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2018

The Science of Neurobiology of Sexual Assault Trauma and the Utah Legal System

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Original Publication Citation

Kelly, D., & Valentine, J. L. (2018). The Science of Neurobiology of Sexual Assault Trauma and the Utah Legal System. *Utah Journal of Criminal Law*, 3(1), 70-86.

BYU ScholarsArchive Citation

Kelly, Donna and Valentine, Julie L., "The Science of Neurobiology of Sexual Assault Trauma and the Utah Legal System" (2018). *Faculty Publications*. 5219.
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Citations:

Bluebook 21st ed.

Donna Kelly & Julie Valentine, *The Science of Neurobiology of Sexual Assault Trauma and the Utah Legal System*, 3 UTAH J. CRIM. L. 70 (2018).

ALWD 6th ed.

Kelly, D.; Valentine, J. ., *The Science of Neurobiology of Sexual Assault Trauma and the Utah Legal System*, 3 Utah J. Crim. L. 70 (2018).

APA 7th ed.

Kelly, D., & Valentine, J. (2018). *The Science of Neurobiology of Sexual Assault Trauma and the Utah Legal System*. *Utah Journal of Criminal Law*, 3, 70-86.

Chicago 17th ed.

Donna Kelly; Julie Valentine, "The Science of Neurobiology of Sexual Assault Trauma and the Utah Legal System," *Utah Journal of Criminal Law* 3 (2018): 70-86

McGill Guide 9th ed.

Donna Kelly & Julie Valentine, "The Science of Neurobiology of Sexual Assault Trauma and the Utah Legal System" (2018) 3 Utah J Crim L 70.

AGLC 4th ed.

Donna Kelly and Julie Valentine, 'The Science of Neurobiology of Sexual Assault Trauma and the Utah Legal System' (2018) 3 Utah Journal of Criminal Law 70.

MLA 8th ed.

Kelly, Donna, and Julie Valentine. "The Science of Neurobiology of Sexual Assault Trauma and the Utah Legal System." *Utah Journal of Criminal Law*, 3, 2018, p. 70-86. HeinOnline.

OSCOLA 4th ed.

Donna Kelly and Julie Valentine, 'The Science of Neurobiology of Sexual Assault Trauma and the Utah Legal System' (2018) 3 Utah J Crim L 70

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THE SCIENCE OF NEUROBIOLOGY OF SEXUAL ASSAULT TRAUMA AND THE UTAH LEGAL SYSTEM

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JULIE VALENTINE**

ABSTRACT

Sexual assault triggers a cascade of physiological responses in victims, commonly referred to as the neurobiology of sexual assault trauma. Victims often report the inability to move or resist, memory loss, and loss of or altered feelings of consciousness – reactions which often negatively impact the perception of their credibility. Recently, the criminal justice system has begun to connect these normal, physiologic responses in understanding common victim behaviors and responses. As knowledge of the neurobiology of sexual assault trauma disseminates throughout the criminal justice system, it is readily apparent that education, new protocols, and trauma informed interview techniques are required. This article highlights the work of the Utah Prosecution Council and the West Valley City Police Department in making these improvements. Results from a pilot study measuring the impact of their work are described. Implications for practice and future recommendations are shared to encourage continued improvements in criminal justice system response in adolescent and adult sexual assault cases.

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INTRODUCTION

It has long been Utah law that for a finding of lack of consent in a sexual assault case, the ability of the victim is a key factor. Appellate case decisions direct that the issue of consent must be analyzed under both individual and “reasonable person” standards. “The victim need do no more than her age and her strength of body and mind make it reasonable for her to do under the circumstances.”¹ And that the

absence of outcries or serious wounds or injuries does not make a conviction unsupportable. Nor is it necessary to resist with vigor *if a reasonable person under similar circumstances* would have feared that failure to comply would have resulted in greater bodily harm or death. . . . Acquiescence induced by fear or reasonable apprehension of bodily harm or death does not constitute consent. (emphasis added)²

The phrases “strength of body and mind,” “resist with vigor,” “a reasonable person under similar circumstances,” and “reasonable apprehension of fear” identify subject matters that are significant both legally and scientifically. These matters, by virtue of *Strudham* and *Stettina*, are legally relevant, and thus lead to admissible evidence as to the consent issue under Utah law and each individual victim’s physical ability during a traumatic event.

In a violent assault case in September 2016, a Utah court recognized the impact of trauma on victims and the science of the neurobiology of trauma. There were some minor inconsistencies in the reports of the victim about the events, which is typical of traumatic memory. The Court of Appeals addressed the issue this way in *State v. Kirby*:³

Even together, these discrepancies are not determinative of Victim’s credibility and, indeed, could readily be interpreted by the jury as resulting from the trauma she experienced rather than as suggesting that she was not a credible witness. Often the events being recalled [by trauma survivors] are distant and difficult to express in words. We should expect such testimony to contain some inaccuracies without compromising the value of the testimony as a whole.

¹ *State v. Strudham*, 572 P.2d 700, 702 (Utah 1977).

² *State v. Stettina*, 635 P.2d 75, 77–78 (Utah 1981).

³ *State v. Kirby*, 2016 UT App 193, ¶ 8, 382 P.3d 644 (quoting LYNN ABRAMS, ORAL HISTORY THEORY 94 (2d ed. 2016)).

In January 2018, the Utah Court of Appeals in *State vs. Cady*⁴ stated that “the focus of this appeal is consent.” *Id.*, at 4. The case begins with this line: “No means no. So does ‘unh-unh,’ especially when accompanied by other non-verbal cues.” *Id.*, at 1. Footnote 8 of the opinion proclaims: “We in any event reject outright the suggestion that a victim is responsible for stopping her own sexual assault.” The Court of Appeals upheld the sexual assault conviction in *Cady* even though there was a certain point at which the victim stopped physically resisting the assault.

This article describes the interplay between the emerging science specific to sexual assault trauma and the criminal justice system’s improved response to sexual assault cases. In addition, findings from a study focused on training a law enforcement agency on the neurobiology of sexual assault trauma are shared.

BACKGROUND

Neurobiology of Sexual Assault Trauma

The scientific community has long known that in moments of panic or fear, the human body responds in specific ways due to innate protective mechanisms and a flood of stress hormones primarily from the hypothalamic-pituitary-adrenal (HPA) axis and autonomic nervous system.⁵ Sexual assault victims are consequently often unable to effectively physically resist, move or cry out. This phenomenon often results in verbal and physical inabilities and is commonly known as *tonic immobility*. Many sexual assault victims experience and report an involuntary freeze response to sexual assault lasting from seconds to hours.⁶ Since tonic immobility is often not understood by investigators, victims may be treated with skepticism such as: “she didn’t fight back,” “she has no defensive wounds,” “she can’t remember,” “she’s not a credible witness,” “she must have wanted it,” and so on. This lack of understanding influences criminal justice professionals at each stage of the criminal justice system. What results is unwarranted

⁴ *State v. Cady*, 2018 UT App 8 (2018).

⁵ B. S. McEwen et al., *Mechanisms of Stress in the Brain*. NATURE NEUROSCIENCE (2015).

⁶ Michelle J. Bovin et al., *Tonic Immobility Mediates the Influence of Peritraumatic Fear and Perceived Inescapability on Posttraumatic Stress Symptom Severity Among Sexual Assault Survivors*. 21 J. OF TRAUMATIC STRESS, 402 (2008); H. S. Bracha, *Adaptationist Perspectives on the Acute Stress Response Spectrum*. CNS Spectrums (2004). Rebecca Campbell, *The Neurobiology of Sexual Assault*, NAT’L INST. OF JUST. (Dec. 3, 2012), <https://nij.gov/multimedia/presenter/presenter-campbell/Pages/welcome.aspx>. K. Roelfofs. *Freeze for Action: Neurobiological Mechanisms in Animal and Human Freezing*. Phil. Trans. R. Soc B. (2017).

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feelings of disbelief towards both the victim and the strength of the case, which in turn, impacts how cases are handled.

In addition to tonic immobility, the brain's response to trauma can result in poor memory encoding, decreased executive-level cognitive thinking (ability to evaluate options, plan an escape, etc.), and altered or decreased feelings of consciousness.⁷ Trauma can impair memory encoding and the ability to describe events regardless of the source of the trauma, and these effects are particularly potent in sexual assault cases, some of the most challenging cases in the criminal justice system. Victims are often unable to recall specific details of the assault since the brain typically fixates on certain aspects of the experience and ignores extraneous information. When asked questions about the assault, victims are often unable to describe the assault in a linear fashion. Poor memory encoding can result in investigators incorrectly concluding that the victim is "making things up," or "they can't get their story straight." These conclusions damage the perception of victims' overall credibility, and may result in invalid disbelief of sexual assault reports.

Many sexual assault victims describe loss of consciousness or feelings of altered levels of consciousness due to the neurobiologic responses that occur during traumatic events such as sexual assaults. Changes in consciousness further impact victims' abilities to recount the assault. In a recent study on 1,874 rape cases at multiple sites in Utah, it was found that 49% of victims reported loss of consciousness and 33% reported some memory loss.⁸ Some of these victims were additionally affected by intake of alcohol, being strangled or the perpetrator using drugs to facilitate the sexual assault.

Unfortunately, the reality is that the criminal justice system has been largely unaware of and consequently has failed to understand these neurobiological responses and adequately address these issues in the investigation and prosecution of sexual assault cases. This lack of understanding was described in a recent California District Attorneys Association Prosecutor's Brief:

Tonic immobility is often misinterpreted by police officers, first responders, and sometimes by prosecutors as "they must not have minded it so much or they would have struggled to escape or fight back," or other inaccurate conclusions. When

⁷ J. Valentine, L. Mabey, & L. Miles, *Neurobiology of Trauma*. Chapter 2. In A. F. Amar and L. K. Sekula (Eds.), *PRACTICAL GUIDE TO FORENSIC NURSING*. Indianapolis, IN: Sigma Theta Tau (2016).

⁸ Julie Valentine et al., *Justice Denied: Low Submission Rates of Sexual Assault Kits and the Predicting Variable*, *JOURNAL OF INTERPERSONAL VIOLENCE*. doi: 10.1177/0886260516681881.

survivors freeze, they, too, are perplexed by this response and may either blame themselves or feel ashamed, often wondering why they did not fight back.⁹

Criminal Justice System Response to Sexual Assault

A lack of understanding of the neurobiology of sexual assault trauma is likely a factor contributing to low prosecution rates, both in Utah and nationwide. A study of sexual assault case outcomes in Salt Lake County from 2003 to 2011 found that only 6% of cases with a fully collected sexual assault kit were prosecuted.¹⁰ Although most jurisdictions do not know their prosecution rates in sexual assault cases, some other urban areas report rates from 9 -15%.¹¹ A Department of Justice investigation of 350 sexual assault cases in Missoula, Montana revealed a 4% prosecution rate.¹²

The pervasive misunderstanding of sexual assault victims' behavior and memory difficulties has resulted in a belief by many in our society and in the criminal justice system that there are large amounts of false reports of rape. National research has consistently shown that false reports of sexual assault are very low and similar to the false report rates for other crimes. A multi-site study of eight U.S. communities which studied 2,059 cases of sexual assault found a 7.1 percent rate of false reports.¹³ A study of 136 sexual assault cases in Boston from 1998-2007 found a 5.9 percent rate of false reports.¹⁴ In another study, researchers examined 812 reports of sexual assault from 2000-2003 and found a 2.1 percent rate of false reports.¹⁵ A review of cases reported to the Los Angeles Police Department found that 4.5

⁹ John Preston, *Understanding the Neurobiology of Traumatic Assault and the Implications for Prosecutors and Investigators*, 38 PROSECUTOR'S BRIEF 258, 263 (2016).

¹⁰ Julie Valentine et al., *Now We Know: Assessing Sexual Assault Criminal Justice Case Processing in an Urban Community Using the Sexual Assault Nurse Practitioner Evaluation Toolkit*, 22 J. OF FORENSIC NURSING 133, 136 (2016).

¹¹ Rebecca Campbell et al. *Implementation of a Sexual Assault Nurse Examiner (SANE) Practitioner Evaluation Toolkit*, NAT'L CRIM. JUST. REFERENCE SERV. (January 2013), <https://www.ncjrs.gov/pdffiles1/nij/grants/240916.pdf>.

¹² DEP'T OF JUSTICE, *Justice Department Finds Substantial Evidence of Gender Bias in Missoula County Attorney's Office*, JUSTICE NEWS (Feb. 14, 2014), <https://www.justice.gov/opa/pr/justice-department-finds-substantial-evidence-gender-bias-missoula-county-attorney-s-office>.

¹³ Kimberly A. Lonsway et al. *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault*, 3 THE VOICE 1, 2 (2009), http://www.ndaa.org/pdf/the_voice_vol_3_no_1_2009.pdf.

¹⁴ David Lisak et al. *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases*, 16 VIOLENCE AGAINST WOMEN 1315, 1329 (2010).

¹⁵ Melanie Heenan & Suellen Murray, *Study of Reported Rapes in Victoria 2000–2003*, STATEWIDE STEERING COMMITTEE TO REDUCE SEXUAL ASSAULT (2006), <http://mams.rmit.edu.au/igzd08ddxtpwz.pdf>.

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percent of sexual assault reports were false.¹⁶ An FBI study of 95,769 cases from urban and rural sites found that 8% of reported sexual assault cases were false.¹⁷

One additional problem is that there has been confusion in the criminal justice community with terms such as “unfounded,” “inconclusive,” and “false.” As evidence based research findings have consistently determined that false reporting rates in sexual assault cases are low, many experts conclude that a report should only be labeled as “false” after a thorough investigation with evidence establishing a report as “false.”¹⁸

Significantly, the prosecution for false reports of sexual assault is extremely rare. For example, in England, the Crown Prosecution Service found that out of 5,651 rape cases which were prosecuted, only 35 prosecutions were determined to be false – a rate of little more than one half of one percent (.62 percent).¹⁹

In recent years the criminal justice community has become aware of the science of neurobiology of sexual assault trauma, and has recognized the need for change. These changes include necessary education about the neurobiology of trauma and new approaches in victim engagement and interview techniques. Victims of sexual assault can provide sufficient evidence of the sexual assault for arrests to be made and criminal charges filed when interviewed in a trauma-informed approach by someone trained to understand the effects of trauma. Additionally, it is believed that a trauma-informed approach will keep victims more engaged throughout the investigation and prosecution process. While it is believed that implementing law enforcement protocols consistent with the understanding of neurobiology of trauma will result in improved outcomes of criminal cases, there is minimal information nationally and in Utah of evidence-based data supporting that belief.

By way of analogy, consider that more than 30 years ago approaches to child abuse interviewing were changed because of the available scientific data. In the early 1990s, the effectiveness of child forensic interviews was substantially increased by a rethinking of engagement and interview protocols. New child interviewing protocols led to more criminal cases being filed and successfully prosecuted. Today, a similar revolution is taking place in how adult victims of sexual assault are interviewed. What the criminal justice system learned regarding child interviewing beginning in the early

¹⁶ Cassia Spohn et al. *Unfounding Sexual Assault: Examining the Decision to Unfound and Identifying False Reports*, 48 L. & SOC'Y REV. 161, 174 (2014).

¹⁷ FBI Uniform Crime Report, 1996.

¹⁸ Lonsway, *supra* note 13, at 2.

¹⁹ Crown Prosecution Services Report, March 2013, https://www.cps.gov.uk/publications/research/perverting_course_of_justice_march_2013.pdf.

1990's is that children need to be interviewed according to their ability to encode memories and tell them to an interviewer.²⁰

Knowledge of specific trauma-informed techniques for interviewing adults who have been through a traumatic event will be similarly helpful in improving criminal case outcomes. However, without simple, practical tools and techniques that can be used by interviewers who are tasked with obtaining an account of a sexual assault, the impact of this knowledge alone will be minimal and specific only to trained interviewers. Also, such knowledge can be lost over time through interviewers' attrition, retirement and reassignment to other law enforcement duties. Police departments will benefit from having long-term access to practical, easy to use forensic interview tools.

One such tool, a one-sheet Trauma Informed Victim Interview ("TIVI") guide for police officers in interviewing sexual assault victims, was developed by the Utah Prosecution Council (UPC), in consultation with the Salt Lake District Attorney's Office, and working together with the West Valley City Police Department (WVCPD). A study has been conducted to measure the effectiveness of the TIVI guide on criminal case outcomes in sexual assault cases.

DEVELOPMENT OF THE TRAUMA INFORMED VICTIM INTERVIEW (TIVI)

In early 2014, the published results of a Salt Lake County study on sexual assault criminal case outcomes, finding 6 percent prosecution rates for sexual assault cases, caused great concern to the Utah community and the criminal justice system.²¹ Juxtaposing Salt Lake County's research findings indicating low levels of false-reporting in rape cases against the actual prosecution filing rate in Salt Lake County indicated that the vast majority of valid reports of sexual assault were not being investigated and prosecuted with a knowledge of how trauma affects behavior and memory. In response, the Utah Prosecution Council (UPC), the agency responsible for training and providing resources for prosecutors in Utah, began collaborating with prosecutors and investigators throughout Utah to develop a plan to make the criminal justice system more trauma-informed. UPC determined that two things were necessary: 1) the training of criminal justice professionals on trauma neurobiology; and 2) creation of a specific, easy-to-use interview protocol based upon the principles of the neurobiology of trauma.

²⁰ See *Office of Juvenile Justice and Delinquency Prevention, JUVENILE JUSTICE BULLETIN* (Sep. 2015), <https://www.ojjdp.gov/pubs/248749.pdf>.

²¹ Erin Alberty & Janelle Stecklein, *Study: Most Rape Cases in Salt Lake County Never Prosecuted*, SALT LAKE TRIB. (Jan. 7, 2014), <http://archive.sltrib.com/story.php?ref=/sltrib/news/57323282-78/cases-rape-police-victim.html.csp>.

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In the spring of 2014, UPC began training criminal justice professionals throughout Utah as to the impact of trauma upon a victim's behavior and memory. Donna Kelly, the UPC's Sexual Assault and Domestic Violence Resource Prosecutor, coordinated this effort. Thereafter Detective Justin Boardman of WPCPD approached UPC and asked to partner together to create and implement a Trauma Informed Victim Interview (TIVI) protocol. WPCPD agreed to train all of its officers on the neurobiology of trauma and on how to use the TIVI protocol to interview persons who report a traumatic event. Dr. Julie Valentine, Assistant Professor at Brigham Young University College of Nursing, agreed to be a part of the training and to study the implementation and results of the use of the TIVI.

Drawing upon both the science of trauma neurobiology, current law enforcement protocols and research for child forensic interviewing protocols for law enforcement, UPC prepared the first draft of a TIVI protocol to be used by officers interviewing persons who have experienced a traumatic event. Several experts in the field of neurobiology of sexual assault trauma reviewed the draft and their recommended changes were incorporated into the final draft of the TIVI protocol. The *Utah Trauma Informed Victim Interview Guide Sheet* (Appendix A) was approved by UPC and WPCPD for use in all WPCPD sexual assault victim interviews.

In addition to the implementation of the TIVI protocol, WPCPD made a number of changes to their overall handling of sexual assault cases: 1) Training first responding officers on how to respond appropriately to sexual assault victims and how to obtain an initial victim statement; 2) Involving detectives as early as feasible in the case; 3) Using the TIVI protocol for the full forensic victim interviews; 4) Allowing a support person to be present during the interview if requested by the victim; 5) Involving victim advocates as early as feasible in responding to victims; 6) Screening all known-suspect cases with a prosecutor in an in-person screening meeting; and 7) Testing all sexual assault kits for forensic evidence.

All WPCPD officers attended a full day training on the principles of trauma neurobiology and on how to use the TIVI protocol. WPCPD began using the TIVI protocol in May 2014. The implementation and consequences of its use was studied by Dr. Valentine on WPCPD sexual assault cases coming into the system from May 1, 2014 to May 30, 2015.

STUDY DESIGN AND FINDINGS

The purpose of Dr. Valentine's exploratory, mixed-method study was to understand the impact of WPCPD's trauma informed sexual assault response training and use of the TIVI protocol in adult sexual assault cases. Police officers and victim advocates received a one-day training on the neurobiology of sexual assault trauma, the background of trauma-informed approaches to adult sexual assault investigations, and specific guidelines and

protocols for conducting a TIVI. The impact of the training and protocol was measured by tracking criminal case outcomes in adolescent/adult sexual assault cases, assessing police officers' experiences in investigating adult sexual assault, and evaluating victims' experiences. WVCPD officers signed consent forms to participate in the study and completed pre-training and post-training surveys regarding their experiences. After sexual assault victims were interviewed using the TIVI protocol, those victims were given the option of completing a survey asking for anonymous feedback on their experiences with WVCPD after their TIVI. Victim advocates read a scripted statement informing victims that their responses on the survey would not impact their case or investigation because the survey was mailed directly to the research investigator. Also, the victims were given the survey to complete privately.

Sixty-four sexual assault cases reported to WVCPD between May 1, 2014 to May 30, 2015 met criteria²² to be included in the study. Out of the 64 cases, TIVIs were conducted by trained police officers in 41 cases. In the remaining 23 cases, TIVIs were not conducted largely due to victims not showing up for interviews despite multiple attempts to schedule TIVIs. Sexual assault kits were collected in 48% of the cases, all of which were submitted to the state crime laboratory for testing. Sexual assault kits were not collected in cases in which the victim reported to law enforcement more than seven days after the assault. Dr. Valentine compared the study findings to the National Institute of Justice (NIJ) Sexual Assault Nurse Examiner (SANE) toolkit study completed in 2013. (Table 1).

Table 1
Study findings of adult sexual assault cases (N=64)

Measurable Outcomes	NIJ SANE Toolkit	WVCPD Study
Screening of Adult Sexual Assault Cases	33%	68%
Declination Rate	75%	56%
Charges Filed	9%	32%
Prosecuted	6%	24%
Successfully Prosecuted ²³	6%	22%

²² Criteria included victim over the age of 18 years and sexual assault occurred within the year of the study.

²³ "Successfully prosecuted" is defined as cases adjudicated as a case where a plea bargain was reached between the parties or trial with conviction.

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Although the study sample size was small ($N=64$), we suggest that these findings are significant because there are no other published studies on the effectiveness of implementing trauma-informed policies and interview formats with law enforcement on criminal case outcomes in adolescent/adult sexual assault cases. Increasing the successful prosecution rate from 6% to 22% is very promising.

In addition to the quantitative findings on prosecution outcomes, quantitative (Likert-style questions) and qualitative (open ended questions) data from victim and police officer surveys were analyzed. In Likert-style questions, over 95% of victims agreed that they felt respected and were treated kindly by law enforcement officers during their case investigation. Comments from victim surveys indicated that victims believed they were given the time and opportunity to tell about their assaults in a supportive environment. The following victim statement represents the feelings and thoughts expressed in many of the victims' written survey responses: "The officers understand me, help me, listen, and I can tell they support me. To be a victim is hard." We propose that these findings from victims' surveys are critically important as positive interactions between police and victims not only result in more productive interviews with greater detail, but also aid in victims' healing process.

The police officer surveys indicated that police officers felt better prepared to investigate sexual assault cases after the training and use of the TIVI protocol. Police officers reported a large shift towards agreement in their abilities to understand the neurobiology of trauma and apply trauma-informed principles to sexual assault investigations. Several police officers commented on the importance of now understanding the "mind-set of victims" when investigating sexual assault cases. Overall, the study findings indicate that trauma-informed training and the use of the TIVI protocol increase prosecution rates in sexual assault cases.

IMPLICATIONS FOR CRIMINAL JUSTICE SYSTEM PRACTICE

For first responding police officers, it is essential to understand the neurobiology of trauma and how traumatized persons may present so that they will understand what they are seeing and hearing. This will guide these officers on how to conduct an initial investigation, and to facilitate the transition to a detective. Law enforcement agencies need to provide trauma-informed response training to all officers.

For detectives and officers who do forensic interviews to be effective, it is imperative that they understand what they are seeing and hearing. Law enforcement should employ TIVI protocols and/or other trauma-informed techniques to obtain the maximum amount of detail from victims while minimizing trauma which may arise from the interview itself. Regular feedback to officers and peer reviews of interviews are good

practices for these cases as well. This will help insure that officers are staying consistent with interviewing styles based on the neurobiology of trauma.

Similarly, it is essential for prosecutors to understand trauma and how victims may present so that they can screen cases appropriately, resolve cases through effective plea bargaining, and persuasively advocate to judges and juries. It is critical that prosecutors know how to present trauma in court. They should develop relationships with experts who can be called as witnesses. Judges and juries will be better able to evaluate cases if they understand the impact of trauma. As an anecdotal example, one prosecutor in Cache County, Utah took a sexual assault case to trial early in 2016 and called an expert to educate the jury about trauma. A juror wrote an unsolicited post-verdict letter to the prosecution which indicated that the expert testimony had an impact on the verdict. Spencer Walsh, Cache County's chief prosecutor, wrote a report regarding the powerful impact of this expert testimony on this case (Appendix B).

CONCLUSION

The result of the Utah Prosecution Council's efforts to educate criminal justice system professionals on the neurobiology of sexual assault trauma is very promising. Dr. Valentine's study with West Valley City Police Department's use of the TIVI found substantially increased prosecution rates in adolescent and adult sexual assault cases. In April 2017, WVCPD relaunched the program, and trained its entire police department on the neurobiology of trauma and trauma-informed responses. This current study is on-going, and early findings indicate a continuation of increased prosecution rates and high levels of victims' satisfaction with the investigative process. UPC plans to train additional law enforcement and prosecution agencies about the effects of trauma and use of trauma informed protocols. Through continued training and focus on trauma-informed response in adult sexual assault cases, victims will benefit from improved law enforcement response and criminal case outcomes will continue to improve.

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Appendix A
Utah Trauma Informed Victim Interview Guidelines

Utah Prosecution Council and West Valley City Police Department

OFFICER PREPARATION

- Review all available reports and evidence, or if not yet available, talk with first responders and dispatchers
- Approach interview in a calm, compassionate, empathetic and non-biased way

PHASE ONE – GOAL: SET TONE AND RULES (RECORDING OPTIONAL)

- Introductions and explanation of roles of police and advocates
- Explain purpose of the interview: to gather as much information as victim is able to give about what happened
- Notify that interview will be recorded
- Emphasize the importance of giving ALL of the information and telling the WHOLE truth – “Don’t leave anything out.”
- Ask victim not to guess about anything – “It’s OK to say ‘I don’t know.’”
- Review support person rules (If support person will be present)
- Attend to person’s needs and answer any questions about process
- Acknowledge that recalling the events may be difficult or painful at times

PHASE TWO – GOAL: CRIME SCENARIO NARRATIVE (RECORDED)

“Help me understand everything you are able to remember about what happened.”

- Do NOT interrupt victim narratives
- Use open-ended questions
- Use silence as a tool
- Ask sensory and “feelings” questions
- Avoid questions that request information in a sequential format. For example, ask “What else happened?” instead of “What happened next?”

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- Follow up on narratives using “headline” style questions—“I want to talk about everything that happened in the car.”
- If hard questions are necessary, explain why you are asking them
- Ask if there is anything else victim would like to talk about

PHASE THREE – GOAL: CLOSURE AND CASE PLAN (RECORDED)

- Express thanks for what person has done so far
- Encourage victim to focus on their life and healing
- Explain next steps in process, but never make promises about outcomes
- Give contact info and best way to communicate

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Appendix B

At a recent kidnapping and sexual assault jury trial, the Cache County Attorney's Office presented expert testimony to educate a jury on the neurobiology of trauma. We believe this was the first time such evidence has ever been presented to a Cache County jury.

At trial the defendant attacked the credibility of the victim, asserting that she was fabricating her account of being sexually assaulted. The defense suggested that the victim had made inconsistent statements about the sexual assault in the days and weeks that followed. To address the defense's assertion of fabrication and inconsistency, the prosecution called Dr. Kyle Hancock, a Cache Valley psychologist, to testify to jurors regarding how the brain reacts to trauma. This expert testimony proved to be invaluable in helping the jury understand the evidence in the case. In fact, one of the jurors wrote the following in an unsolicited letter to the prosecution:

“The defense kept hammering on the fact that [the victim's] testimony was not the same every time. This was not effective because we sympathized with her. . . Instead of making us think she was a liar, it convinced us that she was human and was traumatized. Her testimony had not been well crafted. She had not been coached. Her previous testimony was never actually inconsistent. Details were added over time. That was totally consistent with our experience of retelling stressful events.”

The jury ultimately convicted the defendant on all counts. This was a huge victory for the victim, the criminal justice system and society at large because the defendant is a serial rapist who has been [allegedly] strangling or suffocating women during the course of sexual assaults for nearly two decades. He had more or less walked free on all his [alleged] charges previously. For instance, in 2000 a Kentucky grand jury did not indict him for allegedly strangling and raping a 16 year-old girl as she slept in her bed, even though she immediately reported the assault and had physical injuries consistent with her account. Furthermore, a 2001 Kentucky jury could not reach a unanimous verdict at trial after evidence was presented alleging the defendant suffocated and sexually assaulted a 15 year-old girl as she slept in her bed. This was a real head scratcher because there was eyewitness testimony to the assault, the victim had a red handprint on her face which was consistent with suffocation, and the defendant followed the victim over to a neighbor's house after the assault where he strangled a neighbor who intervened. Finally, at a recent Salt Lake City jury trial the defendant was acquitted of attempted rape and found guilty on a lesser misdemeanor charge.

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We are very appreciative of the recent trainings we have received that have helped us better understand how trauma effects the brain and memory. It is my opinion that evidence of the neurobiology of trauma could have made a difference in the prosecution of the defendant's previous cases. Moving forward, our office intends to utilize this type of expert testimony in our prosecution of traumatic crimes.

*Spencer Walsh
Chief Prosecutor
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* inserted brackets not in original but added by editors of the Utah Journal of Criminal Law.