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Know Your Victim: A Key to Prosecuting Human Trafficking Offenses

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Submitted in partial fulfillment of the requirements of the

King Scholar Program

Michigan State University College of Law

under the direction of

Professor Mark Totten

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I. INTRODUCTION

The Prosecutor and the Victim of Sex Trafficking[1]

At fourteen years of age, Krystal was romanced, lured, and exploited by an older man who claimed to be her boyfriend. He was actually a pimp who went by the name of Pretty Boy. Moving her to New York City, he told her he needed her to pull her weight in the relationship- by selling her body for money. Four years later, Krystal sits on the witness stand after the Assistant District Attorney (prosecutor) and police convinced her to testify against Pretty Boy.

The defendant glares at her as she sits nervously in front of the courtroom and fear triggers all of her defense mechanisms. The prosecutor did not prepare Krystal for his direct examination; as a result, the questions confuse her and he asks each question multiple times because he is unsatisfied with her answers. After causing her to contradict herself by using compound, complicated questions, he moves into evidence a photograph of Krystal after an arrest for prostitution. She is wearing a skimpy bikini top, short shorts, and high heels. When the picture is passed through the jury box, the jurors alternately leer or glare in disdain at this "bad girl." After Krystal's obstinate mannerisms and hostile questions from the prosecutor, this photo has been the last step to sealing the decision of the jury. On cross-examination, her "whole body visibly crumples on the stand… her chin pressed to her chest, eyes closed, willing herself to be somewhere else, anywhere else." Krystal angrily tells her advocate after trial that she "hates the lawyer, the ADA, and the judge." Two days later, the verdict is in: not guilty. Krystal is not surprised. She knew they would not believe her anyway.

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[1] RACHEL LLOYD, GIRLS LIKE US 127-31 (2011). The story that follows has been paraphrased from the account witnessed firsthand by Lloyd during the course of her work as an advocate. The child's name has been changed to protect her identity.

Rachel Lloyd, survivor of sex trafficking and advocate for exploited girls in New York, explains why the scene in the courtroom played out as it did:

> Domestically trafficked girls, who have learned that comfort is rare, that tears get them only more beatings, and that staying numb is the best way to survive, fare badly in the courtroom process. There is little understanding from justice officials and juries of differences in cultural responses and the varying effects of trauma. Girls are seen as either having a bad attitude or not being upset enough. If they are not *good* victims, in other words, they are not *real* victims. And this is true even when they are being framed as victims or witnesses.[2]

This paper seeks to answer the question: *Could prosecutors' greater awareness of the effects of trauma on human trafficking victims lead to more effective prosecution and increased convictions for human trafficking in the United States?* In short, the answer is yes. Incorporating victim-centered, trauma-informed practices when prosecuting human trafficking offenses will lead to two positive solutions to the twin problems that currently plague human trafficking criminal cases: (1) prevention of further harm caused by secondary traumatization, and (2) improvement in human trafficking case outcomes through improved cooperation from victims. The question will be answered and the solutions presented by using scholarly research in the fields of trauma, victim rights, and human trafficking to argue that greater prosecutorial awareness and response to victims' needs is one way to improve outcomes in human trafficking prosecutions and fulfill the federal mandate to protect victims of trafficking.[3] Understanding the

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[2] *Id.* at 131. Lloyd asks the same questions that prompted the inquiries contained herein, questions that prosecutors must hear. "Why didn't the [prosecutor] prepare her better?" She might have understood the questions and could have been empowered to respond. "Why didn't they call an expert witness to help the jury understand how trauma affects a victim's ability to testify in open court?" The jury was not equipped to see coercion, to understand how a young girl is manipulated into providing sexual services, or how she was brainwashed and unable to choose. "Why can't she get witness protection?" Krystal was terrified of her former pimp and his family packing the courtroom. In addition to witness protection, could the prosecutor not have moved for closed circuit testimony? Could he have provided any type of protective services to ensure she felt safe and was, in fact, safe before, during, and after testifying against this dangerous defendant? *Id.*

[3] *See* Committee on Foreign Affairs, House of Representatives, *Out of the Shadows: The Global Fight Against Human Trafficking*, H.R. REP. NO. 111-131 at 6 (2010) (Three Presidential administrations, one Republican and

effects of human trafficking is critical for lawyers, judges, and law enforcement. Victim advocates, victim service providers, and community members seeking justice for victims of trafficking may also benefit from the understanding and recommendations of how to improve practices with victims of trafficking.

Very few authors have written on how the traumatic effects of human trafficking could impact the practices of prosecutors.[4] A small body social science research documents the effects of trauma on trafficking victims,[5] while a large body of research describes the scientific understanding of complex trauma.[6] Likewise, many articles propose changes in prosecutorial practices in cases involving vulnerable victims, such as children and victims of sexual assault.[7] One practitioner's guide recommends strategies for improving the effectiveness of human trafficking prosecutions, including two strategies focused on trauma. Therefore, the academic

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two Democrats, have vigorously sought to protect and rescue victims from being turned into commodities for sale. Three administrations have sought to punish traffickers with rigorous prosecutions and jail sentences, both here and promoting that abroad, commensurate with these heinous crimes).

[4] Sharon Doering, *Human Trafficking Recovery: Conceptual and Dimensional Considerations in a Stage Model*, PROQUEST UMI, No. 3517325 at 6 (Dissertation, University of Cincinnati) (2012) [hereinafter Doering].

[5] *See general id.*; Zimmerman, M. Hossain & C. Watts, *Human Trafficking and Health: A Conceptual Model to Inform Policy, Intervention and Research*, 73(2) SOCIAL SCIENCE & MEDICINE 327 (2011)) [hereinafter Zimmerman 2011]; *see also* Hussein Sadruddin, Natalia Walter & Jose Hidalgo, *Human Trafficking in the United States: Expanding Victim Protection Beyond the Prosecution Witness*, 16 STAN. L. & POL'Y REV. 379, 383 (2005) [hereinafter Sadruddin et al.].

[6] *See, e.g.*, JUDITH L. HERMAN, TRAUMA AND RECOVERY 61 (1992) [hereinafter Herman 1992]; Judith L. Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16.2 J. TRAUMATIC STRESS 159, 159 (2003) [hereinafter Herman 2003]; BRUCE D. PERRY & MAIA SZALAVITZ, THE BOY WHO WAS RAISED AS A DOG AND OTHER STORIES FROM A CHILD PSYCHIATRIST'S NOTEBOOK: WHAT TRAUMATIZED CHILDREN CAN TEACH US ABOUT LOSS, LOVE, AND HEALING 5 (2006) [hereinafter Perry]; Uli Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15.4 SOCIAL JUSTICE R. 313, 314 (Dec. 2002).

[7] Yvonne Rafferty, *The Impact of Trafficking on Children: Psychological and Social Policy Perspectives*, 2.1 CHILD DEVELOPMENT PERSPECTIVES 13, 15 (2008) [hereinafter Rafferty]; Tanya A. Cooper, *Sacrificing the Child to Convict the Defendant: Secondary Traumatization of Child Witnesses by Prosecutors, Their Inherent Conflict of Interest, and the Need for Child Witness Counsel*, 9:239 CARDOZO PUB. L., POL'Y & ETHICS J. 240, 264 (2011) [hereinafter Cooper]. On sexual assault victims specifically, *see* Malini Laxminaraya, *Procedural Justice and Psychological Effects of Criminal Proceedings: The Moderating Effect of Offense Type*, 25 SOC. J. RESEARCH 390 (2012); MELISSA FARLEY, (Ed.) PROSTITUTION, TRAFFICKING AND TRAUMATIC STRESS (2003).

objective of the following summary is to begin discussion among legal professionals about how the effects of trauma could and should impact their practices.

Part I will provide the reader with a brief overview of human trafficking, focusing on the characteristics of the victims, the exploitation, and the legal framework. Part II will summarize the research on trauma and the symptoms of Complex Traumatic Stress Disorder (CTSD) as they impact crimes victims, specifically, victims of human trafficking. It will then detail the impact of CTSD on victims' capacities to cooperate fully with the criminal justice system during the course of prosecution. Part III will explain the related approaches to how the criminal justice system could change to better protect the needs of trafficking victims, given congressional intent to protect these vulnerable individuals who are escaping trafficking. Finally, Part IV will recommend steps to help prosecutors prevent re-victimization and improve the success of their cases against traffickers.

I. EXISTING PROBLEMS

Understanding the trafficking victim is key to prosecuting human trafficking offenses because such an understanding could remedy two existing problems prosecutors face. These two problems, and their corresponding solutions, are interrelated.

A. Problem One: Current prosecutorial practices may harm victims of human trafficking

First, prosecutors in the criminal justice system often cause secondary victimization[8] of exploited victims.[9] In general, the distinguishing factor that determines how any person, such as

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[8] Alternately referred to as retraumatization, "secondary victimization" means "negative social or societal reaction in consequence of the primary victimization and is experienced as a further violation of legitimate rights or entitlements by the victim." Orth, *supra* note 6.. This phenomenon and its impact of trafficking victims will be discussed in more detail in Part II.

[9] Herman 2003, *supra* note 6; *see also* Doering, *supra* note 4, at 154-55 (services should not retraumatize or re-victimize survivors, and should not be dependent upon cooperation with criminal justice systems).

a crime victim, survives trauma is whether the people around him or her provide support and encouragement.[10] For example, prosecutors can assist in helping victims recover by providing support and encouragement to victims. The effect of prosecutorial practices on child victims, for instance, has been documented and, often found to be harmful to the victims.[11] With all crime victims, prosecutors' practices vary by office and by individual, often depending on "who the victim is."[12] When the victim is considered unsympathetic, for example because of participation in prostitution or because of unlawful immigration status, the harmful practices of law enforcement and prosecutors by judging, humiliating, scorning, or confusing the victim's story actually can exacerbate the trauma suffered by victims, effectively re-traumatizing them.[13] As illustrated in the story of Krystal, the prosecutor had clearly labeled her as a "bad girl," confused her story, and relied only on the Krystal for evidence in support of his case. This led to public humiliation and confusing tactics that caused her to feel societally rejected. In addition, the hostility and fear she experienced while testifying in court against her former pimp led to psychological and emotional defeat, re-victimizing her by placing blame on her for the way she was exploited. In contrast, by using trauma-informed practices, prosecutors could prevent this type of secondary victimization of trafficking victims like Krystal.

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[10] *See* Perry, *supra* note 6, at 5 (2006); *see also* Herman 1992, *supra* note 5, at 61 ("Because traumatic life events invariably cause damage to relationships, people in a survivor's social world have the power to influence the eventual outcome of the trauma. A supportive response from other people may mitigate the impact of the event, while a hostile or negative response may compound the damage and aggravate the traumatic syndrome").

[11] Tanya A. Cooper, *Sacrificing the Child to Convict the Defendant: Secondary Traumatization of Child Witnesses by Prosecutors, Their Inherent Conflict of Interest, and the Need for Child Witness Counsel*, 9:239 CARDOZO PUB. L., POL'Y & ETHICS J. 240, 264 (2011).

[12] *Id.* at 273 (citing ANGELA DAVIS, ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR 63 (2007) (explaining that class, race, victim "worthiness," and media coverage all determine how prosecutors treat specific victims).

[13] Jonathan Todres, *Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation*, 43 VANDERBILT J. TRANSNATIONAL L. 1, 34-35 (2010).

B. Problem Two: Current prosecutorial practices may harm their cases by causing the victims not to participate

The second problem is, in short, the negative effect on trafficking cases when prosecutors do not fully understand the victims of these offenses. Due to the complexity of human trafficking prosecutions, "without cooperative victims, it is virtually impossible to make a trafficking case."[14] Witnesses can be considered uncooperative when they fail to respond to questions, contradict themselves, or cast doubt on their own account of victimization.[15] According to a recent national study of state and local human trafficking prosecutions, prosecutors often decide not to pursue cases because they "believe victims lack credibility"[16] and, furthermore, if they do choose to prosecute, they "have difficulty getting victims to cooperate because of fear, intimidation, or trauma."[17] In other words, victims of trafficking and other forms of exploitation are considered non-compliant and fail to cooperate in legal proceedings.[18] In the New York criminal case against Pretty Boy, the jury likely returned a verdict of not guilty in part because of the prosecutor's failure to adequately prepare the victim and the use of confusing questions and degrading evidence. Trauma-informed prosecutorial

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[14] KEVIN BALES & RON SOODALTER, THE SLAVE NEXT DOOR: HUMAN TRAFFICKING IN AMERICAN TODAY 246 (2009) (citing Albert Moskowitz, former section chief, Criminal Section of the Civil Rights Division, U.S. Department of Justice, interview, Dec. 12, 2007).

[15] For example, in the context of child victims, often "prosecutors silence child witnesses with incoherent questions or skeptical and indifferent attitudes." Cooper, *supra* note 8, at 264 (referring back to case examples of prosecutors dismissing cases because the child witnesses' stories were inconsistent in preparation or on the stand).

[16] Urban Institute, *Human Trafficking Cases Slipping Through the Cracks in Federal and State Legal Systems* 2 (Abstract) (June 20, 2012), *available at* http://www.urban.org/publications/901504.html (last visited Mar. 16, 2013) (specifying that prosecutors find that victims lack credibility "due to many of the characteristics that made them vulnerable to being trafficked (such as being a runaway or undocumented immigrant"). For a full copy of the report, contact Matthew Johnson at (202) 261-5723 or mjohnson@urban.org.

[17] *Id.* (out of ten reasons why prosecutors stated they had difficulty pursuing human trafficking cases).

[18] This assertion is based partly on my own experience assisting in pre-trial preparation for a sex trafficking case where, due to the victim's unreliable attendance, shutting down during questioning, and continual desire to run, she was termed uncooperative and non-compliant. *See also* Jennifer Gentile Long, *Enhancing Prosecutions of Human Trafficking and Related Violence Against Sexually Exploited Women*, AEQUITAS 6 STRATEGIES: THE PROSECUTORS' NEWSLETTER ON VIOLENCE AGAINST WOMEN 1, 6 (May 2012), *available at* http://www.aequitasresource.org/Enhancing-Prosecutions-of-Human-Trafficking.pdf ("victims may not participate in the criminal justice process… Even victims who are present for trial, however, may still pose challenges for the prosecution by recanting or testifying on the behalf of the defendant").

practices could increase victim participation and, consequently, decrease the likelihood of losing cases against traffickers like Pretty Boy.

C. Both problems are related to the traumatic effects of trafficking on victims

Victim cooperation depends on ensuring victims are not re-traumatized by the criminal justice process.[19] In order to protect victims from secondary victimization and empower them to participate in the criminal justice process against their traffickers, prosecutors must understand the psychological effects of trauma.[20] Because of prolonged captivity, threats, and lack of control, trafficked individuals often have serious psychological symptoms because of the trauma they suffered.[21] The results of implementing trauma-informed practices by prosecutors are, therefore, interrelated; one cannot be achieved without the other.

II. THE NATURE OF HUMAN TRAFFICKING IN THE UNITED STATES

A. Characteristics of Human Trafficking: Captivity and Coercion

Krystal was a victim of human trafficking for sexual exploitation. Although not all victims are coerced into sexual exploitation by an older man masquerading as a lover, all victims do share one attribute in common: lack of control.[22] Trafficking is characterized by the domination of one person for the purpose of exploitation for the financial gain of another person.[23] That sort of dominion over another person must be recognized for what it truly is: modern-day slavery.[24] It is nearly impossible to know the full extent of slavery today, but the

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[19] Long, *supra* note 14, at 7.
[20] *Id.* at 5 (recommendation number five: "Understand the health consequences of human trafficking").
[21] Doering, *supra* note 4, at 101-07 (*citing* Zimmerman 2011, *supra* note 5*; see also* Rafferty, *supra* note 7 (trafficking of children leads to "attachment difficulties, mistrust of adults, antisocial behaviors, and difficulties relating to others"). These symptoms and their effects on victim behavior will be discussed fully below at Part II(B).
[22] Bales & Soodalter, *supra* note 10, at 13 (explaining the first of three essential criteria defining slavery: "complete control of one person by another, through the use of violence- both physical and psychological).
[23] *Id.*
[24] President Barack Obama, Speech presented at the Clinton Global Initiative (Sept. 25, 2012), website (last visited Mar. 16, 2013):

United State Department of Justice estimates there are at least 27 million slaves globally.[25] Victims are exploited through both forced labor and sexual services.[26] Victims can be any age and either gender. Victims in the United States come from all races, nationalities, and ethnicities,[27] and are both foreign and domestic-born.[28] Due to the especially great trauma caused by sexual exploitation suffered by females, this follow material will focus primarily on female sex trafficking victims.[29]

B. Federal Human Trafficking Law

In the United States, the Trafficking Victims Protection Act (TVPA) was passed on October 28, 2000, and established a comprehensive approach to combatting human trafficking domestically and internationally by preventing human trafficking, prosecuting perpetrators, and protecting victims through partnership and collaboration.[30] This is often referred to as the Four P approach. The federal law accomplished three main objectives: defining human trafficking as exploitation of people for profit; criminalizing offenses of human trafficking; and designing a tool to evaluate the scope and compliance with standards for ending human trafficking globally.

> It ought to concern every person, because it's a debasement of our common humanity. It ought to concern every community, because it tears at the social fabric. It ought to concern every business, because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organized crime. I'm talking about the injustice, the outrage of human trafficking, which must be called by its true name — modern slavery. Our fight against human trafficking is one of the great human causes of our time, and the United States will continue to lead it.

[25] U.S. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 7 (June 2012), *available at* http://www.state.gov/documents/organization/192587.pdf [hereinafter TIP Report 2012].
[26] *Id.* at 14.
[27] *Id.*
[28] *Id.* at 360; *see also* Bales & Soodalter, *supra* note 10, at 14-15.
[29] Although most of the examples presented in this Article are child and adolescent victims born in the United States, the effects of the traumatic incidents occurring during trafficking are not limited by age.
[30] Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 (2000) (stating that the purposes of the act are to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.") [hereinafter TVPA].

The TVPA acknowledged that traffickers often use brutal tactics to compel their victims into servitude, including both physical and psychological torture.[31] For that reason, Congress defined "severe form of trafficking in persons" in the TVPA as:

> Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform the act is under 18 years of age, or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.[32]

The three key words that distinguish human trafficking constitute the methods: force, fraud, or coercion. The TVPA also states the congressional findings on particular vulnerabilities that lead to human trafficking, explaining that traffickers use slavery-like conditions to perpetrate their crime.[33] Secondly, based on this definition of human trafficking, the TVPA criminalizes several forms of trafficking in persons in the United States.[34] These include peonage,[35] involuntary servitude.[36] forced labor,[37] and sex trafficking,[38] as well as confiscation or destruction of documents, such as passports, in connection with trafficking.[39] The U.S. Department of Justice[40] secured 151 convictions for human trafficking in fiscal year 2011, with roughly 81 out of 151, prosecuted under the statute prohibiting sex trafficking of minors and the other 70 convictions

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[31]Sadruddin et al. *supra* note 5..
[32] 22 U.S.C. § 7102(8(A)-(B).
[33] *Id*. § 7101(b).
[34] *Id.* at § 7105 *et seq*.
[35] 18 U.S.C. § 1590.
[36] 18 U.S.C. § 1592.
[37] 18 U.S.C. § 1589.
[38] 18 U.S.C. § 1591.
[39] 18 U.S.C. § 1586.
[40] Adult human trafficking cases are prosecuted by the Human Trafficking Prosecution Unit of the Criminal Section of the Civil Rights Division, whereas child sex trafficking cases are prosecuted by the Child Exploitation and Obscenity Section of Criminal Division. Both offices work in collaboration with the United States Attorney's Office, and often FBI and Homeland Security Investigations field agents, in the corresponding federal district.

for trafficking of adults through use of force, fraud, or coercion.[41]

In addition to defining and criminalizing human trafficking, the TVPA mandated publication of an annual Trafficking in Persons Report (TIP Report) to provide global monitoring of the implementation of the prevention, prosecution, and protection model.[42] The Report assigns rankings from Tier 1 to Tier 3 to each country based on their compliance.[43] In 2010, the United States was ranked in the TIP Report for the first time, and has ranked Tier 1 for the last three years.[44] The Report recommends that the United States improve in the area of victim protection, specifically legal services, long-term care, and comprehensive victim services for both foreign and domestic victims.[45] Domestic victims, in particular, are in need of protective services because only eight states have passed laws preventing children like Krystal from being charged with prostitution and other commercial sex offenses.[46] The TIP Report 2012 emphasized the importance of victim protection and the impact of trauma on victims of human trafficking, and provided helpful fact sheets for practitioners and governments to use in improving their practices.[47]

III. THE IMPACT OF TRAUMA ON HUMAN TRAFFICKING VICTIMS

Little research exists on the actual effects of trauma suffered by victims of human trafficking, although many scholars and advocates agree that all trafficking victims are "at risk"

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[41] 35 convictions for predominantly sex trafficking and 35 for labor trafficking, although many had overlapping forms of trafficking. *See* TIP Report 2012, *supra* note 22, at 362.
[42] Trafficking Victims Protection Reauthorization Act of 2005 22 U.S.C. § 2151(n); Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, §104(a)-(b) (authorizing annual reports and rankings based on human trafficking within all countries receiving foreign aid from the United States).
[43] *Id.*; *see also* TIP Report 2012, *supra* note 22, at 39-41.
[44] *Id.* at 360.
[45] TIP Report 2012, *supra* note 22, at 360.
[46] *Id.* at 364.
[47] *See id.* at 21 (Fact Sheet: *Victim's Empowerment and Access,* http://www.state.gov/tip/j/194926.pdf); *id.* at 12 (Fact Sheet: *Addressing the Psychological Wounds of Trafficking*, http://www.state.gov/j/tip/rls/tiprpt/2012/192359.htm).

for suffering the effects of trauma.[48] However, extensive research in the social science and criminal justice fields of Victimology related to the traumatic psychological effects suffered by victims of violent crimes, including sexual assault and domestic violence, has been applied to victims of trafficking.[49]

The themes of trauma and recovery are rightfully interwoven: if a person's trauma symptoms decrease and psychological functionality improves, he or she is declared to be experiencing recovery. This process varies greatly, just as all victims' specific experiences and symptoms vary;[50] however, the basic elements of trauma and the hope for recovery are constant among victims. The following two subsections review the current research on traumatic effects on the victims of non-trafficking crimes and, building on some exploratory research in the area of sex trafficking and prostitution. Although there are a multitude of traumatic consequences suffered by most trafficking victims, and even basic knowledge of this myriad effects could give insight into victim behavior, the primary explanation of the impacts of trauma on trafficking victims will focus on two of the most serious effects of Complex Traumatic Stress Disorder: Stockholm Syndrome and Distrust of Authorities.

A. Trauma and Recovery of Crime Victims

Before describing the trauma and recovery of victims, a caveat on the broader reaction to trauma in society will help the Reader to be aware of his or her own responses to the material that follows.

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[48] Doering, *supra* note 4, at 6; *see also* Zimmerman 2011, *supra* note 5; Sadruddin et al, *supra* note 5, at 405-06 (human trafficking victims are at extremely high risk for trauma).

[49] *See generally* Herman 2003, *supra* note 6; Herman 1992, *supra* note 6; Orth, *supra* note 6; Edna Erez, Michael Kilcling & Jo-Anne Wemmers, *Therapeutic Jurisprudence and Victim Participation in Justice: An Introduction*, *in* THERAPEUTIC JURISPRUDENCE AND VICTIM PARTICIPATION IN JUSTICE 4-7 (eds. Edna Erez, Michael Kilcling & Jo-Anne Wemmers, 2011).

[50] *See* Doering, *supra* note 4, at 107 (research emphasizing the "complexity of trauma and… need for individualized approaches").

The societal impact of major traumas both mirrors and aggravates the individual response to traumatic events, as explained below. In a similar way that victims often disconnect from the event by subconsciously burying their emotional response, society often disconnects from the event by alternately pretending it never happened, blaming the victims, or letting bygones be bygones.[51] At the outset of this discussion on trauma, the audience is encouraged to be alert to these responses, for this type of "forgetting" contradicts the best interests of the healing of the victim. Rather, society, and particularly those professionals in direct contact with the victims, must support victims in integrating the traumatic reality into his or her life.[52] Recovery from trauma, which enables full participation in society, "requires a social context that affirms and protects the victim and witness in a common alliance."[53]

Trauma is caused when an event or series of events stresses and overwhelms the brain, inspiring helplessness and terror in the individual.[54] The typical human response to all stress is to move into survival mode, responding subconsciously with "flight, fight, or freeze."[55] The human brain often responds by freezing when a set of stimuli catches an individual off guard, causes him or here to unexpectedly be trapped, or exhausts him or her to the point that survival seems questionable.[56] These stimuli lead to helplessness in response, which then traumatizes the brain because of the failure to escape or prevent the situation from occurring.

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[51] Herman 1992, *supra* note 6, at 8 ("After every atrocity one can expect to hear the same predictable apologies: it never happened; the victim lies; the victim brought it upon herself; and in any case it is time to forget the past and move on").
[52] *Id.*
[53] *Id.* at 9.
[54] Herman 1992, *supra* note 6, at 34.
[55] Sadruddin et al., *supra* note 5, at 399 (*citing* JAAK PANKSEPP, AFFECTIVE NEUROSCIENCE: THE FOUNDATIONS OF HUMAN AND ANIMAL EMOTIONS 206 (1998); H. Selye, *Forty Years of Stress Research: Principal Remaining Problems and Misconceptions,* 115 CAN. MED. ASS'N. J. 53 (1976)).
[56] *Id.*

1. Post-Traumatic Stress Disorder (PTSD)

When a person experiences trauma, it is common to suffer from Post-Traumatic Stress Disorder (PTSD) because of the brain's response to the traumatic stimuli; three main symptoms result: hyperarousal, intrusion, and constriction (dissociation).[57] The three symptoms of PTSD often overlap and manifest uniquely based on individual responses to stress.[58] It is important to note that, while much study of trauma focuses on children, adults also suffer trauma when they encounter terrifying stimuli that leads to a feeling of helplessness.[59]

Dr. Bruce Perry, founder of The ChildTrauma Academy, created the following chart to explain the arousal (combining both hyperarousal and intrusion symptoms) and dissociative continuums of individual responses to stress for victims of trauma.

Figure 1: Effects of Trauma on Victims along the Arousal and Dissociative Continuums[60]

Sense of time	Extended Future	Days Hours	Hours Minutes	Minutes Seconds	No Sense of Time
Arousal Continuum	REST	VIGILANCE	RESISTANCE Crying	DEFIANCE Tantrums	AGGRESSION
Dissociative Continuum	REST	AVOIDANCE	COMPLIANCE Robotic	DISSOCIATION Fetal Rocking	FAINTING
Regulating Brain Region	NEOCORTEX Cortex	CORTEX Limbic	LIMBIC Midbrain	MIDBRAIN Brainstem	BRAINSTEM Autonomic
Cognitive Style	ABSTRACT	CONCRETE	EMOTIONAL	REACTIVE	REFLEXIVE
Internal Style	CALM	ALERT	ALARM	FEAR	TERROR

[57] Sadruddin et al., *supra* note 5, at 400-03; *see also* Herman 1992, *supra* note 6, at 35.
[58] Perry, *supra* note 7, at 249 (notes following Figure 3).
[59] Herman 1992, *supra* note 6, at 38 ("This highly visual and enactive form of memory, appropriate to young children, seems to be mobilized in adults as well in circumstances of overwhelming terror").
[60] *Id.* at 249 (Figure 3: The Arousal Continuum, State-Dependent Learning and Response to Treat) (adapted from: Bruce D. Perry, *Fear and Learning: Trauma Related Factors in Education*, 110 NEW DIRECTIONS FOR ADULT AND CONTINUING EDUCATION 21 (Summer 2006)).

Based on this description of the behaviors of trauma victims, the behavior and cognitive ability of trauma victims varies greatly dependent upon what they are in on the arousal or dissociative continuums. In other words, victims of PTSD will likely manifest a broad array of symptoms at different times, depending upon whether they are sensing a threat that triggers a stress response in their brain.

2. Complex Post-Traumatic Stress Disorder (CTSD)

A distinct syndrome results when an individual suffers not one instance of traumatic stress, but multiple instances over a prolonged period of time. Complex Post-Traumatic Stress Disorder (CTSD), defined by *prolonged and repeated exposure to trauma*, results in the case of captivity or relational violence.[61] The seven categories that symptoms fit into are: (1) regulation of affect and impulses, (2) attention or consciousness, (3) self perception, (4) perception of the perpetrator, (5) relations with others, (6) somatization, and (7) systems of meaning.[62]

Two specific effects common to victims of human trafficking.[63] The first effect fits within Herman's fourth category- perception of the perpetrator. This effect is called traumatic attachment, a form of bonding also known as Stockholm Syndrome, wherein the victim identifies with and even defends the perpetrator in order to survive the violent or unpredictable actions of

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[61] Herman 1992, *supra* note 6, at 118-22 (emphasis in original). "Prolonged, repeated trauma… occurs only in circumstances of captivity. When the victim is free to escape, she will not be abused a second time… the barriers to escape are generally invisible. They are nonetheless extremely powerful." *Id.* at 74.

[62] Herman 1992, *supra* note 6, at 122; *see also* D. Pelcovitz, B. van der Kolk, S. Roth, F. Mandel, S. Kaplan & P. Resick, *Development of a Criteria Set and a Structured Interview for Disorders of Extreme Stress (SIDES)*, 10.1 J. TRAUMATIC STRESS 3 (1997).

[63] This is not to suggest that the other effects do not occur for victims in captivity, because they do. Several studies cover the scope and range of effects of complex trauma caused by prolonged captivity. *See* D. Finkelhor & K.A. Kendall-Tackett, *A Developmental Perspective on the Childhood Impact of Crime, Abuse, and Violent Victimization*, *in* 8 SYMPOSIUM ON DEVELOPMENTAL PSYCHOPATHOLOGY AND DEVELOPMENTAL PERSPECTIVES ON TRAUMA 1 (eds. D. Cicchetti & S. Toth, 1997); J.L. Herman, *Complex PTSD; A Syndrome in Survivors of Prolonged and Repeated Trauma*, 5.3 J. TRAUMATIC STRESS 377 (1992); Sadruddin et al., *supra* note 5, at 402-04.

the perpetrator.[64] Stockholm Syndrome is challenging to overcome; one judge observed that once a victim has suffered Stockholm Syndrome, "it becomes virtually impossible for services providers to break through, gain their trust, and obtain their assistance in bringing their traffickers to justice."[65]

The second effect is in category five- relations with others. This effect, particularly common to victims of crime, manifests as distrust of authorities and others who have failed to intervene on the victim's behalf.[66] The repeated hostility or incomprehension of authorities to whom victims reach out for help can fuel distrust and fear in victims.[67] The next subsection will illustrate both the incidence of trauma and the manifestation of these two effects of CTSD among victims of human trafficking in their interactions with law enforcement.

B. The Effects of Trauma on Human Trafficking Victims

Every victim travels a unique path to prolonged enslavement.[68] Scholars and advocates recognize that human trafficking victims are at very high risk for experiencing the psychological effects of trauma because of the circumstances of their trauma.[69]

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[64] *See* Herman 1992, *supra* note 6, at 92; Sadruddin et al., *supra* note 5, at 404. *See also* Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. Rev. 157, 200-01.
[65] KENDALL, VIRGINIA M. & FUNK, MARCUS T, CHILD EXPLOITATION AND TRAFFICKING: EXAMINING THE GLOBAL CHALLENGES AND U.S. RESPONSES 34 (2012).
[66] Herman 1992, *supra* note 6, at 122.
[67] *Id.* at 62 ("the survivor's feelings of fear, distrust and isolation may be compounded by the incomprehension or frank hostility of those to whom she turns for help").
[68] Focusing on child sex trafficking victims in the U.S., one author articulates the unique characteristics of victims this way:

> The statistics are staggering, but it's the individual stories that are heartbreaking. These girls are as young as 11. Girls who haven't reached puberty… Their skin is of every color. Some come from "good" homes and have families desperately searching for them. Others are runaways, or children in foster care, who have already been victimized and traumatized within the walls of their homes- and have no one searching for them.
> These children had dreams. Some could sing, others danced and put on plays. Some were great at sports or loved to draw and paint. Some girls were shy, in advanced classes, and liked to read at night.
> Now they are called *ladies of the night*, *lot lizards*, *bitches*, *whores*, *sluts*, *hooker*, and *hos*.

Due to the prolonged captivity suffered by victims of human trafficking, they are highly likely to suffer the effects of trauma through CTSD.[70] Recall that the essence of human trafficking is "complete control of one person by another, through the use of violence- both physical and psychological."[71] In fact, existing scholarly research suggests that victims of sex trafficking and prostitution experience high levels of trauma because of the violence, captivity, and sexual assault they endure.[72] Based on the captivity and betrayal survived by labor trafficking victims, advocated report victims suffer from trauma. For example, an advocate for victims of domestic servitude testified before congress that victims suffer from PTSD because of their slave-like condition.[73] The prolonged helplessness, fear, and captivity that have been shown to lead to trauma all exist in abundance for trafficking victims.[74] Several innovative

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LINDA SMITH, RENTING LACY: A STORY OF AMERICA'S PROSTITUTED CHILDREN 95 (2009).

[69] *See* Sadruddin et al., *supra* note 5, at 405 (citing JANICE G. RAYMOND ET AL., A COMPARATIVE STUDY OF WOMEN TRAFFICKED IN THE MIGRATION PROCESS: PATTERNS, PROFILES, AND HEALTH CONSEQUENCES OF SEXUAL EXPLOITATION IN FIVE COUNTRIES 65-73 (2002), http://action.web.ca/home/catw/attach/CATW%20Comparative%CC20Study%202002.pdf (last visited Mar. 22, 2005)); *see generally* Zimmerman et al., *The Relationship of trauma to mental disorders among trafficked and sexually exploited girls and women*, 100(12) AM. J. PUB. HEALTH 2443 (2010). In addition to these scholarly articles, advocates and policy makers also recognize the high risk for psychological consequences from the trauma experienced by trafficking victims. *See* U.S. Dep't of Health and Human Services, *FACT SHEET: LABOR TRAFFICKING*, *available at* www.acf.hhs.gov/trafficking/about/fact_labor.html (last visited Feb. 9, 2013); TIP Report 2012, *supra* note 22, at 12; SHARED HOPE INTERNATIONAL, PROTECTED INNOCENCE CHALLENGE REPORT 79-103 (2012).

[70] Doering, *supra* note 4, at 69, 97 (collecting research and finding that, since all trafficking victims are in prolonged conditions of captivity and deprivation, they are likely to suffer trauma).

[71] Bales & Soodalter, *supra* note 10, at 13.

[72] *See* Melissa Farley & Howard Barkan, *Prostitution, Violence and Posttraumatic Stress Disorder*, 27.3 WOMEN & HEALTH 37, 42 (1998) (68% of 130 prostitutes surveyed met the diagnostic criteria for PTSD); Melissa Farley et al., Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder, *in* PROSTITUTION TRAFFICKING AND TRAUMATIC STRESS 33, 33-74 (Melissa Farley ed., 2003); Judith L. Herman, *Introduction*, *in* PROSTITUTION TRAFFICKING AND TRAUMATIC STRESS 1, 12 (Melissa Farley ed., 2003); Sadruddin et al., *supra* note 5, at 405.

[73] Congressional briefing on Migrant Domestic Workers (Bill H.R. 3244: Trafficking Victims Protection Act of 1999), testimony of Xiomara Salgado, at the Campaign for Domestic Minor Workers' Rights Public Briefing, Washington, DC, Feb. 15, 2000, www.montgomerycountymd.gov/content/hhs/vasap/domesticworkerscongressionaltestimony.pdf (last visited Mar. 1, 2013).

[74] Herman 1992, *supra* note 6, at 74 ("Captivity, which brings the victim into prolonged contact with the perpetrator, creates a special type of relationship, one of coercive control. This is equally true whether the victim is taken captive entirely by force… or by a combination of force, intimidation, and enticement").

studies suggests that the most accurate diagnosis for the type of trauma suffered by human trafficking victims is Complex Post-Traumatic Stress Disorder.[75]

1. Stockholm Syndrome

As explained above, Stockholm Syndrome is an effect of CTSD that inhibits the victim in how he or she views the perpetrator during and after the exploitation.[76] Traffickers intentionally use threats and coercive tactics to control their victims and keep them in captivity through traumatic dependency.[77] In the context of sex trafficking, the transformation of a girl into a "ho," or prostituted slave, is accomplished through "an intricate process of psychological destruction and emotional construction."[78] One trafficker-pimp actually disclosed this process openly in his book on pimping, indicating the intentional exploitation of the victim's longing to belong:

> A ho's desire can't be fed because she has a need that isn't material- security, love, acceptance, confirmation of one's sense of self worth, etc. Just as young men join gangs for the same reason, a ho exchanges something she can see for something she can't. This leaves the door open for exploitation, abuse, and misuse.[79]

The result of this type of treatment is trauma attachment, because the victim has learned to find her love and belonging in her captor.[80] Some refer to this traumatic effect as a hostage situation,[81] while others call it brainwashing.[82] The federal TVPA explains that this dependency

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[75] *See* Doering, *supra* note 4, at 59; *see also* Bernice Sanchez, An Examination of the Literature on Human Trafficking and the Psychological Effects on Women, ProQuest UMI, No. 1499299 at 24 (Dissertation)(2011) (citing ZIMMERMAN ET AL, STOLEN SMILES: A SUMMARY REPORT ON THE PHYSICAL AND PSYCHOLOGICAL HEALTH CONSEQUENCES OF WOMEN AND ADOLESCENTS TRAFFICKED IN EUROPE (2006)).
[76] *See* Herman 1992, *supra* note 6, at 92; *see also* Smith, *supra* note 66, at 120.
[77] Sanchez, *supra* note 73, at 39.
[78] MICKEY ROYALE, THE PIMP GAME: INSTRUCTION GUIDE 18 (1998); *see also* KEN IVY, a.k.a. Pimpin' Ken, PIMPOLOGY (2007).
[79] *Id.* at 40.
[80] Smith, *supra* note 66, at 120.
[81] *Id.*

can be the product of removing the victim from his or her support system and then using "psychological abuse and coercion."[83]

The story of a young child sex trafficking victim named Star illustrates the effect of Stockholm Syndrome.[84] Star, whose birth name was Cassie, is a thirteen-year-old arrested for prostitution by local police roughly a month after being coerced into sex work by her "boyfriend." Meeting with the public defender, Jane, before juvenile court, the following interchange occurred:

> Jane folded her hands. "Cassie, your pimp doesn't really care about you. He's just using you for money."
>
> She wanted to slap this woman. *Who does she think she is, anyway?* She was wearing her nice suit and carrying her leather briefcase. What did she know about the street, or how people had to love each other out in the real world? ...
>
> "I have a boyfriend who takes care of me," Star answered firmly.
>
> "And what do you do for your boyfriend? Does he make you work? Does he make you have sex with men? Does he beat you? Do you see any of the money?
>
> Star shook her head vehemently. "Nobody makes me do anything. I decide what I do and don't do."
>
> "You're thirteen years old. You're too young to decide these things."
>
> "I do what I want. Nobody makes me do anything."[85]

According to Dr. Herman, this altered perception of the perpetrator of such severe sexual exploitation manifests in preoccupation with the perpetrator, idealization of the perpetrator, and

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[82] Sanchez, *supra* note 73, at 40.
[83] 22 U.S.C. § 7101(b)(5)-(6).
[84] Smith, *supra* note 66, at 103. The following story is inserted in full to capture the direct quotes used by the child and attorney. The girl's name has been changed to protect her identity.
[85] *Id.*

the victim's sense of having a special relationship with the perpetrator.[86] Further, as shown by the relationship that the young victim above described with her trafficker, coercion and brainwashing lead to dependence.[87] When this dependence leads to compliance and formation of a relationship with the perpetrator, Stockholm Syndrome has taken hold of the victim.[88] Since Stockholm Syndrome describes a fundamental change in the victim's perception of relationships, this effect of CTSD is interrelated with the effect examined below: distrust of authorities.

2. Distrust of Authorities

Like many victims of crime, trafficking victims often develop distrust for the people who were supposed to protect them but failed.[89] Because of the nature of the victimization in human trafficking, the incomprehension or hostility of law enforcement can compound this sense of mistrust.[90] But in addition to these factors, the captivity, or slavery, of trafficking victims continues because traffickers "repeatedly threaten victims by telling them local police or

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[86] Herman 1992, *supra* note 6, at 122.

[87] Sanchez, *supra* note 73, at 39-40; *see also* KEVIN BALES & S. LIZE, TRAFFICKING IN PERSONS IN THE UNITED STATES: A REPORT TO THE NATIONAL INSTITUTE OF JUSTICE (2005).

[88] Sadruddin, *supra* note 5, at 405 (Describing Stockholm Sydrome:

> The perpetrator may alternate between kindness and viciousness; for psychological survival, the victim may form positive feelings for that part of the perpetrator that is kind and ignore the vicious side. A victim may even become protective of the perpetrator and excuse violent behavior as an aberration. This is one of the most baffling behaviors that victims can exhibit. This "traumatic attachment" to perpetrators is also difficult to extinguish once it has been set into motion. While serving an initial survival purpose, such types of dysregulated survival responses can have terrible consequences for the victim over time).

This kind of attachment is merely a survival mechanism, which may seem illogical, but actually helped the victim to survive.

[89] Sanchez, *supra* note 73, at 25 (*citing* H. Clawson, A. Saloman & L. Goldblatt-Grace, *Treating the Hidden Wounds: Trauma Treatment and Mental Health Recovery for Victims of Human Trafficking*, http://aspe.hhs.gov/hsp/07/humantrafficking/Treating/ib.htm (last visited Apr. 7, 2013) (2008)) (victims "may also experience mistrust due to a history of betrayal by their family, service systems, or law enforcement, and fear that their safety is forever compromised").

[90] Herman 1992, *supra* note 6, at 62.

immigration will imprison or deport them if they report the abuse."[91] Further, when victims are threatened in this manner, they come to believe that police action meant to protect them actually is directed against them.[92] Particularly, child sex trafficking victims are vulnerable to this effect of trauma, since local police may have previously arrested them for prostitution.[93] Dr. Herman would characterize this effect as a component of the sixth category of symptoms of CTSD: alteration in relationships with others.[94] The attributes include isolation, withdrawal, and persistent distrust, which can manifest in alternation.[95] In the context of trafficking, this is a common effect of CTSD with disastrous consequences for the likelihood of securing release from captivity.

Therefore, these two prominent symptoms of CTSD clearly apply to trafficking victims in related patterns. The nature of the coercive web of the trafficker causes these traumatic effects, but also often ensures that victims will remain enslaved for prolonged periods of time. Many people who learn about human trafficking in the U.S. ask: *Why don't they run away?*[96] The very stimuli that cause trauma also prohibit them from escaping. There are three main reasons. First, they fear physical violence against themselves or others if they are caught.[97] Second, they "are brainwashed into 'loving' their pimp and believing that despite what he does to her that her pimp loves her in return."[98] And, third, the victims "are taught to distrust law

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[91] Sanchez, *supra* note 73, at 40 (citing Bales & Lize, *supra* note 85) (asserting that this helps to maintain psychological control over the victims)).
[92] TIP Report 2012, *supra* note 22, at 29 ("Law Enforcement and Human Rights").
[93] *Id.*; *see also* Smith, *supra* note 66, at 98-100 ("It was just as [her pimp] had said- the cops arrested her and treated her like a piece of trash").
[94] Herman 1992, *supra* note 6, at 122.
[95] *Id.*
[96] Smith, *supra* note 66, at 121.
[97] *Id.*
[98] *Id.*

enforcement and social service providers. This distrust is proven when they are arrested and tried as criminals."[99]

C. Secondary Victimization Caused by the Criminal Justice System

In addition to the distrust of law enforcement that results for the trauma suffered by trafficking victims, they can be harmed directly by the justice system during the criminal justice process.[100] This is called secondary victimization, defined as "negative social or societal reaction in consequence of the primary victimization and is experienced as further violation of legitimate rights or entitlements by the victim", and it regularly happens in the justice system.[101] Such a result within the justice system is clearly undesirable, as it diminishes the victim's faith in the legal system and the possibility of justice.[102]

The victim's experience in the justice system is often simply disastrous; "if one set out by design to devise a system for provoking intrusive post-traumatic symptoms, one could not do better than a court of law. Women who have sought justice in the legal system commonly compare this experience with being raped a second time."[103] The impact of the adversarial criminal justice system on children is a serious problem: "secondary traumatization- the intimidation and disregard of child witnesses by authorities- threatens the integrity of the entire criminal justice system."[104] Some even suggest that, because of the adversarial system,

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[99] *Id.*

[100] Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims' Mental Health*, 23.3 J. TRAUMATIC STRESS 182, 182 (2010) (acknowledging that: "the justice system's response to victims who choose to report crimes can make the difference between a healing experience and one that exacerbates the initial trauma").
[101] Orth, *supra* note 6, at 314. In other words, "prosecutors are part of this problem of secondary traumatization." Cooper, *supra* note 7, at 249 (citing Douglas E. Beloof, *The Third Model of Criminal Process: The Victim Participation Model*, 1999 UTAH L. REV. 289, 294 (1999)).
[102] Orth, *supra* note 6, at 314.
[103] Herman 1992, *supra* note 6, at 72-73 (stating that "an adversarial legal system is of necessity a hostile environment").
[104] Cooper, *supra* note 7, at 243.

prosecutors will inevitably harm vulnerable victims because they cannot prioritize their interests over that of the public.[105]

While trafficking victims can be challenging for prosecutors to work with, by depriving them of voice, choice, and validation, even judges recognize that prosecutors victimize them again.[106] In short, the trauma suffered by trafficking victims can "amplify the challenges facing those responsible for 'freeing' them from their captors," including "'helplessness, shame and humiliation, shock, denial and disbelief, disorientation and confusion, and anxiety disorders including post traumatic stress disorder (PTSD), phobias, panic attacks, and depression… [and] Traumatic Bonding.'"[107] Prosecutors can be reluctant to give victims a voice or choice because the depth of trauma experienced can make them appear inconsistent, unreliable, amnesiac, angry, distrustful, and loyal to their traffickers. These characteristics will be unlikely to convince a jury that the victim is actually a victim.

Returning to the story of Krystal and the prosecutor at the beginning of this paper, Krystal exhibited signs of trauma while on the stand when she shut down, contradicted her own story, and could not remember accurately periods of what happened to her. The ADA failed to recognize or respond to those signs. As a result, he may have caused secondary traumatization to the victim by threatening her sense of safety and by demonstrating hostility and disbelief in her victimization, which both contributed to her distrust of authorities. Further, the ADA harmed the government's case and the likelihood of a conviction by impeaching his primary witness and

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[105] *Id.* ("perhaps secondary traumatization of child witnesses is inevitable because prosecutors have multiple duties to juggle besides attending to the child" and listing the protection of interests of society and the rights of the accused as potentially conflicting with the best interests of child victims).
[106] Kendall, *supra* note 63, at 34.
[107] *Id.* (*quoting* U.S. Dep't of Health and Human Services, FACT SHEET: LABOR TRAFFICKING, available at www.acf.hhs.gov/trafficking/about/fact_labor.html (last visited Feb. 9, 2013).

causing the jury to question the credibility of the case. The unfavorable presentation could have led the jury to return a verdict of not guilty.

IV. RESPONSES TO THE EFFECTS OF TRAUMA ON HUMAN TRAFFICKING VICTIMS

Clearly, the results can be very negative when prosecutors fail to recognize the trauma suffered by victims and adapt their techniques and practices accordingly. As shown above, the victim suffers further harm and marginalization. In the case of many, the approach of law enforcement, lawyers, courts, and other professionals can aggravate the victim's traumatization and harm the government's case.

In the TVPA, Congress took a different approach.[108] Rather than requiring evidence of physical force by traffickers before finding a victim of trafficking, Congress recognized that psychological trauma can also coerce a victim into slavery.[109] In the Findings of the TVPA, Congress expressed the dependency, isolation, and vulnerability of trafficking victims,[110] as well as the severe manner in which victims are kept in slavery:

> (6) Victims are often forced through physical violence to engage in sex acts or perform slavery-like labor. Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.
> (7) Traffickers often make representations to their victims that physical harm may occur to them or others should the victim escape or attempt to escape. Such representations can have the same coercive effects on victims as direct threats to inflict such harm.[111]

Based on these severe stimuli that are likely to cause trauma to victims, Congress also

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[108] Sadruddin, *supra* note 5, at 383.
[109] *Id.* ("Congress understood that traffickers' threats to harm victims or their families "can have the same coercive effects on victims" as infliction of actual physical harm. This is a clear recognition that psychological trauma can be as severe as physical abuse").
[110] TVPA, *supra* note 27, at § 7101(5) ("Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable").
[111] *Id.* at § 7101(6)-(7).

recognized that victims need specific assistance from the authorities because of how difficult it is to report such heinous abuse.[112]

Congress pointed toward a different approach to dealing with victims of human trafficking that should guide prosecutors as they deal with victims and make their case.

A. What trafficking victims need in order to recover and participate more fully

The knowledge of the trauma effects suffered by victims of trafficking makes it clear that participation in the criminal justice system will likely be difficult and could even cause further harm. However, if professionals are able to help victims recover from trauma, then it is less likely that further harm is being committed and they are suffering fewer symptoms of trauma. As explained by Dr. Perry, if victims are in a state of rest, as opposed to threat, then they will be more likely to respond rationally to requests made of them.[113] This may enable victims to choose to participate in legal proceedings against their traffickers.[114] Drawing on the research about crime victim recovery, supplemented by specific research on trafficking victims, scholars conclude that the principle four needs of recovering trafficking victims are: (1) safety, (2) social support, (3) choice/ agency, and (4) feeling "human" or equal.[115]

In the study of trauma recovery for victims of crime, certain themes are clear. In general, all victims of crime have basic needs: "[t]hey need sympathy and understanding, not blame. They need to reframe their experience. They need to reassert a sense of control over their lives. They need to have the opportunity to tell their story to listeners who will be sympathetic and not

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[112] *See id.; see also Addressing the Internal Wounds: The Psychological Aftermath of Human Trafficking*, *supra* note 45 (TIP Report 2012 at 12).
[113] *See* notes 56-58 and accompanying text.
[114] *See generally* Herman 2003, *supra* note 6, at 159-60.
[115] Doering, *supra* note 4, at 94, Table 4.1.

judgmental."[116] Dr. Herman's 2003 assessment of the impact of criminal justice proceedings on victim mental health drew the direct connection between the lack of victim cooperation and the failure of criminal justice professionals to respond to the recovery needs of victims.[117] Further, Dr. Herman asserts that "the mental health needs are often diametrically opposed to the requirements of legal proceedings," specifically the needs for social acknowledgement and support, a sense of power and control, and the opportunity to tell their stories at their pace.[118] The threshold theme in all of these specific needs is the need for a supportive response from all people surrounding the victim.[119]

This research on the recovery needs of all crime victims is consistent with the research on the recovery needs of human trafficking victims. In 2012, Dr. Sharon Doering, following extensive secondary research and interviews of victim advocates, conducted research on 13 survivors of human trafficking to determine the most important needs for successful trauma recovery.[120] The progression of the recovery themes mentioned by survivors and advocates are described in Figure 2.

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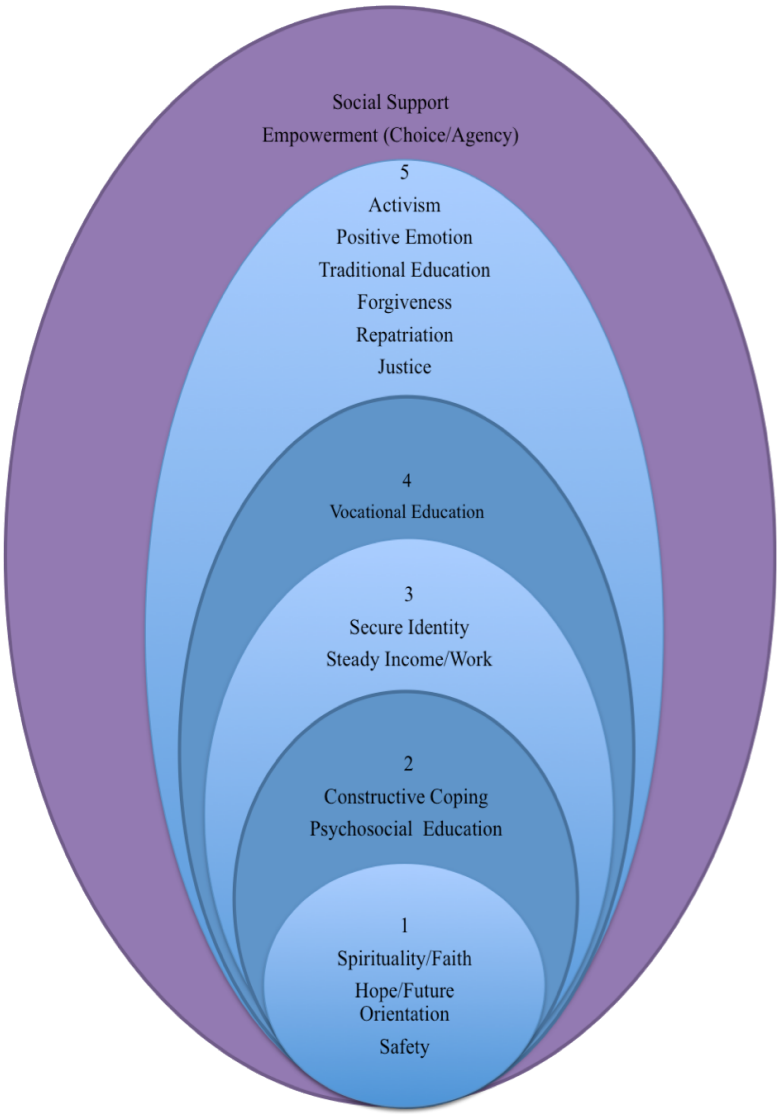
[116] Erez, *supra* note 47, at 5 (emphasis added); *see also* Herman 1992, *supra* note 6, at 61-67 (listing the recovery needs of victims of crime: rebuilding trust, assurances of safety and protection, presence of sympathetic persons, help rebuilding positive sense of self, promotion of self-autonomy, and accurate labeling of the trauma for what it was).
[117] *See* Herman 2003, *supra* note 6, at 159.
[118] *Id.*
[119] *See* Herman 1992, *supra* note 6, at 61 ("A supportive response from other people may mitigate the impact of the event, while a hostile or negative response may compound the damage and aggravate the traumatic syndrome"); *see also* Perry, *supra* note 6, at 230 ("The more healthy relationships a child has, the more likely he will be to recover from trauma and thrive. Relationships are the agents of change and the most powerful therapy is human love").
[120] *See* Doering, *supra* note 4, at 90.

Figure 2: Progression of Recovery Theme Critical to Post-Trafficking Success[121]



As explained in Dr. Doering's research, the general progression in recovery is based in all stages on supportive relationships, and moves from the first need of Safety to the ending needs of Activism and Justice.

In describing how the criminal justice system can help meet the needs of survivors, this Part will focus on four of the significant themes noted by survivors interviewed by Dr. Doering:

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[121] *Id.* at 142,Figure 4.1 (Explaining that "the outer-most oval depicts elements that were critical for *all* stages").

(1) Safety, (2) Social Support, (3) Choice or agency, and (4) Feeling "human" or "like an equal."[122] A brief explanation of each theme will provide the basis for the victim-centered, trauma-informed practices recommended for prosecutors that follow in Part III(B). In each explanation, Dr. Doering's definition and findings will be explained first, and then additional supporting research will be summarized.

1. Safety

In order to recover from trafficking, victims must first "be safe from the physical control of their trafficker" and have their basic needs met.[123] The theme of safety is defined as a state in which physical and physiological needs being met, in reference to the first and second tiers of Maslow's Hierarchy of Needs.[124] In Dr. Doering's research, all survivors and advocates interviewed mentioned this theme and ranked it first, as of the highest importance to recovery.[125] Safety was expressly distinguished from the pursuit of justice by one survivor: "safety [was] just knowing that we were away from our traffickers and they were never going to be [exposed to us again]," while justice was a long process of "putting the bad guys away," including phases of both hope and disillusionment.[126] Similarly, Dr. Herman ranks the task of safety as of central importance and the first phase of recovery.[127]

2. Social Support

Simply put, social support means significant social attachment to another person, whether formal or informal.[128] Survivors in Dr. Doering's research ranked this as the second most important need that must be met in recovery, however Dr. Doering considers this the most

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[122] *Id.* at 94, Table 4.1 and accompanying text.
[123] *Id.* at 111.
[124] *Id.* at 91.
[125] *Id.*
[126] *Id.* at 134.
[127] Herman 1992, *supra* note 6, at 155.
[128] Doering, *supra* note 4, at 92.

expansive and important of all recovery needs.[129] Participants summarized well the relationship between the isolation and relationship betrayal caused by most trafficking and the need for rebuilding social support in the recovery process.[130] In fact, social support from the people interacting with the victim must pervade all phases of recovery in order to facilitate participation in society for former victims.[131] Further, relationships are crucial in recovery because victims will be reluctant to open up about the trauma they suffered unless they encounter sympathy and understanding in other people.[132] Dr. Herman goes so far as to suggest that social support could be the dispositive aspect of recovery, in that "a supportive response from other people may mitigate the impact of the event, while a hostile or negative response may compound the damage and aggravate the traumatic syndrome."[133] Thus, all professionals, at a minimum, have a role to play by guarding against hostile, negative responses that could damage the victim's sense of social support.

3. Choice

Based on the nature of the trauma suffered by trafficking victims, in which they felt powerless and entrapped by their traffickers, the recovery need of choice is also paramount.[134] Choice can be coupled with the terms "agency" and empowerment," and means the ability to influence one's environment through the action that one chooses to do.[135] This recovery theme ranked third among the needs of interviewed survivors and advocates.[136] Victims must be allowed to exercise choice throughout the recovery process because of the nature of the trauma

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[129] *Id.* at 94, 112, 123.
[130] *Id.* at 125.
[131] *Id.* at 166.
[132] *See* Erez, *supra* note 47, at 5; *see also* Perry, *supra* note 6, at 67 ("Recognizing the power of relationships and relational cues is essential to effective therapeutic work").
[133] Herman 1992, *supra* note 6, at 61.
[134] Doering, *supra* note 4, at 92.
[135] *Id.* at 92, 112.
[136] *Id.* at 94.

they survived.[137] Such an exercise of choice "affirms a very basic level of human dignity that may have been lost or stolen in a trafficking enslavement."[138] Moreover, because all trauma, as explained above, is rooted in "an experience of utter powerlessness and loss of control, recovery requires that the patient be in charge of key aspects of therapeutic interaction."[139]

4. Feeling Human

This final recovery need speaks to the desire of trafficking victims to be treated as an "equal member of society."[140] Again, this recovery need is related to the effect of the trauma they suffered, including dehumanization used by traffickers to control them.[141] This need ranked fifth among the themes identified in survivor and advocate accounts.[142] In a related vein, victims need to be protected from mislabeling that criminalizes or degrades them. In other words, proper framing of the victim is important to recovery, for "one person's 'troubled teen' may be another person's 'victim of sexual abuse,' [and] the label given to the [person] often determines how he is treated."[143]

B. Protection for Human Trafficking Victims in the Criminal Justice System

This final subsection will both provide a framework for analyzing victim-friendly practices and then will make a series of recommendations for how prosecutors can adapt to victim-centered, trauma-informed practices toward victims of human trafficking offenses. But first, briefly, incorporating victim-friendly practices is only one of the three schools of thought regarding improving victim protections. The farthest-reaching approach is Therapeutic Justice,

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[137] *Id.* at 131.
[138] *Id.*
[139] Perry, *supra* note 6, at 245; *see also* Herman 2003, *supra* note 6, at 159 ("victims need to establish a sense of power and control over their lives"); Erez, *supra* note 47, at 5 ("attempt, whenever possible, to empower the victim, rather than to perpetuate his or her sense of not being in control").
[140] Doering, *supra* note 4, at 92.
[141] *Id.*
[142] *Id.* at 94.
[143] Perry, *supra* note 6, at 209.

defined as "help[ing] the legal system turn victims into survivors, and to ameliorate and minimize the secondary victimization that many experience as a result of existing practices within the criminal justice system."[144] The second approach is Crime Victims Rights and procedural justice, which entails both statutory rights, the incorporation of victim advocates, and the recommendation that victims need lawyers. [145] Within this approach, federal law has created two main sets of rights for crime victims.[146] The third approach is Victim-Friendly practices, which recommends that criminal justice professionals, like lawyers and law enforcement, become competent in working with victims of exploitation.

This paper advocates for changes within the legal system under category three: victim friendly practices. Thus, specific practices and recommendations for prosecutors and the judicial system will be explained below.

1. Framework for Prosecutorial Recommendations

The case for improving the criminal justice response to victims of human trafficking is clear. In particular, the need for prosecutors to change their practices toward victims when prosecuting human trafficking cases is also clear; although "the US government equates its prosecutorial focus with a 'victim- centered' approach to trafficking… However, its prosecutorial focus often runs counter to the rights of trafficked persons."[147] Thus, the final section of this paper is directed at the question that prosecutors should be asking at this point:

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[144] Erez, *supra* note 47, at 4.
[145] Cooper, *supra* note 7, at 244 (victims need lawyers because prosecutors cannot attends to needs of child victims).
[146] The Crime Victim Rights Act, "recognized role for victims in court proceedings," including notice and opportunity to be heard. *See* Kendall, *supra* note 63, at 244 (citing 18 USC §§ 3771(d)(3), 3771(f)(2)). If the victim is a child, then also protected under the Federal Child Victim Protection Statute, 18 USC § 3509, which "gives federal prosecutors a toolkit to protect child witnesses and abuse victims from the sharpest elbows of the criminal justice system." *Id.* at 246.
[147] Jayne Huckerby, *Unites States of American*, *in* COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD 230, 247 (ed. Global Alliance Against Traffic in Women, 2007).

"How do I do it?" Following this brief introduction, the remainder of the subsection will be structured as a list of Recommended Strategies for Prosecutors.

Even if prosecutors do not intend to specialize in human trafficking prosecutions, to achieve a level of competency in working with human trafficking victims, such that you are less likely to subject victims to re-victimization or harm your case, you must understand: (1) the difficulties prosecutors encounter when prosecuting crimes of human trafficking and (2) how prosecutors are supposed to handle victims of these crimes in light of their conflicting roles and the needs of the victims. This particular framework suggests that lawyers become competent in working with child victims.[148] The framework can lead to recommendations for prosecutors as they endeavor to protect victims of human trafficking. The preceding section fully explained the first prong of the framework. The final subsection will attempt to grapple with the second prong: how prosecutors are supposed to handle victims of these crimes in light of their conflicting roles and the needs of the victims.[149]

2. Recommended Strategies for Prosecuting Human Trafficking Cases

In May 2012, AE Quitas published an article in its Prosecutors' Newsletter on Violence Against Women with a list of seven strategies to enhance prosecutions of human trafficking, including the important strategy of creating specialized units and prosecutors with knowledge and experience in trafficking cases.[150] Two of the seven critical strategies fall within the precise scope of this paper and will be relied upon in the list of recommendations that follow.[151] The list

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[148] Cooper, *supra* note 7, at 265-66 (modeled after analysis of improving prosecutors' work with child victims of crimes against children).
[149] *Id.*
[150] *See generally* AE Quitas, *supra* note 15.
[151] *Id.* at 4-6 (recommendations four and five).

that follows will also be based on the top recovery needs of human trafficking victims, as articulated by Dr. Doering: (1) safety, (2) social support, (3) choice, and (4) feeling equal.

By following the subsequent strategies it is more likely that prosecutors will protect the victim (as Congress and the U.S. Government has expressed a desire to do) and also increase the likelihood of success in achieving trafficking convictions. These strategies are based on several assumptions of awareness, support, and legal framework.[152]

a) Sensitization and understanding

First, before beginning trauma-informed practices, prosecutors must understand the trauma and effects caused by human trafficking.[153] All legal practitioners should understand hyperarousal, dissociation, and the complex symptoms of CTSD in order to comprehend the behavior and decisions of victims during the course of the criminal justice process.[154] In particular, prosecutors must acknowledge the impact of Stockholm Syndrome and distrust of law enforcement, as these will greatly alter the perspective of victims when reporting and testifying.[155]

By becoming sensitized to these trauma effects, prosecutors are equipped to understand the unique role they play in the recovery of victims. First, this role is related to the safety of the victim and, second, the provision of social support in the recovery process.[156] For example, prosecutors may consciously communicate to victims that their story is credible and their

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[152] The first assumption is that prosecutors reviewing and implementing this list of strategies already (1) have an awareness of human trafficking and are able to identify victims; (2) work in an environment that supports victim-friendly practices and is equipped with a victim advocate; and (3) may rely on legal authority that promotes victim protection (see legislative recommendations, above in Part III).
[153] *See* AE Quitas, *supra* note 15, at 4.
[154] *Id.*; *see also supra* Part III.
[155] *See* AE Quitas, *supra* note 15, at 4 ("important for criminal justice professionals to conduct thorough and careful investigations in which they recognize how difficult it is for victims to self-identify, let alone come forward to authorities").
[156] *See* Doering, *supra* note 4, at 92, 112, 125.

struggles are real. In addition, prosecutors can then also ensure that proper referrals to therapeutic services, medical care, and victim advocacy are made at the outset of the investigation, rather than waiting until just before trial, when expert testimony may be helpful.[157] Sensitization of prosecutors will reduce greatly the risk of secondary victimization as they "work to ensure that the justice system… use[s] evidence-based approaches that at the very least are informed by knowledge about trauma and reduce, rather than increase, harm."[158]

Returning to the story of Krystal and the prosecutor presented at the beginning of this paper,[159] the prosecutor clearly did not understand the trauma Krystal had suffered due to the trafficker's coercive methods. Thus, he declined to explain coercion to the jury. Further, he re-traumatized Krystal by subjecting her to humiliation through introduction of a post-arrest photograph of her dressed as a prostitute. By understanding Krystal's trauma and her need for social support in recovery, the prosecutor could have prevented this secondary victimization.

b) Empowerment and voice

Because the nature of the traumas caused by human trafficking is essentially a total revocation of choice and self-determination, prosecutors must, to the extent practicable, give choices to victims in how they wish to participate.[160] For that reason, the TIP Report 2012 urges that a "fundamental premise of victim assistance programs should be to place choices into the hands of trafficking victims."[161] The strategies of Empowerment and Voice clearly further the theme of Choice in Dr. Doering's research with human trafficking survivors.[162] The

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[157] *See, e.g.*, Perry, *supra* note 6, at 34 (State prosecutor's explanation for not seeking mental health consult until ten days before trial: tend not to review cases until up for trial, since they each have so many to prosecute. In general, it is clear that "compartmentalization of services, training, and points of view… [is] very destructive for children").
[158] *Id.* at 246.
[159] *Supra* note 1 and accompanying text (citing Lloyd at 127-31).
[160] *See* Doering, *supra* note 4, at 92; *see also* Sadruddin, *supra* note 5, at 405.
[161] TIP Report 2012, *supra* note 22, at 22.
[162] Doering, *supra* note 4, at 92, 94, 112.

sensitization trainings explained in strategy (a) should include role-playing on how to inform victim and provide him or her with a choice as to the level of participation he or she can offer.[163] Specifically, victims should be given information about their case and the available alternatives to testifying in open court.[164] The prosecutor clearly must maintain decision making authority, but should at all costs consult with the victim and listen to his or her thoughts about the case, such that "the victim [is] given a voice, not a veto."[165]

Similarly, if prosecutors are to give more choice to victims as to the level of participation they are willing and able to contribute to the case, realizing that they might be completely unable to safely participate, they must build their cases around the offender, not just the victim's testimony.[166] Prosecutors should cross-examine defendants to expose coercive tactics, which expert testimony could substantiate with relation to victims.[167]

Another way to empower the victim is to allow the victim to voice his or her story using writing.[168] Victim voice can flourish in optional written intake forms, as well as the victim impact statement at sentencing.[169] Finally, open-ended questions on direct examination, should the victim choose to testify, allow the victim to express his or her story verbally before the jury in the words chosen.[170] The prosecutor should give the victim the choice as to whether open questions with opportunity to speak freely would be preferable, or if examination should be

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[163] *See* Erez, *supra* note 47, at 6-7.
[164] *Id.*
[165] *Id.* at 8.
[166] *See* AE Quitas, *supra* note 15, at 4-6.
[167] *Id.* at 5.
[168] *See* Erez, *supra* note 47, at 8-9.
[169] *Id.* at 7, 9.
[170] *Id.*; *see also* Herman 2003, *supra* note 6, at 130 (stating that testifying in court can be helpful to some victims' healing process).

limited to facts that will merely corroborate the victim's presence in locations at times when the crimes occurred.[171]

Applying the strategies of Empowerment and Voice to the situation between Krystal and the prosecutor in the story at the beginning of this paper,[172] the prosecutor could have spent more time preparing Krystal to testify and allowing her to choose between open questioning and questioning designed merely to corroborate her presence. Moreover, the prosecutor should have used clearer questions to minimize Krystal's confusion on the stand. During their preparation, Krystal should have been given the opportunity to voice her story in writing and be informed about the case and her rights. Since she was a minor, it is possible that closed circuit testimony or other alternatives could have been utilized. Finally, the prosecutor should have taken the time to validate her story and its credibility, rather than viewing her as simply a "bad girl."

c) Collaboration and dignity

This final set of strategies focuses on the recovery needs of social support and being treated like an equal, in recognition of the fact that the relational destruction is one significant effect of the trauma caused by human trafficking.[173] In order to counter the Stockholm Syndrome and Distrust of Authorities, prosecutors should urgently make referrals to victim advocacy and therapeutic counseling, in addition to shelter and security that will protect the victim from returning to the trafficker.[174] Prosecutors should strive to collaborate with service providers, while also building the dignity and trust of the victim.[175]

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[171] *See* AE Quitas, *supra* note 15, at 5.
[172] *Supra* note 1 and accompanying text (citing Lloyd at 127-31).
[173] *See* Doering, *supra* note 4, at 92, 125.
[174] *See* AE Quitas, *supra* note 15, at 5; *see also* Erez, *supra* note 47, at 4-5 (referrals to meet immediate needs of victims);
[175] Heather C. Moore, *How Strong Collaboration Between Legal and Social Service Professionals Will Improve Outcomes for Trafficking Survivors and the Anti-Trafficking Movement*, 1 INTERCULTURAL HUM. RTS. L. REV. 157, 167-68 (2006); *see also* TIP Report 2012, *supra* note 22, at 12 ("soliciting the support of medical experts,

One key strategy within this category deals with alteration of the labeling and terminology the prosecutors use to refer to victims. Victims must be labeled as "victims," not criminals, thus references to victims as "child prostitutes," "bad girls," and the like is only harmful to the victim's dignity and the credibility of her account of what happened.[176] Regardless of the fact that the victim is hostile to the prosecutor or identifies with the perpetrator, these characteristics must be recognized as attempts as complex survival methods, as opposed to co-conspiracy or licentious misbehavior.[177] By understanding these reasons and labeling the victim as a victim, the prosecutor can help to reframe the otherwise unsympathetic victim for the court.

The prosecutor in Krystal's case mislabeled her and bought into the unsympathetic victim frame of her conduct, even presenting a picture of her engaging in prostitution.[178] Moreover, it is clear that the prosecutor did not seek victim advocacy or other services for Krystal during the criminal justice process. By referring her to services and treating her with dignity, the prosecutor could likely have prevented the secondary victimization and, to the extent that he successfully reframed her as a child coerced into sexual exploitation by a career pimp trafficker, could have obtained a guilty verdict from the jury.

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social workers, and psychologists who are trained in human trafficking and can provide trauma-specific therapy" is one way to help trafficking victims recover in light of the trauma they have suffered).

[176] *See* TIP Report 2012, *supra* note 22, at 29; *see also* Perry, *supra* note 6, at 209 (be careful in labeling the victim as a "bad girl," because "one person's 'troubled teen' may be another person's 'victim of sexual abuse,' and the label given to the [person] often determines how he is treated."

[177] *See* Perry, *supra* note 6, at 187 (Trauma victims sometimes attempt to have some sort of control of the abuse so that they can continue to survive in other parts of their daily lives. The "victim" can then look like a "bad girl" or co-conspirator).

[178] *Supra* note 1 and accompanying text (citing Lloyd at 127-31).

V. Conclusion

The majority of victims of human trafficking suffer from extreme psychological effects caused by prolonged trauma.[179] As a prosecutor, there are two critical reasons to understand the traumatic effects of trauma and incorporate that knowledge to engage new victim-friendly strategies in prosecuting trafficking cases: first, to prevent secondary traumatization of victim; and second, to improve the success of trafficking cases by allowing victims to testify more completely, increasing consistency in victim statements, limiting defenses and evidentiary offers by defense, making the case more believable and the victim more credible to the jury. A society-wide, preventative effect also would likely occur because, as word spreads among victims, they may suffer less fear to report and more trust for law enforcement generally.

The recommended strategies in this paper are that prosecutors should adapt victim-centered practices, by engaging in: (a) sensitization and understanding of trauma and recovery, (b) empowerment and choice in how to participate, and (c) collaboration and dignity to strengthen support for the victim. By applying the strategies in this paper, prosecutors would be more likely to accomplish the two main solutions to the current problems of secondary victimization and low conviction rates for trafficking.

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[179] Greater research and dialogue between trafficking survivors and professionals is critically necessary to improving in this area. Legal professionals, social scientists, victim advocates, and legislators all need to engage the discussion if we are to protect victims of trafficking in the United States by better understanding the impact of trauma on them.

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