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Make it Make Sense: Explaining a Victim's Counterintuitive Behavior

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Make it Make Sense

EXPLAINING A VICTIM'S COUNTERINTUITIVE BEHAVIOR





CREDIBILITY?

Counterintuitive Behaviors

- ▶ A sexual assault victim who doesn't resist
- ▶ The victim of brutal crime appears unbothered by the attack
- ▶ A child victim of sexual abuse doesn't cry
- ▶ A domestic violence victim recants her story and supports her batterer at trial
- ▶ Your gang violence witness is difficult and angry
- ▶ The victim of a crime can't recall key details



Counterintuitive Behavior \neq Lack of Credibility



TRAUMA

Objectives

- ▶ Understand the impact of trauma on victims of crime
- ▶ Provide an overview of the neurobiology of trauma
- ▶ Strategies for incorporating a trauma informed approach into a case



Understanding Trauma

IF I WOULD KNOW THEN WHAT I KNOW NOW...

What is Trauma?

- ▶ An emotional response to a terrible event
 - ▶ Psychological impacts
 - ▶ Physiological effects

What is Trauma?

▶ **Three types of trauma:**

▶ Acute

- ▶ from a single incident.

▶ Chronic

- ▶ repeated and prolonged

▶ Complex trauma

- ▶ exposure to varied and multiple traumatic events, often of an invasive, interpersonal nature.



The Neurobiology of Trauma

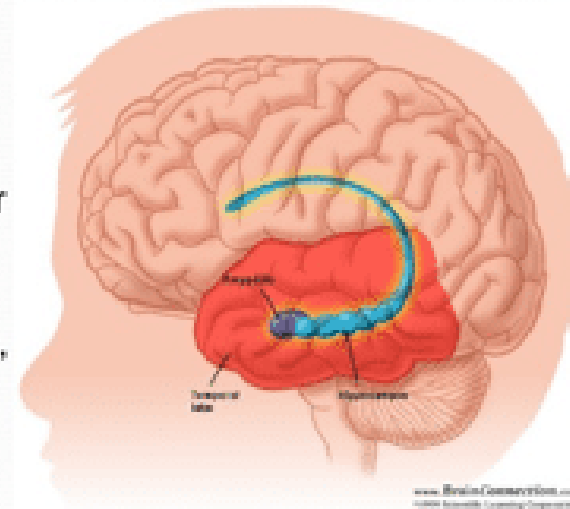
The Neurobiology of Trauma

Amygdala - The brains emotional computer and alarm system

Hippocampus - Brains storage for our most recent conscious memories

Thalamus - Translates sights, sounds, smells into the language of the brain

Prefrontal cortex- Where information is used to make decisions about cognitive and emotional responses

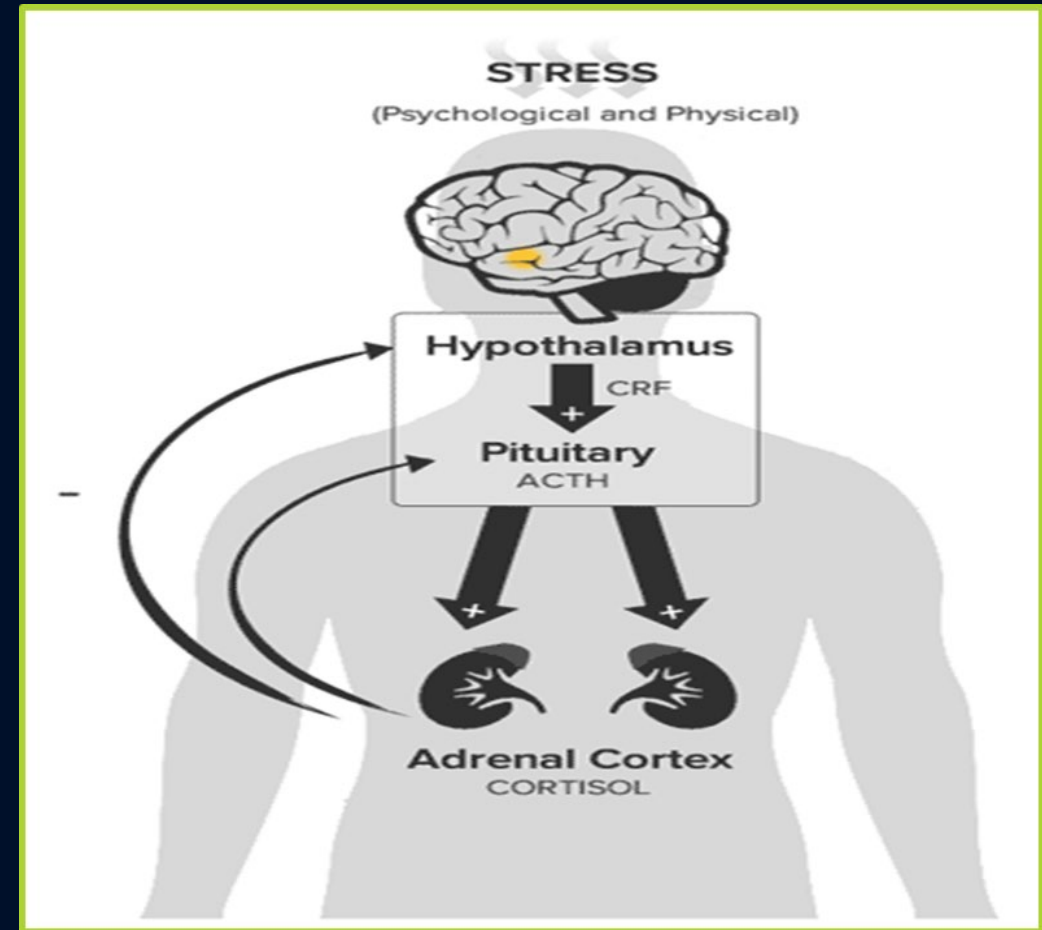


The Neurobiology of Trauma

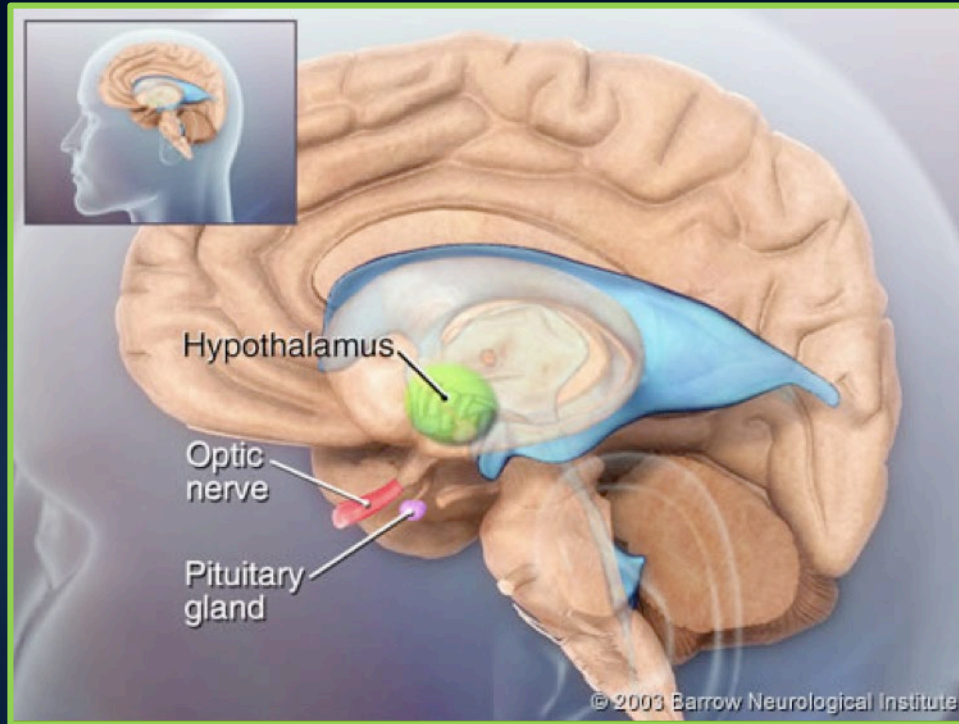
- ▶ The **HPA** AXIS:
 - ▶ **H**ypothalamus
 - ▶ **P**ituitary Gland
 - ▶ **A**drenal Gland

The Neurobiology of Trauma

- ▶ The HPA Axis connects three structures:
 - ▶ The hypothalamus acts on the pituitary gland
 - ▶ The pituitary gland acts on the adrenal glands



The Neurobiology of Trauma

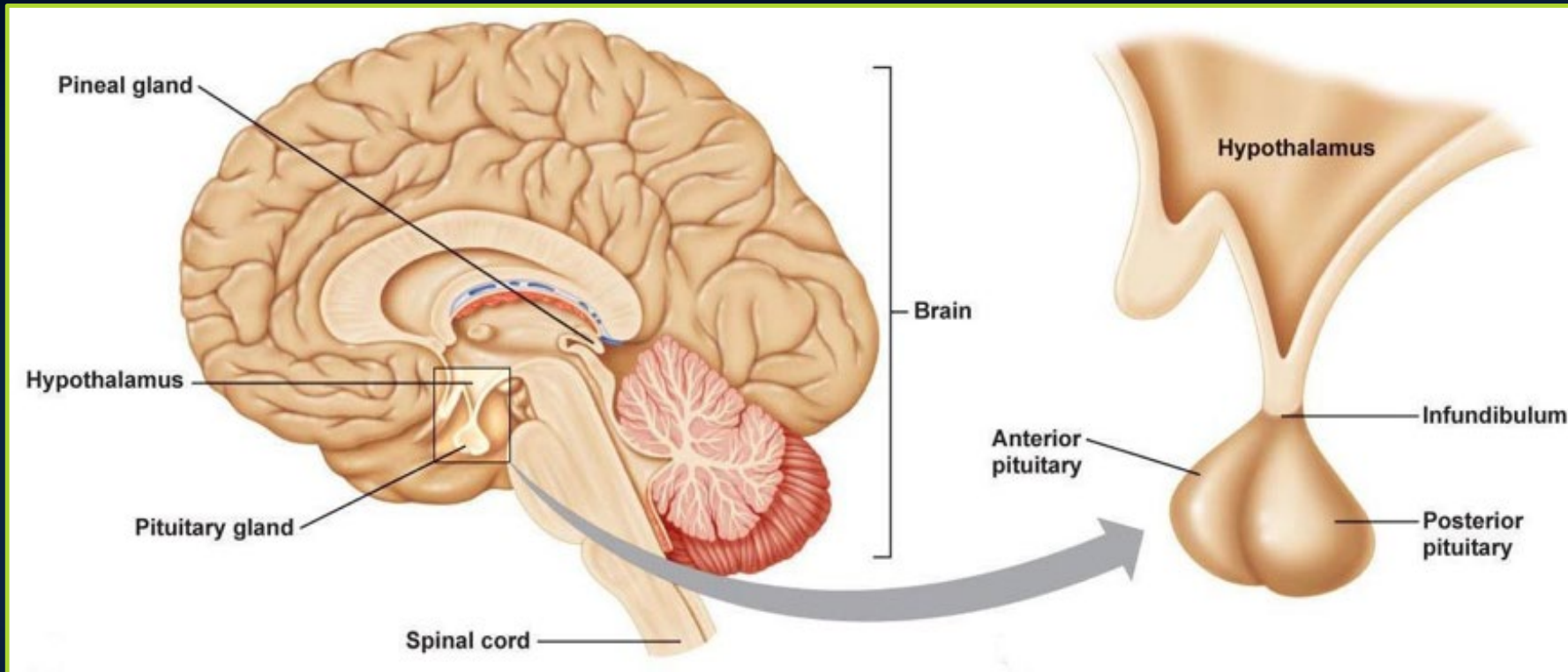


- ▶ The hypothalamus is the “Grand Central Station” of the brain
- ▶ Communicates with other structures in the brain, including the pituitary gland
- ▶ The hypothalamus stimulates hormone release from the pituitary gland

The Neurobiology of Trauma

The hypothalamus is the “Grand Central Station” of the brain

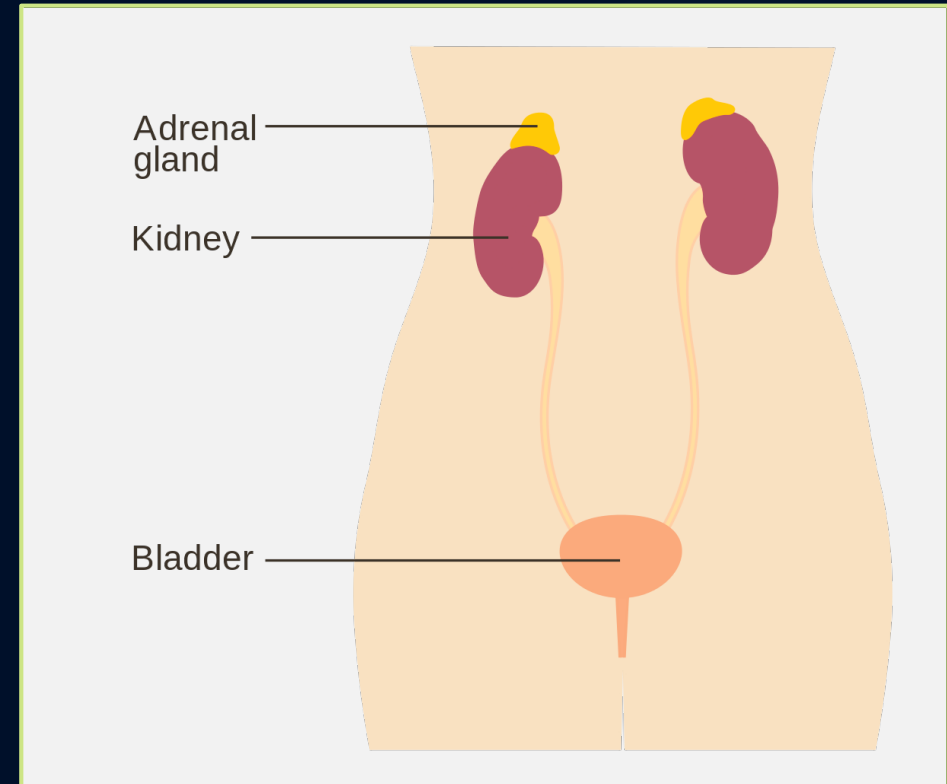
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The Neurobiology of Trauma

- ▶ Adrenal Glands
- ▶ Hormones released from the pituitary gland stimulates hormone release from the adrenal gland



The Neurobiology of Trauma

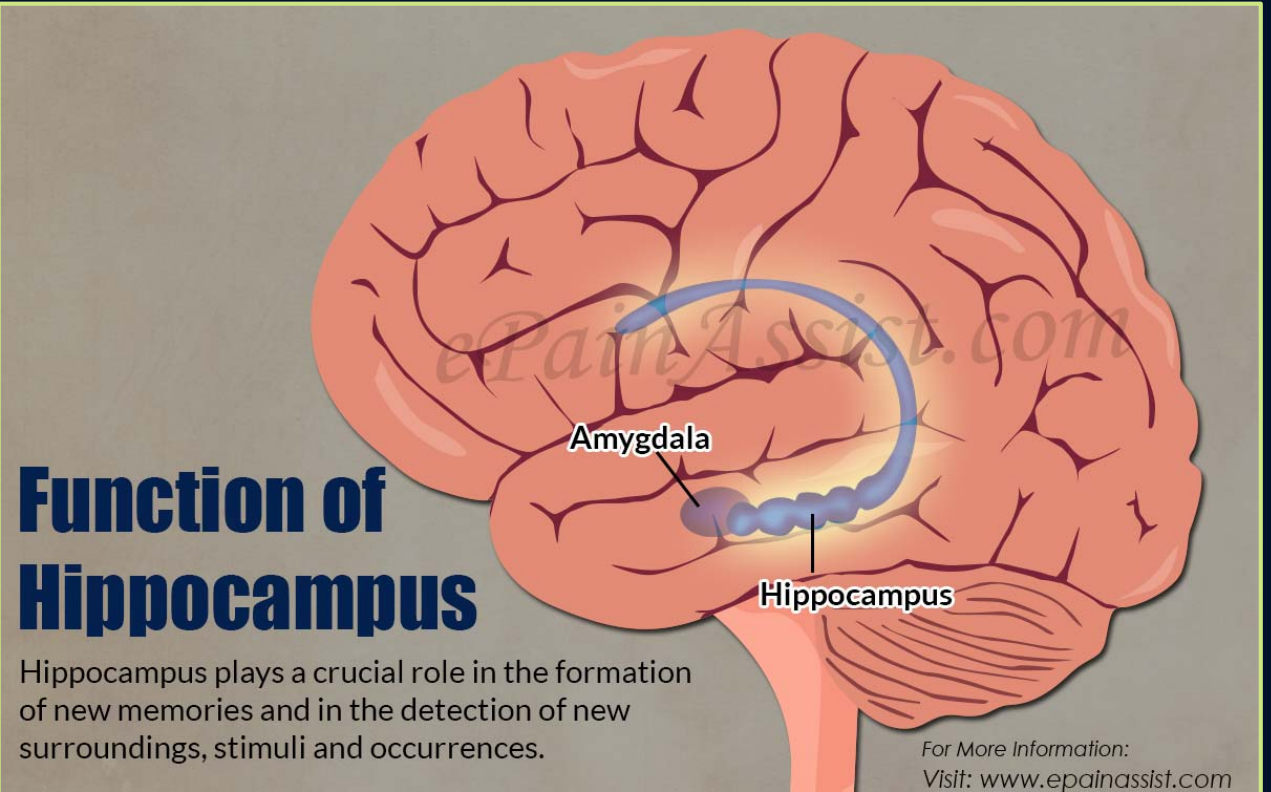
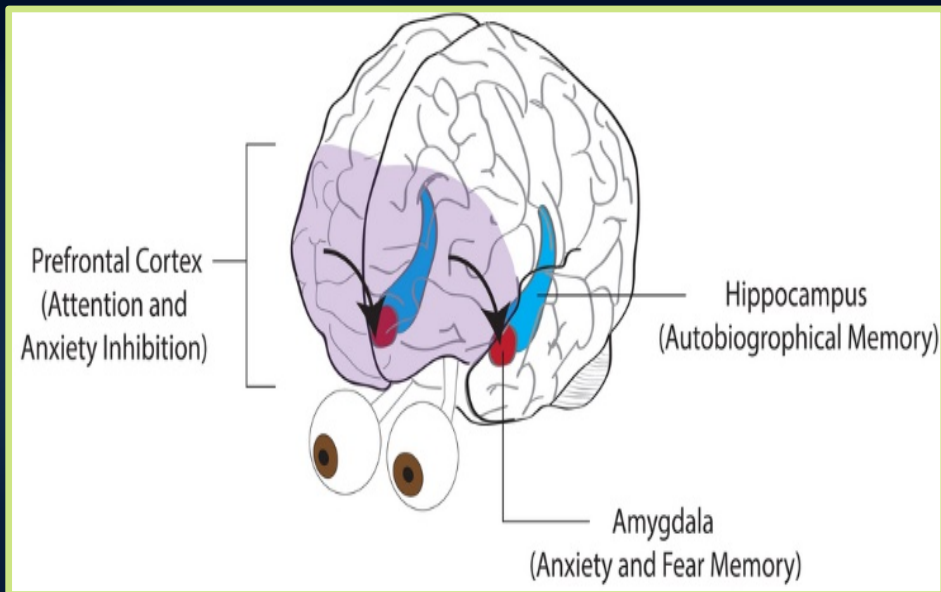
- ▶ Four main hormones are released during a traumatic event
- ▶ Catecholamine
 - ▶ Fight, flight or freeze- “Tonic Immobility”
- ▶ Cortisol
 - ▶ Regulates energy to fight or flee
- ▶ Opiates
 - ▶ Pain reduction
- ▶ Oxytocin
 - ▶ “Feel good” Positive feelings

Hormone Soup



The Neurobiology of Trauma

► Hippocampus and Amygdala



The Neurobiology of Trauma

- ▶ The Hippocampus:
 - ▶ Processes information into memories
 - ▶ Establishes long term memory
- ▶ Encodes and consolidates information
- ▶ Sensory/factual information
- ▶ Takes sensory information coming in and organizes it
- ▶ Consolidates and sorts information

The Neurobiology of Trauma

- ▶ The amygdala processes emotional information
- ▶ Traumatic events are more difficult to handle because of the emotional response
- ▶ The hippocampus and amygdala are very sensitive to the hormone soup, making it harder to process, encode, and consolidate information and memories surrounding a traumatic event

General Effects of Trauma

- ▶ Immediate Term :
 - ▶ Shock
 - ▶ Denial
 - ▶ Dissociation
- ▶ Longer-Term
 - ▶ Physical Symptoms
 - ▶ Interpersonal Problems
 - ▶ Memory
 - ▶ Feelings of worthlessness

The Impact of Trauma on Victims

- ▶ Flat Affect-
 - ▶ A lack of reaction to emotional stimuli,
 - ▶ A monotone voice
 - ▶ Lack of expression in the face.
- ▶ Fragmented & disorganized memory
- ▶ Anxiety



The Impact of Trauma on Victims

- ▶ Flashbacks
- ▶ Volatile emotions
- ▶ The more exposure, the more trauma
- ▶ Coping mechanisms may be good or bad



The Impact of Trauma on Victims

- ▶ Victim may feel degraded or humiliated by the assault
- ▶ Victim may experience flashbacks
- ▶ The shock and strain of trauma never go away



Trauma Informed Prosecution



What are your expectations about victims?



- ▶ Check yourself
 - ▶ Do I have any personal bias?
 - ▶ Do I have a good victim?
 - ▶ Are they credible?
- ▶ **You are your first juror**
 - ▶ **Will you be fair to your victim?**

Trauma Informed Prosecution

Trauma-informed Care for Victims

- Safety
- Trustworthiness
- Choice
- Collaboration
- Empowerment

Summary from Harris, M. & Fallot, R. (2001). Using trauma theory to design service systems. New directions in mental health services, Jossey-Bass, 89, Spring. <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/41-using-a-trauma-informed-approach/> captured 3/28/2020

Trauma Informed Prosecution

- ▶ Name It
- ▶ Frame It
- ▶ Claim It



Trauma Informed Prosecution

- ▶ Understand your victim
- ▶ Identify their needs
- ▶ Create a plan
 - ▶ Personal
 - ▶ Legal

Name It

- ▶ Identify Counterintuitive Behaviors
 - ▶ Witness statements
 - ▶ Police report
 - ▶ Medical records
 - ▶ Personal observations
 - ▶ Victim interviews



Name It

- ▶ What behaviors should you expect to see?
 - ▶ Domestic Violence
 - ▶ Coping mechanisms
 - ▶ Normalizing violence
 - ▶ Recanting/remaining
 - ▶ Minimizing
 - ▶ Self Blame



Name it

- ▶ What behaviors should you expect to see?
 - ▶ Sexual Assault/Human Trafficking
 - ▶ Flat affect
 - ▶ Failure to report
 - ▶ Passive behavior
 - ▶ Laughing
 - ▶ Confusion

Name It

- ▶ What behaviors should you expect to see?
- ▶ Non Intimate Partner Violence
 - ▶ Very Violent crimes
 - ▶ Armed Robbery
 - ▶ Home Invasion
 - ▶ Inability to recount in a linear manner
 - ▶ Gang cases
 - ▶ Anger, aggression



Name It

- ▶ Disclosure happens over time
- ▶ Time and patience needed to establish trust
- ▶ Victim advocates can provide support and services to victim

Frame It

- ▶ How do you best present your victim's story?
- ▶ You
 - ▶ Understanding
 - ▶ Interaction with victims
- ▶ Prosecutors set the tone for victim credibility

Frame It

- ▶ Create a plan for the victim in court
 - ▶ Work with a victim advocate
 - ▶ What triggers exist?
 - ▶ What fears?
 - ▶ What physical changes needed?
 - ▶ What legal issues will arise?



Frame It

▶ Judge

▶ Pre trial motions

▶ Motions in Limine

▶ Character

▶ Irrelevant evidence

▶ Rape Shield

▶ Other Acts

▶ Court personnel

▶ Court Visits

Frame it

Jury

- ▶ Voir Dire
 - ▶ Provide an accurate context for the jury
- ▶ Begin to break down myths about victims



Ratanayake, Ann A. "She Didn't Scream So She Must Have Wanted It: Explaining Counterintuitive Victim Behavior" The National Center for Prosecution of Violence Against Women Volume 4, Number 2, July 2016.

https://www.academia.edu/28482404/She_Didn_t_Scream_So_She_Must_Have_Wanted_It_Explaining_Counterintuitive_Victim_Behavior (Captured Jan. 17, 2020)

Frame It

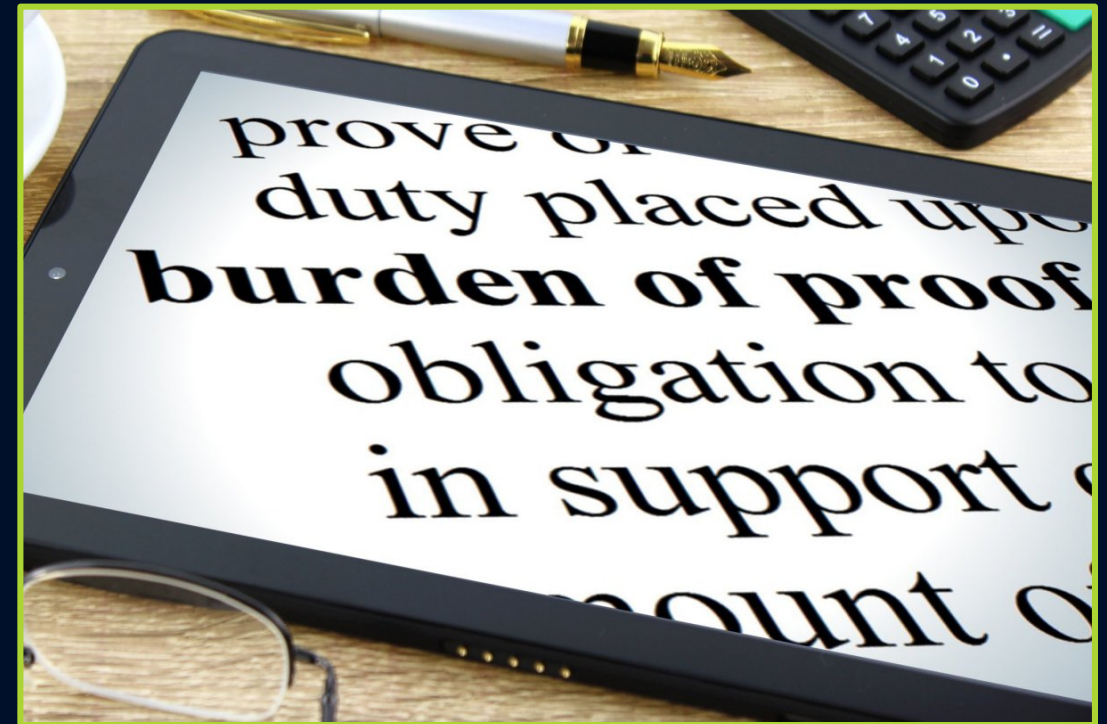
► **Regular folks**



Aunt Flossie

Frame it

- ▶ Corroborate Everything
- ▶ Victims will recant or make inconsistent statements
 - ▶ Why inconsistency ≠ mendacity



Frame it



Frame It



- ▶ Using Expert Witnesses
 - ▶ Expert witnesses can explain counterintuitive behavior
 - ▶ Statistics
 - ▶ The neurobiology of trauma
 - ▶ The process of disclosure
 - ▶ The Cycle of Violence

Frame It



- ▶ Possible Experts
 - ▶ Law Enforcement
 - ▶ Victims advocates
 - ▶ Mental health professionals

Claim It

- ▶ The defense will use counterintuitive behavior to attack victim's credibility
- ▶ Address behavior head on
 - ▶ Prepare jury by discussing it in voir dire and opening
 - ▶ Incorporate it into the theme of the case

Claim It

- ▶ Use your victim's strength in coming forward to inspire the jury
- ▶ Evidence of trauma can help to jury see what the victim has lost due to crime
- ▶ Show how coping mechanism developed as a result of trauma
- ▶ Be a fearless warrior!



Questions?





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References

1. Campbell, Rebecca "The Neurobiology of Sexual Assault: Implications for Law Enforcement, Prosecution, and Victim Advocacy" National Institute of Justice, <https://nij.ojp.gov/media/video/24056> (Captured 3/2/2020)
2. The Neurobiology of Trauma: webinar series Rebecca Campbell, P.H. D captured 2/17/2020 <https://sakitta.org/toolkit/index.cfm?fuseaction=tool&tool=48>
3. Ratanayake, Ann A. "She Didn't Scream So She Must Have Wanted It: Explaining Counterintuitive Victim Behavior," The National Center for Prosecution of Violence Against Women, Volume 4, Number 3, July 2016.
https://www.academia.edu/28482404/She_Didn_t_Scream_So_She_Must_Have_Wanted_It_Explaining_Counterintuitive_Victim_Behavior (Captured Jan. 17., 2020).
4. Viktoria Kristiansson (former Attorney Advisor, AEquitas) and Charlene Whitman-Barr (Senior Associate Attorney, AEquitas), "Integrating a Trauma-Informed Response in Violence Against Women and Human Trafficking Prosecutions" Aequitas Strategies Newsletter, Issue 13, February 2015.



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