

Trauma-Informed Prosecution Presentation Script

Produced by the Institute for Innovation in Prosecution

Objectives: Slides 2-3

Slide 2

Objective:

The purpose of this presentation is to give prosecutors a basic understanding of trauma and how it affects their cases. The presentation outlines the fundamentals of trauma and how it manifests in the mind and body and the effects of trauma and how it may manifest in witnesses, crime survivors, and those accused of crimes. The objective is to provide prosecutors with a basic understanding of trauma and skills to effectively navigate their cases in a trauma-informed way. The presentation will provide real life examples of interactions prosecutors have with individuals throughout the life of a criminal case and suggestions for how best to approach those interactions.

Slide 3

The objective is to provide prosecutors with basic knowledge and skills to effectively navigate their cases with as little re-traumatization as possible. Prosecutors will leave this presentation with:

- » Basic knowledge of trauma and its effects
- » Trauma-informed protocol for dealing with crime survivors and witnesses
- » Basic knowledge on how to identify if someone has experienced trauma or is currently facing the effects of trauma
- » A basic guide for trauma-informed interviewing
- » A trauma-informed understanding of credibility
- » Case examples and best responses

Trauma and The Prosecutorial System: Slides 5-17

Slide 5

Defining Trauma:

According to SAMHSA (Substance Abuse and Mental Health Services Administration): "Individual trauma results from an event, series of events, or set of circumstances [one can suffer from all three at the same time; i.e. they may overlap and have a compounding effect] experienced by an individual as physically or emotionally harmful or life-threatening with lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being."

It's important to note: Stressful events in life are inevitable and healthy amounts of stress can be positive and motivating. Still, there is a risk that excessive amounts of negative stress can lead to trauma. Without support or healthy coping mechanisms, stress can become traumatic when an overwhelming loss of physical, psychological, or emotional safety accompanies it. (i.e. A single parent losing their job and struggling to afford safe housing.)

- » The way in which we cope with/recover from traumatic stress is impacted by intergenerational histories, existing mental health issues, communal/familial support, access to therapeutic resources, and the ability to ensure safety.

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3 types of Trauma:

- » We all will likely experience at least one potentially traumatic event in our lives. **Acute trauma** can arise from one significant event, such as being a victim of a crime or a car accident. "These incidents can have a lasting negative impact on your psyche if left unprocessed, and impact the way you live your life."
- » **Chronic trauma** occurs when an individual experiences repetitive and prolonged exposure to trauma, such as domestic violence. Acute trauma can develop into chronic trauma when individual events occur repeatedly.
- » **Complex trauma** is a result of "Exposure to multiple traumatic events—often of an invasive, interpersonal nature—and the wide-ranging, long-term effects of this exposure...They usually occur early in life and can disrupt many aspects of the child's development and the formation of a sense of self." This can result in lasting emotional dysregulation and a hindered ability to cope with subsequent trauma that occurs throughout an individual's life.

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What does it mean to be Trauma-informed?:

According to SAMHSA (Substance Abuse and Mental Health Services Administration):
"A trauma-informed approach to the delivery of services includes an understanding of trauma and an awareness of the impact it can have across settings, services, and populations. It involves viewing trauma through an ecological and cultural lens and recognizing that context plays a significant role in how individuals perceive and process traumatic events, whether acute or chronic."

Three key elements of a trauma-informed approach:

- "(1) realizing the prevalence of trauma
 - (2) recognizing how trauma affects all individuals involved with the program, organization, or system, including its own workforce
 - (3) responding by putting this knowledge into practice."
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The ABA Standard 3-1.2 Functions and Duties of the Prosecutor enumerate the role of the prosecutor. These particular duties provide fruitful ground for connecting a trauma-informed approach.

- a. "The prosecutor is an administrator of justice, a zealous advocate, and an officer of the court. The prosecutor's office should **exercise sound discretion and independent judgment** in the performance of the prosecution function."
- b. "**The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict.** The prosecutor serves the public interest and should **act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity**, and by exercising discretion to not pursue criminal charges in appropriate circumstances."
- e. "The prosecutor should **be knowledgeable about, consider, and where appropriate develop or assist in developing alternatives to prosecution or conviction** that may be applicable in individual cases or classes of cases. The prosecutor's office should be available to assist community efforts **addressing problems that lead to, or result from, criminal activity or perceived flaws in the criminal justice system.**"
- f. "The prosecutor is not merely a case-processor but also **a problem-solver responsible for considering broad goals of the criminal justice system.** The prosecutor should seek to reform and improve the administration of criminal justice, and when inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, the prosecutor should stimulate and support efforts for remedial action."

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Understanding trauma is essential for prosecutors to abide by ethical standards.:

- » A trauma-informed approach ensures that prosecutors uphold the ethics and standards of their prosecutorial powers and functions. A trauma-informed approach helps prosecutors make informed credibility determinations, appropriate discretionary decisions, and thorough investigations.
 - » A trauma-informed approach to cases enables prosecutors to promote public safety by mitigating the risk of re-traumatization for citizens and empowering crime survivors/witnesses to report crimes.
 - » A trauma-informed approach ensures prosecutors are championing justice by upholding procedural justice standards and making informed decisions throughout their case.
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Understanding trauma helps prosecutors serve as more compassionate advocates:

- » A trauma-informed approach helps crime survivors/witnesses become comfortable with the criminal justice process which can enhance cooperation and strengthen accounts of events/evidence.
 - » A trauma-informed approach increases the satisfaction of crime survivors and witnesses in the criminal legal process. This may increase their likelihood in seeking the criminal legal process again.
 - » A trauma-informed approach empowers prosecutors to employ their understanding of trauma to find the best outcomes for society, including individuals charged with crimes.
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Play presentation (00:56-4:41)

Slide 12

How Does Trauma Manifest?:

As explained in the video, during a traumatic event, the body responds through the

sympathetic and parasympathetic nervous system. The sympathetic response results in a **hyper-arousal** and the parasympathetic creates a **hypo-aroused** state.

When the mind and body are unable to regulate, trauma survivors can experience varying results and symptoms:

Sympathetic Reactions (hyper-aroused):

Anger, Irritability, Anxiety/Panic Attacks, Restlessness/Insomnia, Obsessive Thoughts, Inability to Concentrate, Avoidance, Chronic Pain, Inability to Trust, and seeking Unhealthy Distractions (i.e. substance abuse, self harm).

Parasympathetic Reactions (hypo-aroused):

Flat Affect, Inability to Communicate, Empty Gaze, Feeling Disconnected, Hopelessness, Depression, Self-Blame/Guilt, Withdrawn, and Immobility.

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Cont'd:

Both Parasympathetic and Hypoarousal reactions can have results that will affect a prosecutor's ability to do their job.

Trauma survivors may:

- » Struggle to recall events.
 - » Struggle to give a coherent narrative.
 - » Enter a state of dissociation.
 - » Refuse to cooperate.
 - » Have strong emotional reactions.
 - » Affect a prosecutor's ability to make credibility determinations.
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ACE'S: As discussed in previous slides, the negative effects of trauma are not always a result of one event. Early childhood experiences greatly influence an individual's outcomes in life. Adverse childhood experiences can lead to lasting trauma that manifests in criminogenic or antisocial behaviors.

According to the CDC, "ACEs are potentially traumatic events that occur in childhood (0-17 years).(...) included are aspects of the child's environment that can undermine their sense of safety, stability, and bonding such as growing up in a household with: substance misuse; mental health problems; instability due to parental separation or household members being in jail or prison."

- » "ACEs and associated conditions, such as living in under-resourced or racially segregated neighborhoods, frequently moving, and experiencing food

insecurity, can cause toxic stress (extended or prolonged stress). Toxic stress from ACEs can change brain development and affect such things as attention, decision-making, learning, and response to stress.”

- » ACEs can help inform the way in which we understand the experiences and decisions of crime survivors and people who are charged with crimes.
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Cultural Awareness and Trauma:

Another important factor in understanding trauma is understanding culture.

- » Trauma and culture are inextricably linked. Culture affects the way individuals process and present trauma, due to social norms and expectations.
 - » Cultural awareness is the recognition that our experiences are informed by our cultural backgrounds, and that we should remain curious about how that may impact someone’s behaviors. Having cultural awareness does not mean that you have to be competent or literate in all cultures.
 - » Prosecutors must be cognizant of these cultural backgrounds and influences to remain open to understanding why a person may be ambivalent, concerned, or fearful when entering the criminal justice process.
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Cont’d:

- » Certain cultures are at a higher risk for experiencing trauma. For example, Urban Black communities and Immigrant communities are at a higher risk, due to racial and economic segregation. This increases the likelihood that an individual will be exposed to an Adverse Childhood Experience.
- » It is important to note that the criminal legal system has historically played a significant role in creating and exacerbating trauma and adverse experiences for communities of color. Individuals from these communities, who now are directly involved with the system, are bringing past experiences with them. This can significantly affect their ability and willingness to cooperate.

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The Trauma-Informed Approach:

With the basic understanding of trauma science and how it affects individuals, prosecutors can begin to approach their work with an informed and curious perspective.

- » A trauma-informed approach does not mean that you now have to be a social worker or therapist. In fact, you should not attempt to act as a therapist; always defer to the clinical staff in your office.
- » This approach entails taking your knowledge of trauma and applying it to your job functions.
- » Starting with a trauma-informed approach benefits all cases. Trauma does not look the same or manifest in the same way for everyone. Some survivors are able to cope with the effects better than others. Start with the assumption that all witnesses/victims/individuals accused of crime are dealing with trauma.
- » Responding to crime and ensuring public safety exposes prosecutors to trauma. Prosecutors are constantly exposed to stories, images, and people that are often stress inducing and traumatizing. Even though a prosecutor may have developed coping mechanisms (i.e economic advantages, therapeutic support covered by health insurance, etc.) to do their job, the witness, victim or accused has not. They may not be used to reliving traumatic events the way a prosecutor must.

Trauma and Case Proceedings: Slides 20-62

Part 2 of this presentation identifies trauma touch-points from intake to sentencing, and suggests a trauma-informed approach to prosecution.

Intake

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Bias and Perception:

A trauma-informed approach is cognizant of the outside influences that impact how we view situations. Prosecutors are duty bound to pay close attention to how bias and perception impacts their work as failure to do so can lead to unjust results. Prosecutors must not be afraid to raise the potential for bias and misperception and ask appropriate questions during intake to mitigate the effect of bias on fair adjudication of law.

“**Implicit bias** refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual’s awareness or intentional control. Residing deep in the subconscious, these biases are different from known biases that individuals may choose to conceal for the purposes of social and/or political correctness. Rather, implicit biases are not accessible through introspection.”

“**Perception** is the process or result of becoming aware of objects, relationships, and events by means of the senses, which includes such activities as recognizing, observing, and discriminating. These activities enable organisms to organize and interpret the stimuli received into meaningful knowledge and to act in a coordinated manner.”

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ABA Standard 3-1.6 Improper Bias Prohibited. According to the ABA, “(b) A prosecutor’s office should be proactive in efforts to detect, investigate, and eliminate improper biases, with particular attention to historically persistent biases like race, in all of its work. A prosecutor’s office should regularly assess the potential for biased or unfairly

disparate impacts of its policies on communities within the prosecutor's jurisdiction, and eliminate those impacts that cannot be properly justified."

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What can inform bias?: Like trauma, bias is developed due to an individual's development and circumstance. Think about the factors that contribute to both trauma and bias. How can this inform bias?

- » History
- » Race/ethnicity
- » Gender and sexuality
- » Socioeconomic status
- » Immigration status

Turn to Section 1 of the workbook and discuss how these bias' may manifest when a prosecutor is doing an initial intake of a case.

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How does a police officer's bias affect a case?:

- » **Lack of experience:** An officer lacking experience with particular types of crime or survivors experiencing trauma may harbor a bias or misimpression that may negatively affect a case. For example, an officer with limited experience investigating sex trafficking cases may misidentify a trafficking survivor and arrest him/her instead on prostitution charges. Prosecutors have the opportunity to correct law enforcement mistakes or biases by a more holistic investigation and solution, such as diverting a trafficking victim to a Human Trafficking Intervention Court.
- » **Role in the case:** An officer who viewed a crime from a particular angle or only talked to one witness may inaccurately report the facts of the case. For example, an officer who responded to the scene may have been focused upon what he immediately observed and heard upon arrival. He also may have been dealing with his own neurological stress response and unable to get a holistic view of the incident.
- » **Prior knowledge of the parties involved:** An officer with a prior experience with one or more of the parties involved in the case may make a biased report. For example: If an officer has responded to a particular house for DV multiple times, only to have the DV survivor recant, the officer may blame the survivor for staying and assume the victim is lying. That can impact the details an officer

may put into their reporting and testimony.

- » **Incomplete communication:** Prosecutors must ask all relevant questions to suss out complete information. Officers are human beings. Some are excellent at communicating what they have seen and what has been reported to them; others are less skilled. The prosecutor's job is to make sure he or she has a complete understanding from the witness regardless of the witness' ability to communicate. Additionally, prosecutors must be mindful of the obvious bias that manifests in officers like racism, homophobia, and sexism.
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Sample Police Report:

A sample police report shows the potential for incomplete communication.

You receive these police reports on intake. Discuss the reports and what is missing?

- » Events that led up to an incident
 - » Reasoning behind why each person was there
 - » Relationship history of each person
 - » What an officer might have asked or did not ask based off the report
-

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What role does witness perception and bias play?:

- » Witnesses have their own biases. Statements from individuals, or the willingness to give statements, are affected by an individual's beliefs, level of trust and experiences with police, motives to lie and relationships with parties involved.
- » Their perception can be affected by substance use, trauma (caused by the event or from the past), failure of memory and self-interested motives to lie.
- » A diligent prosecutor must be aware of the possibility for bias and misperception among witnesses, ask probing questions and keep an open mind during case intake.
- » The role of the prosecutor is not to defend the police investigation, but to question it in order to find the truth and do justice.

The Investigation

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Investigation:

A trauma-informed approach involves holistic investigation of the incident in question

and the people involved. Beyond asking what charges lie based on the facts, the trauma-informed prosecutor broadens the focus to ask **why did this happen** and **who are the parties involved**.

Broaden your focus beyond proving the elements of the crime:

- » Crimes do not happen in a vacuum. While “why” is not an element of most crimes, asking why an event happened is the key to unlocking more information about the event.
- » Gather information about all of the individuals involved (responding officers history, survivors, witnesses and the accused individual) beyond their name and address. Who are they? What is their background? How did they come to be involved in the incident you are investigating?
- » Consider alternative ways to investigate the parties, including asking defense counsel for mitigating information, relevant medical, psychological or substance abuse treatment records. Cultivating good relationships with defense counsel and developing a reputation as a prosecutor who cares deeply about justice will encourage defense counsel to share mitigating information that may affect charging decisions or cause case dismissal.

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Mental Health and Substance Abuse Issues:

- » Consider whether mental health or substance abuse issues played a role in the case you are investigating.
- » If so, is there an alternative to charging the case as a crime?
- » Trauma-informed prosecutors work with prosecutors in their offices assigned to handle mental health court or alternatives to incarceration when investigating a case involving obvious mental health and substance abuse issues.
- » Utilize clinical staff, including social workers, to understand relevant medical, psychological or substance abuse treatment records to inform charging decisions

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Witness/Survivor Cooperation

- » Prosecutors have the power to subpoena victims and witnesses to the grand jury/ or, more generally (dependent upon jurisdiction), power to compel someone to come to court. Failure to comply with a grand jury subpoena can have consequences for the victim or witness.

- » There are occasions in which a cooperative witness requests a grand jury subpoena to account for a work absence or have a record.
 - » More often, grand jury subpoenas are issued by prosecutors to “uncooperative” witnesses and survivors. When and how to issue such a subpoena is a nuanced question that differs from case to case. Reasonable minds can differ in approach.
 - » For example, some may believe that the prosecutor should not push a victim of domestic violence to pursue a case against her attacker because the harm it may cause to her (financially, socially, psychologically, physically and otherwise) may be greater than the benefit of going through with the prosecution. On the other hand, subpoenaing a victim of domestic violence reluctant to testify against her attacker and requiring her to face a grand jury may save her life and empower her to remove herself from a dangerous situation.
 - » It is impossible to address in detail the policy considerations related to individual decisions about what is “best” for a case. That is a case-by-case analysis that must be done based upon specific evidence known to the prosecutor.
 - » Instead, we will encourage trauma-informed consideration of such decisions and trauma-informed conversations about grand jury subpoenas with witnesses and victims reluctant to testify.
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There are many reasons a victim or witness may not want to be involved in a case, which include:

- » Fear for safety
- » Love of the accused
- » Financial reliance on the accused
- » Scheduling issues
- » Childcare issues
- » Belief that prosecution is not an appropriate response
- » Belief that they did “enough” by reporting the event
- » Pain of reliving an event
- » Fear of immigration consequences of talking to law enforcement
- » Distrust of law enforcement (possibly due to a prior bad experience with reporting)
- » Trauma of the process of prosecution (not wanting to testify, be cross-examined or agree to participate in a process that might take years to resolve)

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Big Picture Considerations:

- » Treat everyone with respect and care.
 - » Part of your mandate is to animate witnesses to participate in the prosecution of cases. Your behavior and tone will have an impact on witness participation in a case. If you are perceived as untrustworthy or not compassionate, it will be more difficult to do your job effectively.
 - » While it is ultimately the decision of the prosecutor how to move forward with the case, victim buy-in is important. It is challenging to move forward in a case involving a victim when a victim does not want to participate. How you treat the delicate conversation about cooperating can make or break a case.
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The first step in handling a reluctant witness is to understand as best you can why the individual does not want to participate. This will make you better able to speak with him or her about the process and the possibilities.

- » Have an open, compassionate and straightforward conversation with the witness.
- » Frame the discussion in the positive, as if the survivor will be cooperating
- » Discuss the consequences of cooperating or not cooperating
- » Explain the process, including the grand jury, trial and the possibility of subpoena
- » Explain the consequences of failure to comply with a subpoena
- » For example, in a sexual assault case, "The (accused) has been held in on bail and there is an order of protection that prevents him from contacting you. The next step is to present evidence in the grand jury, which will include your testimony. I know this can be intimidating, and I am going to explain the process to you (explain you will be there, it is secret, etc.). If we do not present evidence to a grand jury, he will be released and the order of protection will be dismissed. On the other hand, once you testify and other evidence is presented to the grand jury, they can vote to indict him, which will ensure that he remains incarcerated until trial, assuming he cannot make the bail that was set."
- » Mitigate safety concerns with an actionable plan
- » Consider whether the witness needs counsel
- » Listen to the concerns of the witness with an open mind
- » Remain supportive and compassionate if the individual no longer wants to participate
- » Offer services - counseling, housing, childcare - while it is important to have clinical staff available to support the witness, do not abdicate responsibility for the conversation to counselors. Your relationship with the witness is paramount to his/her cooperation and you are responsible for establishing that relationship.

If the witness is not responsive to you, discuss working with a different ADA (your charge is to do what is best for the case)

The second step is to decide if you are going to attempt to convince the individual to testify and issue a grand jury subpoena if he refuses. This should be a collective office decision, made with input from supervisors and/or prosecutors with more experience in the type of case you are handling.

- » If you decide that the interests of justice demand dismissal of the case because of lack of witness participation, dismiss the case or work with defense counsel to find alternatives that promote justice. Offer the victim services. Consider restorative justice.
- » If you decide that the interests of justice demand moving forward with a case, whether the survivor initially wants to or not, you must have the difficult conversation with the victim.

The third step is having the difficult conversation with the victim in which you tell him that you believe that the interests of justice demand moving forward in the case, despite his disinterest in participation.

- » The conversation may be relatively easy if it involves mitigating fears you can help control, like safety and scheduling considerations. Work with officers to find creative and effective alternatives to mitigate concerns. Do not promise more than you can deliver. For example, a public housing resident may fear for her safety and request a housing transfer to mitigate the concern. Immediate transfer in such a situation may simply not be available because of bureaucratic constraints. If you cannot offer an alternative solution (for example, paying for a hotel until the transfer comes through), be very direct with the victim about what you can help with, and weigh your ability to protect the physical safety of such an individual against your decision to proceed with the case .
- » The conversation is more difficult if it involves lack of desire to participate because of factors you cannot control, like the emotional or financial consequences of coming forward. This will involve being firm yet fair and compassionate to a survivor who is dealing not only with the trauma of the incident, but also the trauma of having to go forward with the prosecution.
- » Express respect and understanding of their desire not to cooperate
- » Respectfully remind them that you also have to do your job, which is to serve the interests of justice
- » Explain why you think they must testify - are you afraid for their safety? Safety of their children? Safety of the community?
- » Try to empower the victim. Part of the trauma of sexual or intimate partner assault relates to self-worth. Suggest that going forward with the case will allow them to tell their story and stand up to the abuse that they have suffered.
- » Consider giving the survivor time to think about it but do not just “kick the can down the road”; set a date in which the victim will return to your office to discuss; consider giving them a grand jury subpoena for the same date.
- » Re-explain your role. You are not the victim’s lawyer; you are a prosecutor, and

you are charged with protecting the community.

Turn to section 3 of the workbook and discuss how you might apply these steps to the case example.

Case Example:

Mary, age 20, reported to police that Joe, the father of her two children, strangled her until she passed out. There are no visible injuries. This is the fourth complaint Mary has made against Joe in the last two years, and the incidents are escalating. Mary has never testified against Joe, refusing to follow through with the complaints after police intervention. Mary and Joe live together, and Joe's mother has been calling Mary non-stop since Joe was arrested begging her to "drop the case." When you meet Mary, she tells you that she is pregnant, and during the course of your interview she excuses herself to the bathroom, where she reports she vomited because of morning sickness. Mary has a host of other health issues and is scheduled to have a procedure in the next few weeks. She also reports that the latest "fight" with Joe began because he found out she was cheating on him, which she had been. Mary says that Joe is an alcoholic who blacks out when he drinks. Mary also tells you that she has an open charge against her for assault (she got into a bar fight with a woman who she thought was flirting with Joe). During your interview, Mary's behavior varies from seemingly dissociated to combative. Her account is credible, but she refuses to testify in the grand jury.

Decision to Charge

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The ABA Standards for the Prosecution Function enumerate the considerations prosecutors must take into account when bringing charges for a crime.

They include:

- » **Impact on public welfare:** "(xvi) whether the public's interests in the matter might be appropriately vindicated by available civil, regulatory, administrative, or private remedies."
- » "(v) the **background and characteristics of the offender**, including any voluntary restitution or efforts at rehabilitation;"
- » **Consequences of prosecution:** "(vi) whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the offender; (x) potential collateral impact on third parties, including witnesses or victims;"
- » "(vii) the **views and motives of the victim or complainant**;"
- » "(viii) **any improper conduct by law enforcement**;"
- » (xii) the possible influence of any **cultural, ethnic, socioeconomic or other improper biases.**"

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Case Examples:

Turn to section 4 of the workbook and read the two sample case scenarios. Use the questions on the following slides to make considerations for each case.

Example One

Mia and Lisa have been dating and living together for 4 years. During that time, there have been no reported incidents of violence. On the night in question, Lisa calls the police and reports that Mia came home very drunk, and the two began to argue. During the argument, Mia got physical, punching Lisa in the face, causing redness. Officers who responded to the scene confirm to you that they observed redness to Lisa's face and that Mia was very drunk when they responded. Photographs confirm the redness. When you interview Lisa, she does not want to proceed with the case. She tells you that this was a blip in behavior when Mia was drunk and begs you not to prosecute.

Example Two

Lucia has been married to Duncan for 15 years. During that time, the police have been called to the house 40 times with reports by Lucia of violence by Duncan including punching, kicking, verbal abuse and choking. The couple has four children under the age of 14, and Lucia is a stay-at-home mom. She is completely financially dependent on Duncan, and the two live together. In the past, Duncan has been convicted of a violation of an order of protection and assault of a stranger in a bar. Last year, Lucia's 13-year-old daughter called the police to report Duncan was about to kill Lucia by strangling her. Duncan was arrested but Lucia did not go forward, and the charges were dropped. On the night in question, neighbors call the police to report screaming and commotion in Lucia and Duncan's house. When the police arrive, the children are home and Lucia appears badly battered about the face and bleeding from her lip. The house is in disarray, and Duncan is not there. Lucia is hysterically crying and reports, through tears, that Duncan just left the house and describes how he beat her up. Duncan is arrested. When you meet Lucia, with still visible injuries, she says nothing happened.

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Questions to think about when charging:

- » Would prosecuting this case cause more harm than good? Who in the community may experience collateral damage because of prosecution?
- » Would another dispute resolution tool mitigate damage to the community? Is prosecution going to help the individual in the long run? What trauma may the community/crime survivor/witness experience if you choose to prosecute or not prosecute? --Work with clinically informed staff to explore additional programs.

- » What role may trauma have played in the accused person's life that might have led to them committing a crime? If convicted, how would the system ensure the individual would successfully re-enter society?
 - » Would incarcerating the accused person create traumatic collateral consequences for their family and community?
 - » Does the crime survivor or complainant feel that charging the accused person with a crime is an effective response? How does a crime survivor or complaint's own experience with trauma implicate their views on a prosecutorial outcome? Is the crime survivor aware of the traumatization of the criminal legal process?
 - » Has law enforcement acted out of bias? Has law enforcement exacerbated the trauma of the accused person, crime survivors, or witnesses?
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Questions to consider when charging:

- » Is the prospective prison sentence a proportional response to the person accused of a crime? If not, are there other ways to hold the individual accountable? Does the case qualify for a diversion program?
- » Has the person accused of the crime made efforts to repair their harm or seek rehabilitative services? Has defense counsel asked for a diversion program?
- » What are the various plea possibilities that can be used to reach the best holistic outcome?

Interviews

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When you begin as a prosecutor, sitting in on as many interviews as you can with different experienced interviewers is important. See what works and what doesn't work; what feels right for you and what doesn't.

Tactfully and compassionately interviewing a crime survivor or witness who has been traumatized by his/her experience is a delicate task and an art, rather than science. It takes practice and time to learn how to use your authentic voice to both get accurate information and offer kind, compassionate and appropriate support.

Note that the same applies to interviews of individuals accused of crime (when appropriate). While such an interview is an interrogation and strategic considerations may be implicated, taking care to treat such a conversation through a trauma-informed lens can be helpful. Be mindful of the trauma that the accused individual may have

experienced. Trauma-informed interviewing skills will allow you to better evaluate credibility during such an interview.

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Prosecutor's role during interviews:

- » Get holistic accurate information (as many sources of information as possible).
 - » Evaluate credibility.
 - » Identify additional leads for evidence collection.
 - » Offer a compassionate face of the government - serve the public by supporting the individual as he or she relays information.
 - » Explain the system / next steps.
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Interview Preparation:

Trauma survivors have experienced unforeseen events that may have caused them extreme fear and stress. The unknown in the criminal justice process can be fear inducing, especially for trauma survivors.

- » When setting up the interview, explain what you are doing before you do it and let them know what you are expecting from them.
 - » Provide a list of things for interviewees to bring: Suggest they write this down if it is over the phone or email/mail them a checklist.
 - » Choose an appropriate location.
 - » Decide how note-taking will happen. Be mindful that an individual may shut down if you open a computer to type what he says. You may not be able to connect to the subject of the interview if you have to take notes.
 - » Limit the number of people in the room and consider the interviewee's prior experience with law enforcement assigned to your case. Was it positive or negative? Might you want to ask a different law enforcement officer to sit in.
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Interview Preparation cont'd:

- » **What other support can you offer at the end of the interview.** The interview is a time for you to gather information. There is rarely a time where having a social worker or therapist in the room is helpful during this phase as it can

be distracting and turn the focus solely to victim support, rather than evidence gathering. However, it is imperative to consider what services you can offer to the victim after the interview. Have social workers/victim advocates on standby to arrive in the room after you complete the factual part of the interview.

- » **Consider how long the interview will take and clear your schedule.** Do not schedule two significant interviews on the same day, if you can avoid it. Interviews can be cut short by refusal to participate or you could find yourself in an interview for many more hours than you expected because of issues related to trauma. Consider breaking up the interview into multiple shorter sessions, but also consider the benefit of getting through it all the first time, especially if a witness seems comfortable and is flowing with the story.
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Safety Concerns:

- » What might the witness be facing in terms of security risk by talking to you? Remember, everyone knows where the DA's Office is. Witnesses can be followed to and from your office.
 - » Offer to bring the witness in in a secure way or return them to their home in a secure way. This is YOUR responsibility as the government actor, not theirs. Have an undercover officer pick them up in a neutral location (not in front of their house).
 - » Consult with patrol officers to create a plan to protect them during the pendency of the case. If you are working with beat police officers you may have to involve detectives or DA's Office staff to create a safety plan.
-

Slide 45

The Interview:

- » Introduce yourself and everyone in the room.
- » Explain your role.
- » Thank the witness for coming.
- » Make sure the witness is physically comfortable (offer water, eliminate distractions, allow them to select the place they will be seated in the room, set the room up like a conversation, not an interrogation).
- » Explain the purpose of the interview.
- » Explain the criminal process (possible outcomes, grand jury, trial) + what to expect.
- » Remind them they are in control and that you want them to feel comfortable as

- possible.
- » Let them know they can stop at any time.
-

Slide 46

Cont'd:

- » Learn how to read the room. You can practice this in your day to day life. Notice how people respond to you in day to day life. Consider others' perception of your presentation and how that might affect the particular witness you are working with.
 - » The way you are dressed and your body language has an impact on how you are perceived.
 - » Is your voice naturally very loud and you are interviewing a timid, scared person? Modulate your voice.
 - » Consider removing your suit jacket and adopting a more casual demeanor if you sense that it may make the interview feel more like a conversation and less like an interrogation
 - » Note that continuous eye contact can be difficult and uncomfortable for some trauma survivors. If the witness does not make eye contact, consider reassuring the witness that they can take their time and stop whenever they want to.
 - » Check in with the interviewee as you go. Ask them if they understand what you are saying/ asking.
 - » Check in with yourself and your own body language
 - » Are you smiling?
 - » Are you relaxed?
 - » Do you appear in control or nervous?
 - » Mimicking body language helps put people at ease - subconsciously + consciously we identify with people like us.
-

Slide 47

Exercise:

Turn to section 5 of the workbook for a sample set of facts about an interviewee.

Role play with a partner:

One partner is the ADA and the other partner is the interviewee. One partner will be the prosecutor in the first scenario and the other partner will be the prosecutor in the second scenario.

Slide 48

Trauma-Informed Questioning:

- » Asking questions in a trauma-informed manner means (1) considering the impact trauma may have on your ability to get truthful information from a witness and (2) the impact your questioning may have on a witness.
 - » Trauma may affect the way a witness recounts a memory. For example, parts of the incident may be too painful to repeat. In a sexual assault case, for example, you might notice that there is an obvious gap in linear recounting of the story and ask the survivor what happened. They may refuse to discuss it or move quickly through that part of the story. Have patience and remember it is your duty to get that.
 - » Remember that everything you say has an impact on the interviewee. The way you ask questions, the information you share with the interviewee and your demeanor can impact the narrative, especially when dealing with witnesses in trauma cases.
-

Slide 49

Trauma-Informed Interviewing - Best Practices:

- » Avoid telling the witness about other witnesses or evidence you have (eg. don't tell them, "don't worry this was caught on video!" or "but the cashier told me that the guy's shirt was blue - why are you saying it is red?")
- » Avoid leading questions / Use open ended questions
 - » Can you tell me about your relationship with___.
 - » Can you start by telling me what you were doing the day of the incident?
 - » What happened next?
 - » Who was there?
- » Avoid "did" questions. Be mindful that when you are using the word "did" in a question, it is likely leading.
 - » After the incident, did Mary seem upset?
 - » Did you see the woman screaming?
- » Practice active listening: Repeat back what they are saying and use non verbal cues that you are listening.
 - » "What I am hearing you say is..."
 - » "The next memory you had was..."
- » Normalize their feelings
 - » All of the symptoms and side effects of trauma are normal. If the interviewee begins to show or share any symptoms that seem dysregulated, offer support.
 - » Try to avoid pre-labeling them as a trauma survivor and allow them to identify themselves first.

Slide 50

Examples:

This slide contains sample responses to common responses an interviewee may have.

An interviewee begins to express their inability to sleep

"What you are feeling is extremely normal. I have met with a lot of people who went through your same experience and have trouble sleeping. If you would like, I can connect you with someone from our social work department so they can give you some tips on how to cope with that. It has been helpful for the other people I have worked with."

An interviewee apologizes for getting upset while talking

"You do not need to apologize, you went through/witnessed an unexpected experience. I have met with many people who have gone through similar experiences and some have reacted similarly. Getting upset is completely normal. These experiences can bring up a lot of emotions. We can take a break if you want. I can also connect you to someone from our clinical staff if you would like resources to discuss how you are coping with the incident."

Slide 51

Memory:

- » Everyone stores memory differently and trauma can impact memory.
- » A witness exposed to trauma may not be able to remember an incident chronologically.
- » A witness exposed to trauma may want to fill in memory gaps. Be aware that prompts or suggestions you give can influence the accuracy of statements.
- » Memories may come based upon certain triggers (eg. they cannot remember when they are in your office, then see something on TV and remember).
- » Tell a witness that it is ok not to remember something and not to try to fill in a gap if they do not remember; you can always come back to it.
- » Ask questions to tease out memory.
 - » Ask about the sensory experience - how did it smell, taste, sound, feel?
 - » Ask about other people the witness has spoken to .
 - » Ask for things in the witness' life that might jog memory - journal, calendar, photograph, map of the scene.
- » Ask what may be helpful for a witness to recall memories (personal journal, date book).
- » Certain memories can bring a person back to the exact moment they were experiencing the trauma. This can lead to further traumatization. Survivors can become visibly distraught. Let them know they can take a break or stop at any point.

Slide 52

Know When To Stop:

- » Every witness and interviewer is different. Do not put pressure on yourself or the witness to drill down every detail in one session.
 - » Know when to adjourn a meeting and set up another time to talk.
 - » If a survivor is unable to remember something, let them know they are free to go and contact you (or your law enforcement agent) if they recall it later.
 - » Some survivors begin the interview process and realize they no longer want to participate because it is too painful or difficult. Be gentle with survivors who change their mind mid-interview. Try taking a break, reassuring them that they are safe and kindly directing the interview.
 - » If you encounter an obstacle to your conversation, consider consulting a supervisor or colleague to get their input and assistance in continuing a difficult conversation.
-

Slide 53

Recognizing the signs that someone may be having a traumatic reaction:

During interviews, prosecutors must take into account all reactions and behaviors of the person they are interviewing. It is important to ask: Could these reactions be related to trauma?

The body cannot tell the difference between physical and emotional danger. Unearthing memories can bring someone back into the 'fight, flight or freeze' state. Despite the fact they are no longer in actual danger, their bodies and minds may react as if they are.

Trauma survivors may have observable reactions that can clue an interviewer into when they may be re-experiencing a traumatic memory or having an adverse reaction. These signs may be a good indication on whether to ask if they would like to take a break from the interview.

Slide 54

Cont'd:

- » Body Language
 - » Inability to make eye contact
 - » Tension in the body
 - » Sweating
 - » Fidgeting

- » Being closed off
 - » Behavioral Reactions
 - » Exhibiting Anger or frustration
 - » Being non-responsive
 - » Exhaustion
 - » Seeming paralyzed
 - » Inability to focus
 - » Altered speech pattern or affect
 - » Becoming sad
-

Slide 55

Tools to Help Someone Having a Heightened Reaction or Dissociating:

- » Back off and give them space. Remain calm.
 - » Ask if they would like to take a break.
 - » Bring them back into their body - Try grounding exercises. (upcoming slides)
 - » Sometimes, you are the trigger. You may remind them of someone from their past and they may not trust you. Do not take it personally. Know when to step away and ask for help. This may mean reaching out to a superior, co worker, or a social worker in your office to continue the interview.
-

Slide 56

Grounding Exercises:

It is helpful to have a few grounding exercises in your arsenal when doing interviews. Various exercises are listed in the workbook.

If you notice someone is dysregulating or getting upset, you can ask if they would join you in a grounding exercise.

Try the 4-7-8 breathing right now:

- » 4-7-8 Breathing
- » Breath in for four seconds
- » Hold for 7 seconds
- » Exhale for 8 seconds
- » Repeat 5x

Determining Credibility

Slide 58

Credibility:

A key job of a prosecutor during an interview is to determine credibility. There is no

particular science that supports credibility determinations. Lie detector tests are not admissible in court because of their unreliability. Pattern jury instructions suggest that there is no particular formula for evaluating the truthfulness and accuracy of another person's testimony. Jury instructions call upon jurors to bring their varied life experiences to the jury room and evaluate the truthfulness as they would in real life. Prosecutors are bringing to bear their own life experiences when they make credibility determinations and must use common sense, interviewing techniques and corroboration to evaluate whether a witness is truthful.

Slide 59

How Trauma Affects Credibility Determinations:

Assessing credibility in trauma survivors is particularly challenging as some common behaviors associated with dishonesty are the same behaviors trauma survivors may exhibit as a result of their experience. For instance, evasive body language or behavior may appear in a trauma survivor not because he or she is lying, but because of his/her reaction to trauma. Trauma survivors can take a while to build trust and become comfortable. Being cognizant of trauma will enhance your ability to make an accurate credibility determination of a trauma survivor.

Slide 60

Additional behaviors that may be caused by trauma:

- » Difficulty recalling events
- » Failure to make or maintain eye contact
- » Agitation
- » Failure to respond (Eg. a survivor sits with arms and legs crossed and remains silent, refusing to talk - such a response may be less about their own trustworthiness and more about the ability to trust those around them)
- » "Inappropriate" response to gruesome events (Eg. smiling while discussing tragedy)
- » Survivors experiencing hypo-arousal may have a flat affect and not show emotion when speaking.
- » Survivors experiencing hyper-arousal may become extremely impassioned and angry.

Slide 61

Determining Credibility:

There is no magic formula for making a credibility determination. Good interviewing techniques take practice, and determining whether someone is lying is sometimes very difficult. The way to give yourself the best shot at an accurate credibility determination is to:

1. Build rapport - establish a connection with the witness and build trust.
 2. Be authentic - authenticity begets authenticity.
 3. Be patient and present.
 4. Ask tough questions and confront inconsistencies directly (and gently). If something does not make sense to you, do not be afraid to ask follow up questions or the same questions more than once.
 5. Corroborate, corroborate, corroborate - with other witnesses, defense counsel, and evidence.
-

Slide 62

Additional Factors to Consider When Evaluating Credibility:

This list is not exhaustive or exclusive:

- » Does it make sense
- » Opportunity to see/hear what they are describing
- » Testimony corroborated by other evidence or not
- » Background, training, experience
- » Motive to lie
- » Interest in the case
- » Benefit from testifying one way or another
- » Criminal conduct
- » Inconsistent statements
- » Ability to recall events
- » Body language - eye contact, emotion

Conclusion

- » Trauma-informed prosecution is a never-ending, ever evolving process. As you learn more about the community you serve, it is important to always evaluate how members interact with one another, their environments, and notice the intersections with the criminal justice system. It is important to continuously build your knowledge on the psychological/sociological impacts of trauma.

- » Key things to remember:
- » Slow down: Take time to plan out your process of looking at the case holistically. Pay attention to the responses/reactions of every individual involved.
- » Take a step back: Do not hyper focus on the incident. Broaden your understanding of the case by looking into the history of those involved.
- » Remain curious: Keep an open mind when looking at the case. Do not rely on assumptions, and be willing to ask questions.
- » Weigh out your decisions: A trauma-informed lens gives you the opportunity to use your office's resources to respond to those who are harmed, and those who cause harm in the best way.
- » Stay attuned with yourself: The work of a prosecutor is inherently stressful and traumatizing. It is important to prioritize self-care and mindfulness when dealing with cases.

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