No. 21-3981

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

STEVE SNYDER-HILL, et al.,

Plaintiffs–Appellants,

v.

THE OHIO STATE UNIVERSITY,

Defendant–Appellee.

On Appeal from a Final Judgment of the
United States District Court for the Southern District of Ohio
Case No. 2:18-cv-736, the Hon. Michael H. Watson

BRIEF OF PSYCHOLOGY AND PSYCHIATRY SCHOLARS AS AMICI CURIAE SUPPORTING APPELLANTS

Jim Davy
ALL RISE TRIAL & APPELLATE
P.O. Box 15216
Philadelphia, PA 19125
(215) 792-3579
jimdavy@allriselaw.org

Counsel for *Amici Curiae*

Date: Feb. 9, 2022

CORPORATE DISCLOSURE STATEMENT

Amici are individual professors. They submit this brief in their personal capacity, and do not speak for any universities with which they have affiliation. They have no parent corporations, and no publicly held corporation owns any portion of any of them.

TABLE OF CONTENTS

Page(s)

Corporate Disclosure Statement i
Table of Authorities iii
Interests of the Amici Curiae 1
Introduction 8
Argument 10
I. Many people do not recognize that they have been sexually abused or assaulted or accurately label those experiences, and this is especially likely to happen when they depend on the person who abuses or assaults them. 10
A. Some people fail to recognize their experiences as sexual violence because of dissociation in the moment, or pervasive myths about who can be a victim. 12
B. People's unawareness in the immediate aftermath of sexual assault and abuse is particularly likely when they are abused by someone on whom they depend. 17
II. People who are sexually assaulted and abused suffer serious harms regardless of whether they immediately recognize what was done to them as sexual violence. 20
A. Harms from sexual violence can impact every part of a person's life, in both the short- and long-term. 21
B. Failing to recognize one's experience as sexual violence does not immunize that person from the harms that assault or abuse cause—especially in cases involving institutional betrayal. 24
Conclusion 27
Certificates 28

TABLE OF AUTHORITIES

Other Authorities **Page(s)**

A. Cepeda-Benito & P. Short, *Self-concealment, avoidance of psychological services, and perceived likelihood of seeking professional help*, Journal of Counseling Psychology, 45:1 (1998) 25
A.E. Jaffe *et al.*, *The #MeToo movement and perceptions of sexual assault: College students' recognition of sexual assault experiences over time*, Psychology of Violence, 11:2 (2021) 15
Alec M. Smidt and Jennifer J. Freyd, *Government-mandated institutional betrayal*, Journal of Trauma and Dissociation, 19:5 (July 30, 2018) 20
Allison C. Aosved *et al.*, *Sexual Revictimization and Adjustment in College Men*, Psychology of Men & Masculinity, 12:3 (July 2011) 23
Beth E. Molnar *et al.*, *Child Sexual Abuse and Subsequent Psychopathology: Results From the National Comorbidity Survey*, American Journal of Public Health, 91:5 (May 2001) 22
C. G. Martin *et al.*, *The role of cumulative trauma, betrayal, and appraisals in understanding trauma symptomatology*, Psychological Trauma: Theory, Research, Practice, and Policy, 5:2 (2013) 26
Carly Parnitzke Smith, & Jennifer J. Freyd, *Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma*, Journal of Traumatic Stress, 26:1 (Feb. 2013) 19
Carly Parnitzke Smith, & Jennifer J. Freyd, *Institutional betrayal*, American Psychologist, 69:6, 2014 ..... 18, 26
Charlene L. Muehlenhard *et al.*, *Evaluating the One-in-Five Statistic: Women's Risk of Sexual Assault While in College*, Journal of Sex Research, 54:4-5 (Apr. 4, 2017) 11
Dave Philipps, *'This Is Unacceptable.' Military Reports a Surge of Sexual Assaults in the Ranks*, THE NEW YORK TIMES (May 2, 2019) 19
David Finkelhor, *et al.*, *The Lifetime Prevalence of Child Sexual Abuse and Sexual Assault Assessed in Late Adolescence*, Journal of Adolescent Health, 55:3 (Sept. 1, 2014) 10
David Lisak & Laura Luster, *Educational, occupational, and relationship histories of men who were sexually and/or physically abused as children*, Journal of Traumatic Stress, 7:4 (Oct. 1994) 24
Elisa Romano & Rayleen V. De Luca, *Male sexual abuse: A review of effects, abuse characteristics, and links with later psychological functioning*, Aggression and Violent Behavior, 6:1 (Jan.-Feb. 2001) 23
Emily A. Holmes *et al.*, *Are there two qualitatively distinct forms of dissociation? A review and some clinical implications*, Clinical Psychology Review, 25:1 (Jan. 2005) 12
Gail S. Goodman *et al.*, *False Memories and True Memories of Childhood Trauma: Balancing the Risks*, Clinical Psychological Science (Sept. 21, 2018) 18

TABLE OF AUTHORITIES—continued

Page(s)

Greg Toppo, *Why Do Colleges Keep Failing to Prevent Abuse?*, Inside Higher Ed (June 5, 2018) 20
H. Littleton *et al.*, *Sexual Assault Victims' Acknowledgment Status and Revictimization Risk*, Psychology of Women Quarterly, 33:1 (2009) 21
Henrietta H. Filipas & Sarah E. Ullman, *Child Sexual Abuse, Coping Responses, Self-Blame, Posttraumatic Stress Disorder, and Adult Sexual Revictimization*, Journal of Interpersonal Violence, 21:5 (May 1, 2006) 16
Jennifer J. Freyd and Pamela J. Birrell, *Blind to Betrayal – From Close Relationships to Institutional Betrayal*, John Wiley & Sons (2013) 18
Jennifer J. Freyd, *Betrayal Trauma – The Logic of Forgetting Childhood Abuse*, Harvard University Press (1998) 17
John Briere and Diana M. Elliott, *Prevalence and psychological sequelae of self-reported childhood physical and sexual abuse in a general population sample of men and women*, Child Abuse and Neglect, 27:10 (Oct. 2003) 11
Juliette M. Mott *et al.*, *Change in Trauma Narratives and Perceived Recall Ability over a Course of Cognitive Processing Therapy for PTSD*, Traumatology, 21:1 (Dec. 15, 2014) 13
Kathleen M. Ingram *et al.*, *Unsupportive Responses from Others Concerning a Stressful Life Event: Development of The Unsupportive Social Interactions Inventory*, Journal of Social and Clinical Psychology, 20:2 (June 2001) 17
Kristen W. Springer *et al.*, *The Long-term Health Outcomes of Childhood Abuse*, Journal of General Internal Medicine, 18:10 (Oct. 2003) 21
Laurie Goodstein and Sharon Otterman, *Catholic Priests Abused 1,000 Children in Pennsylvania, Report Says*, THE NEW YORK TIMES (Aug. 14, 2018) 19
M. R. Burt, *Cultural myths and supports for rape*, Journal of Personality and Social Psychology, 38:2 (1980) 14
Margaret C. McKinnon *et al.*, *A review of the relation between dissociation, memory, executive functioning and social cognition in military members and civilians with neuropsychiatric conditions*, Neuropsychologia, 90 (Sept. 2016) 13
Michael F. Myers, *Men sexually assaulted as adults and sexually abused as boys*, Archives of Sexual Behavior, 18 (June 1989) 22
Nancy L. Talbot *et al.*, *Childhood Sexual Abuse is Associated With Physical Illness Burden and Functioning in Psychiatric Patients 50 Years of Age and Older*, Psychosomatic Medicine, 71:4 (Sept. 17, 2009) 21
Paul Mones, *Boy Scouts bankruptcy a warning to others who have ignored sexual abuse*, USA Today (Feb. 28, 2020) 19
R. E. Goldsmith *et al.*, *To add insight to injury: Childhood abuse, abuse perceptions, and the emotional and physical health of young adults*, Journal of Aggression, Maltreatment & Trauma, 18:4 (2009) 25, 26
Rachel E. Morgan & Alexandra Thompson, *Criminal Victimization, 2020*, Bureau of Justice Statistics (Oct. 2021) 10

TABLE OF AUTHORITIES—continued

Page(s)

Robert C. Davis *et al.*, *Supportive and unsupportive responses of others to rape victims: Effects on concurrent victim adjustment*, American Journal of Community Psychology, 19:3 (1991) 16
Sarah J. Harsey *et al.*, *Perpetrator Responses to Victim Confrontation: DARVO and Victim Self-Blame*, Journal of Aggression, Maltreatment, and Trauma, 26:6 (June 1, 2017) 14
Tracy Connor, *Dr. Larry Nassar, Accused of Abusing Gymnasts, Defends Procedures*, USA Today (Sept. 22, 2016) 14
Trevor J. Schraufnagel *et al.*, *Childhood sexual abuse in males and subsequent risky sexual behavior: A potential alcohol use pathway*, Journal of Child Abuse & Neglect, 34:5 (May 1, 2011) 23

INTERESTS OF THE AMICI CURIAE

Amici are scholars of psychology and psychiatry with research expertise and clinical insight into people who have experienced sexual violence and trauma.

Joan M. Cook, Ph.D., is a Professor in the Department of Psychiatry at the Yale School of Medicine. She has published more than 100 peer-reviewed scientific papers on topics that include traumatic stress and post-traumatic stress disorder (PTSD), as well as the long-term effects of trauma on adults as they age. In addition to academic scholarship, Dr. Cook also sees patients in a clinical setting, including specifically people of all genders who have experienced sexual assault in childhood and early adulthood. Dr. Cook's combination of research and clinical experience give her a unique view into the real-life effects of sexual violence, and the psychology of people who experience it.

Anne DePrince, M.S., Ph.D., is a Distinguished University Professor in the Psychology Department at the University of Denver, and is the Associate Vice Provost of Public Good Strategy and Research. She studies trauma, with a particular focus on trauma induced by intimate violence. In addition to academic scholarship, Dr. DePrince works with community partners to learn more about the real-life effects of trauma on individuals, and to address the effects and manifestations of trauma caused by domestic violence, sexual assault, human trafficking, and other intimate harm. Dr. DePrince's combination of research and community engagement give her a unique view into the real-life effects of sexual violence, and the manifestations of trauma in people who experience it.

Christal L. Badour, Ph.D., is an Associate Professor in the Department of Psychology at the University of Kentucky and Co-Director of the Clinic for Emotional Health at the University of Kentucky. She has published over 80 peer-reviewed scientific papers on the psychological effects of experiencing sexual assault, sexual abuse, and other traumatic events, and she trains and supervises clinicians in the safe and effective implementation of evidence-based therapies for people with PTSD after having been sexual assaulted or abused. Dr. Badour serves on the Board of Directors for the Ampersand Sexual Violence Resource Center of the Bluegrass, an organization that provides crisis intervention, advocacy, and counseling/therapy services to survivors of sexual violence in the community. Dr. Badour's combination of research, clinical experiences, and community engagement give her a unique perspective into the real-life effects of sexual violence, and the psychological impact of sexual violence on people who experience it.

J. Gayle Beck, Ph.D., is the Lillian and Morrie Moss Chair of Excellence in the Department of Psychology at the University of Memphis. Dr. Beck publishes widely on the topics of sexual dysfunction, panic, generalized anxiety, posttraumatic stress disorder, co-morbidity among mental disorders, and the role of cognitive and emotional processes in psychological distress, including particular focus on PTSD following trauma exposure. She is a Past President of the Society of Clinical Psychology (Division 12) of the American Psychological Association and the Association of Behavioral and Cognitive Therapy, and the past editor of *Clinical Psychology: Science and Practice and Behavior Therapy*.

Dr. Beck is a fellow of the American Psychological Association, the Association for Psychological Science, the Academy of Cognitive and Behavioral Therapies, and the Association of Behavioral and Cognitive Therapy.

Kathryn Becker-Blease, M.S., Ph.D., is an Associate Professor and Director of the School of Psychological Science at Oregon State University. She studies trauma, with an emphasis on interpersonal abuse in children and young adults. Dr. Becker-Blease's work with the effects of previous and current interpersonal abuse among college students has led to work with the National Academies of Science, Engineering, and Medicine, initiatives within Oregon State University, and a non-profit advocacy group working with athletics coaches, all with the aim of preventing and responding to trauma. This work applying and translating the science of developmental trauma into real world applications provides a unique perspective on issues faced by children and young adults who have experienced interpersonal abuse.

Sandra L. Bloom, M.D., is a Board-Certified psychiatrist and an Associate Professor of Health Management and Policy at the Dornsife School of Public Health, Drexel University. Dr. Bloom is a past President of the International Society for Traumatic Stress Studies, and has served as Co-chair for the Philadelphia ACEs Task Force since its inception in 2012. She also chairs The Campaign for Trauma-Informed Policy and Practice (CTIPP), which addresses policies and programs that incorporate up-to-date scientific findings regarding the relationship between trauma and many social and health problems. CTIPP

was awarded the Distinguished Service Award for 2019 from the American Psychiatric Association.

Bethany Brand, Ph.D., is a Psychology Professor and the Director of the Clinical Focus program at Towson University. Dr. Brand specializes in the assessment and treatment of trauma related disorders. She has over 30 years of clinical and research experience. Dr. Brand has served on several national task forces that developed guidelines for the assessment and treatment of trauma-related disorders. She has published more than 100 papers focusing on treatment of dissociative individuals and the assessment of trauma-related disorders, among other topics. In addition to assessing and treating traumatized patients in clinical practice, Dr. Brand serves as an expert in trauma-related cases at the state, federal and international level, including a case in the Supreme Court of Australia involving sexual assault within an institutional setting. Dr. Brand's combination of research, clinical, and forensic experience give her a unique understanding of the short- and long-term impact of interpersonal violence.

Christine A. Courtois, Ph.D., A.B.P.P., is a board-certified counseling psychologist, author, and trainer on trauma psychology and treatment. She has worked with adult survivors of developmental trauma in childhood and complex trauma and its treatment. She has published numerous books, including *Sexual Boundary Violations in Psychotherapy*, and co-edited the most recent edition of *Treating Complex Traumatic Stress Disorders*. Dr. Courtois served as Chair of the *Clinical Practice Guideline for the Treatment of PTSD in Adults* for the American Psychological Association (2017), and is a past president of APA

Division 56 (Trauma Psychology). She also co-founded and was Clinical and Training Director of The CENTER: Posttraumatic Disorders Program.

Mary Ann Dutton, Ph.D., is a Professor and Vice-Chair for Research in the Department of Psychiatry and Co-Director of the Community Engagement component of the Georgetown Howard Universities Center for Clinical and Translational Science. Dr. Dutton has published extensively on interpersonal trauma and mental health, and she maintains an active clinical practice, providing psychotherapy for many people who have suffered trauma as children or adults. Her clinical practice includes her running randomized clinical trials of different interventions for trauma populations, including veterans. Dr. Dutton's perspective into these issues is also informed by her experiences assisting lawyers provide trauma-informed legal advocacy.

Julian D. Ford, Ph.D., A.B.P.P. is a board-certified clinical psychologist and Professor of Psychiatry and Law at the University of Connecticut, where he also directs the Center for Trauma Recovery and Juvenile Justice and the Center for the Treatment of Developmental Trauma Disorders. Dr. Ford is past President of the International Society for Traumatic Stress Studies, and a Fellow of the American Psychological Association. He has published more than 250 articles and book chapters and is the author or editor of 10 books, including *Treating Complex Traumatic Stress Disorders in Adults, 2nd Edition*. Dr. Ford runs the national Developmental Trauma Disorder Field trial research study, and conducts randomized clinical trial and effectiveness studies on interventions for youths and adults with developmental trauma histories and complex PTSD.

Damion Grasso, Ph.D., is a licensed clinical psychologist and an Associate Professor of Psychiatry and Pediatrics at the University of Connecticut School of Medicine. He researches social and biological factors affecting risk or resilience after exposure to trauma or adversity, develops and evaluates tools and methods for assessing and quantifying trauma exposure and associated outcomes (including PTSD), and evaluates trauma-informed interventions and identifies key factors that facilitate positive change. His research gives him particular perspective into the issues in this case.

Rochelle F. Hanson, Ph.D., is a Licensed Psychologist and Professor at the National Crime Victims Research and Treatment Center (NCVC), Department of Psychiatry and Behavioral Sciences at the Medical University of South Carolina (MUSC), with a dual appointment in the MUSC Department of Pediatrics. She serves as Associate Director of Research and Director of the Family and Child Program at the NCVC. She is also Co-Director of Research for the Charleston Psychology Internship Consortium, and Director of the Training and Technical Assistance Division for the National Mass Violence Victimization Resource Center. Dr. Hanson specializes in understanding and responding to victims of traumatic events, as well as training professionals to provide effective treatments for youth, families and adults. Dr. Hanson also trains clinicians to deliver trauma-focused, evidence-based interventions.

Ilan Harpaz-Rotem, Ph.D., A.B.P.P., is a clinical psychologist specializing in trauma related psychopathology, primarily PTSD. Over the past 20 years he has provided psychological treatment to victims of violence including sexual violence,

war, and community violence. He also conducts research to better understand PTSD and to improve its treatment.

Janna A. Henning, J.D., Psy.D., F.T., is a licensed clinical psychologist, a Professor in the Doctor of Clinical Psychology program at Adler University in Chicago, and the creator and coordinator of its Traumatic Stress Psychology Emphasis. She has taught doctoral courses and provided professional training, continuing education, and community outreach programs focused on PTSD, complex traumatic stress, and dissociative disorders for 15 years. She is the Chairperson of the Education and Training Committee of Division 56 (Trauma) of the American Psychological Association, and presents at conferences on topics including the treatment of complex traumatic stress and dissociative disorders in survivors of interpersonal violence. She has published numerous articles on best practices in graduate trauma education in peer-reviewed journals. For almost 20 years she has provided therapy for adolescent and adult survivors of interpersonal violence, and this real-world experience directly informs her scholarly work and teaching.

Sylvia A. Marotta-Walters, Ph.D., is a Professor of Counseling at the George Washington University. She researches the spectrum of trauma and stress disorders, with a particular emphasis on the developmental consequences of trauma exposure and on diversity issues among exposed individuals and groups. She is a past president of the psychological trauma division of the American Psychological Association, and Dr. Marotta-Walters regularly publishes and presents on both trauma and resilience among adult survivors of interpersonal

trauma of various types. She is also an associate editor for the journal, Psychological Trauma: Theory, Research, Practice, Policy. Dr. Marotta-Walters is board certified in Counseling Psychology through the American Board of Professional Psychology.

Amici submit this brief because of their expertise with the long-term effects of trauma on individuals. They have an interest in the legal system recognizing the ways that trauma manifests in people over time, and interpreting laws, rules, and other doctrines in a manner informed by research and evidence about how people actually experience the effects of sexual violence.[1]

INTRODUCTION

In dismissing the claims in this case, the District Court made several assumptions that betray fundamental understanding of the impact of sexual violence. Those unsupported assumptions contributed to the District Court's error in this case, and *Amici* urge this Court to consider research and evidence about sexual violence to recognize why the District Court erred. First, although sexual assault and abuse are common, survivors often do not understand and experience sexual assault in the same way. Some victims can be unaware of the

[1] *Amici* file this brief with the consent of the Appellants. Appellee takes no position on filing. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The universities employing *amici* provide financial support for activities related to faculty members' research and scholarship, which helped defray the costs in preparing and submitting this brief. Otherwise, no person or entity has made a monetary contribution intended to fund the preparation or submission of this brief. Titles and institutional affiliations are for identification purposes only.

abuse or assault because of common myths about who can and cannot be victims of sexual violence and other cultural dynamics. These dynamics contribute to people failing to immediately recognize or label their experiences as sexual abuse or violence. On top of that, unawareness is more likely among people abused or assaulted by someone upon whom they depend—including close family members or, as here, their doctor. In such dependent situations where abuse is happening, unawareness can help victims maintain necessary relationships from which they cannot withdraw.

Second, people who are sexually assaulted and abused often suffer serious, long-term consequences. And crucially, sexual assault and abuse can result in serious consequences regardless of whether people acknowledge—to themselves or others—that they were sexually victimized. Those consequences manifest physically and psychologically, including but not limited to PTSD, depression, substance use disorders, self-injurious behaviors, and dissociation. These and other effects can impact every area of a person's life—personal relationships, employment, and physical and mental health, among others. These manifestations can vary and intensify over time, may never entirely subside, and indeed, some may not even emerge until more time has elapsed. Failing to recognize that sexual violence occurred does not immunize someone from experiencing any or all those effects, and in fact, can compound harm. These harms can also be magnified and exacerbated when someone's experience involves institutional betrayal—where the abuse happens in the context of a dependent relationship.

When this Court considers the Plaintiffs-Appellants' allegations from a perspective informed by research about how people experience sexual violence, the District Court's errors become clear. People should not have to fit an idealized victim profile to seek justice in courts, and this Court should reverse and reinstate the complaint here, in recognition of that.

ARGUMENT

I. Many people do not recognize that they have been sexually abused or assaulted or accurately label those experiences, and this is especially likely to happen when they depend on the person who abuses or assaults them.

Sexual abuse and assault are unfortunately common in the United States. This includes sexual abuse and assaults reported criminally, *see* Rachel E. Morgan & Alexandra Thompson, *Criminal Victimization, 2020*, Bureau of Justice Statistics (Oct. 2021),[2] and the enormous amount of sexual violence that people never report to any authority, or even disclose to a family member or friend. Including unreported assaults, large numbers of men and women are sexually victimized at some point in their lifetimes. Today we know that one in four girls in the U.S. is sexually abused. David Finkelhor, *et al.*, *The Lifetime Prevalence of Child Sexual Abuse and Sexual Assault Assessed in Late Adolescence*, Journal of Adolescent Health, 55:3 (Sept. 1, 2014).[3] One in five young women are sexually assaulted on campus, specifically. Charlene L. Muehlenhard *et al.*, *Evaluating*

---

[2] *Available at*: https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cv20.pdf.

[3] *Available at*: https://www.jahonline.org/article/S1054-139X(13)00854-9/fulltext.

the One-in-Five Statistic: Women's Risk of Sexual Assault While in College, Journal of Sex Research, 54:4-5 (Apr. 4, 2017).[4] And the statistics are not dissimilar for men: one in six males were sexually abused at some point during their childhood, *see* John Briere and Diana M. Elliott, *Prevalence and psychological sequelae of self-reported childhood physical and sexual abuse in a general population sample of men and women*, Child Abuse and Neglect, 27:10 (Oct. 2003).[5] The number of men who are sexually assaulted increases to 1 in 4 across their lifespan.

Sexual abuse and assault can impact people in many different ways. Some of the variation owes to the range of acts that can constitute sexual assault. Sexual assault is typically defined as any sort of sexual activity between two or more people in which one of those people is involved against their will; this can include, but is not limited to, unwanted touching, grabbing, oral sex, anal sex, sexual penetration with an object, and/or sexual intercourse. But impacts from abuse and assault also vary because of several factors, including some present in this case. First, people who are sexually assaulted and abused can be unaware of the abuse for a variety of reasons. Some dissociate—that is, they feel disconnected or detached from their bodies or feel as though the world around them is unreal—during an assault, inhibiting recognition. Some fail to recognize what was done to them as sexual violence because of pervasive cultural myths about who does

---

[4] *Available at*: https://www.tandfonline.com/doi/full/10.1080/00224499.2017.1295014.

[5] *Available at*: https://pubmed.ncbi.nlm.nih.gov/14602100/.

and does not experience it. Second, an important factor that makes people more likely not to recognize abuse is when a victim has a dependent relationship with their abuser. Unawareness can help them maintain necessary relationships from which they cannot withdraw, as when their abuser is a parent, caretaker, or doctor.

A. Some people fail to recognize their experiences as sexual violence because of dissociation in the moment, or pervasive myths about who can be a victim.

For some people, self-protective reactions while they are being abused and assaulted inhibit clear recognition of their experiences as abuse and assault. In particular, some individuals dissociate during or after traumatic events. Emily A. Holmes *et al.*, *Are there two qualitatively distinct forms of dissociation? A review and some clinical implications*, Clinical Psychology Review, 25:1 (Jan. 2005).[6] Dissociation offers a way to escape horrific experiences in the moment, allowing people to feel as if they have detached from their bodies or the environment. *See id.* Under the circumstances, dissociation understandably inhibits formation of or access to memories, including in the immediate aftermath of a traumatic event. *See* Margaret C. McKinnon *et al.*, *A review of the relation between dissociation, memory, executive functioning and social cognition in military members and civilians with neuropsychiatric conditions*,

[6] *Available at*: https://www.sciencedirect.com/science/article/abs/pii/S0272735804001199?via%3Dihub.

Neuropsychologia, 90 (Sept. 2016).[7] Some people who survive sexual abuse and assault often understand what has happened only later. Juliette M. Mott *et al.*, *Change in Trauma Narratives and Perceived Recall Ability over a Course of Cognitive Processing Therapy for PTSD*, Traumatology, 21:1 (Dec. 15, 2014).[8]

Even when people have knowledge of what an abuser did to them physically during sexual assault or abuse, pernicious societal myths about sexual violence can disrupt recognition of those events as assault or abuse. Decades of research have documented that some victims do not label what happened to them as abuse, even when those events meet objective criteria that defines abuse. There are many reasons why people may not label what happened to them with terms such as rape, abuse, and assault. Notably here, first, people may not understand what constitutes abuse. And second, for people who do understand, shame, guilt, self-blame, and stigma about being sexually victimized can deter them from categorizing their experiences as such, even internally.

First, nondisclosure of sexual abuse may owe to a person's lack of understanding of what abuse is. People who are sexually assaulted and abused may not understand, for example, that they should have been able to consent to what was done to their bodies. Perpetrators of sexual abuse and assault take advantage of this, encouraging confusion about whether events were abuse or not. *See, e.g.*, Tracy Connor, *Dr. Larry Nassar, Accused of Abusing Gymnasts,*

---

[7] *Available at*: https://www.sciencedirect.com/science/article/pii/S0028393216302615?via%3Dihub.

[8] *Available at*: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4437219/.

Defends Procedures, USA Today (Sept. 22, 2016).[9] Perpetrators of sexual violence also sow confusion by covering up their actions or devaluing the victim of their assault or abuse. Sarah J. Harsey *et al.*, *Perpetrator Responses to Victim Confrontation: DARVO and Victim Self-Blame*, Journal of Aggression, Maltreatment, and Trauma, 26:6 (June 1, 2017).[10] They may explicitly reinterpret events, use official channels to give an appearance of justice, and intimidate, bribe, or threaten the individual victims or bystanders. *See id*. And until recently, mistreatment and abuse of both men and women has been tolerated in American society, often perpetuated by rape myths—prejudicial, stereotyped, and false beliefs about sexual assaults, perpetrators, and rape survivors that make excuses for sexual aggression and create hostility toward victims. The pervasiveness of these myths only makes it more difficult for people to recognize and label their experiences as abuse or assault. *See* M. R. Burt, *Cultural myths and supports for rape*, Journal of Personality and Social Psychology, 38:2 (1980), at 217–230.[11]

Second, even for people who might have the knowledge required to recognize that an abuser's conduct was somehow wrong, perceptions about the effect of labeling experiences as sexual assault or abuse can still stop them from doing so.

---

[9] *Available at*: https://www.nbcnews.com/news/us-news/dr-larry-nassar-accused-abusing-gymnasts-defends-procedures-n652891.

[10] *Available at*: https://www.tandfonline.com/doi/full/10.1080/10926771.2017.1320777.

[11] *Available at*: https://psycnet.apa.org/doiLanding?doi=10.1037%2F0022-3514.38.2.217.

Applying value-laden terms such as "victim" can bring about shame and invites real or perceived stigma associated with victimization. Indeed, very recent increases in self-identification demonstrate the deterrence imposed by stigma. Research has observed that the #MeToo movement—which first achieved widespread acknowledgement in 2017—increased people's willingness to label their experiences as sexual assault. A.E. Jaffe *et al.*, *The #MeToo movement and perceptions of sexual assault: College students' recognition of sexual assault experiences over time*, Psychology of Violence, 11:2 (2021), at 209–218.[12] Notably, this is not because sexual assaults and abuse increased; the researchers questioned college students about sexual assault using both behaviorally-defined descriptions of assault, and using the label sexual assault. *Id*. Even though assaults did not increase based upon people's reports using behavioral definitions, people's willingness or ability to label sexual assaults as such increased after 2017.

Indeed, many victims fail to label their assaults and abuse as such because societal myths have caused them to feel personally at fault for the abuse and assault. Because of societal treatment of these topics, many victims blame themselves for their traumatic experiences, think that they brought it upon themselves, or believe it reflects their own deeply flawed character. After sexual traumas, many people feel "broken" or damaged, and feel an altered sense of self out of their own control. They may feel guilt, shame, and self-blame because of

[12] *Available at*: https://doi.org/10.1037/vio0000363.

mistaken belief they should have been able to prevent the sexual assault and the effects of trauma. They may feel deep sadness, a loss of innocence, broken trust in others, a lack of personal security in the world, and may doubt their own self-worth and value to others. Henrietta H. Filipas & Sarah E. Ullman, *Child Sexual Abuse, Coping Responses, Self-Blame, Posttraumatic Stress Disorder, and Adult Sexual Revictimization*, Journal of Interpersonal Violence, 21:5 (May 1, 2006).[13]

The effect of rape myths on survivors' ability to label their abuse accurately owes partly to those myths' pervasiveness. Unfortunately, insensitive responses to traumatic disclosure have long been common and can discourage people from labeling their experiences as abuse or assault. Robert C. Davis *et al.*, *Supportive and unsupportive responses of others to rape victims: Effects on concurrent victim adjustment*, American Journal of Community Psychology, 19:3 (1991).[14] *Amici* maintain active clinical practices, and recognize how common this is based on reports from their own patients—for example, in Dr. Cook's 25 years of clinical practice, her patients frequently report that the first words out of people's mouths when they disclose sexual assault or abuse include statements like, "Oh, that's no big deal," or "It's in the past, leave it there," or "Did that really happen?" or "Eh, get over it." And many trauma survivors have had people ask questions or make statements that suggest that the person holds the survivor responsible for abuse—questions like: "What were you doing in a place like that?," "Didn't you think that situation might be dangerous?," or "Were you drinking heavily?"

[13] *Available at*: https://journals.sagepub.com/doi/abs/10.1177/0886260506286879.

[14] *Available at*: https://onlinelibrary.wiley.com/doi/abs/10.1007/BF00938035.

See also Kathleen M. Ingram *et al.*, *Unsupportive Responses from Others Concerning a Stressful Life Event: Development of The Unsupportive Social Interactions Inventory*, Journal of Social and Clinical Psychology, 20:2 (June 2001).[15] The collective attitudes that underpin these sorts of reactions—and seeing these reactions—can cause victims to doubt, internally, that what they experienced constituted abuse or assault.

B. People's unawareness in the immediate aftermath of sexual assault and abuse is particularly likely when they are abused by someone on whom they depend.

The propensity of some victims to fail to recognize or label their victimization as abuse or assault increases in reference to a key factor present in this case. People who are sexually abused and assaulted are more likely to be unaware of what happened when they are abused by someone on whom they were dependent, compared to those who are assaulted by strangers. This dynamic is so common that our field has long had a name for it: betrayal trauma. Jennifer J. Freyd, *Betrayal Trauma – The Logic of Forgetting Childhood Abuse*, Harvard University Press (1998). Unawareness of or not labeling an assault as such may be necessary and adaptive for some survivors. *See id*. The victim must adapt day-to-day because they are (or at least feel) stuck in a relationship of dependency. For some victims, not thinking about or remembering less about the abuse, or telling themselves that it wasn't abuse at all, is key to coping and survival.

---

[15] *Available at*: https://guilfordjournals.com/doi/abs/10.1521/jscp.20.2.173.22265.

The "betrayal" of betrayal trauma refers to situations where the victim depends on their abuser. This can include close relationships like a parent, a spouse, or a boss. Jennifer J. Freyd and Pamela J. Birrell, *Blind to Betrayal – From Close Relationships to Institutional Betrayal*, John Wiley & Sons (2013). But this is not black and white; people's awareness of and likelihood of recognizing abuse or assault can be affected by the degree to which victims depend on their abusers and the magnitude of the betrayal. *See id*. The way in which people remember and process traumatic events, like sexual violence, can be impacted by the degree of betrayal. Gail S. Goodman *et al.*, *False Memories and True Memories of Childhood Trauma: Balancing the Risks*, Clinical Psychological Science (Sept. 21, 2018).[16] For example, a victim who depends on a coach, parent, or other person of substantial influence may be less likely to label and discuss what happened to them as abuse. They may not perceive or label the events as abuse because of the need to preserve a relationship with the person on whom they are dependent.

Betrayal does not occur at a solely individual level. "Institutional betrayal," a facet of some betrayal traumas, describes the ways that institutional actions and inactions can increase and compound the injury to survivors. Carly Parnitzke Smith, & Jennifer J. Freyd, *Institutional betrayal*, American Psychologist, 69:6, 2014, at 575–587.[17] Institutional betrayal can cause particularly severe emotional and physical harms to trauma survivors in part because institutions

[16] *Available at*: https://journals.sagepub.com/doi/10.1177/2167702618797106.

[17] *Available at*: https://psycnet.apa.org/record/2014-36500-001.

that deter reporting invalidate survivors' experiences and subsequent reactions and cut off access to a broad range of resources (e.g., community support, mental health services) that can help survivors. *See, e.g.*, Carly Parnitzke Smith, & Jennifer J. Freyd, *Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma*, Journal of Traumatic Stress, 26:1 (Feb. 2013).[18] In addition, institutions, like universities, can engage in institutional betrayal by creating the circumstances that facilitate abuse, failing to investigate abuse, or even actively covering up abuse. This issue occurs in all sorts of institutions. *See, e.g.*, Laurie Goodstein and Sharon Otterman, *Catholic Priests Abused 1,000 Children in Pennsylvania, Report Says*, THE NEW YORK TIMES (Aug. 14, 2018) (describing institutional betrayal in one of America's largest religions);[19] Dave Philipps, *'This Is Unacceptable.' Military Reports a Surge of Sexual Assaults in the Ranks*, THE NEW YORK TIMES (May 2, 2019) (describing institutional betrayal in the United States armed forces);[20] Paul Mones, *Boy Scouts bankruptcy a warning to others who have ignored sexual abuse*, USA Today (Feb. 28, 2020) (describing

---

[18] *Available at*: https://onlinelibrary.wiley.com/doi/full/10.1002/jts.21778?casa_token=9NxR5W0OIjAAAAAA%3AUGVouZwHgkazJEgE7K5-sWYEeF5T5VNdn1x1CVN2LzbCbDl2NK3Z-mr6dafXuzKW1ws5sAr1aAbrJUs6zw.

[19] *Available at*: https://www.nytimes.com/2018/08/14/us/catholic-church-sex-abuse-pennsylvania.html.

[20] *Available at*: https://www.nytimes.com/2019/05/02/us/military-sexual-assault.html.

institutional betrayal by a national civic organization);[21] Alec M. Smidt and Jennifer J. Freyd, *Government-mandated institutional betrayal*, Journal of Trauma and Dissociation, 19:5 (July 30, 2018) (discussing institutional betrayal by government agencies in the context of immigration detention).[22] But to be quite clear: institutional betrayal happens in educational institutions. *See* Greg Toppo, *Why Do Colleges Keep Failing to Prevent Abuse?*, Inside Higher Ed (June 5, 2018) (describing persistent, long-term institutional betrayal by several colleges and universities).[23]

II. People who are sexually assaulted and abused suffer serious harms regardless of whether they immediately recognize what was done to them as sexual violence.

Regardless of whether people recognize their sexual assault or abuse as such, sexual violence confers serious harms that impact victims' entire lives—physical issues, psychological issues, behavioral issues, and obstacles to healthy sexual interactions in the future. Not labeling or recognizing what happened as assault or abuse, among other collateral problems, may cause *more* or increased harm compared to people who can acknowledge their assaults and seek support. H. Littleton *et al.*, *Sexual Assault Victims' Acknowledgment Status and*

---

[21] *Available at*: https://www.usatoday.com/story/opinion/2020/02/18/boy-scouts-abuse-bankruptcy-day-reckoning-group-failed-boys-column/4795945002/.

[22] *Available at*: https://www.tandfonline.com/doi/full/10.1080/15299732.2018.1502029.

[23] *Available at*: https://www.insidehighered.com/news/2018/06/05/why-do-campus-abuse-cases-keep-falling-through-cracks.

Revictimization Risk, Psychology of Women Quarterly, 33:1 (2009), at 34–42 (describing serious harms, including more hazardous alcohol use among women who experienced sexual assault, but did not label it as such).[24] They experience these injuries in the short- and long-term. And as noted briefly above, when people's sexual assaults or abuses are compounded by institutional betrayal on the part of, for example, a university, that betrayal magnifies the harms.

A. Harms from sexual violence can impact every part of a person's life, in both the short- and long-term.

Survivors of sexual abuse or assault have an increased risk of developing a wide range of medical, psychological, behavioral and sexual disorders relative to other people. Especially among those who experience sexual trauma as young people, that trauma is linked to increased propensity for psychiatric and non-psychiatric medical illnesses even decades later. Nancy L. Talbot *et al.*, *Childhood Sexual Abuse is Associated With Physical Illness Burden and Functioning in Psychiatric Patients 50 Years of Age and Older*, Psychosomatic Medicine, 71:4 (Sept. 17, 2009) at 417-22.[25] That increased propensity for medical illness can lead to increased use of health care services and lower quality of life over time. Kristen W. Springer *et al.*, *The Long-term Health Outcomes of Childhood Abuse*, Journal of General Internal Medicine, 18:10 (Oct. 2003).[26] Predictably, people who experience sexual abuse and assault, especially as young

[24] *Available at*: https://doi.org/10.1111/j.1471-6402.2008.01472.x.

[25] *Available at*: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2746033/.

[26] *Available at*: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1494926/.

people, also experience profound psychological effects. For example, a meta-analysis of published research on the effects of child sexual abuse verified extensive and subsequent negative short- and long-term effects, including increased propensity for PTSD, substance abuse, major depression, dissociation, suicidal ideation, self-injurious behaviors and panic disorder. Beth E. Molnar *et al.*, *Child Sexual Abuse and Subsequent Psychopathology: Results From the National Comorbidity Survey*, American Journal of Public Health, 91:5 (May 2001).[27] Most concerningly, people who are sexually assaulted and abused also subsequently report suicidal ideation and suicide attempts at higher rates than people who have not been assaulted or abused. *See id*.

Sexual assault and abuse can disrupt victims' interpersonal relationships, making it hard to enter and maintain healthy relationships, including intimate partnerships, afterward. Many male survivors of sexual abuse, for example, experience a resulting lack of confidence in their appeal and attractiveness. Michael F. Myers, *Men sexually assaulted as adults and sexually abused as boys*, Archives of Sexual Behavior, 18 (June 1989).[28] They also often experience revulsion at being touched or touching others, and sexual dysfunction ranging from low sexual desire to difficulties achieving and maintaining an erection. *See* Elisa Romano & Rayleen V. De Luca, *Male sexual abuse: A review of effects, abuse characteristics, and links with later psychological functioning*, Aggression and

---

[27] *Available at*: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446666/pdf/11344883.pdf.

[28] *Available at*: https://link.springer.com/article/10.1007/BF01543195.

Violent Behavior, 6:1 (Jan.-Feb. 2001).[29] People of all genders who were sexually assaulted and abused as young people are more likely to be sexually victimized again as adults. *See* Allison C. Aosved *et al.*, *Sexual Revictimization and Adjustment in College Men*, Psychology of Men & Masculinity, 12:3 (July 2011) (finding that male childhood sexual abuse survivors are more likely to be sexually victimized as adults); *see also* Littleton *et al.*, *supra* at n.24 (finding that women who experienced sexual assault or abuse at college were even more likely to experience it again if they did not acknowledge the assault). Revictimization can also worsen existing consequences of assault and abuse, such as increasing frequency and intensity of depression.

Ultimately, people who are sexually assaulted and abused can face profound difficulties, with no part of their lives left unscathed. Besides medical, psychiatric, and sexual health, people who were sexually assaulted and abused also engage in riskier behaviors, like drinking alcohol in greater quantities and at younger ages, than their peers. *See* Littleton *et al.*, *supra* at n.24 (describing "more hazardous alcohol use" among unacknowledged sexual assault victims); *see also* Trevor J. Schraufnagel *et al.*, *Childhood sexual abuse in males and subsequent risky sexual behavior: A potential alcohol use pathway*, Journal of Child Abuse & Neglect, 34:5 (May 1, 2011) (discussing lower age of first alcohol intoxication and greater alcohol consumption over time of men who experienced

[29] *Available at*: https://www.sciencedirect.com/science/article/abs/pii/S1359178999000117.

sexual abuse as children).[30] Partly because of the interaction of alcohol and sex, greater alcohol consumption can also led to increased numbers of sexual partners and riskier sexual behaviors. And men who have been sexually abused also have a wider pattern of other life difficulties compared to people who have not experienced assault and abuse, including difficulties in school, trouble at their jobs and in their personal relationships. David Lisak & Laura Luster, *Educational, occupational, and relationship histories of men who were sexually and/or physically abused as children*, Journal of Traumatic Stress, 7:4 (Oct. 1994).[31] This occurs at all levels of education—people who complete grade school, high school, or college—and nobody who experiences sexual assault and abuse is immune to these potential issues.

B. Failing to recognize one's experience as sexual violence does not immunize that person from the harms that assault or abuse cause—especially in cases involving institutional betrayal.

Unfortunately, dissociation in the moment of sexual assault or abuse, unawareness in the aftermath, or inability to label events as assault or abuse, does not protect survivors from all the foregoing harms. To the contrary, people who respond in those ways face a heightened risk of harms across all aspects of their lives. That risk heightens further for people whose individual trauma is compounded by institutional betrayal. In cases involving institutional betrayal,

---

[30] *Available at*: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2866783/.

[31] *Available at*: https://onlinelibrary.wiley.com/doi/abs/10.1002/jts.2490070402.

the potential damage to survivors—including to both their physical and psychological health, in the short- and long-term—is especially stark.

First, people who dissociate or are otherwise unaware of memories of sexual abuse and assault still suffer the harms endemic to abuse and assault. Sexual assault and abuse cause harm regardless of whether victims acknowledge or label those events as assault or abuse. R. E. Goldsmith *et al.*, *To add insight to injury: Childhood abuse, abuse perceptions, and the emotional and physical health of young adults*, Journal of Aggression, Maltreatment & Trauma, 18:4 (2009).[32] But abuse perceptions—that is, whether a person labels events as assault or abuse—contribute to the long-term effects on people who survive abuse or assault. *See* Littleton *et al.*, *supra* at n.24 (describing increased propensity for unhealthy or risky behaviors, and increased likelihood of experiencing another assault or more abuse, among survivors who did not acknowledge a prior assault). The very fact of non-disclosure of assault or abuse, by making a person less likely to access support or services, exacerbates the underlying harms of the abuse or assault itself. A. Cepeda-Benito & P. Short, *Self-concealment, avoidance of psychological services, and perceived likelihood of seeking professional help*, Journal of Counseling Psychology, 45:1 (1998).[33] Simply put, not accurately labeling one's experiences of sexual assault and abuse as such does not save victims from varied and serious health consequences, and in fact may exacerbate those consequences.

---

[32] *Available at*: https://psycnet.apa.org/record/2009-07781-002.

[33] *Available at*: https://psycnet.apa.org/record/1997-42745-006.

Second, institutional betrayal after sexual assault or abuse can contribute to further harms. This includes greater harm to their physical health, in both the short- and long-term. *To add insight to injury*, *supra* at n.32. It also includes psychological effects like PTSD and depression, in both the short- and long-term. C. G. Martin *et al.*, *The role of cumulative trauma, betrayal, and appraisals in understanding trauma symptomatology*, Psychological Trauma: Theory, Research, Practice, and Policy, 5:2 (2013).[34] And notably, psychological effects on survivors increased the closer the person was to their abuser—or, put another way, the greater the betrayal involved. *See id*. As discussed, this occurs in part because of the betrayal itself, but in part because institutional betrayal often imposes difficulty in reporting sexual abuse and assault and accessing resources. *See* Section I.a., *supra*. But when institutions have unsafe environments where trauma is more likely to occur and more difficult to report, or do not respond appropriately when survivors do come forward, and generally do little to prevent or address deep violations of personal autonomy, that compounds harms to survivors. *Institutional Betrayal*, *supra* at n.17. This is only compounded further when public institutions like the justice system react to reports of abuse with disbelief, blame, harassment, refusals to help or insensitive fact-finding practices.

[34] *Available at*: https://psycnet.apa.org/doiLanding?doi=10.1037%2Fa0025686.

CONCLUSION

With additional perspective about the nature of trauma caused by sexual assault and abuse, the District Court's error becomes particularly clear. The judgment of the District Court should be reversed.

Respectfully submitted,
/s/ Jim Davy

Jim Davy
ALL RISE TRIAL & APPELLATE
P.O. Box 15216
Philadelphia, PA 19125
(215) 792-3579
jimdavy@allriselaw.org

Counsel for *Amici Curiae*

Feb. 9, 2022

CERTIFICATE OF COMPLIANCE

In accordance with Federal Rule of Appellate Procedure 32(a)(7)(C) and Sixth Circuit I.O.P. 28, I certify that this brief:

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) and Circuit I.O.P. 28 because it contains 5,976 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f) and 6th Cir. R. 32(b)(1);

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word version 16.56, set in Century Schoolbook font in 12-point type;

(iii) was scanned for viruses prior to submission to this Court.

/s/ Jim Davy

Jim Davy

CERTIFICATE OF SERVICE

I certify that on February 9, 2022, this brief was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

/s/ Jim Davy

Jim Davy