

Christian Legal Society National Conference (November 1, 2024)
“Empathy in Action: Trauma-Informed Lawyering”
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I. Introduction

A. Trauma-informed lawyering is a relational approach, not transactional.

“Trauma-informed lawyering acknowledges the presence of trauma and its impact in the legal system, responds to indicators of trauma with human needs in mind, and seeks to prevent re-traumatization. Its benefits include increasing client and lawyer satisfaction with legal processes or outcomes, prioritizing well-being and increasing access to justice or legal services by removing barriers that may be created by trauma.”

[Maki, H., Florestal, M., McCallum, M., & Wright, J. K. (2023). *Trauma-informed law: A primer for lawyer resilience and healing* (First edition.). American Bar Association.]

A key motivator for them writing this book was speaking with too many clients and other legal system stakeholders who said that their experience with the legal system did not improve their situation. I’ve heard far too many times that instead of helping a situation or case, legal services can often create more harm than good (or at least more harm than necessary).

In addition, to me it’s no surprise that lawyers encounter poor workplace health conditions and are notoriously affected by health issues. This is a profession in which many people are asked to argue or otherwise engage in conflict, all day every day. Trauma-informed approaches to legal services are a tool that can help improve client satisfaction with their experiences, reduce access to justice (and legal services barriers), potentially improve legal outcomes and even improve lawyer wellbeing.

II. Understanding Trauma and Its Impact

A. Definition of trauma: “Individual trauma results from an **event**, series of events, or set of circumstances that is **experienced** by an individual as physically or emotionally harmful or threatening and that has lasting **effects** on the individual’s functioning and physical, social, emotional, or spiritual well-being.”

Event – experience of an actual or extreme threat of physical or psychological harm

Experience of the event – how the event impacts individual on a physically/psychologically

Effect of the event – what symptoms an individual has in response to the event.

[3 E’s, SAMSA’s Concept of Trauma & Guidance for a Trauma-Informed Approach]

B. Psychological and emotional effects of trauma and how it affects client interaction and decision-making. [Understanding Trauma Response in Clients and Lawyers, Image Credit: Helgi Maki]

1. What lawyers are taught to understand:

- Individuals and cases
- Intellectual
- Conscious response
- Cognitive
- Words

2. What lawyers need to understand:

- Trauma responses (feelings of powerlessness/helplessness, humiliation/embarrassment, shame/guilt, betrayal, fear/horror, emotional numbing or detachment)
- Unconscious or subconscious response (PTSD, flashbacks, depression, anxiety, hyperarousal and easily startled, irritability or anger, difficulty concentrating, fragmented memory)
- Survival response (limbic brain)
- Body language and body (somatic) responses
- Nervous system (parasympathetic, sympathetic) response
- Memory, learning, and narrative impacted by trauma.
- Relationship formation and attachment patterns
- Safety and trust, with fears and triggers
- Flight/flight/freeze/fawn (stress response)
- Emotions and co-regulation
- Racism and discrimination
- Culture

3. Neurobiology of Trauma [Sara E. Gold, *Trauma: What lurks beneath the surface*, 24 Clinical L. Rev. 201 (2018)]

The emotional brain takes over and the executive functions take a back seat.
Front seat – Amygdala – fight or flight response; releases stress hormones
Back seat – Prefrontal cortex – decision-making/reasoning; regulate attention, awareness, emotions; initial conscious voluntary actions, inhibit dysfunctional behavior.

Childhood trauma affects the developing brain by changing the wiring and structure of the brain and can have lifelong effects on decision-making, working and long-term memory, ability to distinguish danger from safety, reasoning capacity, and language, and cognitive skills.

C. Recognize how trauma aligns with a lawyer’s duty to provide competent representation. Lawyers training typically does not focus on developing the skills for emotional intelligence necessary to build rapport and trust in order to best advocate and carry out client-centered goals.

1. ABA Model Rule 1.1 Competence: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

In addition to the legal knowledge, an evaluation of competence should include asking whether you possess the **mental and emotional** ability reasonably necessary for the performance of the representation.

2. Legal training teaches us to analyze first. Trauma-informed practices are about providing care first and analyzing later.
3. Fundamental Attribution Error – We underestimate the impact of situational factors on a person’s behavior and overemphasize the role of a person’s perceived personality, character or disposition. If a person has trouble coping due to trauma impact, colleagues, family, friends, and their lawyers will attribute their struggle to a personal flaw rather than an environmental factor. A client’s response to trauma can show up as fear, grief, anger or dysregulation, physical discomfort, mental or emotional suffering, or strained relationships.
4. The impact of trauma on our client can show up in responses and behavior that does not fit with the way legal processes are designed to work or may complicate our work. That awareness can help us assist the client and ourselves with navigating the inconvenient or uncomfortable issues that can become barriers to the pursuit of justice.

“Trauma comes back as a reaction, not a memory.” [van der Kolk, *The Body Keeps the Score* (2014).]

To understand the impact of trauma and adversity on our clients, we must begin with a shift to asking, “what happened to you?” rather than “what’s wrong with you?” [*What Happened to You? Conversations on Trauma, Resilience and Healing* (2023) by Oprah Winfrey and renowned brain development and trauma expert, Dr. Bruce Perry] i.e. If a client is not able to recall details from their testimony, or shows up late for their appointment, that does not necessarily mean they are not a credible person. Trauma affects memory recall.

III. Principles of trauma-informed lawyering (emotional intelligence)

A. Key principles of trauma-informed care adapted for legal practice:

Safety, Trustworthiness, Choice, Collaboration and Empowerment

- B. Principles of TIC can be integrated into legal settings to improve client-lawyer relationships and case outcomes.
- C. ABA Model Rule 1.4: Communication with Clients: A lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required. Also, a lawyer has an obligation to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Trauma-informed lawyering will involve empowering the client by helping them identify the choices they have and emphasizing collaboration over efficiency. Having "proximity" to the client is key.

IV. Practical Strategies for Trauma-Informed Advocacy

- A. Techniques for effective and empathetic communication with trauma-affected clients, including active listening and validating their experiences. Trauma-informed frame for communication with client (Figure 4.1, Image credit, Katherine Porterfield, p. 70)

1. Safety
 - a. Acknowledge the physical space.
 - b. Anticipate what will happen in the meeting.
 - c. Explain what will happen in the meeting.
2. Control
 - a. Ask permission and ask for feedback throughout a meeting.
 - b. Talk about talking.
3. Reflection
 - a. Reflecting back content.
 - b. Reflecting back emotion.
4. Closure
 - a. Shift explicitly into closure.
 - b. Ask for feedback on the conversation.
 - c. Help the client prepare for the next steps.

B. Summary of Key Principles of Trauma-informed lawyering

- A lens-based practice
- "Do no harm."
- Awareness of trauma and trauma responses
- Psychological safety and dignity
- Lawyers are not therapists
- Inquiry instead of assumptions
- Strengths-based communications that offer control.
- Transparency and accountability

- Relational practice
- Empathy and compassion
- Cultural humility
- Self-reflection, including awareness of vicarious trauma.
- Accommodation and Support

V. Importance of self-care for legal professionals working with trauma-affected clients to prevent vicarious trauma and burnout.

A. **Vicarious Trauma** is a negative transformation of your worldview as a result of doing your work, from seeing the suffering of others, accompanied by intrusive thoughts and imagery.

B. **Burnout** is associated with high workload and few rewards, related to the work environment, causing physical or mental collapse caused by overwork or chronic stress. Predictable, builds over time, resulting in work dissatisfaction.

C. State of the Profession: Post-Covid Statistics on Lawyer Wellbeing

-51.3% of lawyers are involved in “risky drinking” (55.9% for women and 46.4% for men)

NIH defines risky drinking as - women: greater than 7 drinks a week or 4 or more drinks on any single occasion, and men: greater than 14 drinks a week or 5 or more drink on a single occasion.

-47.7% of lawyers have symptoms of depression

-48.2% of lawyers have symptoms of anxiety

-57.9% of lawyers are experiencing moderate or severe stress. One of the most significant factors contributing to stress is heavy workloads and overcommitment (e.g., 25 percent of the lawyers in the study indicated working more than 51 hours per week).

[Stress, drink, leave: An examination of gender-specific risk factors for mental health problems and attrition among licensed attorneys by Justin Anker and Patrick Krill]

Drinking and mental health issues are continuing to plague the professional as a whole. Vicarious trauma and burnout are adding to this challenge.

D. Recognize the Signs of Vicarious Trauma and Burnout

- Uncharacteristic Irritability and/or emotional instability
- Insomnia and/or interrupted sleep patterns
- Resorting to no lunch breaks (or any sort of breaks) and over-the-top work hours over and over again
- Persistent sense of overwhelm

- Diminished mental agility (i.e. to recall facts and events) and diminished work performance
- Headaches, chest pain, palpitations, loss of appetite and/or abdominal pains (please urgently consult a doctor if you experience these symptoms as they may be indicative of serious medical conditions)
- Fatigue
- Substance use
- Relationship breakdown
- Nightmares
- Rapid weight change
- Social isolation
- Fear of being alone
- Distorted sense of safety
- Losing flexibility
- Withdrawal
- Rage
- Persistent feeling of shame and guilt
- Hopelessness
- Impatience
- Hypervigilance and paranoia
- Loss of faith in own work or legal system

E. ABA Model Rule 1.3 **Diligence:** A lawyer shall act with reasonable diligence and promptness in representing a client.
 Comments to the Rule: “A lawyer must . . . act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.”
 “Unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer’s trustworthiness.” Oftentimes, a lawyer’s duty of diligence will be compromised if they experience a crisis in their mental health.

F. Workshop Exercise #1: Self Check-In:

The world is a ____ place.
 Life is _____.
 I am ____ as a human being.
 I want to change ____ about my job.
 I want to change ____ about myself.
 Most often I feel _____.

Regular self-check-ins will help you recognize the signs of vicarious trauma and burnout early. [AILA Doc. 18101533] Concerning thought patterns include negative worldviews, low self-esteem, and a sense of depersonalization (a distant or indifferent attitude towards work, callous, and cynical behaviors).

G. Establish Healthy Boundaries: Important to know where our self ends, and another's self begins. Maintain professional boundaries while offering compassionate representation.

[“Emotional Literacy and Boundaries” by Eileen Barker]

- It's not my job to fix others.
- It is okay if others feel angry, but it's not okay for anyone to lash out at me.
- It is okay for me to say no.
- I am not responsible for how others feel.
- My needs matter.
- Nobody has to agree with me.
- I have a right to my own feelings.

[Lipsky, L. van D., & Burk, C. (2009). Trauma stewardship: an everyday guide to caring for self while caring for others.]

1. Professional: Set clear limits on the availability for clients and casework to avoid overcommitment.
2. Personal Boundaries: Keep personal time strictly for non-work activities to ensure recovery and rest.

H. Develop a Support System to reduce attorney isolation, loneliness, or depression.

1. Family, friends, community
2. Supervisor, co-workers
3. Peer Support (Attorney Support Group – AILA, Issues Lawyers Face)
4. Professional Assistance (counselors, therapists, coaches)

I. Workshop Exercise #2: Lawyers' Support Group

-Break into groups of 5-6 and discuss two questions:

Question 1: What specific ways do you accomplish self-care? (15 min)

Question 2: Why is it hard to take time for self-care? (15 min)

-Join an Issues Lawyers Face (issueslawyersface.com) support group

J. Incorporating self-care practices into the daily routine of legal professionals is essential for preventing vicarious trauma and burnout. By taking proactive steps to manage their well-being, lawyers can maintain their ability to provide empathetic, trauma-informed representation to their clients while also ensuring their own health and longevity in the profession.

1. Physical activity: Encourage regular exercise, which has been proven to reduce stress and improve mood.
2. Mindfulness and relaxation techniques: Introduce practices such as meditation/prayer, or deep breathing exercises to manage stress and emotional well-being. (i.e. box-breathing)

3. Hobbies and Interest: Recommend dedicating time to activities that bring joy and relaxation outside of work.
4. Education on Work-Life Balance
5. Time Management Skills: Provide tools and techniques for effective time management to balance work demands with personal life.
6. Vacation and Breaks: Stress the importance of taking regular breaks and vacations to disconnect and recharge.

K. Workshop Exercise #3: Box Breathing (5 minutes)

- <https://www.youtube.com/watch?v=n6RbW2LtdFs>

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