

Trauma-Informed Legal Representation

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Learning Objectives

- Identify the impact of trauma on litigant behavior and decision-making in family law cases.
- Apply understanding of trauma-informed practices utilizing principles of procedural justice.
- Design strategies for managing the impact of trauma exposure to help you and your organization care for yourself and sustain the work.

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Discussion

What comes to mind when you hear the phrase “trauma-informed courts” or “trauma-informed lawyering”?

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Why Consider Trauma?

1. Will influence interactions with staff, services & legal system, as well as our response to litigants
2. Can contribute to aggressive or problematic behavior
3. Can interfere with litigants effectively getting help from court, understanding the process
4. Affects mental & physical health long-term for all
5. Blunts all of our efforts to provide access to justice
6. Exposure to trauma impacts your well being and ability to do the work

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Challenge

Think of your most challenging client.

Write down the first three things that challenge you?

- ▶ Behavior?
- ▶ Response?
- ▶ Mood?
- ▶ Attitude

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What is Trauma and Why Does it Matter?

- ▶ Results from an **event**, series of events, or set of circumstances that is **experienced** by an individual and/or communities as physically or emotionally harmful or threatening and that has lasting adverse **effects** on the individual's and/or communities functioning and physical, social, emotional, or spiritual well-being
- ▶ Micro (interpersonal trauma) and Macro (systemic trauma and oppression) experiences

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Trauma

- A psychological and physiological response to an experience involving threat of, or actual, serious physical injury, death and/or sexual violence.
- May invoke intense fear, helplessness and horror and overwhelm capacity to cope.
- Immediate response → Fight, flight or freeze

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Examples of Interpersonal and Systemic Trauma and Oppression

Interpersonal

- Childhood sexual abuse, childhood physical abuse, neglect
- Verbal/emotional abuse
- Domestic/sexual violence, rape

Systemic

- Court, foster care, child welfare
- Education, health care
- Incarceration
- Police/law enforcement

Structural

- Racism, sexism, all other -isms
- Poverty
- Homophobia

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Types of Trauma

- Combat exposure
- Sexual violence & abuse
- Physical, emotional, psychological violence
- Natural disasters
- Severe accidents
- Illness and Injury
- Historical & intergenerational trauma
- Systemic trauma and oppression
- Toxic Stress, particularly at childhood (ACEs)
- Secondary or vicarious trauma

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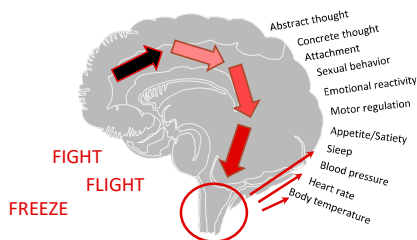
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Trauma Responses

- ▶ Best understood as adaptations to survive and are logical in the context of trauma
- ▶ People will do whatever it takes to survive their experience and pain – RESILIENCY!
- ▶ Trauma reactions often misdiagnosed or overlooked as symptoms of other mental illness

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Trauma and Brain Function



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Trauma Reactions: A new lens to understand challenging behavior

- ▶ **Intrusive thoughts/feelings**
 - ▶ Flashbacks
 - ▶ Nightmares
 - ▶ Intrusive thoughts
 - ▶ Intrusive memories
 - ▶ Physical pain
- ▶ **Hyperarousal**
 - ▶ Increased arousal
 - ▶ Difficulty falling or staying asleep
 - ▶ Difficulty concentrating
 - ▶ Irritability
 - ▶ Jumpiness
 - ▶ Chronic hyperarousal makes it difficult to feel a range of emotion
- ▶ **Avoidance**
 - ▶ Behavioral or cognitive attempts to avoid trauma-reminiscent stimuli
 - ▶ Emotional Numbing

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Trauma Reactions: A new lens to understand challenging behavior

▶ Reenactment

- ▶ Power and control struggle is often reenacted
- ▶ A traumatized participant has had their power and control taken away, often throughout their life
- ▶ Feeling powerless or as if someone is trying to control her can be intolerable
- ▶ When reenacting, the participant can play the victim OR the victimizer
- ▶ Often, this is what causes people to feel like participant is being “manipulative”

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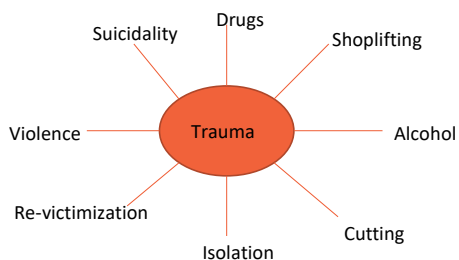
Trauma Reactions: A new lens to understand challenging behavior

▶ Dissociation

- ▶ Intrapsychic defense
 - ▶ The separation of mental systems that would ordinarily be integrated
- ▶ Voluntary and Involuntary Reaction
- ▶ Protective
- ▶ At first a conscious effort to block out the abuse, but when repeated over time, becomes a uncontrollable response to abuse or stimulus of abuse
- ▶ Common experience for survivors of rape, childhood sexual abuse, and witnessing DV

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Trauma Reactions



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Physical & Mental Health

- Mood and anxiety disorders
- Suicide, self-harm
- Problems with sleep and eating
- Injuries, stress-related illness, psychosomatic illness
- Post-Traumatic Stress Disorder (PTSD) or symptoms

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Other Impacts of Trauma

- On view of self, others, the world, spirituality
- On interpersonal relationships, sexuality
- High risk of re-victimization
- Negative experiences with “the system,” including secondary consequences of disclosure

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Moving Toward Trauma-Informed Care

Traditional models:

- What’s wrong with you?
- Blaming
- Power and control
- Hierarchical
- Over reliance on diagnosis
- Safety as priority

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Moving Toward Trauma-Informed Care

Principles of Trauma-Informed Care:

- What's happened in your life? What's happened to you?
- Understanding the impact of trauma on individual
- Understanding of trauma reactions and ways reactions can be expressed
- Trauma reactions are normal in context of experience
- Removing pathology
- Transparency, flexibility, and firm boundaries
- Practitioner AND client have knowledge
- Worker is expected to be impacted by clients and work
- Safety as priority

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Trauma-Informed Lawyering

Four Key Characteristics:

1. Identifying trauma
2. Adjusting the attorney client relationship
3. Adapting litigation strategy
4. Preventing vicarious trauma (more on this in a moment...)

See, The Pedagogy of Trauma-Informed Lawyering, Clinical Law Review, 2016

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Interviewing and Information Gathering

- Building trust
- Physical Environment
- Writing it down
- Multiple appointments
- Breaks

See Trauma Informed Legal Advocacy, National Center on Domestic Violence, Trauma and Mental Health

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Barriers to Disclosing Trauma -

- "No one's ever asked me that..."
- Trauma avoidance
- Relationship w/ perpetrator
- Shame, embarrassment, self-blame, stigma
- Past negative experiences
- External & cultural pressures
- Lack of rapport or comfort w/ interviewer and/or agency

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Preparing for Court

- Go over "what to expect."
- Team up with an advocate or social worker
- Enlist support people that the survivor trusts.
- Make a plan for how to deal with an abuser in the courtroom
- Make a plan for what to do if your client is triggered during the court proceedings

See Trauma Informed Legal Advocacy, National Center on Domestic Violence, Trauma and Mental Health

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Discussion

How might trauma impact the information that a litigant provides or how the court receives it?

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Litigant Response to System & “Us”

- May refuse to discuss major topics, may deny or minimize trauma
- May be triggered by law enforcement, court process, court rules, attorneys, or something we don't know about
- Noncompliance with court orders or rules
- May reenact trauma (as offender or victim), or engage in struggles with us over power and control

Survivor Behavior in Courts

- Flat, volatile, intense and/or 'inappropriate' emotions; flooding
- Guardedness, suspicion, mistrust
- Difficulties with memory, fragmented stories
- Being triggered by trauma reminders and/or loss of control
- Self-censoring → Feeling intimidated by system, fear of retaliation

Survivor Behavior in Court

- Display **anxiety** about rulings by questioning decisions made by the judge.
- Display **combative** intensity during proceedings.
- **Refuse** to testify or withdraw the case
- May impact **decision-making** or ability to participate in settlement negotiations
- Note: How survivors present in court may be **impacted by culture**. People with different backgrounds and behavior could be perceived very differently.

So Trauma Symptoms/Reactions Are...

- Attempts to survive **physically & psychologically**
- Adaptations
- Often very entrenched – long term
- Appear logical and “make sense” once we know the history
- **Not** the person being “difficult”

What Happens if We Miss It?

- We miss the boat!
- We can inadvertently trigger and re-victimize.
- We miss an opportunity to get people the help they need and prevent relapse and/or future violence.
- The **revolving doors** of the system continue.

The Key to Helping

The **goal** is to move our systems from “What’s wrong with you?” to “**What happened to you?**”

Tonier Cain, Nat'l
Ctr. For Trauma-Informed Care

Remember that “challenging” client ...

- ▶ What are some ways you already respond to challenging behaviors?
- ▶ Share some of the challenging behaviors you wrote down in the beginning
- ▶ What are some strategies you already use?
- ▶ What are some new strategies based on what you learned today about trauma to enhance your response?

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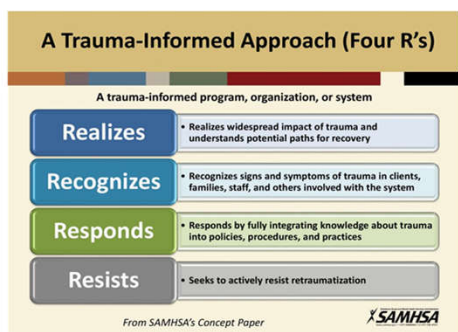
Trauma-informed Practice: Not Just a Buzzword

Aligning What We Know with What We Do

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SAMHSA’s Four R’s



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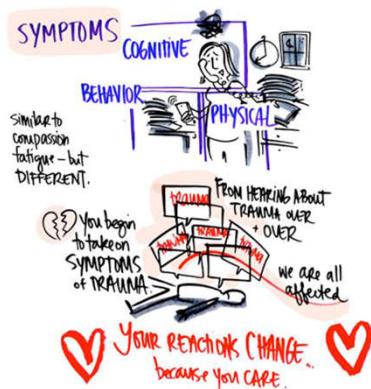
Trauma Informed Practice

- ▶ Identification and awareness of trauma symptoms and power and control dynamics
- ▶ Consider these factors in how you structure the conversation and who is in the room
- ▶ Consider how the room is set up and who is sitting where
- ▶ Enhance physical and psychological safety
- ▶ Be present and reflective and mindful of your own reactions
- ▶ Check your own biases

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Managing the Personal Impact of Our Work



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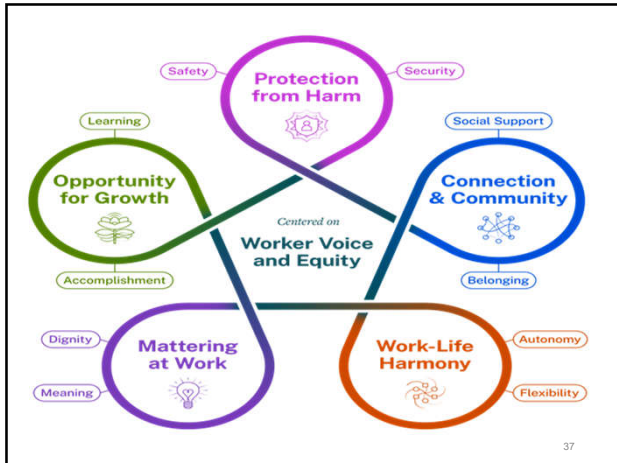
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Why Is This Important?

- So we can be physically and mentally healthy
- So we can provide the best possible response to the litigants in our courtroom
- So our work can stay sustainable
- So we can continue to learn and grow professionally
- **Ask Ourselves: how can we be more present?**

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Impact of Our Work

- Resilience – your ability to “Bounce”
- Compassion Fatigue – feeling “pecked to death by ducks”
- Decision fatigue and cognitive overload/overwhelm
- Burnout – exhaustion from the workplace, workload
- Vicarious Trauma
- Moral Injury

Taking care of yourself is an essential part of taking care of others. The healthier the tree, the better the fruit it can offer.

Vicarious Trauma

- Short- and long-term consequences of working with trauma survivors.
- Effects may be in all of the following areas -- physically, emotionally, behaviorally, cognitively, interpersonally, and spiritually -- can persist for months and sometimes years.
- Experience of the professional parallel those experienced by trauma survivors.
- Wide range of normal feelings and reactions.

Vicarious Trauma

Ask yourself:

- Have you or your colleagues experienced vicarious trauma?
- How has it affected you or your colleagues' well-being (physical, emotional, cognitive, interpersonal, spiritual, etc.)?
- What strategies work for you (or what ideas have you learned from others)?
- How do you help colleagues who aren't reaching out for support (but need help)?

Activity: Silent Witness Exercise

Definitions:

01

Vicarious
Trauma

02

Compassion
Fatigue &
Burnout

03

Moral
Injury

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Types of Exposure to Trauma at Work

- ****Firsthand accounts of traumatic experiences****
- Academic trauma
- Case materials and documents
- Violent death of a colleague, client or litigant

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The expectation that we can be immersed in suffering and loss daily and not be touched by it is as unrealistic as being able to walk through water without getting wet.

By Rachel Naomi Remen

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Discussion Question:

What might these effects look and feel like?

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Types of Effects

- On our feelings
- On our bodies
- On our minds and our thinking
- On our behavior
- On our relationships

****This is normal and expected when you're doing difficult and painful work.****

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What Plays a Role?

- Our previous experiences
- Our personality & coping skills
- Our personal lives!
- Our identities, inc. professional identity
- Our working conditions / situation
- Community & political context

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Discussion Question

How do the legal profession and the judiciary support wellness (or not)?

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Wellness in the Legal Profession

- Difficult working conditions, inc. exposure to detailed trauma stories
- Pressure to meet needs of children and families w/o training or resources
- Common messages re. wellness and coping
- According to an ABA survey, 20% of Judges have at least one depressive symptom

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Activity

Professional Quality of Life Scale

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Discussion

What does staff wellness look like at your organization/office? What is working well? What are the challenges and gaps?

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It's the airplane oxygen-mask theory:
If you don't put on your mask first, you
won't be able to save anyone else.

©Craig Winfrey

#oxygen

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Strategies

- Utilize and institutionalize both prevention and mitigation/response strategies
- Consider personal, professional & organization-level strategies

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Prevention – ABC’s

- **A**wareness - your needs, resources, limits, the science of wellness and prevention
- **B**alance - work, rest, play, emotion
- **C**onnection - family, friends, community, something larger

A Note on Leadership:

Make sure your own behavior is aligned with the messages you want to send and the wellness behaviors you want to see from your team.

Healthy Coping in the Moment

- Controlled breathing
- Mindfulness and visualization
- Grounding
- Thought-stopping
- Progressive muscle relaxation
- Self-talk

Personal & Team Commitments Exercise

	Personal	Professional	Organizational
Prevention			
Response			

Discussion Question

Why do you do this work?

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