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An introduction to trauma-informed lawyering

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TRAUMA

by Alexander S. Rusek and Aylsh B. Gallagher | Michigan Bar Journal

Being trauma-informed is not just the newest social science buzzword. Rather, it is an important set of research-based guiding principles that attorneys in most practice areas must recognize to provide the most effective representation possible for their clients.

So, what is trauma? What does it mean to be trauma-informed? What is trauma-informed lawyering? And where can you learn more about these concepts?

DEFINITIONS

The Centers for Disease Control and Prevention has stated that:

“[a]n 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.”¹

These effects may not be immediate, can be extremely long lasting, and can impact many, if not all, areas of a survivor’s life.

Our justice system and related services also, regrettably, present the possibility of causing further trauma by creating situations where those who have experienced it are re-traumatized. When this happens, clients can experience a lack of control and further abrupt changes in their lives, and feel threatened, vulnerable, exposed, and responsible for what they're going through. Recognizing trauma and its potential effects are the first steps to becoming trauma-informed.

It has been said that “[t]rauma-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.”² Vivianne Mbaku of Justice in Aging has also written that “[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.”³

More simply, a trauma-informed lawyer “asks clients not, ‘What is wrong with you?’ but instead, ‘What happened to you?’”⁴ Delivering trauma-informed services is not accomplished by following a single checklist or set of techniques, but rather it requires “constant attention, caring awareness, sensitivity, and possibly a cultural change at an organizational level.”⁵ A trauma-informed lawyer must also understand that the trauma a client has experienced does not define them as a whole.

BENEFITS OF TRAUMA-INFORMED LAWYERING

Sometimes, it will be obvious that a lawyer needs to incorporate trauma-informed principles into their practice because of the nature of a case, such as when representing survivors of sexual abuse and survivors of tragic accidents in civil litigation, or when prosecutors work with victims of traumatizing crimes. Other times, it may not be as apparent that a lawyer needs to incorporate these principles, such as representing a survivor of domestic abuse in a divorce or child custody matter or representing a criminal defendant who has suffered trauma that has contributed to issues such as substance abuse.

In addition to the positive effects on a client’s well-being, trauma-informed lawyering offers numerous other benefits. Clients who are comfortable with and trust their lawyers are far more likely to share their experiences, potentially providing far more useful information than they would otherwise provide. For example, a civil trial lawyer may learn critical information regarding their client’s damages that would otherwise remain hidden. A prosecutor may obtain information that transforms perceived weaknesses in their case into strong evidence of the guilt of the accused with the additional context provided by the victim. It is also often true that a client will hold the trauma-informed lawyer in higher regard, thus creating a stronger rapport and, ultimately, a more effective attorney-client relationship.

BECOMING A TRAUMA-INFORMED LAWYER

Some have argued that the four key characteristics of trauma-informed lawyering are identifying trauma, adjusting the attorney-client relationship, adapting litigation strategy, and preventing vicarious trauma.⁶ To accomplish these goals, the trauma-informed lawyer works to ensure that their client:

- feels safe,
- can trust them and feel that their relationship has transparency,
- feels as though they have the ability to make the choices that will impact their lives and are actually empowered to make those decisions,
- has a collaborative relationship with the lawyer, and
- recognizes that the lawyer has considered cultural, historical, race, gender, and other identity issues that the client may be experiencing.^{7,8}

In practice, the first step is recognizing the potential impact the trauma has had on a client and providing a safe environment for them to express their concerns and share their experiences with a lawyer who will listen to them and not judge them, minimize their experiences, or disregard them.

TRAUMA-INFORMED LAWYERING RESOURCES

There are several existing materials available about trauma-informed lawyering. For example, The National Center on Domestic Violence, Trauma, and Mental Health started the Trauma-Informed Legal Advocacy Project (TILA) which “offers guidance on applying trauma-informed principles to working with survivors of domestic violence in the context of legal proceedings.”⁹ It is important to note that the resources available through TILA, while focused on survivors of domestic violence, are not limited to or only applicable to trauma caused by intimate partner violence. The same is true for other trauma-informed resources not directed at lawyers, such as those for first responders and healthcare workers.

Other useful resources include podcasts, webinars, and articles readily available on the internet such as The Trauma-Informed Lawyer podcast hosted by Myrna McCallum¹⁰ and the Trauma-Informed Legal Advocacy: An Introduction webinar presented by Rachel White-Domain.¹¹ In March, the American Bar Association Law Practice Management Section published a book titled “Trauma-Informed Law: A Primer for Lawyers in Practice.”¹²

The aforementioned resources are not an exhaustive list; the body of research and literature on trauma-informed practice grows every day. It is also important to remember that we must recognize our own limitations and levels of expertise. This often means learning about available resources and being prepared to offer them to the client when needed, such as the assistance of counselors and community organizations.

It is also important to keep in mind that being trauma-informed alone is not enough this – the lawyer is not the only person the client will interact with. Thus, training staff and providing them with the resources to be trauma-informed is also critical.

SECONDARY TRAUMA

The effects of learning about and experiencing another person's trauma – sometimes called secondary trauma, secondary traumatic stress, vicarious trauma, or indirect trauma – include symptoms similar to people who have directly experienced trauma.¹³ Secondary trauma can result in severe job burnout, compassion fatigue, reliving of the trauma, negative changes in beliefs and feelings, and other adverse effects.¹⁴ As such, being a trauma-informed lawyer “also encompasses the practitioner employing modes of self-care to counterbalance the effect the client's trauma experience may have on the practitioner.”¹⁵

There are resources that address the effects of secondary trauma and how lawyers and others who experience it can manage it. Examples include “Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others” by Laura van Dernoot Lipsky and Connie Burk; “The Age of Overwhelm: Strategies for the Long Haul” by Laura van Dernoot Lipsky; “Reducing Compassion Fatigue, Secondary Traumatic Stress, and Burnout” by William Steele; and “Burnout: The Secret to Unlocking the Stress Cycle” by Emily Nagoski and Amelia Nagoski. While these titles are highly recommended, they certainly do not encompass all available resources.

CONCLUSION

Recognizing trauma and being mindful, compassionate, empathetic, and aware of it is of the utmost importance in the legal profession. Lawyers often work with clients who have experienced – and are still experiencing – the worst situations that life can expose to someone. The trauma-informed attorney strives to leave the client in a better place than they found them.

A high-level official in the Church of Jesus Christ of Latter-day Saints named Carl W. Buehner once said, “They may forget what you said, but they will never forget how you made them feel.”¹⁶ Being trauma-informed will not only enhance the attorney-client relationship but can lead to significantly better outcomes for clients legally and personally – outcomes that we should all fully embrace.

ENDNOTES

1. *Helping Patients Cope With a Traumatic Event*, CDC [<https://perma.cc/SH6H-MJAM>]. All websites cited in this article were accessed June 20, 2023.
2. Katz & Haldard, *The Pedagogy of Trauma-Informed Lawyering*, 22 *Clinical L Rev* 359, 359 (2016), available at https://www.law.nyu.edu/sites/default/files/upload_documents/Katz%20-%20Halder%20Pedagogy%20of%20Trauma-Informed%20Lawyering.pdf.
3. Mbaku, *Trauma-Informed Lawyering*, Nat'l Ctr on Law and Elder Rights, [<https://perma.cc/2XMH-EDBD>].
4. *The Pedagogy of Trauma-Informed Lawyering*, 22 *Clinical L Rev* 359 at 363.
5. *Infographic: 6 Guiding Principles To A Trauma-Informed Approach*, CDC (2020) [<https://perma.cc/N9DC-8AF2>].
6. *The Pedagogy of Trauma-Informed Lawyering*, 22 *Clinical L Rev* 359 at 360.

7. Harris & Fallot, *Using Trauma Theory to Design Service Systems: New Directions for Mental Health Services* (Hoboken: Wiley, 2001).
 8. *Infographic: 6 Guiding Principles To A Trauma-Informed Approach*.
 9. *Trauma-Informed Legal Advocacy (TILA) Project*, Nat'l Ctr on Domestic Violence, Trauma & Mental Health [<https://perma.cc/T4WT-QEPZ>].
 10. Available at [<https://perma.cc/MD9P-8FJZ>].
 11. Available at [<https://perma.cc/M6QV-SFNT>].
 12. Maki et al, *Trauma-Informed Law: A Primer for Lawyer Resilience and Healing* (Chicago: ABA, 2023).
 13. Cieslak et al, *A meta-analysis of the relationship between job burnout and secondary traumatic stress among workers with indirect exposure to trauma*, 11 *Psychological Svcs* 75 (2014).
 14. *Id.*
 15. *The Pedagogy of Trauma-Informed Lawyering*, 22 *Clinical L Rev* 359 at 359.
 16. Evans, *Richard Evans' Quote Book* (Salt Lake City: Publishers Press, 1971), p 244. The quote is typically – and mistakenly – attributed to author Maya Angelou.
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