction Shape Brain Architecture
3. Toxic Stress in the Early Years of Life Can Derail Healthy Development

Slide courtesy of the Center on the Developing Child at Harvard University

7

The Challenge: The Ability to Change Brains and Behavior Decreases Over Time



Source: Levitt (2009)

Slide courtesy of the Center on the Developing Child at Harvard University

Three Levels of Stress Response

Positive
Brief increases in heart rate,
mild elevations in stress hormone levels.

Tolerable
Serious, temporary stress responses,
buffered by supportive relationships.

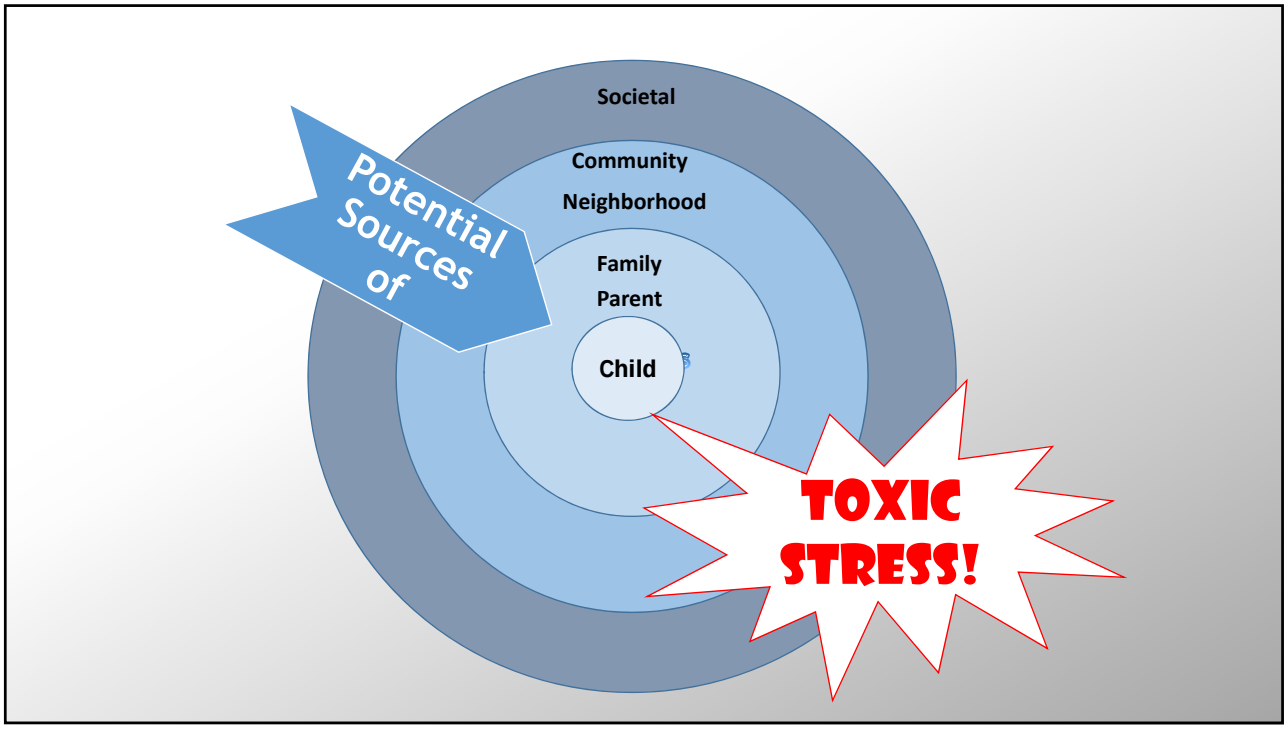
Toxic
Prolonged activation of stress response systems
in the absence of protective relationships.

Slide Source: Center on the Developing Child, Harvard University

Prolonged
activation

of the
stress response system

In the absence of
PROTECTIVE RELATIONSHIPS


Potential Sources of
Societal
Community
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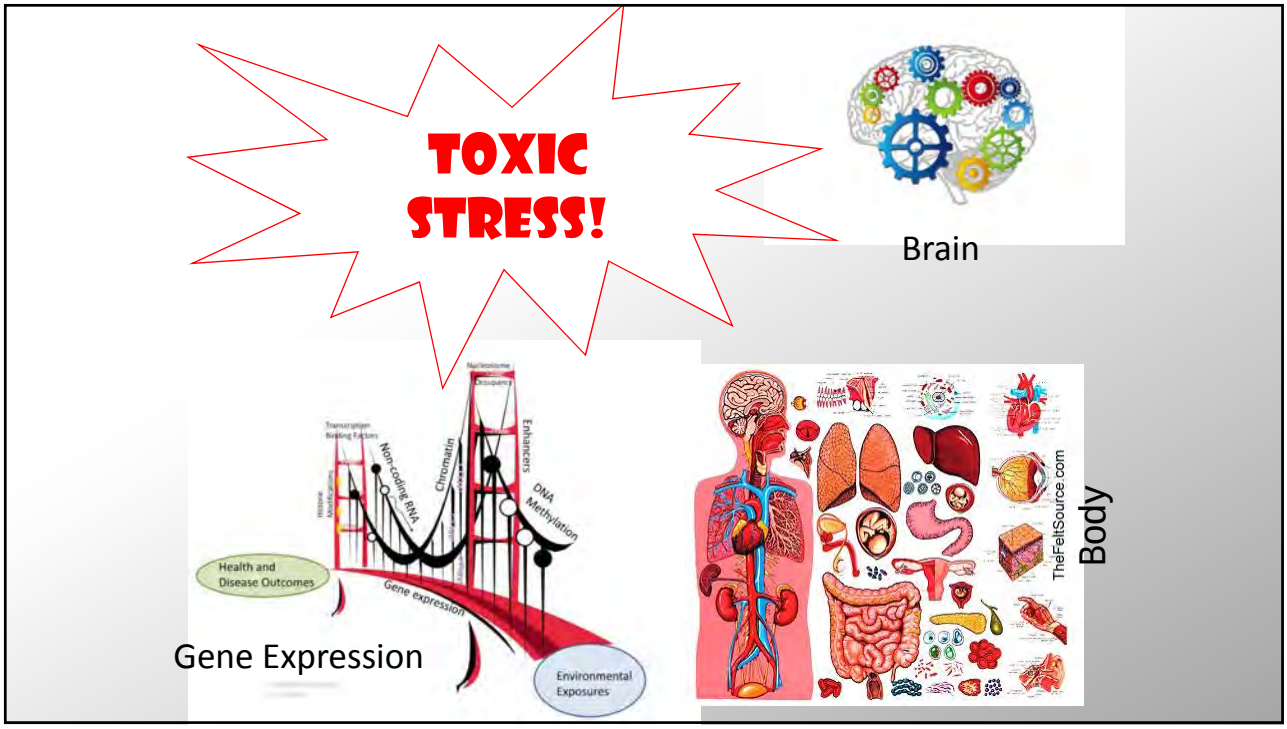
Family
Parent
Child
TOXIC STRESS!


TOXIC STRESS!
Brain
Gene Expression
Health and Disease Outcomes
Gene expression
Environmental Exposures
Body
TheFeltSource.com

Toxic Stress impairs the development of executive functions.

Three Types of Executive Function Skills

Inhibitory Control — filter thoughts and impulses to resist temptations and distractions

Working Memory — hold and manipulate information in our heads over short periods of time

Mental flexibility — adjust to changed demands, priorities, or perspectives

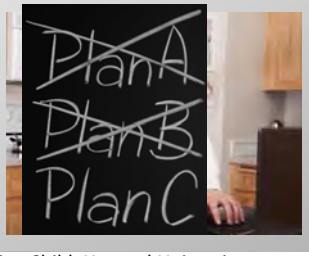
Slide Source: Center on the Developing Child, Harvard University

What Do These Skills Look Like in Adults?

Inhibitory Control — filter thoughts and impulses to resist temptations and distractions

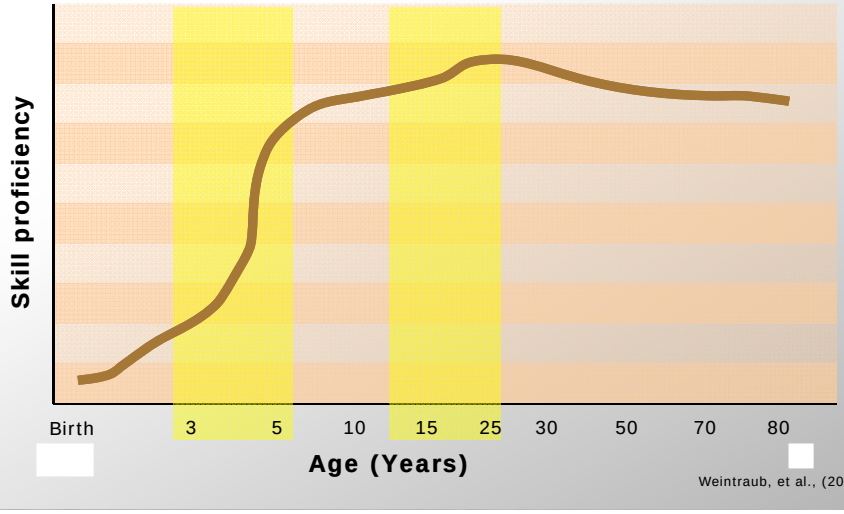
Working Memory — hold and manipulate information in our heads over short periods of time

Mental Flexibility — adjust to changed demands, priorities, or perspectives



Slide Source: Center on the Developing Child, Harvard University

The Opportunity: Circuits for Executive Function Skills Are Located in Brain Regions that Exhibit an Extended Period of Plasticity



Weintraub, et al., (2011)

Slide courtesy of the Center on the Developing Child at Harvard University

Two Strategies for the Prevention of Toxic Stress

Reduce Stress

Increase Protective Relationships

How could we support parents and caregivers to increase the frequency and quality of serve and return?

The ocess

Film target child and caregiver → Create individualized FIND edited film → Coach target caregiver

Frontiers of INNOVATION

Childhaven

Targeting EF Skills in Children Facing Adversity

Nell Robinson
Parenting Skills Program Manager, Childhaven

What We Offer

Early Childhood Intervention and Prevention Services in a Trauma Informed Childcare

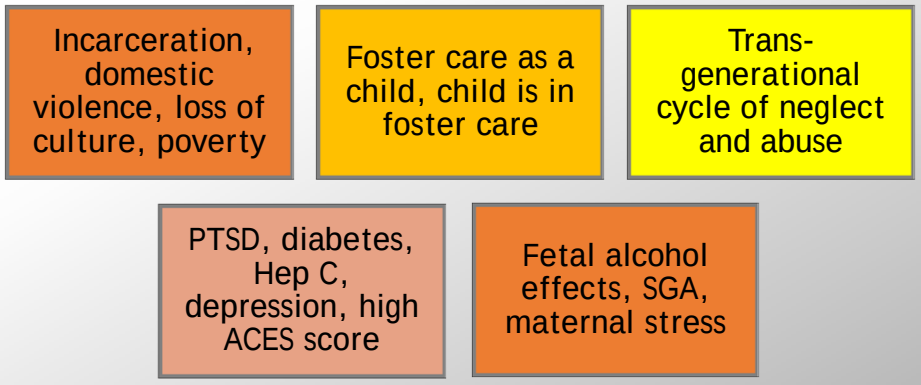
Play Therapy, Individual Treatment Plans

We provide transportation to and from

Evidenced-based parenting interventions: PCIT, Triple P, Incredible Years, PFR, CPP

Each child and family is assigned to a Child and Family Therapist

"Typical" Family Experiences



Target of collaboration with Dr. Silvia Bunge, Professor of Psychology and Neuroscience, UC Berkeley

Executive Function Skill Building

EF= memory, attention, self-control

Children's EF skills hasn't been our focus; primary concern has been attachment and social/emotional development. EF skills are low in children with early life adversity

Can we promote EF skills through group and dyadic play?

Why *play*?

What kinds of *play*?

Play is widespread in the animal kingdom, and is assumed to serve important function(s)

Utility of play: self-regulation & resilience?

Rats that have not had play experience as juveniles…

- Overreact to stressors – e.g., they show a strong stress response in social situations (von Frijtag et al. 2002).
- Don't respond well to novel challenges, either in social *or* non-social settings (Arakawa 2003)
- Exhibit curtailed development of frontal cortex
  (and, on the flipside, rats with frontal lesions violate the game 'rules')

Pellis, Pellis, & Bell, *Am J Play* 2010
Bell, Pellis, & Kolb, *Behavioral Brain Research*, 2009

The potential of play

- The ingredients of play are precisely the ones that *fuel learning*:
  - Intrinsically motivating
  - Opportunity for novel experiences
  - Active engagement
  - Opportunity to learn from peers
  - Relaxed, low anxiety state

Note: there are many types of play, and there is no reason to assume that they all confer the same benefits.

What kinds of *play*?

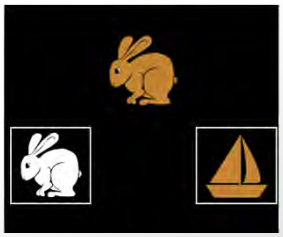
Many forms of play, some of which may be more effective than others at building pre-frontal cortex (PFC)-dependent skills

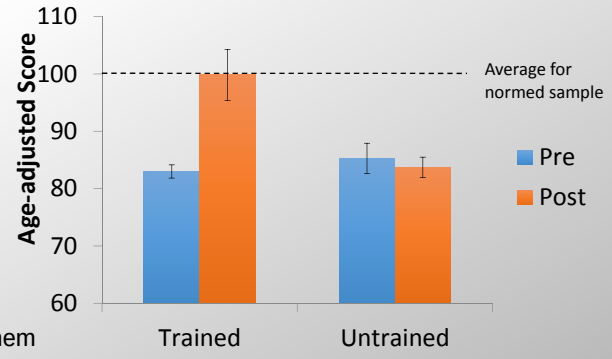
Structured, rule-based games, target those PFC-dependent skills.

Classroom Pilot 1

- Children ages 4-5 at Childhaven in Seattle
- 3 classrooms (total n=20) played games for 10 weeks
- 3 classrooms (total n=21) waited 10 weeks before starting
- 15 minutes/day, 4 days/week, for 10 weeks = 10 hours
- 2 weeks/game; Game rules got more difficult

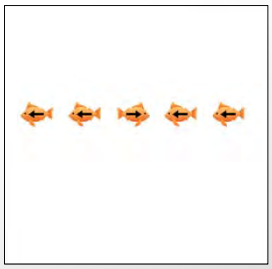
Card Sort Task

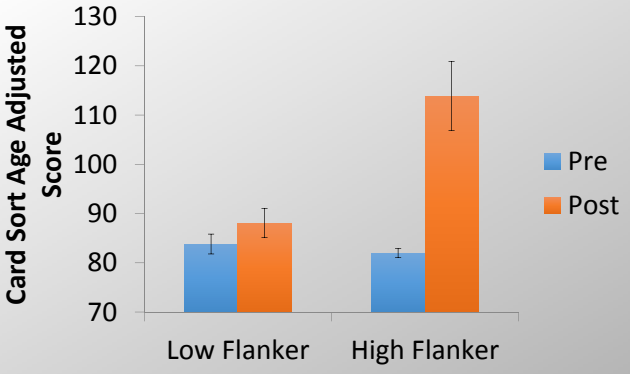




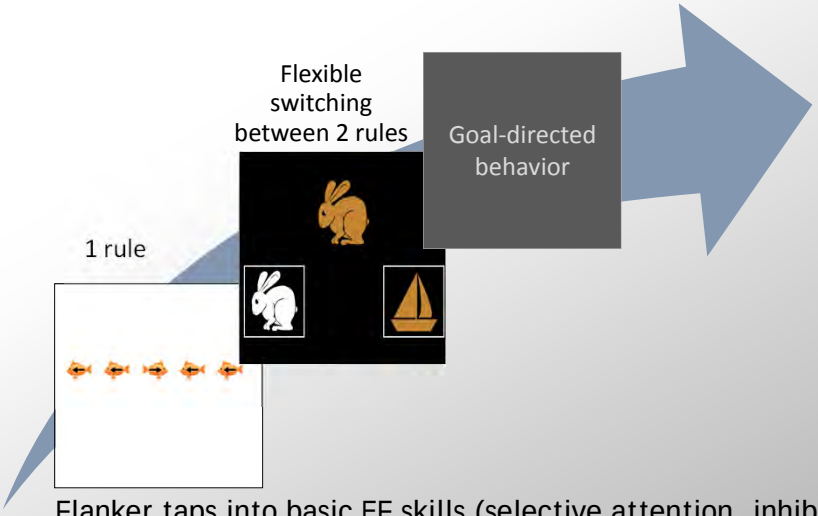
- Learn 2 different rules
- Switch flexibly between them
- Ignore distractors & inhibit inappropriate response

Children with high initial Flanker scores improved more on Card Sorting





Sequential acquisition of skills?



Flanker taps into basic EF skills (selective attention, inhibitory control) that may be *necessary but not sufficient* for learning Card Sort test

Dyadic Play + Emphasis on structured, rule-based play

Rule-guided behavior is central to the concept of EF

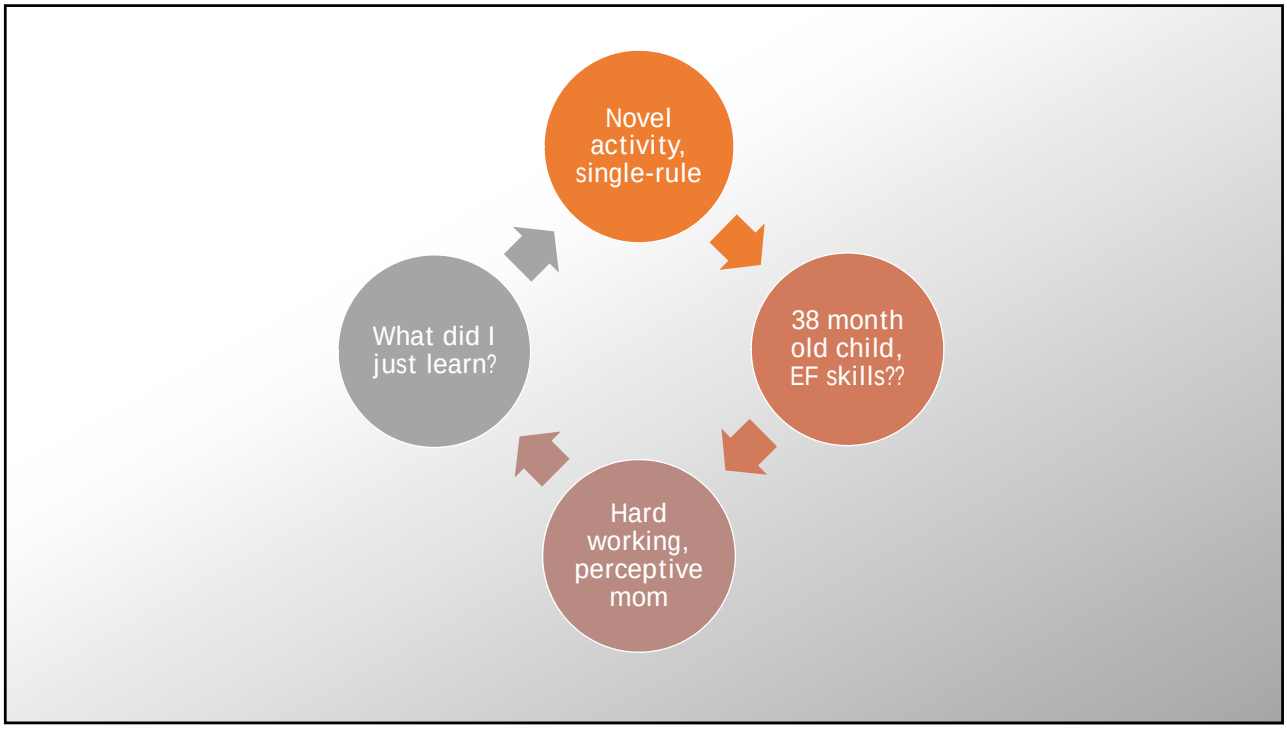
For a child with a chaotic/unpredictable home life, there may be something comforting about structured, pre-defined game rules

For a parent who doesn't know how to play (or even interact) with their children, a game that comes with instructions can be helpful

Play coaching

- Session 1: Creating a framework and expectation for the game/activity. Introduce EF skills.
- Session 2: Playing collaboratively and introducing the idea of "personal best" not competition
- Session 3: How to scaffold the play to support key components.

Hold for video clip…



EF Skills

- We know that early adversity has long-lasting effects on the developing brain and acquisition of EF skills
- We also know that structured, rule-based play can build EF skills

Game-Play Coaching

- We know kids are intrinsically motivated to play
- We know we can "teach" parents how to play
- We know that play brings kids to a state of relaxation and low-anxiety

Current Development

- We are building out this "game-play" intervention and folding it into an existing home visitation program
- We know we are going to run a pilot program to find out if this could work

Remember "resilience"?

Need: at least one stable, caring and supportive relationship

Need: to help child to build a sense of mastery over life circumstances

Need: children who develop strong executive function skills and self-regulation skills

Need: a context of affirming faith or cultural context

Recommended reading –*Supportive Relationships and Active Skill-Building Strengthen the Foundations of Resilience,* Center on the Developing Child, Harvard, 2015.

Acknowledgments

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Jason Gortney

Other Sites
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Sina Mohoric
(Jeannette Spiegelberg)
Kathy Hirsh-Pasek
Roberta Golinkoff

"I saw a woman sleeping
In her sleep she had a dream that Life stood before her
Held in each hand – a gift
In one hand Love
In the other Freedom
Life said to the woman: Choose
The woman waited long and finally she said: Freedom
Life said you have chosen well
If you had said love
I would have given you what you asked for and never returned to you again
Now the day will come when I shall return
In that day I shall bear both gifs in one hand
I heard the woman laugh in her sleep"

Today and Everyday
We should remember the victims of domestic abuse as human beings
Who suffer much pain and sometimes death
Without reason from those not willing to give, respect, love, honor or freedom
They should sleep in peace; dream happy thoughts
Laugh for joy and fight for social justice and real change
Domestic abuse at home, work or at a pastoral setting is like a river that has overflowed its banks and swept to many downstream
This uncertainty spares too few and drowns too many
Some batter and abuse w/o impunity and some do not
Male violence is played out everyday in sports, entertainment media, and the armed forces on every level
Young boys and are girls are bullied online and in person w/o impunity because the forces of empathy are literally outnumbered and outgunned
They can't cry until their tears dry up and turn into anger
When older they marry and often release that latent rage on their partner
Aggression, domination and violence become the primary form of communication
We both fear and admire those with the most power and the impunity it brings
We see and hear everyday on a global level – clenched fists, raised voices, and the use of weapons to defend what we have and take what we want
Men use their physical strength and sex organs to abuse and disrespect mostly females for power and control. Their station in life does not matter – President, Priest. Minister, Teacher, CEO, Athlete, Coach, Military Member, Family Relative, Boss/Co-Worker, Friend, Church Member, etc.
We use the word love but we push, punch, poke, choke, kick, stab, shoot, and sexually violate the victims everyday – they leave and flee into the streets, the homes and arms of family and friends, police stations, hospital emergency rooms, shelters, the highway, and too many end up in morgues and cemeteries.
Apparently to many of our young males know very little of "random acts of kindness and peace." Too often it appears to young men that "kindness is weakness."

A Most Unlikely "Elephant In the Room – Frederick Douglass

In the Nineteenth Century the loudest and most uncompromising voice for the equality and absolute freedom for all American women was Frederick Douglass – the great abolitionist. The most prominent female advocate for unconditional women's rights – Elizabeth Cady Stanton of that century stated, "He was the only man I ever saw who understood the degradation of the disfranchisement of women." Voting was his primary concern but he also spoke resolutely about the need for all women to reach their full potential by participating in every phase of American society and in every element of decision-making. It was well known that his perspective that the oppression of women was in violation of the very principles proclaimed in the formation of the new American Republic. He was in favor of "absolute justice and perfect equality" for women. He was especially concerned that the movement for change paid attention to the profound oppression faced by black women in a white, male dominated society.

Herein lies a great contradiction for Betty and I here today. A historic black man is revered for his truth and power about the liberation of women in this society and all its bounty and human potential and we are here today to reflect and review the paradox presented by black ministers in black churches who historical have played huge roles in the African-American struggle for freedom. Is this not a serious and troubling contradiction?

In 1995 at the Fourth World Conference on Women in Beijing China they held a special session on "Violence Against Women." Let me quote a small portion of their findings and conclusion:

- Violence against women is one of the most frequent violations of human rights, and yet one of the least recognized.
- "Among us, among peoples, among individuals, the strongest individuals, the strongest gives himself rights over the weakest."
- We respond to the 'principles" proclaimed by experts by noting the universality of violence against women, and simultaneously, a certain complicity of public opinion.
- How can we abolish ill treatment between men and women while a world inconstant destabilization shows us an example of general aggressivity that becomes "ordinary violence?"

Domestic violence and rape inside the confines of a religious institution by a ordained or self-program church leader in the African-American church community is a an attack on the women's dignity, self-esteem and safety in a place where the historic role was to serve as a sanctuary from any and all harm. When women are reduced to the role of an illicit sex partner under conditions of coercion, power, guilt, and profoundly misplaced values and adherence to "true" religious beliefs and standards – the entire sanctuary is contaminated because one cannot hold and espouse these values while engaging in disrespectful and immoral activity.
In any so-called religious institution there is no place for "beating, battering, emotional/psychological intimidation, fear, incest, rape, or any form of sexual abuse!"

We learn from Brother Douglass that in the early days of the black church (1830's) male ministers would invoke a Biblical injunction that stated "Let your women keep silence in the churches" in order to prevent their voices and opinions about religious or non-secular issues. The subordination of their voices was a key point of contention for Douglass because he knew that the content of their concerns

could only truly be stated and addressed by them. The sentiment of those times also discouraged women speaking against the institution of slavery when the women suffered from a profound dose of mistreatment by their slave masters. We know that summary rape of black women was key to the wanton pleasure of the master as well as his use of the offspring to enhance his economic status on his plantations (because all slaves regardless of gender or age were chattel property and thus could be used in any way w/o reservation)

So, today it appears that if silence worked in the 19th Century to deny a voice for justice for those most profoundly impacted by the institution of slavery – we have a similar situation in the 21st Century where black male clergy use the power of silence and shame to disrespect their female members via sinful and unwarranted activity. This is a form of hypocrisy that is not a secret to the victims or the perpetrators and why it is not brought into the light of change , forgiveness and reconciliation is difficult to understand.

Useful Resources

The Subjection of Women - John Stuart Mill (edited by Susan M. Okin
Frederick Douglass on Women's Rights (Edited by Philip S. Foner)
Sister Outsider – Essays & Speeches by Audre Lorde
Violence Against Women – Current Controversies (Kate Burns, Book Editor)
The Macho Paradox – Why Some Men Hurt Women And How All Can Help – Jackson Katz
Domestic Violence for Beginner's – Alisa Deltufo
When Violence Begins at Home – K.J. Wilson, Ed.D.
Violence and Society / Domestic Violence - Holly Cefrey
Listening to Battered Women – Lisa A. Goodman & Deborah Epstein
Apologies To Anita Hill/ Melissa Harris–Perry The Nation November 15, 2010
Letter to My Son/ Ta-Nehisi Coates The Atlantic September 2, 2015

Garry Owens / Workshop Co-Leader
garrygo@me.com

7th Annual Domestic Violence Symposium on Violence, Trauma, and Culture

Date: Thursday, September 10, 2015

Session notes for: "Calling the Elephant Out: Uncovering Shame and Silence in Predominantly African American Faith Communities about Domestic and Sexual Violence"

Co-Presenters: Bettie Williams-Watson, Executive Director and
Garry Owens, Community Resource Team Co-Leader

Organization: Multi-Communities(M.I.C.)
Website: www.multicommunities.org

Email address for Garry is garrygo@me.com and Bettie is bettieww@hotmail.com

"There is an elephant in the room.
It is large and squatting, so it is hard to get around it.
Yet, we squeeze by with "How are you?" and "I'm fine" and
A thousand other forms of trivial chatter.
We talk about the weather. We talk about work.
We talk about everything else--except the elephant in the room.

There's an elephant in the room
We all know it is there.
We are thinking about the elephant as we talk.
It is constantly on our minds.
For you see, it is a very big elephant.
But we do not talk about the elephant in the room..."
Excerpted from Bereavement Publishing, Inc.

IMPORTANT THINGS TO CONSIDER WHEN OUTING THE ELEPHANT!

STATISTICS:

U.S. Religious Landscape Survey, conducted in 2007 by the Pew Research Center's Forum on Religion and Public Life indicates that compared with other racial and ethnic groups, African Americans are among the most likely to report a formal religious affiliation, with fully 87% of African-Americans describing themselves as belonging to one religious group or another.

Findings also indicate that nearly eight-in-ten African Americans (79%) say religion is very important in their lives, compared with 56% among all U.S. adults. In fact, even a large majority (72%) of African Americans who are unaffiliated with any particular faith say religion plays at least a somewhat important role in their lives; nearly half (45%) of unaffiliated African-Americans say religion is very important in their lives."

In addition, African American women also stand out for their high level of religious commitment. More than eight-in-ten black women (84%) say religion is very important to them, and roughly six-in-ten (59%) say they attend religious services at least once a week. No group of men or women from any other racial or ethnic background exhibits comparably high levels of religious observance."

According to "Women of Color Networks Facts and Statistics in Communities of Color—June 2006," African American females experience intimate partner violence at a rate 35% higher than that of White females, and 2.5 times the rate of women of other races…and an estimated 29.1% of African American females are victimized by intimate partner violence in their lifetime(rape, physical assault, or stalking.

In addition, African American women typically comprise about 70% of black congregations.

People who are exposed to domestic violence often experience physical, mental or spiritual shifts that can endure and worsen if they are not addressed. According to a study done by the Centers for Disease Control, nearly three in every 10 women—about 32 million—and one in 10 men in the United States who experienced rape, physical violence and/or stalking by an intimate partner reported at least one measured impact or effect related to forms of violent behavior in that relationship.

Even though survivors may experience similar types of abuse, the response to trauma may vary from person to person. Many factors can influence how a person responds to short- and long-term effects of the abuse, such as the frequency of abusive incidents, degree of severity and the effects on physical health. The overall impact of domestic violence also depends on the individual's natural reactions to stress and ways of coping with stressful situations. Other factors can include age in which the trauma occurred, previous exposure to unrelated traumatic incidents and extent of therapy or timing of intervention.

Impact, Barriers and Consequences:

Victim/Survivor

- **Controlled by abusive partner's misuse of scripture, for example, "be submissive and obedient," a "suffering servant," and be "forgiving,"**
- **Held hostage to abuser's manipulation and control**
- **Stripped of a sense of safety and security**

- **Crushed self-esteem**

- **Denial/may not define self as being a"victim"**

- **Blame and judgment by self, as well as others, that she/he is the "problem." contribute to harmful mindset. For example, being labeled as "crazy" or a "troublemaker," or statements such as "You must have done something wrong?" "You need to learn to be more submissive" or "You made your bed now, so lie in it"(pressured to remain in the relationship, no matter how damaging, and "sweep it under the rug."**

- **Shame that they can't fix it, and not being able to measure up to "high" standards of faith community, as well as self-imposed ones.**

- **Fear of condemnation by Higher Power, family, friends and others from their own faith community**

- **Fear of not being heard, understood or supported, emotionally, spiritually, psychologically, etc.**

- **Judged and Blamed—Why didn't you do something about the situation sooner? Or you just didn't handle your business right!**

- **Feeling empty, hopeless and stuck**

- **Internalizes some or all of the myths and stereotypes about African American women such as: being strong matriarchs, able to give birth to babies in the morning, and go and work in the fields at night; emasculating men; angry, loud, and defiant; oversexed and exotic, or cold and calculating; not as smart or capable of earning as much money as white women; alcoholic; on welfare, sneaky, and devious.**

It is important to note that children see, hear, and feel the "elephant in the room" more than parents imagine.

The Washington Post article, "Beyond Ferguson: The Troubled State of America's Children by the Numbers," indicates that Fifty years after President Lyndon Johnson declared a War on Poverty, the United States is still not a fair playing field for millions children afflicted by preventable poverty, hunger, homelessness, sickness, poor education and violence in the world's richest economy with a gross domestic product of $15.7 trillion.

1 in 4 girls, and 1 in 6 boys are sexually abused before the age of 18

An estimated 39 million survivors of childhood sexual abuse exist in America today. Just the ones reported.

Nearly 50% of all victims of forcible sodomy, sexual assault with an object, and forcible fondling are children under 12.

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Children's Exposure

- **Children may hear one parent/caregiver threaten the other, observe a parent who is out of control or reckless with anger, see one parent assault the other, or live with the aftermath of a violent assault. Many children are affected by hearing threats to the safety of their caregiver, regardless of whether it results in physical injury.**

- **Are at increased risk to become direct victims of child abuse. In short, domestic violence poses a serious threat to children's emotional, psychological, and physical well-being, particularly if the violence is chronic.**

Effects

Not all children exposed to violence are affected equally or in the same ways. For many children, exposure to domestic violence may be traumatic, and their reactions are similar to children's reactions to other traumatic stressors.

Short-Term Effects of Domestic Violence on Children

Children's immediate reactions to domestic violence may include:

- **Generalized anxiety**
- **Sleeplessness**
- **Nightmares**
- **Difficulty concentrating**
- **High activity levels**
- **Increased aggression**
- **Increased anxiety about being separated from a parent**
- **Intense worry about their safety or the safety of a parent**

Long-Term Effects of Domestic Violence on Children

Long-term effects, especially from chronic exposure to domestic violence, may include:

- **Physical health problems**
- **Behavior problems in adolescence (e.g., juvenile delinquency, alcohol, substance abuse)**

- **Emotional difficulties in adulthood (e.g., depression, anxiety disorders, PTSD)**

- **Exposure to domestic violence has also been linked to poor school performance. Children who grow up with domestic violence may have impaired ability to concentrate; difficulty in completing school work; and lower scores on measures of verbal, motor, and social skills.**

Effects on Children(cont.)

- **These lessons can have a powerful negative effect on children in social situations and relationships throughout childhood and in later life. Excerpted from National Child Traumatic Stress Network**

  Link: http://www.nctsn.org/content/children-and domestic violence

Perpetrators

- **Will misuse faith beliefs and scriptures to sustain and maintain power and control in their intimate relationship with the victim/survivor. For example: beliefs in male supremacy and the stereotyped masculine role in the family.**

- **May appear to be "tough," "strong", and "confident", more often than not they really suffer from low-self-esteem. If they are emotionally "needy", and they have become dependent on their partner, the thought of losing that partner feels threatening and thus behaviors of controlling and jealousy follow. This holds true not only for heterosexual relationships, but in gay and lesbian relationships as well. For male abusers, they may feel that they fall short in the area of their own sex stereotype and so they overcompensate with hyper-masculinity.**

- **Batterers are often obsessive about appearing to be the "the man of the house" and tend to hold very high and rigid rules about how they can act because they are "the man" - often leading them to feel the need to dominate and control and to expect their word and their needs to be catered to at all times, including in the bedroom. These abusers see their partner as unintelligent, inferior, responsible for menial tasks, and less than whole without the relationship. They will often tell them that no one else would want them or that they are nothing without them. They will remind their partner of their (batterer's)"provider role" - everything they have done for their partner...thus using guilt and convoluted "logic" to pressure them into servile behaviors.**

- **Extreme Jealousy and Possessiveness—may view jealousy as a sign of love—not a sign of possessiveness and lack of trust.**

Perpetrators (cont.)

- **Exhibit controlling behavior-----Will be angry, and seek to monitor victim's whereabouts at all times, and want to monitor, question, and control who you see where you go and what you do---personal decisions about the house, clothing, or going to church, and controlling the money, your job, etc.**

- **Have unrealistic expectations or demands—Expects partner to meet ALL of their needs; the perfect partner, lover, and friend. They say things like "if you love me, I'm all you need and you're all I need". They may expect you to take care of everything for them; emotionally, physically, and sometimes economically.**

- **Use isolation to keep victim centered on them**

- **Frequently, an abusive person tries to cut the partner off from all resources. If their partner has friends, they are labeled as being a "whore,"a "slut" or "a cheater." If they are close to their family, abuser may label them, as being "tied to the apron strings". Abusers will accuse people who are supportive of their partners, of causing trouble, and may restrict use of the phone. Gradually, they will isolate their partner from all of the friends, and restrict use of a car, and try to prevent the partner from working or going to school. Some abusers will try to get their partner into legal trouble so that they are afraid to drive or go out. Sometimes this process can take years and then suddenly a victim looks up and realizes that they've been moved across the country, away from family, friends and a support system and without a job or resources of their own - making them completely isolated and totally dependent on the abuser.**

- **Use of force during sex---Abusive partners may show little concern about whether you want to have sex, and use sulking or anger to manipulate you into giving in to sex. They may start having sex with you while you are sleeping, or demand sex even when you are ill or tired. This should send the message that the abuser is just in it for themselves and/or they are enjoying the power of coercing sex knowing that you are less than willing. They may want to "make up" by having sex after they have just been physically or verbally abusive to you. Sex, under these conditions, is just an extension of the power and control exerted by the prior abuse.**

Perpetrators(cont.)

- **Have poor communication skills**

- **Some people talk with their words, while others talk with their actions (fists). Abusers typically have trouble with discussing "feelings", especially very strong ones like anger or frustration. Some may feel that "having feelings" and talking out problems goes against the stereotyped role that they have bought into (see above). Without the skills or self-permission to express themselves in constructive ways (ways that feels uncomfortable or where they feel inadequate), they can lash out with violence.**

- **Use negative behaviors (drugs, alcohol, battering) to cope with stress.**

- **Studies suggest that batterers, in general, have a higher incident of drug and alcohol abuse than non-batterers. This does NOT mean that drugs or alcohol CAUSE the abuse, rather it lowers inhibitions making an already frustrated and violence-prone person more likely to fall back on violence as a crutch, especially when confronted with their lack of communication skills and feelings of inadequacy.**

- **Blame others for their actions.**

- **Commonly, abusers use the actions of others as excuses for their own behavior. They blame the person who made them angry, as if that person were pushing some magic button that released violent behavior. How often have victims heard "why did you make me do that"? If your partner is chronically unemployed, someone is always doing them wrong or is out to get them. They may make mistakes and then blame you for upsetting them so that they can't concentrate on their work. They may tell you that YOU are at fault for almost anything that goes wrong. Abusive people will might say, "you made me mad" and "I can't help being angry". Although they actually make the decision about how they think or feel, they will use feelings to manipulate you. Abusers see themselves as the "victim" in the relationship, and do not take responsibility for their own feelings or behaviors.**

Perpetrators (cont.)

Are prone to hypersensitivity

Abusers are easily insulted, and may take the slightest setback as a personal attack. They will rant and rave about the injustice of things that are really just a part of living, such as having to get up for work, getting a traffic ticket, or being asked to help with chores.

- **Present dual personalities.---Often the most frustrating thing for the victim, many abusers are also excellent actors. They may appear to function well at work, with friends and family, etc. Sometimes only the victim is aware of the true "nature of the beast". This often makes it difficult for a victim to reach out for support from friends and family, because those persons may try to talk the victim out of thinking that their spouse is abusive. Often friends and family of the victim will go on and on about "what a great partner you've got there" - because the abuser has successfully hidden their violence at home. It's even MORE frustrating for the victim when members of their support system try to turn the tables and say things like "well, just don't make him/her mad". They're putting the blame on the VICTIM and not on the offender where it belongs! When this happens, the violent partner gets backup from the very people the victim NEEDS for support and they too fall into the trap of myths about the nature and causes of relationship violence!**

- **Exhibit cruelty to animals or children**

- **This is a person who punishes animals brutally or is insensitive to their pain. They may expect children to be capable of things beyond their ability. They may tease children until they cry. They may be very critical of other people's children, especially any children you bring in from a previous relationship. An abusive partner may threaten to prevent you from seeing children you have no biological rights to, or punish children to get even with you. About 60% of people who beat their partner also beat their children. Of course the OPPOSITE of this can be true also. Abused women often say that they stay "for the sake of the kids."**

Perpetrators (cont.)

- **Often receives backup validation and support for blaming victim and viewed as being more masculine and "in control" of his (sees partner as being in subjection)"woman" and views children, if there are any, as an extension of her, and also, in subjection.**

- **Feels justified in behaving violently, and not at fault, therefore overtly or covertly has "permission to continue behaving violently towards their partner**

- **Myths and stereotypes about Black men—unemployed; dangerous; uses drugs; a criminal; lazy, loud, and unpredictable.**

<u>It is also important to note that one parent abusing another is one of the greatest risk factors for child abuse as well as for children to sink into depression, anxiety disorder, other mental and physical illnesses, and criminal, even violent, behaviors of their own.</u>

"If a short list was made of the issues the American church does not talk about from the pulpit, sexual and domestic violence would probably top the list. According to Rick Santos, President and CEO of IMA World Health, there is little information out there about what is actually happening in the U.S. faith community on this issue." Excerpted from "The Church's Silence on Domestic Violence," – Prophecy News Watch, August 2014

<u>Leadership</u>

- **Denial---It has not happened here. No one has come forward saying that it has happened, so therefore, there is no need to address it.**

- **Reactive as opposed to proactive –fire prevention, after the house has burned down. May believe that being proactive in preventing domestic and sexual violence in the church thru education and awareness is not a high priority, unless, or until there is an elephant "on fire" in the house.**

- **No need to "open the can of worms. "What's happening in "this house" is too close to their own (past or present) personal internal (unresolved) house issues.**

Leadership(cont.)

- **Want to be viewed as all seeing and all knowing**

- **Territorialism—Statements such as "This is our (leadership's) turf, and no outsiders (systems) are going to come here and tell us how to run things!" "We take care of our own business in our own way. "Systems such as courts, police, etc. may be viewed as being "oppressive," "distrustful," and "too worldly." The belief may also be that systems, including Victim Services Programs, Perpetrator Treatment Programs, etc. encourage "breaking up families."**

  Consequently, leaders may prioritize family preservation over separation, even at the risk of danger to victims and impacted others, by being unable to see the serious issues, and safety concerns.

- **Power dynamics----The house may be seen as the only place that the Black male can have the most power, not the world, or the streets.**

Church at Large

"The church should be a place of refuge, but often we have not known how to listen, how to be present to victims. We have told them that their anger is wrong, that they need to move on, to forgive,to forget. We have denied them their right to mourn and instead have laid new burdens on them. All this is understandable—as part of our effort to distance ourselves from pain and vulnerability—but not at all helpful." –Howard Zehr, "Restoring Justice," God and the Victim, 1999

Church at Large (cont.)

- **Held hostage, consciously or unconsciously – becomes a victim— chained by leadership response or lack of it, and various levels of experiences in hiding elephants, and the impact**

- **Feeds into the culture within a culture---Code of Silence, or look the other way.**

- **May engage in either/or victim/blaming or colluding with perpetrator**

- **Don't ask, don't tell informal policy, and just sweep it under the rug**

- **Steeped in rituals and traditions, that exclude the elephant issue**

- **Domestic and sexual violence are still viewed as" hot button" topics, along with sex in general, mental illness or chemical dependency, depression, suicide, child abuse, elder abuse, teen dating violence, etc.**

- **At risk of taking on the role of perpetrator**

- **Lack of knowledge and empathy, which may lead to the few who do get it, are often disempowered within the walls. Leads to things getting mishandled.**

- **Who do you trust? Become polarized in a "them" versus "us" mentality**

- **Potential relationship bridges are destroyed by well-intended inflated egos.**

Community At Large

- **Sees, hears and feels, and is impacted by, and faces consequences, as well, because of their own and everyone else's "elephant in the room" issues.**

SUGGESTIONS FOR HOW SERVICE PROVIDERS AND FAITH LEADER CAN WORK TOGETHER TO BUILD EFFECTIVE RELATIONSHIP BRIDGES

- **The process can start with one faith leader, and a service provider, or a group of each sitting down together, "breaking bread" and getting more acquainted.**

- **Schedule a series of small informal meetings to share information, ideas, and resources. Just take it slow, and work together.**

- **Lose the myths and stereotypes about each other, and team to find answers by being open to an exchange of ideas, language and culture. It is important to note that the language and culture within faith communities does not necessarily translate in a victim services and/or perpetrator treatment program, or other community programs.**

- **Be willing to learn together what similarities and differences exist without defensiveness.**

- **Look for traditional, as well as non-traditional solutions for working together.**

- **Make a sustained commitment and follow thru. Be patient and stay the course in building healthy relationships, so that every victim/survivor will feel safe and supported (emotionally, as well as spiritually) throughout their healing process and beyond. In addition, those who behave violently can receive the treatment, and other community support and services that they need, in a way that does not put victims at further risk of danger, but also holds them accountable for their behavior.**

SUGGESTED READINGS

Please note: Not all of these are specific to African American faith communities.

Domestic Violence: What Every Pastor Needs to Know by Minister Al Miles

Women, Abuse, and the Bible: How Scripture Can Be Used to Hurt or Heal by Catherine Kroeger and James Beck

I Will Survive: The African American Guide to Healing from Sexual Assault and Abuse by Lori S. Robinson

Keeping the Faith by Dr. Marie Fortune

Creating Partnerships to End Sexual Violence in Faith Communities by FaithTrust Institute

Responding to Abuse in Christian Homes: A Challenge to Churches and their Leaders, edited by Nancy Nason-Clark, Catherine Clark-Kroeger, and Barbara Townsend

Discovering God's Heart for Suffering Women: A 40 Day Prayer Pilgrimage by Gwen McVicker and Idelette McVicker with the Task Force Against Abuse, Commission on Women's Concerns, World Evangelical Fellowship

WEB RESOURCES

Christian Coalition Against Domestic Violence-an online organization working to address and end domestic violence in the Christian home through education, advocacy, and uniting those seeking to end domestic violence.

FaithTrust Institute-a national multi-faith, multi-cultural training and education organization with a global reach working to end sexual and domestic violence. They offer a wide variety of services and resources, including training, consulting, and educational materials. They provide communities and advocates with the tools and knowledge needed to address the religious and cultural issues related to abuse. PLEASE NOTE: FaithTrust Institute has a 19-20 list of suggested readings on domestic and sexual violence issues.

Suggested resources(cont.)

Focus Ministries-One of their primary goals is to educate and train churches, organizations, support group leaders, and concerned friends and family members about the dynamics of domestic violence and abusive relationships

IDVAAC -Institute on Domestic Violence in the African American Community- The Institute on Domestic Violence in the African American Community (IDVAAC) is an organization focused on the unique circumstances of African Americans as they face issues related to domestic violence, including intimate partner violence, child abuse, elder maltreatment, and community violence. IDVAAC's mission is to enhance society's understanding of and ability to end violence in the African-American community.

National Council of Churches-This site provides information about what the National Council of Churches is doing to educate and equip member churches in regard to the issue of domestic violence.

PASCH-Peace And Safety in the Christian Home-is a coalition of academics, professionals, clergy, and lay people who are seeking to end domestic violence and other forms of abuse in the Christian home.

Recovery from Abuse-Most of the material on this site began with lectures presented in a class entitled Pastoral Care and Abuse at Fuller Theological Seminary. It is the kind of resource that all church leaders need. Much of the recommended readings from this site include books or articles from theological journals.

The RAVE Project-The Religion and Violence E-Learning (RAVE) Project seeks to equip religious leaders to respond to domestic violence in ways that are compassionate, practical, and informed by the latest research and best-practices for professionals.

Law Enforcement and Prosecution Best Practices: Immigrant Crime Victims, Language Access and the U Visa

Seattle, Washington
September 10, 2015

NIWAP

Introduction

- Officer Michael LaRiviere
  - Officer, Patrol Division, Salem Police Department
- Leslye Orloff
  - Director, National Immigrant Women's Advocacy Project

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Materials Summary

- Training Folder
  - Agenda
  - Hard copy of PowerPoint presentation
  - Faculty Bios and Participant List
  - Sample – U Visa Certification Form
  - Sample – T Visa Endorsement Form
  - Evaluation
- USB Drives – Supplementary Tools and Resources

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Participant Introductions, Goals and Expectations

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Learning Objectives

By the end of this workshop, you will be able to:

- Understand how investigations can be improved by using language access tools
- Hold offenders more accountable by using the U Visa certification process as a crime fighting tool
- Enhance victim safety and participation in the criminal justice system
- Enhance officer/victim/community safety using language access and certification programs

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What barriers and fears exist for immigrant victims of crime to report?

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If they report…

- They will be deported
- Offender will retaliate
  - Harm them
  - Harm family members, children
- Nothing will happen
- Cannot communicate with officers

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Fears & Misconceptions

- Do not trust police/prosecutors
- Economic survival
- Pressures from both families
- Fear of abandoning the home/community
- Fear of losing children
- Religious factors
- Fear of unknown
- Victim believes that if perpetrator deported she has to go with him
  Dangers in the home country
  - Retaliation
  - Ostracism
  - Police
  - Political instability
  - Gender barriers

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Major Challenges working with Immigrant Victims of Crime

1. Language
2. Fear of Deportation
3. Lack of knowledge of legal rights
4. Do not trust that police/prosecutors will help them
5. Lack of reporting and/or cooperation as the case moves forward

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Language Access

Best Practices to successfully investigate and prosecute cases involving non-English speaking victims

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DOJ Model Guidance

- Police provide free language access to:
  - LEP persons who request it
  - *When officer decides it is helpful* to the criminal investigation or prosecution
- Police will inform members of the public that language assistance is available free of charge
- Language access provided in persons primary language

DOJ Sample Policy Center City Police Department

DOJ Approach to language access outline in:

Steps for Obtaining Interpreters

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DOJ and Exigent Circumstances

- Use the most reliable *temporary i*nterpreter available to address exigent circumstances
  - Fleeing suspect
  - Weapons
  - Life threatening to the officer /victim/or public

Source of Law

- Title VI- No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving financial aid assistance.
- LEP Executive Order 13166 (2001)
  - Requires all agencies receiving any federal financial assistance to
  - Ensure meaningful language access
  - Develop and implement language access plans
  - "Where the denial or delay of access may have life or death or other serious implications, the importance of the full and effective delivery of LEP services is at its zenith."

What countries do immigrants in your jurisdiction come from and what language do they speak?

Washington Demographics (2013)*

- Total foreign born population – 943,664
- 13.5% of the state's 6.9 million people is foreign born
  - 46.3% naturalized citizens
  - ~30.5%^ legal permanent residents (2012 data)
  - ~22.1%^ undocumented or temporary visa holders (2012 data)
- 53.6% rise in immigrant population from 2000 to 2013
- High proportion of new immigrants
  - 28.5% entered in the 1990s
  - 41.6% entered 2000 or later
- 28.5% of children in the state under age 18 have one or more immigrant parents
  - 87% of these children are native-born U.S. citizens

^ The Department of Homeland Security no longer reports on lawful permanent resident or temporary visa holder statistics

*Source: http://www.migrationinformation.org/datahub/state.cfm?ID=WA (January 2015)

Washington – Countries/Regions of Origin (2013)*

- Asia – 41%
  - China/Taiwan (7.2%)
  - India (6.3%)
  - Vietnam (6.2%)
  - Philippines (6%)
  - Korea (5.6%)
- Latin America – 30.5%
  - Mexico (25%)
  - South America (2%)
  - El Salvador (0.8%)
- Europe – 16.2%
  - Eastern Europe (9.2%)
  - United Kingdom (2.3%)
  - Germany (2%)
- Africa – 5.9%
  - Eastern Africa (3.9%)
- Canada – 4.9%
- Oceania – 1.6%

*Source: http://www.migrationinformation.org/datahub/state.cfm?ID=WA (January 2015)

First Responders –

What do you do when you arrive at a crime scene?

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First Response

- Locate and secure the scene
- Are there any weapons?
- Is anyone injured?
- Identify the people involved
  - Victim
  - Offender
  - Witnesses
- If offender is not on the scene
  - Where is the suspect?
  - Are they a continuing danger?
  - Is suspect in possession of weapon?

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What do you do when the people at the scene are limited English proficient?

How can you get the information you need *to secure the scene?*

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Using Qualified Interpreters

Benefits

- Safety
- ID offender
- Locate weapons
- Admissible statements (Excited Utterances)

Harms

- Mistaken ID of offender
- Arrest of victim
- Misinterpretation results in inaccurate statements
- Trauma to children

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DOJ Requirements for Investigations & Interrogations

- "A qualified interpreter shall be used for any interrogation or taking of a formal statement where the suspect or witness' legal rights could be adversely impacted"
  - Criminal interrogations
  - Crime witness interviews
- Vital written materials translated into primary language
  - Miranda warnings

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Now that emergency is over, how do you work with victims, witnesses, and offenders who do not speak English?

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Language Resources

- Language Line
- Department interpreters line developed in response to large local refugee population
- Immigrant community based organization partners
- Health care providers
- School systems

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U Visas as a Crime Fighting Tool

Improving the reporting, investigation, and prosecution of violent crime

& keeping everyone safer

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What, if anything, do you know about U Visas?

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U Visa Basics

- Law enforcement certification is just one part of the overall process it does not = Citizenship
- Meant to promote reporting of crime
- Targets offenders who prey on most vulnerable victims
- Can be "revoked"
- Increases immigrant victim participation in criminal justice system

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Purpose

Congress enacted VAWA self-petitioning (1994) and the U and T visas (2000) to:

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Allow victims to report crimes without fear of deportation
- Enhance victim safety
- Keep communities safe

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DHS Video Part 1.mpg

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U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
  - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

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Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Female genital mutilation
- Felonious assault
- Manslaughter
- Murder
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Peonage
- Fraud in Foreign Labor Contracting
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

*Attempt, conspiracy or solicitation to commit any of these crimes any similar activity

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U Visa Criminal Activities (11/2011 data)

- Domestic violence **45.9%**
- Rape, sexual assault, incest, trafficking **30.4%**
- Felonious assault, murder, manslaughter 9.9%
- Kidnapping, being held hostage, unlawful criminal restraint, torture 8.47%
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation **5.3%**

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DHS Terminology: Who Can Certify?

"law enforcement" &***"law enforcement agencies"*** =

- Federal, state, and local
  - Police, sheriffs, FBI, HSI, ATF…
  - Prosecutors
  - Judges, Magistrates, Commissioners
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies

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How will a U visa certification request come to you?

- From victim advocate or immigration attorney
- As a police officer you are the first responder
- As a prosecutor you might have continued contact with the victim and might be first to identify victim's U visa eligibility

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U Visa Certification Considerations

- What criminal activity occurred?
- Identify the victim or indirect victim
  - Note injuries observed, if any
- Determine helpfulness of the victim
- Determine if any family members were implicated in the crime

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Things to Know About Certifying

- "Do I believe this person was a victim of a qualifying crime?"
- "Did the person assist or willing to assist in detection, investigation, conviction, prosecution and/or sentencing?"
- Question is **NOT**:
  - Can we prosecute the crime?
  - Can I arrest the offender?
  - Do I have proof beyond a reasonable doubt?
  - Will the prosecutor's office file charges?
  - Is this within the statute of limitations?
  - Did we get a conviction?

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When should you certify?

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Timeline

- Certification must be included in the initial application for a U Visa
- Once the initial application is processed:
  - Victim is entered into a database and flagged as an applicant for a U Visa

=

- Immigration proceedings will not be initiated
- Offender can not intimidate with threats

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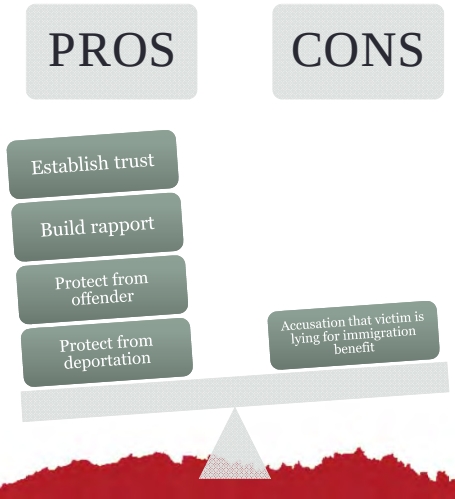
Certifying early



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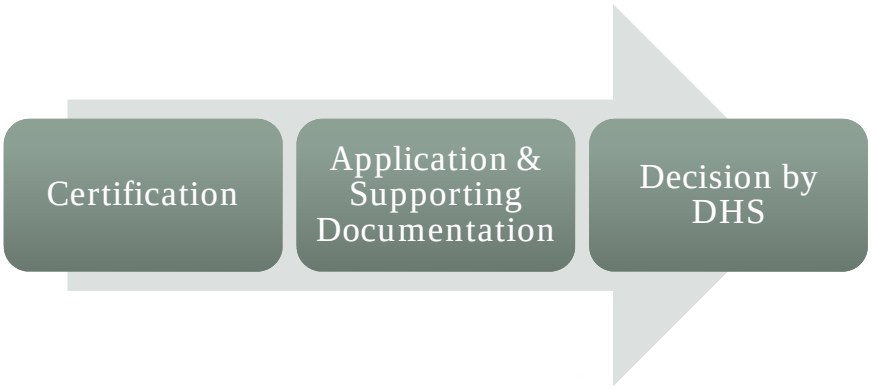
The U Visa Application Process



Typical length of process = 12 -14 months

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DHS Decision

- Were they a victim of a qualifying crime?
- Did they suffer substantial harm as a result of victimization?
- Assess whether the victim unreasonably did not comply with requests from law enforcement (helpfulness)
- Is the victim admissible?
  - Review of criminal history
  - Review of immigration history

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U Visa Facts

- Only 10,000 U visas can be granted annually
- The U visa grants a temporary 4 year stay
- Only some U visa holders will qualify for lawful permanent residency– no guarantee
- U.S. citizenship can only be attained after lawful permanent residency for 5 years + proof of good moral character

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How does law enforcement and prosecution benefit from the U visa?

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U Visa Benefits to Law Enforcement and Prosecutors

- Encourages victims to report crimes
- Improves investigation and prosecution of violent crimes
- Increases potential to convict most dangerous criminals
- Demonstrates commitment to protecting immigrant community members
- Enhanced immigrant community involvement
- Makes it easier to identify victim witnesses
- Reduces repeat calls and recanting victims
- Fosters community policing partnerships
- Enhances Officer and Community Safety

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U Visa Certification Overview

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-918 Supplement B,
U Nonimmigrant Status Certification

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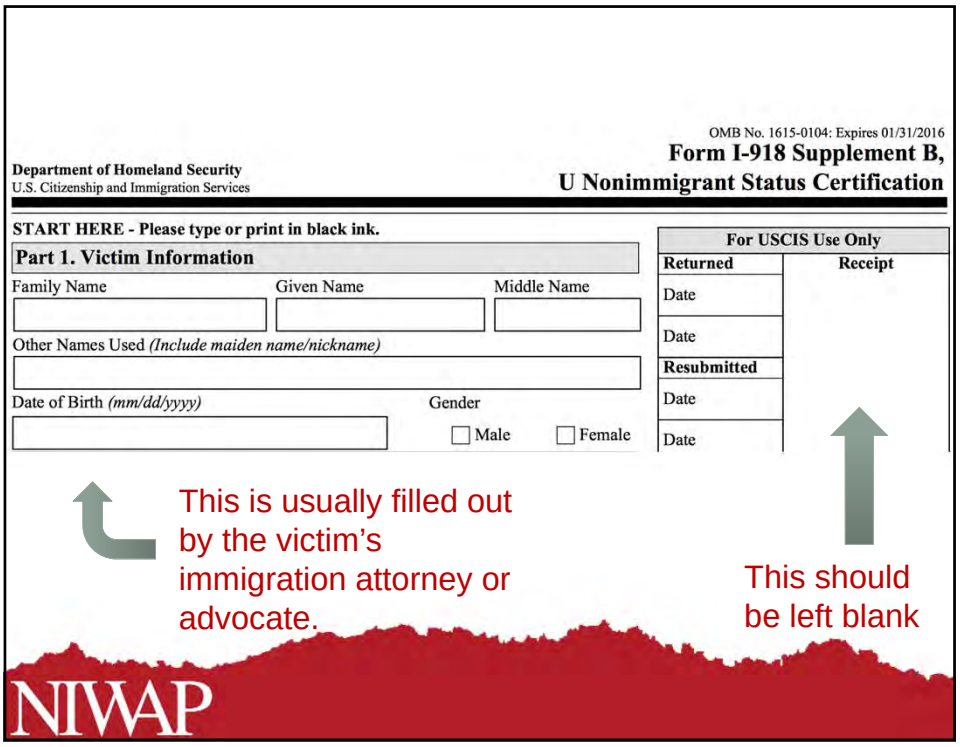

OMB No. 1615-0104: Expires 01/31/2016

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-918 Supplement B,
U Nonimmigrant Status Certification

START HERE - Please type or print in black ink.

Part 1. Victim Information

Family Name | Given Name | Middle Name

Other Names Used *(Include maiden name/nickname)*

Date of Birth *(mm/dd/yyyy)* | Gender ☐ Male ☐ Female

For USCIS Use Only	
Returned	**Receipt**
Date	
Date	
Resubmitted	
Date	
Date	

This is usually filled out by the victim's immigration attorney or advocate.

This should be left blank

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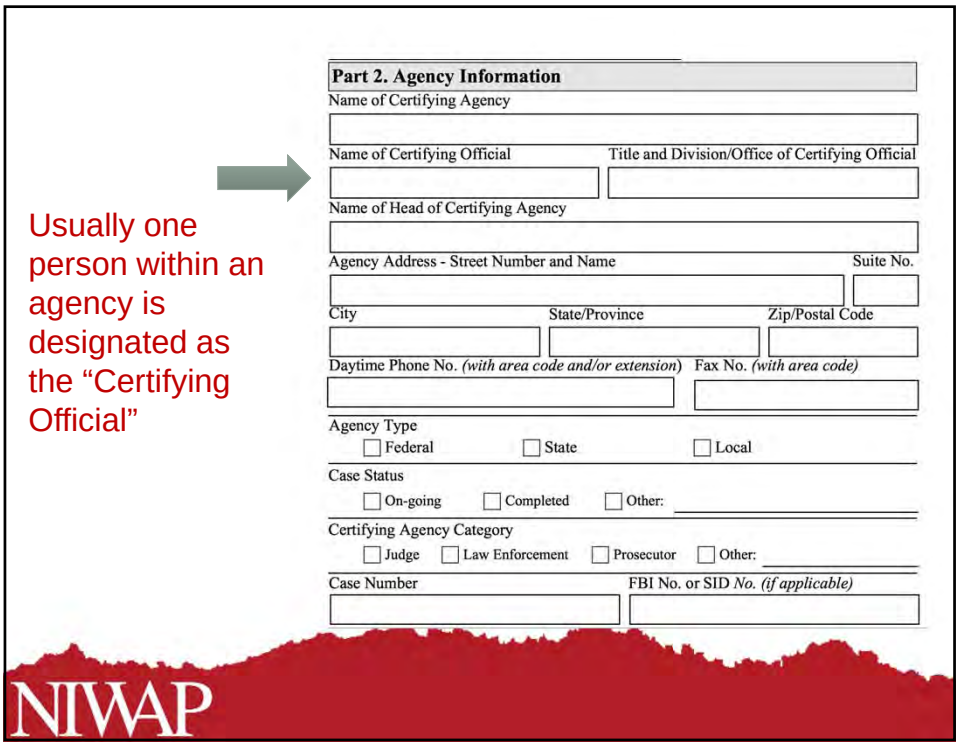

Part 2. Agency Information

Name of Certifying Agency

Name of Certifying Official | Title and Division/Office of Certifying Official

Name of Head of Certifying Agency

Agency Address - Street Number and Name | Suite No.

City | State/Province | Zip/Postal Code

Daytime Phone No. *(with area code and/or extension)* | Fax No. *(with area code)*

Agency Type
☐ Federal ☐ State ☐ Local

Case Status
☐ On-going ☐ Completed ☐ Other:

Certifying Agency Category
☐ Judge ☐ Law Enforcement ☐ Prosecutor ☐ Other:

Case Number | FBI No. or SID *No. (if applicable)*

Usually one person within an agency is designated as the "Certifying Official"

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Part 3. Criminal Acts

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. *(Check all that apply.)*

☐ Abduction	☐ Female Genital Mutilation	☐ Obstruction of Justice	☐ Slave Trade
☐ Abusive Sexual Contact	☐ Hostage	☐ Peonage	☐ Torture
☐ Blackmail	☐ Incest	☐ Perjury	☐ Trafficking
☐ Domestic Violence	☐ Involuntary Servitude	☐ Prostitution	☐ Unlawful Criminal Restraint
☐ Extortion	☐ Kidnapping	☐ Rape	☐ Witness Tampering
☐ False Imprisonment	☐ Manslaughter	☐ Sexual Assault	☐ Related Crime(s)
☐ Felonious Assault	☐ Murder	☐ Sexual Exploitation	☐ Other: *(If more space needed, attach separate sheet of paper.)*
☐ Attempt to commit any of the named crimes	☐ Conspiracy to commit any of the named crimes	☐ Solicitation to commit any of the named crimes	

You can & should certify multiple offenses when present. Other can include criminal activity present, but not listed specifically; e.g. “stalking”

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Dates do not have to be precise – you can use months, seasons or years.

Part 3. Criminal Acts *(continued)*

2. Provide the date(s) on which the criminal activity occurred.

Date *(mm/dd/yyyy)*	Date *(mm/dd/yyyy)*	Date *(mm/dd/yyyy)*	Date *(mm/dd/yyyy)*

3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States? ☐ Yes ☐ No

   a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute? ☐ Yes ☐ No

   b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

   c. Where did the criminal activity occur?

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Part 3. Criminal Acts *(continued)*

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.

Make copies of all reports and attach.

6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

Be as specific as possible, highlighting visible injuries observed (even if not photographed).
If you are aware of mental injury, include as well.

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Part 4. Helpfulness of the Victim

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):

1. Possesses information concerning the criminal activity listed in **Part 3**.	☐ Yes	☐ No
2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. *(Attach an explanation briefly detailing the assistance the victim has provided.)*	☐ Yes	☐ No
3. Has not been requested to provide further assistance in the investigation and/or prosecution. *(Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)*	☐ Yes	☐ No
4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. *(Attach an explanation.)*	☐ Yes	☐ No

5. Other, please specify.

NOTE: This will be discussed in detail in the next section.

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Part 5. Family Members Implicated in Criminal Activity

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim? ☐ Yes ☐ No

2. If "Yes," list relative(s) and criminal involvement. *(Attach extra reports or extra sheet(s) of paper if necessary.)*

Full Name	Relationship	Involvement

Because many applications will include domestic violence, this may likely be the defendant.

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Part 6. Certification

I am the head of the agency listed in **Part 2** or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in **Part 1** is or has been a victim of one or more of the crimes listed in **Part 3**. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make no promises regarding the above victim's ability to obtain a visa from the U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2. **Date** *(mm/dd/yyyy)*

REMEMBER: This is merely a certification that you believe they were a victim of a crime. This does not automatically mean that the victim will be granted immigration relief.

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Helpfulness

Part 4. Helpfulness of the Victim

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):

1.	Possesses information concerning the criminal activity listed in **Part 3**.	☐ Yes	☐ No
2.	Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. *(Attach an explanation briefly detailing the assistance the victim has provided.)*	☐ Yes	☐ No
3.	Has not been requested to provide further assistance in the investigation and/or prosecution. *(Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)*	☐ Yes	☐ No
4.	Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. *(Attach an explanation.)*	☐ Yes	☐ No

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2.	Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. *(Attach an explanation briefly detailing the assistance the victim has provided.)*	☐ Yes	☐ No

What does "helpful" mean to you?

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Helpfulness

By the end of this segment, you will be able to:

- Understand the scope of the helpfulness standard
- Apply the helpfulness standard to U visa certifications

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Hypotheticals
Small Group Activity

- Is this person eligible for a U Visa certification?

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Hypothetical Case Scenario: 1

Lara

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Lara entered the United States seven years ago with a student visa. One night after the visa had expired; she was walking home from waiting tables and was raped by a masked assailant. She never got a good look at the perpetrator. He whispered that he knew where she lived and told her he would tell her family back home the "filthy things" she had done if she told anyone. Four months later, Lara realized she was pregnant. When she began to miss late shifts at work and was disciplined by her boss, she finally shared with him what had happened to her. Her boss encouraged her to contact the police, and helped her call the police. Lara told the police everything she knew, but said she would not testify in court because she feared retaliation.

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Hypothetical Case Scenario:2

Amelia and Carlos

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Amelia and Carlos were living in poverty in their home country. Together they saved, borrowed and planned to pay a "coyote" $3,000 to bring each of them into the United States. Once they arrived in the U.S., the "coyote" demanded an additional $3,000 to release and transport them to family members living in Louisiana. After the "coyote" had held Amelia and Carlos in an abandoned house for 5 days, without food or water, their family was able to send the additional money. The coyote agreed to drive Amelia and Carlos to their family. The coyote had been drinking heavily before the drive, and just before they reached their destination, the coyote's van crashed into oncoming traffic. Amelia was sitting in the passenger seat and died instantly. The passengers in the other car had minor injuries. Police arrived on the scene, and took both Carlos and the "coyote" into custody. Carlos told the police many details of the coyotes' illegal business enterprises.

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What does "helpful" mean?

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Helpfulness in the Regulations

- Statute and DHS Regulations: has been helpful, is being helpful or is likely to be helpful in the
    - Detection, or Investigation, or
    - Prosecution, or Conviction or
    - Sentencing
- There is no degree of helpfulness required
- Law enforcement may complete U visa certification once they assess victim's helpfulness
- The investigation or prosecution can still be ongoing

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Helpfulness in the Regulations

- Statute and DHS Regulations: has been helpful, is being helpful or is likely to be helpful in the
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- There is no degree of helpfulness required
- Law enforcement may complete U visa certification once they assess victim's helpfulness
- The investigation or prosecution can still be ongoing

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Helpfulness can be satisfied even if:

- Victim reports a crime where there's no further investigation
- Report is of past crime that the victim did not report at the time
- Perpetrator absconds or is subject to immigration removal
- The perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim qualifies)
- Perpetrator is dead
- Victim has a criminal history or is subject to immigration enforcement
- Victim fully discloses story after better understanding rights, the U-visa and meaningful language access

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4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. *(Attach an explanation.)* ☐ Yes ☐ No

What does it mean for a victim to "unreasonably refuse" to provide assistance?

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Why would a victim report a crime and then refuse to participate in the ensuing investigation and trial?

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Reasons for Refusing to Cooperate

- Fear of reprisal
- Continued threats or violence
- Pressure from either family
- Financial hardship
- Lesser of two evils

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Evaluating Whether Victim's Refusal to Provide Assistance/Cooperation was "Unreasonable"

- <u>Considerations:</u>
  - totality of the circumstances, including the nature of the victimization
  - victim's fear or the abuser
  - trauma suffered
  - force, fraud or coercion

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Witness Tampering

- Work with prosecutors to detect signs
  - Change in frequency of contact
  - Missed appointments
  - Recantation or minimization
- Investigate
  - Follow up with victim
  - Contact victim advocate, immigration attorney, others that had contact with victim
  - Jail calls
  - Interview friends, neighbors, and family

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If you still believe the victim is unreasonably refusing…

- Note on the certification, sign, and return to victim or victim's attorney
- Burden shifts to victim to prove the refusal is not unreasonable
- DHS makes the ultimate decision

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[DHS Video Part 2.mpg]

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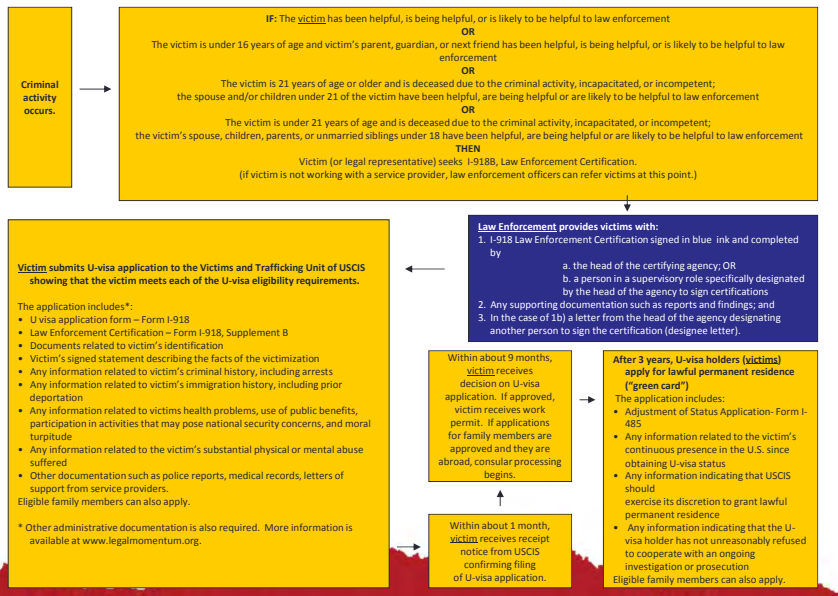
U-visa Application Victim Flow Chart



Prepared by the National Immigrant Victims Access to Justice Partnership (2010). This project was supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.

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<u>Law Enforcement</u> provides victims with:

1. I-918 Law Enforcement Certification signed in blue ink and completed by:
   a. the head of the certifying agency; OR
   b. a person in a supervisory role specifically designated by the head of the agency to sign certifications
2. Any supporting documentation such as reports and findings; and
3. In the case of 1b) a letter from the head of the agency designating another person to sign the certification (designee letter).

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DHS Resources

U.S. Immigration and Customs Enforcement

Homeland Security Investigations (HSI) Victim Assistance Specialist

Sebnem Pura
Phone: (206) 442-2277
sebnem.pura@ice.dhs.gov

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Resources

- **Technical Assistance**
  - Call: 202.274.4457
  - Email: niwap@wcl.american.edu
- **Materials on U visa and Immigrant Victims Legal Rights**
  - Visit http://niwaplibrary.wcl.american.edu
  - U Visa Certification Toolkit
  - DHS Answers to Law Enforcement Reasons for Not Certifying
  - USCIS Q & A on U Visa Certification
  - Roll call training videos
  - All available at: www.http://niwap.org/lawenforcement

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Evaluations

- Evaluations are in your training packet
- Certificates

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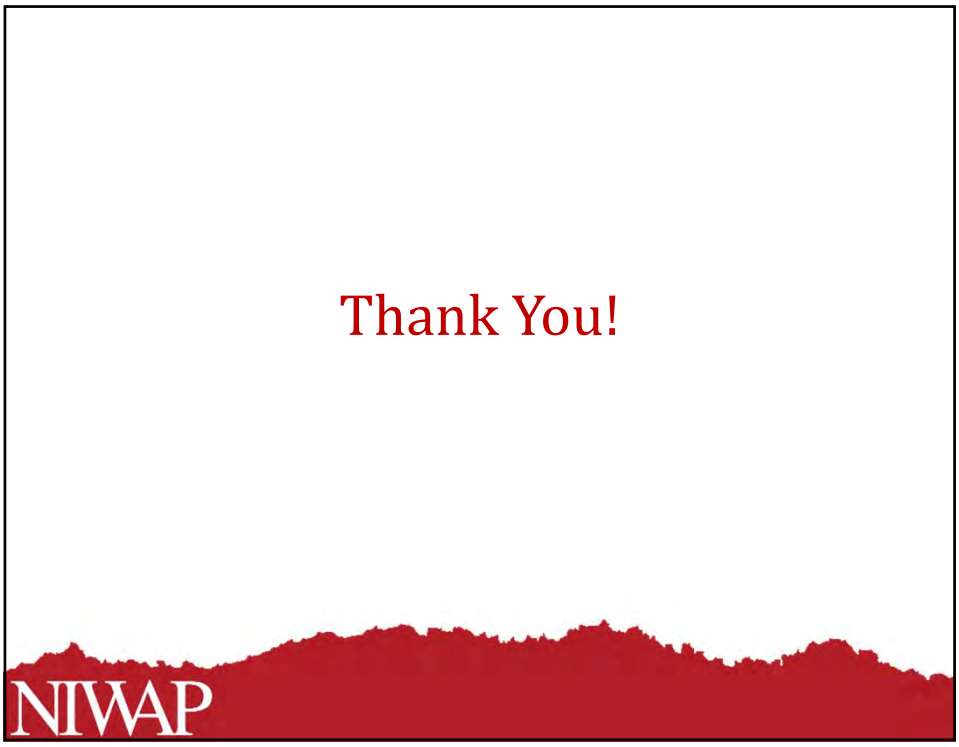
Thank You!



What Can We Learn From Turned Around Cases?

September, 2015
Stephanie Dallam, RN, PhD
And Joyanna Silberg, PhD

What Can We Learn From Turned-Around Cases?

The DVLEAP-OVW Custody and Abuse TTA Project is supported by Grant No.2011-TA-AX-K006 awarded by the Office on Violence Against Women, U. S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

How did we know there was a problem with perpetrators gaining abuse?

- Emails flooding our website
- Newspaper articles, books
- Statements from children
- Scientific literature
- Reports from multiple non-profit organizations

Statements from Children

Scientific Studies

Faller (1995) examined 214 allegations of sexual abuse in divorce cases that were evaluated by a multidisciplinary team at a university-based clinic. 72.6% were determined likely, 20% unlikely, and 7.4% uncertain.

40 concerned parents experienced negative sanctions associated with raising the issue of sexual abuse.

These sanctions included:

- Being jailed;
- Losing custody to the alleged offender, a relative, or foster care;
- Limitation or loss of visitation;
- Admonitions not to report alleged abuse again to the court, Protective Services or the police;
- Prohibitions against taking the child to a physician or therapist because of concerns about sexual abuse in the future.

Scientific Studies

- Remarkably, *none* of the parents experiencing these sanctions were ones who were judged to have made calculated false allegations.
- In fact, sanctioned cases tended to score *higher* on a composite scale of likelihood of sexual abuse, and were *more likely* to have medical evidence than cases without sanctions.

Scientific Studies

- An annotated overview of research documenting protective parents losing custody to abusers can be found at

http://www.leadershipcc

How Many Children Are Placed with Abusers by Family Courts? Estimated Impact

Number of children affected by divorce each year	1,000,000
Number of families with allegations of child abuse and/or severe domestic violence (13%)	x .13 = 130,000
When investigated, percentage of cases found to be valid or suspected to be valid. (Studies vary but average is 60%)	x .60 = 78,000
Percentage of children ordered into either custody, partial custody, or unsupervised visits with abusive parent. (Studies vary between 56-90%, with most data showing the rate is closer to 90%. A conservative estimate is 75%)	x .75
Estimate of children of divorce in the U.S. left in care of abuser .	= 58,500

The Leadership Council On Child Abuse & Interpersonal Violence
http://www.leadershipcouncil.org/1/med/PR3.html

Purpose of the study

- To gather information from in-depth case analysis to identify what factors lead judges to put children in harm's way by granting violent parents unfettered access to their children

Research Questions:

1. What factors are associated with an erroneous legal decision to place children in the full or partial custody of their abuser;
2. What factors are associated with a later legal decision to protect the child?
3. What types of outcomes do the affected children experience?

Research Design

- Exploratory, multi-case study design
- Observational
- Data culled from public records
- Although the data will not allow us to make any causal determinations, we believe the data provide a useful insight into the little understood phenomenon of how family courts handle abuse cases.

Finding cases in which abuse is fairly certain

- To evaluate this problem we plan to focus on what we have termed "turned-around" cases.
- These are cases in which there has been a legal decision to reverse a previous order giving an alleged perpetrator custody or visitation without regard for the child's safety.

Turned Around Cases

- Definition:
  - The parent sought to protect his or her child or children from abuse by the other parent.
  - Evidence of abuse by the other parent was provided to family court during the course of the custody case.
  - The judge presiding over the case did not protect the child and ordered the child to spend unsupervised time with a parent alleged to have abused the child. (Time 1)
  - At a later time, a judge reversed the first decision and protected the child from abuse (Time 2). And/or the father was convicted for abusing the child or another child in a similar manner to what was alleged in family court at Time 1.

We scoured the country and have identified approximately 55 cases that have turned around in the last 10 years.

However, based on our best estimates, in those 10 years over half a million* children were court-ordered into the custody of, or unsupervised visitation with, a parent they claimed has abused them.

Turned Around Cases

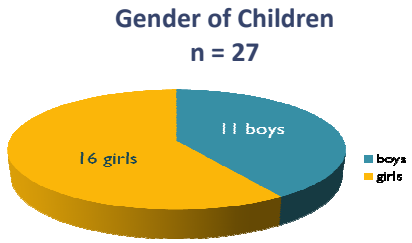
- These cases provide a living laboratory in which to evaluate how judges and evaluators make decisions about children's safety, how these decisions are informed by the types of evidence presented, and how the information is weighed

Results

- Note – these results are *preliminary* and will evolve as we collect more data
- We have identified over 50 cases thus far.
- We have fully analyzed 27 cases.
- These results are based on what we have learned from these cases

Cases have been collected from across the country

Demographics



Demographics

Child's Age At Court Decision Where Abuser Given Custody or unsupervised access (Time 1)	
Range	3-15 years
Mean	6.5 years
Median	6 years

Types of Abuse Reported to Court at Time 1

Abuse Type	%
Child Sexual Abuse	70%
Physical Abuse	52%
Emotional Abuse	41%
Neglect	7%
Medical Neglect	11%
DV Against Mother	59%)

*Note: More than one type was alleged in 38% of cases

To Whom Children Disclosed (n=25)*

	Time 1	Time 2
Protective Parent	100%	71%
Other Family Member	20%	25%
School Official**	8%	21%
Therapist	44%	46%
Other Professional (e.g., CPS, Police, Evaluator, etc)	60%	50%
Judge	0	17%
Other (e.g., babysitter, friend's parent, etc.)	8%	21%

*Note: data missing in 2 cases; **: At Time 1, some children were too young to be in school.

Judge's rationale for not protecting at Time 1

	N	% of total*
Pathology of the Protective Parent*	18	67%
-Parental Alienation	10	37%
-Mother and child viewed as enmeshed	2	7%
-Brainwashing or coaching	9	33%
-Obsessive	1	4%
Protective Parent not credible	14	52%
Accepts opinion of professional or GAL who does not believe child was abused	18	67%
-Professional	12	44%
-GAL	8	30%
Insufficient evidence of abuse	10	37%
Recantation of child	1	4%
Equality of problems on both sides	4	15%
Perpetrator provides more stable home	4	15%
Other (e.g., perpetrator more likely to comply with court orders, more "friendly" parent, etc.)	3	11%
* In most cases judges offered more than one rationale.		

Outcomes at Time 1

	N	% of total
Sole Custody to Perpetrator	17	59%
-PP Unsupervised Visits*	6	22%
-PP Supervised Visits	6	22%
-PP No Contact	2	7%
-Missing Data	3	11%
Joint Custody	3	11%
Custody to PP; Unsupervised Visits with Perpetrator	7	26%
*PP refers to the protective parent		

Time 1

67% of time, the protective parent was blamed for child's abuse allegations

In 78% of cases there were references in the judicial decision that called the mother's credibility into question.

Time 1

59% of the time, **full custody** was given to the alleged perpetrator.

Role of Mental Health Professionals and Custody Evaluators

85% of mental health professionals advising the judge either **failed to believe** the child and the protective parent…

Role of Mental Health Professionals and Custody Evaluators

85% of mental health professionals advising the judge either **failed to believe** the child and the protective parent…

…or believed them and **still** recommended that the child be forced into custody or unsupervised visitation with the perpetrator.

Role of Mental Health Professionals and Custody Evaluators

- When judges received reports from professionals who differed on their view of the credibility of the child's allegations, judges tended to accept the recommendations of a professional who did not believe the child,
- even when hearing testimony from other professionals who had more expertise in the matter or who had examined the child more contemporaneously to the abuse.

Role of GAL

- Judges presiding over child custody disputes often appointed a Guardian Ad Litem (GAL) to ensure that children's interests are adequately protected.
- GALs in the cases studied often contributed to children not being believed or protected from abuse.
- At time 1, the GAL sided with the perpetrator against the child 73% of the time.

Role of CPS

At Time 1, 93% of suspected abuse was reported to CPS.

- The abuse was judged unfounded or was ruled out by CPS in 63% of cases.
- Abuse was founded in only 22% of cases.

Reports to CPS started when child was 2.
This was the 8th report to CPS

Years Until Cases Turned Around

Amount of Time Child Was Court Ordered Into Abusive Home	
Range	4 months to 9 years
Mean	3.2 years

Mean age when 6.5 when time 1 ruling was made. (Range was 3-15 years)

During Intervening Years: Perpetrator Behaviors did not improve (n=24)

	Time 1	Time 2
Anger	15 (63%)	17 (71%)
Projection (blames PP for child's problems)	15 (63%)	16 (67%)
Boundary Violations	11 (46%)	7 (29%)
Minimizing evidence or implausible rationalizations	10 (42%)	12 (50%)
Substance Abuse	8 (33%)	5 (21%)
Child Pornography	5 (21%)	6 (25%)
Failure to appropriately address child's needs	4 (17%)	11 (46%)
Fabrication of documents	3 (13%)	1 (4%)
False report of PP to child welfare	3 (13%)	1 (4%)
Isolating	1 (4%)	3 (13%)
Daily functioning problems	1 (4%)	3 (13%)
Other (e.g., threats, controlling behaviors, false claims about the mother, criminal behavior, etc.)	16 (67%)	14 (58%)

During Intervening Years

- During these years the children continued to be abused
- For many children, the abuse became increasingly severe and their mental and physical health frequently deteriorated. One third became suicidal.
- Medical neglect became a prominent type of abuse reported at Time 2.
- This often took the form of the perpetrator failing to seek medical attention after having harmed the child or

Types of Abuse Reported to Court at Time 2

Abuse Type	Time 1	Time 2
Child Sexual Abuse	70%	54%
Physical Abuse	52%	58%
Emotional Abuse	41%	38%
Neglect	7%	12%
Medical Neglect	11%	27%
DV Against Mother	59%	8%

Child Symptoms Mentioned in Court Records (n=27)

Child Behaviors	Time 1 (n = 23)	Time 2 (n = 24)
Sexual Behaviors	11 (46%)	5 (21%)
Depression	4 (17%)	8 (33%)
Anxiety	11 (46%)	17 (71%)
Self Harm	1 (4%)	3 (13%)
Suicidal	3 (13%)	8 (33%)
School Problems	3 (13%)	6 (25%)
Anger	9 (38%)	5 (21%)
Regressive Behaviors	10 (42%)	8 (33%)
Reluctance to Visit Perpetrator	14 (61%)	17 (71%)
Other (e.g., problems sleeping, running away, eating disorders, etc.)	9 (38%)	10 (42%)

At Time 2

The custody ruling was reversed and 81% of children were **not required** to have any contact with the their alleged perpetrator.

Custody Rulings at Time 2

	N	%
Sole Custody to protective parent	22	81%
-Unsupervised to perpetrator	1	4%
-Supervised Visits with perpetrator	5	19%
-No Contact with perpetrator	9	33%
-Child's Choice Whether to Visit	4	15%
-Missing data	3	11%
Joint Custody (child older or given choice whether to visit)	3	11%
Minor Emancipated	1	4%
Custody to Safe Family Member	1	4%

Main Reasons Why Case Turned Around Based at Time 2

	%
Reports from Professionals	63%
Child's Mental Health is Deteriorating	30%
Persuasiveness of Child's Disclosure	22%
Child's Continued Refusal to Visit	22%
Appeal	19%
Perpetrator Arrested or About to Be Arrested	15%
Rejection of PAS	11%
Compelling Medical Evidence of Abuse	11%
GAL Recommendation	11%
Testimony of Neutral Witnesses	7%
Perpetrator's Bad Behavior in Court	4%
Other: (e.g., settlement, mediation, emancipation of minor, relinquishment)	15%

Main Reason Cases Turned Around

- The main reason that cases turned around was because protective parents were able to present evidence of the abuse and back the evidence up with reports by professionals who were able to dispel the misinformation and myths promulgated at Time 1 (mainly by custody evaluators and GALs).
- 78% of Time 2 cases included testimony by a professional. No custody evaluations were done at Time 2. Instead, the

In addition, perpetrator's true nature revealed over time

- Father convicted of molesting other children;
- Child porn found in father's possession;
- Court-ordered evaluation found abuse and father did not show up to trial after caught embezzling money;
- Father found to have made false accusations against mother;
- Judge recognized that father's ongoing actions against mother in court were a form of DV;
- Judge found out father lied about not having a job, was belligerent in court.

Legal Trends in Turned Around Cases

- Initially, judges relied heavily on court-ordered custody evaluators, which later judges disregarded.
- Protective parents at times lost custody in ex-parte hearings (which then became status quo).
- Court-ordered restrictions in reporting of abuse (e.g., abuse can be reported only to a special master or parent coordinator) caused delays in investigation.
- DV findings originally not admitted, later admitted.
- Self-advocacy of children was a key factor in being protected: Running away, filing their own motions, refusal to visit, going to ER, destabilizing when try to discharge from psychiatric hospital, etc.

Evaluator Assessment Errors

- More concerned about possible alienation by mother than abusive behavior by father.
- Ignored their own findings in psychological test data about the abusers: including evidence of antisocial, narcissistic, and controlling behaviors
- Picked abuser for residential custody due to apparent stability, wealth, likeability, or structure of abuser's household over child's psychological needs.
- Ignored or minimized "red flags" such as history of DV, and/or history of criminal behavior.
- Accepted alleged abuser's word at face value. Did not fact-check even when evidence was presented that alleged perpetrator was lying.

Evaluator Assessment Errors

Recent NIJ study that custody evaluators are very ill-informed about trauma.

Saunders, Ph.D., D. G. Faller, K. C. Tolman, R.L. Ph.D (2012) Child Custody Evaluators' Beliefs About Domestic Abuse Allegations https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf

Examples of Evidence Overlooked or Misinterpreted

1. Ignored adjudicated DV and credible reports of DV.
2. Hatred, anger, or extreme fear of abused child viewed as "alienation."
3. The behaviors of mothers seeking to protect their children were pathologized.
4. Specific disclosures or sexualized behaviors were ignored due to evaluator's lack of knowledge of sexual abuse.
5. Child's recantations after reunification with abuser given more weight than the abuse disclosure.

Common Justifications for Ignoring Abuse Disclosures and Symptoms:

- Sexualized behaviors in children believed to have little meaning
- Viewed mother's concerns about her child's safety as form of parental alienation
- DV viewed as "high conflict"
- Belief that parents can coach children to make detailed disclosures. (Coaching more common to induce children NOT to talk)
- Believed that PTSD symptoms can arise from false beliefs
- Believed children can create detailed abuse

Custody Evaluator Errors

- Pathologizing worried maternal behavior—taking notes, going to doctors, anger at lack of protection.

What Does an Evaluator Observe from a Mother Who Believes her Child Has Been Abused?

- Fear for her child and anger at anyone who hurt the child or is not helping to protect the child.
- Hostility against anyone who does not believe her child
- Certainty about what she heard or observed
- Anger at the abuser
- Increasing attempts to get evidence when she or the child is not being listened to – includes taking child for multiple examinations.
- These behaviors were often pathologized and viewed as signs that she is obsessed with abuse.

How Does A Traumatized Child Behave When Faced With The Source Of Trauma?

Expected Symptoms:	Interpreted as:
1. Fight, flight or freeze	1. Aggression, misbehavior, no affect
2. Regression	2. Attachment to safe parent viewed as enmeshment
3. Trouble distinguishing one incident from another	3. Inconsistency, lying
4. Hostility towards adults who do not protect or believe them	4. Rudeness, lack of discipline
5. Alternate between hopelessness and rage	5. Inconsistent responses, lying

Time 1: S. Family – Custody Evaluator's Recommendation

"Ms. S expressed that she is afraid of Mr. S. Mr. S. believes that there is nothing to be afraid of. Ongoing reports to Child Protective Services need to stop. For this reason, I would urge the Court to offer the parents a parental coordinator."

From Custody Evaluator report (Maryland)

Time 1: S Family - Custody Evaluator Recommendation:

"The [child's] therapist…could address any encopresis problems, sexual self-touching, parental boundary issues, or other problems raised by Ms. S. In my opinion, these problems, to the extent they may exist, are more a result of the parental separation than due to the conduct of Mr. S."

Custody Evaluator report con't (Maryland)

Time 1 -The custody evaluator:

- Discounts child's sexualized behavior.
- Accepts rule outs from social services.
- Does not seek collateral information regarding child's behaviors.
- Does not evaluate or ask about abuse.
- Does not attempt to interpret parental behavior except through lens of parental alienation.

Most importantly. . .

- Mother is pathologized as "obsessive compulsive," "intolerant," and "fixated" on father's potential abuse of son.
- Mother's pathology of focusing on potential abuse seen equal to father's history of DV, poor boundaries, social phobia, and paranoia.
- Father's pictures of two naked boys with underwear covering their heads that were found on his computer are not viewed as relevant.

Time 2: S Family – Judge's ruling

- "What I do find more persuasive is that if you look at his behavior, you look at what could not be ruled out by the medical doctors, you look at what has been provided by way of the collateral contacts, and it is overwhelming evidence that he was sexually abused by Mr. S."

Judge looks at the *actual evidence* rather than blindly accepting the

Example of Time 1 Ruling: Pathologizes Mother's Attempts to Protect

how her behavior impacts her child, how her behavior sexualizes the child, how her behavior is sexually inappropriate with the child, how her behavior coaches the child to say certain things, how her behavior alienates the child from the Father, how her behavior creates the problems in her child that she complains of and how her repeatedly taping and questioning the child colors, contaminates and creates the child's statements. … The above as well as, her enmeshment and lack of control of her child's behavior are harmful to the child."

Example of Time 1 Ruling con't

Mother lost custody of her daughter, at age 5.

Example of Time 2 Ruling: Focuses on Child's Disclosures

- Report by therapist, child was now 12.

"Child has consistently discussed a history of sexualized contact by her father since early childhood and the information that she has given has never wavered. These include being forced to sleep with her father for several years without having her own bed, having to bathe with him and have contact with his penis with a washcloth, remembering having her limbs tied while undressed and her father kissing her bottom, and remembering her father touching her genital area."

Time 2:

After therapist filed this report, father requested to terminate his parental rights. Father has since been indicted for child sexual abuse.

Custody Evaluator Errors: Ignoring evidence of father's violence

- "Several factors raise concerns about his ability to regulate his affect and effectively control his behaviors. A number of statements in his journal refer to the fact that he tells his daughters that their mommy is a liar and that he encourages them over the phone to disobey their mother, although they are in her care at the time. He also described in his journal and during his parent interview that there are a number of times he lost his temper in front of the girls and verbally or physically assaulted their mother. Nonetheless, the children's description of his violence lacks credibility."

Detailed Case Example: N Family and The Role of the GAL

The N Family

Parents married in early 1993

Twin boys born a year later

1996 - Mother seeks marriage counseling due to Mr. N's domestic violence, substance abuse and pornography fixation

1999 - Mother starts to work nights. Mr. N cares for boys alone for the first time. The boys become withdrawn and aggressive, begin drawing sexual pictures in daycare and exhibit sexual behavior.

Boys disclose that they saw naked people on father's computer and that he is taking naked pictures of them.

Ms. N moves away with the boys and obtains a DV restraining order.

The N Family

1999 - The boys see a therapist and disclose sexual abuse –therapist reports to DFS.

Mr. N pays 42K for an evaluation by a psychologist to determine that he is not a pedophile. The psychologist says that Ms. N is alienating the boys from him.

2000 - The children's therapist resigns due to threats against her made by Mr. N.

The N Family

2001 Mr. N. befriends a DCFS social worker who helps him draw up a fraudulent document claiming that DCFS held a hearing and determined that Ms. N was making false allegations – the document was then filed with the court.

The GAL recommends that the father receive sole custody.

The judge determines that all the abuse allegations were false. No evidence of child abuse was allowed.

Ms. N is fined $10,000 and her restraining order was vacated.

The judge orders joint custody.

Judge orders that any future abuse allegations

The N Family

2005 Ms. N and boys sue DCFS over fraudulent report but the suit is dismissed as being outside the statute of limitations.

Local sexual assault team evaluated boys. They report being sodomized and the team find the disclosures credible, they report to DCFS. Police medical team find the boys have red puffy anuses.

A new judge issues a protective order for the boys – which is then torn up by original judge.

2006 Boys continue to disclose abuse which is sent to the Special Master and never investigated.

Report by Court Appointed Minor's Therapist 2005

2005: "I have had 7 sessions with the boys. The boys exhibit great anxiety and distress when any attempt has been made to address their relationship with their father. They have adamantly stated they do not want any contact with their father"

"(Billy) immediately teared up and began to cry. He cried the whole 45 minutes and displayed regressive behavior of sucking his thumb.

"B. reports having daily stomach aches, no appetite and experiencing nightmares. He states, "I am angry at Dad …. I am scared of Dad because he is mean."

The boys disclose abuse but don't want to talk about it – because it is embarrassing.

The N Family

2006 - The boys become suicidal. They threaten to kill themselves if made to stay with their father.

The boys run away and report abuse to DCFS

The boys are returned to their father. DCFS is told by GAL that the reports are false.

The boys call the attorney that filed their case against DCFS and disclose abuse. He files a report with DCFS. The report is never investigated.

GAL recommends that custody be transferred to Mr. N's live in girl friend as evidence against Mr. N mounts. A no contact order is issued against Ms. N.

- The boys become increasingly angry at everyone involved in their case. The GAL notes in his report:
- "The children's anger towards me was voiced in terms of their frustration that neither the judge nor anyone else is listening to them…"
- The boys now begin to express anger at their mother (who has failed to protect them)

The N Family

- 2007 - The boys continue to experience multiple injuries (broken bones and sprains). When with their father.
- One of the boys becomes suicidal and diagnosed with Major Depressive Disorder and placed on Prozac.
- 2008 – Mr. N awarded sole custody after his girl friend asks to be relieved of custody.
- The boys experience more broken bones which doctors judge to not be accidental. The Orthopedic surgeon files abuse report # 14 saying that the boys are in mortal danger due

Time 2 Outcome: The N Family

Mother is able to get a hearing before a new judge.

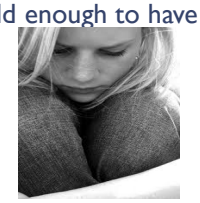
After hearing all the years of evidence the judge awards mother sole custody. He rules that the father has abused the boys and should have no contact.

Common Errors in CPS Evaluations

- Asking: "Who told you to say that?"
- Deferring to family court, and screening out case
- Blaming reporting parent for multiple reports and/or calling it alienation
- Ruling out new allegations because old ones were ruled out.
- Ignoring behavioral indicators.
- Ignoring the context of recantations (after reunification with abusers).

One Child's Thoughts on How She was treated in Family Court

- Why won't anyone believe me when I tell what happened in my house. They always ask, "Who is telling you to say that?" Don't they know I am old enough to have my own thoughts?



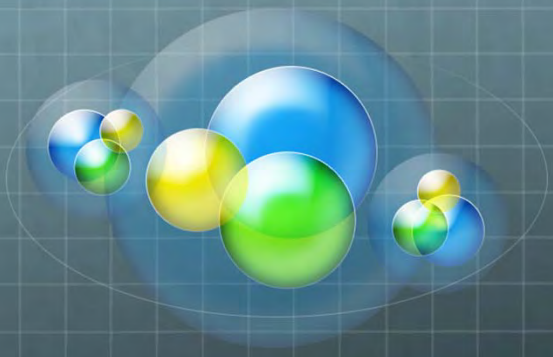
Lost In The System - Judge Salcido Part 1

- http://www.myfoxla.com/video?autoStart=true&topVideoCatNo=default&clipId=7824647
- Father given custody after daughter disclosed abuse that wasn't substantiated. Mother demonized for believing her daughter. Mother fled with daughter, was arrested and jailed. Given only limited contact. Six years later father arrested for molesting other girls his daughter's age. Custody returned to the mother.

72

Judge's Apology to protective mother

- "In 2003, while a Family Court Judge, I made a devastating error . . . I relied on other judges who taught me that I should be suspicious of any woman who makes an abuse allegation during a divorce proceeding. I implemented the policy of the court and as a result I made a horrific and devastating decision. It is too late for me to correct the mistake. Nor can I correct the harm that I caused to JM"



Voluntary Intoxication - It's Not Consent for Sex You Know!

Rape victims assume the risk of being raped when they…?

- Drink too much
- Use drugs (legal or illegal)
- Dress sexy
- Kiss the accused
- Make sexual advances
- Does not rebuff sexual advances the way we would
- Accepts a ride with the accused
- Goes to the room of the accused
  - At night…
- Demonstrates an attraction to the accused

Helping the offender

- Denial and justifications reflect the beliefs, bias', prejudice, and values of the listener
- Cultural differences…how do they play out in our thinking?
- The offender doesn't need to rape to have sex
- The victim brought it on
- Alcohol Alcohol Alcohol Alcohol Alcohol

Implied Consent

- Prior knowledge of the consequences
- Implied consent is a controversial form of consent which is not expressly granted by a person, but rather inferred from a person's actions and the facts and circumstances of a particular situation (or in some cases, by a person's silence or inaction). The term is most commonly encountered in the context of United States drunk driving laws.

- "If recreational drugs were tools, alcohol would be the sledgehammer"

- Few cognitive functions and behaviors escape the impact of alcohol (White, 2003)
- Ethanol is a central nervous system depressant (Harding, 2003)
- A small amount of ethanol eases tension
- A large amount removes inhibitions
- A larger amount still prevents the victim from resisting the aggressor

Alcohol 101

Alcohol impairs both cognition (the process of knowing, thinking, learning and judging) and psychomotor skills (voluntary movement). Alcohol first effects the most recently developed part of the brain, which are responsible for judgment, inhibition, personality, intellectual and emotional states. As alcohol concentration increases, the impairment of psychomotor functions such as muscular coordination, balance, eye movement, etc. also increase. As alcohol concentration continues to increase, involuntary movement, such as respiration, is effected leading to possible comma or death. (Harding, 2003)

Alcohol 101 – So what?

Sex offenders LOVE intoxicated victims

Intoxicated victims are less likely than sober victims to realize the perpetrator is trying to sexually assault them

Intoxicated victims are more likely to exercise poor judgments and decision making concerning their safety

Intoxicated victims do not need to be "forced" to comply

Intoxicated victims cannot remember sufficient details

Intoxicated victims are viewed less credible than sober victims

Intoxicated victims experience added guilt and shame

Intoxicated victims rarely report were sexually assaulted

Intoxicated victims rarely see their perpetrators tried and convicted

Intoxicated victims are more often than not blamed for their behaviors while the reported perpetrator gains support and sympathy from society at large (including jury pools and some police agencies)

AFSA: Almost ALWAYS Non-Stranger

- Non-stranger sex assault is:
- Most prevalent form of sexual violence.
- Least likely to be reported.
- Least likely to believed and taken seriously.
- Mistakenly believed to be less traumatic than stranger rape.

Why the difficulty?

- Usually no physical trauma or injury.
- Often difficult circumstances like alcohol, drugs, or a prior relationship or acquaintanceship.
- Often no criminal history on the part of the perpetrator.
- Often involves 'counter-intuitive' responses.

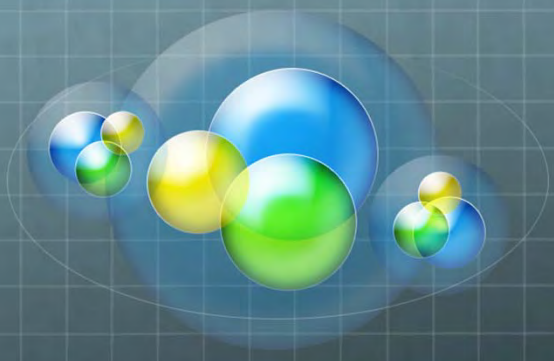
WHAT IS ALCOHOL FACILITATED SEXUAL ASSAULT (AFSA)?

- Victim is too incapacitated to consent due to the effect of –
  - Alcohol alone
  - Alcohol mixed with drugs surreptitiously administered by assailant
  - Alcohol mixed with prescription, over the counter or recreational drugs
- Sexual assault is often facilitated by alcohol

AN OLD PROBLEM . . . .

"Woe to him who gives drink to his neighbors, pouring it from the wineskin till they are drunk so that he can gaze on their naked bodies."

-Habakkuk 2:15 (between 608 – 605 BC)



Why is AFSA so prevalent?

Alcohol use is a part of our culture

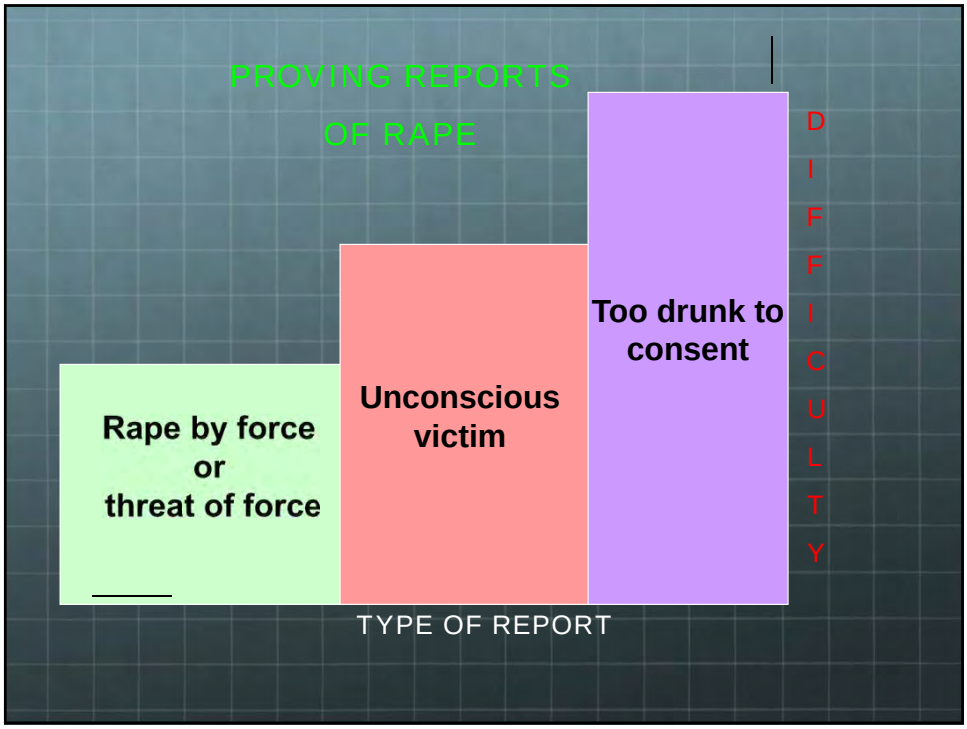
- 82% of people 12 and older have used alcohol at least once in their lifetimes
- Nearly ½ of all Americans (12 and older) have used alcohol in the past month (approximately 109 million people)

Source: Substance Abuse in Brief, April 2003, Volume 2, Issue 1, National Clearinghouse for Alcohol & Drug Information, Substance Abuse and Mental Health Services Administration, US Dept. of Health and Human Services

WHY SHOULD WE CARE?

- Of the study participants, victims of incapacitated rape were comparable to victims of forcible rape with regard to risk for PTSD and depression but were nearly twice as likely as victims of forcible rape to develop substance abuse problems

Kilpatrick, Dean, PhD, et al, Drug-facilitated, Incapacitated and Forcible Rape: A National Study (2007)



What about… that delicate member?

- Moderate use of alcohol can enhance sexual activity because it relaxes and lowers inhibitions
- Excessive use of alcohol can impair sexual functioning
- Heavy drinking dulls the sensation and makes it more difficult for men to have an erection
- Women who are significantly incapacitated may be less lubricated and intercourse may be uncomfortable or painful

Heavy use of alcohol

"It provokes the desire, but it takes away performance"

Shakespeare

Delicate member research

- 72% of alcoholic men had sexual dysfunction - including erectile dysfunction (Arackal, Benegal, 2007)
- Alcohol abuse is the leading cause of impotence and other disturbances in sexual dysfunction (Mendelson, 1979)
- Alcohol in small doses appears to enhance sexual receptivity in women and increase arousal in men, heavy continued drinking may cause significant sexual impairment (Ponizovsky, 2008)

Brewers Droop

- A temporary form of alcohol impotence that occurs when the average drinker consumes "one too many"

How does a penis work?

- Step one – sexual arousal
- Step two – Brain's communication of the sexual arousal to the body's nervous system (which activates blood flow)
- Step three – relaxation of the blood vessels that supply the blood to the penis must occur, allowing the erection to take place
- If something affects ANY of these three steps… frustration occurs…

Brewer's Droop… research

- Alcohol affects the nervous system and impairs the impulses between the brain's pituitary gland and the genitals
  - A few drinks might temporarily dull inhibitions
  - BACs >.06 will lead to loss of sensation, inability to reach orgasm, and temporary impotence
  - BAC .05 & .10 alcohol retards sexual arousal
  - BAC > .10 orgasm is inhibited
  - BAC > .15 can cause temporary impotence

Milsten, Slowinski, 2004)

PS…

- Chronic heavy drinking can
  - Cause behavioral changes that reduce sexual desire and performance
  - Interfere with sperm production
  - Irreversibly destroy testicular cells
  - Shrink testicles
  - Inhibit the metabolism of Vitamin A

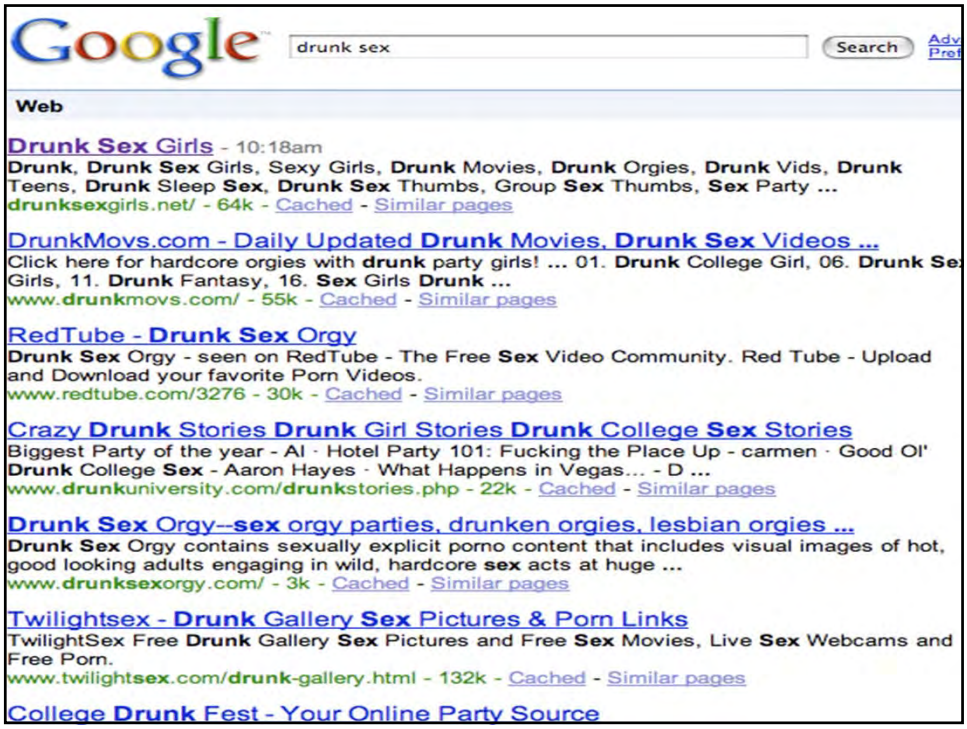
THE CHALLENGES WE FACE

DRUNK SEX?

I
DRUNK
SEX

BEER
HELPING UGLY PEOPLE
HAVE SEX SINCE 1862!

"Believe it or not in every man there's a code written that says … TACKLE DRUNK BITCHES."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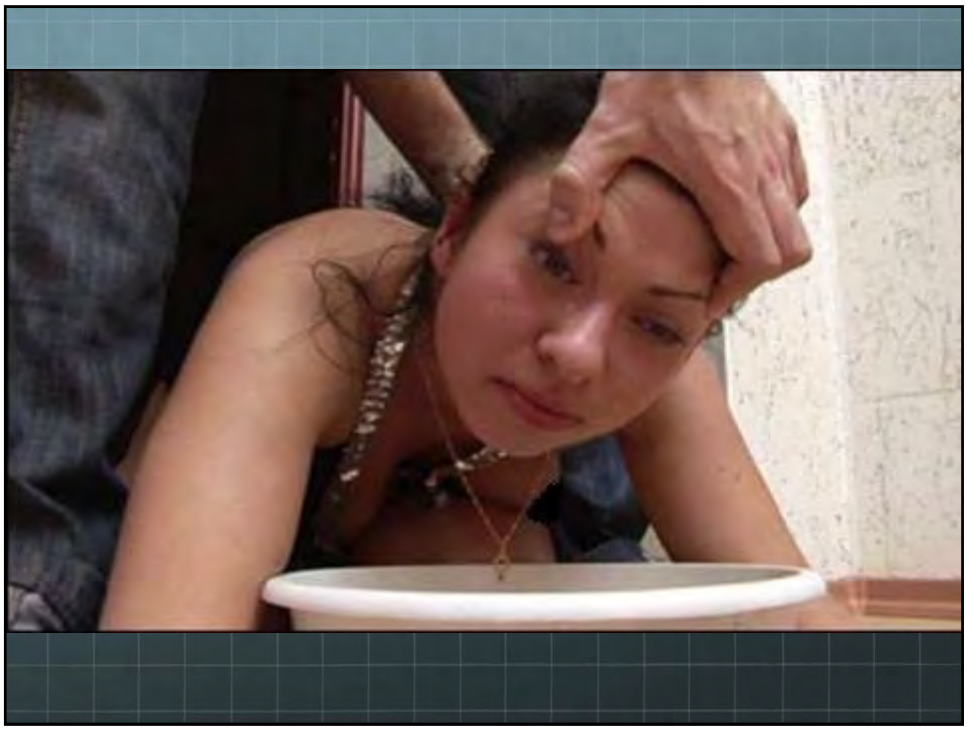
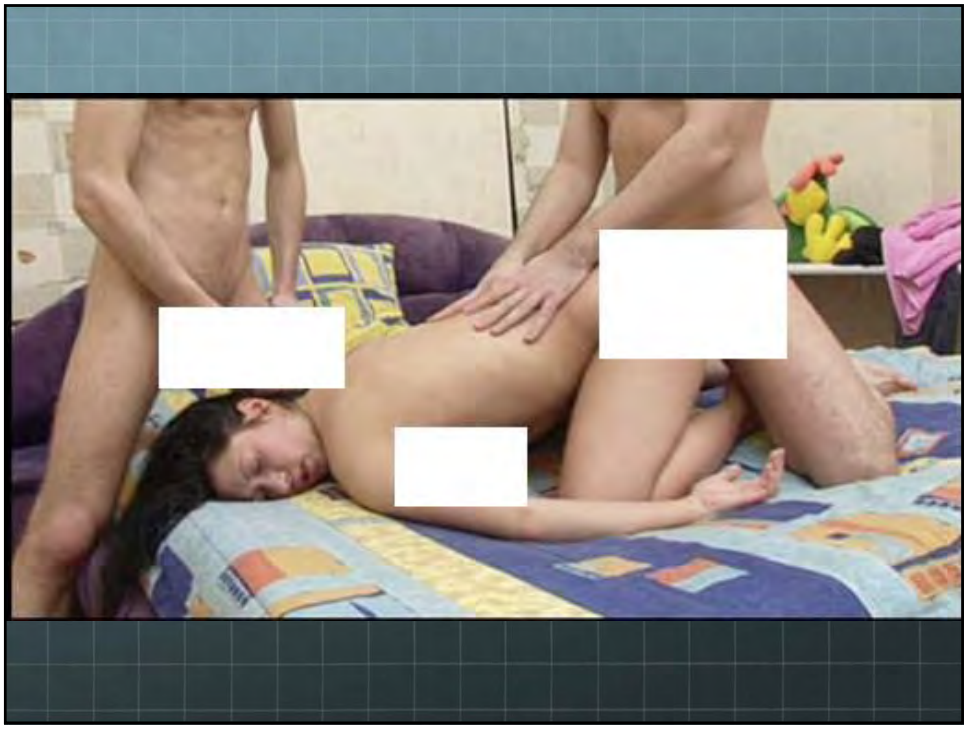
RITE MOVIE OR WHAT'S YOUR FAVORITE
OR HOW'S THE WEATHER TODAY...
IEN SHE'S DRUNK - THE
Y THING SHE REALLY
NTS IS TO GET DIRTY AND
HT NOW!
Our latest add-on:
about deaddrun
Welcome to DeadDrunkGi
you know how to lure a girl
your bed? Do you know how
make her fuck like crazy w
any shyness. The answer is
just give her some drink!
dose can be different but th
result is always worth it!

Drunken Slut Passes Out And Gets Butt ed
March 13th, 2008 - Categories: Drunk Sex Videos
This crazy drinks a full bottle of vodka to herself and collapses on the floor, not such a good idea when the only other people in the room are a couple of her friends who've wanted to her for years. Well, after spending 10 minutes puking upthe drunken slut decides to let them the out of her, starting with some hard action!
http://www.dailydrunks.com/





Alcohol: Weapon Number One

- Alcohol remains the most widely wielded 'acquaintance rape' drug.
  - Socially acceptable and often part of the mating ritual.
  - Legal in most areas and easy to acquire.
  - More predictable in its effects than other drugs.
  - Easier to gauge effects because of most perp's personal experience with it.
  - Positive experience (at least at first) for the target.

Standard Alcoholic Drinks

12 oz

4-6%

4-5 oz

12-15%

1-1.5 oz

40-50%

Each contain about 0.5 oz (15 mL) of pure ethanol

Absorption

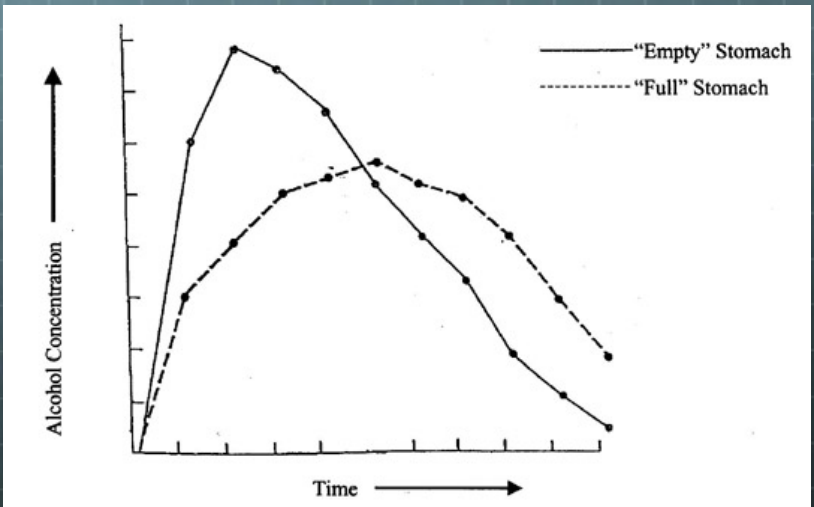
- The passage of alcohol into the blood
  - Alcohol needs to get into the blood in order to get to the brain in order to have its intoxicating effect.
- Alcohol does not need to be digested before it is absorbed

PHARMACOKINETICS OF ETHANOL ABSORPTION

- Carbonated beverages enhances
- Fatty/oily beverages slows
- Ethanol concentration effects absorption
- Higher altitude promotes
- *Food delays*

Source: J. C. Garriott. (1996) Medicolegal Aspects of Alcohol. Tucson, AZ: Lawyers and Judges Publishing Company, Inc.

Effect of Stomach Content



http://www.ncbi.nlm.nih.gov/bookshelf/br.fcgi

CNS Depression of Ethanol

- Impairs judgment
- Depresses learned social and cultural inhibitions
- Impairs self-evaluation
- Euphoria
- Memory loss
- Shortened attention span
- Sedation
- Blurred vision
- Nystagmus
- Altered distance perception
- Impaired hearing
- Reduced muscle coordination
- Increased reaction time
- Light fixation

Source: J. C. Garriott. (1996) Medicolegal Aspects of Alcohol. Tucson, AZ: Lawyers and Judges Publishing Company, Inc.

BAC as an indicator of Effects on the Brain

- The most developed portion of the human brain is affected at lower BACs
- The least developed portion of the human brain is affected at higher BACs

http://www.mtholyoke.edu/offices/health/ADAP/brain.htm

Stages of Acute Alcoholic Influence

Blood Alcohol Concentration (g/dL)	Stage of Alcoholic Influence	Clinical Signs and Symptoms
0.01 – 0.05 g/dL	Subclinical	•Effects not apparent •Nearly normal behavior •Impairment detected by specialized tests
0.03 – 0.12 g/dL	Euphoria	•Mild euphoria, more social, talkative •↑ self-confidence, ↓ inhibitions •↓ attention, judgment, control •Some sensory motor impairment •Slowed information processing •Loss of efficiency in critical performance
0.09 – 0.25 g/dL	Excitement	•Emotional instability •Loss of critical judgment •Impaired perception, memory, comprehension •↓ sensory response •↑ reaction time •Impaired balance •Drowsiness

Stages of Acute Alcoholic Influence

Blood Alcohol Concentration (g/dL)	Stage of Alcoholic Influence	Clinical Signs and Symptoms
0.18 – 0.30 g/dL	Confusion	•Disorientation, mental confusion •Dizziness •Exaggerated emotional states •More severe visual disturbances •↑Pain threshold •↑Muscular incoordination; staggering gait •Slurred speech •Apathy; Lethargy
0.25 – 0.40 g/dL	Stupor	•Approaching loss of motor functions •Markedly ↓ response to stimuli •Serious musclular incoordination •Inability to stand or walk •Vomiting •Incontinence •Impaired consciousness •Sleep or stupor

Stages of Acute Alcoholic Influence

Blood Alcohol Concentration (g/dL)	Stage of Alcoholic Influence	Clinical Signs and Symptoms
0.34 – 0.50 g/dL	Coma	•Complete unconsciousness; coma •Anesthesia •Subnormal temperature •Impaired circulation and respiration •Possible death
0.45 +	Death	•Death from respiratory arrest

Men and Women are Not Equal Relative to Alcohol

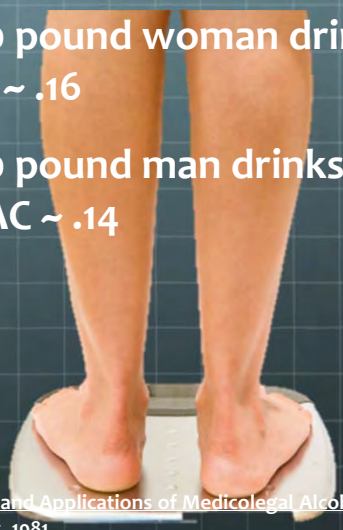
- **Women absorb and metabolize alcohol differently than men**
- **On average, women have higher BACs than men for a given amount of alcohol *independent of* the fact that they generally weigh less**

National Institute on Alcohol Abuse and Alcoholism. *Alcohol Alert: Alcohol and Women*. No. 10, PH 290. Bethesda, MD: the Institute, 1990.

Frezza, M.; Di Padova, C.; Pozzato, G.; Terpin, M.; Baroana, E.; & Lieber, C.S. High blood alcohol levels in women: The role of decreased gastric alcohol dehydrogenase activity and first-pass metabolism. *The New England Journal of Medicine* 322(2):95-99, 1990.

Example

- Average 140 pound woman drinks 6 beers in 2 hours. BAC ~ .16
- Average 140 pound man drinks the same amount. BAC ~ .14



Widmark, E.M.P., Principles and Applications of Medicolegal Alcohol Determination, Davis, CA: Biomedical Publications, 1981

Example

- Average 190 pound male drinks 6 beers over the course of 2 hours. BAC ~ .09
- Average 125 pound female drinks 6 beers over the course of 2 hours. BAC ~ .18
- THE PLAYING FIELD IS NOT EVEN!

Ethanol and blackouts

- Blackout: Periods of memory loss for events that transpired while a person was drinking (no loss of consciousness- not passed out)
- Ethanol induced memory impairment includes disruption to the hippocampus which plays a central role in formation of new memory

Ethanol and passouts

- Alcohol-induced unconsciousness
- Not asleep, but sedated-due to CNS depressant effect
- Resembles sedated state associated with surgery
- Can last for hours
- Groggy-sedated feeling can linger for 24 hours

Very Important…

Don't ask about
Pass-out or blackout
…these are conclusions
That are often inaccurate
And confusing
…ask about behaviors
and outward manifestations of incapacitation

Following AFSA material excerpted from…

AND…TERESA SCALZO, NAVY JAG

http://www.ndaa-apri.org/pdf/pub_prosecuting_alcohol_facilitated_sexual_assault.pdf

RECREATING INTOXICATION

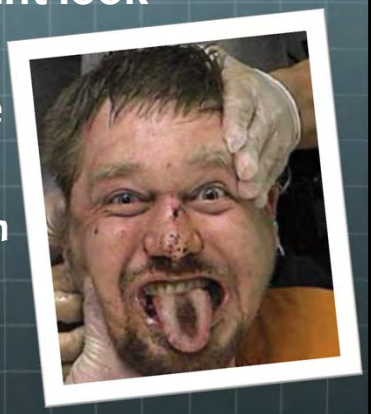
- Key to good decision making
- Investigation must provide sufficient information about the level of intoxication of suspect and victim

RECREATING INTOXICATION

- BAC is good to know, if possible
  - Can corroborate / contradict victim's version of events
  - Helpful questions:
    - What did you drink? (number of drinks, type, size, etc.)
    - When did you last eat?
    - What did you eat?
    - Did you take tranquilizers, pills or medicines of any kind (include prescription and over the counter)?
    - When did you last sleep? How much sleep did you have

Alcohol Incident Report

- What does law enforcement look for with DUI?
  - Odor of alcoholic beverage
  - Blood-shot / watery eyes
  - Slurred / incoherent speech
  - Unsure balance
  - In field tests
    - Can't follow instructions
    - Problems with balance and coordination



Interview Questions from Alcohol Incident Report

- When did you last eat?
- What did you eat?
- What were you doing during the last 3 hours?
- Have you been drinking?
- Are you under the influence of an alcoholic beverage now?
- Are you taking tranquilizers, pills or medicines of any kind?
- When did you last sleep? How much sleep did you have?

Clues . . .

RECREATING INTOXICATION

- Document outward manifestations of intoxication for victim and suspect
  - Did they:
    - Vomit?
    - Urinate?
    - Defecate?
  - Could they:
    - Walk?
    - Talk?
  - Did they have to be helped with physical tasks?
  - Balance and coordination
  - Appearance / clothing
    - Dirty?
    - Disheveled?
    - Bloodshot eyes?

RECREATING INTOXICATION

- What do the facts of the assault tell us about the victim and subject's relative levels of intoxication?
  - Location of assault
  - Was victim conscious?
  - Sexual acts and position
    - Degree of coordination involved
  - Who undressed who?
  - Did defendant:
    - Carry victim?
    - Follow victim?
  - Who gave the victim the drinks or drugs?
    - Was it the accused?
    - Did accused encourage the victim to drink or use more drugs?

BUT . . . IS IT REALLY RAPE?

- Must address the "rape is not regret" defense
- What if the defendant was drinking, too?

OFFENSE FOCUSED INVESTIGATION

CREDIBILITY

PERCEPTION AT THE TIME OF THE INCIDENT

- Degree of intoxication
  - Were motor skills impaired?
  - Was she/he able to perceive what was happening around her/him?
  - What initiated fragmented (flashbulb memories?
  - Sounds, smells, tastes, feelings (emotional and physical)

MEMORY AFTER THE INCIDENT

- What does she/he remember about the incident?
- Can anything refresh victim's memory?
  - Physical or medical evidence
  - Statements from other witnesses
  - Photographs, videotapes, 911 tape
  - Return to the scene?
  - Reenactment

Look for corroboration of credibility in addition to corroboration of the incident

CORROBORATION

- Things that can corroborate / contradict victim credibility:
  - If there is a delayed report, why?
  - If victim converted from Restricted to Unrestricted, why?
  - Is victim's reaction colored by shame, self blame or embarrassment?
    - If so, what can you do to make victim feel more comfortable?
  - Neurobiology of trauma

CORROBORATION

- Witnesses
  - Witnesses to ingestion, incident, aftermath
  - Prompt complaint witnesses
  - Interview bartenders and waiters
    - How much did victim have to drink?
    - Did she appear to be drunk or high?
- Friends of the victim
- Friends of the suspect
- Look for ex-wives, girlfriends, other victims

CORROBORATION

- Is there corroborating physical or medical evidence?
  - Are there surveillance tapes?
  - Videotapes?
  - Tape recordings?
  - Photographs?
  - Injuries?
  - Evidence of victim's presence
    - Blood, hair, urine, vomit, clothing

THE ACCUSED

- Always attempt an interview
  - Did accused know victim was drunk?
    - How much did she drink?
    - What signs of intoxication did she exhibit?
    - Who purchased alcohol?
    - Who provided the alcohol?
  - Why does accused think the victim was or was not significantly incapacitated (if he does)?

PRIOR BAD ACTS

- Look beyond record checks
- Don't just look for completed rapes
  - E.g., are there prior incidents where the suspect tests a potential victim for vulnerability?

ELECTRONIC EVIDENCE

- Can you obtain text messages, emails or other forms of communication?
- Search for victim and accused on:
  - Google
  - MySpace
  - Twitter
  - Second Life
  - Facebook
  - Everywhere else you can think of!

MEDICAL EVIDENCE

- Medical expert
  - Can explain lack of injuries
    - Unconscious victims CANNOT resist!
      - No defensive injuries
      - No torn clothing
  - Should look for injuries consistent with drunk or drugged victim
    - Bumps to head
    - Abrasions on back
    - Bruises

ANALYSIS - PREDATORY BEHAVIOR BY ACCUSED

- Accused's intent
  - Degree of intoxication
  - Capacity to do other things
- Did the accused use planning, manipulation, grooming, deception, or isolation?
- Did accused prey on victim's vulnerabilities?
- Did accused do anything to wear down the victim's resistance?
- Victim selection process
- Exit strategy

Offender Focused Prosecution

- Focuses less on what the victim did to 'contribute' to her victimization, and more on the defendant's behavior
- Simply a different perspective
- Often involves an identification of undetected rapists and compulsive opportunists

What did SUSPECT do?

- How did the suspect identify this victim?
- How did the suspect manipulate the situation to isolate her?
- How did the suspect take advantage of the weaknesses she demonstrated?
- Did the suspect provide alcohol, drugs, transportation, or suggest leaving?
- Was the suspect obviously more sober and aware?

Law Enforcement Challenge: Investigate…

- Who saw her/him drink and who provided alcohol?
- Who observed her/his drunken behavior?
  - Fellow party goers, friends?
  - Security video?
  - Quarters personnel?
- What indicated him/her discomfort, incapacitation, or clear "NO?"
- What about the suspects behavior? More in control?

GOOD TARGET FOR PREDATOR

GOOD WITNESS FOR PROSECUTION

BOTTOM LINE

- We will never make the right decisions if we only consider the wrong evidence!

NATIVE AMERICAN & ALASKAN NATIVE WOMEN
HISTORICAL & INTERGENERATIONAL
AGoddard- Adapted for Seattle Indian Health Board DV/SA Survivor Services 2014

CHRISTOPHER COLUMBUS
"they are the best people in the world and above all the gentlest"
enslaved
raped
murdered
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2

What is Historical Trauma?

- Trauma that is intergenerational.
- Related to oppressed populations due to the lingering current impact of colonization.

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- **Intergenerational trauma**
- **Historical trauma**
- **Cultural trauma**

Maria Yellow Horse Brave Heart, PhD.

Photo courtesy of Sister Liliane
Pukatawagan, MB - 1960. Sister Liliane teaching young girls hygiene.

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4

Historical trauma

- The trauma is held personally and transmitted over generations.
- The intergenerational aspects of the trauma continue to be treated as secondary or inconsequential.

Yellow Horse Brave Heart (2000)

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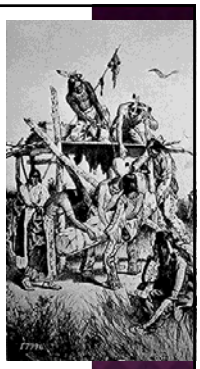
What is Genocide?



- "…any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, and includes five types of criminal actions:
  - killing members of the groups;
  - causing serious bodily or mental harm to members of the group;
  - deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  - imposing measures intended to prevent births within the group;
  - forcibly transferring children of the group to another group."

United Nations Convention on Genocide, 1948

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LASTING EFFECTS OF THE AMERICANIZATION & EXTERMINATION POLICY

- "By then [1891] the Native population had been reduced to 2.5% of it's original numbers and 97.5 of the aboriginal land base had been expropriated….Hundreds upon hundreds of Native tribes with unique languages, learning, customs, and cultures had simply been erased from the face of the earth, most often without even the pretense of justice or law."
  Peter Montague

WHITE MALE DOMINATION

- Imposed anti-female beliefs
- Met with Native men used alcohol to weaken Native men
- Exoticized, eroticized, and sexualized Native women
- Imposed cultural ideals and values of "power over"
- De-humanized Natives, Africans, and other non-white human beings (some white [indentured servants])

SEXUAL ASSAULT, RAPE, VIOLENCE, IMPOSED DOMINANT VALUES/BELIEF SYSTEMS

- When genocide failed, tactics of colonization, oppression, were used.
- The "natural world" of Native Americans eroded & disavowed & destroyed.
- Physical, sexual, spiritual, & emotional abuse
- European conquest – Manifest Destiny

Family Selling Baskets Streets of Seattle, 1912

BOARDING SCHOOL PERIOD (Policy Years 1879-1935)

1879 First off-reservation boarding school Carlisle

◂"Kill the Indian, and Save the Man": Capt. Richard H. Pratt created policy on the education of Native Americans. Pratt was Carlisle Indian School's Founder

- **Modeled after Fort Marion Prison in Florida (1872-1875) Native prisoners**
- **Attendance mandatory or parents imprisoned (1895 19 Hopi men imprisoned in Alcatraz for refusing to send children)**
- **By 1909, 25 off reservation boarding schools, 157 on reservations, and 307 day schools (more than 100,000 Native children forced to attend)**

Boarding schools distorted our ability to act as parents, sons, daughters, as relatives. Our traditional parenting was non-violence and nurtured the spirit of the child.
1897

IDENTITY,
LOVE,
SELF-LOVE?

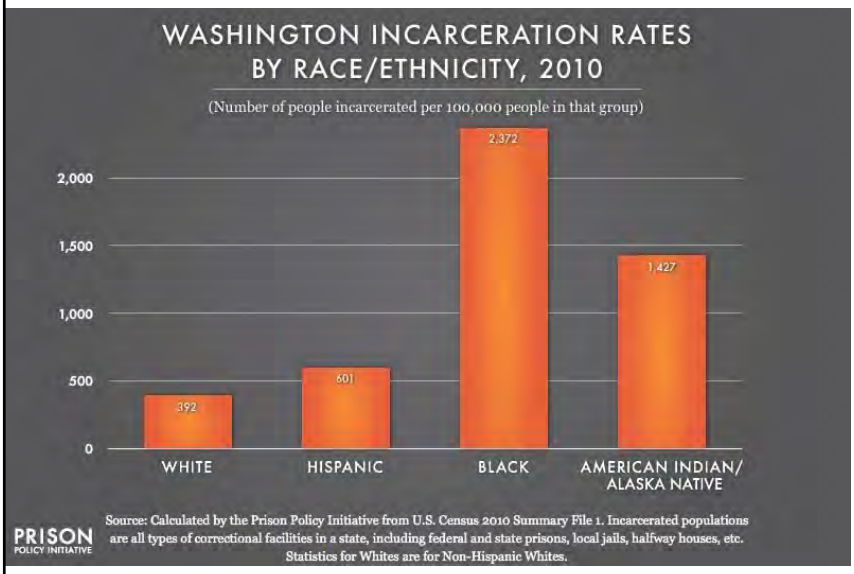
The new "Boarding Schools" (AI/NA=2% of population)

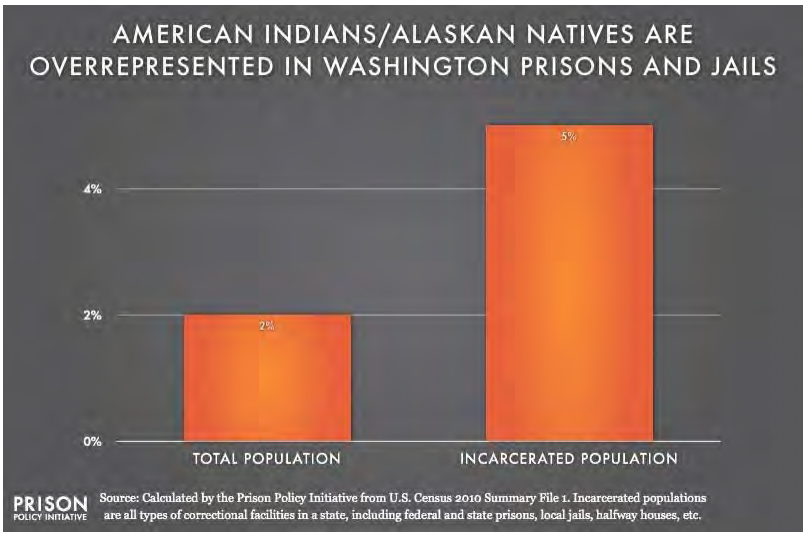
Native Children:

- 8 times more likely to be placed in long term out of home foster care.
- Infant Fatality/Mortali

Native Adults:

- Comprise 5% (assigned cation)- 12% (self-identification) of incarceration…WA state jails and prisons population.
- Only 1/3rd of 1% of incarcerated Natives are referred to work release.
- 2.5-3.5 higher domestic violence and sexual assault rates





COLONIZATION OF NATIVE WOMEN

- History of degrading and destroying Native women's bodies
  - dominance (power & control);
  - mutilation; rape;
  - exoticizing; eroticizing
  - Dicotomizing (maiden/squaw)
- Patriarchy (the institution) and colonization in indigenous communities –
  - Our land, our bodies (sexual & physical assault)
  - Reproductive health & medical experimentation (including forced sterilization)
  - Sustenance and forced dietary changes (commodities)
  - Diabetes; gall bladder removal
  - Misinformation, stereotypes, lies imbedded in educational institutions, nationwide
  - Cultural destruction
  - Cultural and world view differences denial
  - Infant mortality (fatality)

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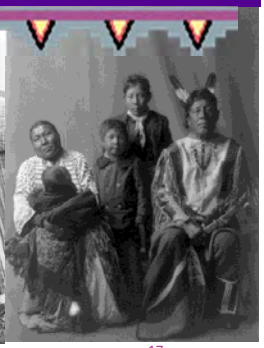
NATIVE WOMEN…SACRED, EQUAL, VALUED, PART OF THE NATURAL BALANCE, LOVING, LOVEABLE

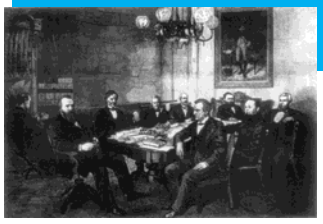
We knew our role in a time when we knew everyone was valued and sacred.

Two Spirit people were honored and held



Colonization imposed **The unnatural worldview which took the form of a hierarchy.**

- **Hierarchy** is a theory that people have a right to controlling power or dominance over others based on status, physical or economic strength.
- In a hierarchy there are no real relationships between all people or elements in creation.
- European culture created institutions, including governments and nuclear families, to justify, support and enforce relationships of dominance and the hierarchy as natural.
- They placed women and children below men, legally, as their property.



Native American/Alaskan Native Women – Highest Rates of Sexual Assault and Domestic Violence

- Why? -a history of displacement, colonization, domestication and violence.
- Why? -a lack of resources, legislation or education to help her get out of a bad situation.
- Why? -86% of assault against Native women is by non-native men…who are rarely caught or charged with the crime.
- Why? -lack of tribal jurisdiction (law enforcement have no recourse to arrest and try the offender), tribal resources and fear of retaliation (on the part of the victim).
- Why? -institutional racism, sexism and classism. And biases & prejudice.
- Why? -lack of people who care about the lives of AI & AN women and children.

Are you aware of personal biases against to American Indians & Alaskan Natives ?

Professional Awareness in Dominant Society

- Be inclusive of Native victims/survivors in your awareness & cultural competency framework.
  - Make no assumptions about a Native victim.
  - Native Americans and Alaskan Natives are not assimilated. (Often experience "invisibility").
  - **Listen to her and believe her.**
  - Remember the impacts of HT, IGT, CT.
  - Remember that she may need "cultural" support.
  - Become knowledgeable about what a Native victim's issues / barriers to safety may be, both urban Indians and reservation Indians.
  - **Check your own biases.**
  - Remember we are all related, connected & Sacred

Contemporary with Time-Honored Traditions

- There are still tribal time-honored traditions that can help the Native woman.
- Are you acknowledging that she is Native American or Alaskan Native woman and may have traditions, customs and cultural practices?

MAJORITY OF NATIVE SPIRITUAL CONCEPTS REVOLVE AROUND THE FEMININE PRINCIPLE.

- The heart of our Nation lies in the feminine.
- The feminine spirit is integral to every tribe's spiritual ways.
- Our connection with Mother Earth teaches us that all things are interdependent relatives.
- This life is a spiritual journey in a physical body to learn to be respectful, compassionate and humble relatives.

Excerpted from "Violence Against Native Women is Not Traditional" handbook, Sacred Circle publication

Seattle Indian Health Board,
Domestic Violence/Sexual Assault Survivors
Advocacy Services

(206)324-9360
Ext: Alicia 2831
Ext: Lua 2295

DV/SA Education & Outreach
Ext: Alma 2585
Outreach Advocate
Ext: Kit 2807

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THRIVING WHILE HEALING

FINDING JOY, RESILIENCE, & SUPPORT IN THE AFTERMATH OF SEXUAL ASSAULT

THE NW NETWORK OF BISEXUAL, TRANS, LESBIAN & GAY SURVIVORS OF ABUSE

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WELCOME!

AMARINTHIA TORRES

COMMUNITY ADVOCACY PROGRAM MANAGER

CONNIE BURK

EXECUTIVE DIRECTOR

NWNETWORK.ORG

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GOALS FOR TODAY

- Centering the experiences and the needs of LGBTQ survivors of sexual assault.
- Discuss the NW Network's process for using on-going process evaluation to develop holistic and culturally relevant peer support.
- Share critical components of the *Thriving While Healing* curriculum.
- Share our "Lessons Learned" and highlights from offering this group to our community.

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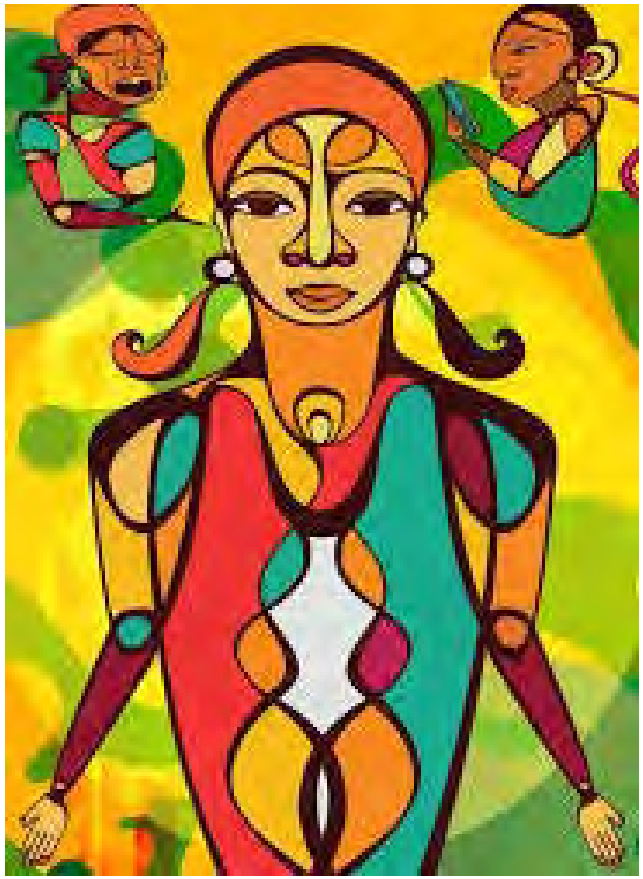
THEMES WE'LL COVER…

- **The Need**
- **Behind the Scenes**
- **The Curriculum**
- **Highlights**
- **Lessons Learned**



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THE NEED:

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THE NEED:

- Impact of homophobia, transphobia, heterosexism
- Internalized oppression
- Sex in an LGBTQ context
- Silencing re: SA, rape, CSA
- Findings from National Intimate Partner & SV Survey
- Myths about sexual assault & child sexual abuse in LGBTQ community
- Impact on sexuality

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What have you seen in your work with LGBTQ sexual assault survivors?

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EVALUTION BASICS:

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EVALUTION BASICS:

- Logic Model
- Theory of Change
- Fidelity
- Staff Training
- Observing/ Gathering info
- Reflecting/ Debriefing
- Analyzing/Making Meaning
- Making Changes

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BEHIND THE SCENES…

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BEHIND THE SCENES…

- Setting Goals & Intentions
- Outreach strategy
- Pre-calls
- Group agreements
- Creating welcoming space & atmosphere
- Trauma Informed
- Evaluation & Feedback

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THRIVING WHILE HEALING FLYER

The NW Network of Bi, Trans, Lesbian & Gay Survivors of Abuse presents:

Thriving While Healing

Finding Joy, Resilience & Support in the Aftermath of Sexual Assault

This free 9-week group will offer skills, education, tools & support to name & confront the silence, isolation & shame which so many LGBTQ survivors experience.

When: **March 3rd – April 28th 2014 from 6:30pm to 8:30pm**

What: **A skills based, peer support group for LGBTQ sexual assault survivors.**

Contact Info:

Call the NW Network at 206-568-7777 to register!

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WELCOME GIFT BAGS

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WELCOME GIFT BAGS…

- Travel tissues
- Notebook with pen
- Chapstick
- Post-it notes
- Herbal tea
- Chocolates
- We <3 Gay Love Stickers
- Decorative pencil
- Book/Resource List

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THE CURRICULUM:

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THE CURRICULUM

- Weekly Outline
- Hopes & Fears
- Story Board via Art
- Emotional Solar System
- Characteristics of Sex +/Sex – Culture
- Shame/Empathy
- Boundary Myths Brainstorm
- “How Far I’ve Come” Letter

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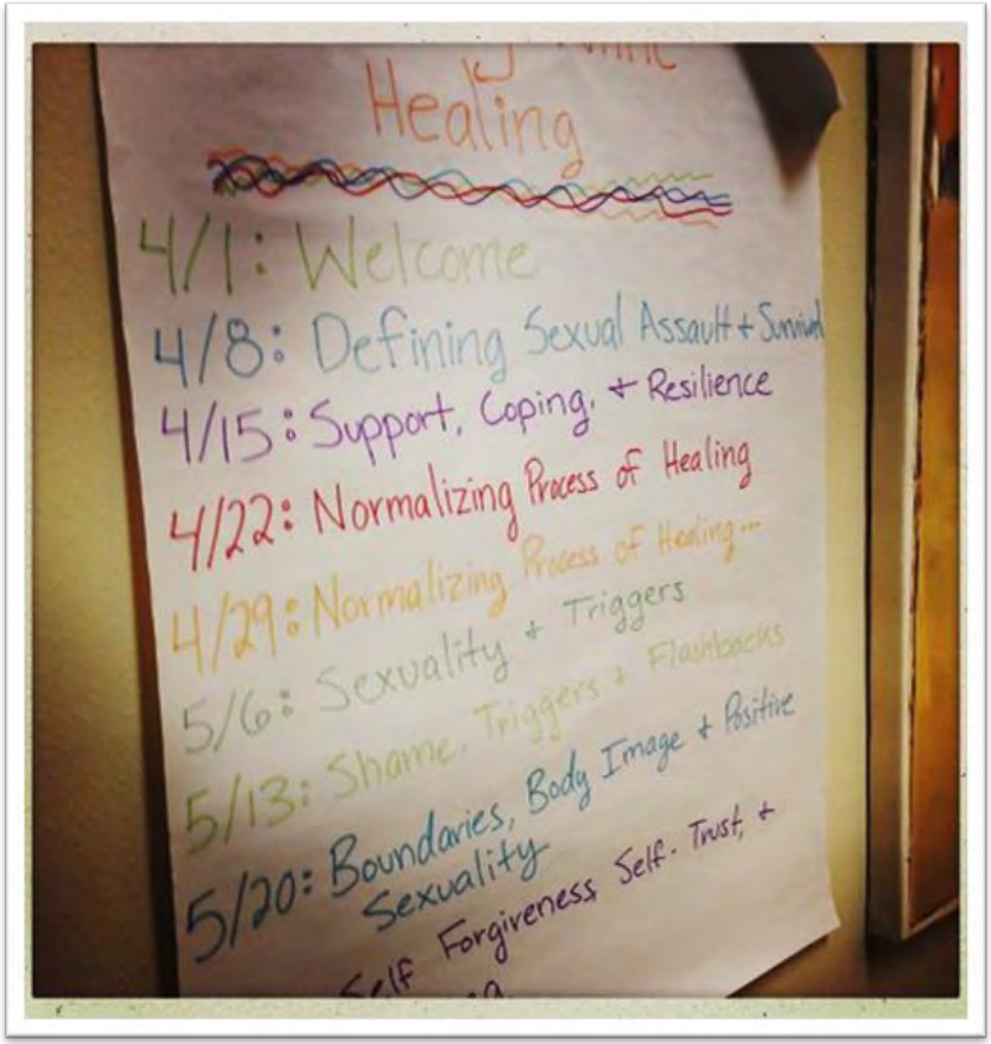
OUTLINE OF 9-WEEK GROUP

- Welcome
- Defining Sexual Assault and Defining Survival
- Support, Coping, and Resilience
- Normalizing Process of Healing
- Emotions
- Sexuality, Triggers, Flashbacks
- Shame, Empathy,
- Boundaries, Body Image, & Positive Sexuality
- Self-Trust, Reflection, Appreciations



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HOPES AND FEARS…

“I fear that my story will affect the way people see him in community”

“I fear that I will never enjoy sex”

“I hope to be able to speak in a way where shame does not smother my light”

“I hope I won’t be as embarrassed about this topic”

“I hope to learn to be my primary source of validation”

“I fear that my trauma isn’t ‘bad enough’ for me to deserve support”

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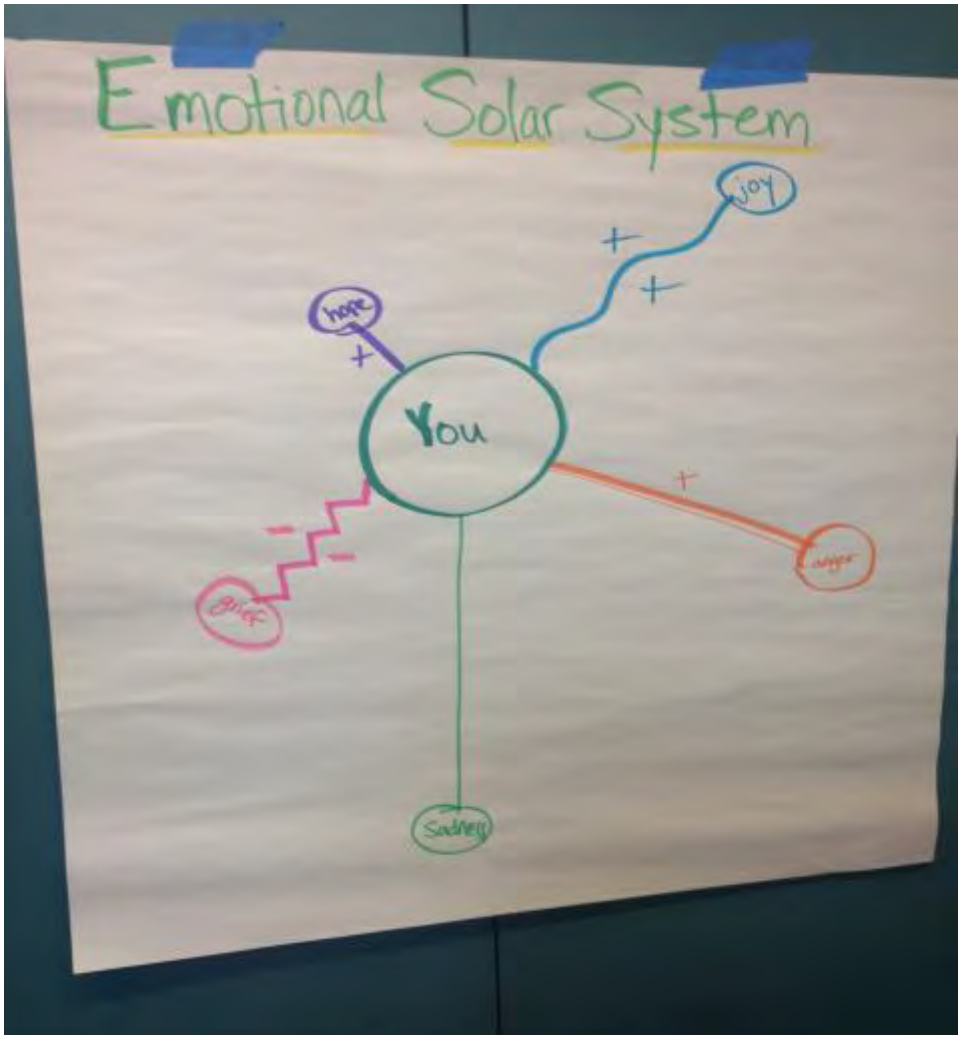
EMOTIONAL SOLAR SYSTEM ACTIVITY

Description:

A visual "moment in time," snapshot of your relationship to complex and often challenging emotions

(ie: fear, anger, sadness, hopelessness, grief joy)



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SEX + SEX – AND TRIGGERS…

What are characteristics of a sex negative culture?

What are characteristics of a sex positive culture?

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SHAME, EMPATHY, RESILIENCE

- How does shame show up in your life?
- Shame relies on secrecy, silence, and judgment.
- Empathy as antidote to shame.
- "When you've been told you are unworthy but act and believe you are worthy of love and belonging, that is a radical and liberating act."

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What are myths about setting boundaries?

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HOW FAR HAVE I COME?

- Focus on progress you've made over last 9 weeks, not on what you still have left to do.
- What have I learned? How have I changed? How are things different than when I began?
- Self-addressed envelope and mailed several weeks later

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LESSONS LEARNED

- 3 years in: Type of Victimization
- LGBTQ History of Resilience
- Shame
- Consent
- Regular emails
- Clearly defining SA
- Variation of content
- Build in time for art
- Meditation
- Sex-positivity

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HIGHLIGHTS:

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HELPFUL RESOURCES…

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THANK YOU!!

NW Network of Bisexual, Trans, Lesbian, & Gay Survivors of Abuse

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Seattle, WA 98118

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