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Trauma-Informed legal advocacy

By Cornelia Brandfield-Harvey on October 29, 2020

Let's face it—lawyers are not the most comforting individuals. We can be intimidating. This stereotype has never been truer than when it comes to clients who are survivors of sexual abuse, sexual assault, and sexual harassment. The area of sexual assault litigation is still in its nascent stages, especially within the state of Texas, and more lawyers need to become “trauma informed.” As a lawyer advocating on behalf of sexual assault survivors, it is paramount to take a personal approach to a sexual assault case. You need to avoid treating a client as just another checklist. Sexual assault is a highly specialized area of the law with clients who have been significantly and uniquely traumatized, sometimes throughout their entire childhood and adulthood. Litigation is already inherently anxiety provoking and stressful. Now imagine if you are a survivor of sexual assault and/or child sexual abuse. A lawsuit magnifies this anxiety exponentially.

I will demonstrate the ways in which a lawyer can become trauma-informed herein.

- **Trust.** Trust is a significant factor with the client because sexual assault involves betrayal. The accused betrayed the client's trust when he or she sexually assaulted the client. Someone used his or her power to wield over the survivor. There exists an inherent power dynamic between a lawyer and client, and therefore a lawyer needs to be sensitive to this dynamic, aware of this dynamic, and ensure that the client does not feel as though the lawyer is taking advantage of him or her in any way.
- **Listen. Listen. Listen.** Allow the client to tell his or her story. A story from a sexual assault survivor will be a stream of consciousness that may seem inconsistent and long winded. However, you need to allow them to talk. They just want someone to listen. Do not interrupt. Other clients are reluctant to talk. Some clients do not want to share the intimate details. Do not press them on intimate details.
- **Client involvement.** Sexual assault clients also tend to be the most involved of clients, in a good way. They want to help you with their case. They are a wealth of information. They want to be involved and informed of every step of the process. They want to be considered part of the team and feel as if you are with

them and not for them. Take their suggestions seriously when it comes to litigating the case. Of course, you are the lawyer at the end of the day and assess every suggestion and guide the client, but the sexual assault client will more likely than not have nuggets of wisdom.

- **Avoid victim blaming.** Refrain from bombarding them with a plethora of questions at the onset because the clients already think that no one believes them. Judgmental questions only tend to reinforce that thought and that fear.

- **Privacy and Confidentiality.** Ensure the clients' privacy is protected from day one. Privacy and confidentiality are paramount. For the majority of sexual assault cases, the client's name does not appear anywhere in the petition. The plaintiff can be anonymous in the public sphere so that way his or her privacy is protected. We either file the petition with the client listed as "Jane Doe," "John Doe," or his or her initials. This option makes the client feel more at ease when deciding whether to pursue a case.

- **Consent.** Always ask the client for consent. Consent is the bedrock of every sexual assault case. And therefore, consent should play a role in every facet of your relationship with the client as well. For instance, I always ask the client to approve the petition before filing. This constant communication will go a long way with the client. I send a copy of the petition to the client and ask the client if the petition looks ready to file. Do not file a petition without the client's express permission first. The client will resent being caught off guard.

- **Resources.** Ensure you can provide the client with resources. If the client needs counseling, then you want to have multiple counselors and/or therapists to whom you can refer the client. If the client wishes to file a police report, then you need to make sure you can refer the client to the correct law enforcement agency and/or district attorney. Develop relationships with the sex crimes division of that district attorney's office and/or police department. If the client is homeless or needs a place to stay, make sure you are in contact with various nonprofit organizations in your city that can help the client with any housing and life skill needs. The client may also be in the midst of a divorce and the defendant is that client's spouse. You can make sure to be in contact with that client's divorce attorney so you can work together. You can accompany the client to the police interview. This also helps with preventing re-traumatization in that the client will not have to repeat his or her story several times. It takes a village to represent a sexual assault survivor. Make sure that village provides a supportive environment. This relationship can only behoove you in the future, serving many purposes. That police officer or that therapist can act as important witnesses at trial or for a deposition in the future.

- **You are not the client's therapist.** More importantly, you are not the client's savior. This important distinction is difficult to convey sometimes. However, this is a distinction one needs to emphasize early and often in the lawyer-client relationship. This distinction is very crucial to understand. Naturally, we want to try to solve the client's mental trauma from a psychological standpoint. However, you are the lawyer—you can solve his or her legal issues, not the mental trauma. The client naturally is going to want to unload on you

about all the emotions he or she is feeling. You need to get that person to a licensed trained psychologist as soon as possible. Especially if that client reveals to you that he or she is experiencing suicidal thoughts, which is very common in a client who has been sexually assaulted and/or sexually harassed.

- **Intake.** The client may need to tell his or her story over a period of several days. The client may not be ready to tell you everything in one sitting. Thus, you should set aside three or four days for intake. Do not pressure the client to sign with you right away. The client may need time. The only exception to this advice is if there is an upcoming statute of limitations deadline. Inform the client immediately of this deadline.

- o *Questions:* The questions you ask during the intake process will be unique. “*What do you remember about that experience?*” “*What can you not forget?*” Do not ask “*what happened?*” Because more likely than not, the client will not be able to remember everything. Trauma shuts down the brain. Trauma blocks memories.

- **Culture awareness.** Educate yourself about that client’s culture. Every culture responds to sexual assault differently.

- **Association.** With whom do you associate daily? Be cognizant of the groups and/or public figures you choose to follow on various social media platforms. Do your homework.

- **Treat each case individually.** Do not consider the client as just another number. Childhood sexual abuse and sexual assault cases are not mass tort cases.

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