

The Benefits of Specialized Prosecution Units in Domestic and Sexual Violence Cases

*Jennifer G. Long, JD and John Wilkinson, JD**

Domestic and sexual violence cases are complex and involve unique dynamics that are often misunderstood by both laypeople and allied professionals inexperienced with these crimes. For example, victim behavior resulting from these types of violence is often perceived as counter-intuitive and is used by the defense to cast doubt on the victim's credibility. Domestic violence victims often do not participate in the prosecution of their abusers, which can be misunderstood as a lack of interest or a lack of credibility. In adult sexual assault cases, offenders often attempt to manipulate the system into sympathizing with them and blaming the victim. Prosecutors with strong experience working on sexual and domestic violence cases are skilled at focusing on the offender and exposing his dangerousness or his attempts to manipulate the system.

In an effort to improve the response to domestic and sexual violence, many prosecutors' offices around the country have created specialized units dedicated to prosecuting these crimes. Specialized units provide prosecutors with concentrated trial experience, focused training, and the opportunity to work closely with law enforcement and community partners. In offices with smaller staff or resources, one attorney is often designated to be the primary prosecutor on these and related cases. Prosecutors who have performed well in general crimes make good candidates for specialization in domestic and sexual violence cases. While they concentrate on the unique challenges of these cases, they bring with them the perspective and breadth of knowledge from other cases. This approach can lead to an improved experience for the victim as well as for police, prosecutors, and community partners.

COLLABORATION WITH ALLIED PARTNERS AND THE PROCESS-ORIENTED APPROACH

Specialized prosecutors recognize that close working relationships with law enforcement and advocates promote victim safety and offender accountability. Many of the trial skills outlined below are enhanced through this collaboration.

Specialized domestic violence prosecutors understand that success is defined by many factors, not just the final verdict or sentence. The victim's safety and ability to meaningfully participate in the criminal justice system during this case and future cases all play a role. This approach, which has been referred to as a "process oriented approach,"¹ encourages prosecutors to assess these cases differently than other crimes, and recognizes that a domestic violence incident and its related prosecutorial decisions uniquely impact the victim.² It focuses on justice and caring for the victim on all levels—rather than a focus on the verdict itself.

Specialized prosecutors create an environment for domestic and sexual violence victims that enable them to meaningfully participate in the criminal justice process. Meaningful participation includes recognizing the impact of each decision in a prosecution on a victim, and, where possible, getting the victim's input and working with advocates to provide the victim with support, services, and information. For example, victim advocates and counselors help victims work through the trauma they have experienced and may continue to experience during the pendency of a prosecution; they also provide victims with information on available resources, e.g., housing, financial support, and childcare assistance. This support not only helps victims heal but encourages victim participation, as well.

CONCENTRATED TRIAL EXPERIENCE

Creating a specialized unit or designating a prosecutor to focus on particular crimes provides a prosecutor with the opportunity to expand his or her skills in addressing the common challenges associated with those crimes. This is especially true for the prosecution of domestic and sexual violence. Prosecutors who routinely handle domestic and sexual violence cases can recognize common barriers to effectively handling these cases and discover or create strategies to overcome them.

Some of the most common legal issues in these cases involve: confrontation,³ forfeiture by wrongdoing,⁴ other act evidence,⁵ rape shield,⁶ common hearsay objections, and expert testimony.⁷ Specialized prosecutors develop an expertise in these legal concepts that supports the presentation of their cases.

For example, in domestic violence cases, victims often fail to appear at the trial. In some cases, a victim will appear in court but minimize the offender's behavior. Sometimes a victim recants the original complaint. Even in cases in which the victim participates, the defense frequently tries to exploit the victim's behavior, minimizes the case, and denigrates the victim or the case as involving an irresolvable conflict in the evidence. Without specialized experience in domestic violence, many prosecutors might abandon the case or seek to punish the victim for failing to participate in the prosecution. Prosecutors who are specialized in these crimes, however, understand the collateral consequences that victims of domestic violence face when they cooperate in the prosecution of their batterers and are better able to work with victims. They are also more familiar with issues that frequently arise and are often more effective in dealing with evidentiary challenges. Through regular contact with victims and domestic violence cases, prosecutors can begin to recognize common behaviors in victims and common defenses presented at trial.

Specialized prosecutors are also more experienced—and, therefore, often more skilled—at conducting evidence-based prosecution, which promotes targeted evidence collection, in collaboration with law enforcement, in anticipation of trial without the victim's testimony. Well-trained law enforcement officers know to document and photograph all physical injuries; seek to obtain admissions from the defendant as to the relationship and the assault; and record witness statements from the victim, relatives, friends, neighbors, and, where appropriate, children. They also preserve and collect other evidence such as 911 tapes and medical records. Thorough investigations, they also document prior violence and intimidation by the suspect – where it exists – so that the prosecutor can present the full context of the relationship to the judge or jury. Only through this context, can a judge or jury appreciate the true scope and nature of the crime. Using innovative strategies such as evidence-based prosecution, experienced domestic violence prosecutors overcome the challenges posed by prosecuting a case without a cooperative victim every day; proceeding without victim participation becomes second nature.

Skills developed by specializing in sexual violence cases can greatly improve a prosecutor's effectiveness. Defense attorneys commonly seek to tilt the scales in a defendant's favor by focusing entirely on the victim. They cast a case as, "he said/she said;" describe any victim behaviors that don't fit jury expectations as evidence of a victim's lack of credibility; or seek to introduce a victim's medical, mental health or sexual history in an effort to embarrass, humiliate, or shift blame onto the victim. Specialized prosecutors anticipate these tactics and prepare their cases accordingly. They know that a thorough investigation is needed to corroborate as many details of the crime as possible, including investigating the defendant's past, any planning or preparation by the defendant, and what occurred after the assault. They also prepare and file pretrial motions to exclude privileged, irrelevant, or immaterial information about the victim and collaborate with civil attorneys, where necessary, to protect victim privacy. Finally, many specialized prosecutors have received specialized training to recognize the role of experts in preparing and prosecuting these cases. They work with experts to understand and, where admissible, explain victim behavior that may be confusing to juries.⁸

Use of experts to explain victim behavior in both domestic and sexual violence cases is a strategy employed regularly by specialized prosecutors who have become familiar with the case law governing such testimony.⁹ Specialized prosecutors use a variety of experts, such as experienced investigators, medical personnel, therapists and advocates to effectively explain common reactions to violence. These prosecutors have learned that it is essential to educate the trier of fact about victim behavior so that the judge or jury does not make a faulty credibility judgment because the victim does not behave as expected. Experts can inform the jury that, while there is no correct way to react to the intimate crimes of domestic and sexual assault, there are common reactions that are easily explained. This allows a judge or jury to reach an informed conclusion based on the facts.

FOCUSED TRAINING

Many of these skills are not only developed over time in the courtroom, but also through focused training and collaboration. Specialized prosecutors often obtain the most intensive, skill-building training offered. Training will cover the latest investigative, courtroom and collaboration strategies. Some of the most effective trainings are multi-disciplinary trainings, which can involve police, prosecutors, and community advocates training together. Collaboration is not only the subject of

formal training but can be the greatest source of informal education for prosecutors. Working closely and regularly with experienced investigators will educate prosecutors on the practical investigative and trial challenges they will face. Together, investigators and prosecutors solve problems creatively. Additionally, working closely with victim advocates is a tremendous source of information on victim behaviors and needs in general, and also on an individual basis. The victim advocate's perspective is unique and invaluable to improving effectiveness in each case and improving how the system responds to victims.

VICARIOUS TRAUMA

One concern of being in a specialized unit is the increased potential for vicarious trauma and burnout. When a prosecutor focuses on traumatic crime exclusively, particularly crimes that can elicit strong emotional reactions, they can, over time, be negatively impacted by what they hear and see as they prepare cases. Vicarious trauma is sympathetically experiencing the trauma that the victim experienced. Burnout, a closely related concept, results in lack of interest in the cases. Specialized prosecutors need to take care to avoid these conditions so that they continue to deliver quality services to victims.

CONCLUSION

There is limited research on the efficacy of specialized prosecution units, but one study comparing an office with a specialized domestic violence unit and one without showed an increased satisfaction with the specialized prosecutors over the non-specialized prosecutors.¹⁰ While there is no "one-size-fits-all" solution to the challenges that arise in prosecuting domestic and sexual violence cases, specialized prosecution units or specialized prosecutors in smaller jurisdictions, can be a cost neutral strategy that results in greater prosecutorial skill and effectiveness, as well as increased victim participation and satisfaction.

**Jennifer Long is the Director and John Wilkinson is an Attorney Advisor with AEquitas.*

Reprinted with permission from the May/June 2011 issue of Administrators' Corner, published by the STAAR Project, Alliance of Local Service Organizations.

ENDNOTES

¹ Viktoria Kristiansson and Jennifer G. Long, "Taking a Process-Oriented Approach to Domestic Violence Prosecutions", 1 THE VOICE, NAT'L DISTRICT ATTORNEYS ASS'N NEWSLETTER, 9 (2007).

² *Id.*

³ *Crawford v. Washington*, 541 U.S. 36 (2004); *Davis v. Washington*, 547 U.S. 813 (2006); *Michigan v. Bryant*, 562 U. S. ____ (2011).

⁴ *Giles v. California*, 554 U.S. 353 (2008).

⁵ Fed. R. Evid. 404(b).

⁶ Fed. R. Evid. 412.

⁷ Fed. R. Evid. 702, 703.

⁸ See Jennifer G. Long, *Introducing Expert Testimony to Explain Victim Behavior in Sexual and Domestic Violence Cases* (NDAA 2007).

⁹ Prosecutors should check their individual state laws to determine admissibility and contact AEquitas for assistance.

¹⁰ *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*, Published June 2009, <http://www.nij.gov/topics/crime/intimate-partner-violence/practical-implications-research/ch6/specialized-prosecution-units.htm>.

This project was supported by Grant No. 2009-TA-AX-K024 awarded by the U.S. Department of Justice, Office on Violence Against Women (OVW). The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of OVW.