

Trauma-Informed Lawyering

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About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

Presentation Goals

- Define Trauma-Informed Lawyering
- Discover benefits of Trauma-Informed Lawyering
- Learn best practices
- Provide space to reflect on trauma-informed practices and vicarious trauma

What is Trauma-Informed Lawyering?

What is Trauma? (1 of 2)

- Trauma is an event that “renders an individual’s internal and external resources inadequate, making effective coping impossible....A traumatic experience occurs when an individual subjectively experiences a threat to life, bodily integrity, or sanity.”
 - Sarah Katz & Deeya Haldard, *The Pedagogy of Trauma-Informed Lawyering*, 22 *Clinical L. Rev.* 359, 364.

What is Trauma? (2 of 2)

- As public interest lawyers, we must remember...
.....Trauma is in the eye of the beholder.....
 - Adriel Boals, Trauma is in the eye of the beholder: Objective and subjective definitions of trauma, Journal of Psychotherapy Integration (2018)

How Common is Trauma? (1 of 2)

- Trauma is very common, with a 1997 NIH study finding about 1/3rd of the population will experience severe trauma at some point
- A majority of Americans experience violent crime in their lives
- 12 million women have been victims of rape
- 3 million children a year “are reported as victims of child abuse and neglect”

-The Body Keeps the Score, Bessel Van Der Kolk, M.D.

How Common is Trauma? (2 of 2)

- Who experiences trauma?
 - 5% of men and 10-12% of women will suffer from PTSD in their lives.
 - New research connects higher rates of PTSD among racial and ethnic minorities to experience of racism
- As legal services attorneys, you interface with people and their traumas on a daily basis, in every practice area

Trauma and Older Adults

- How does trauma intersect with old age?
 - Adverse childhood experiences (ACE's) leads to increased frailty in old age
 - ACE's are traumatic events, like the death of a parent, drug/alcohol abuse in the family, physical abuse
 - The Kaiser Study found that children with more ACE's had poorer health and social outcomes in adulthood
 - ACE's also associated with increased risk of premature death
 - ACE study consisted of majority white middle class study participants

Trauma and Our Clients (1 of 3)

- Trauma has a direct impact on the brains of those who experience it
 - The brain's prefrontal cortex—which is key to decision-making and memory—often becomes temporarily impaired. The amygdala, known to encode emotional experiences, begins to dominate, triggering the release of stress hormones and helping to record particular fragments of sensory information. Victims can also experience tonic immobility—a sensation of being frozen in place—or a dissociative state.
- The physiological effects of trauma can occur a long time after the traumatic experience has ended.

Trauma and Our Clients (2 of 3)

- In PTSD patients, trauma can change the functioning of the stress hormone system. “Fight/flight/freeze signals continue after the danger is over...[i]nstead, the continued secretion of stress hormones is expressed as agitation and panic and, in the long term, wreaks havoc with their health”
- In fact, “re-exposure to a similar environment” can create a “recurrence of fear and anxiety similar to what was experienced during the trauma itself.”
 - Repeatedly raising the adrenaline of a person through a traumatic experience can cause wear and tear on the body
- 22 Clinical L. Rev. 359, 366.
- Article: [Vets Experiencing Trauma Can't Respond to Reason](#)
- The Body Keeps the Score

Trauma and our Clients (3 of 3)

- Trauma reorganizes the way the mind and brain manage perceptions
- Trauma inhibits the ability of your “left brain” (logic) and “right brain” (creativity) to work together. Trauma can “deactivate” the left brain, which “has a direct impact on the capacity to organize experience into logical sequences and to translate our feelings into words.
- The left frontal lobe (Broca’s area) can shut down when confronted with trauma.
 - The Broca’s area helps you put your thoughts into words
 - This area is sometimes impaired during a stroke

How Trauma Effects the Lawyer-Client Relationship

- Effective communication
- Lawyer-client trust
- Getting all of the facts
- Prepping clients for the witness stand
- Effective representation
- Achieving desired outcomes

Trauma-Informed Lawyering (1 of 2)

- We honor the lived experiences of our clients and support their healing by acknowledging the ways trauma has impacted their lives.
- Legal advocacy may often relate to the client's traumatic event.
- Trauma-informed care is looking at a person and not asking “What is wrong with you?” —it's asking “What happened to you?”

Trauma Informed Legal Advocacy Project (TILA)

Trauma Informed Lawyering (2 of 2)

- “Providing trauma-informed services requires all the staff of an organization to understand the effect of trauma on the people being served, so that all interactions with the organization reduce the possibility of re-traumatization and are consistent with the process of recovery.”

22 CLINICAL L. REV. 359, 369.

Benefits of Trauma-Informed Lawyering

Benefits of Trauma-Informed Lawyering

- Reducing re-traumatization
- Better advocacy
- Better referrals
- Discovering additional legal issues
- Builds trust
- Overall enhancement of the lawyer-client relationship

As we will see, you are probably already using some of these tools in your daily practice

In Practice

2 Step Process

STEP 1

- Identify the Trauma
 - Is case related to a possibly traumatic incident?
 - Client might explicitly refer to trauma
 - Read body language
 - Is client closed off, agitated, anxious?
 - Frustration? Anger?
 - Unable to answer questions?

STEP 2

- Adjust relationship
 - Adjust the lawyer-client relationship in relation to the trauma
 - Adapt lawyering strategies to make client more comfortable
 - Acknowledge the trauma
 - Notice and validate feelings

22 CLINICAL L. REV. 359, 383.

Strategies for Trauma-Informed Work (1 of 4)

- Transparency
 - Promotes trust with the client
 - Minimizes the feeling of “powerlessness”
 - Minimizing powerlessness helps clients feel in control and helps regulate emotions
- Client Control
 - Remind your client that they have a voice, this is their case as much as it is yours
 - Remember your ethical duties to follow client, and inform your client of these duties

Strategies for Trauma-Informed Work (2 of 4)

- Predictability/Minimize Re-Traumatization
 - Preview what is going to happen throughout the case—when might they have to recount a traumatic experience?
 - Preview meeting topics with clients. Let them know when they may have to recount a traumatic experience.
 - Stay organized and take complete notes so you don't have to ask hard questions more than needed.
 - Manage expectations—what can you actually do? What can't you do?

Strategies for Trauma-Informed Work (3 of 4)

- Reliability
 - Don't make promises you can't keep and be clear.
 - Manage expectations about communication & how long the case will take.
- Patience/Empathy
 - Don't yell at your clients!
 - Resist urge to judge the behavior of a client. Ask yourself, what would you do if in the same situation? Does their behavior seem more reasonable?
 - Sometimes, someone just isn't ready. Do you make it clear you have an open door?
 - Acknowledge the obstacles that you can't control in the case, i.e delays with the court or opposing counsel.

Strategies for Trauma-Informed Work (4 of 4)

- **Honoring Your Client's Lived Experiences**
 - Acknowledge your client's lived experience, i.e. racism, poverty, disability, homophobia. These traumas inform the way our clients interact with us and the world. Acknowledge their existence and affirm your client's experiences.
 - Cultural competency goes hand-in-hand with trauma-informed practice.

How Are Attorneys Affected?

- As lawyers, we are not immune to the suffering of others, and we can have reactions from being exposed to the trauma of our clients.
- A “trauma exposure response” can manifest in several ways, for example:
 - Hopelessness
 - Hypervigilance
 - Diminished Creativity
 - Inability to Listen
 - Feelings that you can never do enough
 - Chronic Exhaustion
 - Fear and Guilt
 - Inability to Empathize

Trauma Stewardship by Laura van Dernoot Lipsky and Connie Burk

Vicarious Trauma

- You may have heard of “burnout,” “vicarious trauma,” and “compassion fatigue”
- These are all different names for the same symptoms that can result not only from listening to others describing their trauma but also from “merely working in an office where others are suffering from [vicarious trauma]”- ABA
- This means everyone in your office is at risk, and everyone is a part of the solution

Combatting Secondary Trauma (1 of 2)

- Reflective practice keeps compassion in your work
 - Reflective practice “means regularly engaging in reflection, both in the context of individual interaction and after big successes or losses.”
–Trauma Informed Legal Advocacy Project (TILA)
 - Consider creating small group sessions where staff can support each other and discuss difficult cases or clients.
- Encourage Self-Care
 - Do staff feel comfortable taking time off? Does anyone take a vacation?
 - Are staff working normal hours? Is there a culture of always working extreme hours?
 - Do staff come in even when they are sick? This is especially relevant in light of COVID-19.
- Supporting Staff
 - What is your org culture around vacation and sick time?
 - Can you easily express when you have too much on your plate?
 - How is work assigned? Are managers monitoring workloads?
 - Is there space for reflection?

Combatting Secondary Trauma (2 of 2)

- Additional considerations for legal aid organizations
 - Does your organization, or state bar, have an Employee Assistance Program? These programs can offer free, confidential counseling to staff experiencing many different types of crises.
 - If you do not have this program, you should consider investing in this type of support and encouraging staff to participate.
 - Be open to change. Many of the trauma-informed strategies may be the opposite of how you are used to operating, but will be incredibly beneficial to staff.
 - Most of these changes are going to be made at the managerial level, therefore it is important for managers to be engaged in this work as well.

Remember!

- Trauma Informed Lawyering *does not* include:
 - Diagnosing anyone or being your client's therapist (make appropriate referrals to mental health services)
 - Trying to “fix” someone
- Do you know where to refer clients for mental health services?

TILA

Example 1

- Len is a new client coming in for assistance with a debt collection case. You are running a bit late on time so you jump into questioning as soon as he sits down. As you ask him questions you realize his leg is literally “jumping” he is shaking so much. His answers are short with little detail. He seems a bit withdrawn and keeps looking towards the door.

Example 1 Steps

- Identify the trauma
 - Observing body language, there seems to be some anxiety or tension
 - He's giving short answers, but it seems he's holding back more information
 - Trauma is not obvious
- Adjust Relationship
 - Acknowledge client's reactions, "You seem a bit uncomfortable, is there anything I can do to make you more comfortable?"
 - "Let's back up, let me explain what I can help you with."

Example 1 Continued

- You stop legal questioning and note that he seems uncomfortable. You realize that you jumped into the interview without really explaining your role or what you will be doing today.
- You acknowledge that Len seems uncomfortable and ask if there is anything you can do to make him more comfortable.
- Len shares that he was a victim of torture in his home country and feels tremendous anxiety when he is seated so far from the door. He also does not like being in rooms with closed doors as he feels he cannot escape.
- You readjust the seating and move to the open conference room in your office. You tell Len that if he has any other concerns to let you know.
- You then explain the process and what will happen at this interview. You let Len know that if he needs break or anything else to let you know.

Example 2

- Sarah has come to your office for assistance with an elder abuse protective order. Her youngest daughter was her caregiver but began assaulting her and denying her food. Sarah has been very nervous about the hearing because she knows she will have to confront her daughter and testify about the abuse.
- Sarah has also started to get cold feet about pursuing the protective order. She doesn't want her daughter's employment opportunities to be impeded and she still wants to have a relationship with her.

Example 2 Steps

- Identify the trauma
 - Traumatic experience in past is confirmed
 - Physical and emotional abuse
- Adjust Relationship
 - Help client get “grounded” and in the present moment
 - Anticipate what might happen in court
 - Provide a tour of court
 - Are there others that can also provide support?
 - **What would be your approach to Sarah not pursuing the protective order?**

Example 2 Continued

- First, you acknowledge that this hearing might be bringing up some anxiety for Sarah, but that you will help her prepare.
- To prepare Sarah, you have given her a full walk-through of what will happen at the hearing and the types of questions that will be asked. Sarah is also prepared to request a break if the hearing overwhelms her.
- Sarah knows where the court is and where and what time to meet you.
- Sarah has also taken your advice and spoken to her therapist in preparation for the hearing so that her anxiety is managed.
- You speak with Sarah about her concerns about her relationship going forward with her daughter. You remind Sarah that you are there to help her have a safe future, but it is up to her whether she pursues the order.

Best Practices

- Take the time to make your client comfortable
- Engage in reflective practice and encourage others to do so
- Practice empathy
- Be transparent to build trust
 - Ex. Explaining simple things like why you are taking notes, what the client can expect from your relationship
 - Lawyers are notorious for not explaining fully to clients
- Listen to your client
- Offer accommodations
- Where available, be flexible
- Offer breaks or have shorter meetings with clients

What's Next?

- Do you have a reflective practice?
 - If you are in a management position, how can you establish an organized reflective practice?
- What trauma-informed practices do you think you can implement in your work?
 - Or have you already implemented these practices?
- What would you change to implement more trauma-informed practices in your workplace?

Additional Resources

- National Center on Domestic Violence, Trauma & Mental Health: Trauma Informed Legal Advocacy (TILA) Project
- The Jewish Federations of North America: Center for Advancing Holocaust Survivor Care
- *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 363
- *Establishing a Trauma-Informed Lawyer-Client Relationship*, ABA Child Law Practice , Oct. 2014
- *The Body Keeps the Score*, Bessel Van Der Kolk
- *Trauma Stewardship*, Laura van Dernoot Lipsky with Connie Burk

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