

Unbelievable: Revictimization and the Need for a Victim-Centered Approach

**INTRODUCTION**

Sex trafficking is sexualized violence and exists on a continuum that includes sexual harassment and sexual assault.<sup>1</sup> I am a victim of sexual assault. My experience within the judicial system has formed my passion and has brought me to law school. I am pulling from my own lived experiences when discussing the revictimization, victim blaming, and the need for all interactions with victims of sexualized violence to be conducted from a victim-centered approach.

This paper argues for the implementation of a victim-centered approach for all individuals who interact with victims of sexualized violence to put perpetrators of sexualized violence on trial, halt their elusion of detection, and stop the revictimization of victims while allowing them to heal. Immediately following the traumatic experience, victims of sexualized violence are asked to retell and relieve their trauma.<sup>2</sup> Instead of processing what has happened, victims are placed in a position of having to convince the investigators and criminal justice system that the traumatic experience actually happened.<sup>3</sup> Victims are interrogated and forced to tell their trauma multiple times, to multiple different people, all while in a highly susceptible and vulnerable state.<sup>4</sup>

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<sup>1</sup> Blanche Bong Cook, *Stop Traffic: Using Expert Witnesses to Disrupt Intersectional Vulnerability in Sex Trafficking Prosecutions*, 24 Berkeley J. Crim. L., 147, (2019), at 103.

<sup>2</sup> *Id.* at 163.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 137.

Individuals interacting with victims of sexualized violence need to intrinsically understand how trauma impacts the victim.<sup>5</sup> Victims suffer significant alterations to their brain chemistry and functioning.<sup>6</sup> Victim-centered approach requires recognizing the symptoms of trauma.<sup>7</sup> Survivors need to be seen and heard in the state that they are in, so their experiences and emotions can be understood.<sup>8</sup> The victim-centered approach would start by believing the victim.<sup>9</sup> This in turn would relieve the victim from having to fight for validation of their story.<sup>10</sup>

Society pathologizes the victim and overvalorizes the perpetrators because of societies allocation of who is worthy of value and who is not.<sup>11</sup> Society is damaged when victims are not believed.<sup>12</sup> When victims are not taken seriously, when victims are continuously forced to relive their trauma, they are disincentivized to come forward, and their perpetrator is still free to recommit. In shifting societal placement of values and implementing a victim-centered approach, society wins.<sup>13</sup>

The victim-centered approach needs to be taught and implemented.<sup>14</sup> There needs to be mandated victim-centered approach training for investigators, prosecutors, defense attorneys, and judges.<sup>15</sup> There needs to be more victim-centered judicial opinions. The United States needs more women in law school. Women in the law can, and are, changing the law of rape. Women, and people who have been victims of sexualized violence, need to step into positions of power

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<sup>5</sup> Kirsten Foot, Ph.D., *Toward Trauma-Informed Professional Practices: What Legal Advocates and Journalists can Learn From Each Other and Survivors of Human Trafficking*, 36 Ga. St. U. L., Rev. 1129, at 1133.

<sup>6</sup> *Id.* at 1132; (citing Sarah Katz & Deeya Halder, *The Pedagogy of Trauma-Informed Lawyering*, 22 Clinical L. Rec. 359, 361 (2016)).

<sup>7</sup> Foot, *supra* note 5, at 1130.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 1139.

<sup>10</sup> *Id.*

<sup>11</sup> Cook, *supra* note 1, at 109.

<sup>12</sup> Foot, *supra* note 5, at 1137.

<sup>13</sup> *Id.*

<sup>14</sup> Foot, *supra* note 5.

<sup>15</sup> *Id.*

within the law to effect change. Blaming the victim normalizes exploitation and renders the pathology of the perpetrator invisible.<sup>16</sup> The blame needs to shift from the victim towards the perpetrator.<sup>17</sup> Expert witnesses need to be utilized from the onset of the case.<sup>18</sup> Expert witnesses have the ability to comprehensively provide the proper context in which to assess the victim's story, disposition, and credibility.<sup>19</sup> The perpetrators, not the victims, need to be put on trial.<sup>20</sup> In order to emphasize the need for change and the implementation of the victim-centered approach, this paper proceeds in several parts.

Part One lays the foundation for the revictimization that victims of sexualized violence continuously face throughout the criminal justice system.

Part Two makes clear that by pathologizing the victim, the perpetrator is allowed to go free, acquire power, and impact the world.

Part Three discusses societies allocation of who is worthy of value and who is not. Showing that when there is a perpetrator and a victim, the indictment and conviction are dependent on the way the individuals are valued.

Part Four addresses traumas impact on the victim and traumas disruption of the rational disposition of the brain and the ability of the brain to engage in rational thought process.

Part Five explains applying the victim-centered approach to interactions with victims of sexualized violence.

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<sup>16</sup> Cook, *supra* note 1, at 106.

<sup>17</sup> Cook, *supra* note 1, at 103.

<sup>18</sup> Cook, *supra* note 1, at 113.

<sup>19</sup> *Id.*

<sup>20</sup> Cook *supra* note 1, at 140. (citing Blanche Bong Cook, *Biased and Broken Bodies of Proof: White Heteropatriarchy, the Grand Jury Process, and Performance on Unarmed Black Flesh*, 85 U.M.K.C.L. Rev. 567, 568 (2017); L.Z. Granderson, *Why are Black Murder Victims Put on Trial?*, CNN (2013), <http://www.cnn.com/2013/11/15/opinion/granderson-whites-shooting-blacks/index.html> (last visited Oct 8, 2017)).

Part Six outlines the need to train investigators and all individuals interacting with victims on how to implement a trauma-informed approach.

Part Seven sets forth the need for more trauma centered judicial opinions. In equipping judges with the victim-centered approach, opinions will be written that do not perpetuate the cycle of pathologizing victims. By looking specifically at the Brock Turner case we can hypothesize how differently the judicial opinion and sentencing would have been had the judge been trained in the victim-centered approach.

Part Eight provides why expert witnesses need to be involved from the beginning of the case to end the pathologizing of victims and incentivize more victims to come forward.

Part Nine uses the Netflix series *Unbelievable* to contrast the initial set of investigators to the new set of investigators. By doing so, we can see the difference in how victims are treated today versus through the application of the victim-centered approach.

## **PART ONE. REVICTIMIZATION**

Victims of sexualized violence have endured severe trauma significant enough to have lasting psychological effects.<sup>21</sup> Trauma is an emotional response to a terrible event.<sup>22</sup> Trauma disrupts rational thought processes and impairs the ability to handle stress, perceive when a threat is in the past, and manage emotions.<sup>23</sup> When victims are forced to retell and relive their stories, they are caught in a loop of the traumatic experience.<sup>24</sup> Victims are re-traumatized when triggered, forced to flashback, and told to replicate and relive the experience of their initial trauma.<sup>25</sup>

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<sup>21</sup> *Trafficking in Persons Report*, Department of State, (2018).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Foot, *supra* note 5, at 1138.

<sup>25</sup> *Supra* note 21.

Victims are forced to recount their story to police officers, investigators, hospital staff, social workers, attorneys, jurors, and judges.<sup>26</sup> The first time they relive their story is oftentimes when the victim has had no time to process what has happened to them.<sup>27</sup> The victim is forced to place themselves back into the experience of their initial trauma.<sup>28</sup> The victim is not only retelling and reliving their experience, but they are also placed in a position where they have to convince the investigators and the judicial system that the experience actually happened.<sup>29</sup>

## **PART TWO. PATHOLOGIZING VICTIMS**

When victims are pathologized, perpetrators continue to victimize other people.<sup>30</sup> By pathologizing and criminalizing the victim, the perpetrator is allowed to go free.<sup>31</sup> Society needs to understand that when we pathologize the victim, the perpetrators are allowed to go acquire power and impact the world.<sup>32</sup> This is evidenced in the experiences of Anita Hill and Christine Blasey Ford. Both women were sexually assaulted, chastised by society, pathologized, and blamed.<sup>33</sup>

Anita Hill was sexually harassed by Clarence Thomas.<sup>34</sup> Instead of pathologizing the perpetrator, it was shifted towards the victim.<sup>35</sup> Anita Hill was described by the committee

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<sup>26</sup> Cook, *supra* note 1, at 164; (citing Jennifer L. Wright, *Therapeutic Jurisprudence in an Interprofessional Practice at the University of St. Thomas Interprofessional Center for Counseling and Legal Services*, 17 St. Thomas L. Rev. 509, 509 n. 11 (2005) (“The risk of re-traumatization of clients who have to repeat and relive their experiences of abuse, first in the lawyer’s office and then in court, is serious.”)).

<sup>27</sup> *Supra* note 21.

<sup>28</sup> Foot, *supra* note, at 24.

<sup>29</sup> *Id.*

<sup>30</sup> Foot, *supra* note 5, at 1139.

<sup>31</sup> Cook, *supra* note 1, at 103.

<sup>32</sup> Cook, *supra* note 1, at 107.

<sup>33</sup> Clifford Krauss, *Anita Hill to Christine Blasey Ford: ‘Don’t Do Anything That Will Dehumanize You.’*, The New York Times, (2018).

<sup>34</sup> Kimberlé Crenshaw, *We Still Haven’t Learned From Anita Hill’s Testimony: In the great awakening around sexual harassment, race was politely ushered offstage. That problem persists.*, The New York Times, (2018).

<sup>35</sup> *Id.*

members inside of the hearing room as an “angry and sexually deranged woman.”<sup>36</sup> Society blamed Ms. Hill and described her as having “nefarious motives and a dubious background.”<sup>37</sup> Congress, the media, and society failed to give Ms. Hill a fair hearing.<sup>38</sup> Ms. Hill was pathologized and blamed.<sup>39</sup> Clarence Thomas was rallied behind and appointed to the Supreme Court.<sup>40</sup> The victim was blamed and the perpetrator was able to acquire power and influence.

Christine Blasey Ford was sexually assaulted by Brett Kavanaugh.<sup>41</sup> Brett Kavanaugh was described as a “brilliant student who loved sports” who “stood out for his friendship, character, and integrity.”<sup>42</sup> In severe contrast, Ms. Ford faced vicious attacks on her credibility, memory, and motive.<sup>43</sup> Ms. Ford received death threats and critics “smeared her as a two-bit political operative and sneered at her sexual history.”<sup>44</sup> The victim was blamed, doubted, and interrogated, while Brett Kavanaugh was met with empathy and concern regarding how the allegations could impact his promising future.<sup>45</sup>

Society pathologized Anita Hill and Clarence Thomas is on the Supreme Court.<sup>46</sup> Society pathologized Christine Blasey Ford and Brett Kavanaugh is now on the Supreme Court.<sup>47</sup> This reflects the privilege men of significant power hold over others.<sup>48</sup> The victim is pathologized,

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Emma Brown, *California Professor, Writer of Confidential Brett Kavanaugh Letter, Speaks Out About Her Allegation of Sexual Assault*, The Washington Post, (2018).

<sup>42</sup> *Id.*

<sup>43</sup> Haley Sweetland Edwards, *How Christine Blasey Ford’s Testimony Changed America*, TIME, (2018).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Ron Elving, *A Refresher on Anita Hill and Clarence Thomas*, NPR, (2017).

<sup>47</sup> Emma Brown, *California Professor, Writer of Confidential Brett Kavanaugh Letter, Speaks Out About Her Allegation of Sexual Assault*, The Washington Post, (2018).

<sup>48</sup> Elizabeth Theriault, *An Examination of Pervasive Language Around Sexual Harassment Through the Lens of Anita Hill, Christine Blasey Ford, and #MeToo*, Digital Commons @ UMaine (2020), at 57.

which leads to blame of the victim and a shift of responsibility from perpetrator to victim.<sup>49</sup> This occurs while perpetrators are overvalored and allowed to acquire power and influence.<sup>50</sup>

There is a large disparity in application of justifications for punishment. The United States is the most carceral nation in history, but the United States is not the most carceral in terms of putting rapists away.<sup>51</sup> Perpetrators of sexual violence are overwhelmingly less likely to go to jail or prison than other criminals.<sup>52</sup> Sexual violence cases are under prosecuted, under indicted, and under convicted.<sup>53</sup> The majority of perpetrators will not go to jail or prison.<sup>54</sup> Out of every 1000 sexual assaults, 995 perpetrators will walk free.<sup>55</sup> Why does this disproportionality exist? Perpetrators have been allowed to lead the law. Perpetrators have been equipped with power.<sup>56</sup> Institutions and power structures enable perpetrators.<sup>57</sup> Perpetrators go to law school, they become prosecutors, defense attorneys, and judges.

However, more women are attending law school.<sup>58</sup> The landscape is shifting.<sup>59</sup> Women in the law are changing the law of rape.<sup>60</sup> Women, and people who have been victims of sexualized violence, are stepping into positions of power within the law to effect change.<sup>61</sup> The work of women, the political activism of women, the work of women in law schools, the work of women

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<sup>49</sup> Cook, *supra* note 1, at 141.

<sup>50</sup> *Id.*

<sup>51</sup> Lorna Collier, *Incarceration Nation: The United States Leads The World in Incarceration. A New Report Explores Why and Offers Recommendations For Fixing The System.*, American Psychological Association, Vol 45, No. 9, (2014).

<sup>52</sup> *The Criminal Justice System: Statistics*, RAINN, (2020).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Theriault, *supra* note 48, at 22.

<sup>57</sup> Theriault, *supra* note 48, at 25.

<sup>58</sup> Ian Pisarcik, *Women Outnumber Men in Law School Classrooms for Third Year in a Row, but Statistics Don't Tell the Full Story*, JURIST, (2019).

<sup>59</sup> *Id.*

<sup>60</sup> Tim Hendrick, *Cassady Gets Law Amended to Protect Assault Victims*, The News Democrat, (2018).

<sup>61</sup> *Id.*

studying at universities, and the work of women on the ground are drafting and redrafting sexualized violence statutes. Women have been fighting for decades, and the fight is far from over.<sup>62</sup>

In the absence of rape shield laws, judges often admitted evidence of a victim's sexual reputation and history.<sup>63</sup> Defense attorneys attacked victim's character through opinion or reputation evidence.<sup>64</sup> This tactic worked because society and the judicial system saw women that were "unchaste" as "less credible."<sup>65</sup> By showing sexual promiscuity, women were impeached and deemed more likely to have "rape fantasies that made them more likely to fabricate a rape charge."<sup>66</sup> Victims are, and have historically been, met with severe skepticism and judgment. However, adopting rape shield rules was a necessary change effectuated by women.<sup>67</sup> Members of the feminist movement focused their attention and passion towards ending part of the harsh treatment rape victims experienced in court.<sup>68</sup> Rape victims had been disincentivized to come forward through the fear of being chastised and pathologized by the deep dive into their sexual history.<sup>69</sup> Through the feminist movement and through a growing societal shift, sexual reputation and history of a victim has become less relevant to the likelihood that the victim consented to sex when sexually violated.<sup>70</sup>

The United States needs more women in law school, more women as prosecutors, defense attorneys, and as judges. Women are disproportionately impacted by sexualized

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<sup>62</sup> Deborah Jones Merritt and Ric Simmons, *Learning Evidence From the Federal Rules to the Courtroom*, West Academic Publishing Fourth Edition, (2018).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*



violence.<sup>71</sup> When it comes to sexualized violence, there are flaws because men under report their cases of sexualized violence.<sup>72</sup> When men come forward, they are not only pathologized as victims of sexual violence, their sexual orientation and their masculinity are also pathologized.<sup>73</sup> While it is not clear exactly how many men have been sexually assaulted, the data we do have demonstrates a disproportionate number of women as victims.<sup>74</sup> If women are disproportionately the victims, they should disproportionately be empowered to do something about it and act.

If survivors begin occupying influential positions, change can come into fruition. More women are attending law school, but it is problematic to look at that statistic in a vacuum.<sup>75</sup> A necessary step has been taken, but without increasing efforts to advance the legal career and influence of women, the progress may halt.<sup>76</sup> The number of women in law schools have been increasing, but the number of women holding leadership and influential positions within the law and legal profession have not followed suit.<sup>77</sup> The lack of women in positions of power within the legal field hurts everyone.<sup>78</sup>

A survivor as a law school professor would educate students about the rape law through an entirely different scope than a professor who is a perpetrator or who has not been victimized. Jenna McNeal Cassady is a survivor of sexualized violence who entered law school.<sup>79</sup> Ms. Cassady is from a small town in Kentucky.<sup>80</sup> While in High School, Ms. Cassady was at her then

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<sup>71</sup> *Victims of Sexual Violence: Statistics*, RAINN, (2020).

<sup>72</sup> Samuel Vincent Jones, *The Invisible Man: The Conscious Neglect of Men and Boys in the War on Human Trafficking*, 2010 Utah L. Rev. 1143 (2010).

<sup>73</sup> *Id.*

<sup>74</sup> Theriault, *supra* note 48.

<sup>75</sup> Pisarcik, *supra* note 58.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Hendrick, *supra* note 60.

<sup>80</sup> Jenna McNeal Cassady, "Unbelievable," a Netflix series about sexual assault, Panel Moderated by Blanche Bong Cook, University of Kentucky College of Law, (2019).

boyfriend's home when his father raped her.<sup>81</sup> Ms. Cassidy's traumatic experience spread to the rest of the town.<sup>82</sup> The people in her hometown began taking sides, flying banners, and selling bumper stickers in support of her perpetrator.<sup>83</sup> Ms. Cassidy was pathologized, not believed, and met with severe disbelief.<sup>84</sup> Ms. Cassidy was sixteen when she was victimized.<sup>85</sup>

Ms. Cassidy's perpetrator was charged with rape and sodomy, but convicted of a much lesser charge.<sup>86</sup> Even though Ms. Cassidy's perpetrator ensured she was under the influence, was unconscious during the initial part of the attack, and was mentally incapacitated and unable to give consent, he was only convicted of third-degree unlawful transaction with a minor.<sup>87</sup> Ms. Cassidy's experience within the justice system revealed to her a gap in the law.<sup>88</sup> Ms. Cassidy recounted that despite the absence of consent, her "assailant was acquitted of rape and sodomy because there was no safety net that mandated a conviction in the third degree."<sup>89</sup>

Ms. Cassidy found deficits within the old law, found the gap, and advocated for change.<sup>90</sup> Before Ms. Cassidy's involvement, the law protected children fifteen years old and younger and individuals the age of eighteen.<sup>91</sup> Children that were sixteen or seventeen years old were not covered and it was "too easy to plead down to sexual misconduct."<sup>92</sup> Kentucky Governor Matt Bevin signed House Bill 101 into law.<sup>93</sup> The amendment to KRS §510.020 is

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Hendrick, *supra* note 60.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

known as Jenna’s Law due to the work of Jenna McNeal Cassady.<sup>94</sup> Jenna’s Law filled this gap in the law.<sup>95</sup> Jenna’s Law states that “a 16 or 17-year-old is incapable of consent when the actor is at least 10 years older than the victim.”<sup>96</sup> Jenna’s Law also adds “that a person is guilty of rape in the third degree when a person who is at least 10 years older than a 16 or 17-year-old engages him or her in sexual intercourse and a person is guilty of sodomy in the third degree when a person who is at least 10 years older than a 16 or 17-year-old engages him or her in deviate sexual intercourse.”<sup>97</sup>

Jenna McNeal Cassady used her experience to rewrite the Kentucky rape laws.<sup>98</sup> She also updated the Sexual Violence Law in Kentucky: A Handbook of Criminal, Civil, and Administrative Laws, Fourth Edition, through the Kentucky Association of Sexual Assault Programs.<sup>99</sup> More women need to be in positions of power and influence. Ms. Cassady used her experience as a victim of sexualized violence to advocate and fill the gap that should have already been in place at the time she was victimized.<sup>100</sup> Survivors are changing the landscape of rape laws.<sup>101</sup> Survivors of sexualized violence are giving a voice to the silenced and pathologized.<sup>102</sup> Survivors are effecting change.<sup>103</sup>

### **PART THREE. SOCIETIES ALLOCATION OF VALUE**

Society pathologizes the victim and overvalorizes the perpetrators because of societies allocation of who is worthy of value and who is not.<sup>104</sup> When there is a perpetrator and a victim,

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<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> Kentucky Association of Sexual Assault Programs, Inc., [www.kasap.org](http://www.kasap.org)

<sup>100</sup> Hendrick, *supra* note 60.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Cook, *supra* note 1, at 115.

the indictment and the conviction are dependent on the way the individuals are valued.<sup>105</sup> If the perpetrator is valued more than the victim, that is what the final disposition will reflect.<sup>106</sup>

Jeffrey Epstein, through his race, gender, and class influence, forcibly raped children, trafficked children, and hosted “sex parties” at several of his homes.<sup>107</sup> Jeffrey Epstein targeted disadvantaged children.<sup>108</sup> He specifically targeted children that he knew society would not be inclined to believe.<sup>109</sup> Jeffrey Epstein’s crimes could have resulted in him ending up in federal prison for the rest of his life.<sup>110</sup> Instead, through Jeffrey Epstein’s status, wealth, and connections, he entered into a plea agreement that concealed the full extent of his crimes and the people involved.<sup>111</sup> The focus of justice was not centered on the victims. Society did not empathize the victims. The victims were children who were pathologized and judged. Society and the judicial system favored a wealthy white man over the children who were victims of sexualized violence.<sup>112</sup>

Cyntoia Brown ran away from home when she was sixteen years old.<sup>113</sup> A man eight years her senior trapped, manipulated, and sex trafficked her.<sup>114</sup> Cyntoia Brown’s vulnerability was exploited and she was a victim society was less likely to believe. Cyntoia Brown was physically abused, sexually abused, and raped.<sup>115</sup> Cyntoia Brown had no dominion over her

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<sup>105</sup> Cook, *supra* note 1, at 165.

<sup>106</sup> *Id.*

<sup>107</sup> Julie K. Brown, *How a Future Trump Cabinet Member Gave a Serial Sex Abuser the Deal of a Lifetime*, Miami Herald, (2018).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Sentenced to Life in Prison as a Teen, How Cyntoia Brown Survived Sex Trafficking & Won Her Freedom, Democracy Now, (2019). <https://www.youtube.com/watch?v=rWBxipMTAYU>

<sup>114</sup> Sentenced to Life in Prison as a Teen, How Cyntoia Brown Survived Sex Trafficking & Won Her Freedom, Democracy Now, (2019). <https://www.youtube.com/watch?v=rWBxipMTAYU>

<sup>115</sup> Mahita Gajanan, *The History Behind the Netflix Documentary Murder to Mercy: The Cyntoia Brown Story*, TIME, (2020).

body.<sup>116</sup> Cyntoia Brown was dominated by a man called “Cut Throat,” who exercised control by beating her and taking money from perpetrators that raped her.<sup>117</sup> One afternoon, Cyntoia Brown was raped and in fear of her life.<sup>118</sup> She saw her perpetrator reach for what she believed was a gun and she acted in self-defense.<sup>119</sup>

Instead of believing the victim, her history and motives were brought to the forefront of the trial and a new narrative was produced by the skeptics. Cyntoia Brown was pathologized, judged, and not believed because of her status in the world and others inability to understand the trauma she had endured.

Cyntoia Brown was a child. Cyntoia Brown was a victim. She was not only a victim of sex trafficking, but she was a victim of the system. The judicial system did not believe her. The judicial system failed to protect her.<sup>120</sup> The judicial system continuously victimized her. Cyntoia Brown was prosecuted in large part due to her skin color and her socioeconomic status. Her race, class, and sex all went to her credibility and played large parts in her not being perceived as sympathetic when it came to hearing her story and sentencing her. She was vulnerable, her life experiences were exploited, and she was severely manipulated. Within the judicial system, she was not seen as a child that had been through a series of traumatic events. Society blamed and placed no value in her.

Brock Turner’s father illuminated societal value when he begged for leniency for his son by saying his life was going to be ruined for “twenty minutes of action.”<sup>121</sup> The victim was

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<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Sentenced to Life in Prison as a Teen, How Cyntoia Brown Survived Sex Trafficking & Won Her Freedom, Democracy Now, (2019). <https://www.youtube.com/watch?v=rWBxipMTAYU>

<sup>121</sup> Elle Hunt, ‘20 Minutes of Action’: Father Defends Stanford Student Son Convicted of Sexual Assault, The Guardian, (2016).

reduced to “twenty minutes of action,” while Brock Turner was continuously described as a Stanford athlete and intellectual.<sup>122</sup> Brock Turner sexually assaulted an unconscious woman on the campus of Stanford University, behind a dumpster. Instead of calling Brock Turner a perpetrator or a rapist, media outlets repeatedly referred to Brock Turner as a “three-time all-American Stanford swimmer,” Stanford academic, and a boy with a bright future.<sup>123</sup> Brock Turner was not called a rapist, he was referred to in light of his academia and privilege.<sup>124</sup> Brock Turner’s father pled for leniency for his son, and his son received just that. Emphasis was placed on Brock Turner’s future being ruined, the one Brock Turner “worked so hard to achieve.”<sup>125</sup>

Empathy was elicited for Brock Turner because of his race, gender, achievements, and class influence. Meanwhile, media outlets continuously placed emphasis on the amount of alcohol that was in the victim’s system at the time she was sexually violated.<sup>126</sup> The allocation of value that society places on perpetrators versus victims can be seen in the way the media promotes its stories to the public. The victim was violated, experienced a severely traumatic event, and was revictimized within the judicial system.<sup>127</sup> The responsibility was shifted off of Brock Turner and the sexual assault was recharacterized as “twenty minutes of action.”<sup>128</sup>

Societal allocation of value is also seen in the context of law enforcement. Police officers have an exceptionally high domestic violence rate, and yet they are given deference.<sup>129</sup> Police officers shoot people, and yet they are given deference.<sup>130</sup>

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<sup>122</sup> *Id.*

<sup>123</sup> Julie Sprankles, *These Brock Turner Headlines Are Beyond Tone Deaf*, *Bustle*, (2016).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Conor Friedersdorf, *Police Have a Much Bigger Domestic Abuse Problem Than the NFL Does: research suggests that family violence is two to four times higher in the law-enforcement community than in the general population. So where is the public outrage?*, *The Atlantic*, (2014).

<sup>130</sup> Lynne Peeples, *What the Data Say About Police Shootings*, *Scientific American*, (2019).

Perpetrators are allowed to lead the law, evade detection, acquire more power, and recommit. Prosecution rates are low because of untrained or undertrained police officers, their lack of prioritization of sexualized violence investigations, and corruption in law enforcement.<sup>131</sup>

Social change is met with apprehension from society when they believe they might have to lose something or give something up. However, in shifting societal placement of values and implementing a victim-centered approach, society wins. Society is damaged when victims are not believed. When victims are not taken seriously, when victims are continuously forced to relive their trauma, they are disincentivized to come forward, and their perpetrator is still free to recommit. Victim blaming places the blame on the victim.<sup>132</sup> This allows both the perpetrator and rape culture to evade detection.<sup>133</sup> Victim blaming puts the victim on trial, rather than putting the perpetrator on trial.<sup>134</sup> Rather than placing misogyny, patriarchy, or sexism on trial, the fault becomes that of the victim.<sup>135</sup>

Societies allocation of who is worthy of value and who is not leads to society pathologizing the victim and allowing the perpetrator to go free and recommit. In prostitution, the victim is exploited and bought by someone.<sup>136</sup> The victim's body becomes property for the perpetrator to invade.<sup>137</sup> The victim has to be bought, but that perpetrator is almost never prosecuted.<sup>138</sup> In sharp contrast, most jurisdictions legally make "prostitutes" criminals.<sup>139</sup> For

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<sup>131</sup> Kara, S., *Sex Trafficking: Inside the Business of Modern Slavery: A Framework for Abolition – Risk and Demand*, (2017).

<sup>132</sup> Cook, *supra* note 1, at 103.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Cook, *supra* note 1, at 104.

<sup>136</sup> Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, Harvard Civil Rights-Civil Liberties Law Review, Vol. 46, (2011), at 300.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

being victimized, they are criminally charged.<sup>140</sup> Societal emphasis is placed on pathologizing, disrespecting, and judging the victim, instead of the perpetrator.<sup>141</sup>

When victims are sexually violated their body becomes dehumanized and their perpetrator acquires power.<sup>142</sup> “Sexual aggression turns a female individual into a hyper-feminized body, that is being overtaken and submitting to a hyper-masculinized body.”<sup>143</sup> In the narratives surrounding sexualized violence, one body has been dominated and the other has been seen as powerful enough to do so.<sup>144</sup> The victim is not seen as a person, but instead, as a vessel in which the perpetrator used to exercise control.<sup>145</sup> Society has conceptualized the perpetrator as the party with the power. By doing so, the power and humanity of the victim has been undermined and delegitimized.<sup>146</sup>

Victim blaming places a moral failing issue on the victim, allowing society to avoid policy fixes and accountability.<sup>147</sup> The vulnerability that an individual possesses is often seen as a fixed characteristic of victim in question, instead of as the outcome of social political relations.<sup>148</sup> Power and injustice is perpetuated by the societal shift that occurs when blame is taken from the society and the perpetrator, and placed on the victim.<sup>149</sup>

#### **PART FOUR. IMPACT OF TRAUMA ON THE VICTIM**

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> Theriault, *supra* note 48, at 31.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Angela P. Harris, *Vulnerability and Power in the Age of the Anthropocene*, 6 Wash. & Lee J. Energy, Climate & Env't 96, (2014).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*



Every person responds to traumatic events differently.<sup>150</sup> Investigators need to understand that victims' dispositions vary widely due to nerves, vulnerability in sharing intimate details, and the trauma of reliving their story.<sup>151</sup> Victims are retelling and reliving the worst thing that has ever happened to them.<sup>152</sup> Part of the pain is in remembering what happened, the embarrassment of recalling in detail sexual violence and trauma to strangers, and the level of vulnerability they are forced into.<sup>153</sup> Survivors need to be humanized so that their experiences can be understood.<sup>154</sup> Law enforcement needs to take the time to understand the reason behind the victims' actions.<sup>155</sup> This allows for trust to be built.<sup>156</sup>

Victims suffer significant alterations to their brain chemistry and functioning.<sup>157</sup> Profound changes occur to the amygdala, hippocampus, and prefrontal cortex after a traumatic experience.<sup>158</sup> Stress related to trauma increases the levels of cortisol and norepinephrine response, which can cause a victim to suffer from hyperarousal, intrusive thoughts, flashbacks, nightmares, sleep disturbances, and changes in memory and concentration.<sup>159</sup> This often results in victims' inability to provide chronological and coherent testimony to law enforcement.<sup>160</sup>

While the impression of inconsistency in other contexts may indicate unreliability, for victims it is a result of the trauma they have endured.<sup>161</sup> The changes in the brain of the victim

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<sup>150</sup> *Human Trafficking Manual*, DOJ, (2017).

<sup>151</sup> Cook, *supra* note 1, at 163.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Foot, *supra* note 5, at 1143.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 1133.

<sup>157</sup> *Supra* note 150.

<sup>158</sup> *Id.*

<sup>159</sup> Wendy Macias-Konstantopoulos, *Human Trafficking: The Role of Medicine in Interrupting the Cycle of Abuse and Violence*, 165 *Annals of Internal Med.*, Aug. 2016, 582–88; *supra* note 150.

<sup>160</sup> *Id.*

<sup>161</sup> *Supra* note 150.

can result in extreme anxiety, fear, and mistrust.<sup>162</sup> These feelings are then likely coupled with shame, embarrassment, or guilt for what has happened to them.<sup>163</sup> When a victim is retelling their story, they are in the fight or flight mode.<sup>164</sup> The victim is in their most susceptible state, are easily triggered, and are then asked to relive their trauma repeatedly to strangers.<sup>165</sup>

I suffer from Post-Traumatic Stress Disorder (PTSD). I experience flashbacks, nightmares, anxiety, and the trigger of the fight or flight response. I am easily frightened. A simple fast hand movement can trigger a visceral reaction. I break out in full body sweats, a palpating heart, tight chest, and am consumed by a drowning sensation. When a victim is asked to retell their traumatic experience, they are in a similar triggered state and then asked to relive their trauma.<sup>166</sup>

## **PART FIVE. VICTIM-CENTERED APPROACH**

Part of the change that needs to be advocated for is the implementation of a trauma-informed approach.<sup>167</sup> A trauma-informed approach is a victim-centered approach to interactions with survivors of sexualized violence.<sup>168</sup> Investigators need to communicate with victims with the understanding that the victim has endured a trauma.<sup>169</sup> When interacting with victims, victims need to be met with the understanding that they are placing themselves back in the moment of the trauma.<sup>170</sup> Survivors need to be seen and heard in the state that they are in, so their experiences and emotions can be understood.<sup>171</sup> The victim-centered approach starts with

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<sup>162</sup> *Supra* note 21.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> Foot, *supra* note 5, at 1130.

<sup>169</sup> *Id.*

<sup>170</sup> Foot, *supra* note 5, at 1134.

<sup>171</sup> Foot, *supra* note 5, at 1135.

the belief of the victim, which takes the emphasis off of the victim having to fight for validation of their story.<sup>172</sup>

A trauma-informed approach would allow the victim to start working through their trauma during their participation in the criminal justice process.<sup>173</sup> It is not always about the facts or adhering to a schedule, individuals working with victims need to acknowledge what will best work for the victim and need to build trust to minimize the risk of revictimizing the victim and damaging the relationship.<sup>174</sup> The victim needs to feel safe.<sup>175</sup> Safety can be found in the environment in which the interview is conducted and in the structure of the interview itself.<sup>176</sup> The environment needs few, if any, distractions.

Victims of sexualized violence have experienced traumatic environments filled with mistrust and abuse, they need stability, trust, and consistency.<sup>177</sup> The posing and framing of the questions need to be distinctly an interview, and not an interrogation.<sup>178</sup> Victims should feel safe when entrusting their story to another. The victim needs to be seen and heard. The conversation needs to be a safe place for the victim, surrounded by people that understand the psychological effects trauma will have on the victim during their participation in the judicial system.

The trauma-informed approach requires recognizing symptoms of trauma and designing all interactions with victims of sexualized violence to effectively minimize the potential for re-

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<sup>172</sup> Drew Barnhart, *The Office of Civil Rights' Failing Grade: In the Absence of Adequate Title IX Training, Biased Hearing Panels and Title IX Coordinators Have Harmed Both Accusers and Accused's in Campus Sexual Assault Investigations*, 85 UMKC L. Rev. 981, (2017).

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Foot, *supra* note 5, at 1140.

<sup>176</sup> *Id.*

<sup>177</sup> Jill Laurie Goodman and Dorchen A. Leidholdt, *Lawyer's Manual On Human Trafficking: Pursuing Justice For Victims*, Supreme Court of the State of New York, Appellate Division, First Department New York State Judicial Committee on Women in the Courts, (2013), at 257.

<sup>178</sup> *Id.*

traumatization.<sup>179</sup> Without a trauma-informed approach, important cues may be missed and the victim may be revictimized.<sup>180</sup> Psychological, psychological, and emotional safety needs to be emphasized to address the unique experiences and needs of survivors.<sup>181</sup> Victims are already reliving their most traumatic experience, which is then coupled with the anxiety and visceral impact of being a victim.<sup>182</sup> Victims need to be treated as human beings, not as evidence.

A trauma-informed approach puts the realities of the victims traumatic experiences at the forefront of the interaction.<sup>183</sup> The interaction is adjusted and informed by that individual client's traumatic experience and response. The effects of trauma include physiological effects that can negatively affect the victim's "memory, cognition, ability to trust others, perception of (un)safety, and emotion regulation."<sup>184</sup> These effects can impact and influence how victims interact with others, especially when triggered and asked to put themselves back into that traumatic experience.<sup>185</sup> The trauma-informed approach focuses on victim-centered practices to minimize harm and to effectively communicate and interact with victims.<sup>186</sup>

In order to use the trauma-informed approach, the individual interacting with a victim would need to begin by understanding the physical, social, and emotional impact the traumatic experience had on the victim.<sup>187</sup> The following three elements are imperative when meeting the victim where they present: "(1) realizing the prevalence of trauma; (2) recognizing how trauma affects all individuals involved with the program, organization, or system, including its own

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<sup>179</sup> *Supra* note 21.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Supra* note 150.

<sup>183</sup> Foot, *supra* note 5, at 1130.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> Foot, *supra* note 5, at 1134.

workforce; and (3) responding by putting this knowledge into practice.”<sup>188</sup> The trauma-informed approach minimizes the risk of revictimization, incentivizes victims to come forward, and stops perpetrators from recommitting.<sup>189</sup>

## **PART SIX. NEED FOR TRAINING IN THE VICTIM-CENTERED APPROACH AND HOW TO MAKE IT HAPPEN**

The realities of the victims traumatic experiences need to be at the forefront when engaging with victims.<sup>190</sup> The trauma-informed approach incorporates the realization of the prevalence of trauma, recognizing how trauma impacts all individuals, and responding by putting this knowledge into practice.<sup>191</sup> This approach has the possibility of yielding better case results for law enforcement through producing more effective and productive interviews of victims and helps present a trauma-informed story in court.<sup>192</sup>

Interviewing a victim from a victim-centered approach needs to revolve around the understanding and acceptance of the survivor.<sup>193</sup> You can interview a victim from a victim-centered approach through several stages of interviews. The interview first centers around asking the victim if they are okay. In doing so, the victim will know that their personal wellbeing is being taken into account. It also allows the victim time to process. This might be the first time that the victim has stopped to think about how they are feeling. Then, the investigators may come back and let the victim tell their story, uninterrupted. At this second interview, the investigators may not be taking notes so that the victim can know that they have the attention and respect of the investigator. The victim is able to tell their story free from any interruptions. It can allow the

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<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> Foot, *supra* note 5, at 1130.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> Foot, *supra* note 5, at 1134

victim to feel heard by knowing that the investigators are actively listening. After this processing and recounting of events, the officers may come back later and interview the victim again.

However, this time, the investigators may start taking notes in order to get the evidence needed to corroborate the victim's story. By this time, the victim will be telling their story after they have had the necessary time to process.

The investigators should be trained, alert, and in tune with the body language of the victim, and equipped with a checklist for a trauma-informed and victim-centered approach to interacting with victims of sexualized violence.<sup>194</sup> This would enable these individuals to know what to look for and how to effectively communicate with the victim.<sup>195</sup> The investigator should know the signs that the victim is overwhelmed and have materials with them that support the victim.<sup>196</sup> The investigator always needs to be aware that changes in memory and inconsistencies may be indicative of a trauma response, and not indicative of falsehood.<sup>197</sup> Investigators need to manage their emotional responses and not operate off of assumptions.<sup>198</sup> There needs to be focus on the facts of the story and experience instead of the victim's emotional response or perception of events.<sup>199</sup>

In line with the implementation of a victim-centered approach, we should also treat rape victims the way we treat police officers when they shoot people. In practice, this means also giving rape victims the benefit of the doubt. Giving the victim the time to get their story together, to process the event. Police officers are given due process when they shoot people and yet rape

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<sup>194</sup> *Supra* note 21; *See also* Justice Resource Institute, Utilizing Trauma-Informed Approaches to Trafficking-related Work. [http://www.traumacenter.org/clients/projectreach/H-O%20Trauma-Informed%20Case%20Study\\_final.pdf](http://www.traumacenter.org/clients/projectreach/H-O%20Trauma-Informed%20Case%20Study_final.pdf).

<sup>195</sup> Foot, *supra* note 5, at 1136.

<sup>196</sup> *Supra* note 21.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

victims are not given due process when they are raped. Power is raced, classed, sexed, or gendered.<sup>200</sup> Power requires performance.<sup>201</sup> Both rape and police shootings of societally vulnerable victims are performances of power on vulnerable bodies.<sup>202</sup>

It is not just investigators who need to be trained, it is society at large.<sup>203</sup> Civic organizations, houses of worship, colleges and universities, and wherever people assemble, need mandatory sexualized violence training and training on how to implement the victim-centered approach.<sup>204</sup> Roughly one in five women will be sexually assaulted in college.<sup>205</sup> What other statistic gets to be that large and society does nothing about it? Society needs to be taught through the scope of a victim-centered approach and focus on hearing and advocating for victims.<sup>206</sup>

## **PART SEVEN. TRAUMA CENTERED JUDICIAL OPINIONS**

Brock Turner's case is infamous for his depiction as a Stanford scholar, the judge's lenient sentencing, and the intersectionality of race, gender, and class influence.<sup>207</sup> Brock Turner sexually assaulted and attempted to rape an incapacitated woman at a fraternity party at Stanford University.<sup>208</sup> The victim was continuously described as too drunk, while Brock Turner was described as an athlete and an academic.<sup>209</sup> Judge Aaron Persky was a Stanford alumni and the judge preceding over *People v. Turner*.<sup>210</sup> Judge Persky shared race, gender, and class influence

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<sup>200</sup> Cook, *supra* note 1, at 105.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> Theriault, *supra* note 48, at 3.

<sup>204</sup> *Id.*

<sup>205</sup> Statistics About Sexual Violence, *National Sexual Violence Resource Center*, (2015).

<sup>206</sup> Theriault, *supra* note 48, at 3.

<sup>207</sup> Liam Stack, *Light Sentence for Brock Turner in Stanford Rape Case Draws Outrage*, *The New York Times*, (2016).

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

with Brock Turner.<sup>211</sup> Both Judge Persky and Brock Turner were athletes at Stanford University.<sup>212</sup>

The victim's alcohol content was repeatedly questioned, while serious weight and attention was placed on how fast Brock Turner could swim, his swimming scholarship, and his bright future.<sup>213</sup> The judge said that he did "not want to ruin [Brock Turner's] future."<sup>214</sup> When sentencing Brock Turner, after the jury found him guilty of three felony counts of sexual assault, the judge said that a "prison sentence would have a severe impact on [Brock Turner]" and that he did not fear he was a "danger to others."<sup>215</sup> The victim was not at the forefront of the judge's mind, Brock Turner was.<sup>216</sup> Brock Turner was praised, pitied, and allotted leniency.<sup>217</sup>

The judge needed victim-centered training. Had the judge been trained in the victim-centered approach there would have been a different outcome and a trauma centered judicial opinion. If the victim-centered approach was applied, Brock Turner would not have been over valorized. The empathy would not have been directed at the perpetrator, but instead, the victim. The victim would not have been put on trial. The victim would not have had to justify, explain, or excuse the amount of alcohol she had drank that night. The victim would not have been blamed or shamed for drinking the night she was sexually assaulted. The victim would not have been blamed for what happened to her. The victim would have been given time to process the trauma. The victim would have been met where she was mentally, emotionally, and physically,

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<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*



by individuals who were trained and equipped with the tools to interact with a victim of sexualized violence.

The entire judiciary needs to be trained in the victim-centered approach. This kind of training needs to be mandated for judges. If the judges have this training, then when writing opinions about sexualized violence the victim will not continuously be pathologized. Victims would be incentivized to come forward. Perpetrators would cease to evade prosecution. Perpetrators would not be free to acquire power. Perpetrators would not be free to continue victimizing.

#### **PART EIGHT. EXPERT WITNESSES NEED TO BE INVOLVED**

Expert witnesses need to be involved in sexualized violence cases from the very beginning. Trauma disrupts the rational thought process of victims and experts are needed to explain what this means for victims and what this looks like in practice.<sup>218</sup> Experts can provide the necessary narrative and scope in which to assess evidence.<sup>219</sup> Experts are needed to help train and explain the impact of trauma on the functioning, responses, and triggers of victims.

Trauma disrupts the rational disposition of the brain and the ability of the brain to engage in rational thought processes for victims of sexualized violence. For investigations and adjudications involving a victim impacted by this cognitive disruption, an expert witness can reframe the intuited questions of why a victim does not fit the factfinders mental image of how a victim should act, what a victim should wear, and how a victim should present themselves.<sup>220</sup> Every individual interacting with a victim of sexualized violence needs to be skilled and

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<sup>218</sup> Cook, *supra* note 1, at 154.

<sup>219</sup> *Id.*

<sup>220</sup> Cook, *supra* note 1, at 155.

equipped with a specialized understanding as to how to handle the case and most effectively communicate with the victim.

A victims behavior may not cognitively make sense to a factfinder that cannot relate or comprehend what the victim has gone through and is continuing to go through.<sup>221</sup> Experts would be able to explain the situation in ways that may not be innate to a factfinder.<sup>222</sup> When victims are blamed and pathologized, the expert can shift that blame and pathology onto the perpetrator.<sup>223</sup> Instead of focusing on the clothes the victim was wearing, the expert can direct the factfinders attention onto the behavior and criminality of the perpetrator.<sup>224</sup> An expert can work to stop perpetrators from evading detection and prosecution.

An expert would be intimately familiar with the dispositions of a victim of sexualized violence in a way that others may not be able to intrinsically comprehend. In holistically looking at the victim and the trauma they have endured, the expert would be able to explain how the victim's experiences may dictate their responses and reactions to the trauma.<sup>225</sup> While inconsistencies, giggling, self-medication, anger, or no emotion at all may not be what a factfinder or investigator is expecting, an expert can explain the cognitive dissonance that has resulted from the trauma.<sup>226</sup>

Factfinders and society at large are both riddled with predispositions of who a victim is, how a victim acts, and how the victim should heal. An expert can be utilized within the criminal justice system to break the biases in place and replace them with the reality of the victim sitting

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<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

in front of the factfinder.<sup>227</sup> There is no universal victim. A factfinder operating off of the assumption that all victims fit a mold is unbelievably problematic to the function of the judicial system. When a victim is pathologized and not believed, the perpetrator evades prosecution and is free to recommit.<sup>228</sup> In order to see and understand the victim, factfinders and those interacting with the victim need to be trained and equipped with the proper knowledge to understand the complex dynamics of the victim.<sup>229</sup>

The victim's voice, story, and traumatic experience should be at the center of the criminal justice proceeding. The victim's case hinges on the credibility of the victim's testimony and degree of believability.<sup>230</sup> When victims are blamed, pathologized, and judged, their experience is dismissed and their perpetrator escapes prosecution.

Victims of sexualized violence have experienced a perpetrator forcing domination over their body and being. When a victim has been sexually violated, they are susceptible to a continued pattern of domination and triggers.<sup>231</sup> Victims will be vulnerable to individuals a part of the judicial process and the moral scrutiny to which they are subjected.<sup>232</sup> If experts are not there to bring attention to the needs, dispositions, and triggers of the victim, then the judicial process will revictimize and pathologize the victim repeatedly.<sup>233</sup>

## **PART NINE. CONTRASTING THE INVESTIGATORS IN NETFLIX'S**

### **UNBELIEVABLE**

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<sup>227</sup> *Id.*

<sup>228</sup> Cook, *supra* note 1, at 103.

<sup>229</sup> Cook, *supra* note 1, at 155.

<sup>230</sup> Cook, *supra* note 1, at 158.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

The Netflix series *Unbelievable*, sheds the ever-present light on the revictimization that victims of sexualized violence experience within the judicial system. The victim is asked to retell and relive her trauma over and over again by the people meant to help her.<sup>234</sup> Three out of four rapes go unreported, influenced by the victims fear that the police will not help them.<sup>235</sup> The victim's experience in *Unbelievable* validates the skepticism and interrogation victims fear they will be met with.<sup>236</sup> The officers have not taken into account the psychic toll of reliving one's trauma repeatedly.<sup>237</sup>

In *Unbelievable*, Marie is forced to retell her traumatic experience several times to several parties. She first relives her story to the police.<sup>238</sup> She then relives her story to the detectives.<sup>239</sup> She then has to relive her story to the hospital staff, where an invasive procedure needs to be performed both emotionally and physically.<sup>240</sup> She is continuously retelling her story and forced to relive her trauma. She is treated as evidence and not as a human being. A human being that has just endured an exceptionally traumatic event. A traumatic event she has not yet had the time or space to process and feel.

It is imperative investigators interview, not interrogate, victims of sexualized violence. In contrasting the two sets of investigators who interacted with Marie, we can see the difference in how victims are treated today versus through the application of the victim-centered approach.<sup>241</sup>

There is no indication that the first set of investigators assigned to Marie's case ever had any

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<sup>234</sup> Mahita Gajanan, *The True Story Behind The Netflix Series Unbelievable*, TIME, (2019).

<sup>235</sup> *The Criminal Justice System: Statistics*, RAINN, (2020).

<sup>236</sup> Gajanan, *supra* note 234.

<sup>237</sup> Cook, *supra* note 1, at 164; (citing Jennifer L. Wright, *Therapeutic Jurisprudence in an Interprofessional Practice at the University of St. Thomas Interprofessional Center for Counseling and Legal Services*, 17 St. Thomas L. Rev. 509, 509 n. 11 (2005) ("The risk of re-traumatization of clients who have to repeat and relive their experiences of abuse, first in the lawyer's office and then in court, is serious.")).

<sup>238</sup> Gajanan, *supra* note 234.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

training on how to interview rape victims. The male investigators were blatantly acting as if they did not believe Marie's story.<sup>242</sup> They pathologized the victim.<sup>243</sup> They narrowed in on inconsistencies within her story.<sup>244</sup> They coerced her and broke her down to the extent that she believed it was easier to say she had lied about being raped.<sup>245</sup>

The investigators interrogation of the victim depicted a scene where the victim was forced to feel like they had to not only retell and relive their traumatic experience, but they also had to convince the investigators that the experience actually happened.<sup>246</sup> Their lack of sufficiency in their investigation and interview techniques revictimized the victim and allowed the perpetrator to continue victimizing other people.<sup>247</sup> The failure of the initial investigators meant that the serial rapist went on to rape at least five other women, while the original rape victim was victimized continuously in the investigation and the adjudication process that criminalized her.

When we pathologize victims, society will be damaged. Had the initial investigators believed Marie from the outset, there would not have been five other victims.<sup>248</sup> Instead of pathologizing the rapist, they pathologized the victim. The dramatization in *Unbelievable* made it clear that by pathologizing and criminalizing the victim, the person that should have been listened to, the perpetrator was allowed to go free.

The second set of investigators on Marie's case, the female investigators, worked to humanize the victim. They had a victim-centered approach. They did not ask questions at the

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<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

outset of meeting the victim. They did not begin by asking the victim to retell and relive her most traumatic experience. They did not treat her as evidence. They instead asked her if she was okay. Her humanity was centered. The investigators were concerned with her as a human being first. They developed a relationship with the victim to build trust.<sup>249</sup> They did not force her to recant her report, they got the necessary information, got to work, built a case, and found corroborating evidence.<sup>250</sup>

## CONCLUSION

There needs to be mandated victim-centered approach training for investigators, prosecutors, defense attorneys, and judges. There needs to be more victim-centered judicial opinions. The United States needs more women in law school. Women in the law can, and are, changing the law of rape. Women, and people who have been victims of sexualized violence, need to step into positions of power within the law to effect change. Blaming the victim normalizes exploitation and renders the pathology of the perpetrator invisible. The blame needs to shift from the victim towards the perpetrator. Expert witnesses need to be utilized from the onset of the case. Expert witnesses have the ability to comprehensively provide the proper context in which to assess the victim's story, disposition, and credibility. The perpetrators, not the victims, need to be put on trial.

As a society, we need to do better. These are just some of the ways that we can be better. By incorporating and training every individual who interacts with a victim of sexualized violence in the victim-centered approach, victims will be incentivized to come forward. Victims of sexualized violence are victimized by their perpetrator and revictimized by society and the criminal justice system. Victims experience of seeking justice is met with reliving their trauma

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<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

and opening themselves up for further victimization. Without interventions like implementing the victim-centered approach, the victim continues to be traumatized and victimized.

A victim-centered approach would provide victims with what they deserve. To be heard, validated, and to heal. The use of an expert would help others understand and believe the victim and their experience.