

# Trauma-Informed Lawyering

Vivianne Mbaku, Justice in Aging

## Introduction

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.

## Key Lessons

1. The widespread prevalence of trauma underlines the importance of civil legal aid attorneys adopting trauma-informed practices.
2. Trauma-informed lawyering leads to better communication between the lawyer and client, discovery of additional legal issues, and better referrals.
3. Trauma-informed lawyering is generally free of cost, but will take additional lawyer time.

## One-Third of Adults Experience Severe Trauma in Their Lifetime

The American Psychological Association defines trauma as “an emotional response to a terrible event like an accident, rape, or natural disaster.”<sup>1</sup> An event is defined as traumatic when it renders an individual’s internal and external resources inadequate, making effective coping impossible.<sup>2</sup> Trauma is very common, with an estimated one third of the U.S. population expected to experience severe trauma in their lifetime.<sup>3</sup> Women are much more likely than men to experience traumatic events like rape and stalking, and consequently more likely to report an impact on their functioning related to the traumatic event.<sup>4</sup> Further, new research connects higher rates of post-traumatic stress disorder (PTSD) among racial and ethnic minorities to the traumatic experience of racism.<sup>5</sup>

## Trauma-Informed Lawyering Improves Legal Advocacy

Trauma-informed care recognizes the widespread prevalence of trauma and its impact while aiming to reduce re-traumatization.<sup>6</sup> The term ‘trauma-informed’ was coined in 2001 by PhD researchers Maxine Harris and Roger Fallot.<sup>7</sup> Trauma-informed lawyering “asks clients not ‘what is wrong with you?’ but instead, ‘what happened to you?’”<sup>8</sup>

The central goals of trauma-informed lawyering are to reduce re-traumatization and to improve legal advocacy by recognizing the role trauma plays in the lawyer-client relationship. Considering high rates of trauma among the general population, it is imperative that civil legal aid attorneys integrate trauma-informed practices to reduce re-traumatization. Common examples of trauma-informed practice include providing accommodations for client interviewing or extensive witness preparation to alleviate client anxiety. Regardless of

1 American Psychological Association, “Trauma,” available at: [apa.org/topics/trauma](https://www.apa.org/topics/trauma).

2 Sarah Katz & Deeya Haldard, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 364.

3 *Id.*

4 *Id.* at 365

5 American Psychological Association, “Uncovering the Trauma of Racism” [apa.org/pubs/highlights/spotlight/issue-128](https://www.apa.org/pubs/highlights/spotlight/issue-128).

6 Trauma-Informed Legal Advocacy Project of the National Center on Domestic Violence, Trauma & Mental Health, available at: [nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/](https://nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/).

7 Trauma-Informed Legal Advocacy Project of the National Center on Domestic Violence, Trauma & Mental Health, available at: [nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/](https://nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/).

8 Sarah Katz & Deeya Haldard, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 363.

its form, a trauma-informed practice assists lawyers in connecting to their clients, creating better legal outcomes and more robust advocacy.

## Self-Care is Important to Counterbalance Secondary Trauma

Integral to trauma-informed lawyering is the practice of “employing modes of self-care to counterbalance the effect [a] client’s trauma experience may have on the practitioner.”<sup>9</sup> The concept of ‘vicarious/secondary trauma’ or ‘compassion fatigue’ has been explored extensively within the legal field. This condition resembles post traumatic stress disorder and is “caused by being indirectly exposed to someone else’s trauma.”<sup>10</sup> Secondary trauma can manifest as avoidance, black and white thinking, and frustration with clients or losing empathy towards clients.<sup>11</sup> Further, direct exposure to clients experiencing trauma is not the only way to be affected by secondary trauma. Secondary trauma can develop from listening to others recount a traumatic event or working with others who are dealing with secondary trauma.<sup>12</sup>

The Trauma-Informed Legal Advocacy Project (TILA) of the National Center on Domestic Violence, Trauma & Mental Health encourages reflective practice to help counteract the effect that a client’s traumatic experiences may have on their attorney.<sup>13</sup> A reflective practice includes “regularly engaging in reflection, both in the context of individual interactions and after big successes or losses.”<sup>14</sup> Changes in organizational culture to foster discussion of secondary traumatic stress and encourage employees to take breaks from work can assist in mitigating the effects of secondary trauma.<sup>15</sup>

Here is more information on [secondary trauma and tools to better support employees](#).

## Clients Benefit from Transparency and Trust in Trauma Informed Lawyering

A trauma-informed practice provides many benefits to both the attorney and client. Clients benefit from more transparency in the lawyer-client relationship, leading to higher levels of trust in lawyers.

Many clients have had negative experiences with the legal system and may not understand the process. Lawyers are also prone to not explaining their motivations or process during representation. By explaining their role, the role of others in the court, and what can happen during the course of representation, lawyers can alleviate the stress and anxiety of the process. Lawyers should start interviewing by explaining the nature of the meeting and providing as much information about what will happen to ease anxiety. By starting with transparency, the lawyer establishes trust with the client. When the client feels comfortable, they are more likely to share sensitive information that may be integral to their case. Lawyers can then provide proper referrals to additional services and better prepare cases for settlement or trial.

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9 *Id.* at 359.

10 American Bar Association, “Understanding Secondary Trauma: A guide for Lawyers Working with Child Victims”, September 10, 2015, available at: [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/](http://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/).

11 *Id.*

12 *Id.*

13 Trauma-Informed Legal Advocacy Project of the National Center on Domestic Violence, Trauma & Mental Health, “Practice Scenarios Series”, available at: [nationalcenterdvtraumamh.org/wp-content/uploads/2013/08/TILA\\_ReflectivePractice\\_Apr22.pdf](http://nationalcenterdvtraumamh.org/wp-content/uploads/2013/08/TILA_ReflectivePractice_Apr22.pdf).

14 *Id.*

15 American Bar Association, “Understanding Secondary Trauma: A guide for Lawyers Working with Child Victims”, September 10, 2015, available at: [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/](http://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/).

## PRACTICE TIP

The trauma-informed practice takes place in two steps. First, identifying the trauma, and second, adjusting the lawyer-client relationship in relation to the trauma.<sup>16</sup> It is important for attorneys to remember that this process does not include diagnosing a client or trying to be a “therapist” for clients. Attorneys should make proper referrals to mental health services for any client who is struggling.

## Identifying Trauma and Adjusting the Relationship

In the first step of identifying the trauma, trauma might be easily identified because it is related to the nature of the legal relationship, i.e. the client seeking assistance with an elder abuse protective order. In other cases, the existence of trauma may not be readily apparent. Lawyers should make efforts to note their client’s body language, tone, and general demeanor. Trauma manifests differently in everyone, and it “may affect the attorney’s ability to get the whole story.”<sup>17</sup> A client may seem closed off, uneasy, agitated, or annoyed. Acknowledging any discomfort is encouraged, as it gives your client the opportunity to voice needs or concerns. Lawyers can then accommodate clients’ needs, and adjust their techniques to provide a better environment for the client. The key here is to not fall back on assumptions, wondering “what is wrong with this person? Why are they so \_\_\_\_\_?” but to embrace “what is going on with them, what happened? How can I make them more comfortable?”

The second step of adjusting the lawyer-client relationship in relation to the trauma, can take many forms. Offering options to clients to accommodate their reactions to their traumatic experience is one of the easiest changes to the lawyer-client relationship to make. Options like flexibility with meeting time and place, seating arrangements, or whether the door is closed or open are simple ways to adjust the lawyer client relationship while building trust.<sup>18</sup>

The Trauma-Informed Legal Advocacy Project also outlines the following strategies as other helpful best practices:<sup>19</sup>

- **Take breaks.** Breaks provide a client with the space they need to stay present during a meeting or interview. Offer breaks not only at the beginning of the meeting but also periodically throughout.
- **Explain the process.** Be open about what you are doing, such as taking notes, and ask permission before taking notes. During the interview, use open body language to help avoid creating an objectifying experience. After the interview, summarize the notes you took with the client.

**Validate feelings.** Clients should know that their feelings matter. By verbally validating, you can help the client become aware of what is happening with them.

## CASE EXAMPLE

Len is a new client coming in for assistance with a debt collection case. As you ask him questions, you realize his leg is literally “jumping” he is shaking so much. He seems a bit withdrawn and keeps looking towards the door. You stop legal questioning and note that he seems uncomfortable, and ask if there is anything you can do to make him feel more comfortable. Len shares that he was a victim of torture in his home country and

<sup>16</sup> *Katz* at 382.

<sup>17</sup> *Katz*, at 383.

<sup>18</sup> Trauma-Informed Legal Advocacy Project of the National Center on Domestic Violence, Trauma & Mental Health, available at: [nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/](http://nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/).

<sup>19</sup> *Id.*

feels tremendous anxiety when he is seated so far from the door. He also does not like being in rooms with closed doors as he feels he cannot escape. You readjust the seating and move the open conference room in your office. You assure Len that if he had any other concerns to let you know.

Strategies for helping the client feel comfortable:

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

## Conclusion

A trauma-informed legal practice not only reduces re-traumatization, it also makes better lawyers. A lawyer who is able to recognize the role trauma plays in the lawyer-client relationship is able to be a better advocate.

**Please contact [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov) for free case consultation assistance. Sign up for our email list and access more resources at [NCLER.acl.gov](https://www.acl.gov).**

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