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# **TRAUMA INFORMED LAWYERING**

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## **Manual 2025**



# **TRAUMA INFORMED LAWYERING MANUAL 2025**

# TRAUMA INFORMED LAWYERING

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# **EXHIBIT 1 - DOMESTIC VIOLENCE AND HUMAN TRAFFICKING**



## **EXHIBIT 1 – DOMESTIC VIOLENCE AND HUMAN TRAFFICKING**

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## **WHAT IS DOMESTIC VIOLENCE?**

The United Nations defines domestic abuse or domestic violence as a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner, child, relative, or any other household member<sup>1</sup>. The epidemic of domestic violence involves physical acts of violence, emotional, psychological, verbal, sexual, legal and financial abuse against an intimate partner or family member<sup>2</sup>. This includes any behaviors that “frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound someone”<sup>3</sup>. Fundamentally, domestic violence is “a pattern of coercive behavior or tactics that is culturally learned and socially condoned”<sup>4</sup>.

**Domestic violence can impact anyone of any race, age, sexual orientation, gender identity, nationality, religion, socioeconomic background, immigration status, language of fluency, or education level<sup>5</sup>.**

Although many domestic violence cases involve individuals in a romantic relationship (typically referred to as intimate partner violence), this may not always be the case. The individuals involved may be dating, cohabitating, married, divorced, separated, and/or have a child in common. Domestic violence can present and be interpreted differently depending on the surrounding cultural and social context of the individuals involved. However, a consistent theme is use of power and control to victimize the other party.

## **EXAMPLES OF ABUSIVE BEHAVIORS**

### *Physical Abuse*

This form of abuse includes acts like spitting, scratching, biting, grabbing, shaking, shoving, pushing, restraining, throwing, twisting, slapping, punching, choking, burning, forcing sexual contact, forcing alcohol and/or drug use, and other acts that inhibit physical well-being. Food and medication may be withheld and access to medical attention or police services may be prevented. They may be kidnapped or confined in an enclosed space or abandoned in an unfamiliar place. Physical abuse may or may not cause visible physical injuries<sup>6</sup>.

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<sup>1</sup> United Nations (2023) “What is Domestic Abuse? United Nations. <https://www.un.org/en/coronavirus/what-is-domestic-abuse>

<sup>2</sup> Breger, M. L., Kennedy, D.A., Zuccardy J.M., & Hon. Elkins, L.H. (2022). New York Law of Domestic Violence. Chapter 1. Domestic Violence Defined.

<sup>3</sup> United Nations (2023) “What is Domestic Abuse? United Nations. <https://www.un.org/en/coronavirus/what-is-domestic-abuse>

<sup>4</sup> New York State Coalition Against Domestic Violence (NYSCADV). (2011). Domestic Violence Handbook. NYSCADV.

<sup>5</sup> United Nations (2023) “What is Domestic Abuse? United Nations. <https://www.un.org/en/coronavirus/what-is-domestic-abuse>

<sup>6</sup> United Nations (2023) “What is Domestic Abuse? United Nations. <https://www.un.org/en/coronavirus/what-is-domestic-abuse> & New York State Coalition Against Domestic Violence (NYSCADV). (2011). Domestic Violence Handbook. NYSCADV.

### *Sexual Abuse*

This form of abuse includes pressured sex when that is not consensual, coerced sex by manipulation or threat, physically forced sex, sexual assault accompanied by violence, or other acts the right to freely and safely express their sexuality<sup>7</sup>.

### *Emotional Abuse*

This form of abuse includes acts and behaviors like undermining a person's self-worth through constant criticism; belittle one's abilities; name-calling or other verbal abuse; damaging a partner's relationship with their children; and isolating a partner from friends and family<sup>8</sup>.

### *Psychological Abuse*

This form of abuse involves acts or behaviors causing fear or intimidation; threatening physical harm to self, a partner, or child(ren); attacking a partner's property, pets, or others acts of intimidation; and forcing isolation for anyone outside of the relationship or domestic violence situation<sup>9</sup>.

### *Financial or Economic Abuse*

Economic abuse occurs when control is invoked over the ability to acquire, use and maintain financial resources, such as transportation, food, clothing, shelter, insurance, credit, and money. This form of abuse involves making or attempting to make a person financially dependent by maintaining total control over financial resources, withholding access to money, committing identity theft by opening fraudulent accounts or credit lines in their name, placing sole financial responsibility for supporting their household, and/or forbidding attendance at school or employment<sup>10</sup>.

### *Cyber Abuse*

This form of abuse includes hacking, installation of spyware, cyber stalking, spoofing, identity theft, impersonation (including deep fakes), sexual extortion (colloquially known as

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<sup>7</sup> United Nations (2023) "What is Domestic Abuse? United Nations. <https://www.un.org/en/coronavirus/what-is-domestic-abuse> & New York State Coalition Against Domestic Violence (NYSCADV). (2011). Domestic Violence Handbook. NYSCADV.

<sup>8</sup> United Nations (2023) "What is Domestic Abuse? United Nations. <https://www.un.org/en/coronavirus/what-is-domestic-abuse> & New York State Coalition Against Domestic Violence (NYSCADV). (2011). Domestic Violence Handbook. NYSCADV.

<sup>9</sup> United Nations (2023) "What is Domestic Abuse? United Nations. <https://www.un.org/en/coronavirus/what-is-domestic-abuse> & New York State Coalition Against Domestic Violence (NYSCADV). (2011). Domestic Violence Handbook. NYSCADV.

<sup>10</sup> United Nations (2023) "What is Domestic Abuse? United Nations. <https://www.un.org/en/coronavirus/what-is-domestic-abuse> & New York State Coalition Against Domestic Violence (NYSCADV). (2011). Domestic Violence Handbook. NYSCADV.

sextortion), and the nonconsensual distribution or threat of distribution of sexually explicit images and videos<sup>11</sup>.

### *Abuse of Process*

This form of abuse involves misusing and manipulating legal and social processes to weaponize them against the victimized person. This includes acts like making false reports of abuse, substance abuse, or child neglect to police or ACS, filing frivolous or fraudulent immigration or court proceedings, filing retaliatory orders of protection, intentionally delaying court or immigration proceedings, misleading or lying about their legal rights and options, threats of deportation, threats to withdraw or refusal to continue support in immigration applications, stealing newly received immigration benefits or identification – like employment authorization documents, A numbers, and social security numbers – to commit identity theft, etc.

## **POWER AND CONTROL WHEEL**

Below is the original power and control wheel. Since its creation, subsequent power and control wheels have been developed to explore specific accepts of abuse in relation to a person's identity. It describes the tactics a responsible party may use to maintain control over the person they are victimizing<sup>12</sup>. This wheel is not comprehensive but provides helpful framing to understand the aspects of victimization someone may be experiencing. *Other versions of the power and control wheel specific to victimization experienced immigrants and people with a disability can be found in the Appendix section of this manual*

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<sup>11</sup> New York Cyber Sexual Abuse Task Force. About Cyber Sexual Abuse. New York Cyber Sexual Abuse Task Force. <https://cyberabuse.nyc/>

<sup>12</sup> National Domestic Violence Hotline. (2023). Power and Control Break Free from Abuse. National Domestic Violence Hotline. <https://www.thehotline.org/identify-abuse/power-and-control/>



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## **"WHY DO THEY STAY?" The Stages of Change Model**

Domestic violence is a complex and multi-dimensional issue that's presentation and impact cannot be generalized. Each person processes the complexities of their relationship and their trauma from the abuse they experienced differently. This process is uniquely personal to them and often not a linear process<sup>14</sup>. The psychology field has developed a tool for understanding the complex needs and actions of domestic violence survivors<sup>15</sup>. It describes the process survivors go through when they seek to end the violence and abuse they experienced. The model includes five distinct stages:

### **(1) Pre-contemplation**

- a. In this stage the person experiencing the abuse is not aware of the extent of the problem and minimizes or denies the abuse. At this point they likely have no intention to change or leave the situation. They may feel responsible for

<sup>13</sup> Copyright by the Domestic Abuse Intervention Project, 202 East Superior Street, Duluth, MN, 55802 218-722-2781

<sup>14</sup> Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

<sup>15</sup> Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

the abuse they are suffering and may be modifying their actions to avoid further abuse<sup>16</sup>.

(2) *Contemplation*

- a. Usually in this stage the abuse has increased in its severity. The survivor begins to consider the possibility of changing their current situation and may begin building social, emotional, and financial support. They may make an initial attempt to leave. However, the survivor may express ambivalence and fluctuate between feeling troubled and unconcerned as they consider whether the situation can continue unchanged<sup>17</sup>.

(3) *Preparation*

- a. In this stage the survivor begins to understand the abuse they experienced differently. They become more aware of the abuse they are experiencing and attempt to determine the best course of action and develop a plan to carry it out. In this stage the survivor may set aside money; call an abuse hotline; gather information about resources, services, and legal options for survivors of domestic violence; and reconnect with people they were isolated from<sup>18</sup>.

(4) *Action*

- a. In this stage the survivor begins to carry out strategies to protect themselves and their children from future violence by taking actions such as going into shelter, seeking a protection order, or having others intervene in the abuse<sup>19</sup>.

(5) *Maintenance*

- a. This stage involves a continuation of actions by the survivor that are needed to maintain the change. These actions may involve safety planning, seeking mental health counseling, and rebuilding financial health<sup>20</sup>.

This model is cyclical and nonlinear. In fact, it is common for survivors to fluctuate between stages as they move towards maintenance<sup>21</sup>. Again, a survivor's process of leaving a domestic violence situation and healing from the trauma they experienced is specific and personal to them.

## **OTHER MODELS AND THEIR LIMITATIONS**

Two of the most common models used to understand the intricacies of domestic violence are the Battered Woman Syndrome and the Cycle of Violence. The Battered Woman Syndrome and Cycle of Violence models were developed by Lenore Walker in her 1979 book *The Battered Woman* and further developed in her 1984 book *The Battered Woman Syndrome*<sup>22</sup>. The Cycle of Violence describes the cyclical nature of abuse in intimate partner

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<sup>16</sup> Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

<sup>17</sup> Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

<sup>18</sup> Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

<sup>19</sup> Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

<sup>20</sup> Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

<sup>21</sup> Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

<sup>22</sup> Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

violence. The cycle starts with building tension, acute abuse, and a honeymoon phase or a loving repentant period<sup>23</sup>. Walker defines battered woman syndrome as “a cluster of psychological and behavioral characteristics that abused women develop as a result of how they perceive their batterer’s violence”<sup>24</sup>. Walker posits that abused women developed “learned helplessness” as a result of the “cycle of violence”<sup>25</sup>. Meaning that the continued and repeated abuse and control will cause the abused women to enter “psychological paralysis” and stop trying to leave the abusive situation<sup>26</sup>. According to Walker, “Once the women are operating from a belief of helplessness, the perception becomes reality and they become passive, submissive, ‘helpless’”<sup>27</sup>.

This model conflates domestic violence with intimate partner violence (IPV), imposes a heteronormative cisgender understanding of IPV that positions the cisgender woman as victim and the cisgender man as abuser, disempowers the survivor, and implies the survivor is complicit in the continuation of abuse. In addition, these models are not created to understand domestic violence and intimate partner violence from the perspective of the person being victimized. It instead gives justification to view people who remain in abusive relationships as lost causes.

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<sup>23</sup> Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

<sup>24</sup> as cited in Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

<sup>25</sup> as cited in Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

<sup>26</sup> as cited in Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

<sup>27</sup> as cited in Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

# Lawyer's Manual on Domestic Violence

## Representing the Victim, 6th Edition

Edited by

Mary Rothwell Davis, Dorchon A. Leidholdt and Charlotte A. Watson



Supreme Court of the State of New York, Appellate Division, First Department  
The New York State Judicial Committee on Women in the Courts



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Supreme Court of the State of New York, Appellate Division, First Department

**Hon. Luis A. Gonzalez**, Presiding Justice

New York State Judicial Committee on Women in the Courts

**Hon. Betty Weinberg Ellerin**, Chair

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## Chapter 1

# Understanding Trauma

### **WHY TRAUMA MATTERS**

If you are working with kids, chances are that you are trying to help them do better in some way: get in less trouble, do better at school, feel less angry or sad, not hurt people. So why not just focus on the problem? Why should we care about trauma?

Following is a partial listing of the kinds of problems kids might have that are potentially trauma related:

- Disruptive behaviors
- Poor frustration tolerance
- Depression
- Anxiety
- Poor concentration
- Loss of interest in activities/goals
- "Don't care" attitude
- Anger
- Fighting
- School absences
- Substance abuse
- Criminal behaviors
- Noncompliance with medical treatment
- Suicidal behaviors

This is not to suggest that trauma is the only reason kids have problems. But trauma can find the child's weak spot. Trauma is a powerful stressor that can either cause new problems or make existing problems worse. If we try to help kids but don't take trauma into account, we risk ignoring a driving force behind the problems. We risk being less effective.

### **A USEFUL DEFINITION OF TRAUMA**

Trauma was previously defined as a horrific event "beyond the scope of normal human experience" (American Psychiatric Association, 1980). To qualify as traumatic, an event should be subjectively perceived as threatening to a person's life or physical integrity, and should include a sense of helplessness along with fear, horror, or disgust. Such events might include being in a car accident, house fire, or natural disaster; being raped; or being assaulted. Through research we have learned to identify a wider range of events as being possibly traumatic—for example, witnessing a parent or sibling being beaten; being diagnosed with a life-threatening illness.

The bad news is that traumatic events are not beyond the scope of normal human experience. Although not every child will be exposed to one or more traumatic events, most will. This is not just true for kids growing up in high-crime urban areas. Even our (presumably) best-protected

kids experience trauma. For example, a study of second-year college students (modal age of nineteen) found that 84 percent had experienced at least one major trauma (Vrana & Lauterbach, 1994). Among disadvantaged urban populations, very few escape exposure to major trauma events (see Greenwald, 2002b). Trauma during childhood and adolescence is now so common as to be normative. When working with a child or adolescent with any kind of problem, we can't afford to assume that trauma is not a factor.

Although the focus here is on trauma, it is important to note that other adverse life events can have a traumalike impact on kids. For example, a child's response to a significant loss can be virtually identical to a posttraumatic response, except that following loss, hyperarousal may not be present (Pynoos, 1990). Indeed, the research on adjustment disorder shows that many children do not adjust to or recover from a range of adverse events (Newcorn & Strain, 1992) but maintain some symptoms indefinitely.

When working with a distressed child, we do not ask if the event qualifies as a trauma before offering help. We will offer essentially the same treatment regardless of whether the source of the distress is an earthquake, a sexual assault, or a death in the family. In this book, the term *trauma* is intended to apply to major trauma as well as loss and other adverse life events, as long as the event has had a traumalike impact on the child.

### WHAT MAKES AN EVENT TRAUMATIC?

Not every upsetting event is so intense and overwhelming that it is experienced as traumatic. The biggest factor pushing an event into the traumatic range is, not surprisingly, how bad it is. Several factors determine the severity of the exposure to trauma:

- The nature of the event itself
- Direct experience versus witnessing versus hearing about it or seeing it on TV
- Personal impact versus impact on a known person versus impact on a stranger
- After-event impact (e.g., lifestyle disruption)

#### *Severity of the Event*

Some events are clearly worse than others. For example, an open-hand spanking is not as bad as being whipped with a belt, which is not as bad as being beaten to the point of broken bones. In most cases, once the event has been described, its severity is readily apparent. However, children with special vulnerabilities may experience certain insults especially severely. For example, being punched in the arm will hurt a child who has hemophilia more than it will hurt a child who does not have this condition. Also, how the event is perceived contributes to its severity. For example, a child who does not understand the danger she was in may not experience a nearly fatal near-miss event as traumatic.

#### *Proximity of the Experience*

The more directly the child is involved in the event, the higher the risk of posttraumatic stress symptoms. For example, in a school shooting, children witnessing the event had the most severe symptoms, followed by children nearby who heard the shots but did not see the event, followed by children farther away who neither saw nor heard (Pynoos et al., 1987). However, even distant exposure can have impact, especially when children can personally relate or feel directly affected in some way. For example, younger children who saw the World Trade Center towers collapse on television, and who saw this multiple times, were exposed repeatedly to this event

because they did not understand that it was only the same event being replayed. They thought that many buildings had been hit and were coming down, and they felt more vulnerable.

### *Personal Impact*

Something that happens to the child or to someone he cares about is likely to have a greater impact than something that happens to a stranger. Children take it very personally when a parent or sibling is victimized or hurt. On the other hand, it is important not to underestimate the impact that an apparently distant event can have on a child.

- A ten-year-old boy's classmate drowned during a school outing. He did not even like the drowned girl, but felt guilty that he had not been friendlier toward her and irrationally blamed himself for her death.
- A five-year-old boy looked out the window and saw a neighborhood man getting beaten up. After that he was afraid to go outside; he feared someone might beat him up too.
- A nine-year-old girl's best friend's father died of cancer. She became obsessed with the fear that her own parents might have cancer.

### *After-Event Impact*

This is a critical element of severity of exposure that is often overlooked. Imagine that two identical bombs are dropped. One explodes and makes a crater in the ground. The other explodes somewhere else and also makes a similar crater in the ground, but then some nearby buildings collapse into the second crater. Although both bombs had the same strength, the second bomb has had more impact and thus can be considered more severe. Life experiences can be like this too. A traumatic event is more than just the single terrible moment.

- A fourteen-year-old girl was in a car accident. After the crash, she did not know for a few minutes whether her aunt (the driver) was dead or alive. In the hospital, she had to wait by herself in a small room for almost an hour. The attendants cut off and discarded the bloody jacket she had been wearing in order to tend to her wounds; her boyfriend had given her this jacket and she treasured it. She was left with a scar on her lower arm and felt that she could no longer wear short-sleeved shirts or bathing suits.
- A four-year-old boy's father died in a work-related accident. His mother became depressed and withdrawn. Spring came around and the boy's father was not there to teach him how to catch a baseball. He'd already received a baseball glove for Christmas. Father's Day came. His birthday. His first day of school. (This could go on indefinitely, as major losses can have fresh impact at every developmental milestone.)
- An eleven-year-old girl lost an uncle in the World Trade Center disaster. Even a month later, her parents were upset all the time and couldn't seem to talk about anything else. Also, her school wasn't any good anymore; everyone there was angry now because hundreds of kids from some other school were all crammed in there too, until they could go back to their own school again.

In other words, it's not just the event itself but the circumstances surrounding and following the event that may make it traumatic rather than merely upsetting. Personality, social support, and other factors (discussed later in this chapter) also help to determine whether a child can handle an event or will be overwhelmed.

## THE "TRAUMA WALL"

A popular saying is that "What doesn't kill you makes you stronger," or, less colloquially, that we grow from adversity. Although this certainly can be true, it is not always the case. Sometimes what doesn't kill you may still hurt you or cause damage. So how does this work—why does it go one way rather than the other?

Here a food analogy is helpful. Usually, we chew food, swallow it, and digest it. It becomes part of our nutrition, something we can grow from. Ideally, we do something similar with an upsetting experience. Kübler-Ross (1969) described a similar process in the stages of processing grief.

For example, let's say your dog dies. Maybe you don't think about it or process it every minute of the day, but now and then you do think about it, remember different aspects: how frisky she was when you first got her, how she liked to have her belly scratched, how badly you feel about having let her out the day she got hit by a car. You remember, you talk to others, you take a walk, you write, you cry, you laugh. Little by little—or bite by bite—the hurt becomes smaller as more gets processed, integrated, "digested." When an upsetting experience is digested, it becomes your nutrition, something you grow from. Then it becomes part of long-term memory, part of the past. It is not as fresh or upsetting anymore. Along with the emotional processing, we have organized the elements of the experience into a coherent story, including a perspective that allows us to move on. For example, you might say to yourself, "Well, she loved to play outside. I guess there was always the risk of an accident, but she would have been miserable tied up," and "She was a great dog. I'll always love her."

However, sometimes upsetting experiences do not get processed in this ideal way. Sometimes it's just too much to face, to take bites out of. Maybe the event was too upsetting and overwhelming; maybe you try to talk about it and are punished for that (perhaps by parents getting upset or peers teasing); maybe just when you are ready to take a bite out of this upsetting memory, another one comes along. It can be so difficult to face this upsetting memory, to tolerate it, that many people try to push it aside, push it behind a wall. That brings quick relief, so the strategy is experienced as helpful. Unfortunately, it provides only a temporary solution.

Back to the food metaphor: Imagine that you have eaten some food that is bad for you or poisonous. Ideally you will be able to get rid of it somehow. Maybe you'll be shaky or sick for a little while, but it'll be gone from your system. Unfortunately, with an upsetting experience, you can't just reject it and flush it down the toilet. The only way out is to go through—through the memory processing system into long-term memory. Until the memory is processed, or digested, it stays behind the wall.

Although the wall may provide some relief, this system has problems. First, the memory stays fresh and keeps its power indefinitely, until it is digested. I have worked with people months, years, and even decades after the trauma, and the quality of the undigested memory is the same. When asked to concentrate on the memory, they say things like, "It's so vivid it's like it just happened yesterday," or, even more telling, "I'm there."

Also, although the memory retains its freshness and power, it is still behind the wall, so we can't get at it with the rest of our psychological resources the way we can with processed memories. This means that the memory, or parts of the memory, can negatively influence us and we may feel helpless to stop it. For example, many rape victims will say, "I *know* in my head that it wasn't my fault, that I didn't do anything wrong, that I didn't deserve that. But I can't help *feeling* ashamed, dirty, to blame." In other words, the healthy part that knows better can't manage to influence the powerful beliefs and feelings that are shielded behind the wall.

Furthermore, the memories stored behind the wall are not content to stay there. They are always waiting for a chance to come out, go through the system to be digested, and become part of the past. It is as if the memory is seeing its chance and saying, "Me too! Can I finally be treated



like a normal memory and get processed already?" When this happens, we say that the memory was "triggered" or activated by a reminder, something thematically related. Another way of explaining this is that the stuff piled up behind the wall is like a "sore spot," and when some kind of reminder hits that sore spot, the reaction is stronger than others might expect. This is because the person is not just reacting to what's happening right now; the old stuff is kicking in, too.

- Most of us who drive are at least a little nervous about driving. This is reasonable and inspires us to put on our seat belts and watch out for bad drivers. However, we are still able to enjoy conversations with our passengers, listen to the radio, and think about where we are going. Now think about the woman who experienced a car accident because she couldn't stop on a snowy road. Afterward, whenever she got into the driver's seat, she had the usual amount of nervousness, plus all the extra fear from behind the wall. You've probably seen people like her on the road, clutching the wheel and gritting their teeth as if they are expecting an accident to occur at any second. On rainy or snowy days, so much of the fear piled on that she could not manage to drive herself to work.
- Most of us, when accidentally bumped in the hallway, will be slightly irritated, perhaps make a comment, but forget about it five minutes later. Now think about the twelve-year-old boy who has been routinely physically abused at home. Behind the wall is piled-up fear of being attacked, a sense of helplessness, and rage. When he is bumped in the hallway, the "sore spot" reaction from the stuff piled up behind the wall is so strong that he believes he is being attacked. Naturally, being angry and not wanting to feel helpless anymore, he defends himself. When he is sent to the assistant principal's office for "punching a peer with no provocation," he insists that the other kid started it.

Note that it is not necessary to be aware that an unprocessed memory is being triggered for it to be happening. Sometimes the person will be acutely aware of it, as unwanted images from the memory itself come back. For example, one thirteen-year-old girl said, "Every time my boyfriend tries to kiss me, I freak out. I see the face of that guy who messed with me when I was little." However, often the person is unaware of the impact of the behind-the-wall memory and just subjectively experiences a strong reaction to the present situation. For example, a sixth-grade boy who has experienced several events involving helplessness may give up too quickly when he does not immediately grasp how to do his math homework. He may say, "It's too hard—I can't do it" when he probably could do it with a little effort—if he weren't overwhelmed by the "sore spot" helplessness from behind the wall.

We all understand this phenomenon. We understand that people have their wounds, their sensitive areas, their sore spots. We say, "Don't mention John around her, unless you want her to start crying," or "Don't joke like that with him—he'll go ballistic." What we mean is that there are unprocessed memories piled up behind the wall that can get triggered by thematically related events in the present. We understand that people can be more reactive than the current situation warrants when they are hit on their sore spot. This is one of the consequences of carrying trauma memories that are not fully processed.

### **RESILIENCY AND VULNERABILITY**

Beyond the objective severity of the event itself, several factors contribute to determining whether a given upsetting experience is ultimately processed or pushed behind the wall.

### ***Social Support***

The choice to face and digest an upsetting event versus pushing it behind the wall occurs in a social context. Children may not want to talk about upsetting thoughts and feelings around their peers for fear of being rejected and isolated. At home, kids may not want to worry their parents or other family members. When a parent says, "Don't talk about that. It'll only upset you!" the child learns, "Wow—this is so bad and scary that even Mom/Dad can't handle it!" So unless kids are in an accepting and supportive environment, they may be getting messages that do not provide support for talking about the trauma and that discourage processing.

### ***Temperament***

Pain threshold is a familiar concept that can be applied to emotional pain as well. People are unique in the ways they experience events. The same event with the same severity will bother one person more than another. Extending an earlier analogy, two identical bombs might make different size craters for each person. Furthermore, even if the same size bomb is making the same size crater for two people, it might bother one person more than the other. For example, on a 0–10 scale of severity of emotional upset, two kids might each report the same event as being a 6. However, one child might experience that 6 as no big deal, and the other might find it intolerable. Obviously, the more difficulty a child has with tolerating pain, the more tempted that child will be to push the memory behind the wall.

### ***New and/or Repeated Insult/Wound***

Suppose a child has experienced a minor everyday type of upsetting event, such as a peer insult or a school-related frustration. She is on track to digest it and is just getting ready to take a bite when some new stressor comes along, and then another, and another, and another. Eventually so many of these small events pile up that the pile is experienced as "too much" and pushed behind the wall. This pileup of minor events commonly occurs in kids who have an untreated learning disability or attention deficit/hyperactivity disorder (ADHD); kids who are bullied; and kids who are subject to emotional abuse.

You might have noticed that we just expanded our definition of trauma. If it's behind the wall, it counts. If it's behind the wall, it's creating sore spot reactivity, whether the sore spot comes from one big event or a hundred smaller ones.

### ***Attachment Status***

Some preliminary research suggests that attachment status can, to some extent, predict the child's preferred coping style. This also makes sense. How do you become someone with a secure attachment? You do this by having a "good-enough mother" (Winnicott, 1965). This parent figure actually doesn't need to be a mother, but he or she does need to be good enough! When you have a good-enough mother, you learn, through repeated experiences over time, that if you're cold, soon you'll get warm again; if you're hungry, soon you'll get fed; and if you get so angry that you want to kill, your mother will survive and so will you; she will not retaliate or reject you. In other words, in the process of developing a secure attachment, kids learn that although they may not like to feel bad, they can handle it and things will come out okay.

When securely attached kids have to deal with a trauma memory, they have an experience base and coping style that favors facing it and getting through it. Incidentally, kids with secure attachment are also more likely to have good social support, because they are probably still in

the family in which the attachment was formed, and because they are more capable of forming other supportive relationships.

On the other hand, how do you form anxious, insecure, or disorganized attachment? You do so by having a (subjectively experienced) not-good-enough mother, or a good-enough-sometimes-but-not-other-times mother. Kids with problematic attachments have learned, through repeated experiences over time, that feeling bad can be disastrous and overwhelming. If you are cold, you might get warm, or you might stay cold and miserable. If you are hungry, you might get fed, or you might just get hungrier. If you get so angry that you want to kill, you might get rejected or attacked. In other words, in the process of developing a problematic attachment, kids learn that feeling bad is a danger sign, to be avoided if possible. When such kids have to deal with a trauma memory, they have an experience base and coping style that favors trying to push it out of the way, to get rid of the threat.

The more severely problematic type of attachment status is known as failed attachment or reactive attachment disorder. Unattached kids may experience trauma in a qualitatively different way than other kids do; they also have some unique ways of responding to various interventions. The treatment of kids with the most severe attachment problems is beyond the scope of this book. The treatment approach presented in this book is still necessary in their treatment, but it is not sufficient; an additional specialized treatment component is needed.

### *Safety and Attachment*

There are also other consequences of traumatization. In Erikson's (1963) developmental theory, the first stage of development is trust versus mistrust. With a good-enough mother, the infant learns through repeated experience that he or she will be taken care of, that the world is a safe place. Trauma can alter that perspective, reverse that lesson.

We have understood this since the beginning of the modern era of trauma study. In the World War I literature on post-traumatic stress disorder (PTSD, which was called "shell shock" then), it was reported that soldiers under bomb attack would frequently call out either for God or their mothers. What is the significance of this? The first promise was being broken: "The world is no longer a safe place. I am not being taken care of. Mother, God, you lied to me."

Attachment and safety are inherently related, and when children feel unsafe they seek the comfort and protection of their primary attachment figures. The toddler at the zoo is not frightened by the tiger; he is safe with his mommy. However, trauma can disrupt attachment, in part because the attachment figures have, by definition, failed to protect and an unimaginably bad thing happened.

Some kids may react to this trauma-related attachment challenge by withdrawing, whereas others may seek out new attachment figures who are perceived as more likely to protect. For example, although there are practical reasons for affiliating with street gangs, the explanations kids offer are revealing: "We watch each other's backs," and "This is my family."

## **SURVIVAL ORIENTATION**

When children are exposed to trauma, they learn that parents and others cannot be relied upon for protection; they learn that bad things can happen. They then make a profound shift in their worldviews, in their orientations to daily living. Instead of focusing on normal concerns and activities, the primary focus becomes keeping the bad thing (or other bad things) from happening again. When we say someone has "lost her childhood," this is what we mean. The child exchanges the healthy (if irrational or naive) optimism for a survival orientation.

## POSTTRAUMATIC SYMPTOMS

Many posttraumatic stress symptoms can be understood from the perspective of the sore-spot reactivity, plus the survival orientation.

### *Reexperiencing*

Reexperiencing, one of the primary posttraumatic symptoms, refers to instances in which the memory itself recurs or intrudes into awareness. The child might complain that he thinks of the memory "all the time" or that it comes to mind at random moments, without warning. However, on analysis, it turns out that such intrusions generally occur when they have been triggered by something in the present. Most people find these intrusions disturbing and disruptive. Flashbacks are an extreme and relatively rare reexperiencing symptom; nightmares and waking memories are much more common.

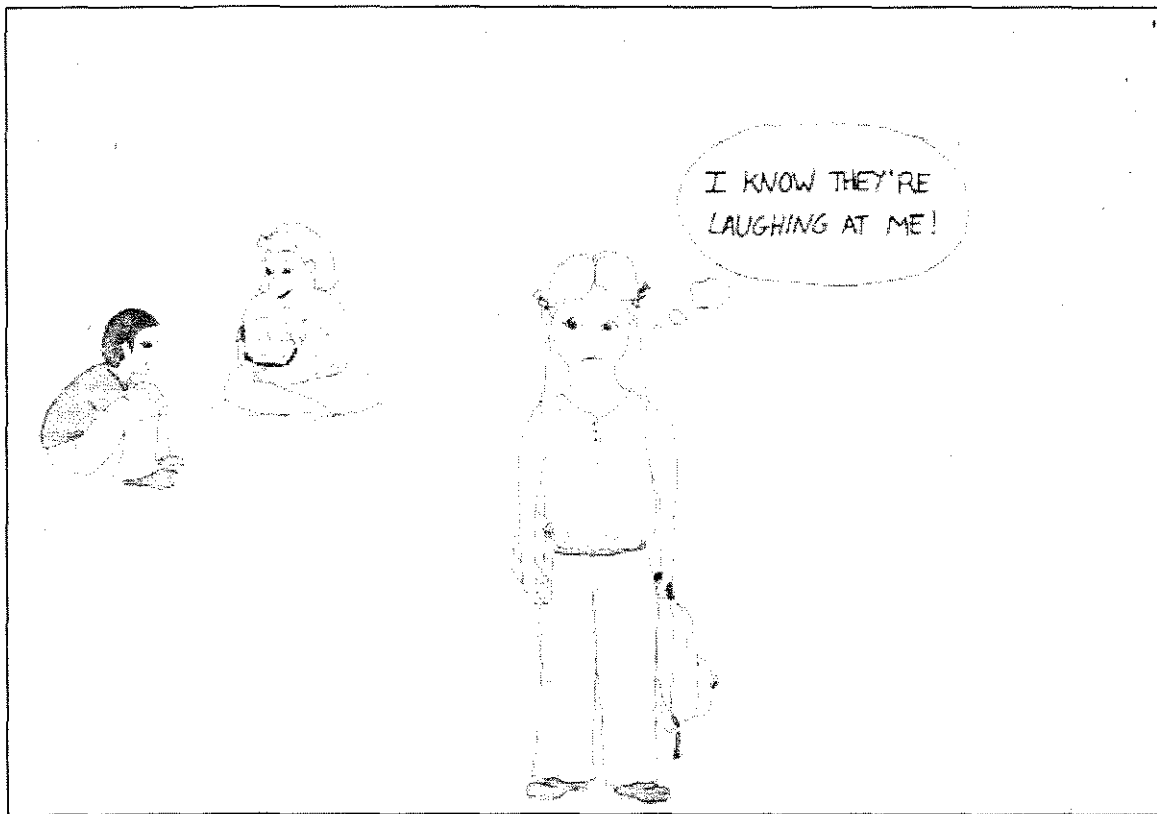
### *Avoidance*

Avoidance, another of the primary posttraumatic symptoms, relates to both the sore-spot reactivity and to the survival orientation, the wish to keep any more bad things from happening. For example, a traumatized child might avoid walking down a certain street where she had been hit by a car, both to avoid a recurrence of the accident and to avoid being reminded of the memory. Avoidance can have significant impact on many areas of life:

- A fourteen-year-old boy, whose best friend had abandoned him during a street fight, says, "I don't have friends, only associates. Friends let you down." He is avoiding the possibility of being let down again by not trusting anyone anymore.
- A fifteen-year-old girl with exposure to multiple traumas is not doing much in the way of schoolwork, and she is having unprotected sex. She says, "What does it matter? Nothing's going to work out for me anyway. Why bother making the effort?" She is avoiding the possibility of feeling disappointed again by not getting her hopes up, not feeling optimistic, not setting goals for herself (the technical term for this is *pessimistic future*).
- A nine-year-old boy, who had been hit by a car while on his bicycle, has quit his baseball team. He says, "I just don't feel like going anymore." In fact, he's not going anywhere except school and home, because he doesn't feel safe anywhere else. He's learned that bad things can happen out in the world, and he doesn't want any more bad things to happen to him.

### *Hyperarousal and Hypervigilance*

Hyperarousal and hypervigilance are also common outcomes of traumatization. Many children are in a constant state of alert, on the lookout for possible signs of danger. When kids are primed to expect the worst, they can be jumpy when startled or threatened. The problem is, when you think you're a nail, everything looks like a hammer. So many kids will interpret neutral or ambiguous social cues as being threatening (the technical term for this is *hostile attribution bias*; see Dodge & Coie, 1987). For example, a boy may notice a peer looking his way and assume that the peer is showing disrespect and trying to start a fight. Of course, this kind of assumption leads to problems!



### ***Numbness***

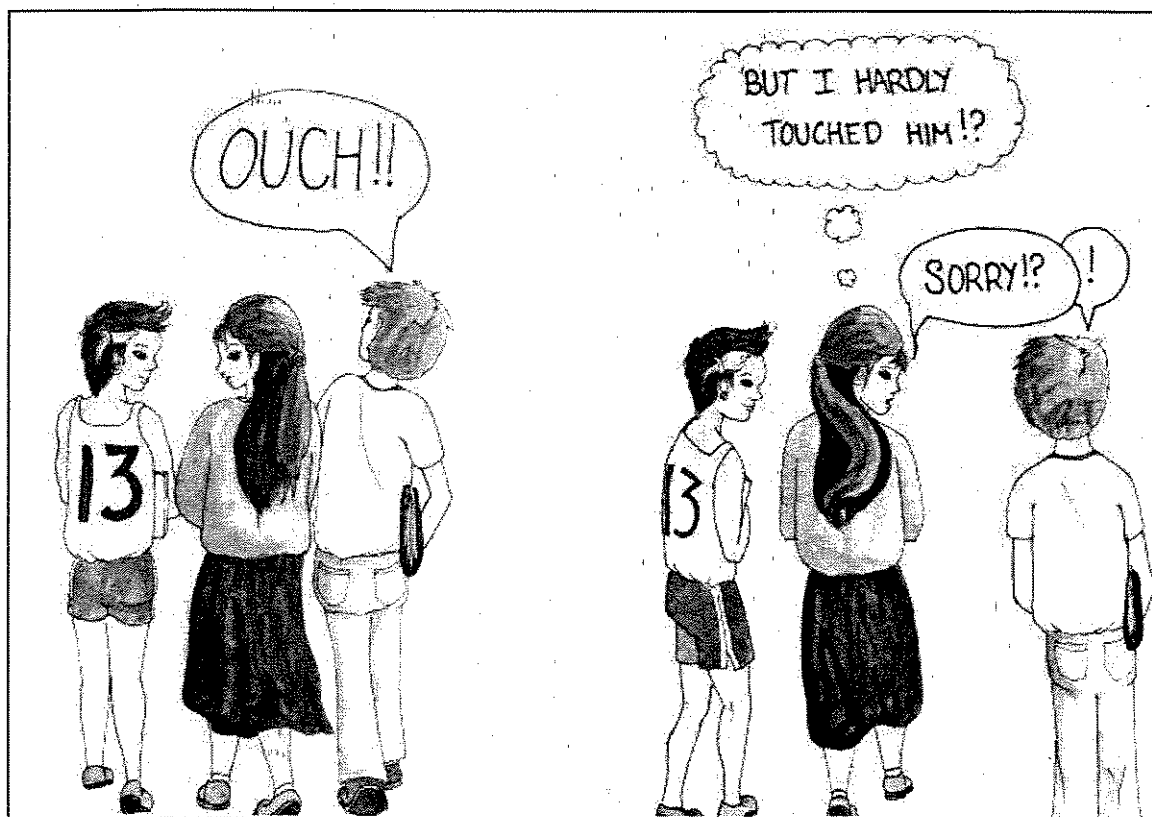
Many traumatized kids find themselves “numb” or unable to feel certain (or most) emotions. This may be a “freeze” response to being overwhelmed or it may be a special kind of avoidance. Some kids will say, for example, “I can’t let myself feel anything or I’ll feel everything; it’ll all come back. And that’s too much,” or, “I’m afraid that if I start crying, I’ll never stop.” The numbness solution is to block it all out.

### ***Substance Abuse and Other Avoidance Strategies***

Many traumatized kids are unable to effect that numbness and so seek activities that will help them “forget about” the memory or related affect. For example, some kids become thrill seekers, troublemakers, or workaholics to stay busy and distracted with attention-compelling activities. Many youth turn to substance abuse to keep the trauma memories away, if only for a while. One nineteen-year-old boy who had been brutally assaulted by peers said, “I think about it every night. It keeps me awake for hours. I have to catch a buzz [smoke marijuana] to get myself to sleep.”

### ***Affect Dysregulation***

The technical term for sore-spot reactivity is *affect dysregulation*. We should not use this term in front of our clients, but it’s important to understand it. Breaking it down, *affect* is emotion, and *dysregulation* means unregulated, out of control, or volatile. Emotions may become out of control when traumatized kids react very strongly to minor stressors because they are already sensitized. This in-the-moment reaction, perhaps of anger, fear, sadness, shame, or helplessness, can



be very intense and uncomfortable, even intolerable. The fear of these reactions drives many of the avoidance behaviors.

Also, kids who react very strongly to minor stressors are at a high risk of impulsive acting out behavior (van der Kolk et al., 1996). The impulsive acting out provides quick relief from the intolerable feeling, but often leads to other problems. It is likely that unprocessed trauma plays a significant role in the acting-out problems of many kids with oppositional/defiant and conduct disorders (Ford, 2002; Greenwald, 2002b).

### *Posttraumatic Symptoms over Time*

Unfortunately, kids don't just "get over" their traumatization. The memory (and associated symptoms) doesn't just fade away with time. It stays fresh as long as it's behind the wall. It stays fresh until it's digested. But what does it take for digestion to be possible? What needs to happen?

Going back to the food analogy. Suppose you've just had a nice lunch and you're back at work. Someone bursts into your office and announces that there's a bomb scare in the building, so you have to rush out and go somewhere else. Meanwhile, your nervous system is shifting from parasympathetic to sympathetic, and the blood is going away from the stomach to supply the brain, arms, and legs. This allows you to escape and survive. Twenty minutes later you hear an announcement that the whole thing was a hoax—there's no bomb. You go back to work and gradually your nervous system shifts back to parasympathetic. The blood goes back to your stomach, and you can proceed with digestion.

This return to relaxation does not happen with posttraumatic stress symptoms because they are self-perpetuating. The need for survival mode is repeatedly reinforced, with no shift to safety and relaxation, no opportunity for digestion:

- A young girl who had been assaulted on a certain street walks the long way home from school to avoid going down that street. She may say to herself every day that she does this, "Phew! I escaped another assault."
- A girl who was raped by the babysitter—who is now in jail—is bullied by her big brother in minor ways on a daily basis. She learns, over and over again, that males who are bigger and more powerful than she is can have their way with her. Her "psychological truth" is that she is in constant danger.
- A previously victimized teenaged boy believes that he is being stared at by a peer and interprets this as a hostile affront. If he
  - quickly leaves the situation, he may say to himself, "Phew! I got away! I'm glad I've stayed so alert."
  - challenges the peer, who then backs down, he may say to himself, "I defended myself well."
  - challenges the peer, who responds by fighting, he may say to himself, "I was right: he was hostile."

Regardless of specific outcome, these posttraumatic symptoms serve to reinforce the perception that the world is still dangerous. Every avoidant behavior—such as walking the long way around—only provides relief from fear, and reinforces the perceived need for avoidance. The defensive-intent aggressive behaviors also are self-reinforcing: by forcing the other's withdrawal or hostility, the need for the defensiveness is confirmed. Since traumatized kids tend to be hypervigilant and to overinterpret neutral cues, these types of situations may occur frequently. As long as kids remain in survival mode, they do not feel safe and are not prepared to relax or to digest their trauma memories.

Posttraumatic stress symptoms can also make it more difficult for kids to handle new challenges in a healthy way. A new upsetting experience may be hard enough to manage already. However, when this new experience triggers trauma-related reactivity from something that's already behind the wall, the reaction to the new experience can be much stronger than is apparently warranted. This extra-strong reaction can make it even more difficult to manage the new experience effectively, and the child is more likely to push the memory behind the wall rather than attempt to digest it. Thus, previously traumatized kids are at a higher risk for being overwhelmed, and traumatized, by new upsetting experiences.

The more trauma memories (and associated thoughts and feelings) are piled up behind the wall, the more likely this "trauma burden" (Greenwald, 1997) will affect the child's daily life. A single memory might be well contained, at least until the child is faced with a very closely related reminder. For example, after an initial period of adjustment, children of divorce tend to look and act like other kids, with no special problems—at least until they get old enough to attempt their own intimate/romantic relationships (Wallerstein, Corbin, & Lewis, 1988). Because kids can be good at containing or hiding their distress, many parents come to believe that the child has "gotten over" the trauma.

As unprocessed trauma accumulates behind the wall, two things happen. First, the strength of the reactivity to a current stressor is likely to be greater, so others are more likely to notice that the child is overreacting to things. Second, the child is more likely to overgeneralize and practice a wider avoidance. This is because humans are good at recognizing patterns and can use this ability to avoid repeating the same mistake. However, a traumatized child's interest in avoiding further trauma can be so powerful that she may take avoidance to an extreme.

Following is an example of how avoidance might be generalized from a specific identified high-risk situation to other less high-risk situations:

- I won't be alone in a room with Uncle Matt anymore. He messed with me last time.
- Uncle Matt has a beard—that must be it. I guess I can't trust men with beards.
- I can't trust men.
- I can't trust.

Pessimistic future can develop in a similar way:

- Wow—something bad happened. I didn't know that could happen.
- Something bad might happen again. I'd better be careful.
- I know bad things are going to happen.
- Only bad things will happen, and good things will turn bad, so why get my hopes up?

In summary, posttraumatic stress symptoms can persist indefinitely and can lead kids to react very strongly to minor stressors. In fact, sometimes others don't see any stressor at all, because we don't know what might be a trauma reminder to the child. When the triggers are not apparent to others, we are prone to forming opinions about the child's behavior that are not based on understanding. For example, we may be likely to assume that a child is gratuitously aggressive when, from his point of view, he is only defending himself.

### ***A NOTE ON EXERCISES/ACTIVITIES IN THIS BOOK***

The exercises and activities are included because they are likely to help you to learn the material. People tend to learn best when engaging personal experience is part of the lesson. Because this book is focused on trauma, the experiential component sometimes focuses on trauma as well. Participation in such experiences might hurt your feelings or at least bring up hurt feelings that were otherwise dormant. In live workshops, most people find that they can handle this and they are glad they participated. However, occasional exceptions do occur.

Although in general the value of the learning will outweigh the potential for discomfort, it will be up to you to make that determination for yourself at each instance. You will want to consider not only the value of the lesson but the possible impact of participation on your emotional status and functioning, in light of your current situation/surroundings and your plans for later in the day. You always have several options:

- Participate fully in the activity.
- Participate until you determine that your distress level is as high as you are willing to allow it to go; then stop.
- Participate but carefully select the content (e.g., which memory to focus on) to avoid an unwanted level of distress.
- Decline to participate.

Bear in mind that sometimes you get more than you bargained for. If you choose to participate and then find that it is too much for you, it is important to take care of yourself and make sure that you're okay. Here are some suggestions in this regard:

- Do the deep breathing or another of the calming exercises that are presented at various points in the book.
- Use any of your usual coping skills/methods as long as they are constructive (e.g., thinking of something else, taking a walk, listening to music, etc.).
- Discuss your concerns with the workshop leader if you are attending a workshop.



- Discuss your concerns with a trusted family member, friend, colleague, or supervisor.
- Discuss your concerns with a mental health professional.

### **EXERCISE: FLOAT-BACK**

The main purpose of this exercise is to see how trauma-related triggers may be active in your own life. When you see how a principle applies to you, you can use your experience to better understand others. Another purpose of the exercise is to directly experience an activity that you might ask a client to do. For this exercise, you'll need a pencil or pen and paper.

#### ***Float-Back***

1. Think of a situation that happened within the past couple of days in which you were somehow distressed: upset, mad, worried, hurt, sad, frustrated, etc. It doesn't have to be anything major. The first thing that pops into your head is probably the right one.
2. On a scale of 0–10, 0 is no bad feeling at all, 10 is the worst a feeling could possibly be. Concentrate on the worst part of the recent event. Notice the picture in your mind, what you are saying to yourself, and what you are feeling. On a scale of 0–10, how bad is the feeling *right now* as you are concentrating on it? (Not how bad it was then.) Write that number down.
3. Now as you are concentrating on this recent memory, again notice the image, what you are saying to yourself, what you are feeling, where you feel this in your body. Now try to make the feeling even more intense.
4. Let your mind float back in time, maybe a long way back, to when you first learned to feel this way. If something pops into your head, maybe that's it.
5. Now on a scale of 0–10, with 10 being the worst the feeling could be, how bad is the feeling from the old memory *right now* as you are concentrating on it? (Not how bad it was then.) Write that number down.

#### ***Deep Breathing***

Because I asked you to think about something that might be upsetting, now I will ask you to do a deep-breathing exercise that might help you to feel better, to relax again. You might not need this, but please do it anyway for the experience. You will be taking a very deep, slow breath in, to a count of three, then hold for three, then breathe out slowly to a count of three. Ready?

Breathe in 1, 2, 3; hold 1, 2, 3; out slow 1, 2, 3. Again, breathe in 1, 2, 3; hold 1, 2, 3; out slow 1, 2, 3.

This time, when you breathe out, look for any bad stuff—tension in your body, upsetting thoughts or pictures—and when you breathe out, imagine the air coming from that place and the bad stuff going out with the exhale. Ready?

Breathe in 1, 2, 3; hold 1, 2, 3; breathe out the bad stuff, 1, 2, 3. Once more, breathe in 1, 2, 3; hold 1, 2, 3; breathe out the bad, 1, 2, 3.

#### ***Discussion Questions***

How many (in a group, raise hands) had a higher number—a worse feeling—for the old memory than for the recent one? (Normally about three-fourths of the group will raise hands here.) What might this mean?

- What was once significant may maintain its influence, even over a long time period.
- Do you think that, for you, your reaction to the current event was at least in part due to hitting the sore spot from the old one?

How many (in a group, raise hands) had a higher number—a worse feeling—for the recent memory than for the old one? (Normally about one-fourth of the group will raise hands here.) What might this mean?

- Perhaps the recent event was actually a major trauma, although the odds are against this.
- What's fresh may feel more relevant than something that happened a long time ago.
- Will kids believe you when you say that the recent event is not relevant?

The trick here is that both answers are the right answer, and with kids we must somehow address both the past and the present if we are going to be helpful.

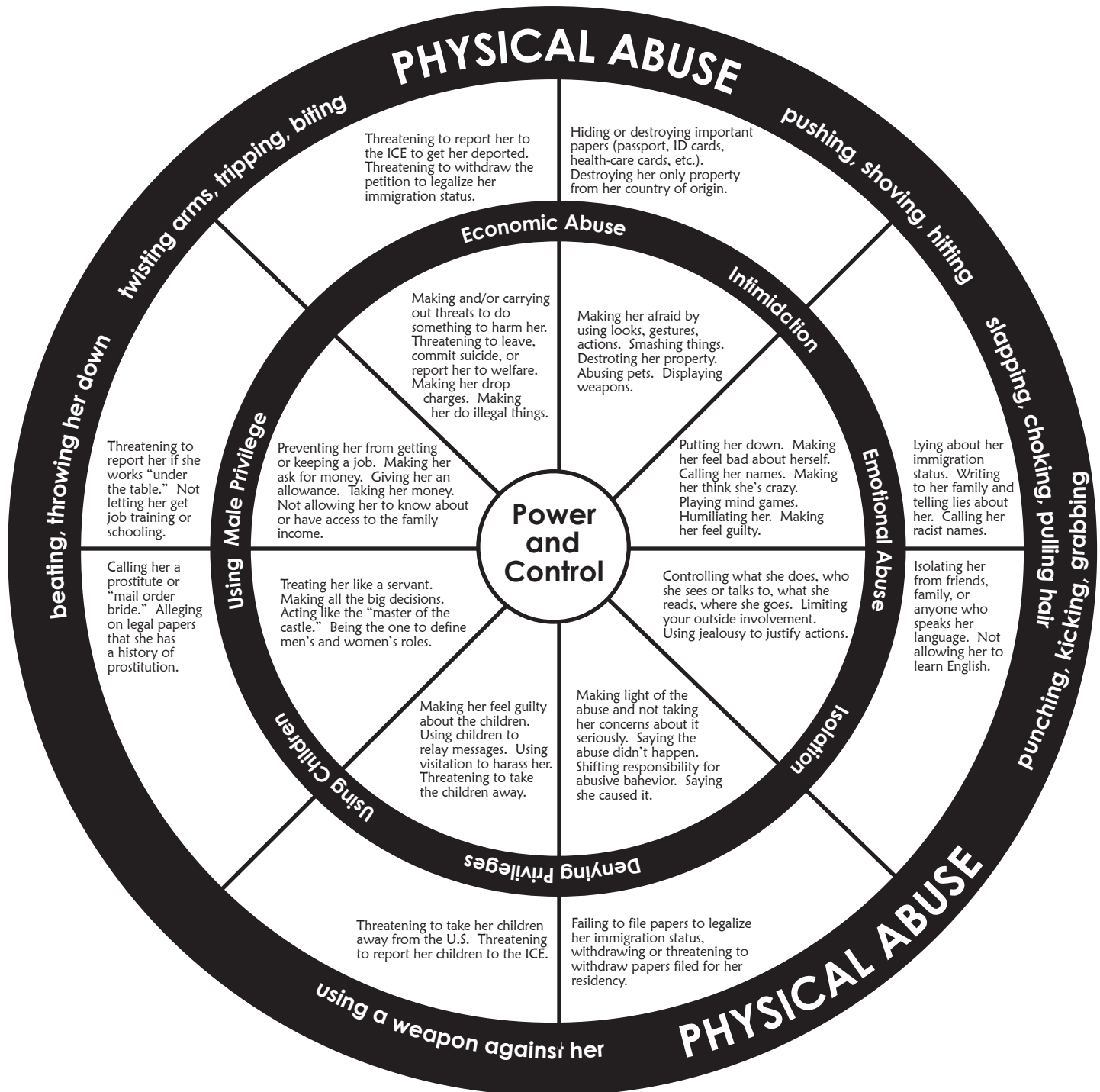
A twelve-year-old boy had been doing pretty well until his mother died suddenly, when he was seven. Since then, he has done worse in school, had a short temper, and gotten into a lot of fights. You are absolutely sure that his problems are directly related to the death of his mother (and you're right). But when you bring this up, he storms at you, "Everybody wants to talk about my mother all the time! I'm sick of talking about my mother! That's not what's bothering me! My problem is that my teacher picks on me. I'm the one that gets in trouble even though the other kid started it!"

If you insist on talking with him about his mother, what will probably happen? He will feel disrespected. He is trying to tell you what is important to him and you are ignoring him. He will then discount you and become uncooperative. This is especially tempting for him because then he can avoid talking about his mother! And you lose your chance to be of service.

But if you do it his way and talk only about the problem of the day, what will probably happen? He will feel respected, he will work with you, and he might even learn a few problem-solving or other coping skills. But the core problem will remain because the source of his reactivity never gets addressed. He might go from one counselor to the next for years and never solve his problem.

So what do we do about this? How do we address the past as well as the present? I'll tell you later! This is the part of the book in which we try to understand what's going on with traumatized kids. Later on step-by-step guidance is available for what to do and how to help them. In the next chapter we take the first step, by learning how to analyze a presenting problem to take into account both past and present-day contributing factors.

# IMMIGRANT POWER AND CONTROL WHEEL



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## Interviewing and Assisting Trafficking Survivors

by Dorchen A. Leidholdt

### Barriers to Interviewing and Assisting Survivors

**As challenging as it can be to identify human trafficking and recognize victims, the tasks of interviewing and assisting survivors of human trafficking can be even more daunting.** Trafficking victims endure the same kind of harms as victims of many commonly occurring crimes. What distinguishes trafficking is that, while most crime victims suffer discrete injuries that occur during a limited period of time, victims of human trafficking are often subjected to a wide array of criminal acts inflicted over a period of months or even years.

Trafficking victims have much in common with other kinds of crime victims and frequently have experienced the same forms of violence as victims of intimate partner violence, rape and sexual harassment, theft and extortion, stalking and torture, and official corruption. Like intimate partner violence, trafficking often involves betrayal by individuals the victim trusted and loved as well as a course of abusive conduct that extends over years. Like rape and sexual harassment, trafficking often involves a profound violation of the victim's most intimate boundaries. Like theft and extortion, trafficking almost always robs victims of economic resources, leaving victims with urgent material needs. Like stalking and torture, trafficking deprives victims of privacy and peace of mind, instilling in them a state of fear. Like official corruption, trafficking too often denies victims the possibility of justice and protection.

The multifaceted and prolonged nature of the victimization affects trafficking victims in ways that can impede the efforts of attorneys and other service providers to interview victims and develop strong working relationships with them. The many obstacles faced by the legal or social service professional attempting to assist trafficking victims are almost always the direct result of the harm — physical, psychological, and material — inflicted by the traffickers who carry out this profoundly injurious crime.

## **Trauma**

Many trafficking victims have sustained psychological trauma, symptoms of which can range from depression, often accompanied by listlessness or flattened affect, to panic attacks and extreme emotionality. Often victims attempt to distance themselves psychically from their terrifying and humiliating experiences through minimization, memory loss, and dissociation. Many try to numb feelings of anxiety through alcohol and drugs. Post traumatic stress disorder (PTSD) is extremely common among victims of human trafficking.<sup>1</sup> A normal response to abnormal degrees of stress, PTSD is characterized by intrusion (emotional reactions, flashbacks, images, nightmares), avoidance (dissociation, minimizing, numbing, denial), and arousal (anger, difficulty concentrating, insomnia).<sup>2</sup>

Prior to being trafficked, many victims suffer traumatic events that inflict psychic trauma. This prior trauma not only attracts the attention of traffickers, who are adept at seeking out vulnerable victims and exploiting their vulnerability, but also magnifies the psychic harm of subsequent trauma. Typical is the experience of Kika, a sex trafficking victim from Latin America who was a client at Sanctuary for Families, a large New York City not-for-profit organization serving domestic violence and trafficking victims and their families.<sup>3</sup> Before Kika met the man who lured her to the United States, pressed her into debt bondage, and handed her over to a brothel manager, she had been beaten by her mother as a child, raped by her mother's boyfriend, and battered by a boyfriend. Like sharks that scent blood in the water, Kika's traffickers were attracted by and preyed on her vulnerability. The psychic damage they inflicted was greatly compounded by her previous psychic injury and rendered her so disabled that she was unable to resist the demands of her traffickers and identify routes of escape.<sup>4</sup>

Many victims display the hallmarks of traumatic bonding, also known as Stockholm syndrome, sometimes viewing their exploiters as their protectors. Mario, a labor trafficking victim from Honduras, had witnessed the murder of his beloved older brother by a rival street gang and had been threatened and held captive by the "coyotes" he paid to smuggle him through Mexico and across the border. Once in the United States he fell under the control of a construction boss who confiscated his passport and held him in a trailer on the construction company's work site, forcing him to work long hours for no pay. However, the construction boss occasionally wired money to Mario's family in Mexico. Sporadic acts of apparent kindness like the payments to his family led Mario to feel indebted to the man who was brutally exploiting him. Mario's traumatic bonding intensified his trafficker's domination and control.<sup>5</sup>

High degrees of trauma like that sustained by Kika and Mario heighten the challenges faced by lawyers and other professionals attempting to interview and assist victims. Minimization, denial, and memory loss, all symptoms of psychological trauma, can make it extremely difficult to elicit information necessary to understand whether the exploiter's conduct rises to the level of actionable trafficking, to draft petitions and criminal complaints, and to prepare the victim to testify at trial.

Physical trauma, especially traumatic brain injury, may also be at the root of difficulties victims have remembering. Traffickers and other abusers know that leaving victims with visible physical injuries can tip off authorities and render victims less marketable. Beatings sustained in and around the head can leave even cooperative victims with enduring difficulties producing a coherent narrative of their histories and details of their trafficking experience.

Interviewing survivors and preparing them for court proceedings require them to recount the traumatic events. Not infrequently this can cause them to reexperience the earlier trauma and trigger traumatic symptoms. For survivors, the pain of reliving traumatic events can discourage them from attending meetings with attorneys and other service providers and cooperating with law enforcement officials. For the providers attempting to assist survivors and not cause further harm, the experience of inadvertently retraumatizing a client during interviews or preparation sessions can be extremely uncomfortable and thwart well-intentioned efforts to provide help.

Anger and irritability are frequent symptoms of the kind of depression and trauma victims experience, and it is not unusual for survivors to misdirect these emotions caused by abuse at the hands of their traffickers to those attempting to provide protection and assistance. Attorneys at Sanctuary for Families provided legal representation to Kristina, an Eastern European trafficking victim who had been serially raped, first by the American man who recruited her on an internet bride website and then, when she fled from him, by a man who falsely claimed to be a police officer. The efforts of attorneys to help Kristina obtain immigration relief and medical assistance for her seizure disorder were frequently met with outbursts of rage and, on two occasions, with physically menacing acts. Staff struggled to maintain their composure in the face of repeated incidents of provocative and even frightening behavior.<sup>6</sup>

## **Fear**

Traffickers maintain control over their victims by deliberately instilling in them high degrees of fear, often by threatening to harm them and those they

love.<sup>7</sup> Since traffickers often have connections with victims' communities and know the whereabouts of their family members, victims are acutely aware that their exploiters can make good on such threats. Olga, a Sanctuary for Families client and a labor trafficking victim from the Ukraine, was subjected to chilling threats. Not only was she told that she would be forced into prostitution if she disobeyed her traffickers' orders, after she tried to escape she was warned that if she did not do everything her traffickers demanded they would murder her two small children in the Ukraine, eviscerate them, and sell their organs. Olga was paralyzed by fear, and when she was rescued had frequent and uncontrollable panic attacks. This made it extremely difficult for her attorney to gather the information she needed to prepare Olga's application for a T-visa.<sup>8</sup>

Traffickers also instill in their victims fears about the response of law enforcement and immigration authorities. Sex trafficking victims are routinely told by their traffickers that if they try to seek help from the police they will be arrested for prostitution and, if they are immigrants, summarily deported. Sex traffickers threaten victims with children that, if the authorities find out that they were in prostitution, their children will be put in foster care and they will be deported and never see their children again. Labor traffickers tell victims that authorities will separate them from their families, incarcerate them in immigration jails, and deport them back into the conditions of poverty they had hoped to escape.

Sadly, too often these threats are realized. Both sex and labor trafficking victims often experience mistreatment by authorities, not only in their countries of origin, where official corruption may be rampant, but also in the United States. Survivors of sex trafficking often report that law enforcement officers tell them after arrest that they will be released if they provide sexual services to the officers. Sex trafficking victims who are apprehended by the police are far more likely to be arrested and treated as law breakers than identified as victims and offered services. Trafficking victims who are undocumented immigrants are frequently subjected to arrest, detention, and deportation by American criminal justice and immigration authorities more used to expelling "illegal immigrants" than identifying victims and providing them with protection.

Existing in conditions of heightened fear for months or even years not only can exacerbate trauma and its symptoms but also can make it difficult for survivors to trust anyone, especially someone who is or appears to be connected with government authorities, including lawyers. Repeated experiences of betrayal and exploitation, often by those in whom survivors had placed their trust, render them suspicious, guarded, reluctant to disclose important information, and likely to resort to giving those attempting to assist them the false narratives drilled into them by their traffickers.



## Shame

Like all those who are victimized, survivors of human trafficking experience shame — shame at having been tricked and deceived, at having been taken advantage of, at having been exploited, and often at failing to provide family members with money survivors had intended to send them. Because the period of victimization is often prolonged, the shame they experience is often deeper and more persistent than that experienced by other crime victims.

Sex trafficking victims almost invariably experience a profound degree of shame.<sup>9</sup> Over and over, they are required by both their traffickers and their customers to perform acts that are degrading, humiliating, and repugnant to them. Deepening their shame, they often are required to feign pleasure in the degradation and to pretend that they are engaging in humiliating acts of their own volition. Not infrequently these acts are photographed or filmed, and the victims are threatened that the pornographic images will be shown to family members and/or publicized on the internet. Victims are often subjected to verbal abuse by their exploiters and their customers, called names like “dirty whore,” “puta,” and “slut” that suggest that their very beings are vile and that they are in prostitution because they are prostitutes by nature.

In most societies, especially traditional ones, prostitution is considered the lowest human condition, one that renders those in it permanently stigmatized and cast out of normal society. Prostitution is considered immoral, a violation of religious precepts, and prostitutes are regarded as “fallen women.” In many countries, including our own, prostitution is a crime. By inducing their victims into prostitution, sex traffickers marginalize them, creating a vast gulf between victims and those attempting to assist them. It is not surprising that sex trafficking victims often find it difficult if not impossible to recount experiences that are mortifying in the extreme.

## Isolation

Extreme isolation, the *sine qua non* of human trafficking, takes place in a variety of settings — private homes, farms and factories, brothels, strip clubs, and sex shops. This isolation does not separate victims from all human contact; indeed, they are usually surrounded by others, they enjoy little if any privacy, and human contact of the most invasive nature imaginable is often pressed upon them. Instead, the isolation that is endemic to human trafficking takes the form of the trafficker rigorously controlling the victim’s ability to communicate, cutting the victim off from systems of support, and curtailing his or her freedom of movement.

Traffickers isolate their victims for many, interconnected reasons: to separate them from sources of help, to prevent them from obtaining information that could facilitate escape, to keep them in a state of disorientation and dependence, to stop them from discovering the truth about the trafficker's campaign of misinformation, and to shield their operations from detection by law enforcement authorities. Often trafficking victims suffer in conditions of isolation for weeks, months, or years.

The isolation imposed by traffickers amplifies their power and control over their victims and impresses the traffickers' world view and belief system on them. Sex traffickers often carry this to an extreme, employing a process called "seasoning," which systematically breaks down and reconstructs the victim's values, sense of self, and understanding of her or his relationship to society. A victim who has been successfully seasoned regards the trafficker as an omniscient, omnipotent god and offers him devotion and blind obedience. Isolation and its consequences mean that the legal professional trying to connect with a victim may first need to deal with someone deeply influenced by, if not still in the service of, the trafficker.

## **Adaptation**

While trafficking is often precipitated by tactics of overt brutality and/or deception, as months turn into years, traumatized, fearful, shamed, and isolated victims may begin to accept their circumstances. They struggle to make the intolerable survivable. They learn that fighting against their exploiters is dangerous and futile. The best that can be achieved is accommodation. If traumatic bonding kicks in, victims come to regard traffickers as family and protectors.

When exploitation in trafficking becomes routine, victims no longer try to escape but instead try to find a way to survive physically and emotionally within its confines. Often it takes an overtly violent experience to rouse the victim from this trauma-induced stupor and precipitate an effort to escape. Kika, one of Sanctuary for Families' sex trafficking clients, is a good example. Psychologically devastated by having to provide sexual services to twenty customers a night, Kika adapted to life in a brothel by creating a family with the other victims. Annie, a trafficking victim from the Dominican Republic, became her confidante and best friend. Only when Annie was murdered in front of her by an irate customer did Kika's illusion of safety shatter, and she began to try to find an exit route.<sup>10</sup> Similarly, Olga, the labor trafficking victim from the Ukraine, became inured to life as a labor slave until her trafficker tried to rape her. Then she tried the only exit available to her — suicide.<sup>11</sup>

When she first met with her lawyer at Sanctuary for Families, Katerina presented as a battered wife who needed an order of protection. Later she told her attorney that she had previously been in prostitution, which she described as entirely voluntary. To the attorney's surprise, a law student intern who had been preparing Katerina's application for a civil order of protection reported that Katerina was a trafficking victim. In her mid-20's she had gone to an employment agency in Moscow in response to an ad for babysitters in New York City. When she arrived at Kennedy Airport, she was met by a man, working with a female confederate, who placed her in debt bondage, confiscated her passport, and, with the debt mounting, offered Katerina a way to settle it: stripping in Newark or performing "massage" in Brooklyn. Katerina's entry into prostitution was far from volitional, and the three years in brothel and escort prostitution that followed left her suicidal, self-hating, and alcoholic. Nonetheless, Katerina continued to insist that she was not a victim and that the other women in the brothel had suffered far more than she.<sup>12</sup>

Katerina's attorney came to realize that her client was engaged in the psychological strategy of "reappraisal," "cognitively transforming the situation so as to alter its emotional impact."<sup>13</sup> As a team of psychologists explains, "This process may include an individual reappraising an aversive situation as not as bad as it could be, minimizing the harm, [providing] justification for the situation, [making] social comparisons to others who are worse off, or [demonstrating] acceptance of the situation."<sup>14</sup>

Lawyers and other service providers working with possible victims of trafficking who deny sustaining harm or minimize negative effects should be alert to the likelihood that reappraisal or other mechanisms of adaptation may be at work. Rather than simply accepting a client's disclaimer of harm at face value, as initially occurred in Katerina's case, the legal professional should sensitively explore all of the facts and circumstances before ruling out the crime of trafficking. Once Katerina was correctly identified as a victim of human trafficking, not only did her self-blame abate but she became eligible for a T-Visa and the many benefits available to T-Visa applicants.

## **Recommendations to Legal Professionals**

### **Work to Develop a Relationship of Trust**

Building the trust that is essential to a healthy attorney-client relationship is not an easy task but there are steps you can take to help create a strong, trusting relationship. Your first task may be dispelling misunderstandings about your role. Even though you may be a private practitioner or a lawyer employed by a public interest organization, your client may assume that you are a government official and regard you with suspicion and fear.

As soon as possible, explain to your client, if it is accurate, that you are not working for the government and that all of his or her communications to you will be kept strictly confidential. Emphasize that your client can speak with you freely and openly, without concern that you will disclose his or her confidences to the government or the traffickers. If your client is an immigrant, broach the subject of immigration status with sensitivity: For example, instead of asking “Are you undocumented?” you could say “We may be able to help you with your immigration legal needs.” Be alert to the power imbalance inherent in the attorney-client relationship and work to diminish it by acknowledging the client’s strengths, listening to his or her concerns, and demonstrating responsiveness to his or her needs.

### **Prioritize Effective Communication**

Effective communication is the foundation of a strong attorney-client relationship. If your client does not speak English and you do not speak her or his language, be sure that you communicate through a competent interpreter who not only speaks your client’s language but, if appropriate, your client’s dialect. Equally important, make sure that the interpreter treats your client with sensitivity, professionalism, and respect. If you can communicate with your client at all without an interpreter, after the interpretation has begun try to ask your client, outside of the interpreter’s earshot, whether he or she feels comfortable with the interpreter’s level of skill and attitude. Both your client and the interpreter must understand his or her duty of confidentiality. If the interpreter is from your client’s ethnic community, inquire as to whether he or she has connections to your client’s kinship group or that of the exploiters and, if so, find another interpreter.

Whether your client speaks your language or not, try to use language that is readily accessible to a layperson and, whenever possible, avoid legal jargon.

Take time to thoroughly explain to your client the available legal remedies, each step of the process, the identities and role of key players, what to expect during interaction with each of them, and what will be expected of your client in and outside of court. The better prepared your client is for each stage of the case, the more comfortable he or she will feel, the better he or she will present, and the more confidence he or she will have in the representation. Because emergencies often arise suddenly in trafficking cases, make sure that your client has a way to reach you if necessary.

### **Be Alert to Symptoms of Psychological Distress**

Legal professionals working with trafficking victims need to be alert to the possibility that their clients are experiencing psychological distress and be able to recognize its symptoms. Many trafficking victims suffer from anxiety, depression, and other symptoms of trauma. A normal response to acutely distressing abnormal experiences, these symptoms can interfere with the victim rebuilding her life and working with her attorney on her case. Victims may avoid talking about painful experiences, may deny that they occurred, or may break down when attempting to describe them. You may discover that your client has suicidal ideations or is actively suicidal. If possible, attempt to make referrals to appropriately trained professionals with experience and skill in working with trauma victims. Be aware that your client may have developed substance abuse problems in an effort to alleviate feelings of depression and anxiety. If you see signs that this is the case, identify appropriate substance abuse treatment providers and encourage your client to seek their assistance.

### **Strive to Mitigate the Effects of Recounting Traumatic Events**

Describing traumatic experiences almost invariably forces trafficking survivors to relive them and often sparks traumatic symptoms. Legal professionals cannot avoid such inquiries because an accurate, detailed account of incidents of trafficking, the tactics of the traffickers, and the effects on the victim is essential to almost every kind of case intended to provide survivors with legal relief. While there is no easy solution to this dilemma, there are ways that the psychological harm from participation in the legal process can be alleviated. It may be less injurious, and even therapeutic, for victims to transcribe accounts of their traumatic experiences. If your client is literate, consider asking her or him to prepare a written narrative of her or his experiences. Ask questions in a supportive, nonjudgmental way and affirm your client's responses in a manner that demonstrates understanding and compassion. Avoid body language,

expressions, or comments that indicate that you find her pitiful or her experiences shocking or disgusting or that you take a voyeuristic interest in her ordeal.

Understand that there may need to be multiple meetings before your client can disclose incidents that are especially painful to remember or humiliating to reveal. Scheduling the interview over several days may help prevent your client from being flooded with feelings of distress. If your client breaks down in the course of a session and timing permits, take a break and consider ending early. Reassure your client that it is not unusual to become upset in an interview when asked to remember traumatic occurrences. Remember that your client has survived an experience in which his or her autonomy was severely curtailed if not destroyed; in the interview, let your client determine the timing and pace to the greatest extent possible. Try to end the interview in a positive way, for example, by acknowledging your client's strength and courage.<sup>15</sup>

### **Avoid Exacerbating Feelings of Embarrassment, Shame, or Self-blame**

Choose a meeting location that is private and avoid interruptions once your interview begins. Do not disclose your client's circumstances to anyone other than colleagues who are part of your legal team. Realize that your client may not have disclosed the trafficking to family members or friends, who could be judgmental or critical, so don't interview her or him in their presence or allude in their presence to her or his victimization. Be careful not to imply in your comments or questions that your client was responsible for the exploitation or stayed in an abusive situation voluntarily. Avoid, for example, asking, "Why couldn't you leave?" When inquiring about sexual abuse, let your client guide the discussion and reassure her or him that such victimization is common in trafficking cases and that he or she is not to blame. Understand that sex trafficking victims often experience prostitution as rape. Avoid asking questions such as "Was sex a part of your job?" that downplay the seriousness of the violation survivors typically feel.

### **Be Sensitive to Issues of Gender**

If you are male and your client is a female victim of sexual exploitation or abuse, ask her if she would be more comfortable talking with a legal professional who is female and, if so, try to enlist the help of a sensitive female colleague. Demonstrate through your words and actions that you are not being judgmental. You may wish to acknowledge the strength and agency that facilitated her survival. Recognize that trafficking victims often have complex relationships with and feelings about their traffickers and that traumatic bonding

may still be at work. If appropriate, explain that it is not unusual for victims to have feelings of love or gratitude toward those who abused them.

### **Develop and Implement a Safety Plan**

Safety planning is as essential in trafficking cases as in cases of domestic violence. It may have begun before you even meet your client; inquire about safety considerations from any referral sources, such as law enforcement providers. Ensure that the meeting place for your interviews with your client is in a safe location, ideally one that is confidential. Help your client understand the importance of keeping the fact and substance of your meetings confidential. Find out where your client's traffickers and any confederates are, and work with your client to develop a plan in which they can be avoided.

Often the next step — and the most difficult one — is identifying a safe place for the survivor to live. Shelter resources for trafficking survivors are scarce. Explore the possibility of your client entering a domestic violence shelter and, if there is resistance on the part of shelter staff, emphasize to them the similarities of trafficking to intimate partner violence. Be sure that the shelter is not near the living quarters or operations of the traffickers and their associates. If local shelter is not available, explore the possibility of your client relocating to another part of the state or to another state with such facilities.

Other safety measures available to domestic violence victims may be equally beneficial to trafficking victims, such as criminal orders of protection, which usually require the initiation of a criminal case against the trafficker, and civil orders of protection, which usually require that the trafficker and victim have an intimate relationship. Because the family members of victims are frequently the subject of traffickers' threats, your safety plan should include steps that protect the safety of the client's family members in the home country. In one Sanctuary for Families' case, a survivor's attorney persuaded the prosecutor to postpone the arrest of her client's traffickers, who operated between Mexico and the United States, until her daughter in Mexico, whom the traffickers had under surveillance, could be spirited to safety in a domestic violence shelter in New York City.

### **Be Attentive to Your Client's Material Needs**

Trafficking survivors have an array of urgent material needs. Be attentive to these needs and work to address them. They include the need for a safe place to live, food, toiletries, clothing, and medical care. Survivors who are undocumented may not be eligible for traditional public benefits such as food stamps and cash

assistance; explore the possibility of obtaining benefits for them under New York State's anti-trafficking law and available to T-Visa applicants. Material assistance also includes providing your client with a glass of water, tissues, and snacks during the interview. Helping the survivor address these needs not only will free him or her from dependence on exploiters but will help facilitate a relationship of trust.

## **Conclusion**

Interviewing and assisting survivors of human trafficking pose many of the same challenges as interviewing and assisting victims of domestic violence. For this reason, it can be immensely helpful to reach out to experienced domestic violence victim advocates for suggestions about safety planning and addressing clients' other needs. While working in respectful partnership to assist a client with the strength and courage to survive the unimaginable will test the knowledge and skill of even the most seasoned legal professional, it is likely to be one of the most rewarding experiences of an attorney's legal career.



## Notes

1. Melissa Farley, *et al.*, *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 (3/4) *Journal of Trauma Practice* 33, 35 (2003); Melissa Farley & Howard Barkan, *Prostitution, Violence, and Post-Traumatic Stress Disorder*, 27 (3) *Women & Health* 37, 40-41 (1998).
2. See, e.g., Mary Ann Dutton, *Empowering and Healing the Battered Woman*, at 16-3 (1992).
3. The trafficking victims whose experiences are drawn upon to provide examples for this chapter were all clients of the Center for Battered Women's Legal Services at Sanctuary for Families in New York City. The author of this chapter is the Center's Director.
4. Kika Cerpa, "The Human Toll of Sex Trafficking and the Way Out: Kika's Story," presentation at Mercer University (Mar. 20, 2009).
5. Information provided by the victim to the author.
6. Information provided by the victim to Lori Cohen, Senior Staff Attorney, Center for Battered Women's Legal Services, Sanctuary for Families.
7. Kevin Bales, *Disposable people: New slavery in the global economy* (1999).
8. Information provided by the victim to Lori Cohen, Senior Staff Attorney, Center for Battered Women's Legal Services, Sanctuary for Families.
9. Judith Lewis Herman, "Introduction: Hidden in Plain Sight: Clinical Observations on Prostitution," in Melissa Farley, ed., *Prostitution, Trafficking, and Traumatic Stress* (2003).
10. Information provided by the victim to the author.
11. Information provided by the victim to Lori Cohen, Senior Staff Attorney, Center for Battered Women's Legal Services, Sanctuary for Families.
12. Information provided by the victim to the author.
13. J. Gross, *Antecedent-and response-focused emotion regulation: Divergent consequences for experience, expression, and physiology*, *Journal of Personality and Social Psychology*, 74, 284 (1998).
14. T.K. Logan et al., *Understanding Human Trafficking in the United States, Trauma, Violence, and Abuse*, Vol. 10, No. 1, 15 (January 2009).
15. World Health Organization, *WHO Ethical and Safety Recommendations for Interviewing Trafficked Women* (2003).

# **EXHIBIT 2 - WHAT IS TRAUMA INFORMED LAWYERING?**

## **EXHIBIT 2 – WHAT IS TRAUMA INFORMED LAWYERING?**

- A. Exhibit 2 Table of Contents
- B. What is Trauma Informed Lawyering?
- C. Researching Trauma, The Body and Transformation: A Situated Account of Creating Safety in Unsafe Places
- D. Katz-Halder Pedagogy of Trauma-Informed Lawyering
- E. Creating Accessible, Culturally Relevant Domestic Violence and Trauma Informed Agencies

## **WHAT IS TRAUMA INFORMED LAWYERING?**

A trauma informed approach to lawyering is one that considers the impact of trauma on a client's life. While lawyers are not mental health professionals, understanding trauma is necessary to respond to the effects of trauma in our work. Our goal is to deliver trauma-informed legal services that limit re-traumatization.

### **WHAT IS TRAUMA?**

The Centers for Disease Control and Prevention has stated that an "event, or series of events, that causes moderate to severe stress reactions, is called a traumatic event. Traumatic events are characterized by a sense of horror, helplessness, serious injury, or the threat of serious injury or death. Traumatic events affect survivors, rescue workers, and friends and relatives of victims who have been directly involved."<sup>1</sup>

Often, our justice system (criminal and family court) as well as our immigration systems retraumatize our clients. Therefore, a trauma-informed legal practice "aims to reduce re-traumatization and recognize the role trauma plays in the lawyer-client relationship. Integrating trauma-informed practices provides lawyers with the opportunity to increase connections to their clients and improve advocacy."<sup>2</sup>

The materials in this manual have been selected to guide trauma-informed legal services, understand the effects of trauma, and provide you with best practices to work with your client.

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<sup>1</sup> *Helping Patients Cope With a Traumatic Event*, CDC [<https://perma.cc/SH6H-MJAM>]. All websites cited in this article were accessed March 28, 2024.

<sup>2</sup> Mbaku, Trauma-Informed Lawyering, Nat'l Ctr on Law and Elder Rights, [<https://perma.cc/2XMH-EDBD>]

# Researching trauma, the body and transformation: A situated account of creating safety in unsafe places

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**ABSTRACT** *This paper is based on a study of how childhood trauma can be experienced in the body and the resources individuals have chosen to deal with that. Ten individuals (including myself) wrote stories showing how they had made sense of those experiences and found ways to heal. In this paper, I tell the story of that research, contextualising myself as researcher and researched, against a changing societal, research and practitioner background to show how social constructionist and poststructuralist ideas have influenced the way I undertook and re-presented my study. This paper also provides me with an opportunity to focus for the first time on aspects of the stories that demonstrate how people created safe enough environments as children and as adults in order to heal.*

## Introduction

This paper is based on a study of how childhood trauma was experienced in the body and the resources individuals used to deal with that. The methods used to explore these ideas involved 10 people, including myself, in writing autoethnographic accounts. In this paper, I have described the methodology and methods of the original study and contextualised myself as researcher and researched against changing cultural backgrounds that influenced them. Additionally, I focus on one aspect of the study, related to what Judith Herman (1992) considered to be the first and most important factor in helping people recover from trauma: the creation of a safe environment in which to heal. In doing so, I show what participants' stories tell us about how they found ways of staying safe enough as children to survive their unsafe worlds.

The principles that underlie my thinking are based on notions of postmodernism and social constructionism: I value 'local' stories that highlight differences, and unique stories which contribute to the creation of new narratives that help deconstruct and complement existing discourses. I am influenced by my early holistic training as an occupational therapist (OT) in the 1960s and as a humanistic counsellor in the late 1980s, as well as by feminist principles relating to equality and

power. I have also been influenced by Foucault's (1980) thinking about the relationship between power and knowledge and how a person can be limited by their ability to participate in discourses that constitute what is true or possible within a society. Whilst I do not describe my position as poststructuralist, I am influenced by poststructuralist or non-structuralist thinkers and practitioners (Derrida, 1981; Freedman & Combs, 1996; White & Epston, 1990). This paper therefore is an exploration of how I put these ideas into practice in research, using a narrative approach to assist the co-construction of personal stories within a social context.

Writing our own stories for research purposes and placing them within a social context has been described as autoethnography (Reed-Danahay, 1997). This is a 'blend of ethnography and autobiographical writing that incorporates elements of one's own life experience when writing about others' (Scott-Hoy, 2002, p. 276). The study upon which this paper is based could therefore be described as 'collective autoethnography', a methodology that can transform the reader as well as the writer and lead to social change:

'... the collective story overcomes some of the isolation and alienation of contemporary life. It provides a sociological community, the linking of separate individuals into a shared consciousness. Once linked, the possibility for social action on behalf of the collective is present, and, therewith, the possibility of social transformation' (Richardson, 2000, p. 26).

## **Background**

In 1996, a year after being awarded a PhD, I decided to try and find out how people understood the links between trauma and the body. My interest in this topic stemmed primarily from a growing understanding about how my own childhood trauma had influenced my complex relationship with my body, and the illnesses and medical and surgical interventions I had suffered over many years earlier in life, and a recognition of similar stories in the lives of many of my past and current clients.

Believing that this research would be of value to the National Health Service (NHS) in the UK, I decided to make my first funding bids through their research directorate, a decision that shaped the methodological approach I proposed. I believed that to be taken seriously as a researcher in that context I needed to gather data by sending questionnaires to large numbers of 'patients' and to seek permission to examine their medical records. After two unsuccessful bids for funding from the NHS I decided to shelve the idea, noting my relief each time a bid was rejected, and realising that these methods did not fit with my underlying philosophies.

In the meantime, attitudes, practices, and trends in research were changing in society in general and within the counselling community in particular. I had been introduced to Foucault and Sneaky Poo through reading White and Epston's work (1990). Foucault's ideas helped me to remember why I had left previous employment within the NHS and Social Services. Sneaky Poo reminded me of some of my

preferred ways of working with stories in a Child Guidance Clinic in 1961—my first job after qualifying as an OT.

As a therapist, I was becoming more interested in understanding what influenced a person's way of dealing with the impact of negative life experiences, their resilience and resourcefulness; and how I could help them build on that. As a researcher, I was moving more and more towards working collaboratively with research participants, gathering 'local' stories that would offer me opportunities to explore their 'lived experiences' and to place that knowledge alongside my own life experiences, in order to inform myself and others about resources used to heal.

My interest in these methods led me in 2000 to write a book with two ex-clients about their experiences of childhood trauma, their recovery and my relationship with them. That work gave me an opportunity to put my developing research philosophy into practice and to experiment with narrative ways of knowing and learning and with different ways of representing people's complex multi-layered stories (Etherington, 2000). Inspired by this, I submitted once again a proposal on the links between trauma and the body to the Economic and Social Research Council, in which I proposed to gather stories and analyse them using narrative analysis. Once again my proposal was turned down.

Disheartened, I tried to forget about the idea but it wouldn't go away. I had just edited two books (Etherington, 2001, 2002), in which clients and counsellors involved in rehabilitation and health settings had written their *own* stories. Encouraged by that experience, I began to seek out people who were prepared to write personal stories related to 'trauma, the body and transformation' and for whom I might become a means by which the stories reached a wider audience. Increasingly, I was valuing the use of reflexivity in research and intended to include my own stories alongside others'.

I advertised in a counselling journal for people who: (a) could write well, (b) had experienced any self-defined trauma in childhood that had been expressed through the body, and (c) had found ways of transforming their symptoms. Implicit in this advertisement was my assumption that participants working in the field of counselling may have begun to deconstruct their childhood trauma and be at a stage where they could stand back enough to have a reflective grasp on their lives, whilst also being able to relocate themselves inside their stories in order to write them, without becoming overwhelmed. These were ethical *and* literary issues (see Etherington, 2004a). I also made contact with 'gatekeepers' in the world of therapeutic and creative writing, in the light of a growing body of knowledge about the positive outcomes of writing trauma stories (Deters & Range, 2003; Pennebaker, 1988, 1993).

I had come to recognise that trauma was a very subjective experience and could be related to a very wide range of childhood experiences, for instance, as a result of injury or accidents, war, loss of significant people, abuse, neglect or abandonment. I was also aware of literature related to the different ways trauma might be held in the body, for instance, through physical illness, disability, addiction, and pain, and that people found their own ways to transform trauma. I believed that these ways *might* include counselling and very probably alternative healing resources, internal and

external, that were *not* counselling. I hoped that by presenting information within a storied format readers could become aware of the impact of gender, culture, history and the socio-political context on an individual's experiences of trauma, their process of recovery and the meanings people ascribe to their experiences.

### **Aims of the study**

My aim was to construct a narrative from personal stories to put alongside the psychiatric story of 'somatisation' to offer an alternative to the pathologising and dominant discourse. I also wanted to inform counsellors and medical practitioners about the wide range of alternative resources they could refer people to and to challenge the idea that any one way was best. Another aim was to create a resource for practitioners *and* those affected by trauma, and to raise awareness about a little understood phenomenon.

I wondered also how my own stories had changed over my life so far and how I would re-tell them at this point. By writing my own stories alongside others I hoped to continue my process of self-understanding *and* professional understanding, and to become part of a community of voices that is rarely heard. I also hoped that other participants would gain something for themselves, recognising that both writing and reading stories could create personal and social change. A follow-up study about the impact on authors of writing their stories and seeing them published shows that these aims were indeed met (Etherington, 2004a).

### **Theoretical stories**

Making a coherent story out of experiences of childhood trauma is a very difficult task because trauma disrupts our sense of having a continuous existence. Coherent stories told in the present usually include a remembered past and lead to an imagined future (Frank, 1995). Childhood trauma sometimes creates chaos in people's lives and can leave us voiceless and isolated. When a child becomes overwhelmed by trauma, they might disconnect from aspects of the experience in order to survive: the child might have little or no awareness of the body as a physical state and emotions are not expressed directly. However, the body 'continues to respond to the emotion, even though the mind refuses to acknowledge it' (Dubovsky, 1997, p. 47). When a person cannot directly express or speak of their trauma, either because they were too young to have a language or frame of reference for their experience, or because adults' threats or refusal to listen has silenced them, no verbal link can exist between disconnected parts. Without any way of verbally representing the trauma, they might find other ways of communicating their separated experiences of themselves. However, there may come a time when we might want to find a more direct language for telling our stories, one that is not so costly to our health, happiness and well-being.

Bruner (1986) says that we can only know that for which we have language available for knowing. When we have no language, no frame of reference, we cannot



understand our experiences. When we do not understand what we are experiencing we are helpless to communicate it to others so we may creatively provide ourselves with the 'credentials' to acknowledge distress through bodily pain or illness, or seek relief from pain killers (which may be in the form of alcohol, prescribed or illegal drugs), or medical or surgical interventions. The means by which we survive childhood may be carried into adulthood and the physical dis-ease might take over and develop a troublesome life of its own that consumes our attention and distracts us from parts of our stories that feel too unsafe (Sansone *et al.*, 2001).

Judith Herman (1992) suggests that healing trauma involves: (a) the creation a safe environment in the present; (b) gaining some control over life; (c) telling our stories in the harbour of a safe relationship; and (d) mourning the losses created by the trauma. The timing and pacing of telling and re-telling our stories can be important. If we go too quickly, we might release a flood of adrenalin and become re-traumatised (Goleman, 1996). However, I believe that most of us have the wisdom to know the pace that suits us and, providing we are not pushed back into facing memories before we are ready, we can recover in our own time.

## **Participants**

The participants for this study were from a range of different cultures and backgrounds. There were two men (very few men responded to my invitation) and seven women from Asian, Chinese-Hawaiian-American, German, British, second generation Irish and Italian cultural backgrounds. All were residents of the UK at the time of writing. Our ages ranged between 27 and 68. Two of the authors were people whose dissertations I had supervised at Masters level and who I had invited to participate, knowing that they met all of the criteria for the study. I had briefly met another author at a conference and had no prior relationship with the other six. There were others who began but did not complete their stories because further traumatic life experiences took over (one person was evicted from her home and another woman's husband left her).

The traumatic childhood experiences authors wrote about included:

- experiences of neglect; physical, sexual and emotional abuse;
- witnessing the abuse of siblings; death of mother in a car accident in which the 7-year-old child was seriously injured and hospitalised in an adult ward, and later adopted into the care of emotionally abusive relatives;
- the experience of transportation from Nazi Germany at the age of 4, resulting in the loss of parents, culture, home and language, and ensuing placements in a series of foster homes and later, enforced repatriation.

Authors had suffered a wide range of bodily manifestations, several of which had been diagnosed and treated within the medical model. These were described as:

- autoimmune diseases, such as multiple sclerosis, lupus, mono-neuritis multiplex;
- psychosomatic disorders, such as allergies, asthma, migraine, stomach problems, hay-fever, skin disorders, joint pain, back problems;
- somatic complaints, such as unexplained pain, illnesses, disability, which led to repeated medical and surgical interventions;
- dissociative experiences, such as ‘out of body’ experiences, sleep disorders, sensory disturbances, numbness, leading to addiction, eating disorders, self-harm and suicide attempts.

Resources authors named as helpful in their stories were: counselling/therapy; writing stories and poetry; psychic healing; homeopathy; nutrition; massage and other forms of body work; education; flower remedies; osteopathy; spirituality; reflexology; visualisation; inner child work; loving relationships; Taoism and tai chi; self-care; kinesiology and family constellation work (Etherington, 2003).

### **Ethical issues**

Potential authors needed to know that writing trauma stories could cause distress initially, as well as improving their sense of well-being in the longer term. Pennebaker *et al.* (1998, p. 245) showed that, although subjects eventually experienced their writing as beneficial, they were initially upset and ‘immediately after writing, trauma subjects reported more physical symptoms and negative moods’. However, they also observed that negative effects might have been caused by inviting people to write about intensely personal traumatic experiences without support and without being given objective coping information. My plan was to offer support and discussion with authors as we co-constructed their stories and crafted them for publication.

The second major ethical issue concerned confidentiality: in writing our own stories, we are likely to include information about others who are involved in our lives; our families, friends, or colleagues. Carolyn Ellis (2001) addresses these concerns in her reflections on writing about her relationship with her ageing mother. Ellis acknowledges the muddle created by trying to decide ‘what it means to ask and give permission to write about others’. She goes on: ‘This muddle, however, is closer to the truth of my experience than a contrived clarity based on prescribed rules would be. And for me, that’s good enough for now’ (Ellis, 2001, p. 615). In my own view, a major ethical requirement is that we are mindful in our work and make our attempts and struggles transparent.

At an early stage I asked contributors to think about what it might mean for themselves and others to have their personal stories in the public gaze. I suggested that one way to provide anonymity for themselves or family members might be to use a pseudonym, whilst also pointing out that even then it might be possible to recognise a person’s unique biography.

There might be unexpected costs and consequences for authors who use a pseudonym. One of my participants who did so wrote to me on receiving her copy of the book: ‘I’m disappointed because I didn’t use my real name. I felt it especially

when I saw everyone else had. It was like it didn't belong to me any more ...' I responded by suggesting that, if the book should go to a second printing, she might want to use her real name. This led to a different response:

'... your offer to include my name for a second printing surprised me and helped me to be in touch with other feelings: fear about standing out, of being front of stage. Not sure I could take it on. And that is a pattern I have followed all my life. It feels like a fear of being found to be not good enough.'

Several months later, this participant attended the book launch in person, introduced herself by her real name and spoke about her process, including what it had meant to use a pseudonym. In the re-printed version of the book her real name is written beneath the title of her story.

Academics who choose to use a pseudonym can be disadvantaged by not being credited for work they might rely on for promotion or recognition in their field. It may only be from the 'safety' of an established career that this kind of writing can be undertaken without fearing the costs. Even then, the need to protect reputation can impede the ability to be open about our own lives (Etherington, 2004b; Flemons & Green, 2002).

Fully informed consent is, of course, not possible when we embark on research that involves unfolding processes. We must therefore rely on 'process consent', ensuring at each stage that participants are still willing to be involved in the project and reminding them of their right to withdraw at any time (Etherington, 2000; Grafanaki, 1996).

## **Narrative analysis**

During recent years the world has taken a 'narrative turn' and researchers have come to value stories as legitimate ways of learning about the world in which we live. These ideas are based on a social constructionist worldview that we live storied lives in a storied world, and on viewing knowledge as situated within contexts, embedded within historical, cultural stories, beliefs and practices. These approaches see reality as experienced through the telling and re-telling of the story. Poststructuralists seem to be less certain about all this, viewing these ideas as yet another structure that might limit our thinking.

I saw our stories as *constituting* the social reality of the narrators; as knowledge in themselves (Frank, 1995); and as ways of showing how individuals create meaning within a culture. My belief is that the stories we tell or write today will be different from those we tell tomorrow because life is being lived continuously and we are changed by our stories. These views challenge the accepted nature of modernist certainties and question how we know what we know and who tells us what we know (McLeod, 1997; Polkinghorne, 1988, 1995).

Increasingly, we are encouraged to place expert stories *alongside* other 'dominant stories', whilst privileging neither, viewing them not as 'truths' but as part of a larger narrative or discourse. Too often in the past the dominant 'expert' discourses have silenced the voices of people whose ways of knowing include personal experience, intuition and tacit knowledge. By viewing 'expert' *and* local knowledge as equally valid (Geertz, 1983), we can adopt a position of curiosity, recognising that meaning and knowledge is being created anew each time we tell, read or listen to stories.

As there is a complex interaction between the world in which a person lives and their understanding of that world, stories are particularly suitable for portraying how we experience our selves in relation to a culture. Embedded in stories we hear a person's feelings, thoughts and attitudes. The richness of the narrative helps us to understand how they understand themselves, their strategies for living and how they make theoretical sense of their lives.

When I tell or write my stories, I am helping myself and others understand who I am. I am also creating meaning out of my existence: making sense of my life. When I hear or read other people's stories, I begin to understand *them* more fully by reflecting, not only on the content of their stories, but also on *how* they tell them, their language, intonations, images and metaphors.

When we give testimony to experience through writing and publishing our trauma stories, we bear witness to the past and challenge the idea that terrible experiences are too awful to be told (Frank, 1995). We also create a possibility for change and a better future.

### *Thinking with stories*

As I sat with my own stories and those of co-authors, I became intimately aware of the suffering trauma brings in its wake. Each author had revisited their earlier traumas as they re-connected with their lives through their writing, and I knew for myself that I had been taken into new places that challenged me yet again and moved me on. I was both researcher and researched and, as I met my fellow authors through their stories (and few of them face-to-face), I had a sense of belonging to a community of 'voices' that have for too long remained unheard.

Their stories touched my own, overlapping and weaving in and out, blending or contrasting. All of them created a response in me. As I wrote my analysis for the study, I was aware of Arthur Frank's warning (2001) that, even though others might expect me, as the researcher, to categorise, generalise and try to make sense of these stories in terms of themes and theories, if I did so, I might reduce their power by diluting them or subsuming them into a 'grand narrative'. By taking bits and pieces from the stories and using them to validate a previously held theory, I would be in danger of fragmenting the stories in ways that might be disrespectful to the authors' experience.

So I positioned myself as a 'weaver', a tapestry maker, whose tale was created from the yarns and threads that were used to create the stories that had gone before. This tale, or analysis, was a re-telling of my own stories and theirs, new and different

stories that were evoked through the process of reading and reflecting on what had gone before. I realised that the threads I chose to weave would probably be different from those that others might have used, because we all bring to the reading our histories, perceptions and prior knowledge. During the editing, I had assisted in the co-creation of new stories by asking curious questions of the authors as I read their drafts; and in thickening and deepening existing ones (Geertz, 1983). I sometimes enquired about emerging, half heard stories that the writer seemed not to have noticed themselves; alternative stories that are absent but implicit (White, 2000) sometimes more hopeful ones, that may have become submerged by more familiar problem stories; and sometimes sadder stories I sensed behind the more comfortable, familiar anecdotes of childhood. I sent my own writing to fellow authors and asked for their comments; so my stories too were co-constructed.

As a counsellor, I was interested in thinking *with* these stories, rather than *about* them. Arthur Frank (1995, p. 23) says: 'To think *about* a story is to reduce it to content and then analyze that content ... To think *with* a story is to experience it affecting one's own life and to find in that effect a certain truth of one's life'. The stories or themes that emerged and touched my own during this stage were about: how individuals created a safe place in which to heal; ideas about faith and spirituality; education as a resource; using play and imagination; being in relationship with a 'safe' person or persons; attachment, separation and isolation; self-destructiveness; the language of the body; second generation trauma; and being wounded storytellers.

### Creating a safe place

For the purposes of this paper, I show just one of the above themes: creating a safe place in which to heal, something Judith Herman (1992) suggests is the first and most necessary requirement for dealing with trauma. In this section I therefore explore the means by which authors survived safely 'enough' as children and the means by which they found safety in adulthood in order to tell their stories.

#### *Childhood safety*

Although, as therapists, we recognise the value of creating a safe relationship in which clients can begin to deal with their lives, we may be less aware of the need to encourage or value stories that show us (and them) the means by which they may have found ways to stay safe during childhood, *despite* being in an unsafe environment. On reflecting on our stories, I began to see that many of us had probably survived *because* of our ability to create enough safety in our unsafe worlds, sometimes by adapting to the circumstances in which we found ourselves and sometimes by 'escaping', for instance, through play, imagination, prayer or disconnecting. The dominant stories of childhood trauma often dwell only on the negative aspects and perhaps we are in danger of ignoring the more hopeful stories of personal courage, creativity and determination to survive.

Ruth (Barnett, 2003, p. 57), who had been transported from Nazi Germany at the age of 4, had found a safe place as a child among animals:

‘It felt safe to bury my face in a horse’s mane and cry because a horse will never criticise, tease or tick you off. A horse will bend his head round and nudge you comfortingly. I became very skilled with the animals and no one could nurse a sick animal back to health like I could.’

Others found safety in escaping into daydreaming, make believe or disconnecting from the body. Michael (Len, 2003, p. 109) wrote: ‘I daydreamed that I had been switched at the hospital; that I was adopted; or that I was not the child of that man and that was why he hated me’. Gillie (Bolton, 2003, p. 127) disconnected from her body in order to survive sexual abuse:

‘I had spells when I lost control of my body ... I had to watch helplessly from somewhere up at the ceiling while my body collapsed and had to be carried to lie down ... I had periods when I thought my feet weren’t reaching the ground, that I was floating.’

Matt (Valentine, 2003, p. 138), writing as if back in childhood, said: ‘although I realise the danger, I am calm, almost numb ... I just can’t seem to move from the spot ... my body does not seem to be my own’.

For some storytellers, religion or their relationship with God provided a sense of safety during childhood, whilst for others religion meant quite the opposite. Religious upbringing can be viewed in negative ways, but this was not the case for me, even though I have now moved away from the religion of my childhood. As a child, I had been sent to a private Catholic convent preparatory school, housed in an old sandstone manor house, set in beautiful grounds with a lake and woodland (Etherington, 2003, p. 181):

‘Catholicism allowed me to experience a deep sense of being cared for by God and his helper, my guardian angel, and I was taught to create an internal space, through prayer, ritual and imagination, where I could contact them and myself. I had been taught that if, for just one moment, God forgot about the smallest hair on my head then I would cease to exist. So as I continued to exist, I believed I must continue to be of importance to God ... My school environment was a constant link with the ‘presence of God’ and additionally strengthened my sense of self-worth, putting me in touch with a strong aesthetic appreciation of beauty and place: a containing and holding environment.’

This internal sense of safety helped me survive within my unsafe world. However, when I was writing my own contribution for the book, I noticed myself questioning the wisdom of including these aspects of my stories, expecting judgement from those who reject ideas that religion could possibly have been a positive factor in a child’s

upbringing. Counsellors who hold one-sided views on these issues might subtly convey them to clients who may then, like me, consider withholding important aspects of their lives. In offering me feedback on my story, a fellow author wrote: 'Many people become uncomfortable around anything spiritual. But I imagine you have thought of this ...'

Griffiths and Griffiths (1994, p. 59) comment that

'... authentic religious experiences involve intrapersonal dialogues with a personal God that are privately held. These are perhaps the most privately held of all conversations that a patient may bring into a therapy room. Hence, they are often kept outside the awareness of a clinician unless deliberate inquiry is made. Yet, they can hold great power for freeing or constraining the body.'

Another author, Ginny, was brought up in a religion that reinforced her lack of safety:

'I used to pray to God to make things all right. I tried so hard to be good ... I was taught at Sunday School that God was a punishing God who could see everything, even my bad thoughts about wanting Dad dead. "Honour thy father and thy mother" was the commandment, but it didn't stop me having such thoughts so I reasoned I must be bad.'

She found her safety and sense of well-being in school, as did several other participants: 'I loved being at school and in particular I liked sport because I could stay on after school and avoid going home as long as possible' (Mayhew, 2003, p. 80).

### *Creating safety as an adult*

Most authors wrote about the importance of separating from the unsafe environment of their homes and families of origin once they were old enough to leave. Michael (Len, 2003, p. 112) 'escaped' from his family into the American Army at the age of 17: 'my captors were about to release me and my life would begin'. In the Army, he found ways to educate himself and experience success in physical skills and intellectual pursuits: 'The army was my salvation'.

Others, including myself, left home and married into long term relationships that became our 'secure base' from which we were able to grow and struggle with intimacy, and in which we could explore our histories, our bodies and our selves. Others gave up on intimate relationships, preferring to live alone or start again rather than repeat past patterns of relating that compromised their sense of self.

Within her marriage, Gillie began to create a safe place for herself through writing—a way that became her main resource for healing, having decided that counselling was 'too intrusive'. 'The page is a silent, accepting recipient; it holds

secrets trustworthily until I, as writer, could bear to become reader and develop the understanding of those secrets further' *and so*, she 'wrote herself' onto the page, becoming her own best therapist, her own affirming person (Bolton, 2003, p. 122).

Indu had sought relief for her symptoms from the medical world, which had diagnosed her with a potentially life-threatening illness, lupus. At this time, she was studying to become a counsellor: 'For over ten years I had put up with a career that I had not enjoyed and now I'd finally found something which I felt was calling me ...' (Khurani, 2003, p. 69). This new career pathway led her to meet practitioners within the world of complementary medicine, which she went on to explore having felt out of control, and therefore unsafe, by experiencing the side affects of prescribed steroids. She describes how, by finding her own way, she was able to feel 'in control of my health and believe that I know best about my body and my case of Lupus'.

Most authors, at some stage in their healing journey, had found safety within an individual therapeutic relationship. Heather's therapist had helped her to re-connect with memories of her childhood prior to her mother's death and her subsequent adoption that meant she lost her beloved grandfather too. Her adopted parents had led her to believe that she was 'a nuisance, that I wasn't clever, that I wasn't good enough, that other people were more important than me' (Weston 2003, p. 101), messages upon which she had built her sense of identity. In therapy, she was able to 're-member' her story with memories of her relationship with her grandfather (Myerhoff, 1983) and reconstruct a more positive sense of identity. She wrote of herself:

'She loved to ... help her granddad and pick his tomatoes. She loved the smell of his greenhouse and going for walks with him. Her granddad was the most important person in her life and she adored him. He always had a Fox's glacier mint in his pocket and always had time for her. He seemed to enjoy her company as much as she enjoyed his. Together they fed the robins with worms they dug up and he spent hours running after her, holding onto the seat of her two-wheeler bike, until she learned to ride it on her own ...'

Carole, who had been diagnosed with multiple sclerosis, was painfully abandoned by one therapist who was probably overwhelmed by listening to stories of the torture and abuse Carole had experienced as a child. In spite of that experience Carole went on to find a safer relationship with

'an American psychotherapist called Sara who was courageous enough to offer to help me. She saw me for 3 hours twice a week for two and a half years. She was generous and funny but more than anything she showed me that the most healing thing one human being can give another is a strong, staunch and vibrant love. She never pretended to know more than me, or hide behind ambivalent answers. She told me that one day I would feel a sense of peace and that my suffering would come to an end. Her faith in my recovery helped me to believe it too ... When I had been seeing Sara for



year I could run again and play sport. One by one my symptoms went away and they have not returned' (Mandeville, 2003, p. 51).

## **Finally**

By applying social constructionist and poststructuralist ideas to research, we can gain access to stories outside the dominant discourses and open up spaces into which more helpful and hopeful stories might emerge. This paper shows how traumatised children used their own resources to support their healing and found ways to create safety, even when living in unsafe circumstances. Many of the resources used could be regarded in terms of pathology, such as avoidance, dissociation, splitting, fantasy and displacement, but, by valuing them as useful resources for survival, they can be celebrated and called upon to help re-story lives.

Dominant pathologising discourses can fail to recognise a person's personal knowledge and strengths, leaving them dependant on 'experts' who 'know best'. However, this paper shows us how helping relationships can come in many different forms: relationships with much loved animals; with a blank page; with a person's god(s); with supportive people who may remain alive only in our memories; or with loving friends and partners; and/or with practitioners of various kinds. The small details of people's stories can be overlooked, diminished or disregarded, or seen as insignificant until we look again and see their importance for restoring 'the valued sense of who they are, the preferred sense of identity or personhood' that Michael White refers to as 'a sense of myself', which can then become 'the foundation for a rich story development of the person's life' (White, 2004, p. 47).

Writing this paper has helped me look again at the stories of trauma, the body and transformation and this time to focus with a different lens, one that I have also been using in my practice with trauma survivors and supervisees who work with them. In doing so, I have become increasingly aware of the negative impact on a person's sense of self and identity of pathologising discourses that reinforce feelings of helplessness and passivity, all too similar to feelings experienced as the aftermath of trauma itself. By focusing on the means by which a person created safety in their unsafe lives, and by valuing and building on those resources, a sense of agency and power can emerge.

During my own journey, I have used various resources that met my needs at different stages: writing this paper has become yet another of those resources. The work I have undertaken for the study upon which this paper is based has helped me balance the negative stories of 'damage' and 'pathology' with newer stories of resourcefulness and creativity. These stories help me stand in a position as witness to my childhood experiences, and those of the people who consult me, not only as harmful and distressing, but also as reminders of the resilience and resourcefulness we all held as small human beings, even though we did not know it at the time.

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## THE PEDAGOGY OF TRAUMA-INFORMED LAWYERING

SARAH KATZ & DEEYA HALDAR\*

*“Trauma-informed practice” is an increasingly prevalent approach in the delivery of therapeutic services, social and human services, and now legal practice. Put simply, the hallmarks of trauma-informed practice are when the practitioner puts the realities of the client’s trauma experiences at the forefront in engaging with the client, and adjusts the practice approach informed by the individual client’s trauma experience. Trauma-informed practice also encompasses the practitioner employing modes of self-care to counterbalance the effect the client’s trauma experience may have on the practitioner.*

*This article posits that teaching trauma-informed practice in law school clinics furthers the goals of clinical teaching, and is a critical aspect of preparing law students for legal careers. Trauma-informed practice is relevant to many legal practice areas. Clients frequently seek legal assistance at a time when they are highly vulnerable and emotional. As clinical professors who each supervise a family law clinic, we of course teach our students how to connect with their clients, while drawing the appropriate boundaries of the attorney-client relationship. Equally challenging and important is helping our students cultivate insight into identifying and addressing trauma and its effects. Many of our clinics’ clients are survivors of intimate partner violence or have experienced other significant traumatic events that are relevant to their family court matters. Law students should learn to recognize the effects these traumatic experiences may have on their clients’ actions and behaviors. Further, law students should learn to recognize the effect that their clients’ stories and hardships are having on their own advocacy and lives as a whole. It is particularly crucial that we educate our law students about the effects of vicarious trauma and help them develop tools to manage its effects as they move through their clinical work and ultimately into legal practice.*

*This article argues that four key characteristics of trauma-informed lawyering are: identifying trauma, adjusting the attorney-cli-*

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*ent relationship, adapting litigation strategy, and preventing vicarious trauma. Specifically, the article discusses how to teach trauma-informed lawyering through direct examples of pedagogical approaches.*

#### INTRODUCTION

*When Victoria<sup>1</sup> came into the clinic for an intake appointment with a law student, the student knew only that this was a child and spousal support case. After explaining the goals and purpose of an intake interview, the law student asked a simple question: what legal problem brings you here today? Victoria broke down crying and began explaining that about two years before, she learned that her husband of twenty-one years had been sexually abusing their now thirteen year-old daughter and fifteen year-old son since they were small children. Victoria stated that her husband had sometimes physically abused her, but she knew nothing of the sexual abuse. After the disclosure, she had filed for and been granted a protection order in Tennessee on behalf of herself and her children. She then moved with her children from the marital home in Tennessee to Philadelphia to be with family. The Tennessee protection order expired, and because of threatening phone messages received from her husband, she had sought a protection order again in Philadelphia. A local domestic violence legal services agency had referred her to the clinic for help with a child and spousal support case.*

*During the meeting with the law student, Victoria became increasingly upset, and continued to share details of the abuse she and her children had suffered. Victoria seemed intent on convincing the law student that she really had not known about the abuse of her children while it was happening. The law student offered tissues and told Victoria repeatedly that he believed her, and that it must have been so awful to make this realization. When the law student tried to move the focus of the conversation to the pending support case, it turned out that Victoria had not brought any of the paperwork she had been asked to bring by the clinic's office manager. The law student got as much information as Victoria could provide, and then explained that for the clinic to see if it could help her with the case, he would need to see the paperwork. The law student and Victoria scheduled another appointment, and the law student provided Victoria a written list of the needed documents. The law student discussed with his supervisor, and later shared in class case rounds, how challenging the interview had been. Victoria did bring the needed documents to the second appointment, and the clinic ultimately accepted the case.*

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<sup>1</sup> This case description is based on the experience of a client represented by Professor Katz's clinic. Names and identifying information have been changed.

*Prior to going to court, Victoria called the law student asking if she could just not attend the court date, because she was terrified of seeing her husband. The law student calmly explained that Victoria needed to be present if she wanted to pursue the support claim. They scheduled a time to meet the day before court, and the law student spent a lot of time reviewing with Victoria exactly what occurs in a support hearing, including where she and others would sit, what types of questions would be asked, and what the law student would be doing. The law student also arranged to meet Victoria prior to the hearing time at a location near the courthouse, so they could walk into court together. Because the litigation became very contentious and there were multiple court hearings, the law student repeated this approach each time there was a court hearing. He also encouraged Victoria to speak with her therapist about her anxiety over dealing with her husband. Ultimately the support case was resolved favorably for Victoria.*

While many reading would view the description of the law student's handling of the case above as simply "good lawyering," it is also an example of "trauma-informed practice." "Trauma-informed practice" is an increasingly prevalent approach in the delivery of therapeutic services, social and human services, and now legal practice. Put simply, the hallmarks of trauma-informed practice are when the practitioner, here a law student, puts the realities of the clients' trauma experiences at the forefront in engaging with clients and adjusts the practice approach informed by the individual client's trauma experience. Trauma-informed practice also encompasses the practitioner employing modes of self-care to counterbalance the effect the client's trauma experience may have on the practitioner.

Although there is a body of clinical legal education literature devoted to the value of teaching and developing law students' empathy toward their clients, less attention has been devoted to the importance of teaching trauma-informed practice, the pedagogy of teaching law students to recognize and understand trauma, and the effect of vicarious trauma on law students (and attorneys) who work with clients who have experienced serious trauma. Clients frequently seek legal assistance at a time when they are highly vulnerable and emotional. In practice areas such as family law, immigration, child welfare, criminal law and others, by necessity, clients must share some of the most intimate and painful details of their lives. In our family law clinics, our students are taught how to connect with their clients, while drawing the appropriate boundaries of the attorney-client relationship. Equally challenging and important is helping our students cultivate insight into identifying and addressing trauma and its effects. Many of

our clinics' clients are domestic violence survivors or have experienced other significant traumatic events that are relevant to their family court matters. Law students must learn to recognize the effects these traumatic experiences may have on their clients' actions and behaviors. Further, law students must learn to recognize the effect that their clients' stories and hardships are having on their own advocacy and lives as a whole. It is particularly crucial that we educate our law students about the effects of vicarious trauma and help them develop tools to manage its effects as they move through their clinical work, and ultimately into legal practice.

Although the authors draw from their own experience teaching family law clinics, other types of law school clinics could likely benefit from the pedagogy of trauma-informed lawyering, such as immigration law, criminal law, juvenile law, and veterans' rights law.<sup>2</sup> A significant body of literature exists regarding working with traumatized children involved in the legal system, including in the law school clinical context.<sup>3</sup> It is the authors' intention that this article will provide tools for teaching trauma-informed practice in all law school clinic settings, while the examples offered are specific to family law experience.

This article proceeds in three sections. The first section will further explore trauma-informed practice, and what is meant by the terms "trauma," and "vicarious trauma." The second section will argue why teaching trauma-informed lawyering in a clinical legal educa-

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<sup>2</sup> See, e.g., Lynette M. Parker, *Increasing Law Students' Effectiveness When Representing Traumatized Clients: A Case Study of the Katherine & George Alexander Community Law Center*, 21 GEO. IMMIGR. L.J. 163 (2007) (discussing students in immigration clinic begin confronted with traumatized client seeking asylum); Ingrid Loreen, *Therapeutic Jurisprudence & The Law School Asylum Clinic*, 17 ST. THOMAS L. REV. 835, 845 (2005) (arguing that students need training in therapeutic jurisprudence topics, including trauma training in order to adequately serve traumatized clients seeking asylum); Sarah Mourer, *Study, Support, and Save: Teaching Sensitivity in the Law School Death Penalty Clinic*, 7 U. MIAMI L. REV. 357 (2013) (discussing students exposed to clients with trauma histories in the Miami Law Death Penalty Clinic); Capt. Evan R. Seamone, *The Veterans' Lawyer as Counselor: Using Therapeutic Jurisprudence to Enhance Client Counseling for Combat Veterans with Posttraumatic Stress Disorder*, 202 MIL. L. REV. 185 (2009).

<sup>3</sup> See Carolyn Salisbury, *From Violence and Victimization to Voice and Validation: Incorporating Therapeutic Jurisprudence in a Children's Law Clinic*, 17 ST. THOMAS L. REV. 623 (2005). See also Renee DeBoard-Lucas, Kate Wasserman, Betsy McAlister Groves & Megan Bair-Merritt, *16 Trauma-Informed, Evidence-Based Recommendations for Advocates Working with Children Exposed to Intimate Partner Violence*, 32(9) CHILD L. PRAC. 136 (2013); JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 9 (2007); NATIONAL CHILD TRAUMATIC STRESS NETWORK, BIRTH PARENTS WITH TRAUMA HISTORIES AND THE CHILD WELFARE SYSTEM: A GUIDE FOR JUDGES AND ATTORNEYS, available at <http://www.nctsn.org/products/birth-parents-trauma-histories-child-welfare-system-guide-birth-parents-2012> (last viewed Dec. 20, 2015).



tion setting makes sense. The third section will identify four hallmarks of trauma-informed legal practice: (1) identifying trauma; (2) adjusting the lawyer-client relationship; (3) adapting litigation strategy; and (4) preventing vicarious trauma. The article then discusses how to incorporate these hallmarks of trauma-informed lawyering as teaching goals in law school clinics through direct examples of pedagogical approaches.

## I. DEFINING TRAUMA-INFORMED PRACTICE

Trauma-informed practice has gained traction in the therapeutic world for at least the last decade. As one practitioner has explained, “[t]rauma-informed practice incorporates assessment of trauma and trauma symptoms into all routine practice; it also ensures that clients have access to trauma-focused interventions, that is, interventions that treat the consequences of traumatic stress. A trauma-informed perspective asks clients not ‘What is wrong with you?’ but instead, ‘What happened to you?’”<sup>4</sup> As psychiatrist Sandra Bloom has written, “It connects a person’s behavior to their trauma response rather than isolating their actions to the current circumstances and assuming a character flaw.”<sup>5</sup> A trauma-informed system also focuses on how services are delivered, and how service-systems are organized.<sup>6</sup> These approaches in the therapeutic context have begun to profoundly inform the delivery of other types of human and social services, such as child welfare,<sup>7</sup> law enforcement, and the courts.<sup>8</sup> But in order to understand what is meant by trauma-informed practice, an understanding of trauma, and vicarious trauma is necessary; this section will define and explain these terms, and then return to a discussion of how trauma-

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<sup>4</sup> Nancy Smyth, *Trauma-Informed Social Work Practice: What Is It and Why Should We Care?*, SOCIAL WORK/SOCIAL CARE & MEDIA (Mar. 20, 2012), available at <http://swscmedia.wordpress.com/2012/03/20/trauma-informed-social-work-practice-what-is-it-and-why-should-we-care-opinion-piece-by-dr-nancy-smyth/> (citing SANDRA L. BLOOM, & BRIAN FARRAGHER, *DESTROYING SANCTUARY: THE CRISIS IN HUMAN SERVICES DELIVERY SYSTEMS* (2011)).

<sup>5</sup> Sandra L. Bloom, *Why Should Philadelphia Become a Trauma-Informed City*, Briefing Paper Prepared for the Philadelphia Mayoral Forum, sponsored by the Scattergood Foundation (2015), available at <http://sanctuaryweb.com/Portals/0/Bloom%20Pubs/2015%20Bloom%20Why%20should%20Philadelphia%20become%20a%20Trauma.pdf>.

<sup>6</sup> Sandra L. Bloom, *The Sanctuary Model of Trauma-Informed Organizational Change*, 16 (1) THE SOURCE 12, 14 (Nat’l Abandoned Infants Resource Center, 2007).

<sup>7</sup> ABA CENTER FOR CHILDREN & THE LAW, *IMPLEMENTING TRAUMA-INFORMED PRACTICES IN CHILD WELFARE* (2013) available at <http://childwelfaresparc.org/wp-content/uploads/2013/11/Implementing-Trauma-Informed-Practices.pdf>.

<sup>8</sup> SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *ESSENTIAL COMPONENTS OF TRAUMA-INFORMED JUDICIAL PRACTICE*, available at [http://www.nasmhpd.org/sites/default/files/JudgesEssential\\_5%201%202013finaldraft.pdf](http://www.nasmhpd.org/sites/default/files/JudgesEssential_5%201%202013finaldraft.pdf) (last viewed Dec. 20, 2015) [hereinafter SAMHSA].

informed practice is implemented.

### A. Understanding Trauma

An event is defined as traumatic when it renders an individual's internal and external resources inadequate, making effective coping impossible.<sup>9</sup> A traumatic experience occurs when an individual subjectively experiences a threat to life, bodily integrity or sanity.<sup>10</sup> The American Psychological Association further defines trauma as:

[An] emotional response to a terrible event like an accident, rape or natural disaster. Immediately after the event, shock and denial are typical. Longer term reactions include unpredictable emotions, flashbacks, strained relationships and even physical symptoms like headaches or nausea. While these feelings are normal, some people have difficulty moving on with their lives.<sup>11</sup>

External threats that result in trauma can include “experiencing, witnessing, anticipating, or being confronted with an event or events that involve actual or threatened death or serious injury, or threats to the physical integrity of one's self or others.”<sup>12</sup>

Trauma can take many different forms. A 1997 study found that about one third of the population will experience severe trauma at some point.<sup>13</sup> The most common sources of trauma, experienced by 15 to 35 percent of the people surveyed, included witnessing someone being hurt or killed, or being involved in a fire, flood, or other such life-threatening accidents.<sup>14</sup> Other common experiences included robbery and sudden deaths of loved ones.<sup>15</sup> An estimated 0.5 percent of people (1.2 million) in the United States were victims of a violent crime in 2014.<sup>16</sup> Researchers have begun to confirm the interconnection between the effects of racism and trauma.<sup>17</sup> Further the intercon-

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<sup>9</sup> Richard R. Kluft, Sandra L. Bloom, & John D. Kinzie, *Treating the Traumatized Patient and Victims of Violence*, in 86 NEW DIRECTIONS IN MENTAL HEALTH SERVICES 79 (2000) (citing B. A. Van der Kolk, *The Compulsion to Repeat the Trauma: Re-enactment, Re-victimization, and Masochism*, 12 PSYCHIATRIC CLINICS OF N. AM. 2 (1989)).

<sup>10</sup> LAURIE A. PEARLMAN & KAREN SAAKVITNE, TRAUMA AND THE THERAPIST: COUNTERTRANSFERENCE AND VICARIOUS TRAUMATIZATION IN PSYCHOTHERAPY WITH INCEST SURVIVORS 60 (1995).

<sup>11</sup> *Trauma*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <http://www.apa.org/topics/trauma/> (last viewed Dec. 20, 2015).

<sup>12</sup> *Id.*

<sup>13</sup> S.D. Solomon & J.R.T. Davidson, *Trauma: Prevalence, Impairment, Service Use, and Cost*, 58 J. CLINICAL PSYCHIATRY (SUPPL. 9) 5-11, 7 (1997).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Jennifer L. Truman & Lynn Langton, *Criminal Victimization, 2014* at 1 (U.S. Dept. of Justice Sept. 29, 2015), available at <http://www.bjs.gov/content/pub/pdf/cv14.pdf>.

<sup>17</sup> See, e.g., Dottie Lebron, Laura Morrison, Dan Ferris, Amanda Alcantara, Danielle Cummings, Gary Parker & Mary McKay, *The Trauma of Racism* (McSilver Institute for

nection between urban poverty and trauma has been established.<sup>18</sup>

Intimate partner violence and child maltreatment are other examples of trauma, and are far more prevalent than is often acknowledged. On average, twenty four people per minute are victims of rape, physical violence, or stalking by an intimate partner in the United States—more than twelve million women and men over the course of a year.<sup>19</sup> Nearly three in ten women and one in ten men in the US have experienced rape, physical violence, and/or stalking by a partner and report a related impact on their functioning.<sup>20</sup> A reported 1.71% of children are maltreated in the United States.<sup>21</sup>

The rates of abuse are higher among the population of litigants in family court. The anecdotal experience of our family law clinics is many of our clients have experienced serious incidents of physical or sexual abuse by an intimate partner, and in the past as a child. They may also have witnessed or experienced their own child(ren) being physically or sexually abused. These anecdotal observations are supported by empirical study. For example, one study indicated that 80% of parents who were separating or divorcing were able to agree on custody and parenting time with their children. But among the 20% of parents who needed the court to intervene to decide custody, domestic violence was remarkably prevalent, and a domestic violence allegation was substantiated in 41-55% of these cases.<sup>22</sup> In fact, experts have noted the “majority of parents in ‘high-conflict divorces’ involving child custody disputes report a history of domestic violence.”<sup>23</sup> The National Center for State Courts has found documented evidence in court records of domestic violence in 20-55% of contested custody cases.<sup>24</sup>

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Poverty Policy & Research, NYU 2015), available at <http://www.mcsilver.org/wp-content/uploads/2015/04/Trauma-of-Racism-Report.pdf>; Glenn H. Miller, *Commentary: The Trauma of Insidious Racism* 37(1) J AM. ACAD. PSYCHIATRY LAW 41, 42 (Mar. 2009).

<sup>18</sup> See, e.g., KATHRYN COLLINS ET AL., UNDERSTANDING THE IMPACT OF TRAUMA AND URBAN POVERTY ON FAMILY SYSTEMS: RISKS, RESILIENCE & INTERVENTIONS (Family Informed Trauma Treatment Center 2010).

<sup>19</sup> CENTERS FOR DISEASE CONTROL, UNDERSTANDING INTIMATE PARTNER VIOLENCE FACT SHEET, available at, <http://www.cdc.gov/ViolencePrevention/pdf/IPV-FactSheet.pdf> (last viewed Dec. 20, 2015).

<sup>20</sup> *Id.*

<sup>21</sup> U.S. DEPT. OF HEALTH AND HUMAN SERVICES, FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4): REPORT TO CONGRESS, at 3-3 (2010).

<sup>22</sup> Janet R. Johnson, Soyoung Lee, Nancy W. Oleson, & Marjorie G. Walters., *Allegations and Substantiations of Abuse in Custody-Disputing Families*, 43 FAM. CT. REV. 283, 289-290 (2005).

<sup>23</sup> PETER JAFFE, MICHELLE ZERWER, SAMANTHA POISSON, ACCESS DENIED: THE BARRIERS OF VIOLENCE AND POVERTY FOR ABUSED WOMEN AND THEIR CHILDREN AFTER SEPARATION 1 (2002).

<sup>24</sup> NATIONAL CENTER FOR STATE COURTS, DOMESTIC VIOLENCE AND CHILD CUSTODY DISPUTES: A RESOURCE HANDBOOK FOR JUDGES AND COURT MANAGERS 5 (1997).

The trauma experiences of clients have a direct relationship to how they relate to their attorneys and the courts, because trauma has a distinct physiological effect on the brain, which in turn affects behavior in the short-term and long-term. Colloquially, this evolutionary response is sometimes referred to as a “flight, fight, freeze.” As one writer has explained:

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.<sup>25</sup>

Subsequently, a traumatic experience becomes encoded as a traumatic memory and is stored in the brain via a pathway involving high levels of activity in the amygdala, making recall of the traumatic event highly affectively charged.<sup>26</sup> Recall, either intentional or through inadvertent exposure to internal or external stimuli related to the trauma, leads to the release of stress hormones.<sup>27</sup> For many individuals who have experienced trauma, specific conditioned stimuli may be linked to the traumatic event (unconditional stimulus) such that re-exposure to a similar environment produces recurrence of fear and anxiety similar to what was experienced during the trauma itself.<sup>28</sup> Thus the physiological effects of trauma can manifest far after the traumatic incident occurs, as the amygdala does not always discriminate between real dangers and memory from a past dangerous situation.

In response to traumatic experiences, an individual may feel intense fear, helplessness, or horror.<sup>29</sup> People process these reactions differently, resulting in different indicators of trauma.<sup>30</sup> Four common behaviors are: anxiety and depression, intense anger towards self or others, the formation of unhealthy relationships, and denial.<sup>31</sup> Yet, although these common behaviors can result from trauma, the reac-

<sup>25</sup> Rebecca Ruiz, *Why Don’t Cops Believe Rape Victims?*, SLATE (June 19, 2013), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2013/06/why\\_cops\\_don\\_t\\_believe\\_rape\\_victims\\_and\\_how\\_brain\\_science\\_can\\_solve\\_the.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2013/06/why_cops_don_t_believe_rape_victims_and_how_brain_science_can_solve_the.html).

<sup>26</sup> Ronald A. Ruden, *Neurobiology of Encoding Trauma*, in THE ENCYCLOPEDIA OF TRAUMA: AN INTERDISCIPLINARY GUIDE (Charles R. Figley ed.) 228, 230-231 (2012).

<sup>27</sup> *Id.*

<sup>28</sup> Dennis Charney, *Psychobiological Mechanisms of Resilience and Vulnerability: Implications for Successful Adaptation to Extreme Stress*, 2 AM. J. PSYCHIATRY 161 (2004).

<sup>29</sup> Kluft et al., *supra* note 9, at 1.

<sup>30</sup> *Id.* at 3.

<sup>31</sup> Sandra L. Bloom, *The Grief That Dare Not Speak Its Name Part I: Dealing With the Ravages of Childhood Abuse*, PSYCHOTHERAPY REV. 2 (9), 408, 408-409 (2000). See also JUDITH HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE – FROM DOMESTIC TO POLITICAL TERROR, 88-95 (1992).

tions to traumatic events can look different among individuals because although trauma is a common human experience, it is affected by a wide range of “personality styles, ego strengths, diatheses for mental and physical illnesses, social supports, intercurrent stressors, and cultural backgrounds.”<sup>32</sup> Thus, the reactions to trauma are psychobiologic and are influenced by complex individual and social contexts, all of which determine the ways in which each individual processes trauma.<sup>33</sup> As a result there are no universal indicators of, or responses to, traumatic events.<sup>34</sup>

The responses to trauma can be short term or long term.<sup>35</sup> Short-term consequences can include re-experiencing the traumatic event, such as having recurrent or intrusive distressing recollections of the event, acting or feeling as if the event is recurring, or avoidance of stimuli associated with the trauma.<sup>36</sup> Avoidance may include efforts to avoid thoughts, feelings, or conversations associated with the trauma, efforts to avoid activities, places, or people that arouse recollections of the trauma. Avoidance can also include amnesia for aspects of the trauma, detachment or estrangement from others, defensive numbing, or dissociative symptoms.<sup>37</sup> Dissociation may consist of a diminished awareness or realization of one's surroundings, problems with concentration and attention, or increased arousal.<sup>38</sup> Increased arousal refers to such symptoms as experiencing difficulty falling or staying asleep, hypervigilance, or an exaggerated startle response.<sup>39</sup>

Long-term consequences may include persistence of the short term symptoms, chronic guilt and shame, a sense of helplessness and ineffectiveness, a sense of being permanently damaged, difficulty trusting others or maintaining relationships, vulnerability to re-victimization, and becoming a perpetrator of trauma.<sup>40</sup> The responses may also be triggered or exacerbated by anniversaries of traumatic events or stressors that are suggestive of the past trauma.<sup>41</sup>

### *B. Understanding Vicarious Trauma*

Vicarious trauma, also sometimes called “compassion fatigue” or “secondary trauma,” is a term for the effect that working with survi-

<sup>32</sup> Kluft et al., *supra* note 9, at 3.

<sup>33</sup> *Id.* at 1.

<sup>34</sup> *Id.* at 3.

<sup>35</sup> *Id.* at 4.

<sup>36</sup> *Id.* at 4.

<sup>37</sup> *Id.* at 4-5; HERMAN, *supra* note 31, at 89.

<sup>38</sup> HERMAN, *supra* note 31, at 94.

<sup>39</sup> *Id.* at 5.

<sup>40</sup> *Id.* at 4.

<sup>41</sup> *Id.*

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vors of trauma may have on counselors, therapists, doctors, attorneys, and others who directly help them.<sup>42</sup> Vicarious traumatization refers to harmful changes that occur in professionals' views of themselves, others, and the world, as a result of exposure to the graphic or traumatic experiences of their clients.<sup>43</sup> As psychologist Mark Evces has written, "[s]econdary, or indirect, traumatic exposure is not limited to mental health providers. Anyone who repeatedly and empathically engages with traumatized individuals can be at risk for distress and impairment due to indirect exposure to others' traumatic material."<sup>44</sup>

Vicarious trauma is distinct from "burnout," which refers to the toll that work may take over time.<sup>45</sup> Burnout can usually be remedied by taking time off, by moving to a new job. Vicarious trauma is a state of tension or preoccupation with clients' stories of trauma.<sup>46</sup> It may be marked by either an avoidance of clients' trauma histories (almost a numbness to the trauma) or by a state of persistent hyperarousal.<sup>47</sup>

Professionals experiencing vicarious trauma may experience painful images and emotions associated with their clients' traumatic memories and may, over time, incorporate these memories into their own memory systems.<sup>48</sup> As a result, there may be disruptions to schema in five areas.<sup>49</sup> These are safety, trust, esteem, intimacy, and control, each representing a psychological need.<sup>50</sup> Each schema is experienced in relation to self and others. The harmful effects of vicarious trauma occur through the disruptions to these schemas.<sup>51</sup> Vicarious trauma "has been described as a common, long-term response to working with traumatized populations, and as part of a continuum of helper reactions ranging from vicarious growth and resilience to vicarious traumatization and impairment."<sup>52</sup>

As a normal response to the continuing challenges to their beliefs

<sup>42</sup> AMERICAN COUNSELING ASSOCIATION, VICARIOUS TRAUMA FACT SHEET #9, *available at*, <http://www.counseling.org/docs/trauma-disaster/fact-sheet-9—vicarious-trauma.pdf?sfvrsn=2> (last viewed Dec. 20, 2015).

<sup>43</sup> Katie Baird & Amanda C. Kracen, *Vicarious Traumatization and Secondary Traumatic Stress: A Research Synthesis*, 19 COUNSELING PSYCHOL. Q. 181 (2006).

<sup>44</sup> Mark R. Evces, *What is Vicarious Trauma?*, in VICARIOUS TRAUMA AND DISASTER MENTAL HEALTH: UNDERSTANDING RISKS AND PROMOTING RESILIENCE, 9, 10 (Gertie Quintangon & Mark R. Evces, eds.) (2015).

<sup>45</sup> Lisa McCann & Larie A. Pearlman, *Vicarious Traumatization: A Framework for Understanding the Psychological Effects of Working with Victims*, 3 J. TRAUMATIC STRESS 131, 133 (1990).

<sup>46</sup> AMERICAN COUNSELING ASSOCIATION, *supra* note 42.

<sup>47</sup> *Id.*

<sup>48</sup> McCann & Pearlman, *supra* note 45, at 144.

<sup>49</sup> Baird & Kracen, *supra* note 43.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Evces, *supra* note 44, at 11.

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and values, individuals experiencing vicarious trauma may exhibit varying symptoms.<sup>53</sup> Some of these symptoms include: denial of clients' trauma, over-identification with clients, no time and energy for one-self, feelings of great vulnerability, experiencing insignificant daily events as threatening, feelings of alienation, social withdrawal, disconnection from loved ones, loss of confidence that good is still possible in the world, generalized despair and hopelessness, loss of feeling secure, increased sensitivity to violence, cynicism, feeling disillusioned by humanity, disrupted frame of reference, changes in identity, world view, and spirituality, diminished self-capacities, impaired ego resources, and alterations in sensory experiences.<sup>54</sup>

### C. Understanding Trauma-Informed Practice

The increase in studies on trauma and vicarious trauma, and the various measures taken to mitigate the effects of the two have resulted in a systemic approach to how human services can be delivered to address the concerns of trauma and vicarious trauma simultaneously. "A trauma-informed approach to services or intervention acknowledges the prevalence and impact of trauma and attempts to create a sense of safety for all participants, whether or not they have a trauma-related diagnosis."<sup>55</sup> To be trauma-informed means to be educated about the impact of interpersonal violence and victimization on an individual's life and development."<sup>56</sup> Providing trauma-informed services requires all the staff of an organization to understand the effects of trauma on the people being served, so that all interactions with the organization reduce the possibility of retraumatization and are consistent with the process of recovery.<sup>57</sup> Trauma-informed practice recognizes the ways in which trauma impacts systems and individuals.<sup>58</sup> Becoming trauma informed results in the recognition that behavioral

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<sup>53</sup> *Id.*

<sup>54</sup> Christian Pross, *Burnout, vicarious traumatization and its prevention*, 16 TORTURE 1 (2006).

<sup>55</sup> SAMSHA, *supra* note 8, at 1.

<sup>56</sup> Denise E. Elliott and Paula Bjelajac et al., *Trauma-Informed or Trauma Denied: Principles and Implementation of Trauma-Informed Services for Women*, 33(4) JOURNAL OF COMMUNITY PSYCHOLOGY, 461-477, 462 (2005).

<sup>57</sup> *Id.*

<sup>58</sup> Whereas vicarious trauma impacts individuals exposed to trauma victims, organizations working with a traumatized population can experience organizational trauma, in which an organization's adaptation to chronic stress can create "a state of dysfunction that in some cases virtually prohibits the recovery of the individual clients who are the source of its underlying and original mission, and damages many of the people who work within it." SANDRA L. BLOOM, & BRIAN FARRAGHER, DESTROYING SANCTUARY: THE CRISIS IN HUMAN SERVICES DELIVERY SYSTEMS 14 (2011). See also Shana Hormann and Pat Vivian, *Toward and Understanding of Traumatized Organizations and How to Intervene in Them*, 11(3) TRAUMATOLOGY 159, 160-164 (September 2005).

symptoms, mental health diagnoses, and involvement in the criminal justice system are all manifestations of injury, rather than indicators of sickness or badness – the two current explanations for such behavior.<sup>59</sup> As a result, trauma-informed services and programs are more supportive (rather than controlling and punitive), avoid retraumatizing and punishing those served, and avoid vicarious traumatization of those serving the survivors.<sup>60</sup>

In particular, trauma-informed practice has had a significant impact in the fields of domestic violence,<sup>61</sup> health care, child welfare, law enforcement and judicial administration. As discussed in the next section, trauma-informed practice has also informed the practice of law.

## II. THE TRAUMA-INFORMED LAWYER

The concepts of trauma-informed practice have begun to have a profound effect on attorneys who routinely work with trauma survivors.<sup>62</sup> Particularly for attorneys in practice areas such as domestic vi-

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<sup>59</sup> SANDRA L. BLOOM & BRIAN FARRAGHER, *RESTORING SANCTUARY: A NEW OPERATING SYSTEM FOR TRAUMA-INFORMED SYSTEMS OF CARE*, 1, 7-9 (2013).

<sup>60</sup> For example, one model used to accomplish these goals is the Sanctuary Model, a trauma-informed method for changing organizational culture, created by psychiatrist Sandra Bloom. The Sanctuary Model can be described as a “plan, process, and method for creating trauma-sensitive, democratic, nonviolent cultures that are far better equipped to engage in the innovative treatment planning and implementation that is necessary to adequately respond to the extremely complex and deeply embedded injuries that children, adults, and families have sustained.” Sandra L. Bloom, *The Sanctuary Model of Organizational Change for Children’s Residential Treatment*, THERAPEUTIC COMMUNITY: THE INTERNATIONAL JOURNAL FOR THERAPEUTIC AND SUPPORTIVE ORGANIZATIONS 26(1): 65-81, 70-71 (2005). The Sanctuary Model proposes seven characteristics that would result in an organization being trauma informed: a culture of nonviolence, which means committing to safety skills and higher goals; a culture of emotional intelligence, which means to teach and model emotional management skills; a culture of social learning, which involves creating an environment that promotes conflict resolution and transformation; a culture of shared governance, which involves encouraging self-control, self-discipline, and healthy authority figures; a culture of open communication; a culture of social responsibility, which involves building healthy relationships and connections; and a culture of growth and change, which requires restoring hope, meaning and purpose by actively working through loss/trauma. *Id.* at 71.

<sup>61</sup> Joshua M. Wilson, Jenny E. Fauci, & Lisa A. Goodman, *Bringing trauma-informed practice to domestic violence programs: A qualitative analysis of current approaches*, 85(6) AM. J. OF ORTHOPSYCHIATRY 586, 587 (2015).

<sup>62</sup> See LISA PILNIK & JESSICA R KENDALL, OFFICE JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *IDENTIFYING POLYVICTIMIZATION AND TRAUMA AMONG COURT-INVOLVED CHILDREN AND YOUTH: A Checklist and Resource Guide for Attorneys and Other Court-Appointed Advocates* (2012), <http://www.ojjdp.gov/programs/safestart/IdentifyingPolyvictimization.pdf>. KAREN REITMAN, ATTORNEYS FOR CHILDREN GUIDE TO INTERVIEWING CLIENTS: INTEGRATING TRAUMA INFORMED CARE AND SOLUTION FOCUSED STRATEGIES (2011); Barbara Glesner Fines & Cathy Madsen, *Caring Too Little, Caring Too Much: Competence and the Family Law Attorney*, 75 UMKC L. REV. 965 (2007); Lynda Murdoch, *Psychological Consequences of Adopting a Therapeutic Lawyering Approach: Pitfalls and Protecting Strategies*, 24 SEATTLE U.L. REV. 483 (2000); Susan Daicoff,



olence, immigration, and child welfare, the principles of trauma-informed practice have altered the way legal services are delivered.<sup>63</sup> In fact, trauma-informed practice can have relevance to all areas of practice, as clients may present with a trauma history whether central to the subject of the representation or not.

Trauma-informed practice can be particularly salient for attorneys because traditionally attorneys are trained to separate emotions from the law in order to competently analyze legal problems.<sup>64</sup> By borrowing trauma-informed techniques developed in the therapeutic context, attorneys are learning to provide more effective representation.<sup>65</sup> Attorneys can learn how to identify trauma, and to adjust their methods of counseling and representation to incorporate an understanding of their clients' trauma history. Attorneys can also help clients identify the need for behavioral health intervention, or help clients secure trauma-informed therapeutic services.<sup>66</sup> Attorneys can also employ methods of self-care to prevent vicarious traumatization. Systemic implementation of these methods form trauma-informed legal practice. Domestic violence legal centers, immigration legal centers, and other public interest legal services offices have become particularly adept at incorporating these practices into daily legal work. This article posits that clinical law professors can and should incorporate this methodology into law school clinics.

The experience of Victoria, the client described at the beginning of this article, is a good example of trauma-informed lawyering at work. First, the law student handling the case was trained to recognize trauma. In other words, the student could recognize that the

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*Law as a Healing Profession: The "Comprehensive Law Movement"*, 6 PEPP. DISP. RESOL. L.J. 1 (2006); MARJORIE SILVER, *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* (2007); Marjorie Silver, *Love, Hate, and Other Emotional Interferences in the Lawyer/Client Relationship*, 6 CLIN. L. REV. 259 (1999); Marjorie A. Silver, *Supporting Attorneys' Personal Skills*, 78 REV. JUR. U.P.R. 147, 148 (2009); MARY MALEFYT SEIGHMAN, ERIKA SUSSMAN, & OLGA TRUJILLO, *REPRESENTING DOMESTIC VIOLENCE SURVIVORS WHO ARE EXPERIENCING TRAUMA AND OTHER MENTAL HEALTH CHALLENGES: A HANDBOOK FOR ATTORNEYS*, available at <http://www.nationalcenterdvtraumamh.org/publications-products/attorneys-handbook/> (last viewed Dec. 20, 2015).

<sup>63</sup> Both authors had the opportunity as legal services attorneys to work in family law practices that trained staff in and applied methods of trauma-informed practice.

<sup>64</sup> Parker, *supra* note 2.

<sup>65</sup> *Id.* See also AMERICAN BAR ASSOCIATION, *ABA POLICY ON TRAUMA-INFORMED ADVOCACY FOR CHILDREN & YOUTH* (Feb. 10, 2014), [http://www.americanbar.org/content/dam/aba/administrative/child\\_law/ABA%20Policy%20on%20Trauma-Informed%20Advocacy.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/child_law/ABA%20Policy%20on%20Trauma-Informed%20Advocacy.authcheckdam.pdf); Eliza Patten & Talia Kraemer, *Practice Recommendations for Trauma-Informed Legal Services* (July 2013), available at [http://www.americanbar.org/content/dam/aba/administrative/child\\_law/5C\\_Patten%20Kraemer\\_Practice%20Recommendations%20for%20Trauma%20Informed%20Legal%20Services.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/child_law/5C_Patten%20Kraemer_Practice%20Recommendations%20for%20Trauma%20Informed%20Legal%20Services.authcheckdam.pdf).

<sup>66</sup> See PILNIK & KENDALL, *supra* note 62.

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physical abuse that Victoria had experienced, as well as the knowledge that her children had been sexually abused, were traumatic experiences which would profoundly affect the attorney-client relationship and the nature of the representation, even though the abuse allegations were not directly pertinent to the case. If the law student not been trained in trauma-informed practice, he might have been more dismissive of the client's insistence on telling her trauma story. Instead, the law student exhibited patience and affirmation for the client that ultimately enabled the client to develop a trusting relationship with the law student. Similarly, the law student adjusted his approach to counseling the client and preparing the client for court, based upon the law student's acknowledgement and understanding of the client's trauma experience. Instead of simply preparing the client for the kinds of testimony and evidence that would be requested, the law student took into account how terrifying it was for the client to go to court against her abusive ex-husband. The student also encouraged the client regarding the importance of continuing in therapy, drawing clear lines between the kind of counseling the law student could provide, and support that could be provided by a therapist. Finally, the law student also had opportunities for self-reflection and sharing through supervision to allow him to process the impact of working with a client who had experienced severe trauma.

Rather than waiting until lawyers enter practice to learn these skills, law schools can and should teach trauma-informed lawyering, particularly in the law clinic setting.<sup>67</sup> Teaching trauma-informed lawyering in law school clinics bolsters and builds upon existing approaches to clinical pedagogy. Clinical legal education has traditionally emphasized teaching social justice values, client-centered lawyering and the acquisition of practical lawyering skills,<sup>68</sup> and teaching trauma-informed lawyering reinforces each of these areas. Further, trauma-informed lawyering builds upon existing clinical pedagogical literature on therapeutic jurisprudence, empathy and emotional intelligence, and vicarious trauma.<sup>69</sup> Law school clinics are particularly well-suited to teach trauma-informed lawyering because

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<sup>67</sup> See, e.g., Jill Engle, *Taming the Tigers: Domestic Violence, Legal Professionalism and Well-Being*, 4 TENN. J. RACE, GENDER & SOC. JUST. 1 (2015); Joan Meier, *Teaching Lawyering With Heart*, forthcoming in VIOLENCE AGAINST WOMEN (2015), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2685926](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685926)##.

<sup>68</sup> See, e.g., Stephen Wizner, *Beyond Skills Training*, 7 CLIN. L. REV. 327, 338 (2001); David Binder and Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLIN. L. REV. 191 (2003); Katherine Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLIN. L. REV. 369 (2006).

<sup>69</sup> See, e.g., MARJORIE A. SILVER, *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* (2007).

of the focus on reflective practice, and their capacity to teach law students important practice skills to take into their legal careers.

*A. Teaching Trauma-Informed Lawyering Fits with the Values of  
Clinical Pedagogy and into Already Existing  
Clinical Theoretical Areas*

Teaching trauma-informed lawyering in law school clinics furthers the value clinical legal education places on teaching social justice principles and the notion of client-centered lawyering.

*1. Social Justice*

Clinical legal education has always had a social justice focus, in its mission to provide much-needed legal services for the indigent, and also in its goals of exposing law students to the lack of legal services for the poor, and to the limits and realities of the legal system. The first clinics were established and developed in the 1920s and 1930s as a way to supplement traditional, doctrinal classes taught in the Langdellian case method. However, clinical legal education did not really take hold in law schools until the 1960s and 1970s. A crucial event in the development of clinical pedagogy was the establishment of the Council on Legal Education and Professional Responsibility (CLEPR), by William Pincus, Vice President of the Ford Foundation. The mission of the CLEPR was to provide legal services to the poor, and in order to do so, CLEPR funded several law school clinics, significantly affecting legal education by infusing clinical legal education with a social justice purpose.<sup>70</sup>

Although the initial mission of law school clinics was to provide access to legal services for low-income clients, as clinical pedagogy developed, clinics developed the added function of exposing students to the realities of the legal system, and in particular its limitations for meeting the goals of indigent individuals.<sup>71</sup> Teaching trauma-informed lawyering in clinics reinforces the social justice value of clinical education because it causes students to be exposed to the realities and limits of the legal system.<sup>72</sup> Teaching trauma enables students to see, though the experiences of their trauma-affected client, how, for that particular individual, legal doctrines, theories, or the litigation

<sup>70</sup> *Id.* at 338 (“From the beginning of the clinical legal education movement, experiential learning and skills-training were seen as the means for achieving the justice goal articulated by William Pincus, not as ends in themselves.”).

<sup>71</sup> Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic’s Ability to Harmonize Teaching Practical Skills, Ethics, and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23, 39-40 (2006).

<sup>72</sup> See, e.g., Wizner, *supra* note 68.

system may or may not work to achieve the client's stated goals.<sup>73</sup> Recognition that the legal system may not always be an effective mechanism of pursuing the client's goals is particularly relevant when the client has experienced trauma. This statement is particularly true in light of the fact that for a traumatized client, court proceedings may run the risk of causing the client to relive or confront the trauma, and court proceedings themselves may cause further trauma to the client.

Additionally, teaching students trauma-informed lawyering, and specifically focusing on the ways in which the current legal system may not be able to meet a client's goals, encourages students to think critically about the legal system as it affects litigants who have been subject to trauma in their lives.<sup>74</sup> By learning about trauma-informed lawyering and thinking critically about the legal system, students will begin to think not only about procedural justice, defined as access to the courts or representation in court, but also about true substantive justice for litigants, a term which "could be perceived to require disassembling the existing power structure in order to precipitate a redistribution of resources."<sup>75</sup> Thinking critically about the legal system, developing strong professional values, and developing an appreciation for the important role that attorneys play in society are all sub-parts of the larger clinical goal of teaching social justice to law students through their clinical work.<sup>76</sup>

The importance of teaching trauma-informed lawyering to clinic students to further the social justice goal of clinics is underscored by the literature on therapeutic jurisprudence, which focuses on the extent to which the law enhances or inhibits the wellbeing of those who are affected by it.<sup>77</sup> The practice of trauma-informed lawyering can be a natural extension of the teachings of therapeutic jurisprudence. Therapeutic jurisprudence is a lens for viewing litigation<sup>78</sup> and concerns itself with the therapeutic and anti-therapeutic goals that flow from legal rules, procedures, and the operation of the legal system.<sup>79</sup>

<sup>73</sup> *Id.* at 351.

<sup>74</sup> Leigh Goodmark, *Clinical Cognitive Dissonance: The Values and Goals of Domestic Violence Clinics, the Legal System, and the Students Caught in the Middle*, 20 J. OF LAW & POLICY 301, 314 (2012) (quoting Sue Bryant & Maria Arias, *Case Study: A Battered Women's Rights Clinic: Designing a Clinical Program which Encourages a Problem Solving Vision of Lawyering*, 42 WASH. U. J. URB. & CONTEMP. L. 207, 212-215 (1992)).

<sup>75</sup> Carasik *supra* note 71, at 45 (citing John O. Calmore, "Chasing the Wind": Pursuing Social Justice, Overcoming Legal Mis-Education, and Engaging in Professional Re-Socialization, 37 LOY. L.A. L. REV. 1167, 1175 (2004)).

<sup>76</sup> Stephen Wizner, *Is Social Justice Still Relevant?*, 32 B.C. L. J. & SOC. JUST. 345 (2012) (exploring the social justice mission of law school clinics).

<sup>77</sup> See, e.g., Susan L. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients, and Communities*, 13 CLIN. L. REV. 213 (2006).

<sup>78</sup> David B. Wexler, *Therapeutic Jurisprudence*, 20 TOURO L. REV. 353 (2004).

<sup>79</sup> *Id.*

One of the crucial principles is the emphasis on voice and validation for clients. Pursuant to a therapeutic jurisprudence perspective, achieving voice and validation has special significance and importance for survivors of violence.<sup>80</sup> Survivors need to be accorded a sense of “voice,” the ability to tell their side of the story, and “validation,” the sense that what they have to say is taken seriously. By acknowledging and honoring the client’s trauma experience, lawyers can help give voice to the client’s perspective. Therapeutic jurisprudence scholars emphasize that these survivors should be treated with dignity and respect, which will diminish the extent to which they feel coerced and gives them a sense of voluntary choice.<sup>81</sup> Rather than viewing the client’s trauma experience as a weakness, a therapeutic jurisprudence approach emphasizes the resilience of the client.<sup>82</sup> Teaching trauma-informed lawyering to clinic students furthers these therapeutic jurisprudence goals and causes students to think more about the meaning of the broader clinical goal of social justice.<sup>83</sup>

## 2. Client-Centered Lawyering

Teaching trauma-informed lawyering in clinics also reinforces one of clinical legal education’s central tenets, the importance of client-centered lawyering. Client-centered lawyering focuses on understanding clients’ perspectives, emotions, and values, including the possible effects of prior trauma on a client’s decisions and actions.<sup>84</sup> Client-centered lawyering is perhaps the central value in many current law school clinics, particularly in clinics where clients are individual litigants. The goals of client-centered lawyering focus on maintaining respect for a client’s decision-making authority within the lawyer-client relationship. In the client-centered lawyering paradigm, the lawyer should remain neutral as to the goals of the representation.<sup>85</sup> Unlike

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<sup>80</sup> Carolyn S. Salisbury, *From Violence and Victimization to Voice and Validation: Incorporating Therapeutic Jurisprudence in A Children’s Law Clinic*, 17 ST. THOMAS L. REV. 623, 654-55 (2005).

<sup>81</sup> Bruce J. Winick, *Applying the Law Therapeutically in Domestic Violence Cases*, 69 UMKC L. REV. 33, 63 (2000).

<sup>82</sup> Pilar Hernandez & David Gangsei, *Vicarious Resilience: A New Concept in Work with Those Who Survive Trauma*, 46 FAMILY PROCESS 229 (2007).

<sup>83</sup> Closely related to therapeutic jurisprudence is the literature on restorative justice, which focuses on having all of the individuals who have been affected by a particular act come together and agree on how to repair the harm. According to restorative justice principles, the focus of the process is on healing, rather than finding a way to hurt the offender in a way that would be proportional to the victim’s hurt. See John Braithwaite, *A Future Where Punishment is Marginalized: Realistic or Utopian?* 46 UCLA L. REV. 1727, 1743 (1999).

<sup>84</sup> Kruse, *supra* note 68, at 377 (describing the cornerstones of client-centered lawyering).

<sup>85</sup> *Id.* at 376.

traditional doctrinal law school classes which focus on appellate court decisions, a clinic with a client-centered philosophy helps the client solve their identified problems, through either legal or non-legal means. The four central tenets of client-centered lawyering can be summarized as follows: 1) it draws attention to the critical importance of non-legal aspects of a client's situation; 2) it cabins the lawyer's role in the representation within limitations set by a sharply circumscribed view of the lawyer's professional expertise; 3) it insists on the primacy of client decision-making; and 4) it places a high value on lawyers' understanding their clients' perspectives, emotions, and values.<sup>86</sup> A lawyer's principal role in a client-centered lawyering model is to help the client solve a problem, not simply to identify and apply legal rules.<sup>87</sup> Teaching trauma-informed lawyering to clinic students in law clinics reinforces all of the main tenets of client-centered lawyering.

Teaching trauma-informed practice as part of client-centered lawyering improves the client's experience of representation, by encouraging students to consider the non-legal aspects of a client's situation, and also places a high value on the law student's understanding of a client's perspectives, emotions, and values. Teaching about the possible effects of trauma on clients encourages students to look at the client outside of the narrow context of litigation, and to consider the other effects of her life experiences. Additionally, trauma-informed lawyering, with its emphasis on the effects of prior trauma, persuades students to look at what the client may be seeking from the representation, and to consider whether the litigation process will achieve that goal, or whether that goal is best achieved by non-legal methods. The student must take into account the effect of the trauma on the client and the effect on the client's current decision-making, even though that decision process may be different from the process that the student is using to make a decision as a legal advocate.

The theory behind client-centered law practice is based on the influence of other social sciences on law, particularly psychology, in which empathy is considered a useful skill for supporting clients.<sup>88</sup> Law students will be better able to incorporate empathy into their interactions with clients if they are trained in trauma. The literature on emotional intelligence and the literature on the clinical pedagogy of teaching empathy focus on the legitimacy of emotions and their

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<sup>86</sup> *Id.* at 377.

<sup>87</sup> *Id.* at 376-77 (quoting Binder's textbook).

<sup>88</sup> Emily Gould, *The Empathy Debate: The Role of Empathy in Law, Mediation, and the New Professionalism*, 36-FALL VT. B.J. 23, 24 (2010). See also Sarah Buhler, *Painful Injustices: Encountering Social Suffering in Clinical Legal Education*, 19 CLIN. L. REV. 405 (2013).

relevance to our actions and decisions, and also on the need and manner in which the clinical supervisor facilitates a process through which law students interpret their emotional experiences as advocates, a process which will positively affect the representation.<sup>89</sup> Trauma-informed clinic students will better empathize with their clients. Empathy can be a key part of the information-gathering function of a client interview and client counseling.<sup>90</sup> Empathy encompasses several different phenomena: feeling the emotions of another; understanding another's situation or experience; and taking actions based on another's situation.<sup>91</sup> Similarly, the literature regarding teaching empathy to law students in a clinical context explores the concept of "identification." Identification can be defined as taking on the attitudes, behaviors, and perspectives of others.<sup>92</sup> Identification and empathy allow an attorney to "enter" into the emotional state of the client,<sup>93</sup> which provides the attorney with a far more complex understanding of the client and the client's legal needs. With clients in particularly difficult situations, such as clients who have experienced trauma or torture, a student may become overwhelmed by the experiences of suffering and therefore fail to identify and empathize with the client.<sup>94</sup> Teaching law students to identify trauma and its effects on clients will aid in identification with a client in a situation where identification and empathy might otherwise not be possible, and will enable the student to achieve a greater empathy for and understanding of the client's perspectives and needs. Trauma-informed clinic students will achieve greater empathy with a client, and also will use that empathy to adjust the attorney-client relationship or to adjust the litigation strategy.

Teaching trauma-informed lawyering in law clinics will also encourage students to circumscribe their view of their own expertise, emotional understanding and role as law students in the representation, and will encourage students to focus on the primacy of client decision-making as emphasized in the client-centered lawyering model.<sup>95</sup> In the client-centered lawyering model, the lawyer and the client work together as problem-solvers, and the client is able to

<sup>89</sup> See, e.g., Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and the Management of Empathy*, 9 CLIN. L. REV. 135 (2002); Gould, *supra* note 88; see also, Silver, *supra* note 69 at 5.

<sup>90</sup> Fletcher & Weinstein, *supra* note 89.

<sup>91</sup> John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 336-37 (2008).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 142.

<sup>94</sup> Fletcher & Weinstein, *supra* note 89, at 143.

<sup>95</sup> Kruse, *supra* note 68, at 377.

choose what s/he wants from the lawyer and the legal system.<sup>96</sup> A lawyer working in a client-centered model should listen to all of the client's concerns, not just the facts which are deemed legally relevant.<sup>97</sup>

*B. Acquisition of Practical Lawyering Skills: Teaching Trauma-Informed Lawyering Makes Students Better Advocates*

Another central value in clinical pedagogy is that students should acquire practical lawyering skills, by gaining experience in practice and by participating in the lawyer/client relationship.<sup>98</sup> Students are generally more motivated to learn because they are given a tremendous amount of responsibility over the case of a real-life individual, and this responsibility leads to greater identification with the client and other individuals who are similarly situated.<sup>99</sup> Clinics are particularly well-suited for teaching trauma-informed lawyering because students are readily able to put into practice with their clients the trauma-informed lawyering goals of identifying trauma, adjusting the attorney-client relationship, adjusting the litigation strategy, and preventing vicarious trauma.

Clinics are also ideally suited to teaching trauma-informed lawyering to students because clinics are one of the primary vehicles through which law students learn the practical aspects of professional responsibility. The Model Rules of Professional Conduct summarizes the duty of competent representation as follows: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."<sup>100</sup> When representing clients who have survived trauma in the past, the duty of competent representation requires not only legal knowledge and preparation, but also requires a thorough understanding of the ways in which trauma may present in clients, and of the ways prior trauma may affect the attorney-client relationship and the litigation process. Competent representation may also mean acknowledging the limits of the attorney's role, and using mental health professionals as supports when necessary.

Teaching trauma-informed lawyering will cause students to become better, more effective advocates who are able to fulfill the duty

<sup>96</sup> Jane Stoeber, *Transforming Domestic Violence Representation*, 101 KY. L.J. 483, 496 (2012-2013).

<sup>97</sup> *Id.* at 498.

<sup>98</sup> See, e.g., David Binder & Paul Bergman, *supra* note 68, at 194-95, 198.

<sup>99</sup> See Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLIN. L. REV. 489, 511 (2013) (Grose refers to a student's participation in the lawyer-client relationship as "the heart of clinical pedagogy.").

<sup>100</sup> MODEL RULES OF PROF'L CONDUCT §1.1 (2015).



of competent representation. Through learning about trauma-informed lawyering, law students will become better advocates because they will gain better interviewing skills; more effectively build trust with their clients; and more effectively tackle problems that clients face. Students will also be better prepared for hearings, and better able to prepare their clients for hearings.<sup>101</sup> Students who interview clients may be better able to identify signs of such trauma such as: clients experiencing difficulty telling their story in a linear manner; clients describing violent or upsetting events in a flat, detached matter; clients seeming disassociated or emotionally absent during interviews; and clients not remembering key details of abuse.<sup>102</sup>

Here is another example of how law students are able to implement trauma-informed practice to better represent their clients:

*Jane<sup>103</sup> came to the clinic seeking representation for her two family law cases. She had filed a Protection From Abuse (PFA) petition against her boyfriend, Tom, because he had become physically abusive a few months before, and on the last night they were together, beat her and tried to run her over with his car. Jane had a daughter, Anne. When Anne's father, Mark learned of the abuse by Tom, he didn't give Anne back to Jane for a month after a weekend visit. Jane had to involve the police to get Anne back. Mark filed a custody modification petition asking the court to give him primary physical custody of Anne. Jane filed a contempt of custody petition against him for keeping Anne away from her.*

*Jane missed the first two appointments and arrived two hours late for her third appointment with the law student assigned to her case. During her meeting, which was to begin to prepare for the PFA case against Tom, Jane only wanted to talk about Anne and whether she might lose custody. She became very emotional when talking about the custody case. Jane was angry with Mark for keeping Anne for so long and said that she hoped he would be punished by the Judge for what he did. Jane did not remember when the abuse by Tom began, when he tried to run her over, or when she had gone to the police. She also did not remember when Mark had kept Anne from a month, or the date when she was able to get Anne back.*

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<sup>101</sup> Parker, *supra* note 2.

<sup>102</sup> See NAT'L CENTER ON DOMESTIC VIOLENCE, TRAUMA & MENTAL HEALTH, SUPPORTING SURVIVORS IN CONTESTED CUSTODY CASES: TRAUMA-INFORMED STRATEGIES FOR BUILDING ON PARENTING STRENGTHS WHERE MENTAL HEALTH IS A FACTOR (March 2014), available at <http://www.nationalcenterdvtraumamh.org/wp-content/uploads/2014/01/Supporting-Survivors-in-Custody-Cases-April-7-FINAL-v3.pdf>.

<sup>103</sup> This case description is based on the experience of a client represented by Professor Haldar's clinic. Names and identifying information have been changed.

Rather than thinking a client is difficult or uncooperative, a student who has been taught trauma-informed lawyering will be able to recognize the preceding characteristics as signs of trauma, and will develop the skills to counteract the specific trauma symptoms which arise during client interviews.<sup>104</sup> These skills include developing mechanisms to: interview and prepare clients' cases with minimal re-traumatization; work with emotional clients more effectively by validating their feelings; focus or re-focus clients who are avoiding talking about a traumatic experience; help clients remember significant details; anticipate and handle clients who are late to an appointment or who miss the appointment entirely; define the role of the legal advocate, as opposed to a therapist or social worker; and build trust with the client. In short, teaching trauma-informed lawyering will allow students to specifically tailor their interviewing and case preparation to the client's individual circumstances, which include past trauma.

*During the first meeting with Jane, the law student recalled the guest lecture by an area psychologist regarding trauma and recognized the indicators of trauma in Jane's actions. He told her that both the abuse by Tom and having Anne taken away from her must have been very difficult for her. He told her that during that first meeting, they would talk about what she most wanted to discuss, and then he and Jane together planned a timeline of appointments to get ready for both the PFA hearing and the custody hearing. The law student explained the purpose of each hearing and how the Judge would make a decision in each case. The law student let Jane know what documents she needed to bring to each meeting.*

*Additionally, the law student was able to use the police report filed when Jane got Anne back to determine when Mark had taken her and returned her. He also looked at Tom's date of arrest and Jane's PFA petition to get a rough timeframe of when the abuse happened, and Jane was able to supplement that information.*

*During a later meeting to prepare for the custody hearing, Jane revealed that as part of the abuse, Tom had forced her to join him in his drug use. Substance abuse was particularly emotionally difficult for Jane to discuss, because she and Anne's father Mark both had severe addiction issues when they were together, and they both stopped using when Jane became pregnant with Anne. Because the law student had this important bit of information, he was able to inform Jane that it was very common for custody judges to ask litigants to take drug tests, particularly if there is a history of drug abuse. He also discussed with her the importance of continuing to attend her substance abuse meetings,*

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<sup>104</sup> Parker, *supra* note 2, at 182.

*which served as a support for her in staying drug-free.*

*The law student went over Jane's direct examination with her several times before each hearing. He stressed the importance of being on time for the hearing, told her exactly who would be in the courtroom, and what each party might say. He emphasized that although she felt very emotional about the events, it was important to remember to answer only the questions asked of her in court. The law student reminded her the day before each time she had to be in court, and would meet her just inside the entrance to the courthouse. The custody judge decided not to modify the order in Jane's custody case with Mark, and the Protection From Abuse judge granted Jane a final protection order.*

The enhanced interview skills that students learn when taught trauma-informed lawyering can help to nurture a trusting relationship between the client and the student lawyer. The law student and the client can then analyze risks, review and develop safety plans, and devise legal strategies together. Building this kind of a trusting relationship may help avoid a situation in which a client does not reveal crucial information. In addition to hearings, building a trusting relationship between a client and a law student recognizes the fact that advocating effectively for a client may not always involve an adversarial, court-centered litigation strategy. In fact, any form of litigation may not be the best way for the client to achieve her goals. Encouraging a client to speak as freely as possible about the past trauma, as well as her current experiences, can lead both parties to exchange important information so that they can most productively discuss the next steps to take in a client's case. Students will also be able to more effectively prepare for hearings if they are trained in trauma-informed lawyering. Once students understand which types of events can trigger the trauma of a client, they can work to lessen that potential.<sup>105</sup>

Additionally, teaching trauma-informed lawyering will also cause students to more effectively tackle clients' trauma-related problems. For example, in family law cases, two of the most significant problems with the domestic violence survivor client population are mental health issues, often caused or exacerbated by the trauma and more recent trauma-related triggers, and substance abuse, which may also be cause or heightened by a traumatic situation. A crucial aspect of trauma-informed legal practice is recognizing the limits of lawyers' professional role, and knowing when to help the client seek behavioral health supports. Particularly for law students who are in the midst of

<sup>105</sup> See Parker, *supra* note 2, at 177-178 (discussing the importance of credible testimony in political asylum cases, where a traumatized client may have difficult expressing emotion).

cultivating their professional identities, and are still developing their competency at lawyering skills, it is important to underscore their professional boundaries.

An additional important aspect of clinical pedagogy is the importance of teaching students how to integrate being lawyers with the rest of their lives as they move forward as practicing attorneys. Recent research indicates that attorneys exhibited a higher level of vicarious traumatization compared to mental health professionals, at least in part because they felt that they had not received systemic education regarding the effects of trauma in their clients and themselves.<sup>106</sup> If explicitly taught trauma-informed lawyering, law clinic students will be more effectively prepared to handle their own feelings upon hearing their clients' traumatic stories, and will as a result suffer less from vicarious trauma and burnout.<sup>107</sup> Teaching trauma-informed lawyering in clinics creates foundations for students for positive self-care as they pursue and develop their legal careers.

### III. THE PEDAGOGY OF TRAUMA-INFORMED LAWYERING: HOW TO TEACH TRAUMA-INFORMED LAWYERING IN LAW CLINICS

While acknowledging that teaching trauma-informed practice is an important goal, clinical law professors may struggle with how to integrate it into their clinics. This section will first describe four key hallmarks of trauma-informed lawyering: (1) identifying trauma; (2) adjusting the attorney-client relationship; (3) adapting litigation strategy; and (4) preventing vicarious trauma. The following section will give concrete examples of how to teach these hallmarks in law clinics.

#### A. *The Hallmarks of Trauma-Informed Lawyering*

The authors have identified four teaching goals that we believe are the key hallmarks of trauma-informed lawyering:

*Identifying Trauma.* Simply learning to identify trauma can go a long way in making an attorney more effective. Arguably, an attorney's ability to communicate with clients and develop a relationship of trust with clients is critical to attorney competence.<sup>108</sup> An attorney need not be a mental health expert to recognize that what the client is describing, or behavior the client in exhibiting, is indicative of trauma. Unless the law student has a previous professional background in

<sup>106</sup> See, e.g., Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245, 252 (2003).

<sup>107</sup> *Id.* at 251-252.

<sup>108</sup> Fines & Madsen, *supra* note 62.

trauma-related practice, law students tend not to be particularly aware of how trauma is defined or presents. A client who has experienced trauma needs to be able to feel safe in the attorney-client relationship, and an attorney who can be both affirming and empathetic to the client will help create that feeling of safety.

*Adjusting Attorney-Client Relationship.* Once an attorney has recognized that a client has experience with trauma, the attorney can adjust the attorney-client relationship accordingly. Trauma may affect the attorney's ability to get the whole story, and law students need training in these techniques. Because trauma manifests differently in different people, the attorney should be versed in a variety of strategies to work with the client. For example, the client may be very withdrawn, and the attorney will need to help the client gain a sense of trust and safety in order to get necessary information to prepare the case.<sup>109</sup> Another client might be highly emotional, flooding the attorney with a lot of information; the attorney will need to employ strategies to focus the client on key facts pertinent to the representation.<sup>110</sup> Another client may be angry or suspicious, and the attorney will need to put continued focus on transparency and trust.<sup>111</sup> Cultivating these strategies will make the attorney more effective in developing a relationship with clients and handling their cases.

*Adapting Litigation Strategy.* The client's trauma experience may also change the attorney's litigation strategy in a variety of ways. Court can be overwhelming or frightening to many clients, but a client with a trauma history may have a particularly difficult time coping.<sup>112</sup> Law students need to be introduced to these topics to effectively prepare their clients. To the extent the client needs to testify about the traumatic events, the client may have difficulty telling the story consistently and credibly. The attorney can help the client by making the situation as predictable as possible by de-sensitizing the client by rehearsing.<sup>113</sup> The attorney may make certain adaptations for the client, like making a plan to take a break if the testimony becomes too trying, or enlisting the support of a mental health provider or other support person in preparing for or attending court.<sup>114</sup> Finally, the

<sup>109</sup> Judy I. Eidelson, *Representing Traumatized Clients*, Phila. Bar Assoc. Family Law Section, Nov. 4, 2013.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> See generally Ann E. Freedman, *Fact-Finding in Civil Domestic Violence Cases: Secondary Traumatic Stress & the Need for Compassionate Witnesses*, 11 AM. U.J. GENDER SOC. POL'Y & L. 567 (2003).

<sup>113</sup> Eidelson, *supra* note 109, at slide 13.

<sup>114</sup> *Id.*

attorney may need to give extra thought to how the client will be able to testify about the traumatic experiences in court.<sup>115</sup> By employing these strategies, the attorney may make court more palatable for the client and simultaneously more successfully advocate for the client's position.

*Preventing Vicarious Trauma.* Attorneys working with clients who have experienced severe trauma can also take preventive measures to avoid vicarious trauma. The risks of vicarious trauma for attorneys working with survivors of trauma may be even higher than those in other helping professions, because those in the legal profession tend to have higher caseloads,<sup>116</sup> and to not be trained in the dynamics of trauma.<sup>117</sup> Particularly in a high volume practice, with limited resources, attorneys are at a high risk of developing clinically significant symptoms of vicarious trauma.<sup>118</sup> Although it is unlikely that law students in a clinic practice setting will develop vicarious trauma, it is important that they become aware of the risks and prevention measures at the start of their practice experience. One of the most important preventive measures for attorneys is to diversify and manage case load, so that the attorney has the opportunity to work with trauma survivors as well as clients who have not experienced severe trauma, and so the attorney does not become overwhelmed with too many cases.<sup>119</sup> Further, attorneys can create a workplace culture that acknowledges the potential for vicarious trauma. This can include creating spaces for supervision and peer support, and encouraging open communication about the effect of the work.<sup>120</sup>

#### *B. Incorporating the Hallmarks of Trauma-Informed Lawyering as Teaching Goals*

This next section will give concrete examples of how to achieve the teaching goals of (1) identifying trauma; (2) adjusting the attorney-client relationship; (3) adapting litigation strategy; and (4) preventing vicarious trauma.

Consider the examples of the clients Victoria and Jane, from the perspective of the clinical professor. The law students who worked

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<sup>115</sup> *Id.*

<sup>116</sup> Levin, *supra* note 106.

<sup>117</sup> Fines & Madsen, *supra* note 62, at 992. See also Yael Fischman, *Secondary trauma in the legal professions, a clinical perspective*, 18 TORTURE 107 (2008).

<sup>118</sup> Andrew P. Levin et al., *Secondary Traumatic Stress in Attorneys and their Administrative Support Staff Working With Trauma-Exposed Clients*, 199 J. OF NERVOUS & MENTAL DISEASE 946, 953 (2011).

<sup>119</sup> Fines & Madsen, *supra* note 62, at 993.

<sup>120</sup> *Id.* at 994.

with Victoria and Jane had been introduced to the concepts of trauma-informed practice in clinical seminar. The clinical professor had informed the students at orientation that learning to identify trauma, understand the effect of trauma on clients' behavior, and alter the attorney-client relationship and litigation strategy accordingly, were part of the teaching goals for the clinic. The clinical professor brought in an outside speaker to talk to the class about the dynamics of intimate partner violence, and also brought in a psychologist to discuss the impact of trauma on the brain, and how it may manifest. The clinical professor reinforced these lessons through reflection exercises such as case rounds, journaling, supervision and evaluation. And finally, the clinical professor introduced the concept of vicarious trauma, and educated the law students on how to prevent it, by focusing on creating confidential space to talk about the effect the work and clients had on the students, as well as underscoring the importance of good self care. By incorporating these teaching methods into the clinic, the professor created an environment where clients like Victoria and Jane can feel supported and empowered through the experience of representation by the clinic, and the law students are prepared to be excellent advocates on their behalf.

### 1. *Identifying Trauma*

To teach law students to identify trauma, the students must learn the definition of trauma and why it is relevant to the practice area in the clinic. Law students may incorrectly assume that in teaching about trauma, we are asking them to step outside the bounds of their role as attorney; in contrast, the purpose is to enhance their capacity to build an effective attorney-client relationship.<sup>121</sup> In the context of family law clinics, whether the clinic has a specific domestic violence focus or not, identifying trauma can be introduced by contextualizing what we know about the population that relies on family courts to resolve disputes, specifically that there is a high prevalence of family violence.<sup>122</sup> In other clinical settings, there may be other common types of trauma with which clients present; for example in an immigration clinic, there may be high rates of clients who witnessed family members or other individuals be harmed in tragic ways. In a child or family advocacy clinic, there may be many clients who have experienced severe child abuse or neglect.

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<sup>121</sup> Parker, *supra* note 2, at 169.

<sup>122</sup> Janet Johnson et al., *supra* note 22. The link between child custody decisions and domestic violence is one that has been acknowledged by state legislatures and courts. See Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1062 (1991).

It is important to help the students shape what is meant when we refer to trauma. The word “trauma” is tossed around a lot (“*My favorite tv show is on summer hiatus and I am SO traumatized!*”; “*My child was lost in the department store for 10 minutes and I was so traumatized!*”). Although trauma is subjective to a specific individual’s ability to cope, not every bad experience is a traumatic one. And not every client who has experienced trauma carries a diagnosis of post-traumatic stress disorder. Further, in teaching about trauma, there is a risk that students will essentialize clients’ experiences, assuming they all share common histories or characteristics. By focusing on the particular commonalities and needs of the population served by the clinic, the professor can guide students toward being alert to relevant information in the client’s history and/or experience which may have an effect on the nature of the representation.

To teach students to identify trauma, the professor may elect to bring in a psychiatrist or psychologist to class, who can speak about how trauma presents and how it affects the brain. With some research and preparation, the clinical professor may also elect to teach this information on her own. The outside speaker or the professor can also focus on some of the common ways trauma presents in the population served by the clinic, and suggest or model strategies for working with these types of clients. For some clients the content of the representation will be specific to the trauma experience, such as representation in a protection order matter regarding abuse perpetrated by the opposing party, or representation in a custody matter about child abuse perpetrated by the opposing party. There are also times where the student may have to deduce that a backdrop of trauma is affecting the client’s demeanor or ability to relate to the student, such as representation in a child welfare case concerning allegations of mother’s mental health issues. With a basic understanding of how trauma may present, the student can develop greater sensitivity toward the client, and be alert to (sometimes subtle) indications that the client has experienced trauma.

Frequently, students have preconceived notions about how a survivor will present; the student expects the client to be forthcoming and compliant in relaying her story. An effective way to teach law students to identify trauma is to incorporate this learning goal into exercises focused on learning interviewing skills. For example toward the beginning of the semester, the authors utilize Laurie Shanks’ storytelling exercise to teach students about how difficult it sometimes is for clients to share intimate details of their lives.<sup>123</sup> In this exercise, students

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<sup>123</sup> Laurie Shanks, *Whose Story is it, Anyway? – Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 CLIN. L. REV. 509, 516-517 (2008).



are paired in class and then asked to tell a story to each other about something that changed their life; the other student is then charged with telling her partner's story to the rest of the class, and a discussion ensues about the challenges and obstacles of telling someone else's narrative.<sup>124</sup> Although not specifically a trauma-related exercise, it can create a forum to underscore some of the barriers to effective fact gathering with clients who have experienced trauma. As Psychologist Judy Eidelson has hypothesized, some of these internal barriers for the interviewer may include fear of what we might have to hear, fear of not knowing how to respond, fear of losing composure, our own moral judgments, and idealization of the trauma survivor followed by disillusionment.<sup>125</sup>

The law student should ensure that her representation creates no additional harm.<sup>126</sup> Clients' trauma history may affect representation by making it difficult to get the whole story (because of avoidance) and to get a consistent story (traumatic memories get stored in the brain in disconnected ways).<sup>127</sup> In addition to disruptions to the client's memory of the relevant events, the client may experience shame, hopelessness, traumatic flashbacks and/or distrust in being asked about the traumatic events.<sup>128</sup> Because trauma presents differently, it is helpful to make students aware that it is quite common for a trauma survivor to present as withdrawn and with flat emotion, *or* to flood with an overload of information, *or* to be angry and/or suspicious.<sup>129</sup> Through hypotheticals or role plays, the professor can brainstorm with the students effective strategies for working with each type of client. For example, with the withdrawn client, the client may feel more in control of the interview if the law student affirms how difficult it is to share the information.<sup>130</sup> With the flooding client, it can be valuable to be upfront and transparent about the goals and focus of the interview.<sup>131</sup> With the angry or suspicious client, it can be beneficial to validate the client's frustration while not getting defensive.<sup>132</sup>

All of the above teaching strategies can be reinforced throughout the students' work in the clinic through supervision and reflection. The student may need help or feedback around why a particular client interview did not go as smoothly as planned, or assistance with

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<sup>124</sup> *Id.* at 518-526.

<sup>125</sup> Eidelson, *supra* note 109.

<sup>126</sup> SEIGHMAN ET AL., *supra* note 63, at 5., at 5.

<sup>127</sup> Eidelson, *supra* note 109, at slide 3.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at slides 6-11.

<sup>130</sup> *Id.* at slide 7.

<sup>131</sup> *Id.* at slide 9.

<sup>132</sup> *Id.* at slide 10.

strategizing how to most effectively handle a particularly challenging client interview. Not every student will immediately draw the connection between the lessons learned about trauma in class and a client's particular behavior. For example, the student may feel frustrated by a client's repeated cancellation of appointments, or unwillingness to talk about key events in her history. By introducing trauma-informed practice early, the clinical professor can redirect the student to these lessons. In the authors' clinics, we frequently revisit how a client's trauma history may be affecting the law student-client relationship through supervision and case rounds.

## 2. *Adjusting the Attorney Client Relationship*

Once students learn to identify trauma in their clients, the next step is to enable the student to make adjustments to their strategy for building an attorney-client relationship. As mentioned above, an outside speaker or the clinical professor can teach students about how trauma or indicators of trauma may manifest in clients. In the family law context, both Professor Katz and Professor Haldar bring in outside speakers from a local domestic violence agency, who can talk about the dynamics of domestic violence. These speakers introduce the students to basic concepts like the idea that domestic violence is about power and control,<sup>133</sup> and that there is a cycle of abuse.<sup>134</sup> Without this backdrop, it can be hard for students to understand why their clients behave in certain ways: *Why did she decide to drop this protection order?*<sup>135</sup> *Why didn't she show up to court, I thought this case was important to her!*<sup>136</sup>

Once students are informed about the effects their clients' trauma experience may have on the client's behavior, the clinical professor can help the students develop strategies for working with these clients. Such strategies can be integrated into lessons on client counseling through hypotheticals or simulations, as well as addressed through supervision and reflection. Because trauma presents differently in different clients, students need to be versed in a wide array of strategies. Students should learn that working with clients with trauma experience requires investing extra time in the attorney-client relationship, perhaps scheduling more in-person meetings than might otherwise be usual practice, and being particularly patient and consistent with the

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<sup>133</sup> See generally LENORE E. WALKER, *THE BATTERED WOMAN* (1979).

<sup>134</sup> *Id.*

<sup>135</sup> James C. Roberts, Loreen Wolfer & Marie Mele, *Why Victims of Intimate Partner Violence Withdraw Protection Orders*, 23 J. FAM. VIOL. 369 (2008).

<sup>136</sup> Avoidance or withdrawal are common ways for clients' trauma to manifest. See Eidelson, *supra* note 109, at slides 6-7.

client. Student can also help the client identify and acknowledge how the trauma experience impacts their interactions with their law student, the opposing party or the judge. Transparently engaging the client in developing solutions can be empowering to the client and lays a strong foundation for a meaningful attorney-client relationship.<sup>137</sup> The student can also become versed in contemplating non-legal solutions with the client, such as referrals to trauma-informed therapy, connections to other social services or supports, or reliance on trusted family or friends.

Clinical professors should be aware that students, just like clients, may also present with their own trauma history. Working with particular clients may present triggers for certain students. While this will be addressed further in the discussion of vicarious trauma in Section III. B. 4., *infra*, the clinical professor can help students be mindful that the experience of listening to someone else's trauma history is not neutral. The students can be encouraged to be reflective with regard to their own reactions and responses to clients.

### 3. *Adapting Litigation Strategy*

Preparing a client with trauma experience for court requires particularized strategies which law students can learn through a clinic. The experience of going to court in and of itself can be re-traumatizing, particularly because the trier of fact may not know the client has a trauma history, or may not be aware of how trauma presents. To the extent that the client may have to testify about the traumatic events, many triers of fact might assume that if something really horrible happened that the client will be able to testify about it with great specificity.<sup>138</sup> In contrast, clients with trauma experience can make terrible witnesses for a variety of reasons.<sup>139</sup> First, because the brain stores memories in mismatched ways, the client may be unable to present a linear narrative.<sup>140</sup> Second, the client may not remember key elements of what occurred; while this may make a trier of fact question client's credibility, it is a normal trauma reaction.<sup>141</sup> Third, a client's emotions or lack thereof may unnerve or misguide the trier of

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<sup>137</sup> SEIGHMAN ET AL., *supra* note 63, at 7.

<sup>138</sup> Joan Meier, *Symposium: Domestic Violence, Child Custody & Child Protection: Understanding Judicial Resistance And Imagining Solutions*, 11 AM. U. J. GENDER SOC. POL'Y 657, 662 (2003) ("The failure of many courts to apply new understandings of domestic violence in cases concerning custody actually contrasts sharply with the demonstrable increases over the past ten years in judicial awareness and sensitivity to domestic violence in more standard 'domestic violence' cases, such as civil protection orders or criminal prosecutions.").

<sup>139</sup> Parker, *supra* note 2, at 171.

<sup>140</sup> Eidelson, *supra* note 109.

<sup>141</sup> Parker, *supra* note 2, at 171.

fact: the client may appear with a flat affect; or the client may want to tell the full story in a rush of hysterical emotion; or the client may appear angry (thus making her seem like the aggressor) or the client may simply disassociate and not be able to articulate what happened at all.<sup>142</sup>

Extra time spent on preparation can go a long way in making the litigation process palatable for clients with trauma experience. The student can spend extra time preparing the client for what to expect in the courtroom, reviewing details as mundane as where everyone will sit or stand, to what types of questions will be asked. The more the experience of court can become normalized and predictable for a client, the more likely they will be able to cope. In addition, because constantly re-telling the story of the traumatic events can be re-traumatizing for the client, dividing the preparation into shorter sessions can help minimize the risk of re-traumatization.<sup>143</sup>

Students can utilize extra preparation time to work on mental safety-planning with the client. For example, the student can work with the client around how they will handle being asked difficult questions, or where to focus their energy when the opposing party is talking. The student and client can set up a safety signal, whereby the student can ask for a break in the testimony should it become too overwhelming for the client. Allowing the client to be an active participant in planning for how to handle going to court can help empower the client and normalize the experience of the court hearing.

The student can spend extra time preparing the client for the worst possible case outcomes (e.g. *The worst thing that may happen is that the judge grants his petition for shared custody*). Being able to visualize the possible results will help normalize the experience of court.

Finally, although difficult, students can seek to educate the trier of fact about dynamics of trauma through the litigation process. Some resources exist for training judges in a more systemic manner.<sup>144</sup>

#### 4. Preventing Vicarious Trauma

Perhaps the most crucial aspect of the pedagogy of teaching trauma-informed lawyering in law clinics, and certainly the aspect that students have the greatest need to carry forward with them in their legal practice, is the awareness of vicarious trauma and the need

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<sup>142</sup> Eidelson, *supra* note 109. One client in Professor Katz's clinic, after repeated questioning in court about the history of intimate partner violence between the parties simply blurted out "he has a hand problem!" (meaning 'he puts his hands on me').

<sup>143</sup> Parker, *supra* note 2, at 176.

<sup>144</sup> SAMSHA, *supra* note 8.

to take preventive measures against its effects. While students may not be likely to experience vicarious trauma in their clinical work, it is important that they learn about the risks, and are able to implement preventive measures starting with their clinical legal work. Preventive measures can be implemented in a number of ways. First, in the authors' clinical courses, the possibility and effects of vicarious trauma are explicitly taught and the authors are each transparent with their students about the preventive measures that are being implemented. When new students begin, as mentioned previously, a psychologist speaks with the students about the effects of trauma on clients, but also discusses the issue of vicarious trauma and how to identify vicarious trauma symptoms and also to protect oneself against vicarious trauma. Students read material about the effects of trauma and the effects of vicarious trauma on professionals who work with trauma survivors, and discuss the effects of vicarious trauma in class.<sup>145</sup>

It is also possible and crucial to consider vicarious trauma when structuring clinical courses. One of the best ways to prevent vicarious trauma is balance and limit caseloads.<sup>146</sup> For example, cases should be distributed among students such that the cases involving clients with significant trauma histories are evenly distributed among the students. In Professor Haldar's clinic, where students handle both Protection From Abuse and custody cases, students are assigned both kinds of cases to increase the chance that each student will have at least a few clients who have not recently experienced traumatic events. Thus, every effort is made to ensure that no one student will have only clients who have recent trauma histories, and this balance is a significant factor to protect against vicarious traumatization.

Another recognized prevention technique is to create safe space for practitioners to talk about the effects of working with their clients with trauma histories on a regular basis.<sup>147</sup> In a law school clinic, this can be accomplished through supervision and reflection, and through effective use of case rounds. Both Professor Haldar and Professor Katz ask students to reflect upon vicarious trauma-related topics specifically in their journal assignments. The journal entries call for students to think specifically about whether and how they are being

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<sup>145</sup> In addition to journal assignments, sample assignments might include role playing a client interview session when a client discusses a traumatic past event or reading articles about the effects of vicarious trauma in the therapy context and discussing in class the similarities and differences in the legal context.

<sup>146</sup> T. Bober and C.D. Regehr, *Strategies for Reducing Secondary or Vicarious Trauma: Do They Work?*, 6 BRIEF TREATMENT AND CRISIS INTERVENTION 1-9, 7 available at <http://dx.doi.org/10.1093/brief-treatment/mhj001> (last viewed Dec. 20, 2015).

<sup>147</sup> Barbara Dane, *Child Welfare Workers: An Innovative Approach for Interacting with Secondary Trauma*, 36 (1) J. OF SOC. WORK EDUC., 27, 34-35 (2000).

affected by their clients' trauma histories, and whether they are experiencing vicarious trauma symptoms.

In clinics, students should be taught explicit strategies to prevent vicarious trauma that they can carry forward with them into their legal practices. One very effective way to teach students about preventing vicarious trauma is to encourage good self-care and model good self-care. Self-care, in the sense of setting appropriate boundaries between the advocate and the client, is recognized to be a protective factor against vicarious trauma.<sup>148</sup> Sandra Bloom divides self-care into several components: personal physical; personal psychological; personal social; personal moral; professional; organizational/work setting; societal.<sup>149</sup> In the beginning of the semester, along with a discussion of vicarious trauma, clinical professors may choose to encourage their students to develop their own self-care plans, incorporating all of the different components of self-care. In case rounds and supervision, students and the professor can refer back to these self-care plans as needed, especially when working with clients with trauma histories.

Clinical professors may also find it helpful to themselves model good self-care techniques for students. For instance, professors can be transparent about making sure they themselves get to exercise regularly, or about using mental health counseling if needed. Specific discussion of mental health services, and of their availability, may also help students to avoid the effects of vicarious trauma, as knowledge of mental health services is a protective factor.<sup>150</sup>

Although not strictly vicarious trauma, it is also important to note here that students often come to our clinics with their own trauma histories; in fact, it is often a student's own trauma history which motivates them to enroll in the clinic to assist clients with similar issues. Of course, working with clients with trauma histories can be triggering for students with their own trauma histories. A crucial aspect of the

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<sup>148</sup> Prof. Katz gives the following prompt: *Vicarious trauma, also sometimes called compassion fatigue or secondary trauma, is a term for the effect that working with survivors of trauma may have on counselors, therapists, doctors, lawyers and others who directly help them. Vicarious traumatization refers to harmful changes that occur in professionals' views of themselves, others, and the world, as a result of exposure to the graphic and/or traumatic experiences of their clients. Vicarious trauma occurs in someone who is not the primary person experiencing the trauma. Vicarious trauma happens when a secondary person is exposed to the original victim or offender, likely in the course of their profession.*

*In the practice of family law, our clients share some of the most painful and intimate details of their lives. Please use this journal entry to reflect on how you manage your reactions to these stories, and coping mechanisms you are developing to maintain balance as you move through this work.*

<sup>149</sup> Sandra L. Bloom, *Caring for the Caregiver: Avoiding and Treating Vicarious Traumatization*, in *SEXUAL ASSAULT: VICTIMIZATION ACROSS THE LIFESPAN – A CLINICAL GUIDE* 459, 466-467 (A.P. Giardino, E. M. Datner, and J.B. Asher eds.) (2003).

<sup>150</sup> Parker, *supra* note 2, at 178, 198.

pedagogy of trauma-informed lawyering consists of acknowledging for law students that they may have their own trauma histories that have an effect on them as they proceed in their legal careers, particularly in working with clients with trauma histories. It is important to create a space for students to talk about and/or reflect on their own trauma experience as needed, as they proceed in working with clients with trauma histories.

#### CONCLUSION

As this article explains, teaching trauma-informed lawyering is a critical aspect of law students' education in the clinical legal educational setting, particularly in clinics which focus on practice areas where clients' trauma experiences are the direct subject of the representation. This article is not meant to be an exhaustive treatise on how to teach these subjects in law school clinics. Rather the message is simple: a little knowledge about trauma goes a long way in helping students adjust their practice skills to competently and zealously represent clients who have experienced trauma. By implementing the four hallmark teaching goals of trauma-informed lawyering, clinical law professors can not only enhance the advocacy of their students while in the clinic, but also convey lasting skills which will set their students on the path to being excellent lawyers throughout their careers.

## Creating Accessible, Culturally Relevant, Domestic Violence- and Trauma-Informed Agencies

### A Self-Reflection Tool

This tool reflects the work of the Accessing Safety and Recovery Initiative (ASRI), OVW Ending Violence Against and Abuse of Women with Disabilities Grant 2007-FW-AX-K004. That project brought together six Illinois pilot site agencies to collaborate in addressing the ways in which their agencies were providing accessible, culturally relevant, domestic violence- and trauma-informed (ACDVTI) advocacy and services to survivors of domestic violence who were experiencing the mental health effects of trauma and/or psychiatric disability. The pilot agencies included domestic violence programs, community mental health agencies, and state psychiatric hospitals. These agencies—and their counterparts across the country—work every day to provide advocacy, mental health, and other services to survivors of domestic violence, even as they themselves must manage with shrinking resources and growing demands. This tool was developed to support agencies in creating ACDVTI services and organizations, while keeping in mind that limitations on funding and resources may create obstacles to doing our best work. This tool also incorporates an understanding that agencies have different strengths and challenges, and that creating ACDVTI agencies is a constant learning process with no single end-point. We hope that this tool will be helpful to agencies at many different points along this path.

The tool has seven sections, which can be completed in any order. They include the following:

- Organizational Commitment
- Physical and Sensory Environment
- Intake and Assessment
- Program and Services
- Staff Support
- External Relationships
- Evaluation and Feedback

For each section, the agency engaging in this self-reflective process will be invited to think about **some of the ways it might look to be doing ACDVTI work in these areas**. You may find that you are already doing some of the things listed or that you are doing similar things. You may find that some of the concepts are new to you (and for those concepts in particular, you may decide to contact other organizations for assistance). Keep in mind that this tool is not a blueprint: although there are many common elements, ACDVTI work looks different at each agency.



## **How to Use this Tool**

This tool is best used as part of a larger effort to build agency capacity to enhance ACDVTI work and improve services to survivors. This may be a process that you have already started, or you may be starting with this tool. The pilot agencies that participated in ASRI received ongoing training and technical assistance from six agencies with expertise in one or more of these areas. Agencies using this tool are strongly encouraged to connect with others who can provide support and assistance during this process.

A self-reflective process involves individual staff members, agency leadership, and the agency as a whole. As you begin this journey, take the time to consider the unique needs of your agency. This work proceeds best in a safe context, one in which staff members feel safe to learn, grow, and contribute. Design a process for approaching this work that will include many points of view. After deciding on a process for this work, your agency can work through the discussions and decisions at your own pace. Take breaks as needed to seek additional resources, be responsive to the needs and multiple priorities of staff members, and reevaluate the process itself.

## **Before You Get Started**

Before embarking on a self-reflection process, consider whether this is the right time for your agency to take this step and what you may need to have in place before starting this process. Throughout every step of this process, agencies are strongly encouraged to hold open discussions with staff members. The following steps are recommended.

### **1. Is your agency ready to begin a self-reflective process?**

Hold an initial discussion or series of discussions on whether this is the right time to begin a self-reflection process at your agency. You might ask these questions:

- a. What will it take to engage in this process (e.g., time, resources, commitments from staff members)?
- b. What are the benefits of using this process (e.g., the process is inclusive and comprehensive, the process will allow the agency to examine its strengths while identifying opportunities to improve services)?
- c. What challenges might come up for us during this process (e.g., staff time might be diverted away from another project)?
- d. What are the alternatives (e.g., more self-education or preliminary training on these topics)?
- e. If we did begin this process, what would we need to do before or during the process to make it work well (e.g., explain the process to all staff, take breaks as needed)?

## 2. What process will you use for your self-reflection work?

If you determine that this is the right time for your agency to start the self-reflection process, you might hold a second discussion or series of discussions to determine what process you will use. You might ask these questions:

- a. What are our goals in embarking on this process?
- b. What challenges might come up during this process? How will we respond?
- c. What logistical process will we use for working through this tool (e.g., send questions to staff members by email and then meet to share responses)? Who will lead the process? Who will be involved?
- d. What kind of outside expertise do we need? Who can we involve in this process and how?
- e. How will we make sure that the process is safe and inclusive for staff members? What challenges might come up here? How will we respond?
- f. How will we approach the tool itself? In what order will we complete the sections? Is there an area that we will focus on first (e.g., the area in which our agency is the strongest)?
- g. How will we evaluate the process as it proceeds (e.g., during regular meetings we will check in with our goals, discuss how the process is affecting staff members, and whether a change or break is needed)?

You are encouraged to take as much time as needed to hold these initial discussions. You may decide to memorialize any consensus and share this documentation with all staff members.

### **Focus Area 1: Organizational Commitment**

What are some of the ways that an agency might show its commitment to ACDVTI work in its mission statement and written policies and procedures, in its staffing decisions and training, and in its evaluation procedures?

#### **Mission Statement and Written Policies**

- The agency's mission statement and/or written policies and procedures include an express commitment to providing culturally relevant, domestic violence- and trauma-informed services.
- The agency's mission statement and/or written policies and procedures include a written commitment to serving people regardless of ethnicity, disability, language, sexual orientation, gender identity, culture, or immigration status.
- The agency's written policies incorporate an understanding of the dynamics of domestic violence and attend to issues of domestic violence-related safety and confidentiality.
- The agency's written policies incorporate a recognition of the pervasiveness of trauma in the lives of people receiving services and express a commitment to reducing retraumatization and promoting healing and recovery.

### **Human Resources Policies and Practices**

- The agency hires and retains staff members who reflect the diversity of the population being served.
- The agency hires and retains staff members who demonstrate cultural competency/cultural humility.
- The agency hires and retains staff members who are knowledgeable about and skilled at working with survivors of domestic violence and other trauma.
- The agency hires and retains staff members who demonstrate a respectful, empowering approach to working with clients.

### **Training Policies and Practices**

- The agency provides training on providing services that are accessible and culture-, domestic violence-, and trauma-informed, both during new staff orientation and during ongoing in-service trainings/staff trainings.

### ***Ask Yourself***

- How does my agency show its commitment to these principles?
- What steps could we take to make real improvements, taking into account any obstacles?

### ***What do people receiving services have to say?***

#### **Evaluation of Services Provided**

- The agency has mechanisms in place to obtain regular input and feedback regarding the agency's sensitivity to culture, DV, and trauma from people receiving services, and to incorporate this input and feedback into the development of policies and practices of the agency.
- The agency has mechanisms in place to ensure that the communities being served are involved in decisionmaking about the services and policies at the agency.

## **Focus Area 2: Physical and Sensory Environment**

Is the agency's physical and sensory environment welcoming, accessible, inclusive, non-stigmatizing, non-triggering, non-retraumatizing, and physically safe for people receiving services and staff members?

### **Think about: Culture**

- The agency is physically accessible to everyone.
- The agency's materials, décor, reading material, and other physical aspects of the environment reflect the diversity of the people being served.
- The agency has policies and procedures for obtaining input from people receiving services with regard to the accessibility, inclusiveness, cultural relevancy, and physical and emotional safety of the environment.

### ***Does the space feel welcoming and inclusive? Is it a safe space?***

- The agency makes non-graphically triggering **posters** with information about domestic violence and trauma resources visually accessible to people receiving services.

- The agency has policies and procedures for obtaining **input and feedback** from people receiving services with regard to physical and emotional safety of the environment.

### **Think about: Domestic Violence**

The agency has written policies and procedures in place to provide for the safety of staff and of people being served by the agency, and these policies and procedures reflect an understanding of domestic violence. Furthermore, staff members are sufficiently trained on, understand, and adhere to these policies and procedures. These include the following:

- Policies and procedures for physical safety in the building, grounds, and parking areas of the agency
- Policies and procedures for gaining access to the facility
- Policies and procedures for physical and emotional safety and confidentiality in the context of telephone, email, and social network communication
- Workplace safety protocol that include protocols contained in the Illinois Victims' Economic Security and Safety Act (VESSA) or your state's equivalent
- Policies and procedures to ensure physical and emotional safety when more than one member of a family or couple is receiving services at the agency

## Think about: Trauma

*Is the physical and sensory space non-triggering and non-retraumatizing?*

- Consideration is given to the impact of the physical and sensory environment on both people receiving services and staff members.
- Staff members are trained to attend to aspects of the physical and sensory environment that may be triggering to people receiving services.
- Staff members work with people receiving services on developing strategies to deal with potentially triggering aspects of the environment.
- The agency provides physical space that a person receiving services can use to practice self-care and self-soothing. Staff members encourage people to use spaces set aside for self-care and self-soothing, as appropriate.
- If applicable, the agency has mechanisms in place to address gender-related physical and emotional safety concerns (e.g., physical separation of sleeping quarters, gender-specific spaces and activities, and staff assignments that incorporate gender-related emotional safety concerns).
- If applicable, staff members are trained on the traumatizing effects of restraint and seclusion and on trauma-informed crisis prevention and intervention alternatives.
- The agency has policies and procedures for obtaining input from people receiving services with regard to emotional safety and potentially retraumatizing elements of the environment.

## *Ask Yourself*

- What is the physical and sensory space like at my agency?

### ***Ask Yourself***

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- What does my agency do well to make sure that the space is welcoming, inclusive, and accessible to people receiving services and staff members?
- What does my agency do well to reduce or minimize potential triggers?

### ***Ask Yourself***

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- What can we improve?
- What are the first steps? What supports and resources does my agency need to take those first steps?

### **Focus Area 3: Intake and Assessment**

Are questions about current and past domestic violence and other lifetime trauma and ongoing physical and emotional safety incorporated into agency intakes and assessments in sensitive and culturally relevant ways?

#### **Think about: Culture**

- Optional questions about individual cultural, ethnic, racial, and gender identity; sexual orientation; and primary language are included in intake and assessment procedures. People receiving services are free to decide whether and how they want to respond.
- Questions asked during intake and assessment take into account the role of culture, religion, and spirituality in clients' lives.
- Staff members are trained to ask questions in ways that are inclusive, non-stigmatizing, and reflect principles of cultural humility.
- People receiving services are not automatically assigned to staff members from their own cultural, ethnic, racial or language group.

#### **Think about: Domestic Violence**

*Does my agency ask questions about safety at home?  
Does the staff know how to respond if someone discloses abuse?*

#### **The agency's intake and assessment process includes questions about**

- Immediate and long-term safety concerns
- Current and past experiences of DV and other lifetime trauma
- The history, pattern, and impact of DV on survivors and their children
- Abusers' use of mental health or substance abuse conditions as part of abuse and control
- The impact of DV and other trauma on survivors' mental health and substance use, and on their ability to access recovery services and mental health treatment
- Whether survivors' current reasons for seeking services are related to abuse
- Survivors' coping strategies, strengths, and supports
- Obstacles and barriers to safety
- Survivors' perceptions, priorities, and goals

#### ***After the intake stage...***

- The agency takes care to provide **many safe opportunities** for a person receiving services to disclose current and past abuse and safety concerns.
- Staff members are trained to and do **respond appropriately** when a person receiving services discloses current or past abuse or safety concerns during intake and assessment or at any time while they are receiving services.

## Think about: Trauma

- Questions about previous traumatic experiences and their impact on individuals receiving services are incorporated, as appropriate, into intake and assessment procedures (e.g., more in-depth assessment should occur in the context of an ongoing therapeutic relationship).
  - For DV agencies, this may include asking how a person feels that they have been affected by trauma.
  - For mental health agencies, this may include incorporating recognition of the impact of trauma into mental health assessments and diagnoses.
- Staff members are trained to and do ask questions about trauma in ways that are empathetic and trauma informed.
- Staff members are trained to and do work with people receiving services to engage in **emotional safety planning** during intake and assessment.

### Ask Yourself

- What is my agency doing well? How do we know?
- What can we improve? What are the first steps?



## **Focus 4: Program/Services**

### **Think about: Culture**

*Does the agency provide services in a way that affirms and is **inclusive of survivors' many identities** (including identities related to age, disability, language, sexual orientation, gender, culture, ethnicity, religion, and immigration status)?*

#### **Policies and Procedures**

- The agency's mission statement and/or written policies and procedures include a written commitment to serving people regardless of disability, language, sexual orientation, gender identity, culture, ethnicity, religion, and immigration status.
- The agency's policies and procedures reflect an attention to the diversity of the people receiving services.
- Services are available in the first languages of the majority of people served.
- The agency has policies and procedures for providing services for people whose first language is less common in the communities served.

#### **Training and Practice**

- The agency hires and retains staff members who reflect the diversity of the population being served.
- The agency hires and retains staff members who demonstrate respect for diversity and cultural competency/cultural humility.
- Staff members do not make assumptions about the culture, religion, gender identity, or sexual orientation of individuals being served.
- Staff members receive training and supervision on respecting diversity and on principles of cultural humility.

- In DV programs, staff members receive regular training, supervision, and consultation on working with **survivors experiencing trauma, substance abuse, and other psychiatric disabilities.**

## The agency provides staff members with training on

- Diversity and cultural humility
- How staff members' own culture, status, or background can create risk for inadvertent use of power and control
- The impact of discriminatory and stigmatizing language, practices, and biases, as well as inclusive and non-stigmatizing alternatives
- How identity, culture, and community can affect a person's experience of domestic violence and other trauma, access to supports and resources, and opportunities for safety
- How oppression can affect a person's experience of domestic violence and other trauma, access to supports and resources, and opportunities for safety (e.g., an LGBTQ survivor may face an additional burden of stigma when disclosing the abuse; a survivor who is undocumented may avoid calling the police because of the threat of deportation)
- How past experiences with other social service systems or government agencies, or with social or political oppression, may impact how individuals interact with the agencies in the present
- How positive and negative feelings can be expressed in both verbal and non-verbal ways
- How social supports are used by different individuals, cultures, and communities
- Working with survivors experiencing trauma, substance abuse, and other psychiatric disabilities (for DV programs)

## *Ask Yourself*

- Does the agency provide services in a way that affirms and is inclusive of people's many identities? What are we doing well right now?

### ***Ask Yourself***

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- What can we improve?
- What are the first steps?
- What resources do we already have that will support our efforts?
- What resources and supports do we need to support our efforts?

## Think about: Domestic Violence

*Are the agency's programs and services DV-informed?*

### The agency's **policies and procedures**

- Incorporate an understanding of the dynamics of domestic violence
- Incorporate an understanding of the ways that perpetrators use mental health and substance abuse issues to control their partners
- Attend to issues of safety and confidentiality
- Support survivor self-determination and choice

The agency's policies and procedures **provide guidance to staff members** on how to respond to survivors who are experiencing ongoing domestic violence.

At **mental health agencies**, staff members receive **training** on

- Understanding the dynamics of domestic violence
- Working with survivors to assess safety and engage in safety planning
- Providing linkages and referrals to domestic violence resources during the provision of services and/or at discharge
- Avoiding potentially harmful interventions and referrals (e.g., couples counseling, mediation, anger management, non-certified batterer intervention programs)
- The appropriate procedures for documenting domestic violence

At **DV agencies**, staff members receive **training** on

- The mental health effects of DV and other trauma
- Abuser use of mental health issues as tactics of control
- Medications and side effects
- Advocating with mental health providers and systems
- The implications of mental health and substance abuse issues for the survivor's access to legal resources

### ***Thinking about Training***

*Who receives training? How is training reinforced? How are training principles put into practice?*

### Putting it into practice at mental health agencies...

- At mental health agencies, staff members and supervisors consistently incorporate a DV-informed perspective into practice.
- At mental health agencies, staff members consistently incorporate DV-specific interventions into mental health treatment and services, as appropriate.

### ...and at DV agencies.

- At DV agencies, the provision of services reflects an understanding of the mental health effects of domestic violence.
- At DV agencies, staff members provide non-stigmatizing information to survivors about the mental health effects of domestic violence.

### *Ask Yourself*

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- In what ways are the agency's programs and services DV-informed and/or take into account the mental health effects of DV?

### *Ask Yourself*

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- What can we improve?
- What are the first steps?
- What resources do we already have that will support our efforts?
- What resources and supports do we need to support our efforts?

## Think about: Trauma

*Are the agency's programs and services trauma-informed?*

### Policies and Procedures

- The agency's written mission statement and policies express a commitment to trauma-informed principles.
- The agency's policies and protocols reflect a commitment to reducing retraumatization and promoting healing and recovery.

- The agency **hires and retains** staff members who demonstrate a respectful, **empowering** approach to working with clients.
- The agency hires and retains staff members who demonstrate knowledge and understanding of trauma-informed principles.
- The agency trains staff members on the **range of "normal" trauma responses**, trauma-informed principles, and trauma-informed, recovery-oriented crisis response techniques.

- Staff members keep people receiving services **fully informed of rules**, procedures, activities, and schedules, while being mindful that people who are frightened or overwhelmed may have a hard time processing even basic information.
- Staff members offer people who are receiving services **choices** at all possible times, while acknowledging that this may be frightening or unfamiliar for some survivors of trauma.

- Staff members respond knowledgeably and empathically when a person discloses experiences of current or previous trauma, immediately **listening and offering support** in a setting of her choice (to the extent possible).
- Staff members talk with people receiving services about the range of "normal" trauma reactions and work to **minimize feelings of fear, shame, and stigma**, and to increase self-understanding.
- Staff members help people to identify **emotional triggers** that may cause them to feel overwhelmed and "out of control."
- Staff members help people to identify strategies that contribute to feeling comforted and empowered.
- Staff members help people to develop and actively use **personal safety plans** to help prevent crises.

Staff members provide tools and supports for creating physical and emotional safety when appropriate (e.g., personal space and boundaries, affirmation that safety is a right).

### ***Ask Yourself***

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- In what ways are the agency's programs and services already trauma informed?

### ***Ask Yourself***

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- What can we improve?
- What are the first steps?
- What resources do we already have that will support our efforts?
- What resources and supports do we need to support our efforts?



## **Focus Area 5: Staff Support**

Are staff members supported in their work with survivors of ongoing DV and other trauma who are from diverse cultures, abilities, orientations, etc.?

### **Policies and Procedures**

- The agency has written policies on the use of routine and regular supervision.
- The agency has written policies or commitments regarding the use of strengths-based reflective supervision techniques.
- The agency has written policies or commitments regarding vicarious trauma and staff self-care.
- Human resources policies attend to the impact of working with people who have experienced trauma (e.g., reasonable case loads, opportunities for reflection and conferring with colleagues during the work day, good mental health and alternative/well-being benefits, and personal/vacation time).

### **Training and Practice**

- Staff members receive routine and regular supervision and feel supported in the work that they do.
- Staff members and supervisors are provided with training and resources on vicarious trauma and self-care.
- Staff members and supervisors are provided with training and resources on reflective practice and supervision.
- Staff members have regular education that supports them in developing the knowledge and skills to work sensitively and effectively with survivors experiencing domestic violence, trauma, and psychiatric disabilities.
- Staff know who they can call if the issues a survivor is facing go beyond their experience and expertise.
- Staff members have regular supervision and other resources (e.g., peer support or consultation) to support them in addressing their own responses to domestic violence and trauma.
- The agency provides and encourages staff members to use onsite and offsite supports.

### ***Ask Yourself***

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- In what ways does the agency support staff members?

### ***Ask Yourself***

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- What can we do better to support staff members?

## **Focus Area 6: External Relationships and Collaboration**

Does the agency interface with other systems in ways that improve services for survivors of domestic violence with psychiatric disabilities?

### **Policies and Agreements**

- The agency has written policies or agreements (e.g., MOUs or linkage agreements) that support people in accessing resources in other systems.
  - For mental health agencies, this includes written policies or agreements with DV programs and other DV-related service providers.
  - For DV programs, this includes written policies or agreements with mental health agencies, peer support programs, and other trauma and mental health-related services.
- The agency seeks to form relationships and refer to agencies that provide accessible, culture-, DV-, and trauma-informed services.
- The agency has DV-informed policies and procedures regarding confidentiality; documentation; and sharing and releasing information, including in response to subpoenas.

***Does your agency have collaborative relationships with other agencies in the community? Do staff members know how to connect people with other resources in the community?***

### **Training and Practice**

- The agency regularly engages in cross-training, cross-consultation, cross-referral with community partners.
- Staff members are knowledgeable about the services available through other agencies in the community, including
  - Culturally specific and culturally relevant services, including LGBTQI-specific organizations
  - DV programs and other DV-related services, including domestic violence advocacy programs, safe shelter for homeless clients
  - Community mental health and peer support services and resources, including supported housing, employment, education, and benefits
- Staff members regularly make referrals as appropriate.
- When making referrals, staff members are attentive to the policies and procedures of both agencies for ensuring the safety and confidentiality of the person receiving services.
- The agency ensures that information about outside agencies and resources is readily available and accessible.

### ***Ask Yourself***

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- Does my agency interface with other systems in ways that improve services for survivors of domestic violence with psychiatric disabilities?

### ***Ask Yourself***

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- What can we do better?
- What are the first steps?

## **Focus Area 7: Evaluation/Gathering Feedback**

Does the agency have mechanisms in place for obtaining regular input and feedback from the people who are utilizing their services? Is attention to accessibility, culture, trauma, and domestic violence included in agency quality improvement mechanisms?

### ***What do you ask?***

The agency solicits **input and feedback** from people who received services on

- Whether they felt treated with dignity and respect
- Whether services were culturally relevant
- Whether the physical and sensory environment felt welcoming
- Whether they felt informed about staff expectations
- Whether they had access to information about DV and trauma
- Whether they found staff to be non-judgmental
- Whether they experienced relationships with staff as hierarchical or collaborative/partnering
- Whether any service interactions or experiences were retraumatizing
- Whether services were helpful in providing useful information and skills that enhanced physical and emotional safety, healing, and recovery
- Whether they have any comments or suggestions for improvement

### ***Who do you ask? How do you ask?***

- The agency has a procedure for soliciting regular input and feedback from people who received services.
- Policies and procedures are in place for including people who use services in an advisory capacity to the agency.
- People who received services are able to provide feedback anonymously and confidentially.
- Exit evaluations or equivalent methods for soliciting feedback are available in the languages used by a majority of the population served.
- The agency evaluates whether staff members feel safe and valued at the agency.
- Mechanisms are in place for staff to provide feedback on the agency's ability to provide for the physical safety of staff and people receiving services.
- The agency regularly incorporates feedback into changes and improvements.

### ***How are we doing? What can we do better?***

## *Ask Yourself*

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- What mechanisms does my agency have in place for obtaining regular input and feedback from the people who are receiving services?
  
  
  
  
  
  
  
  
  
  
- How well do those mechanisms address creating accessible, culturally relevant, DV- and trauma-informed services?
  
  
  
  
  
  
  
  
  
  
- How can my agency improve the way that we solicit input and feedback from people who have received services?

# **EXHIBIT 3 – BEST PRACTICES**

## **EXHIBIT 3 – BEST PRACTICES**

- A. Exhibit 3 Table of Contents
- B. Her Justice FAQ
- C. Best Practices and Ethical Considerations
- D. Trauma-Informed Lawyering With Your Her Justice Client
- E. Representing Domestic Violence Survivors Experiencing Trauma
- F. PIPBA Trauma Informed Lawyering Tip Sheet
- G. Tips for Working with Interpreters
- H. Grounding and De-Escalation Quick Tips
- I. PIPBA Trouble Shooting Pro Bono Relationships with Low-Income Clients



## **FREQUENTLY ASKED QUESTIONS**

Thank you for taking a pro bono case through Her Justice. We hope the following frequently asked questions will help guide your representation and troubleshoot some common challenges in pro bono work. Our manuals provide additional information and guidance specific to each type of case in our program. Of course, your mentor is always available to answer questions about legal strategy and client expectations as your case progresses.

### **1. What is my firm's relationship with Her Justice for the purpose of this matter?**

Her Justice is a consultant to the firm. We provide mentoring, training, sample documents, and will also review any written materials that you produce in the case. When we put a client on our waitlist, we explain to them that they will be represented directly by a firm, and that we will act as consultants to their lawyers. We assert attorney-client privilege over our direct communications with clients and over our communications with our pro bono teams.

We recommend that you explain this relationship to your client at your initial meeting so that they can be reminded of our relationship with the firm and understand that the firm should be their main point of contact going forward. We recommend that Her Justice be described in your retainer agreement as an outside consultant with whom you may have privileged and confidential discussions and share documents and information.

### **2. This is my first pro bono client and I don't feel like I understand their perspective on the case. What should I do?**

Our clients' culture and individual life histories influence their perspectives and priorities in making important decisions. It is possible that your client is making certain considerations in making these decisions or forming their perspective on their case that you are not aware of. This means that the perspective our client has on their case may vary significantly from you. Take this as an opportunity to explore sensitivity and cultural humility. Do not assume. Leave space for inquiry and introspection.

For more information, please see the Best Practices and Ethical Considerations section of this manual. Consult your mentor for further guidance.

### **3. What is required if my client and I do not speak the same languages?**

We are grateful to firms that take cases for clients with limited English proficiency, who are even less likely to have access to justice than our similarly situated clients with English fluency. In working with LEP clients it is paramount that you ensure they are accurately

understanding the information you are providing them with and that you are understanding the needs they are communicating to you. To do this, work with qualified interpreters. Qualified is a relative term so please consider the nature of the conversation and the language capacity of the interpreter you are working with. It is best practice to work with a qualified interpreter - any staff member that demonstrates written and spoken fluency - at your firm that can consistently interpret during all calls and communications with your client. If that is not accessible to you, think creatively about the interpretation and translation services available to you. Ask your pro bono coordinator if it is possible to retain professional interpreter services, or assist you in reviewing the internal staff language capacity. For potentially non-sensitive information it may be appropriate to have a friend or family member interpret. **It is never appropriate to have a client's child interpret. It is never appropriate to rely on Google Translate or similar multilingual neural machines translation service.**

For more information, please see the Best Practices and Ethical Considerations section of this manual. Consult your mentor for further guidance.

#### **4. What special considerations are there for working with domestic violence survivors?**

In 2024, 85% of Her Justice client self-identified as survivors of Intimate Partner Violence (IPV). Your representation may or may not be directly related to the abuse that they have experienced. Depending on your client's specific circumstances, there are multiple ways that your client's experiences as a survivor may impact your work together. It is best practice in the course of your representation to make your client's safety and autonomy paramount.

For more information, please see the Best Practices and Ethical Considerations, and What is Domestic Violence sections, and Appendix Resources of this manual. Consult your mentor for further guidance.

#### **5. What special considerations are there for working with clients with physical or cognitive disabilities?**

Your client may have a physical, developmental, or emotional disability. Their disability may be the result of the abuse they've experienced. Their disability may or may not be diagnosed and may or may not be visible or obvious to you. Talk with your client about what, if any, accommodation is needed. Check in with your client periodically about what they need in order to work most effectively with you throughout your representation, e.g., instead of handing them a written paper, ask if they are comfortable reading it to themselves or if they would like you to read it out loud to them. Be mindful of potential

obstacles like the accessibility of your building or public transportation to get to your office or a court building.

For more information, please see the Best Practices and Ethical Considerations section of this manual. Consult your mentor for further guidance.

## **6. I am having trouble getting in contact with my client. What should I do?**

We emphasize to clients that your time is valuable, and that they must be responsive to their pro bono attorney's calls, and respectful of attorney time. It is important for attorneys, however, to remember that Her Justice clients typically fall within 200% of the federal poverty line (approximately \$30,000 for a household of one), are juggling multiple urgent needs, and are prioritizing accordingly. For example, in light of food or housing insecurities, your client may choose to forego buying cell phone minutes in order to put food on the table. We understand how this choice may impact you and your ability to communicate with your client, however, we ask for your understanding and compassion. We encourage you to speak with your client during your initial call and establish a safe back-up contact in case this situation arises. Be creative in contacting your client and responsive to their needs. Explore alternatives like using work email, text messages, or mail.

For more information, please see the Best Practices and Ethical Considerations section of this manual. Consult your mentor for further guidance.

## **7. My client has been late to meetings or hasn't shown up to court or my office. What should I do?**

We emphasize to clients that they should call you if they need to change or cancel their appointment, or if they are running late. It is helpful if the pro bono attorneys understand that it is not unusual for a client to have trouble keeping an appointment. Our clients are under-resourced. They may be experiencing a more pressing crisis, like an eviction, health crisis, or safety concern. It is possible that attending an appointment may require them to take time off work, pay for round-trip transportation, and coordinate childcare which they may not have the resources to do. Your client, especially at the beginning of your relationship, may feel uncomfortable or embarrassed to share why they cannot make an appointment with you. We ask for your understanding, compassion, patience, and flexibility in this matter. Please keep in mind that the handling and outcome of the case primarily affects the client and any accommodation that can be provided is greatly appreciated.

Consider whether the firm could pay for a car service or a MetroCard for the client if transportation is a barrier to effective representation. At your first meeting with the client, ask them about their work and childcare schedules so you can select meeting dates and times that are easy to keep. For example, if your case will involve court appearances, tell

the client that they should expect to meet with you or attend court during business hours, and that they will have to ask for time off from work or arrange for childcare in order to do so. Plan to meet up early on the day of a court appearance, taking into account the likelihood of the client needing extra time to get to court from home with everything they need and childcare in place. These expectations should be clear at the outset of the case so that the client can plan and does not feel surprised or overwhelmed later on. We thank you for your patience and compassion and encourage you to use your time with your client efficiently, to keep the number of meetings manageable.

For more information, please see the Best Practices and Ethical Considerations section of this manual. Consult your mentor for further guidance.

### **8. My client wants me to help with a new case or another issue. What should I tell them?**

Remember that your firm is retained only for a specific case, and your retainer agreement should state the scope of the representation simply and specifically. For Family Court cases, we recommend that you specify the docket number for your case on the retainer, as you are not obligated to represent the client on future violation and modification petitions. While we encourage firms to assist clients if possible, with related cases, we do not recommend that the firm take on additional cases for a client without consulting with Her Justice or another legal services organization, if the new case is unrelated to family, matrimonial, or immigration work.

Be consistent with the client and maintain appropriate boundaries, remembering that you are their attorney for a discrete issue, and cannot provide social work services or unrelated legal services (for more information on these services, see Question 9, below). If the client has new legal issues, contact Her Justice for a new intake for the client. It is possible that Her Justice can provide advice or an appropriate referral. If the new issue is one that we would typically assist with, we can discuss whether the firm would like to expand its representation to include the new case (for example, the client now has an order of protection case in addition to a child support case).

### **9. I think my client needs to talk to a counselor or social worker. What should I do?**

The litigation process can be very stressful and upsetting for clients. Many clients have underlying mental health concerns, such as depression or post-traumatic stress disorder, or would benefit from extra support in making decisions about the trajectory of their cases. Contact your mentor about connecting your client to the in-house social work program at Her Justice. If your client is a survivor of domestic violence or elder abuse, they also qualify for services at a New York City Family Justice Center (FJC). Your mentor can assist with making a referral. Many clients already have case managers assigned at their local FJC.

## **10. How can I get up to speed on the substantive law that affects my case?**

Our manuals provide an overview of the relevant law for each type of case that we mentor. In addition, we offer live and video training on every type of case, plus some additional advanced topics such as child support enforcement and division of pensions in a litigated divorce. It is imperative that you attend or view the relevant training before you start the case so that you are competent to answer basic questions that your client will have at the first meeting. Your mentor is available to answer your substantive law questions and provide guidance on any research you need to conduct, once you have viewed the training and reviewed our manual. It is also important to remember your general obligation as an attorney to familiarize yourself with the relevant law, so be sure to review, for example, the sections of the Family Court Act, Domestic Relations Law, Civil Practice Law and Rules, or applicable immigration laws you will be relying upon in your case.

## **11. I have a trial coming up in the Family or Supreme Court and I don't know where to begin. What should I do?**

Getting courtroom experience as the lead attorney is one reason that pro bono attorneys, and leadership at their firms, seek out our cases. Our staff attorneys have personally litigated many cases, but we are primarily your consultants on substantive law, client management, and case strategy, rather than trial advocacy skills. For general litigation practice skills (for example, understanding hearsay, entering exhibits into evidence, and conducting cross examination), remember that your firm's litigation department has in-house expertise and resources in addition to the knowledge we can provide.

## **12. I am going on secondment, parental or other extended leave, or leaving the firm—what happens to my client? Can Her Justice take the case back?**

The client has retained your firm, not any individual attorney, for pro bono representation. Her Justice is a pro-bono-first organization. With a relatively small staff of attorneys, we are able to mentor thousands of cases a year because the firms represent the clients directly, aided by our training and mentoring. Because of this leverage model, usually it is not possible for Her Justice to take the case back. Although it is possible to take on a client as an attorney working alone, it is best if the client has two associates in addition to a supervising partner. This will allow each attorney to accommodate very busy times for billable work and allows for seamless transition of cases in the event that an attorney leaves the firm for any reason. If you are leaving, it is imperative that you find a replacement attorney at the firm before you go. The client should meet their new attorney with you, ideally in person, before you leave, and the new attorney should take possession of all files and materials. Contact Her Justice right away if you are leaving the firm for any

significant period of time. Ultimately, when a pro bono attorney is no longer available to the client, it is the responsibility of the firm to re-staff the case. If your firm has taken an uncontested divorce that has become contested, and the firm has a policy against pro-bono contested matrimonial work, speak with your mentor immediately about your options.

## **BEST PRACTICES AND ETHICAL CONSIDERATIONS**

Thank you so much for your time, effort and energy in providing pro bono legal representation to our clients. This document is meant to provide some useful framing of the unique experiences and needs of our clients as well as some best practices and ethical considerations to guide you in your practice.

### **POVERTY IS A RACE AND GENDER EQUITY ISSUE**

The impacts of poverty are felt disproportionately amongst communities of color and communities with Limited English Proficiency (LEP) in New York City and New York State. A comprehensive study of poverty in New York City by the Poverty Tracker Research Group at Columbia University (2021) found that, before the pandemic, nearly one in five adults (or 1.2 million people) in New York City lived in poverty and more than 350,000 children (one in five) live in poverty<sup>1</sup>. Research from the New York State Comptroller shows that one quarter of New York's foreign born population lived below the poverty level in 2021 compared to 15% nationwide<sup>2</sup>. Further, a study by the Poverty Tracker Research Group at Columbia found that every year, from 2016 to 2019, Black and Latino New Yorkers were **twice** as likely as white New Yorkers to experience poverty; 22% of Black New Yorkers, 25% of Latino New Yorkers, 21% Asian New Yorkers lived in poverty from 2016 to 2019 compared to 12% of white New Yorkers.<sup>3</sup> Further, due to structural racism and discrimination, "roughly 40% of Black New Yorkers and 30% of Latino New Yorkers who exited poverty were pushed back below the poverty threshold just a year later"<sup>4</sup>. According to researchers at the Poverty Tracker Research Group at Columbia, "the interaction between racism, discrimination, and economic inequality leaves Black and Latino New Yorkers significantly more likely to endure material hardship than white New Yorkers<sup>5</sup>."

People of marginalized gender identity, referring to women and individuals who identify outside of the gender binary<sup>6</sup>, in New York City were more likely to experience all forms of

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<sup>1</sup> Poverty Tracker Research Group at Columbia University. (2021). The State of Poverty and Disadvantage in New York City. Volume 3.

<sup>2</sup> New Yorkers in Need: A Look at Poverty Trends in New York State for the Last Decade (2022) New York State Comptroller Thomas P. DiNapoli

<sup>3</sup> Poverty Tracker Research Group at Columbia University. (2021). The State of Poverty and Disadvantage in New York City. Volume 3.

<sup>4</sup> Poverty Tracker Research Group at Columbia University. (2021). The State of Poverty and Disadvantage in New York City. Volume 3.

<sup>5</sup> Poverty Tracker Research Group at Columbia University. (2021). The State of Poverty and Disadvantage in New York City. Volume 3.

<sup>6</sup> The gender binary refers to the idea that there are only two genders

disadvantage than cisgender<sup>7</sup> men<sup>8</sup>. In fact, families with female heads of household experience poverty at more than two times the rate of all families and four times the rate of married couples.<sup>9</sup> A study conducted by Legal Services NYC (2016) found that Black Americans in same sex couples have poverty rates at least twice of those of different sex couples and Black people in same-sex couples are more than six times as likely to be impoverished than White men in same-sex couples<sup>10</sup>. This same study found that transgender Americans are nearly four times more likely to have a household income under \$10,000 per year than the population as a whole (15% vs. 4%)<sup>11</sup>.

## **HER JUSTICE CLIENT POPULATION**

Her Justice serves low-income folks of marginalized gender identities who reside in the 5 boroughs of New York with legal issues in the areas of family, matrimonial, and immigration law. Our clients' income falls 200% below the Federal Poverty Level (FPL), which was \$14,580 for a single person and \$60,000 for a family of 4 in 2023<sup>12</sup>. Poverty is "when an individual or household does not have the financial resources to meet basic needs such as food, clothing, and shelter, or alternatively, access to a minimum standard of living".<sup>13</sup> Our clients are 92% women of color, 83% self-identify as survivors of intimate partner violence, and 48% have Limited English Proficiency (LEP) and would need an interpreter to effectively engage in court proceedings<sup>14</sup>.

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<sup>7</sup> Cisgender refers to someone whose gender identity is the same as the sex they were assigned at birth

<sup>8</sup> Poverty Tracker Research Group at Columbia University. (2021). The State of Poverty and Disadvantage in New York City. Volume 3.

<sup>9</sup> New Yorkers in Need: A Look at Poverty Trends in New York State for the Last Decade (2022) New York State Comptroller Thomas P. DiNapoli

<sup>10</sup> Legal Services NYC. (2016). Poverty is an LGBT Issue: An Assessment of the Legal Needs of Low-Income LGBT People. Legal Services NYC.

<sup>11</sup> Legal Services NYC. (2016). Poverty is an LGBT Issue: An Assessment of the Legal Needs of Low-Income LGBT People. Legal Services NYC.

<sup>12</sup> ASPE Office of the Assistant Secretary for Planning and Evaluation US Department of Health and Human Services Poverty Guidelines for 2023

<https://aspe.hhs.gov/sites/default/files/documents/1c92a9207f3ed5915ca020d58fe77696/detailed-guidelines-2023.pdf>

<sup>13</sup> New Yorkers in Need: A Look at Poverty Trends in New York State for the Last Decade (2022) New York State Comptroller Thomas P. DiNapoli

<sup>14</sup> Her Justice Annual Report FY 2022





Her Justice is a pro bono first organization which means we employ a small highly-skilled staff of attorneys that use their skills and expertise to educate and mentor pro bono attorneys, like yourself, on how to effectively serve and represent our client population. In FY 2022, our model allowed us to leverage the skills and expertise of our 14 in-house attorneys to mentor 2,162 pro bono volunteer attorneys who served 5,313 women children, donating 46,092 hours of their time and energy amounting to a value of \$35,958,719 in legal services<sup>15</sup>.

## BEST PRACTICES

### Differences in Perspective – Cultural Humility

Her Justice clients come from diverse backgrounds. Our clients' culture and individual life histories influence their perspectives and priorities in making important decisions. It is possible that your client is making certain considerations in making these decisions or forming their perspective on their case that you are not aware of. This means that the perspective your client has on their case may vary significantly from yours. Take this as an opportunity to explore sensitivity and cultural humility.

The term cultural humility was coined by doctors Melanie Tervalon and Jann Murray-Garcia in 1998 and describes “a lifelong commitment to self-evaluation and self-critique, to redressing of power imbalances in the patient-physician dynamic, and to developing the mutually beneficial and non-paternalistic clinical and advocacy partnerships with communities”<sup>16</sup>. Similar to medical professionals, a power imbalance exists between legal professionals and the people they serve. We acknowledge and are grateful for your professional expertise; however, in challenging this power imbalance, it is important to recognize the client as the expert regarding their life experience and the needs of their

<sup>15</sup> Her Justice Annual Report FY 2022

<sup>16</sup> Tervalon, M. & Murray-Garcia, J. (1998). Cultural Humility Versus Cultural Competence: A Critical Distinction in Defining Physician Training Outcomes in Multicultural Education. *Journal of Health Care for the Poor and Underserved*. Vol 9.2. pp 117-125

family. Remember “client-centered lawyering prioritizes the client, the client’s understanding of the problem, and achievement of the client’s goals in the way the client deems best”<sup>17</sup>. Empower your client to make informed decisions by explaining the law, legal processes and possible outcomes. Don’t assume things and be sure to leave space for inquiry and introspection.

### Respect, Empathy & Trust

Many of our clients are survivors of various forms of victimization frequently related to their gender identity, race, ethnicity, sexual orientation, class, English language proficiency, and/or immigration status. They may have experienced further victimization in attempting to access help from agencies or individuals that did not give them the space to be understood. These experiences may cause them to feel hesitant, unsafe, or distrustful. It is important to prioritize building trust in your attorney-client relationship by approaching your client with respect, empathy, patience, and transparency.

Some suggestions for establishing a good relationship with your client are:

- Be prepared to listen. Do not be in a hurry to give advice without the complete picture
- Validate their experience and believe what they tell you unless there is clear evidence of the contrary
- Be mindful of your asks of the client. Keep in mind the other conflicting demands in their life and any existing restrictions on time or money and be as accommodating as possible
- Be realistic in your deliverables to your client and set clear boundaries
- Confirm with the client that you understand them, and they are understanding you
- Be patient in repeating information and be willing to rephrase information to improve understanding
- Listen carefully and encourage questioning
- Be responsive to the needs your client raises with you. If their need falls outside of the scope of your representation, speak with your mentor for appropriate referrals
- Empower the client’s informed decision making and respect the decisions they’ve made

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<sup>17</sup> Stoeve, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

## Considerations for LGBTQ+ Clients

LGBTQ+ clients are often among the most marginalized communities served by Her Justice<sup>18</sup>. In working with LGBTQ+ clients it is important to not assume their gender identity or sexual orientation. In your initial conversation with your client introduce yourself by your name and gender pronouns. Ask your client their name and if they feel comfortable sharing their gender pronouns with you. Understand that your client may not feel comfortable sharing their gender pronouns with you initially. If they do not share their gender pronouns with you, please refer to the client by name or using gender neutral pronouns (they/them/theirs). If you make a mistake in your client's gender pronouns, acknowledge the mistake and move on.

Mirror the language the client uses in referring to their gender identity and sexual orientation. Always refer to your client with the name the client gave you. Referring to a client by a name they no longer use is called "deadnaming" and is very traumatizing as it negates your client's identity<sup>19</sup>. If you make a mistake in referring to your client by the wrong name, acknowledge the mistake and move on.

Lastly, be an ally and advocate for your client. According to a Lambda Legal survey of 2,376 LGBTQ+ people, 19% of the survey respondents who had appeared in a court at any time in the past five years had heard a judge, attorney, or other court employee make negative comments about their sexual orientation, gender identity, or gender expression<sup>20</sup>. To the extent the client is comfortable, attempt to address bias in the courtroom and always respect the name, gender, and pronouns they identify with.

## Considerations for Clients with Disabilities

Your client may have a physical, developmental, or emotional disability. Their disability may be the result of the abuse they've experienced. Their disability may or may not be diagnosed, and may or may not be visible or obvious to you. Talk with your client about what, if any, accommodations are needed. Be mindful of the accessibility of your building. Be patient with needing to repeat and rephrase information for your client. If you need additional resources to accommodate your client, speak to your Her Justice mentor.

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<sup>18</sup> Meyer, E. (2021). Top 7 Best Practices for Representing Transgender and Nonbinary Pro Bono Clients. Proskauer for Good. Proskauer.

<sup>19</sup> Meyer, E. (2021). Top 7 Best Practices for Representing Transgender and Nonbinary Pro Bono Clients. Proskauer for Good. Proskauer.

<sup>20</sup> as cited in Meyer, E. (2021). Top 7 Best Practices for Representing Transgender and Nonbinary Pro Bono Clients. Proskauer for Good. Proskauer.

## Communication

Be thoughtful about the communication needs of your client. Frequently, our clients do not have experience with the legal system and may be unfamiliar with many of the terms commonly used in the court room or legal discourse. Due to circumstance, their formal education may be limited, and they may have a low level of literacy. Be mindful of the needs of your client. Ensure they are able to understand all materials presented to them to the fullest capacity. Always check for comprehension.

For limited English proficiency clients, please review the “Limited English Proficiency (LEP) Clients” on this document.

## Scheduling

Before making your first phone call with your client, review the information we provided you with to ensure it is safe to call the client at the time you are calling and that it is safe to leave a voicemail. Remember that many of our clients self-identify as survivors of intimate partner violence and may still be residing with the opposing party.

In your initial conversation with your client establish what methods and times are best for you to contact your client. Keep in mind that our clients are low income and may not have sufficient resources to maintain a phone plan or continuously purchase more minutes for their phone. If possible, ask if there is a trusted friend or family member whose phone you can contact if you experience difficulty in contacting your client.

In making appointments, especially in person, be mindful of time and economic restrictions your client may be experiencing. Take into account their work and child care schedules in making these appointments. Be mindful of any safety concerns your client may have in terms of what times are most appropriate in scheduling appointments. Consider whether the firm can pay for a car service or a MetroCard for the client if transportation is a barrier to effective representation.

When scheduling in person appointments with your client, consider the security requirements to enter the building. Many law offices require guests to present a valid form of identification and intense security checks to enter. This can be extremely anxiety inducing for undocumented clients that may not have a valid form of ID, LGBTQ+ clients that may not have a valid form of ID that reflects their gender identity, and clients with limited English proficiency. Some clients have difficulty navigating large office buildings and may not know where to enter, which elevator to use, or which security desk to go to. It is a best practice to meet your client in the lobby of your building and escort them to the meeting room or your office.

## Missed Appointments

We emphasize to our clients that they should call you in advance if they need to change or cancel their appointment or are running late. However, it is not unusual for clients to have trouble keeping appointments. Our clients are under-resourced. They may be experiencing a more pressing crisis, like an eviction, health crisis, or safety concern. Or attending the appointment may require them to take time off work, pay for round-trip transportation, and coordinate childcare which they may not have the resources to do. Your client, especially at the beginning of your relationship, may feel uncomfortable or embarrassed to share why they cannot make an appointment with you. We ask for your understanding, compassion, patience, and flexibility in this matter. Please keep in mind that the handling and outcome of the case primarily affects the client and any accommodation that can be provided is greatly appreciated.

## Responsiveness

Our clients typically have incomes below 200% of the federal poverty line, \$14,580 for a single person and \$60,000 for a family of 4 in 2023<sup>21</sup>, and are typically juggling multiple urgent needs. Many of our clients do not have a phone plan and instead purchase minutes on a pre-paid phone. However, in light of food or housing insecurities, your client may choose to go without minutes to put food on the table. We understand how this choice may impact you and your ability to communicate with your client, however, we ask for your understanding and compassion. We encourage you to speak with your client during your initial call and establish a safe back-up contact in case this situation arises. Be creative in contacting your client and responsive to their needs. Explore alternatives like using work email, text messages, or mail.

Interacting with the legal system is inherently traumatizing and anxiety-inducing for many of our clients. Remember that for many of our clients the legal system is unfamiliar. This is not their area of expertise and they know they need to rely on your knowledge and support to successfully navigate their case. Be patient when fielding phone calls and questions from your client. Be transparent about your capacity and set clear boundaries with your client. For example, if you are receiving multiple calls a week from a client asking for case updates, call them back and schedule a regular check-in meeting with them that fits with your work schedule to go over any questions they have and provide any case updates. This will help ease the clients' anxiety as they know a schedule to expect regular communication from you on their case.

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<sup>21</sup> ASPE Office of the Assistant Secretary for Planning and Evaluation US Department of Health and Human Services Poverty Guidelines for 2023  
<https://aspe.hhs.gov/sites/default/files/documents/1c92a9207f3ed5915ca020d58fe77696/detailed-guidelines-2023.pdf>

## Interviewing

Clients are often sharing sensitive personal information with you that can be difficult to share. It is imperative to build trust in your attorney-client relationship. Remind your client that the information they share with you is confidential. When asking questions about sensitive information make sure your questioning is grounded in what is needed for the case. It may be helpful to provide the client with some additional framing when asking questions as to why the information is needed and what it will be used for. For example,

- when asking questions regarding sensitive information we suggest this framing: “I am going to ask you some questions to better understand your case and how I can help. Please be as forthcoming as possible so I can provide you with the best assistance possible. Some of these questions may ask you about sensitive or private information. I want to assure you that everything you share with me is confidential, I will not share what you tell me here without your permission. Before we begin, I just want to emphasize that you do not have to share anything with me that you do not feel comfortable sharing. Please let me know if you would like to take a break or stop at any point during our interview.”

At the end of the interview thank the client for sharing this information with you. It was likely not easy for them to share that level of vulnerability with you. Reground them in what this information will be used for and provide them with any next steps.

## Limited English Proficiency (LEP) Clients

As stated previously, our clients come from diverse backgrounds and speak a multitude of languages. In 2022, 6 million people in New York spoke a language other than English; of that, 2.5 million speak English less well and would be considered Limited English Proficient or LEP.<sup>22</sup> LEPs in New York City speak 151 different languages<sup>23</sup>. New York City has acknowledged the need for greater language access through NYC Local Law No. 33 (LL 30) that requires covered agencies to translate commonly distributed documents into 10 designated languages and provide telephonic interpretation in at least 100 languages<sup>24</sup>. However, LL 30, for the most part, does not apply to most legal organizations including legal nonprofits. This means that there is a huge gap in the legal services available for LEPs. Even in our own work we see cases for LEPs take much longer to receive services than similarly situated English speaking cases.

We greatly appreciate your effort if you are handling a case for an LEP client. In working with LEP clients it is paramount that you ensure they are accurately understanding the information you are providing them with and that you are understanding the needs they are communicating to you. To do this, work with qualified interpreters. Qualified is a

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<sup>22</sup> VOLS. (2022). Language Access in Pro Bono Practice.

<sup>23</sup> VOLS. (2022). Language Access in Pro Bono Practice.

<sup>24</sup> VOLS. (2022). Language Access in Pro Bono Practice.

relative term so please consider the nature of the conversation and the language capacity of the interpreter you are working with. It is best practice to use an in-house qualified interpreter to work with your client for the duration of the case. If that is not accessible to you, think creatively about the interpretation and translation services available to you. See if it is possible to retain professional interpreter services or review the internal staff language capacity. For potentially non-sensitive information it may be appropriate to have a friend or family member interpret. **It is never appropriate to have a client's child interpret. It is never appropriate to rely on Google Translate or similar multilingual neural machines translation service.** The Spanish Group, an internationally recognized certified translation service list 5 reasons why you should not use Google Translate or a similar software for translations:

- Translation apps translate the text literally. Think about the number of times you speak in expressions in English. For example, the phrase "break a leg" is an expression of good luck, however, if translated literally it gives the impression that you are wishing that someone would break their leg.
- Many of these translation apps are not updated or operated by professional translators
- The translator apps do not account for the regional dialect your client may speak.
- Using a translator app frequently requires proofreading by someone fluent in the language to ensure the grammar and language choices match with the idea being expressed.
- Using a translator app for translating sensitive information is unsafe as the information may be compromised during a data breach<sup>25</sup>

Here are some other best practices in working with interpreters:

- Always brief the interpreter on the nature of the call before starting the meeting with client
- Consult the interpreter regarding whether a legal interpreter is more appropriate for the call
- Speak to the client directly, do not address your comments to the interpreter
- Ask the interpreter to confirm the client can understand them
- Ask the client to ensure they understand you

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<sup>25</sup> The Spanish Group. (2020). 5 Reasons why not to Use Google Translate for Business Purposes. The Spanish Group. <https://thespanishgroup.org/blog/top-5-reasons-not-use-google-translate-business-purposes/>

### Managing Your Case

Even if there are no updates in your case for the client, continue to regularly check in with them. Remember our clients are facing many complex issues and conflicting demands. Without regular check-ins you may miss vital information about your client's living situation, access to phone and internet services, and safety.

Be affirmative in asking questions to your mentor and informing them of any case updates. It is your responsibility to inform your mentor in a timely fashion when documents are due to be filed in court or immigration authorities, when court dates are scheduled, and when final orders or judgements are received. Without this information we are unable to accurately report on our cases and are unable to monitor the needs of our clients.



## **TRAUMA-INFORMED LAWYERING WITH YOUR HER JUSTICE CLIENT**

### ***Thinking Ahead About Legal Processes***

The process of working with a lawyer and pursuing legal relief using systems that are not trauma-informed, such as the Family Court and the U.S. immigration system, can exacerbate the impact of trauma on clients. An important part of trauma-informed lawyering is thinking ahead: *Where, how, and when will my client potentially experience re-traumatizing pain points during this legal process?* Your client's case may involve one or more of the following, and may be especially difficult when they involve clients needing to disclose, confirm, or detail traumatic events:

- strict filing deadlines
- emergency filings
- preparation of detailed affidavits or testimony
- court appearances
- review of a response or statement by an abuser
- having to face and listen to their abuser
- recounting interactions with law enforcement, child protective services, or other service providers with whom the client had a negative or combative experience
- detailing their parenting history, especially if they had to leave their children in someone else's care or their children were forcibly removed from them
- disclosure of their own criminal history or "bad acts"
- discussion or disclosure of finances, financial abuse, coercive debt, or fraudulent activity which is causing the client to feel shame or fear

While it may feel challenging and overwhelming to work with a client who must relive their traumatic experiences to obtain the legal relief they are seeking, it is an important opportunity to show your client that you care about her and her legal case, that you are committed to working with her in a way sensitive to her trauma, and that you want to help her achieve the best result in the most effective way possible.

Practice Tip: Your Her Justice Mentor can help you identify the parts of your specific case process that may be difficult for your client given her experiences. Schedule a time to speak to your Her Justice Mentor after you are assigned your client to help you think ahead and chart a course of action.

## Client Communications

Once you have a sense of the procedural direction your case is heading, you should start to plan for how you will *communicate* and *work with* your client. Remember: from the very beginning, your communications and meetings with your client are building trust, setting expectations, and defining boundaries. It is critical to communicate to your client what you need from her, what she can expect from you, and what her case process entails.

Communication That Helps Build Trust		
Direct	Honest and Contextualized	Compassionate
<ul style="list-style-type: none"><li>• Being clear: <i>we are meeting for an hour to review your affidavit and for you to sign it if it is complete</i></li><li>• Explaining the legal process and legal terms using clear language: <i>your affidavit is you stating the facts which you promise are true, so it's very important we make sure it is accurate</i></li><li>• Setting boundaries: <i>If you email or call me late in the evening I will not be able to respond until at least the next day</i></li></ul>	<ul style="list-style-type: none"><li>• Providing information about why you are asking certain questions</li><li>• Making it clear that the Court or other adjudicator needs to hear the information (the request is not coming from you individually)</li><li>• Answering their questions</li><li>• Acknowledge your limitations: <i>I'm not sure how we should respond, I'm going to consult with my supervisor and get back to you</i></li><li>• Set expectations: <i>if _ happens, the case will be over and your only option at that point will be _</i></li></ul>	<ul style="list-style-type: none"><li>• Let them know that you will be discussing _ topic at the next meeting and why.</li><li>• Active listening</li><li>• Leaving time for breaks, reactions, silence</li><li>• Offering breaks and checking in with them during intense conversations</li><li>• Acknowledge feelings and reactions<sup>1</sup></li><li>• Provide resources and encourage the client to rely on her support systems</li></ul>

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<sup>1</sup> Note that this does not mean you have to agree with them. You can acknowledge, for example, that your client feels that something is unfair, and even why she feels that way, without agreeing with her that it is unfair. By acknowledging her feelings, you can then move the discussion to next steps or how best to respond.

## **Your First Steps**

Reach out to your client as soon as possible after receiving your case assignment. Even if you are not ready to meet with her or discuss the case in detail, take the time to make contact with your client and reassure her that you will be getting started on her case soon. This communication can go a long way to making her feel comfortable with you and begin building trust with you. Be sure to provide her with your contact information and let her know who else from your firm will be working with you on her case and may be reaching out to her and why.

**Sample first email:** *Hi Ms J, my name is \_ and I am an attorney with the law firm \_. I received your information from Her Justice, and I am the attorney who will be representing you in your TYPE OF CASE case. My supervisor \_ will also be working on your case from time to time, so you will see her name in some of our email correspondence. I'm going to review your documents over the next week and then I or my colleague \_ will be reaching out to you to schedule a time for us to meet in person to go over your personal and case information. We will let you know if you need to bring anything to that meeting. If you have any questions you can reach me at this email or at my phone number \_ or you can contact my colleague at \_. I am looking forward to working with you.*

From there, be sure you are clear in your communications why you are making contact and what if anything you need from your client; e.g.: *Hi Ms \_, I'm just checking in to let you know I've contacted the court to see if the order from our last court date is ready yet and it is not. The clerk informed me it may be another week or two, and I will forward it as soon as I have it. In the meantime, could you please send me the bank statement showing the last child support payment you received by the end of this week? A scan or clear photograph of it would be fine, thank you.*

When you are communicating sensitive information to your client, or following up with a client after an upsetting experience, it is important that you are mindful of your language and method of communication. It should reflect your concern and empathy; e.g. *Hi Ms \_. I know that court yesterday was a very upsetting experience for you, and that your spouse's settlement offer and the way his attorney delivered it was very insulting to you. I hope you were able to take some time for yourself after. As bad as their settlement offer was, we do need to discuss it because it is really important to think about how we want to proceed now. I'd like to set up a time for us to meet, and knowing that meeting might be upsetting again for you I want to make sure it's at a time where you will be sufficiently prepared and that it's enough time for us to go through everything we need to discuss even if you need a break or two. Can you let me know your availability over the next week and I will try my best to accommodate you?*

## Client Meetings

When it is time to meet with your clients, it is important to be very clear with them the purpose of the meeting, how long it should take (or how much time you have set aside for it), and what if anything they may or should do or bring to prepare for the meeting. This is especially important because the client will know the topics or events you plan on discussing that may be upsetting or re-traumatizing to her. The more time and resources you can give her to prepare, the less difficult the experience may be for your client.

### **In advance of client meetings:**

- Let the client know the purpose and how much time you expect it will take, or whether it is time-limited or open-ended.

*For example: I'm confirming that we're going to meet this Thursday at 4pm. I only have about an hour to give you so we will need to stay focused on completing the form we discussed that you need to complete and sign.*

*--OR-- I'm confirming that we're going to meet this Thursday at 4pm to finish drafting your affidavit. I know completing this affidavit may be difficult because we will again have to go over the abuse you experienced in detail, so I have set aside about 2 hours but I can stay a little longer if needed.*

- Let the client know if you may or will need to include sensitive topics.  
*For example: We're going to meet to confirm that I have all the correct background information about you and your case and talk a little bit about what this process looks like. Just so you're aware, we won't have time to go into detail about the abuse you experienced, so I will set up another time to do that because I don't want you to feel rushed when we have that discussion.*  
*--OR-- To prepare you for the next court appearance, we're going to have to go over your financial situation and what happened with your ex. I know that might be difficult, so I want to make sure you have time to prepare for that and to give yourself some quiet time after our meeting if you need it.*
- Encourage the client to plan around the meeting and make use of her support networks if it is likely to be upsetting.
- For example, you can say: *This could be a very difficult and even exhausting meeting for you, so you may want to alert your therapist that it's happening in case you want to reach out to them after, and maybe leave yourself a little time to clear your head and get something to eat before you go back home or go to work.*

- Give the client a list of documents or other items you need her to bring, and sufficient time to gather them.
- Encourage the client to think about what type of documents or other information might help her remember or discuss especially sensitive topics.  
For example, you can say: *I know it can be hard to remember details about things that happened over several years, so if there is anything that might help you remember, like a diary or old text messages, please bring them.*
- Use your supervisor and Her Justice Mentor as a resource and for guidance in preparing.

### **During client meetings:**

- Be sure you have adequate privacy, and the space is appropriate for the discussion.
- Make sure the client knows everyone in the room and their role, and consents to their presence. Also be sure to remind the client about client confidentiality.
- Keep an eye on her reactions and body language—is she showing signs of stress or distraction?
- Allow your client breaks or a change of subject if needed.
- Think about the order of questions or topics: avoid “diving in” on sensitive topics and avoid ending on them as well.
- Help with context clues when your client is struggling with her memory.  
For example, you can say: *I know remembering dates can be difficult. Let's try this, when this happened, do you remember what season it was? What kind of clothes were you wearing? Was it around the time of a holiday or school break?*
- Avoid making the client repeat traumatic experiences: don't ask questions to which you don't need answers yet, and don't delve into topics you don't have time to explore.  
For example, you can say: *We only have about 10 minutes left and I don't think that will be enough time to go over this. I don't want to make you stop and then start again, and I don't want to rush you. Let's set up another time to meet so I can give you the time and attention this topic needs.*
- Use supportive language and affirmatively express care and concern.  
For example, you can say: *I know this experience has been so tough for you, and I really admire how well you have handled it.*

--OR-- *I know you have concerns about pursuing \_\_, but I think we should discuss it more. The decision is yours but I am concerned for you, and I want to be sure we go about this process in a way that best protects your safety.*

- Make sure your body language, tone, and subtle cues match your supportive language.
- Again, encourage your client to make use of her supportive networks and provide resources if needed. Your Her Justice Mentor can provide you with resources for both legal and supportive services for clients.
- Explain or warn the client about anything that may appear to be a distraction for you and provide reassurance that it will not make you less attentive. For example, you can say: *I will be taking notes during this meeting so I may be looking at my keyboard or my screen while you're talking. I know that can be distracting, but I want to make sure I accurately capture what you are telling me, so I don't have to make you keep repeating it. I will be paying close attention.*

#### **After client meetings:**

- Follow up with your client, including a written summary of what happened or what you discussed, and next steps or further instructions if needed.
- Make sure your client knows when she can expect to hear from or meet with you again.
- Self-Care! See the Vicarious Trauma section of this manual and think about what you need to do for *yourself*.

EXCERPT FROM

# **Representing Domestic Violence Survivors Who Are Experiencing Trauma and Other Mental Health Challenges: A Handbook for Attorneys**

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# Section One: Interviewing

## Do Not Exacerbate the Harm or Risks

Lawyers working with survivors who are experiencing trauma and other mental health-related challenges should aim to ensure that their representation does not exacerbate the harm done to a client or create additional harms. Every domestic violence survivor faces risks. Some risks are batterer-generated; some risks are life-generated.<sup>4</sup> Survivors who are experiencing trauma or other mental health challenges may face additional risks when they come in contact with systems and individuals who are ill equipped to address their particular mental health needs. Thus, attorneys must take steps to ensure that their relationship with the client does not exacerbate the risks or further harm the mental health of the survivor.

## Be Aware of the Signs of Trauma

Lawyers working with survivors of domestic violence should be aware of signs of trauma and mental health challenges, such as:

- ◆ The client does not talk about her experience(s) in a linear manner. She may go off on tangents or her speech may not seem coherent.
- ◆ What would seem to be highly emotional facets of her experience are expressed with little emotion both in terms of facial expression and body language, and in terms of the tone of her voice (sometimes referred to as “flat affect”). She may be intellectually present but emotionally detached.
- ◆ The client develops a deep, blank stare or an absent look during meetings with her; this could be a sign that she is dissociating.
- ◆ The client is unable to remember key details of the abuse.

If you notice any of the above signs, you will want to take steps to avoid triggering feelings that are disruptive to your client as you work together on her case. While an attorney cannot ensure that an individual remains present and does not dissociate or otherwise disengage, there are steps you can take to remove as many barriers as possible to help your client be psychologically present for her own advocacy.

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<sup>4</sup> See Jill Davies, Eleanor Lyon, and Diane Monti-Catania, *Safety Planning with Battered Women: Complex Lives/Difficult Choices* (Sage Publications 1998).

## **Survivor-Defined Representation When the Client is Living with Trauma-Related or Other Mental Health Conditions**

Survivor-defined advocacy requires that attorneys tailor their advocacy approach to meet the individualized needs of survivors. For survivors facing mental health challenges, this means that lawyers must:

- ◆ Gain an understanding of the ways in which *this client's* challenges impact her ability to engage in the advocacy process, and
- ◆ Tailor interviewing and counseling approaches to meet the needs of and maximize the self-determination of each individual client.

Survivors facing mental health challenges will often require more time and resource-intensive advocacy than other survivors. To use their time and resources wisely, lawyers must consider how to tailor their advocacy approach to be responsive to the issues and needs of survivors experiencing trauma related conditions and mental health concerns.

### **Begin a Dialogue about the Survivor's Mental Health Needs**

The lawyer should begin a dialogue with the survivor about her mental health needs as it relates to the lawyer/client relationship. This type of conversation provides a space for the survivor to explain her circumstances and for both lawyer and survivor to develop strategies for accommodating those challenges in the course of their relationship.

Lawyers need not, and should not, try to gather the client's entire mental health history at this stage in the process. Rather, these preliminary conversations about the client's mental health should focus upon how any mental health challenges affect her functioning. To get this conversation going, lawyers might ask, "Is there anything that I should know to help us work better together?" Or, "How can I, as your lawyer, accommodate what you need in this process?" For example, if the lawyer's office creates too much sensory stimulation or causes sensory overload, your client might suggest meeting somewhere else. If she has difficulty focusing for long periods of time, the attorney might suggest taking several breaks or scheduling shorter appointments.

It is best practice for lawyers working with survivors to take the time necessary to build relationships and trust with their clients. Trust is key to developing the type of lawyer-client relationship required for effective representation. There are times, however, when lawyers have a limited amount of time or are meeting clients just before a hearing. In these situations, you need to gather as much information as possible, as quickly as possible, in preparation for your case. It is important to know that, when working under such tight deadlines, your client may not feel comfortable enough yet to disclose details about trauma

and mental health conditions. In those situations, you are not likely to get complete and accurate information about this from your client. Under such circumstances, you may want to partner with an advocate who has been working with the survivor to assist in gathering this information and to provide you with the context necessary to understand and advocate for the comprehensive and individual needs of the survivor.

### **Techniques for Building Trust and Ensuring Informed Consent with Survivors Who Experience Trauma and/or Mental Health Symptoms**

Survivor-centered interviewing skills are critical to providing comprehensive, individualized advocacy to survivors of domestic violence, whether or not a survivor has experienced trauma or mental health concerns. First, by offering a survivor the space to tell her own story, from her own perspective, an attorney can begin to lay the foundation for building trust. Second, when an attorney actively listens to a survivor's story, she gains a more comprehensive, contextual understanding of the survivor's needs. This rich understanding, when combined with a working relationship based on trust and respect for survivor agency, forms the basis of an effective survivor-attorney partnership that can work toward the expressed goals and objectives of the survivor.

Oftentimes in the lives of survivors, people were abusive or let them down, service providers responded ineffectively to them, and/or systems ignored or added to their pain. Each survivor has a unique perspective of these realities and lives with the effects of these negative experiences. A survivor's cultural background will also impact the way in which she perceives her prior experiences.

Many survivors who have experienced violence from an intimate partner and/or have trauma related concerns are often likely to accommodate what they think you want. This can play out in different ways. A client may ask you directly, "What do you think I should do?" Or, a client may intuitively pick up from your discussion with her what she believes you want her to do. You may think the survivor is making an informed decision when in fact she is trying to do what she thinks you want.

To overcome the distrust that survivors who are dealing with trauma-related or other mental health symptoms experience, lawyers must take steps to nurture a respectful working relationship with them. Lawyers should:

- ◆ Develop a basic understanding of trauma-related and mental health conditions that survivors may experience;
- ◆ Be skilled in listening and asking questions to understand a survivor's perspective and needs; and
- ◆ Know how to decide what information and options to offer to meet those needs.

It is within the context of a respectful relationship that lawyers can provide opportunities for survivors experiencing trauma and mental health challenges to access the resources they need and to exercise more control over their own lives.

Jill Davies has crafted a list of the ways in which advocates can offer concrete assistance to survivors who have experienced trauma resulting from multiple victimizations. Attorneys for survivors who are dealing with mental health challenges can assist clients by:

- ◆ Recognizing that survivors may be unable to access all of the details;
- ◆ Providing options and the time and space for survivors to make fully-informed decisions;
- ◆ Validating the survivor's feelings throughout the process;
- ◆ Being responsive to a survivor's requests for information and support, even if she asks for the same information several times;
- ◆ Partnering with survivors to identify alternative coping strategies, when they are engaging in self-harming behaviors;
- ◆ Finding supports for developing alternative or additional coping strategies;
- ◆ Connecting survivors who are experiencing a mental health crisis with a trusted mental health referral/resource; and
- ◆ Offering support to survivors who are using alcohol and/or drugs by safety planning and strategizing to the greatest extent possible at the time (including assessing risks and developing strategies that mitigate the risks posed by alcohol and drug use) and encouraging them to contact you again.<sup>5</sup>

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<sup>5</sup> Adapted from Jill Davies, *Helping Sexual Assault Survivors with Multiple Victimizations and Needs, A Guide for Agencies Serving Sexual Assault Survivors* (July 2007).

## Working with Survivors of Abuse: A Trauma Informed Approach

Many pro bono attorneys represent clients who have suffered severe and/or repeated trauma—intimate partner violence, persecution, assault, torture, trafficking. Clients who have experienced trauma may react in ways you don’t always understand, or they may have difficulty trusting and opening up. These pro bono matters may feel challenging at times. They are also extraordinarily meaningful and rewarding. Understanding how to provide trauma-informed lawyering can build effective attorney-client relationships and help you support clients during the difficult process of telling their stories.

To that end, we hope this overview of trauma-informed lawyering provides a solid foundation for you to begin your pro bono work with survivors. The overview includes an introduction to trauma and how some of its common manifestations can affect client interactions, and provides recommendations and best practices for developing rapport and trust with clients.

Remember that you can always reach out to the referring public interest organization for help anytime you need additional guidance on working with survivors of trauma. Your organization can provide advice and/or help you find additional resources and training.

### 1. A Brief Introduction to Trauma

**Trauma** refers to experiences that have caused intense physical and/or psychological stress reactions. The experience could be a single event, multiple events, and/or a set of circumstances.

**Traumatic memories**, unlike most other memories, are not stored in the “thinking” part of the brain (frontal lobe); they are stored in the part of the brain responsible for non-verbal emotion, or “gut” reactions (limbic system). This means that it is difficult to recall traumatic events in an organized, linear, and easily articulable way. Instead, survivors more often recall their *reactions* to the traumatic event—images, sensations, fear, emotions.

**Trauma-informed lawyering** places the realities of your client’s trauma at the forefront of how you engage with your client, and requires you to adjust your typical practice approach so it is informed by your client’s specific trauma experiences and individual reactions to those experiences. It also focuses on minimizing re-traumatization as much as possible. Understanding the **manifestations of trauma** can help you engage with your client in a more trauma-informed way. If you understand why your client reacts a certain way, you will be able to tailor your approach to fit your client’s needs.

## 2. An Overview of How Primary Manifestations of Trauma May Affect Client Interactions

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Everyone reacts to trauma differently, but here are some of the more common manifestations:

**Flooding:** Because the brain stores all traumatic memories in the limbic system—the part not responsible for “thinking”—it can be difficult for survivors to logically sort through each traumatic memory. Traumatic memories can become conflated, meaning that remembering one traumatic event may bring up all related traumatic events. This is why when you ask a client about an incident that occurred last year, they may begin telling you about an incident that occurred in their childhood. This is also why your client may not be able to tell you a linear story or determine where in the timeline certain events happened: they are not remembering a chronology of events, but rather a flood of traumatic incidents that have been stored away in no particular order. Flooding is especially prevalent where there has been repeated and on-going trauma.

**Minimization:** Survivors may minimize the importance and intensity of their traumatic experiences in an attempt to minimize the emotional impact. This might include minimizing the harm, providing justification for the situation, making social comparisons to others who are worse off (“not as bad as it could be”), etc. It may seem strange to you when your client acts unaffected by the horrible stories they are telling you—this is simply the brain’s way of separating the emotional response from the details of the memory. It is a survival mechanism to get through the day, the interview, etc.

**Dissociation:** This occurs when clients compartmentalize traumatic events. It is another survival mechanism to get them through the day without having to constantly face the emotional response of their traumatic memories. It may take several meetings to bring out certain events and details that clients have locked away. Do not be surprised if you learn something important in your third or fourth meeting—it does not mean your client was hiding something on purpose. Instead, it may have been a memory that took time to unlock.

**Physical Reactions:** Common physical reactions include sweating, nightmares, anxiety attacks, headaches, jaw pain, backaches, and nervous ticks. Clients often experience these physical reactions after meetings where they had to discuss or think about traumatic experiences. This is one reason why **grounding**—bringing clients back to the present— at the end of the meeting and checking in after the meeting are important.

**Other Common Reactions:** Memory loss, difficulty concentrating, difficulty trusting others, anger, irritability, defensiveness, aggressiveness, difficulty completing tasks, sleep and eating issues.

## 3. Building Trust With Your Client

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It is critical to build trust with your client. **Collaboration** is often a critical element of trust-building. Be sure you’re making decisions *with* clients, not *for* clients. Clients will often feel like their attorneys hold all the power. **Minimize the power differential** as much possible through collaboration. Ask the client what they want and ensure them that you will all work towards that goal together. Listed below are a few

important trust-building principles to always keep in mind during your representation. The remaining sections of this document provide practical tips on how to implement these principles.

- Transparency, honesty, and open communication
- Sensitivity to your client's story and their triggers
- Safety - physical, emotional, and psychological
- Respect, dignity, and shared humanity

#### 4. Create A Comfortable Environment

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The physical environment can contribute significantly to client stress or comfort. Think about ways you can create a safe space for your client. A few small steps can go a long way:

- **Tell Your Client What to Expect.** Your office may feel intimidating to clients, so make sure they are prepared. Tell them in advance about the security process and make sure they have a contact number to call if they get lost. Meet them in the lobby to help them through security and escort them upstairs, especially if they speak limited English or are undocumented.
- **Discuss Childcare.** Talk with clients in advance about their childcare options on the day of the appointment. Children, no matter how young, should never be in the room when discussing traumatic events. It is also unlikely that clients will open up in front of their children. Many firms will provide a second room with a TV and a volunteer to watch the child if clients cannot organize/afford childcare.
- **Use a Private Space.** Reserve a meeting room that does not have transparent walls (e.g., fishbowl conference rooms) that allow passersby to see inside so that your client maintains a sense of privacy. If that's not possible consider meeting in an empty office, although the bigger the office the better so the client does not feel trapped.
- **Be Consistent.** Use the same room every time so your client is familiar/comfortable with their surroundings.
- **Prepare the Room.** Make sure there are tissues in the room, as well as water and tea. Sipping water or tea can be calming. Setting out beverages or food can also create opportunities to take breaks during discussions about difficult experiences.
- **Limit the Audience.** Include in the meeting only those people on the team who are necessary. Remember that your client is being asked to open up about deeply personal experiences. This might mean excluding paralegals, interns, or attorneys not heavily involved in the case. Smaller groups will make your client feel safer. Be thoughtful about the gender of the team members in the room, especially if you are working with survivors of sexual violence. You can talk about this with the referring agency, or ask the client what they're comfortable with.
- **Restrict Remote Participation.** There should be no "dial-in" team members. Having an open line and a faceless voice will make opening up very difficult for clients.

- **Dress.** Try to avoid wearing a business suit when you first meet with your client so that they don't feel underdressed or intimidated. Also, scents can sometimes be a trigger for trauma survivors, so try to avoid perfume or cologne during your meetings.
- **Pay Attention to Positioning.** Be mindful of positioning in the room, especially in relationship to the door. Let clients choose their seats. For example, some clients may not feel safe with their backs to the door. Avoid "cross-examination" style seating—your client should not be seated on one side of the table facing several attorneys on the other side. Finally, be cognizant of your client's personal space and boundaries.
- **Explain Note-Taking.** Try to choose in advance only one note-taker for the meetings. The person leading the interview should be focused on the client as much as possible. Explain that XX will be taking notes because it's necessary for the case and all notes will remain confidential. It sometimes puts clients at ease to let them know that they are welcome to look at the notes—it reduces the fear that you are writing something "bad" about them.

## 5. Best Practices For The First Meeting

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Remember that open communication, transparency, and collaboration are key to building trust. Understand the power imbalance inherent in your relationship and work to diminish that imbalance by arming your client with information. Knowledge is power, after all. Accordingly, spend time in your first meeting sharing information and providing ample opportunity for your client to interject and ask questions. You may not even want to get to the client's story in that first meeting.

Some things to cover:

- ☒ Make sure they know the roles/responsibilities of everyone in the room—attorney, paralegal, interpreter. Identify the client's primary contact and provide a business card.
- ☒ Explain attorney/client privilege and stress that you will not reveal anything unless your client directs you to. This will help your client feel emotionally safe.
- ☒ Walk the client through the engagement letter, explaining each section and pausing to allow time for questions. Make sure your client knows they can take it home and review it before signing so they don't feel pressured. Note that the engagement letter should never be mailed to the client before it is first presented in person—most clients will be unfamiliar with a firm engagement letter and receiving it without explanation may cause pre-meeting anxiety.
- ☒ Explain the process ahead of you. Set realistic expectations. Make this collaborative by asking your client what their goals are and discussing how you will try to achieve those goals together.
- ☒ Encourage questions and feedback. You can ask things like: "Does that sound ok to you?" "Can I explain that better?" "Am I being clear?" Avoid asking "Do you understand?" Clients often fear they *should* understand and may be too ashamed to say "no."



- ☑ Acknowledge that you will be discussing some difficult topics and ask your client what you can do to make them feel more comfortable. Encourage them to tell you when they feel overwhelmed or need a break.

## 6. Discussing Sensitive Topics and/or Traumatic Events

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Always approach potential trauma triggers gently. Clients may avoid themes or topics that cause them to re-experience their trauma. They are not being uncooperative; it is simply a defense mechanism. Before broaching a sensitive topic and/or digging deeper into a traumatic experience, give a warning about where you intend to go. Assure them that you don't want to be invasive, but you need to gather this information for the case. Explain why the information is important to the case. Allow clients to tell their stories in the way they experience or recall them. Use open-ended questions and be patient—resist the urge to interrupt your client's narrative to ask clarifying questions or establish dates. Instead, record your questions and find a time to gently go back later to ask them.

Here are some additional things to keep in mind:

- **Check In.** Monitor your clients' reactions and take breaks when they appear overwhelmed. Even if clients aren't showing physical signs of discomfort, pause after a difficult story and offer to take a break—some clients have become very good at hiding their anxiety/fear. Some clients may even smile or laugh when discussing trauma. This can be jarring at first, but remember that it is simply another coping mechanism.
- **Interrupt Flooding.** If clients begin to flood or start experiencing other manifestations of trauma, stop the interview and ground your client by bringing them back to the present: Get them water or tea; go outside for fresh air; encourage them to focus on breathing; and/or start talking about something neutral and in the present day (e.g., plans for the evening; the weather). Very rarely should you engage in physical contact such as hugging or taking a client's hand, and only if you already have a trusting relationship and you get affirmative consent first.
- **Monitor Your Own Reactions.** Do not express feelings (or facial expressions) of disgust or horror. Although you may be horrified at the *situation*, your client may internalize it as being horrified at *them*. You also don't want to convey a sense that you can't handle the hard parts of their story. That might lead clients to hold back certain facts, or worry that *they* need to take care of *you*. (Of course it is normal to feel upset by the stories you will hear. Make sure to take a break if you feel like you need it.)
- **Use a Strength-Based Perspective.** Remind clients that they survived and found help for themselves, which took strength and courage. Say things like, "I admire your strength" and "that must have taken incredible courage." Be compassionate (e.g., "I'm so sorry that happened"), but avoid treating the client like they are damaged or fragile (e.g., avoid phrases like "you poor thing," "I don't know how you made it through that," or "I've never heard something so horrible").
- **Avoid Judgmental Phrasing.** Be careful not to use judgmental or victim blaming language in your questions; that is, don't ask questions that presume a right or wrong way of doing things. For example,

don't ask "Why did you wait so long to come forward?" Instead, say, "Tell me about your decision to seek help from the police."

- **Build Contextual Timelines.** Understand that your client may not be able to put together a precise timeline because their traumatic memories are mixed up together. You can help establish time periods by asking about surrounding neutral facts; for example, "How old was your son?"; "What was the weather like?"; "Was it near a holiday?" But understand that it may not be possible for your client to be precise. Assure them that it's ok that they can't recall.
- **Be Careful with Labels.** Understand that your client may not be able to label what happened to them. Very few clients will say "I was trafficked" or "I was raped." You will need to patiently gather the facts in order to

understand the severity of what happened. While you're gathering the facts be sure to mirror the client's language. You may ultimately need to get the client comfortable with "labeling" what happened to them for purposes of the legal case, but that should be a slow and compassionate process.

- **Ask Only What You Need to Know.** Be thoughtful about how much information you really need to successfully complete your case. Clients have often experienced multiple forms of trauma and in many cases you don't need to know the full trauma history. Don't try to elicit every instance of harm if 5-6 incidents would more than meet the burden.
- **Make Adjustments.** Be sensitive to your clients' needs and be prepared to make adjustments. If you're having

## 7. Best Practices For Ending the Interview

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**Never** end the interview right after a re-telling of a traumatic event. Bring the client back to the present by asking neutral or positive questions. This can be as simple as asking about their children, or what they plan to do for the rest of the day.

After your client leaves your office they will likely start to have anxiety about what happened in the meeting and about what's going to happen at the next meeting. Do as much as you can to try to minimize their anxiety. Thank the client for sharing their experience with you and remind them that you will keep everything they disclosed confidential. Give them a clear understanding of what the next steps are. It will help to reduce anxiety if you can preview what they can expect to cover at your next meeting. When scheduling the next meeting let your client take the lead by asking what days and times of the week are best for them. If you offer a specific day/time some clients may feel that they need to say yes because you are an attorney offering free services—even when the time is difficult for them. Provide them with a roundtrip metro card for the next meeting so that they don't experience anxiety about how they will get to your office next time. Be sure the client knows who to contact if they have questions.

## 8. On-going Communication

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Stay in contact with your client and provide **at least monthly updates**—even when there's not much to report. Clients, especially those who have difficulty trusting, will become anxious if they haven't heard from you in a long time. This could negatively affect the progress you've made building trust. Conversely, a quick check-in will help build trust.

You also may experience some turnover on your team. This is normal, but it's important to be transparent with your client about team changes. If you are the team member leaving, it is best to tell the client in person and introduce your replacement in person. The transition will be difficult for your client and could be a trigger. Handle the transition thoughtfully and ensure your client that it will not cause delays.

## 9. Experiencing Vicarious Trauma

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Hearing your client's traumatic, and often heartbreaking, experiences can sometimes cause you secondary trauma, or may trigger your own personal past traumatic experience. It is important to check in with yourself after client meetings and be honest about what you are feeling. You cannot take care of your clients if you do not take care of yourself. A few tips:

- **Take Time to Decompress.** Identify what helps your mind and body relax and incorporate it into your routine. It could be anything from meditation, to running, to doing a puzzle.
- **Establish Clear Boundaries.** Don't be afraid to set appropriate boundaries with your client. Most of us are not trained social workers and you should not take on that responsibility. If you believe your client needs counseling, contact the referring public interest agency to help your client get a clinical referral.
- **Self-Care Is Critical.** Make sure you get enough sleep, food, and exercise. Pay attention to your sleep habits—if you aren't sleeping well think about whether it's related to your trauma work and talk to someone about it.
- **Reach Out.** Check in with yourself in the days following your client meetings. If you start to feel overwhelmed, share your experience with someone—a counselor, friend, family member, or fellow pro bono attorney. Do not try to manage trauma on your own.

## Who We Are

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PIPBA is an association of pro bono professionals overseeing pro bono programs at nonprofit and public interest law organizations in the New York City metropolitan area. We are committed to supporting a range of pro bono legal services that promote civil rights, human rights and access to justice, strengthen the nonprofit sector, and otherwise improve life for low-income and disadvantaged communities and populations. Our goal is to foster a supportive community where resources are shared, best practices are established, and standards are set to ensure the highest quality pro bono legal services. If you would like a copy of PIPBA's other tip sheet, entitled "**Troubleshooting Pro Bono Relationships with Low-Income Clients**" please visit our web site, [www.pipba.org](http://www.pipba.org).



### GROWTH IN U.S. ETHNIC MARKETS

According to the U.S. Census Bureau, the foreign born population in the U.S. has grown from **9.7 million in 1970 to 32.2 million in 2003.**

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- Over-the-Phone Interpretation
- Document Translation
- Language Line® Phone
- Language Line® University
- Language Line® Direct Response
- Language Line® Video Interpreter Service

## TIPS FOR WORKING WITH AN INTERPRETER

- 1. BRIEF THE INTERPRETER** - Identify the name of your organization to the interpreter, provide specific instructions of what needs to be done or obtained, and let him/her know whether you need help with placing a call. If you need the interpreter to help you place a call to the Limited English Proficient (LEP) customer, you may ask the interpreter for a dial-out. There is a limited amount of time allotted for placing a dial-out once the interpreter is on the phone. Therefore, it is important that you provide a brief introduction and specific instructions to the interpreter in a timely manner.
- 2. SPEAK DIRECTLY TO THE CUSTOMER** - You and your customer can communicate directly with each other as if the interpreter were not there. The interpreter will relay the information and then communicate the customer's response directly back to you.
- 3. SPEAK NATURALLY, NOT LOUDER** - Speak at your normal pace, not slower.
  - **SEGMENTS** - Speak in one sentence or two short ones at a time. Try to avoid breaking up a thought. Your interpreter is trying to understand the meaning of what you're saying, so express the whole thought if possible. Interpreters will ask you to slow down or repeat if necessary. You should pause to make sure you give the interpreter time to deliver your message.
  - **CLARIFICATIONS** - If something is unclear, or if the interpreter is given a long statement, the interpreter will ask you for a complete or partial repetition of what was said, or clarify what the statement meant.
- 4. ASK IF THE LEP UNDERSTANDS** - Don't assume that a limited English-speaking customer understands you. In some cultures a person may say 'yes' as you explain something, not meaning they understand but rather they want you to keep talking because they are trying to follow the conversation. Keep in mind that a lack of English does not necessarily indicate a lack of education.
- 5. DO NOT ASK FOR THE INTERPRETER OPINION** - The interpreter's job is to convey the meaning of the source language and under no circumstances may he or she allow personal opinion to color the interpretation. Also, do not hold the interpreter responsible for what the customer does or does not say. For example, when the customer does not answer your question.
- 6. EVERYTHING YOU SAY WILL BE INTERPRETED** - Avoid private conversations. Whatever the interpreter hears will be interpreted. If you feel that the interpreter has not interpreted everything, ask the interpreter to do so. Avoid interrupting the interpreter while he/she is interpreting.
- 7. AVOID JARGON OR TECHNICAL TERMS** - Don't use jargon, slang, idioms, acronyms, or technical medical terms. Clarify unique vocabulary, and provide examples if they are needed to explain a term.
- 8. LENGTH OF INTERPRETATION SESSION** - When you're working with an interpreter, the conversation can often take twice as long compared with one in English. Many concepts you express have no equivalent in other languages, so the interpreter may have to describe or paraphrase many terms you use. Interpreters will often use more words to interpret what the original speaker says simply because of the grammar and syntax of the target language.
- 9. READING SCRIPTS** - People often talk more quickly when reading a script. When you are reading a script, prepared text, or a disclosure, slow down to give the interpreter a chance to stay up with you.
- 10. CULTURE** - Professional interpreters are familiar with the culture and customs of the limited English proficient (LEP) customer. During the conversation, the interpreter may identify and clarify a cultural issue they may not think you are aware of. If the interpreter feels that a particular question is culturally inappropriate, he or she might ask you to either rephrase the question or ask the interpreter to help you in getting the information in a more appropriate way.
- 11. CLOSING OF THE CALL** - The interpreter will wait for you to initiate the closing of the call. When appropriate, the interpreter will offer further assistance and will be the last to disconnect from the call. Remember to thank the interpreter for his or her efforts at the end of the session.

# Grounding And De-Escalation Quick Tips

## What Is Grounding

- a set of strategies aimed at **managing strong emotions** when they threaten to overwhelm and disrupt a person's functioning

## Guidelines

- Keep your eyes open
- Remember you are always in control
- Remain alert and to be aware of your surroundings.
- Grounding is like a muscle and needs much practice to build the 'grounding muscle'
- Use it anytime and anywhere
- Remain as neutral as possible and avoid judgements of 'good' or 'bad'
- Stick to the facts and DO NOT elaborate on your emotional reactions to the facts
- There's no perfect way to do it, the goal is to develop coping skills in emotional management
- Use grounding early in the cycle (ex: beginning panic attack)
- Use the Emotional thermometer to rate the intensity of feeling(s) on a scale from 1 to 10 before and after the grounding exercise
- Focus on the present, not the past
- Find the methods of grounding that work best for them

## Types of Grounding; Examples

### Mental Grounding

- Describe your environment in detail using all your five senses. Ex: if you are in the waiting room, describe the colors, the smells and the sounds of the room
- Play a categories game with yourself e.g. List your top 5 favorite foods, categories of music, world cities, basketball players, etc.
- Describe an everyday activity in great detail, ex. doing the laundry, or cooking a meal
- Count to 10 backwards and/or say the ABCs. Do it in different languages if you know them
- Do math games counting to 40 while skipping 3,5,7 and then subtract backwards...

### Physical Grounding

- Plant your feet firmly on the ground, literally 'grounding' yourself. Take shoes off if possible
- Run cool water on your hands
- Carry 'grounding' objects in your pocket such as small piece of cloth, a rock which you can touch and feel when triggered
- Stand up and shake your arms
- Stand close to a wall and push away the wall as hard as you can, allow the force to rise up from your center
- Eat a strong mint gum or a spice candy to 'snap you out of it'
- Grab tightly onto your chair as hard as you can

### Soothing Grounding

- Repeat the words of your favorite song
- Describe in detail a 'favorite' person and the reasons why you like him/her so much
- Describe your favorite food and beverage
- Repeat a meaningful quote, saying or a prayer paying attention to the rhythm and try to say it slowly
- Repeat safety statements: 'My name is XXX I am safe right now. I am in the present and I am safe. I am a strong and courageous person and I am not alone'
- Describe your safe place focusing on details

## What is De-Escalation

- **Escalation is a NORMAL response** to feeling afraid, rejected, powerless, humiliated

- Consider de-escalation when **someone is visibly agitated, angry or upset** and the **situation seems to be spiraling out of control**.

## Verbal De-Escalation Guidelines

- Start with yourself
  - Remember to breathe
  - Ground yourself- people will respond to the tone and energy that you display. Grounding yourself allows you to display a calmer presence to the agitated person
  - It's hard to stay calm when the situation is stressful, fake it until you make it!
  - Remember that it's not about you, don't take it personally (e.g. it's hard not to defend yourself/yell back when you are being yelled/cursed at), this helps decrease defensiveness
    - It can be helpful to focus on the emotion/concern underlying the behavior
  - Trust your instincts. If after a few minutes of trying these strategies you feel that de-escalation is not working ask for help
- If you are not working with the person or if assistance arrives, perform introductions and use their name
- Frame questions and statements empathetically and avoid judgement
- Listen actively: maintain attention and eye contact (but don't stare or gaze intense into their eyes which may seem threatening)
- Summarize what they say, repeat it (easy way to demonstrate you are actively listening)
- Model the volume/tone you want them to utilize
- Body Language Is Important
  - Neutral/attentive facial expression
  - Calm and relaxed posture, try not to cross your arms, smile when appropriate, show you're concerned, get down to their level (if safe to sit down) so you're able to talk to them as equals (increases safety and trust)
  - Nod your head up and down (increases empathy, helps get more information)
  - Touching someone with history of trauma in the midst of agitation should be done thoughtfully, preferably only if you have a pre-existing positive relationship
- Remind client that you are on the same side and while the concern and frustration are understandable, be clear what the goal is currently
- Encourage/Assist the client in using a grounding technique.
- Identify a cue for the client to signal that they need a break if distress intensifies again.
- Practice and prepare for situations that may cause distress

## Links

### Guided Meditation by Dr. Neda Gould

<https://youtu.be/77bIfq3zknY>

**Grounding Exercise: Anxiety Skills #5 - YouTube**

<https://youtu.be/1ao4xdDK9iE>

**Grounding Yourself - National Center for Post Traumatic Stress Syndrome - Clinical Series  
- YouTube**

<https://youtu.be/DFxRs1oFiEE>

## Troubleshooting Pro Bono Relationships with Low-Income Clients

Thank you for taking on a pro bono matter on behalf of a low-income New Yorker! Most volunteers report that their pro bono work is among the most meaningful of their career. We certainly hope that is true for you as well. Any new client relationship presents challenges for both the attorney and the client. Pro bono cases are no different. We hope that by identifying some common pitfalls you can avoid some of these situations and enhance the experience for both you and the client.

Our clients are by definition low-income. What does low-income mean? In 2016, the federal poverty line is less than \$12,000 for an individual. Most of our clients are at or below 200% of the poverty line. There are approximately 1.7 million New Yorkers at or below the federal poverty line, and three million New Yorkers at or below 200% of the poverty line. That's one-third of the population of New York City.

Surviving on ten or twenty thousand dollars a year in New York City is extremely difficult, and sometimes creates challenges when accessing and utilizing legal services. Those challenges can sometimes lead to misunderstandings between counsel and client. Some common ones are described below, along with tips on how to deal with them.

Whatever challenges you face, remember this golden rule: reach out to the referring public interest organization for help anytime you are having issues with a client. It is a vital part of our role in any pro bono case; never hesitate or worry that you are troubling us.

### 1. Responsiveness

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Low-income clients frequently have phones that require prior purchase of minutes. Without sufficient funds, clients may borrow phones or computers to contact you. That may mean that it takes some time to get back to you, or that communication comes from different numbers or sources, or that a client doesn't always get your messages. Conversely, clients may call you hoping for immediate help when an issue is an emergency.



### **Tips:**

- Be persistent. Call the client again if they haven't called you back.
- Don't take it personally, and don't assume it means the client is not taking the case seriously.
- Give a client multiple ways to reach you—by phone, email, and letter.
- Similarly, try to obtain multiple ways to reach the client when you first meet and find out which methods the client prefers.
- Ask the client to try to let you know if your usual way of contacting them will be temporarily unavailable so that you can reach them through an alternative medium if necessary.
- Be flexible, and respond when the client asks for help.
- Get in touch with us and your pro bono counsel if you are having problems. Don't let the problem fester—the faster we know about the problem, the faster we can help.

## **2. Appointments**

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Sometimes clients are late or miss appointments. That might be because another crisis has erupted in their lives. Or it could be because they couldn't figure out how to get to your office, or didn't have money for the subway. \$5.50 for a round-trip is a significant burden for many of our clients. Many clients have low-wage jobs that do not permit them to take time off for appointments, or do not pay them for time that they miss at work. Others fear asking for time off, in part because they may not feel comfortable explaining the reason.

### **Tips:**

- Offer to pay for a Metrocard or car service if the train is not an option.
- Take special care to explain how to get into your building, and if they will need an ID. If they don't have an ID, figure out a plan with your building security to get them in.
- Consider meeting the client in the building lobby. It can be intimidating to try to get into office buildings; having someone come downstairs to welcome the client in—and help deal with security—can make a huge difference.
- If the client is transgender, make sure security and others will address the client appropriately.
- Meet your client early for court appearances.
- Have food and refreshments in the conference room you meet in, just as you might for any client.
- Consider meeting your client somewhere more convenient for them than your office.
- Make the most out of every in-person appointment. For example, if a document is ready to be notarized, bring the document to a legal secretary or other notary in your office immediately.
- Ask about a client's work schedule, and offer to accommodate that schedule as best you can.
- Explain in advance that there may be times when a client will have no choice but to miss work—for example, for a deposition or court date. It is better to set expectations up front so that a client is not surprised later.

### 3. Disabilities

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Many of our clients are people with physical, developmental, or emotional disabilities. Sometimes those disabilities are undiagnosed. Some of these clients may present in a chaotic manner, or have trouble processing information.

#### **Tips:**

- Consider whether to make accommodations to address a disability.
- If you know about a disability, ask the client about the accommodations that they prefer. It is better to be direct than to make assumptions.
- Talk through travel that the client may need for the case, and give any support you can.
- If your client has difficulty processing information, take particular care to communicate clearly, give the client time to ask follow up questions, and repeat information as needed.
- If using a sign language interpreter, be sure to make eye contact with and direct your comments to the client, not the interpreter.
- Remember: clients with emotional and developmental disabilities are intelligent and deserve respect; make sure to treat them that way, even as you make any necessary accommodations.

### 4. Communication

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Many clients are not familiar with the legal system, or have not had much schooling, or English is not their first language. Others are elderly or disabled. That's part of why your help is so important: you can help them navigate a byzantine and often unfriendly system.

#### **Tips:**

- Make sure you explain your role and the legal proceedings carefully and clearly.
- Be prepared to explain the concepts in a simple and clear fashion, perhaps several times. Try to assess your client's ability to understand the proceedings.
- Meet face-to-face early in the engagement to build trust and make sure that the client understands the engagement letter.
- When setting up appointment times, ask the client about his or her work or school schedule and try to accommodate it if possible. A client may not initially feel comfortable telling you that it is difficult to get a day off work, or miss class.
- If your client's primary language is a language other than English, an interpreter and translator are required. Be sure you have one for every communication. Confirm at the outset with the client that they understand the dialect used by an interpreter. A professional interpreter/translator is strongly recommended, especially for communication integral to the representation. Do not expect the client to bring a family member or friend to interpret—and never use children as interpreters. Direct conversation toward and make eye contact with your client, not the translator.
- When working with youth, remember that this may be the first time they are encountering the legal system. Try to get an early read on the young client's relationship with parents or caregivers and decide together how involved those individuals will be in the representation.

## 5. Other crises

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The matter you have taken on for the client may be just one of several critical things going on in his or her life: their housing or public benefits may be in jeopardy, they may be dealing with creditors, or even be facing threats and violence.

### Tips:

- Be patient and understand that clients may suddenly have other priorities that take precedence over their case.
- But don't feel that you need to solve every problem a client has. It is important and helpful to set consistent boundaries, and to reinforce them.
- If a client has a problem that is beyond the scope of your engagement, please immediately contact us and your pro bono counsel.

## 6. Empathy and respect

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Keep in mind that it can be intimidating or embarrassing for clients to try to get help. They may feel intimidated by you as an attorney, or nervous about coming to a big office building. They might be embarrassed to note that they don't have the money to travel to meet you, or feel reticent to tell you about abuse or other challenging problems that they may face. They may also feel suspicion or mistrust based on prior bad experiences.

### Tips:

- Convey respect, just as you would with any client.
- Answer emails, phone messages, and other outreach in the same timely manner as you normally would.
- Offer meeting space and refreshments as you normally would.
- Make clear that you work for the client.
- Listen carefully to the client and encourage questions.
- Think through small costs that might feel very large to someone without money: paying a notary, paying a hospital for copies of medical records, etc. Ask your firm if it will absorb these minor costs. It can make a huge difference. You may want to consult with your pro bono counsel about your firm's policies on these costs.
- Respect, empathy, responsiveness, and kindness will strengthen the bond with your client.

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## Who we are

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# **EXHIBIT 4 – VICARIOUS TRAUMA**

## **EXHIBIT 4 – VICARIOUS TRAUMA**

- A. Exhibit 4 Table of Contents
- B. Vicarious Trauma and Ethical Obligations for Attorneys Representing Immigrant Clients: A Call to Build Resilience Among the Immigration Bar
- C. How this Work Affects Us
- D. Attorneys and the Obligation of Self-Care as Competence

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Lindsay M. Harris

Liana M. Montecinos

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Shoba Sivaprasad Wadhia  
Editor-in-Chief

Volume 2, Number 1, April 2020

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# Vicarious Trauma and Ethical Obligations for Attorneys Representing Immigrant Clients

## A Call to Build Resilience Among the Immigration Bar

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**Abstract:** This article analyzes the ethical obligations for attorneys representing immigrant clients and the consequences of vicarious trauma, compassion fatigue, and burnout for the immigration bar and immigrant clients. The authors identify barriers for immigration attorneys in preventing, recognizing, and responding to vicarious trauma in themselves and colleagues and suggest practical ways that the immigration bar can and should seek to build resilience.

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Trauma is embedded in the practice of immigration law, especially for attorneys who represent clients seeking humanitarian and discretionary immigration relief. This article analyzes trauma within the practice of immigration law, the ethical obligations for attorneys representing immigrant clients under the ABA Model Rules of Professional Conduct, and the consequences of vicarious trauma among the immigration bar. The authors then identify barriers for immigration attorneys in preventing, recognizing, and responding to vicarious trauma and suggest practical ways that the immigration bar can build resilience.

## Trauma and Immigration Law

Scholars from the fields of psychology and social work describe three potential periods of trauma for migrants: trauma suffered in the country of origin, trauma suffered during the migration journey, and trauma of relocating.<sup>1</sup> This “triple trauma paradigm,” however, does not necessarily acknowledge that being undocumented in the United States often also traumatizes clients, because this concept was originally theorized in the context of refugees who already possess status upon arrival. The theory also does not encompass the reality that many immigrants are vulnerable to additional traumas once in the United States, including criminal victimization. Nor does this theory acknowledge that the

process of applying for relief before an immigration court or U.S. Citizenship and Immigration Services (USCIS) may in itself be an additional source of trauma once an individual has arrived in the United States or is forced to start the process through the Migrant Protection Protocols (MPP) in Mexico.

Given the layers of trauma that immigrant clients may be exposed to before even entering law offices, it is no surprise that many immigration attorneys—like others who find themselves in helping professions, such as public defenders, civil legal aid attorneys, and family law attorneys—find themselves regularly exposed to trauma as a part of their legal practices. This article places special emphasis on the experience of immigration attorneys engaged in removal defense and affirmative practices that involve applying for humanitarian relief such as asylum, withholding of removal, protection under the Convention against Torture (CAT), discretionary waivers, and relief under the Violence Against Women's Act (VAWA), including self-petitions and U-visas. All of these forms of relief require "the lawyer to prepare the client to tell the story of their pain, to tell the story of the torture they have experienced. . . . Thus, the trauma becomes the centerpiece of the representation and [requires attorneys to] engage it as a critical mass of legal data and evidence."<sup>2</sup> In other words, the trauma that the client has experienced becomes integral to the attorney-client representation itself, as does the evidence of the trauma that immigration attorneys must review and present to sustain a client's burden of proof. This wide range of evidence may include gruesome photos, death certificates, police reports, and newspaper articles documenting harm; forensic psychological and medical reports; and international reports on human rights abuses.

Attorneys and legal staff describe the "impact" of confronting these client narratives and documentary evidence in a variety of terms, in part because the legal profession has not adequately trained attorneys to recognize the spectrum of negative impact that working with traumatized populations may bring to the surface. Given this professional limitation, this article relies on the definitions delineated in the social work profession in order to better address the consequences and professional responsibility that attorneys have in addressing the impact of this work.

Colloquially, the term "burnout" is often used. However, "professional burnout" describes a specific phenomenon in which a professional's personal experiences, combined with the negative cumulative effects of providing services to clients over a particular time *and* organizational dynamics of the advocate's employment environment, result in "emotional exhaustion, depersonalization, and reduced sense of personal accomplishment."<sup>3</sup> In contrast, "secondary trauma" or "secondary traumatic stress" results from engaging in an empathetic relationship with an individual suffering from a traumatic experience and bearing witness to the intense or horrific experiences of that particular person's trauma.<sup>4</sup> "Compassion fatigue" is best described as a state in which an advocate—most often a professional engaged in a helping profession such

as psychology, social work, or legal aid lawyering—is experiencing symptoms of both burnout and secondary trauma.<sup>5</sup>

While all three—professional burnout, secondary trauma, and compassion fatigue—are consequences that attorneys may attempt to avoid in order to find sustainability in their professional lives, it is vicarious trauma that is most concerning and risky from a professional and ethical perspective. Vicarious trauma describes “the resulting cognitive shifts in beliefs and thinking that occur . . . in direct practice with victims of trauma.”<sup>6</sup> These changes in beliefs and thinking include alterations in “one’s sense of self” as well as changes around fundamental issues such as “safety, trust, and control; and changes in spiritual beliefs.”<sup>7</sup> This shift may manifest itself in a variety of negative trauma exposure responses, such as the minimization of others’ experiences, inability to embrace complexity, diminished creativity, avoidance and inability to listen, inability to empathize, and an inflated sense of importance related to one’s work as well as corresponding feelings of helplessness—any one of which may cripple an attorney’s ability to establish trusting relationships with clients and advocate zealously on their behalf.<sup>8</sup> Additionally, other trauma exposure responses such as cynicism, anger, fear, guilt, hypervigilance, intrusive images, physical ailments and somatic symptoms ranging from headaches and stomachaches to more severe ailments, substance abuse, and chronic exhaustion may not only affect an attorney’s representation but also their health and wellness.<sup>9</sup> These negative trauma exposure responses may affect how attorneys think, react, and practice, thereby putting at risk the fundamental ethical obligations that attorneys have to immigrant clients.

## **Ethical Obligations of Immigration Attorneys**

Many of the symptoms of vicarious trauma described above affect the most fundamental aspects of the attorney-client relationship. Thus, unabated negative trauma exposure responses may lead to serious ethical issues. This section will cover the ethical obligations of immigration attorneys and ethical issues that arise with attorneys experiencing vicarious trauma.

For immigration attorneys, there is no single comprehensive authority for guidance on ethics. Although USCIS and Executive Office for Immigration Review (EOIR) regulations address the discipline of attorneys and non-attorney representatives, they do not provide detailed guidance on actual ethical issues faced by immigration lawyers. Instead, the ethics rules applicable to immigration lawyers are the rules of ethics for the state in which the lawyer is licensed to practice. For purposes of this article, however, references will be made to the Model Rules of Professional Conduct (Model Rules) drafted by the American Bar Association (ABA). The majority of states, including the District of Columbia, have adopted the Model Rules either completely or with relatively minor changes.

**Competent Representation (Model Rule 1.1)**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Although Model Rule 1.1 may seem elementary and simply worded in its requirement of competence, maintaining the level of knowledge and thoroughness necessary to represent immigration clients is an ever-increasing challenge. Especially now, with immigration law and policy changing almost daily, it is critical that attorneys research and study the law to keep abreast of changes that may affect a client's case. The ethical duty of competence requires thoroughness and adequate preparation in handling a client matter, particularly considering the drastic consequences that removal or visa refusal have on our clients and families. Because the stakes are so high in immigration cases, immigration attorneys are under more pressure than ever to competently represent their clients.

For an attorney suffering from vicarious trauma, she must be especially mindful about whether she is able to provide competent representation as required under Model Rule 1.1. Indeed, even a knowledgeable, experienced, and dedicated immigration lawyer may be unable to provide competent representation if she is suffering from symptoms of vicarious trauma or burnout. For example, an attorney feeling overwhelmed, disoriented, and hopeless may be inclined to procrastinate until the last moment and then rush through the work or put off the required preparation altogether. Whether the lapse of competent representation is checking off the wrong box on an employment authorization renewal or failing to include crucially obvious supporting documentation, the prejudice to the client may be dire. Thus, prior to accepting representation, an attorney must consider whether she is capable of providing competent representation and also must self-monitor themselves throughout representation to ensure that they are maintaining the required level of competence.

Moreover, as others have recognized, the duty to provide competent representation to clients who have experienced trauma includes an obligation to understand trauma and its impact.<sup>10</sup> Knowledge and skills in working with clients who have survived trauma as well as in managing one's own trauma exposure responses are necessary to avoid retraumatizing clients. Without such knowledge and skills, attorneys are impeded from undertaking basic critical tasks such as interviewing a trauma survivor, counseling a victim on available options, gathering facts and evidence in support of a claim, and presenting a victim's testimony.<sup>11</sup> As such, reasonably necessary thoroughness and preparation may very well include consulting with a mental health professional to improve upon the attorney's knowledge and skills working with survivors of torture and also to aid with any specific trauma-based symptoms the attorney may be experiencing. In addition, competent representation requires that immigration attorneys and staff be attentive and culturally competent in their

work in order to build trust with clients from diverse backgrounds, many of whom may have differing cultural experiences, religious beliefs, race, class, and gender from the attorneys representing them.<sup>12</sup>

### **Diligent Representation (Model Rule 1.3)**

A lawyer shall act with reasonable diligence and promptness in representing a client.

### **Communication (Model Rule 1.4)**

- (a) A lawyer shall:
  - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
  - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
  - (3) keep the client reasonably informed about the status of the matter;
  - (4) promptly comply with reasonable requests for information; and
  - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Often associated with the concept of “zealous representation,” reasonable diligence and promptness require that an attorney do whatever must be done to provide the agreed upon legal services without any unjustified delay. And, just as with a lack of competence, an attorney's failure to handle a matter with reasonable diligence and promptness may result in dire consequences for an immigrant client. For example, an attorney's failure to file an adjustment of status application prior to expiration of the client's status could result in denial of the application and placement in removal proceedings. Similarly, an attorney's failure to file an application for asylum within one year of a client's arrival may bar the client from obtaining asylum relief altogether. Beyond potentially irreparable injury to the client, an attorney's lack of diligence and promptness could also cause the client to lose confidence in the attorney and erode the attorney-client relationship.

An attorney suffering from vicarious trauma may manifest symptoms that impair her ability to exercise reasonable diligence and promptness in a client's case. Comment 3 for Model Rule 1.3 notes how “[p]erhaps no professional shortcoming is more widely resented than procrastination.” Avoidance, a symptom of vicarious trauma, can certainly lead to procrastination. For instance, an attorney who is triggered by a client's past sexual abuse due to the attorney's own past sexual abuse may procrastinate working on the client's case or not sufficiently delve into the facts of the prior abuse for the client's affidavit and testimony. Or an attorney who has been practicing for



many years representing clients with similar claims might subconsciously or consciously minimize the harm a client suffered and fail to elicit all of the facts from the client. Not only could such avoidance result in the attorney's failure to uncover harm or experiences that could make a client eligible for a particular form of immigration relief, but also if a client testifies or offers evidence about previously undisclosed harm in immigration court, the omission could result in credibility challenges by the Department of Homeland Security. Additionally, an attorney's avoidance, inability to embrace complexity, and diminished creativity may also affect the ability of the attorney to conduct legal research, zealously advance articulate and creative legal arguments, and write complex legal briefs. In short, failure to combat or mitigate trauma exposure responses can result in weaker immigration cases, which may rise to the level of ineffective assistance of counsel.

Going hand-in-hand with Model Rule 1.3's ethical requirement for reasonable diligence and confidence, Model Rule 1.4 requires that an attorney keep her clients reasonably and promptly informed. This obligation includes the attorney's duty to inform a current or former client of the lawyer's material error. An attorney suffering from vicarious trauma might avoid the client's phone calls and not keep the client apprised about the status of the case, especially when the news involves denial of the benefit or relief sought. Additionally, in a practice area where communicating with clients often requires the use of interpreters or translators, working with family or community members as intermediaries, or even working with clients who are legally incompetent,<sup>13</sup> an attorney's avoidance of client communication can seriously undermine the attorney-client relationship.

### **Responsibilities of a Partner or Supervisor Lawyer**

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

Finally, the Model Rules address the responsibilities of attorneys serving in a supervisory capacity over other lawyers as well as legal staff who carry out legal work on behalf of an attorney, law firm, or organization. This rule lays out another guideline implicating the work of attorneys in group settings and suggests that attorneys serving as leaders and supervisors must ensure that firm culture and policies allow for proper training, recognition, and mitigation of negative trauma exposure responses in order to both prevent and respond to vicarious trauma among reporting staff.

This ethical responsibility is particularly challenging during a time when the entire immigration bar is negotiating negative trauma responses as well as constantly changing policies from the Trump administration that directly affect the practice. It is easy for vicarious traumatization to lead to a negative

organizational culture and toxic workplaces. For example, practitioners often engage in the coping mechanism of minimizing the experiences of others around them because “we feel saturated to the point that we can’t possibly let any more information in . . . . [W]e are literally at capacity.”<sup>14</sup> However, as author Laura van Dernoot Lipsky explains, when professionals engage in minimization in a workplace, there are consequences; if a colleague expresses irritation and anger, that colleague may be less approachable to others in a time of conflict and may make it difficult for the conflict to be resolved in a healthy manner.<sup>15</sup> Minimization can also lead to competition for resources and an attitude of scarcity, particularly in a field where there is no right to counsel and a seemingly never-ending stream of clients in need of representation.<sup>16</sup>

The risk of vicarious trauma as a supervisory concern for firms and organizations can have very real practical consequences, including high employee turnover and consequently increased hours devoted to hiring, lower productivity, and lower morale.<sup>17</sup> Unfortunately, in addition to loss of income for firms and financial resources for legal aid organizations, the result also directly impacts the quality of representation provided to clients due to the inexperience of new attorneys and support staff. Additionally, client representation is often inconsistent and interrupted due to attorney or staff departures, especially over the long course of non-detained immigration cases in jurisdictions where clients wait many months or years for immigration court hearings or USCIS office interviews. While some departures are unavoidable and even reflect natural attrition, the scale of attorney burnout in the immigration bar may lead to the opposite of trauma-informed care where firms and organizations are crippled by attorney departures and as such are not able to provide trauma-informed services in ways that create reasonable client expectations and build trust between staff and clients.

## **The Barriers to Recognizing, Preventing, and Responding to Vicarious Trauma for Immigration Lawyers**

Barriers to recognizing, preventing, and responding to vicarious trauma emerge in law school and solidify in both private and nonprofit practice settings. Some of these barriers are the realities of immigration lawyering: high caseloads due to community needs and the need for firm revenue; tight deadlines before certain courts and asylum offices juxtaposed with incredibly lengthy deadlines with more backlogged courts and asylum offices, which make continuing long-term client relationships and managing case preparation a challenge; and a constantly changing legal landscape that generates feelings of constant crisis. Additionally, the heavy politicization of immigration makes it difficult for attorneys to “leave work at home” when immigration policies are constantly discussed on television, radio, and social media and among friends and family.

However, beyond these practical and contextual barriers, a substantial barrier to recognizing, preventing, and responding to vicarious trauma stems from the foundations of the legal profession and corresponding legal culture. From the moment law students step inside the door of the law school, they are taught to “think like a lawyer.” However, this mode of thinking has, at least historically, not been associated with being compassionate, being in touch with one’s emotions, or acknowledging vulnerability to colleagues, supervisors, or clients.<sup>18</sup> Instead, generations of attorneys have been applauded for their skills at compartmentalizing, pushing down emotions, and demonstrating their ability to persevere “in the trenches.” Lawyers then reinforce these expectations with younger attorneys whom they mentor and train, perpetuating patterns of lawyer conduct and generational patterns of vicarious trauma in workplaces. Yet within this “stiff upper lip” culture, stories, like these below provided by the authors, are shared from attorney to attorney:

“I gasped for air until I woke up at approximately 3:00 A.M. I was in shock and terror, even minutes after I realized it was just a nightmare. I had seen the gang muffle a man’s mouth and strap his feet and hands to a chair, rendering him immobile. I recognized the man as my brother. I could see what they were doing to him, but I was too far away to intervene. When I woke from the dream, my eyes were widened as I lunged, my body howling, but no sound came out of my mouth. This nightmare was an incident one of my asylum-seeking clients shared with me, but in my nightmare, it was happening to my brother. It was in this moment I realized that I needed to be more cognizant of signs of vicarious trauma in my practice of immigration law.”

“I had a client erroneously put in expedited removal. We badgered ICE with release requests until my colleagues filed a successful habeas petition. That all felt like the normal fight. But a month later, I spent two days of advocating with multiple CBP and ICE offices to help him comply with a “check-in” with CBP only to have to tell the client that he was likely going to be re-detained. He broke down in tears on the phone. Even though we averted re-detention, the sound of helplessness in my client’s voice stuck with me. The rest of the week, I found myself lacking motivation and feeling physically exhausted. I could not understand why, especially because we were successful! But I’ve come to realize that when individual clients confront unilateral, oppressive systemic policies that have little or no opportunity for redress that triggers me. I guess I feel like what good am I as an attorney if I am helpless against ICE, too?”

“I once represented a detained client diagnosed with paranoid schizophrenia in seeking asylum. The Immigration Judge first denied the case, and then I obtained a supplemental psychological evaluation, which resulted in the judge reopening the case and eventually granting asylum. The case was very emotionally taxing on me due to the individualized needs of the client and high demands of the complex legal case. I was thrilled to win the case

and kept in touch with the client after his release from ICE detention, even going so far as giving him my cell phone number in case of emergency. A few months after his release, I learned that my client had passed away in a tragic car accident. I was shaken to my core. I tried to compartmentalize my emotions and didn't discuss it with my colleagues, staff, family, or friends. I buried my feelings and let the plight, struggles, and needs of my other clients fill in the void I was feeling, without truly addressing the grief head on."

These stories are consistent with documented negative trauma exposure responses including intrusive thoughts, hypervigilance, psychosomatic symptoms ranging from chronic exhaustion, headaches, and stomach aches to more severe ailments.<sup>19</sup> Yet, while these negative trauma exposure responses are normalized in the literature, such responses are not uniformly normalized or accepted as natural responses among the immigration bar.

## **Building Resilience Among the Immigration Bar**

Rather than deny or debate the existence of vicarious trauma symptoms, the immigration bar should instead focus on helping member attorneys engage in a practice of "trauma stewardship" and cultivating resilience. Author Laura van Dernoot Lipsky describes trauma stewardship as "a daily practice through which individuals, organizations, and societies tend to the hardship, pain, or trauma experienced by humans . . . even the most urgent human and environmental conditions in a sustainable and intentional way."<sup>20</sup> For immigration attorneys, this means cultivating a legal practice that allows us to engage diligently with our clients, while not "internalizing [client] struggles or assum[ing] them as our own" nor allowing our negative trauma exposure responses to affect our ability to competently provide representation, make our work unsustainable, or contribute to toxic or dysfunctional work culture.<sup>21</sup> This section explores ways in which law schools, individual practitioners, and supervisors can build such resilience.

## **Law School Education and Continuing Legal Education Seminars**

Law schools have started to recognize the need for students to reflect on and be in touch with their whole being as they transition to becoming lawyers. Mindfulness has made inroads into law school curriculums, with some schools offering meditation or mindfulness for lawyers courses for credit, or, in some instances, even making a mindfulness course a mandatory part of the first year curriculum.<sup>22</sup> Mindfulness and meditation can be just one of many tools in preventing and addressing symptoms of secondary trauma, but an explicit focus on the subject is lacking within most law schools. Clinical courses in

which students provide representation to traumatized individuals do usually engage this topic,<sup>23</sup> but insufficient attention and energy is typically devoted to a discussion of vicarious trauma.

Therefore, much can be done within law schools to increase trauma literacy and train trauma-informed, self-aware lawyers. The most logical place to start with reform is within experiential education; if a student finds her way into an immigration clinic, it is somewhat likely that the clinical instructors will include at least one class session on working with survivors of torture and trauma, which may include a component on vicarious trauma or self-care. In addition to this session, professors should weave discussions of trauma and vicarious trauma into the clinic curriculum. Additional steps may include:

- Discussing trauma and vicarious trauma in official clinic documents, including the syllabus and any articulation of learning objectives or goals;<sup>24</sup>
- Teaching specific classes focused not only on trauma-informed client representation but also addressing vicarious trauma and providing students with tools to self-assess within those classes;<sup>25</sup>
- Revisiting the topic during weekly supervision meetings or through reflection memos;<sup>26</sup>
- Administering various self-tests or quizzes to measure vicarious trauma and burnout;<sup>27</sup>
- Explicitly discussing trauma and vicarious trauma at the mid-semester and final evaluation;<sup>28</sup>
- Periodically opening the clinic seminar class with a brief pulse check around the room—asking students to share one word about how they are feeling about their case work, about how they would describe their work-life balance or self-care, or other reflective prompts;<sup>29</sup> and
- Incorporating a social worker or therapist into the clinic<sup>30</sup> or for specific clinic projects,<sup>31</sup> or even creating a dual-disciplinary clinic incorporating social work students fully into the clinic.<sup>32</sup> Cross-disciplinary and community partnerships are key.<sup>33</sup>

Immigration professors and supervisors within internships, externships, and job placement should also consider honestly and openly sharing their own trauma journey. Modeling how to address vicarious trauma and an admission that you as the “professor” or as the “lawyer” (or both) can be a powerful way to normalize discussions of trauma. One method of coping with vicarious trauma is to ensure adequate debriefing with colleagues and those within the zone of confidentiality associated with the particular client work at hand. If the supervising professor is able to share her own experiences, this can help open up discussions in groups or one-on-one with students who may also be experiencing symptoms of vicarious trauma.<sup>34</sup>

It is important to note that not all law schools have immigration clinics, and not all immigration lawyers will take a clinic, let alone an immigration clinic, before graduating law school. We must, therefore, look beyond the walls of the law school for more comprehensive solutions to address the gap in knowledge, awareness, and discussion of vicarious trauma. For example, in the context of continuing legal education (CLE) courses, bar associations and organizations conducting CLEs need to move beyond providing “self-care and trauma 101” trainings for attorneys attending such courses and seek to engage trauma stewardship as an ethical issue throughout legal education curricula.

Additionally, for legal aid organizations that regularly partner with pro bono attorneys, especially attorneys who conduct pro bono work from outside the immigration profession, there is a need for these attorneys to develop trauma stewardship skills as well. Training pro bono attorneys to engage in trauma stewardship not only will prevent negative trauma exposure responses from prejudicing clients during the course of the pro bono representation but may increase the likelihood that pro bono attorneys will continue to provide pro bono representation to immigrant clients.

### Trauma Stewardship by Individual Attorneys/Advocates

For individual practitioners, developing a trauma stewardship practice involves both taking steps for vicarious trauma prevention and addressing symptoms *when* symptoms of vicarious trauma arise. The reality is that attorneys and legal staff engaged in direct representation of clients will suffer negative trauma exposure responses that may lead to instances, episodes, or seasons of vicarious trauma. This is not to say that practicing immigration law is a hopeless endeavor, but merely acknowledges that experiencing vicarious trauma over the course of one’s career is normal. The goal of trauma stewardship is to develop awareness to mitigate these symptoms and prevent episodes of vicarious trauma that result in ethical violations, harm to clients, or transitions out of removal defense representation.

Discussing vicarious trauma prevention can devolve into a laundry list of “self-care” tips and techniques or “pop culture” notions of commoditized self-care. It is true that for all professionals, developing self-care practices around health and wellness (such as getting sufficient sleep, regular exercise, healthy eating habits, and having good practices regarding amount of screen time) is important. Certainly, prioritizing client work over engaging in these healthy behaviors can in and of itself be a symptom of vicarious trauma, such as when traumatized attorneys feel that they can never do enough or have an overinflated sense of the importance of legal representation to the point of developing a savior complex. However, wellness behaviors alone will not mitigate the long-term effects of vicarious trauma. Nor will “pop culture” notions of self-care, more appropriately characterized as self-soothing, which

can range from getting manicures to spending time with therapy dogs. As attorney Bea Bischoff puts it, “all the self-care in the world won’t change the fact that I work in a place and within a system in which asylum cases are granted only around 3 percent of the time. . . . It is hard to experience the relaxation promised by a lavender pillow mist when your clients are trapped in detention centers without access to proper hygiene or food.”<sup>35</sup> Rather, trauma stewardship is a set of client practice skills described below that all attorneys can cultivate and deepen over time.

### *Trauma Time Management*

Attorneys engaged in trauma stewardship engage in time management in ways that acknowledge the risk of vicarious trauma. They may limit how many client meetings they conduct per day or how many fact-intensive affidavits they or their staff write with clients in a particular time frame. Attorneys should be mindful of how they respond when finishing filings, writing briefs, or doing trial preparation, and should take steps to de-escalate after long periods of writing or testimony preparation. This can take careful planning and awareness of work patterns to allow for sufficient time to monitor and feel emotions instead of pushing on to the next case or just burying emotions that may bubble to the surface at another (more inconvenient) time—or worse, that manifest while interacting with another client. Attorneys should also intentionally use their time off in ways that increase the sustainability of their advocacy. For some, that may mean taking one long vacation each year and completely going “off the grid,” while for others it may be shorter vacation periods after large trials or intense cases. Beyond vacation, attorneys should also take sick days and mental health days and encourage colleagues and support staff to do the same.

### *Set and Keep Client Boundaries*

While boundary setting is important for all attorneys to enable sustainable ethical practices, it may take different forms. Boundary setting ranges from deciding if and when you give out your cell phone number to clients to making exceptions for irregular meeting times to accommodate client schedules or needs outside business hours. However, working with clients who have experienced trauma or who may still be experiencing trauma may feel different from working with clients who have not. Monitoring responses and finding boundaries enable healthy relationships for both attorney and client. For example, if a client is experiencing a crisis or high level of distress, or is subject to constant levels of crisis by virtue of immigration detention or risks because of immigration status, finding ways to demonstrate empathy and being of assistance while still demarcating clear expectations is consistent with a trauma-informed, relationship-centered approach to legal representation.<sup>36</sup>

### *Self-Monitor and Create a Personal Safety Plan*

Attorneys should develop habits of self-monitoring responses and behavior patterns based on their reactions to different client experiences. For instance, some attorneys may find themselves particularly triggered by testimony about domestic violence or targeting by law enforcement. Other advocates may find it is a client's current behavior or an emotional or indifferent response to the trauma that she suffered that activates their experience of secondary trauma. It is common for responses to ebb and flow over time, which may mean scheduling time annually or biannually to take a day or afternoon to attend to mental and emotional health, rather than addressing these issues only in crisis moments. Some individuals may even want to regularly complete the free professional quality of life scale compiled by the Center for Victims of Torture.<sup>37</sup>

Every attorney should have a safety plan or vicarious stewardship toolbox of behaviors and activities they can access after moments of crisis or when feeling particularly triggered. These practices could include engaging in mindfulness techniques or breathing exercises, going to a place that feels calming or safe, engaging in physical activities specifically aimed at releasing any tension triggered by secondary trauma, or reaching out to a trusted colleague or attorney who may be able to cover a hearing or assist in a task without a long explanation or self-disclosure that may result in backlash.

Part of self-monitoring for attorneys is being aware of one's own background. Attorneys and advocates who themselves have suffered migration-related *or other* trauma in the past may also be triggered by certain client narratives, which in turn requires specific attention and management. This by no means suggests that immigrants are not outstanding, zealous advocates. Each individual attorney brings their own mix of experiences, privileges, strengths, and vulnerabilities to his or her work and may over time develop coping mechanisms that either mitigate or exacerbate vicarious trauma. However, self-awareness is key. Beyond self-monitoring, the immigration bar should also encourage attorneys to seek assistance from mental health professionals to assist in developing healthy coping mechanisms. Attorneys should also be mindful of the proclivity within the broader legal profession toward alcoholism and substance abuse and seek help from lawyer assistance programs offered by local bar associations.

### *Cultivate a Support Team*

Practitioners should cultivate their own support team, from whom they may not only seek support but who they know will speak honestly and openly with them if their behavior changes. The most precarious situation is an attorney who has started to show symptoms of vicarious trauma that endangers ethical responsibilities but has not yet behaved in a way that has come to the attention of a disciplinary bar.<sup>38</sup> In this situation, if an attorney



does cross a line and violate ethical boundaries, other attorneys or community members may hesitate to speak up or confront the attorney, when in reality, such behavior if goes unchecked may escalate or create significant problems for the colleague and his or her clients. If an attorney becomes aware of her own symptoms of burnout, secondary trauma, compassion fatigue, or vicarious trauma that impede her ability to represent clients with reasonable diligence, promptness, and communication, the attorney should seek support from colleagues, support staff, friends, and family so that the attorney can meet their ethical requirements.

### *Engage in Activism or Work Directly with Immigrant Communities*

Many attorneys may find that engaging in immigration-related political activism or efforts to make policy change—or, for attorneys whose day-to-day work is advocating for macro-level change, spending time engaging with clients and immigrant communities directly—may mitigate some symptoms of vicarious trauma, particularly symptoms of helplessness.<sup>39</sup> Such activism may include participating in a community protest, engaging in an advocacy day organized by AILA or another immigration advocacy organization, contacting congressmen to advocate for immigration reform, or engaging with local community organizations. It may mean collaborating with clients and the press to widely publicize their plights or sharing advocacy experiences within professional or personal circles. It may also be powerful to visit immigrant neighborhoods where immigrants are engaging in day-to-day activities unrelated to their immigration case or to the systemic hardships that they endure. Connecting with immigrants outside of the power structure of a law office may help advocates perceive immigrants as survivors and not victims. However, an attorney should self-monitor to be aware of her own needs and boundaries; for some attorneys, the activities noted above may mitigate vicarious trauma, but for other attorneys, over-engagement or overexposure to immigration issues outside of the workplace may exacerbate symptoms of vicarious trauma. All attorneys need to engage in practices that work for them individually.

### *The Role and Responsibility of Experienced Attorneys, Supervisors, and Bar Leaders*

Leaders and supervisory attorneys within law firms, nonprofits, and clinics have a responsibility to create safe spaces for trauma stewardship. For example, beyond advocating for policies such as vacation time, sick time, flex time, comp time, and mental health days, supervisors must actually encourage employees to *use* this time. Further, supervisors must work institutionally to ensure that mental health care is covered by any employer-provided healthcare plans. Less concrete but equally important steps include making efforts to acknowledge,

address, and normalize vicarious trauma. As discussed above in the context of law schools and clinics, supervisors should model disclosure of vicarious trauma and explore ways to open the door to conversations with junior staff. It is important to offer training to new staff and consistently raise the topic of vicarious trauma throughout an employee's tenure. Further, supervisors must take care to avoid creating a culture where new or junior staff feel they are expected to show that they are "tough" or unaffected by trauma. Supervisors must make clear that showing emotions and empathy is valuable, but oftentimes takes a toll on the individual. Supervisors must strike a balance and ensure that vicarious trauma symptoms are neither penalized nor ignored but are instead acknowledged and mitigated.

## Conclusion

This article is intended to ignite conversation among attorneys, law students, law professors, supervisors, and leaders in immigration law on the pervasiveness of vicarious trauma within the field, the barriers to preventing and addressing vicarious trauma, and the ethical imperative to do so effectively. However, further research and discussion is needed. In February 2020, one of the authors, Lindsay Harris, launched a national survey of immigration attorneys handling asylum cases to measure levels of burnout, stress, and vicarious trauma.<sup>40</sup> The purpose of this survey is to gather additional data on best practices to train practicing immigration attorneys and build resilience in their current practices. In addition, more research is needed on the effects of re-traumatization on immigrants seeking relief through the immigration legal process in order to better train immigration attorneys on how to mitigate re-traumatization and vicarious trauma experienced by counsel and legal staff.

## Notes

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of matters, she specializes in removal defense and regularly practices before the Arlington and Baltimore Immigration Courts.

1. Denise Michultka, “Mental Health Issues in New Immigrant Communities,” in Fernando Chang Muy, *Social Work with Immigrants and Refugees: Legal Issues, Clinical Skills, and Advocacy* § 145-146 (2009), quoting John Orley, “Psychological Disorders among refugees: some clinical and epidemiological considerations,” *Amidst Peril and Pain: The Mental Health and Well-Being of the World’s Refugees* (1994).

2. Marjorie A. Silver, Sanford Portnoy & Jean Koh Peters, *Stress, Burnout, Vicarious Trauma, and Other Emotional Realities in the Lawyer/Client Relationship: A Panel Discussion*, 19 *TOURO L. REV.* 847, 860 (2004).

3. Jason M. Newell & Gordon A. MacNeil, *Professional Burnout, Vicarious Trauma, Secondary Traumatic Stress, and Compassion Fatigue: A Review of Theoretical Terms, Risk Factors, and Preventive Methods for Clinicians and Researchers*, 6 *BEST PRACTICE IN MENTAL HEALTH* 2, 57–68 (2010).

4. *Id.* at 60.

5. *Id.* at 61.

6. *Id.* at 60.

7. *Id.*

8. Laura van Dernoot Lipsky & Connie Burk, *Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others*, §41-112 (2009).

9. *Id.*

10. See, e.g., Lynette M. Parker, *Increasing Law Students’ Effectiveness When Representing Traumatized Clients: A Case Study of the Katharine & George Alexander Community Law Center*, 21 *GEO. IMMIGR. L.J.* 163, 177–80 (2007); Jean Koh Peters, *Representing Children in Child Protective Proceedings*, 467 (2007) (“[B]oth the duty to contain our counter-transference in any individual case, and the duty to address our vicarious traumatization as the overall context of our ongoing work for all of our clients, are ethical imperatives.”).

11. Parker, *supra*, 177–79, n.67.

12. See, e.g., Bryant, Susan, *Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 *CLINICAL L. REV.* 33–107 (2001).

13. See, e.g., Hannah Cartwright, Gregory Pleasants & Megan Hope, *Self-Care in an Interprofessional Setting Providing Services to Detained Immigrants with Serious Mental Health Conditions*, 65 *SOCIAL WORK* 1 (2020).

14. Van Dernoot Lipsky & Burk, *supra* note 8.

15. *Id.* at 81.

16. *Id.* at 151–55 (profiling the Northwest Immigrant Rights Project and the decision by the leadership to shut down intake during a particularly untenable period experienced by the NWIRP staff).

17. The Center for Victims of Torture, *Vicarious Traumatization* (2018), [https://www.proqol.org/uploads/VT\\_Handout\\_3.2018.pdf](https://www.proqol.org/uploads/VT_Handout_3.2018.pdf).

18. Silver, Portnoy & Peters, *supra* note 2 at 869.

19. Van Dernoot Lipsky & Burk, *supra* note 8 § 41-112.

20. Van Dernoot Lipsky & Burk, *supra* note 8 § 11.

21. *Id.*

22. See, e.g., Tim Iglesias, *Offering and Teaching Mindfulness in Law Schools*, 49 *University of San Francisco L. Rev. Forum* 24 (2015).

23. See, e.g., Lynette M. Parker, *Increasing Law Students' Effectiveness When Representing Traumatized Clients: A Case Study of the Katharine & George Alexander Community Law Center*, 21 GEO. IMMIGR. L.J. 163 (2007) (discussing the need for specialized training of law students working with survivors of trauma); Carol M. Suzuki, *Unpacking Pandora's Box: Innovative Techniques for Effectively Counseling Asylum Applicants Suffering from Post-Traumatic Stress Disorder*, 4 HASTINGS RACE & POVERTY L.J. 235 (2007) (discussing PTSD and sharing techniques for attorneys to help an asylum seeker suffering with PTSD to tell a credible, consistent, detailed story); Julie M. Marzouk, *Ethical and Effective Representation of Unaccompanied Minors in Domestic Violence-Based Asylum Cases*, 22 CLINICAL L. REV. 395, 399 (2016) (focus on training law students to ethically represent children survivors of trauma avoiding re-traumatization as much as possible); Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 363 (2016) (recognizing the four key components of trauma-informed lawyering as identifying trauma, adjusting the lawyer-client relationship, adapting litigation strategy, and preventing vicarious trauma).

24. The Syllabus for the Columbia Law School Immigrants' Rights Clinic, for example, specifies the following goals: "Learn how to engage in challenging work on a sustained basis; Develop an ability to maximize your compassion satisfaction and reduce burnout; Be mindful of secondary traumatic stress." See email on file with authors from Elora Mukherjee.

25. For example, within the University of the District of Columbia (UDC) Law Immigration and Human Rights Clinic we use the "Fill Your Life Well" exercise adapted from an exercise shared by Liala Buoniconti, social worker with Harvard's Immigration and Refugee Clinical Program. Students complete a worksheet to reflect which activities "drain" their well of energy and which "refill" the well. We then share, as a group, as much as students are willing, and revisit the well-draining and filling concept throughout the semester.

26. The University of Baltimore's Immigrant Rights Clinic assigns a reflection memo specifically on the topic of self-care and vicarious trauma. See email on file with authors from Nickole Miller.

27. A variety of different tools are currently used including, for example, the ProQOL, Center for Victims of Torture. Developed by B. Hudnall Stamm, Professional Quality of Life: Compassion Satisfaction and Fatigue Version 5 (ProQOL) (2009–2012), [https://www.proqol.org/uploads/ProQOL\\_5\\_English\\_Self-Score\\_3-2012.pdf](https://www.proqol.org/uploads/ProQOL_5_English_Self-Score_3-2012.pdf). The ProQOL is used within Harvard's Immigration and Refugee Clinical Program. See Email on file with author from Sabrineh Ardalan and within the Columbia Immigrant Rights' Clinic. See email on file with authors from Elora Mukherjee. The Seattle University Gender Violence Immigration Clinic, for example, administers a stress assessment and a self-care assessment. See email on file with authors from Monika Bashra Kashyap.

28. At the Northwestern Immigrant Justice Clinic, for example, Hemanth C. Gundavaram reports that the students take a self-care assessment around a month into the semester and revisit throughout, including at the mid-semester stage and during their exit interview.

29. We frequently use this tool in the Immigration and Human Rights Clinic at the UDC Law School and find that it helps to inform the direction we need to be taking to support students throughout the semester.

30. See, e.g., Sabrineh Ardalan, *Constructive or Counterproductive? Benefits and Challenges of Integrating Mental Health Professionals into Asylum Representation*, 30 GEO.

IMMIGR. L.J. 1 (2015). Boston University's Immigrants' Rights and Human Trafficking program has established a partnership with the school of social work through which office hours and other support is offered to students. *See* email on file with authors from Sarah Sherman Stokes. The University of Tulsa's clinical program has partnered with a psychology professor who specializes in trauma and vicarious trauma. *See* email on file with authors from Mimi Marton.

31. *See, e.g.,* Lindsay M. Harris, *Learning in Baby Jail: Lessons Learning from Law Student Engagement in Family Detention Centers*, 25 CLINICAL L. REV. 155, 172, 207, 215 (2018) (discussing partnerships with social workers for clinics engaged in intensive fieldwork within family detention centers, including traveling with a social worker as part of the team).

32. Jacqueline St. Joan, *Building Bridges, Building Walls: Collaboration Between Lawyers and Social Workers in a Domestic Violence Clinic and Issues of Client Confidentiality*, 7 CLINICAL L. REV. 403 (2001).

33. For example, the Center for the Human Rights of Children (CHRC) at Loyola University Chicago, School of Law, has established materials to address vicarious trauma for their new Immigration Law Practicum through partnerships with the Illinois Child Trauma Coalition, Refugee and Immigrant subcommittee, and faculty partners within the University's Psychology Department. *See* email on file with authors from Katherine Kaufka Walts. At Tulane University within the immigration practicum, Professor Laila Hlass has partnered with a social worker to create an exercise to assist with issue spotting trauma and vicarious trauma issues. *See* email on file with authors from Laila L. Hlass.

34. Lindsay Muir Harris, *An Open Book? Self-Disclosure in Clinical Teaching*, CLINICAL LAW PROF. BLOG (Nov. 17, 2017), [https://lawprofessors.typepad.com/clinic\\_prof/2017/11/an-open-book-self-disclosure-in-clinical-teaching.html](https://lawprofessors.typepad.com/clinic_prof/2017/11/an-open-book-self-disclosure-in-clinical-teaching.html).

35. Bea Bischoff, *I'm an Immigration Attorney in Trump's America and the Stress Took Over My Life*, THE HUFFINGTON POST (Jan. 8, 2019), [https://www.huffpost.com/entry/immigration-attorney-compassion-fatigue\\_n\\_5c33a4fde4b01b7197a2dcb3](https://www.huffpost.com/entry/immigration-attorney-compassion-fatigue_n_5c33a4fde4b01b7197a2dcb3).

36. University of Buffalo Center for Social Research, *What Is Trauma-Informed Care?*, <http://socialwork.buffalo.edu/social-research/institutes-centers/institute-on-trauma-and-trauma-informed-care/what-is-trauma-informed-care.html>; Substance Abuse and Mental Health Services Administration (SAMHSA). *SAMSHA's Concept of Trauma and Guidance for Trauma-Informed Approach*. U.S. Department of Health and Human Services (2014), <https://store.samhsa.gov/system/files/sma14-4884.pdf>; *see supra* Katz & Haldar note 23; *see supra* Cartwright, Pleasants & Hope note 13.

37. *See supra*, n.27.

38. Christina Rainville, *Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims*, AMERICAN BAR ASSOCIATION, [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-34/september-2015/understanding-secondary-trauma--a-guide-for-lawyers-working-with/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/september-2015/understanding-secondary-trauma--a-guide-for-lawyers-working-with/).

39. Rebecca Raney, *Compassion Fatigue: A Side Effect of the Immigration Crisis*, AMERICAN PSYCHOLOGICAL ASSOCIATION (Oct. 15, 2019), [https://www.apa.org/members/content/compassion-fatigue?fbclid=IwAR0sT-xJjU3XlIfS98yY0smsjJF\\_DWYC0-b9KczXiwCshGWMuLX50M8j61c](https://www.apa.org/members/content/compassion-fatigue?fbclid=IwAR0sT-xJjU3XlIfS98yY0smsjJF_DWYC0-b9KczXiwCshGWMuLX50M8j61c).

40. Survey can be accessed at [https://www.aila.org/about/announcements/participate-in-an-asylum-attorney-burnout-stress?utm\\_source=Recent%20Postings%20Alert&utm\\_medium=Email&utm\\_campaign=RP%20Daily](https://www.aila.org/about/announcements/participate-in-an-asylum-attorney-burnout-stress?utm_source=Recent%20Postings%20Alert&utm_medium=Email&utm_campaign=RP%20Daily).

# How this Work Affects Us: Secondary Trauma, Grief, & Healing

## What is Trauma?

Response to an event or events that are perceived as threatening causing an overwhelming sense of terror, helplessness, and horror. When these experiences are internalized, it impacts the perception of safety along with the views of self, others, and the world.

## Secondary Trauma

Stress and/or process of change resulting from chronic exposure to (or practice with) populations that are vulnerable or suffering.

Source: Trauma Stewardship, Laura van Dernoot Lipsky

## Warning Signs

- 🚩 Difficulty distinguishing your experience from the traumatic experiences of the people that you work with.
- 🚩 Seeing danger or feeling on high alert in places or settings that you might not have before.
- 🚩 Struggling to be creative in ways that used to come easily to you.
- 🚩 Feeling pessimistic about your work all the time.
- 🚩 Feeling like it's hard to receive support or not wanting to decrease your workload.

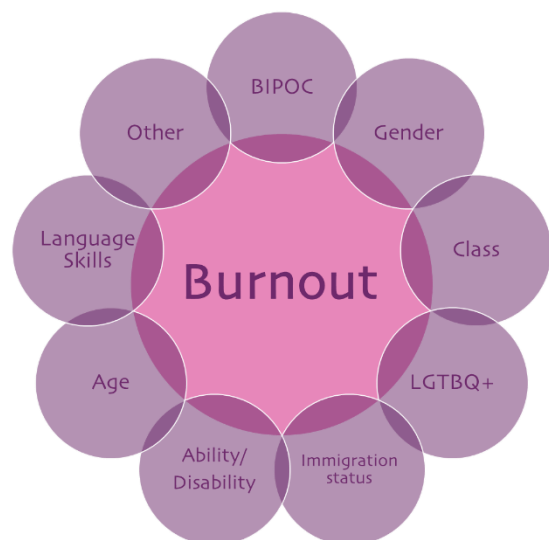
## Burnout

Exhaustion, alienation, and/or lowered performance resulting from stressors.

### Symptoms of Burnout Include:

- ☐ Helplessness and hopelessness
- ☐ Sense that one can never do enough
- ☐ Minimizing/ Avoidance
- ☐ Fear, Guilt
- ☐ Inability to embrace complexity
- ☐ Hypervigilance
- ☐ Diminished creativity
- ☐ Chronic exhaustion
- ☐ Physical ailments
- ☐ Grandiosity
- ☐ Anger/cynicism
- ☐ Inability to empathize

### Burnout is Intersectional



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## Grief

An emotional, psychological, and physical reaction to loss.

### Types of Grief

#### **Disenfranchised Grief**

The loss is not recognized by society, others.

#### **Chronic Grief**

Grief process/loss that goes on for a period of years.

#### **Anticipatory Grief**

A future loss that is mourned in advance.

#### **Ambiguous Loss + Unresolved Grief**

Occurs without closure or clear understanding, can leave someone searching for answers.

## Self-Care

Practices that nourish you mentally, emotionally, physically, and spiritually.



## Boundaries

- Expectations and expression of needs that help you feel safe and comfortable in relationships.
- Healthy boundaries require constant attention.
- Sometimes a person's concept of boundaries can be so under-formulated that they may not be aware of what appropriate boundaries are, this is often because their own boundaries have been completely violated and ignored.
- Teaching others how to treat us!

## Resources

### Books

- Trauma Stewardship – Laura van Dernoot Lipsky
- Set Boundaries – Find Peace, Nedra Glover Tawwab
- The Pain We Carry – Natalie Y. Gutierrez

### Podcasts

- Meditation Minis
- Life Kit – NPR
  - [Setting Boundaries with Family – and Stick to Them](#)
  - [How to Set Boundaries and Protect Your Energy](#)



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**CUNY SCHOOL OF LAW**

## **ATTORNEYS & THE OBLIGATION OF SELF-CARE AS COMPETENCE**

To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession falls short when it comes to well-being. Multiple studies reveal that too many lawyers experience chronic stress and high rates of depression and substance use. These findings are incompatible with sustainability and raise implications for basic professional and organizational competence. Research suggests the current state of lawyers' health cannot support a profession dedicated to client service and dependent on the public trust. We are at a crossroads and cannot ignore these problems. In 2016 the ABA created a working group to advance wellbeing within our profession. In 2018 they called for a paradigm shift, for legal employers to adopt a seven (7) point framework to improve mental health in the law. Change requires candid assessment of our state of being and courageous commitment to reenvisioning what it means to live the life of a lawyer.<sup>1</sup>

Moreover, as the ABA is not known for pursuing radical social change, or even transformation of the profession towards anti-capitalist or carceral abolitionist aims, any existing recommendations about our profession must be coupled with progressive demands for employers and institutions to build-in support and sustainability. Comprehensive physical/mental health plans, shifts in frenetic work culture, partnerships with counseling professionals (for client casework as well as employee needs), collective bargaining rights, flex-time, guaranteed child care, and paid family & medical leave are also crucial next step.<sup>2</sup>

### **Lawyers and Stress**

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<sup>1</sup> ABA NATIONAL TASK FORCE ON LAWYER WELL-BEING (COMMISSION ON LAWYER ASSISTANCE PROGRAMS (COLAP), THE NATIONAL ORGANIZATION OF BAR COUNSEL (NOBC), AND THE ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS (APRL), YOUNG LAWYERS DIVISION, ET. AL.), *CREATING A MOVEMENT TO IMPROVE WELL-BEING IN THE LEGAL PROFESSION* (2017); LIZZY McLELLAN, MAY 30, 2019, *IS THE LEGAL INDUSTRY READY FOR A CULTURE SHIFT ON MENTAL HEALTH?* LAW.COM; *See also* NYC LAWYER ASSISTANCE PROGRAM; AMERICAN BAR ASSOCIATION,

[https://www.americanbar.org/groups/lawyer\\_assistance/resources/compassion\\_fatigue.html](https://www.americanbar.org/groups/lawyer_assistance/resources/compassion_fatigue.html); PUBLIC DEFENDERS BLOG, Oct. 25, 2017 at [http://www.publicdefenders.us/blog\\_home.asp?Display=635](http://www.publicdefenders.us/blog_home.asp?Display=635)

<sup>2</sup> Clare Huntington, *Early Childhood Development and the Law*, 90 S. Cal. L. Rev. 755 (2017); Meredith Johnson Harbach, *Childcare, Vulnerability, and Resilience*, 37 Yale L. & Pol'y Rev. (2019); Lynn D. Lu, *FROM STIGMA TO DIGNITY? TRANSFORMING WORKFARE WITH UNIVERSAL BASIC INCOME AND A FEDERAL JOB GUARANTEE*, S. Carolina L Rev (2021); Lynn D. Lu, *Restorative Relationships and "Radical Help": Reimagining Welfare-to-Work Beyond the Market-Family Divide*, Baltimore L Rev (2021).



A study by the ABA Commission on Lawyer Assistance Programs and H.B. Ford Foundation found a “parade of difficulties” common among almost 13,000 practicing lawyers, including work addiction, sleep deprivation, job dissatisfaction, a “diversity crisis,” complaints of work-life conflict, incivility, social alienation, suicide, and a narrowing of values. Between 21-36% of practicing lawyers qualify as problem drinkers, and approximately 28%, 19%, and 23% struggle with some level of depression, anxiety, and or stress, respectively. Lawyers in the first ten years of practice experience the highest rates of stress and addiction. Budding impairment of the future generation should alarm us. A Survey of Law Student Well-Being reflected similar results.

### **Why Stress?**

Lawyers, like other helping professionals, are at risk for inattention to self-care and the experience of compassion fatigue—or “the cumulative physical, emotional and psychological effect of exposure to traumatic stories or events when working in a helping capacity, combined with the strain and stress of everyday life.” While burnout is predictable, building over time and resulting in work dissatisfaction, someone affected by compassion fatigue may be harmed by the work they do, experiencing intrusive imagery and a change in world-view. Compassion fatigue is also known as vicarious trauma or secondary traumatic stress. Its treatment may prevent a more serious disorder.<sup>3</sup>

High caseloads especially put attorneys at risk. Other sources of stress include funding issues, insufficient mentorship or support, barriers to client well-being posed by legal systems themselves, and challenges with cultural competence. Practices like criminal, family, immigration, or poverty law are particularly susceptible as attorneys are regularly exposed to trauma narratives, must empathetically listen and facilitate solutions, visit institutions, and view graphic evidence of victimization. It is crucial for helping professionals to honor (at least within themselves, if not outwardly) their own “origin stories” which may have inspired them to enter the field. Having survived personal struggles or family trauma can be a powerful source of motivation and insight, as well as a source of tension or anger at times.<sup>4</sup>

### **Why Address Well-Being & Self-Care?**

Powering through tough spots may work in the short term, but won’t carry the professional over the long term. While helping others is always a professional stressor, substance abuse, family disruption, physical health issues, and

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<sup>3</sup> AMERICAN BAR ASSOCIATION, WHAT IS COMPASSION FATIGUE?

[HTTPS://WWW.AMERICANBAR.ORG/GROUPS/LAWYER\\_ASSISTANCE/RESOURCES/COMPASSION\\_FATIGUE/](https://www.americanbar.org/groups/lawyer_assistance/resources/compassion_fatigue/)

<sup>4</sup> *Ibid*; See also ABA CTR. ON CHILDREN & THE LAW, STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENDANTS, COMMISSION ON DISABILITY RIGHTS, ET. AL, UNDERSTANDING THE IMPACT OF SECONDARY TRAUMA ON LAWYERS WORKING WITH CHILDREN AND FAMILIES (2016); ANDREW P. LEVIN, MD, SECONDARY TRAUMA AND BURNOUT IN ATTORNEYS: EFFECTS OF WORK WITH CLIENTS WHO ARE VICTIMS OF DOMESTIC VIOLENCE AND ABUSE (2008) [https://www.americanbar.org/content/dam/aba/publishing/cdv\\_enewsletter/LevinWinter2008.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publishing/cdv_enewsletter/LevinWinter2008.authcheckdam.pdf); Nancy D. Polikoff, *Am I My Client? The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV. 443 (1996); Julie D. Lawton, *Am I My Client? Revisited: The Role of Race in Intra-Race Legal Representation*, 22 MICH. J. RACE & L. 13 (2016);

professional lapses in judgment are serious and common from burnout and compassion fatigue. Self-care should be a preventive measure and is not a sign of weakness. We cannot take care of others unless we first take care of ourselves.<sup>5</sup> The ABA Task Force On Lawyer Well-being<sup>6</sup> offers three reasons to act:

1. **Well-being fosters organizational success** vis a vis optimal cognitive functioning, competitive advantage, retention, and better performance. In particular, job satisfaction predicts retention and performance, and worker engagement influences organizational success and client satisfaction.
2. **Well-being impacts ethics and professionalism** (per *ABA Model Rules 1.1, 1.3, and 4.1 through 4.4*). Minimum competence is critical to protecting clients and avoiding discipline but won't enable the highest levels of skill or innovation. One study suggests 40-70% of disciplinary proceedings & malpractice claims involve substance use or depression, often both.
3. **From a humanitarian perspective, promoting wellbeing is the right thing to do.** Untreated mental health and substance abuse ruins lives and careers. Though our profession prioritizes individualism and self-sufficiency, we all contribute to—and are affected by—collective legal culture. Whether that culture is toxic or sustaining is up to us. Our interdependence creates a joint responsibility for solutions.

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<sup>5</sup> AMER. UNIV. WASHINGTON COLLEGE OF LAW, <http://library.niwap.org/wp-content/uploads/Self-Care-Tool.pdf>.

<sup>6</sup> Well-being - *A continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others. Well-being is part of a lawyer's ethical duty of competence, including ability to make healthy, positive work/life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients. It includes maintaining their own long-term well-being (supra note 1, ABA NAT'L TASK FORCE (2017)).*