

The Psychology of Judicial Betrayal

Carly P. Smith, M.A., M.S.,* Jennifer M. Gómez, M.S., ** &
Jennifer J. Freyd, Ph.D. ***

University of Oregon

I. INTRODUCTION

Lana Lawrence was sixteen years old when the sexual and physical abuse that her father, a former police officer in her home

* Carly Smith, M.A. (Wake Forest University, 2010), M.S. (University of Oregon, 2011) is a doctoral candidate in clinical psychology at the University of Oregon. Smith's research, conducted in collaboration with Dr. Jennifer Freyd, has focused on the form and impact of institutional betrayal in education, military, and healthcare settings. Smith is the editorial assistant for the *Journal of Trauma & Dissociation*. She can be reached at carlys@uoregon.edu. All the authors wish to thank Lana Lawrence for allowing her story to be told as an illustration of institutional betrayal in the judicial system.

** Jennifer M. Gómez, M.S., is a doctoral student in clinical psychology at the University of Oregon, researching the effects of betrayal trauma and institutional betrayal with Dr. Jennifer J. Freyd. She is the co-editor to the upcoming special issue of *Journal of Trauma & Dissociation: Self Injury & Suicidality: The Impact of Trauma & Dissociation*. In expanding upon betrayal trauma theory, proposed by Dr. Freyd, Jennifer has introduced cultural betrayal trauma theory as a way to examine and understand interpersonal trauma outcomes for cultural minorities. She is dedicated to contributing culturally relevant work that can inform trauma research with clinical applications. Gómez can be reached at jgomez@uoregon.edu.

*** Jennifer J. Freyd, Ph.D., is Professor of Psychology at the University of Oregon. She directs a laboratory investigating the impact of interpersonal and institutional trauma on mental and physical health, behavior, and society. Her new book *Blind to Betrayal*, co-authored with Pamela J. Birrell, was published in English by John Wiley & Sons in March 2013 with translations into Portuguese, Korean, Simple Chinese, Traditional Chinese, Japanese, and Russian. Freyd can be reached at jjf@uoregon.edu.

county, perpetrated against her was brought to the attention of Child Protective Services and law enforcement.¹ Following Lana's father's interview with a state trooper, he confessed to raping Lana and was charged with one count of Criminal Sexual Contact in the first degree, a life felony.² The state trooper petitioned the probate court to have Lana removed from the home, and the case went to trial.³ Lana was put on the stand to provide the factual basis of the crime.⁴ Even though Lana's father was found guilty at trial, he never served time in prison.⁵ While Lana tried to overcome the effects of her trauma over the next several decades, she remained confused and hurt as a result of the judicial outcome until information emerged about the miscarriage of justice that had allowed her father to remain free.⁶

Lana's story about the abuse she endured and her subsequent experience within the legal system, shared in this article with her permission, is an altogether too common tragedy.⁷ Her experiences starkly illustrate several components of traumatic experiences, such as child abuse and other interpersonal violence, which have important legal implications. The purpose of this article is to utilize Lana Lawrence's story in introducing Betrayal Trauma Theory, describing the research in support of this theory, and explaining how betrayal perpetrated by close individuals and institutions has implications for the recognition and prevention of this betrayal in legal settings⁸—what Lana Lawrence first called *Judicial Betrayal Trauma*.⁹

II. BETRAYAL TRAUMA THEORY

Theoretical and empirical investigations of traumatic experiences have historically focused on the fear-inducing aspects

1. Telephone Interview with Lana Lawrence, Victim (Sept. 2, 2013).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

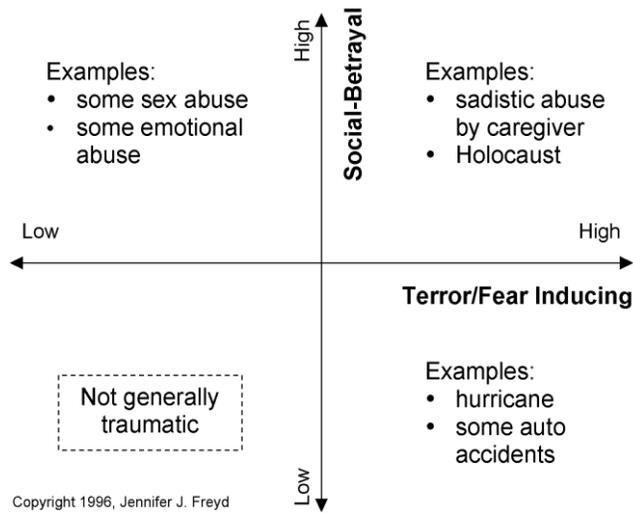
7. *See id.*

8. *See generally* JENNIFER J. FREYD, BETRAYAL TRAUMA: THE LOGIC OF FORGETTING CHILDHOOD ABUSE (1996) [hereinafter FREYD 1996]; Jennifer J. Freyd, Betrayal Trauma: *Traumatic Amnesia as an Adaptive Response to Childhood Abuse*, 4 ETHICS & BEHAV. 307 (1994) [hereinafter Freyd 1994].

9. Interview with Lana Lawrence, *supra* note 1.

of trauma, yet the psychological impact of trauma is often not entirely captured by this dimension alone.¹⁰ Jennifer Freyd proposed that incorporating a second dimension of trauma, the degree of social betrayal, would expand our understanding of the potential impact of traumatic experiences in a way that fear alone could not capture.¹¹ Freyd initiated this line of research after noting that interpersonal traumas that are high in betrayal (e.g., sexual abuse by a parent or caregiver) tend to be associated with reduced or impaired recall for some or all of the abuse (more so than other forms of trauma) independent of the fear-inducing nature of the events.¹² This observation began a line of research aimed at elucidating both the form and mechanism of this type of forgetting.¹³ Most relevant to understanding the importance of betrayal, the mechanism of this forgetting seems to hinge on a specific motivation: to maintain important relationships.¹⁴

Figure 1. Dimensions of Traumatic Events (Note: Reprinted with permission)



10. See generally Erel Shvil et al., Neutral, Psychophysiological, and Behavioral Markers of Fear Processing in PTSD: A Review of the Literature, *CURRENT PSYCHIATRY REP.*, May 2013, at 1.

11. FREYD 1996, *supra* note 8, at 101. See generally Freyd 1994, *supra* note 8. See *infra* Figure 1.

12. FREYD 1996, *supra* note 8, at 197.

13. See *id.*

14. See generally *id.*; Freyd 1994, *supra* note 8.

Humans have evolved as a highly dependent species; first, upon caregivers, and then, upon social contracts (e.g., social relationships with implicit or explicit expectations) throughout development. For infants and children, primary attachment relationships are dually reinforced: caregivers provide protection and resources, and children exhibit lovable and engaging behaviors, thus eliciting continued caregiving. As adults, this contract is mirrored in numerous close relationships, in addition to other social contracts with acquaintances and institutions built on trust and provision of needed resources. When these social contracts are violated by a betrayal of trust, humans have evolved a highly sensitive “cheater-detection” mechanism to alert us and allow restitution-seeking or dissolution of an untrustworthy alliance.¹⁵ Yet, this cheater-detection mechanism often seemed absent in cases of high-betrayal trauma, such as abuse by a caregiver.¹⁶ Rather than confront mistreatment or seek other relationships, those mistreated in close relationships tended to report an unawareness of this abuse.¹⁷ Freyd proposed that this “betrayal blindness” is an adaptive mechanism that arose to resolve the conflicting need to respond to social betrayal (“cheater-detecting”) and maintain necessary or apparently necessary relationships.¹⁸

This proposal generates a testable hypothesis that abuse perpetrated by close others, such as caregivers, should be associated with more memory impairment, as compared to abuse perpetrated by non-close others.¹⁹ This pattern was observed in a study of college students who reported various types of abuse (emotional, physical, and sexual) perpetrated by both caregivers and non-caregivers.²⁰ Physical and sexual abuse perpetrated by a caregiver was associated with more impaired recall (i.e.,

15. See generally Jens Van Lier et al., *Detecting Cheaters without Thinking: Testing the Automaticity of the Cheater Detection Module*, PLOS ONE, Jan. 2013, at 1.

16. See Freyd 1994, *supra* note 8, at 312–13.

17. See *id.* at 309–10.

18. *Id.* at 312–13.

19. See *id.*

20. See generally Jennifer J. Freyd et al., *Self-Reported Memory for Abuse Depends Upon Victim-Perpetrator Relationship*, 2 J. TRAUMA & DISSOCIATION 5, 5 (2001).

experiencing partial or total forgetting of the abuse for any period of time) than similar abuse perpetrated by a non-caregiver.²¹ This effect held even when the age at the time of the abuse and the duration of that abuse were accounted for, indicating that other common explanations for memory impairment were unlikely.²²

Beyond disrupted memory for abuse, betrayal trauma is associated with a host of post-traumatic difficulties over and above those associated with “typical” posttraumatic stress disorder (“PTSD”).²³ Betrayal in trauma predicts poorer physical health, anxiety, depression, dissociation,²⁴ borderline personality disorder characteristics,²⁵ shame,²⁶ hallucinations, self-harm,²⁷ and revictimization.²⁸ Additionally, independent researchers have found that betrayal, as a component of psychological trauma, is an important etiological factor of PTSD.²⁹ Thus it appears that the

21. See *id.* at 10–11.

22. See *id.* at 11. See also Anne P. DePrince et al, *Motivated Forgetting and Misremembering: Perspectives from Betrayal Trauma Theory*, in TRUE AND FALSE RECOVERED MEMORIES: TOWARD A RECONCILIATION OF THE DEBATE 199–201 (Robert F. Belli ed., 2012).

23. See *infra* notes 16–20.

24. See, e.g., Jennifer J. Freyd et al., *Betrayal Trauma: Relationship to Physical Health, Psychological Distress, and a Written Disclosure Intervention*, 6 J. TRAUMA & DISSOCIATION, no. 3, 2005, at 83, 84; Rachel E. Goldsmith et al., *To Add Insight to Injury: Childhood Abuse, Abuse Perceptions, and the Emotional and Physical Health of Young Adults*, 18 J. AGGRESSION, MALTREATMENT & TRAUMA 350, 358–59, 361 (2009).

25. See, e.g., Laura A. Kaehler & Jennifer J. Freyd, *Betrayal Trauma and Borderline Personality Characteristics: Gender Differences*, 4 PSYCHOL. TRAUMA: THEORY, RES., PRAC. & POL'Y 379, 379–80 (2012); Laura A. Kaehler & Jennifer J. Freyd, *Borderline Personality Characteristics: A Betrayal Trauma Approach*, 1 PSYCHOL. TRAUMA: THEORY, RES., PRAC. & POL'Y 261, 261–63 (2009) [hereinafter Kaehler & Freyd 2009].

26. See, e.g., Melissa Platt & Jennifer J. Freyd, *Trauma and Negative Underlying Assumptions in Feelings of Shame: An Exploratory Study*, 4 PSYCHOL. TRAUMA: THEORY RES. PRAC. & POL'Y 370, 373 (2012) [hereinafter Platt & Freyd 2012].

27. See, e.g., J.M. Gomez & Jennifer J. Freyd, *High Betrayal Child Sexual Abuse, Self Injury & Hallucinations*, Poster Presentation delivered at the 121st Annual Convention of the American Psychological Association (July 31–Aug. 4, 2013) (on file with author).

28. See, e.g., Robyn L. Gobin & Jennifer J. Freyd, *Betrayal and Revictimization: Preliminary Findings*, 1 PSYCHOL. TRAUMA: THEORY, RES., PRAC. & POL'Y 242, 242–43 (2009) [hereinafter Gobin & Freyd 2009]; Annmarie C. Hulette et al., *Intergenerational Associations Between Trauma and Dissociation*, 26 J. FAM. VIOLENCE 217, 218 (2011).

29. See, e.g., Lance P. Kelley et al., *Association of Life Threat and*

dimension of social betrayal is a critical component of traumas and their psychological impact.

III. DISCLOSURE AND LISTENING

To return to Lana Lawrence's story, it is apparent that the physical and sexual abuse she suffered was a betrayal of a necessary parental relationship.³⁰ She experienced many of the difficulties in everyday life associated with this type of betrayal, as described above. She also endured this abuse in relative silence for thirteen years before disclosing it to a therapist.³¹ This delayed disclosure is associated with betrayal trauma for many of the same functional reasons as a lack of awareness of the trauma itself—to disclose often poses similar threat to potentially necessary relationships.³² In fact, research has documented the longer periods of non-disclosure following high betrayal trauma.³³ It may be that, in some cases, a lack of complete awareness of the abuse begets this non-disclosure. This silence can also serve to sustain a necessary, if abusive, relationship and thus can be adaptive in some capacities. Yet, maintaining this silence comes at a cost: it delays a potential source of recovery.

Disclosing a trauma in a supportive environment is associated with healing and recovery.³⁴ It is the first step necessary to obtaining legal, medical, material, and emotional support.³⁵ Initially, Lana Lawrence appeared to receive this type of support, yet each supportive gesture was diluted by delay or adverse consequences.³⁶ Upon Lana's disclosure, her therapist notified Child Protective Services, and Lana was placed in voluntary foster care with her parents' consent until law enforcement was notified of the abuse and petitioned the probate court for a more

Betrayal with Posttraumatic Stress Disorder Symptom Severity, 25 *J. TRAUMATIC STRESS* 408, 408–09 (2012).

30. See Interview with Lana Lawrence, *supra* note 1.

31. *Id.*

32. See Melissa Ming Foynes et al., *Child Abuse: Betrayal and disclosure*, 33 *CHILD. ABUSE & NEGLECT* 209, 210–11 (2009).

33. See *id.*

34. Leigh A. Faulconer et al., *Women's Disclosure of Sexual Abuse*, 4 *J. PERS. & INTERPERSONAL LOSS* 163, 173–74 (1999).

35. See *id.* at 174.

36. See Interview with Lana Lawrence, *supra* note 1.

permanent protective ruling.³⁷ Yet, nearly a year had elapsed between the first disclosure to her therapist and removal from her home—it was not until the effects of the abuse were physically visible (following a beating), that her therapist filed a report.³⁸ Additionally, the court issued a “no contact” order, not just for her parents (her mother’s parental rights were also terminated for neglect in her failure to act upon Lana’s disclosure), but also for Lana who was ordered to have no unsupervised contact with her siblings.³⁹ As an adult, she continued to warn other family members about the danger her father posed by having access to children, but was ignored.⁴⁰ Over time, members of her family distanced themselves from her entirely, all as a result of telling about the abuse she endured.⁴¹ Many individuals who heard Lana’s story either reacted poorly or failed to react in a supportive way.⁴² Although the determination of supportive reactions may seem subjective, research has suggested that simple and concrete listening behaviors meet this standard, are highly teachable, and lead to better disclosure outcomes.⁴³

The role of disclosure and listening played a particularly important role in the investigation, prosecution, and sentencing of Lana’s abusive father. Before her father’s hearing, she was asked to tell the assistant prosecutor about the last time she was abused, which was a rape.⁴⁴ The assistant prosecutor became a ‘close other’ to Lana by virtue of both the trust he elicited from her by helping her get placed in a foster home, and the dependence she had on him, within the judicial system, to be safe from her father and to obtain justice through the trial and sentencing of her father.⁴⁵ She was subpoenaed to testify to what she believed was a description of her rape; however, the assistant prosecutor instead led her through a series of scripted questions that she

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. Melissa Ming Foynes & Jennifer J. Freyd, *The Impact of Skills Training on Responses to the Disclosure of Mistreatment*, 1 PSYCHOL. OF VIOLENCE 66, 72–73 (2011).

44. Interview with Lana Lawrence, *supra* note 1.

45. *See id.*

later learned omitted the fact that penetration had occurred.⁴⁶ Additionally, Lana was unaware that during the plea hearings, the assistant prosecutor told the court that no confessions existed, even though two confessions had been obtained and corroborated by Lana's mother (one by the state trooper and another during the preliminary probate hearing).⁴⁷ The assistant prosecutor also did not disclose to Lana that she was only testifying to establish the factual basis of the crime for a 4th-degree "touching" incident, and that he recommended no prison time for her father.⁴⁸ He also allowed her father to enter a "no contest" plea.⁴⁹ As a result, her father was convicted of a two-year high misdemeanor, served two years' probation with an order for psychiatric treatment, and paid a nominal fine.⁵⁰ Thus, while disclosure offers the opportunity for justice and healing, this opportunity is only realized if listeners respond appropriately and supportively during the disclosure and in their behaviors that follow.⁵¹

IV. INSTITUTIONAL BETRAYAL

When Lana Lawrence learned of the outcome of the court case, she blamed the judge for her father's light sentencing, which included no jail time.⁵² She believed that he had heard all of the evidence and still declared her father guilty of only a misdemeanor not worthy of imprisonment.⁵³ She was distraught at this outcome and attempted suicide, beginning a tumultuous period of foster placements and eventually leaving her home state.⁵⁴ The depth of the betrayal experienced by Lana extends beyond that of her father's abuse, or even the apparent misrepresentation by the assistant prosecutor. Lana was

46. *Id.*

47. *Id.*; Letter from Deana M. Finnegan, Shiawassee County Prosecuting Attorney, to Lana Lawrence, Victim (date unknown) (on file with Carley Smith, University of Oregon).

48. Interview with Lana Lawrence, *supra* note 1; Letter from Deana M. Finnegan, *supra* note 47.

49. Letter from Deana M. Finnegan, Shiawassee County Prosecuting Attorney, to Lana Lawrence, Victim (date unknown) (on file with Carley Smith, University of Oregon).

50. *Id.*

51. Faulconer et al., *supra* note 34, at 173.

52. Interview with Lana Lawrence, *supra* note 1.

53. *Id.*

54. *Id.*

betrayed by the legal system itself, which allowed her case to unfold as it did and failed to provide the justice that she depended upon it doling out.

Institutional betrayal refers to wrongdoings perpetrated by an institution against individuals who trust, or are dependent upon that institution.⁵⁵ The relationships individuals have with institutions often mirror primary relationships in language (e.g., a fraternal order of police, a military family), allocation of resources (e.g., government issued benefits, worker's compensation), and protection or provision of justice (e.g., legally afforded rights, imprisonment following convictions of crimes).⁵⁶ Institutional betrayal can include acts of commission, such as cover-ups of potentially damaging information or insensitive responses to disclosures of trauma (e.g., victims of abuse being encouraged to drop charges or questioned about their role in the abuse) or omission such as failing to prevent mistreatment (e.g., difficult to access legal resources or lack of communication about potential legal options).⁵⁷ These betrayals can also be apparently isolated in nature, such as the outcome of Lana's case, or more clearly systemic, such as the practice of having victims of child abuse testify in court without sufficient protections. Given that this type of betrayal violates the same social contracts as interpersonal betrayal and is associated with similarly difficult decisions (e.g., to confront the betrayal and risk losing institutional membership or remain vulnerable to continued betrayal), institutional betrayal is hypothesized to share many of the same outcomes as interpersonal betrayal.⁵⁸

This hypothesis has begun to receive empirical support.⁵⁹ Smith and Freyd developed a questionnaire to assess the occurrence of institutional betrayal across a variety of settings.⁶⁰ Specifically, this questionnaire assesses the degree to which an

55. Carly Parnitzke Smith & Jennifer J. Freyd, *Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma*, 26 J. TRAUMATIC STRESS 119, 120 (2013) [hereinafter Smith & Freyd, *Dangerous Safe Havens*].

56. *See id.* at 120–21.

57. *See id.* at 121.

58. *See* Smith & Freyd, *Dangerous Safe Havens*, *supra* note 55, at 119–20.

59. *See id.* at 120–21.

60. *Id.*

460 *ROGER WILLIAMS UNIVERSITY LAW REVIEW* [Vol. 19:451

institution failed to prevent a traumatic experience.⁶¹ Smith and Freyd created an environment where some traumatic experiences seem “normal” or are more likely to occur, made it difficult to report the traumatic experience, covered up the experience once it was disclosed, responded inadequately to a disclosed traumatic experience and/or punished the discloser in some way for this experience (such as the loss of privileges or status).⁶² Smith and Freyd found that college students who reported institutional betrayal related to unwanted sexual experiences report increased post-traumatic difficulties (including anxiety, dissociation, and sexual dysfunction) when compared with students who had similar sexual experiences but no institutional betrayal.⁶³ Thus, it appears that institutional betrayal exacerbates the effects of sexual trauma in much the same way as interpersonal betrayal.⁶⁴

Similar to how interpersonal betrayals can remain outside of awareness when it is too difficult to know them, so too can institutional betrayals.⁶⁵ Throughout her adult life, Lana Lawrence experienced intense and upsetting flashbacks of the courthouse and courtroom that she could not understand.⁶⁶ However, in examining these and other trauma outcomes through an institutional betrayal lens, we can better understand Lana’s persistent suffering in response to the abuse she endured by her father and the subsequent legal proceedings.⁶⁷ The assistant prosecutor told Lana that she could not attend her father’s sentencing hearing; instead, she received a copy of that hearing’s transcript in the mail.⁶⁸ At this point in her life, Lana had a fifth grade reading level and likely could not make sense of the transcript beyond its signifying her father’s continued freedom.⁶⁹ Ten years later, both a major newspaper and then Lana requested the transcript of the complete circuit court proceedings.⁷⁰ Both

61. *Id.*

62. *Id.*

63. *Id.* at 122.

64. *See id.* at 120.

65. *See id.* at 119.

66. Interview with Lana Lawrence, *supra* note 1.

67. *See id.*

68. *Id.*

69. *See id.*

70. *Id.*

2014]

JUDICIAL BETRAYAL

461

received them, missing the same two pages.⁷¹ It was another twenty-five years before Lana learned that those pages explained the ramifications of any written or oral confessions.⁷² Had these confessions been included in the proceedings, the judge would have likely questioned the charges and imposed a greater penalty. Decades after the court proceedings, with the help of a different assistant prosecutor, Lana discovered additional irregularities in the court procedures.⁷³ She finally understood why her father did not serve prison time and that there were multiple betrayals by the original assistant prosecutor who handled her father's case.⁷⁴ Lana captured these betrayals in Figure 2 on the following page.

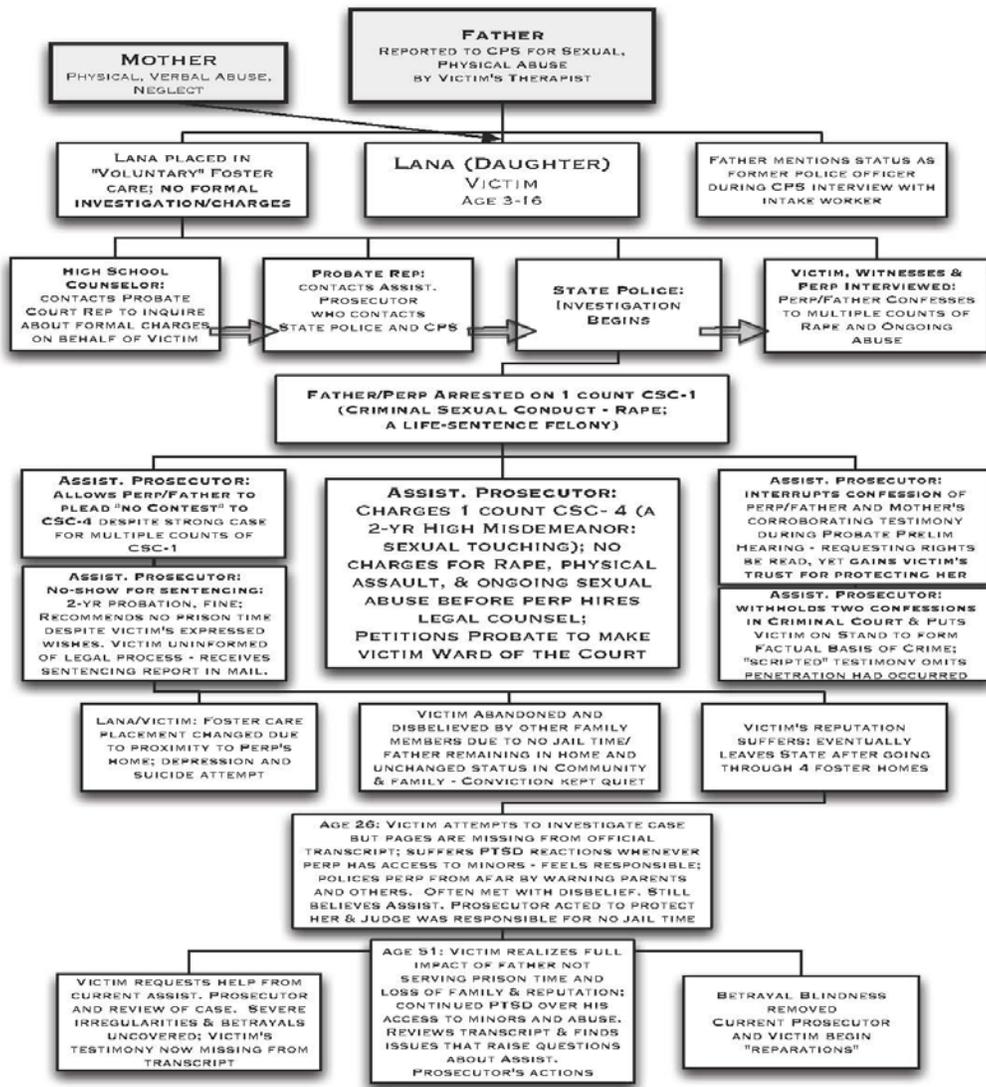
71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

Figure 2. Judicial Betrayal⁷⁵



V. JUDICIAL IMPLICATIONS

Blindness to institutional betrayal is maintained by denial

75. Lana Lawrence, Judicial Betrayal (figure capturing the judicial betrayal perpetrated in her decades long engagement with the legal system).

and lack of accountability by both the institution itself as well as those who are dependent upon it. In the judicial system, where the stakes are high and the resources are often scarce, it may feel dangerous to recognize that justice may be subverted for some vulnerable individuals. Unawareness allows continued investment and participation in the system, even when there are indicators that the system is dysfunctional. This dysfunction can range from corruption to incompetence to well-meaning, but harmful, ignorance of victim psychology. Yet, emerging research indicates that judicial institutions may be particularly at risk for perpetrating institutional betrayal due to their images as a means to justice.⁷⁶ In a study of college students, Smith and colleagues found that students who read a vignette describing a sexual assault involving institutional betrayal (e.g., occurring following a university sponsored event condoning risky behavior) were more likely to seek services from institutional sources including the university police, residential hall staff, and university health services—as compared to students who read a vignette about an identical sexual assault without institutional betrayal.⁷⁷ When asked to indicate their reasons for choosing to disclose to these institutional sources, students most frequently indicated seeking support, safety, and punishment for perpetrators from the institution.⁷⁸ This is an effective choice when support, provision of safety, and options for justice are indeed awaiting these disclosures.⁷⁹ Yet, this is not always the case for individuals disclosing sexual assault or childhood abuse.

Emerging research also indicates that discrimination against minority groups may play a role in how individuals experience sexual trauma and institutional betrayal.⁸⁰ In a study comparing the experiences of LGBT college students to their heterosexual peers, Cunningham and colleagues found that lesbian women reported an institution had created an environment in which they were discriminated against based on their sexual orientation in

76. C. P. Smith & J. Lewis, *Seeking Reparation: Institutional Disclosure Following Campus Sexual Assault* (2014) (unpublished manuscript) (on file with author).

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

the events leading up to and following unwanted sexual experiences.⁸¹ Additionally, lesbian women in this study reported experiencing biased or negative attitudes toward themselves, and their reports of sexual harassment and assault based on their sexual orientation.⁸² These (and other) forms of institutional betrayal leading up to or following a sexual assault were associated with more post-traumatic difficulties including depression, PTSD symptoms, and lower self-esteem.⁸³ These experiences are particularly troubling as sexual minority men and women tend to experience much higher rates of sexual violence than heterosexuals.⁸⁴ Thus, the exposure to and effects of institutional betrayal may be even worse for people who have relatively less power and status in society.

Research on the insensitive or ineffective institutional responses to reports of sexual assault uses the term “secondary assault” to describe victim-blaming, intensive questioning, and impersonal treatment of trauma survivors.⁸⁵ A trauma-informed approach takes the following information into account:⁸⁶

“Passivity during sexual assault is a common response of both child and adult victims.”⁸⁷

“Sometimes victims forget all or part of their assault experience.”⁸⁸

“Often victims do not disclose the assault at all or disclose only after a delay.”⁸⁹ Sometimes these disclosures are partial or incomplete as victims ‘test the water’ or disclose fragmented memories of abuse. “Sometimes victims retract a legitimate

81. Sarah Cunningham, *Sexual Assault, Institutional Betrayal, and Psychological Outcomes in the LGBT Community* (2013) (unpublished honors thesis, University of Oregon) (on file with author).

82. *Id.*

83. *Id.*

84. *Id.*; Laura S. Brown & David Pantalone, *Lesbian, Gay, Bisexual, and Transgender Issues in Traumatic Psychology: A Topic Comes Out of the Closet*, 17 *TRAUMATOLOGY* 2, 2011, at 1.

85. Rebecca Campbell & Sheela Raja, *The Sexual Assault and Secondary Victimization of Female Veterans: Help-Seeking Experience with Military and Civilian Social Systems*, 29 *PSYCHOL. WOMEN Q.* 104 (2005).

86. JENNIFER J. FREYD & PAMELA J. BIRRELL, *BLIND TO BETRAYAL: WHY WE FOOL OURSELVES WE AREN'T BEING FOOLED* 43 (2013).

87. *Id.*

88. *Id.*

89. *Id.* at 44.

2014]

JUDICIAL BETRAYAL

465

accusation.”⁹⁰

“Assault by a familiar other is both more common and potentially more toxic than assault by a stranger.”⁹¹

Victims often display a constellation of seemingly contradictory reactions after the assault including avoidance of social contact, flat emotions, confusion, anger, self-blame, and defending the perpetrator.⁹²

Disbelieving and blaming the victim can compound the damage done by the assault.⁹³

Implementing these research-based tips often requires challenging common, but often times erroneous, knowledge or understanding of trauma at an individual level. Incorporating them into institutional practices may be more challenging as it requires both recognizing and removing systemic barriers to change. Yet it is often legal standards and decisions that begin to affect public understanding of trauma, particularly sexual assault. For example, sensationalized cases where accusations are retracted⁹⁴ or abusers who fit a “dangerous stranger” stereotype⁹⁵ often shape public perceptions and may lead to future jurors who are less trauma-informed. Further, it may leave room for defense arguments based on myths about sexual assault, such as passivity indicating consent.⁹⁶

V. JUDICIAL BETRAYAL REPARATIONS

The same power that can put legal institutions at risk for betraying those who seek justice can also be a resource for providing profound healing from betrayal. Thankfully, Lana Lawrence’s story also contains such reparations. After discovering the inconsistencies in her case and missing court documents, Lana contacted the then-Assistant (now-elected) County Prosecutor,

90. *Id.*

91. *Id.*

92. *Id.* at 45.

93. *Id.*

94. Renae Franiuk et al., *Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case*, 14 VIOLENCE AGAINST WOMEN 287, 301 (2008).

95. Pamela Mejia et al., *News Coverage of Child Sexual Abuse and Prevention, 2007–2009*, 21 J. CHILD SEXUAL ABUSE 470, 482 (2012).

96. FREYD & BIRRELL, *supra* note 86, at 43–45.

466 *ROGER WILLIAMS UNIVERSITY LAW REVIEW* [Vol. 19:451

Deana Finnegan.⁹⁷ Lana reports that the amount of time Ms. Finnegan took to listen to her story, along with her willingness to acknowledge the betrayal and deep pain that she suffered at the hands of the judicial system—and the ways in which the betrayals impacted her life—was of great significance in her rebuilding trust of a prosecutor as a source of justice and putting her on a path of healing.⁹⁸ Perhaps most significantly, Ms. Finnegan accompanied Lana back to the courtroom where she had testified thirty-five years prior and asked her to tell the whole truth about the rapes, sexual assaults, and molestations that her father perpetrated against her (while holding her hand and being supportive).⁹⁹ This gave Lana an opportunity to completely reframe her earlier trauma in that courtroom. She no longer experiences any flashbacks of the courthouse or the courtroom where she had been deeply traumatized, by being placed on the witness stand to help her perpetrator get convicted of only one misdemeanor charge for the prolonged and severe sexual abuse she endured.¹⁰⁰ She now has new memories of being supported and believed in that courtroom and on that witness stand.¹⁰¹ Finally, Ms. Finnegan wrote a public letter (quoted below) to Lana apologizing for the judicial betrayal she had experienced and the resulting anguish the failure of the legal system had caused her.¹⁰² In the letter, Ms. Finnegan also promised to learn from Lana's story and listen carefully to victims of domestic violence and sexual abuse:

“Dear Ms. Lawrence:

As a result of your persistent search for criminal justice as a victim of child sexual abuse, I have taken the opportunity to review the 1977 Criminal Sexual Conduct case of People v. [redacted by authors], your biological father. I have reviewed the police reports, listened to recordings of court proceedings, examined the available transcripts, and read your father's confessions to a trooper of the Michigan State Police. I have also spoken with individuals who

97. Letter from Deana M. Finnegan, *supra* note 47.

98. Interview with Lana Lawrence, *supra* note 1.

99. *Id.*

100. *Id.*

101. *Id.*

102. See Letter from Deana M. Finnegan, *supra* note 47.

2014]

JUDICIAL BETRAYAL

467

were present during these events and were aware of the proceedings following your father's arrest.

Your father was arrested on one count of First Degree Criminal Sexual Conduct (a life offense). He was charged with and bound over to Circuit court on one count of Fourth Degree Criminal Sexual Conduct (a high court misdemeanor punishable by only two years maximum incarceration). I found the charge troubling, since the offense involved the repeated rape and molestation of a child. Your father entered a plea of no contest (neither admitting nor denying the charge) before the Shiawassee County Circuit Court. In order to form the factual basis for that no contest plea, two confessions were ignored and you were placed on the witness stand to provide testimony regarding one count of inappropriate touching only. The sexual penetrations were ignored and you were never questioned about them. Unfortunately, neither the court nor the public ever heard the truth of the full extent of your repeated victimization. Though no recommendation was made by the assistant prosecutor regarding sentence at the time of the plea, the sentencing transcript makes reference to a "no jail" recommendation, in spite of the fact that the settled record indicates that sentencing was conducted without a prosecutor present. In my 24 years of prosecution, I have never known of a sentence for a high court misdemeanor being carried out without the presence of a prosecuting attorney.

As a result, your molester and rapist was sentenced to only two years' probation and continued therapy. A nominal fine was also ordered. No form of incarceration, not even house arrest, was imposed.

One especially troubling matter I discovered when examining the court record, has to do with missing pages of the official court transcript. I realize those pages were missing back in 1987 when you attempted to retrieve the file then. Those pages have since been restored; however, several pages of your testimony are now missing. I will do everything in my power to have the certified copy of that testimony that you have in your possession restored to the court file. I will gladly provide you with a copy of the complete file once this is accomplished.

To this day, many people in our community have no idea of the physical and mental anguish you suffered at the hands of your father. People that worked with him every day were totally

468 *ROGER WILLIAMS UNIVERSITY LAW REVIEW* [Vol. 19:451

unaware of the court proceedings. Unfortunately, this community still does not know that a sexual predator lives among us; a person who NEVER had to pay the price for the crimes he committed. It is even more offensive when this perpetrator is a former Owosso police officer. There was no justice for you in this case, and that is unacceptable.

Having prosecuted child molestation cases for over 20 years, I can honestly say that your case is one of the most heinous I have ever encountered. I am disappointed in the way it was handled. I hope it was not derailed because of your father's position as a former police officer.

Had your case come to our office today, I would welcome the opportunity to take this matter to trial. It is not often we have cases where we have a strong victim, a confession, and physical evidence to support our victim's claims. Your father would be charged with multiple counts of first degree criminal sexual conduct and one count of aggravated assault stemming from the beating you endured just prior to his arrest.

Ms. Lawrence, the criminal justice system failed and betrayed you. You were placed in foster care, while your abuser continued in his high-paying job as plant security for General Motors; you were shunned by many members of your own family (including your mother), while this pedophile continued to lead a normal life. You ultimately felt the need to leave this state as a result of a system that betrayed you on so many levels. You once referred to this as "judicial betrayal." It wasn't until I heard that phrase that I realized exactly how wronged you truly were.

I understand your distress and frustration at having to try to protect other children from your father even though you are hundreds of miles away. It is frustrating for all of us involved in the criminal justice system when we realize that the disposition of this case caused many people to question the veracity of your allegations. "If he really did it, he'd be in prison!" As a result, I know your reputation has suffered. Double jeopardy issues and the Statute of Limitations prevent any recharging of these heinous crimes. I truly understand how much you have suffered both mentally and physically over the past 35 years.

Today your case would be handled much differently. Michigan's Crime Victims' Rights Act would give you the opportunity to have input in the disposition of a case in which you

2014]

JUDICIAL BETRAYAL

469

are a victim. The Michigan Sex Offender's Registration Act would make the community aware of the predator living among us. We understand that children need to know that by reporting sexual abuse, they are doing the right thing. While our laws have been strengthened to assure the rights of the victims, we can always do better. I commit to going to the Michigan legislature with your case as an example and asking for additional reforms that will prevent this type of miscarriage of justice from ever happening again.

Ms. Lawrence, on behalf of the people of Shiawassee County and the Shiawassee County Prosecutor's office, let me offer our heartfelt and humble apology. Not only did we fail to give you the justice you so richly deserve, we allowed you to be betrayed by the very system that was designed to protect both you and the public. The People of the State of Michigan are proud to call you one of our own. You are a tireless advocate for victims' rights and have been very successful in your professional life. Your fight to overcome the devastating effects of trauma has made you a person of great moral integrity. I will always remember your case and your example when dealing with women and children who are victims of sexual assault and molestation. I will listen carefully to their stories and I vow to never let another child suffer as you have. It is my sincere wish that this apology brings you the peace and healing for which you have been searching for these past 35 years.

Very truly yours,

*Deana M. Finnegan
Shiawassee County Prosecuting Attorney*¹⁰³

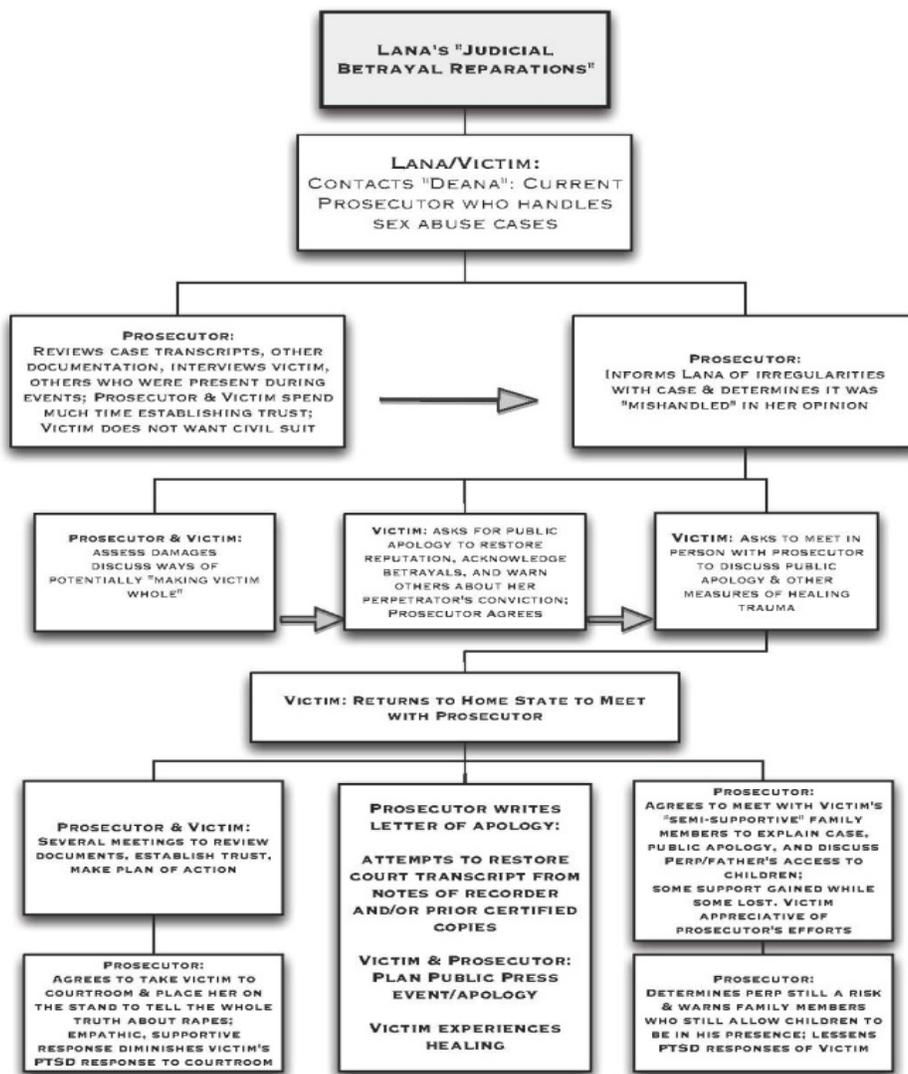
The lessons to be learned from Lana's story are numerous. Over thirty-five years after she was betrayed by the legal system, an apology from an entirely different prosecutor was effective and healing.¹⁰⁴ This proves that it is never too late to apologize for institutional betrayal and these apologies may be most effective coming from an institutional representative, delivered in a sincere and public way. This process is captured by the figure below.

103. *Id.*

104. Interview with Lana Lawrence, *supra* note 1.

470 *ROGER WILLIAMS UNIVERSITY LAW REVIEW* [Vol. 19:451

*Figure 3. Judicial Reparations*¹⁰⁵



105. Lana Lawrence, *Judicial Betrayal* (figure capturing the judicial betrayal perpetrated in her decades long engagement with the legal system).

To prevent and respond to institutional betrayal systemically, it is necessary to incorporate training and education at all levels that recognizes the potential for betrayal when a system does not operate as intended.¹⁰⁶ A problem that has a name and an explanation is easier to handle. Encouraging institutional employees or members to report wrongdoings often requires a cultural shift that celebrates rather than punishes whistleblowing.¹⁰⁷ This reduces the need to depend upon denial and passing of blame to deal with wrongdoings. Recognizing these limitations can also help those who work within the institution to catch and correct potential mistakes.¹⁰⁸ Yet this requires operating outside of sometimes idealized assumptions about how these systems work.

Lana Lawrence's case was covered by a local Michigan newspaper in which several past and current legal professionals were interviewed for different stories.¹⁰⁹ The former Assistant Prosecutor who handled Lana's original case was questioned about the reduced charges Lana's father faced.¹¹⁰ Rather than relying on his own memory about the case, he turned to assumptions about the workings of the legal system, noting that reducing the original first degree criminal sexual conduct charge to a fourth degree charge would have required a "valid reason" suggesting the existence of information that favored the defense (when such was not the case).¹¹¹ He also noted that a decision of this magnitude was not one he would have been able to make without input from the Chief Prosecutor.¹¹² This type of reasoning does not allow for the possibility that the legal institution may not always operate as

106. See Dave M. Mayer et al., *Encouraging Employees to Report Unethical Conduct Internally: It Takes a Village*, 121 ORGANIZATIONAL BEHAVIOR & HUMAN DECISIONS PROCESSES 89, 101 (2013).

107. See *id.* at 100.

108. See *id.* at 101.

109. Curtis Wildfong, *Society Has Made Progress Dealing with Assault Cases*, THE ARGUS-PRESS, Aug. 28, 2013, at A1 [hereinafter Wildfong, *Society Progress*]; Curtis Wildfong, *Searching for Justice*, THE ARGUS-PRESS, Aug. 26, 2013, at A1, A3 [hereinafter Wildfong, *Searching*].

110. Wildfong, *Searching*, *supra* note 109, at A3.

111. *Id.*

112. *Id.*

472 *ROGER WILLIAMS UNIVERSITY LAW REVIEW* [Vol. 19:451

intended and may perpetrate further betrayal as the victims' experiences of institutional mistreatment are again invalidated.

Regarding the documents missing from Lana's case records, in addition to the two pages missing prior to the review of the case, Ms. Finnegan discovered the entirety of Lana's testimony was absent from the file.¹¹³ A county clerk interviewed for the newspaper story noted that she had never known documents to go missing from files and expressed disbelief that someone might purposefully tamper with a file.¹¹⁴ The clerk described the security measures taken to maintain the integrity of case files.¹¹⁵ However, as a result of Lana's case, the clerk's office now requires individuals to sign out public records in order to view them.¹¹⁶ This systemic change takes into account that the existing safety measures taken by the institution may not always be sufficient. Yet, it is noteworthy that responding to this shortcoming in the clerk's office is less threatening to the overall integrity of the legal system than the sentencing issue. The same protective unawareness that can maintain necessary relationships also acts to preserve ideals about trusted institutions and can serve as an impediment to improvement.

Legal practices for protecting child survivors of sexual abuse, particularly those acting as witnesses, can also be improved by aiming to reduce institutional betrayal. The capacity of a child or adolescent trauma survivor to understand the legal process, particularly given common post-traumatic difficulties, is often quite limited as compared to other child witnesses or even adult survivors.¹¹⁷ Sensitivity to this fact leads to different interviewing and consenting processes.¹¹⁸ Collecting non-linear narratives or repeatedly gaining consent for each new step of the legal process are both good practices, as traumatic experiences have marked

113. Curtis Wildfong, *Missing Documents Add Mystery to Case*, THE ARGUS-PRESS, Aug. 26, 2013, at A3.

114. *Id.*

115. *Id.*

116. *Id.*

117. RONNIE JANOFF-BULMAN, SHATTERED ASSUMPTIONS: TOWARDS A NEW PSYCHOLOGY OF TRAUMA 88 (1992); See Nicholas Bala, *Child Witnesses in the Canadian Criminal Courts: Recognizing Their Capacities and Needs*, 5 PSYCHOL. PUB. POL'Y & L. 323, 328 (1999).

118. See Bala, *supra* note 117, at 331.

effects on memory and concentration.¹¹⁹ Providing comfortable surroundings or allowing support figures (such as a non-offending parent or support staff of an advocacy center) to be present during interviews has been shown to decrease distress.¹²⁰ Additionally, child witnesses can gain legal support and protection through services aimed to provide protected spaces, such as safe rooms, for providing videotaped testimony rather than facing a perpetrator in court.¹²¹

Recognizing and educating children about the limitations of the legal system can also reduce betrayal. Many children have a simpler understanding of the legal system as one that puts “bad guys in jail,” often referred to as a belief in a just world. This belief can be shaken by traumatic experiences, but further harmed when the “bad guy” gets to go free, or plea-bargains to a lesser charge.¹²² A child’s own role in these outcomes may require further explanation to avoid harm.¹²³ For example, if a child testifies in a case that does not end in conviction or incarceration, he or she may interpret this outcome as indicating he or she was not believable or that the abuse he or she experienced was not worth punishing. Establishing realistic expectations may allow children to have a different goal for their testimony or participation in a trial.¹²⁴ These goals might include speaking publically about previously secret events, having a judge say what happened to them was wrong, or knowing that other children might directly or indirectly benefit from their testimony.

Furthermore, the specific nature of child abuse, perhaps particularly child sexual abuse, is such that the wants, needs, wishes, and opinions of the children who are victimized are

119. See Bessel van der Kolk, *The Body Keeps the Score: Memory and the Evolving Psychology of Post Traumatic Stress*, 1 HARV. REV. PSYCHIATRY 253, 258 (1994) (“Intrafamilial abuse is increasingly recognized to produce complex post-traumatic syndromes [in children], which involve chronic affect dysregulation, destructive behavior against self and others, learning disabilities, dissociative problems, somatization, and distortions in concepts about self and others.”)

120. See Bala, *supra* note 117, at 334–35.

121. See *id.* at 331.

122. See generally JANOFF-BULMAN, *supra* note 117, at 52–53, 64–65.

123. See *id.* at 132.

124. *Id.* at 134.

overridden, while those of the perpetrators are privileged.¹²⁵ For example, in cases of sexual abuse the perpetrators physically and psychologically impose themselves on their victims, thus rendering children voiceless, without a choice. Therefore, in an effort not to repeat a similar pattern within the judicial system (e.g., communicating with children that it is their responsibility to their family, other children, or society to testify, thus relegating them again to a position where their wants are ignored in favor of serving the needs of others), informing children about all of their options—including not testifying—along with all the positive, negative, and neutral outcomes of all options—including the state of the case without testifying—can give children a sense of self-worth, autonomy, and agency.¹²⁶ This type of informed consent is unlikely to discourage children's participation, as it serves the child victims of violent crime by promoting healing through replacing some control in the hands of children who were previously powerless.

Along these lines, understanding the limitations of the judicial system would help guard against judicial betrayal. The statute of limitations and laws that protect against double jeopardy mean that even in Lana's case, which ends with hugely transformative reparations following betrayal, there remains a level of unavoidable judicial betrayal: her father was not and never will be convicted or sentenced of the crimes he committed against Lana.¹²⁷ Therefore, accepting and communicating that the judicial system, by its very nature, is unable to provide justice in every case can lead to a more honest understanding, and therefore more realistic expectations, of the system, thereby necessarily reducing the risk of judicial betrayal.

Finally, as no legal advocate, lawyer, judge, or system is perfect, betrayals may still occur in spite of best practices. When this occurs, recognizing and apologizing for the betrayal prevents ongoing harm. As Lana Lawrence's story illustrates, it is never

125. *Id.* at 85–86.

126. *See generally* Tamara Walsh & Heather Douglas, *Lawyers, Advocacy and Child Protection*, 35 MELB. U. L. REV. 621, 638–40 (2011) (discussing how direct representation can affect whether a child wants to participate in child protection cases).

127. *See* Wildfong, *Society Progress*, *supra* note 109, at A3.

too late for a genuine and humble apology.¹²⁸

VI. CONCLUSION

Betrayal trauma theory was formulated with the initial goal of understanding how and why disruptions in memory tend to follow certain traumas but not others.¹²⁹ Over the past twenty years, research under this theory has expanded, linking betrayal traumas with depression, anxiety, dissociation, shame, PTSD, physical illness, borderline personality disorder features, hallucinations, low self-esteem, self-harm, re-victimization, and reduced disclosure, in addition to memory disruption.¹³⁰ Furthermore, betrayal trauma theory has expanded our understanding of complex traumatic outcomes beyond interpersonal betrayals within trauma to betrayals at the institutional and societal levels.¹³¹ As this theory is applied to judicial betrayal, illustrated poignantly by the story of Lana Lawrence, we see the potential for both the profound harm of betrayal and the even deeper potential for healing with betrayal reparations.¹³²

128. Telephone Interview with Lana Lawrence, Victim (Sept. 2, 2013).

129. See e.g., FREYD 1996, *supra* note 8, at 9–10; Freyd 1994, *supra* note 8, at 308–09.

130. Goldsmith et al., *supra* note 24; Kaehler & Freyd 2009, *supra* note 25, at 265; Platt & Freyd 2012, *supra* note 26, at 375–76; Gobin & Freyd 2009, *supra* note 28; Kelley et al., *supra* note 29, at 412–13.

131. See FREYD 1996, *supra* note 8, at 186.

132. See Interview with Lana Lawrence, *supra* note 1.