

# Enhancing Legal Advocacy through a Trauma-Informed Approach

**By Olga Trujillo, JD & Patricia Moen**

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Victims and witnesses of crime have experienced trauma when they are exposed to violence, physical or sexual abuse, neglect, natural disasters, accidents, or any other events that induce powerlessness, fear, recurrent hopelessness, and a constant state of alert. These victims and/or witnesses often need lawyers to help them get through administrative, civil or criminal legal proceedings.

## Why Consider Trauma?

By their nature, legal proceedings are stressful and confusing for most people. Traumatic experiences can influence how well a client is able to participate in legal proceedings and, ultimately, the outcome of their case.

The trauma that these clients experience can affect the outcome of their cases in two key ways:

1. Participation in legal proceedings can be difficult for clients who have experienced trauma, because the client can be easily reminded of the crime by seeing the people,

pictures of the places or scenes of the incidents of violence. This can bring up the feelings and sensations associated with those traumatic events, which can cause a literal re-experiencing of the incident. This kind of re-experiencing may cause feelings of panic, anger, disorientation, physical pain, grief, or numbing and shutting down. These traumatic reminders are referred to as “triggers” and these triggers during a court proceeding can disrupt the client’s testimony, cross examination or make it too hard for them to participate at all. Credibility determinations are often made in legal proceedings without recognizing the impact of trauma on clients. Judges and juries determine whether a person is truthful based on that adjudicator’s sense of what a reasonable person can remember, or how they believe a client should look or sound when testifying about life threatening events. However, traumatic events can alter the way a person thinks, talks and even remembers an incident. To survive, victims may have dissociated, allowing them to experience the incident without actually feeling the full effect. For example, someone who experiences a near deadly car crash caused by a drunk driver, may dissociate so they don’t feel all the pain and terror associated with the incident. The victim may talk about the car accident in a flat and scattered manner when testifying. Judges and juries can find it hard to believe a client showing these signs of trauma.

## What Can Lawyers Do to Help?

Successful legal advocates incorporate an in-depth understanding of trauma into their legal knowledge. The legal process often leaves participants feeling a loss of control. Recognizing this and addressing it with clients can help them prepare for legal proceedings, which can

help them fully engage by minimizing perceived threats and avoiding re-traumatization, to the extent possible.

Lawyers who are trauma-informed expect the presence of trauma and do what they can to prepare for it. Ways to do this include:

## BEFORE LEGAL PROCEEDINGS

- Review your office space and decorum:
  - Ensure it is not chaotic, over stimulating, and noisy.
  - Make sure the space you meet with clients is not too small or crowded with furniture.
  - Make sure the client has easy access to the door and feels they can leave at any point.
  - Ensure clients are clearly and kindly directed to your office or meeting room when they arrive for appointments.
- Take time to develop a rapport with your clients before you have them discuss or recount traumatic experiences.
- Talk to your client about what helps them when they are triggered or reminded of traumatic experiences.
- Incorporate a what-to-expect discussion into every client's routine preparation for legal proceedings. Predictability, to the extent possible, helps alleviate a client's fears and helps them prepare to participate.
- Explain and walk clients through the legal aspects of the process so they know what to expect.

- Talk them through the process step-by-step.
- Discuss logistical details such as where both parties will wait before the proceeding, where they will take breaks, and the location of restrooms.

## DURING LEGAL PROCEEDINGS

- Create a physical and emotional safety plan for attending and participating in the legal process.
  - Prior to the scheduled date of the hearing, deposition or interview, accompany your client to the location where the proceeding is scheduled.
  - Strategize with them around any emotional or physical challenges to the space, hearing deposition, or interview.
  - Agree on a simple cue to let you know they are feeling overwhelmed or triggered.
- Learn grounding techniques to help clients reorient in the present when they are triggered, dissociating, overwhelmed or feeling intense anxiety.
  - Practice these techniques generally and once proficient, practice them with clients to develop a rapport and to discuss when they might be needed.
  - If possible, practice them in the location of the hearing, deposition or interview before hand.
- Ask for a recess to give your client a chance to get grounded after being triggered.
- Suggest and help arrange for clients to have a supportive person in the legal proceeding. Victim advocates, close friends and even clinicians can fill this role.
- Explore the use of emotional support animals during the legal proceedings.

- If an interpreter is needed to participate in the proceeding, discuss the process so clients know what to expect and explore any potential trauma that may be compounded by interpretation.
- Be prepared to request a recess or ask a judge or opposing counsel to rephrase questions if it is clear that the interpretation process is additionally re-traumatizing or confusing.
- Be patient with victims who struggle to recount (and may be reliving) some of the worst moments of their lives.
- Work closely with victim advocates and others involved in legal proceedings to help survivors and witnesses feel safe.
- Maintain an awareness of how power and control and intimidation are being used in the proceeding and bring it to the adjudicator's attention.
- Advocate for courtroom accommodations to limit the opposing party's ability to interact with your client.
  - When your client is testifying, stand between the witness stand and the opposing party.
  - In criminal cases, ask prosecutors to stand between the victim and the defendant when the victim is testifying.
  - For opposing parties that are pro se, be ready with a motion for use of standby counsel, should the opposing party want to cross examine your client.
- Advocate for testimonial accommodations. For example, your client could testify behind a screen or through closed circuit television or in another room.

- Normalize your client’s behavior throughout the proceeding. In court cases, start with voir dire to help determine whether you may need to use an expert about the impact of trauma.
- Introduce expert testimony on trauma and dissociation to normalize your client’s demeanor and behavior.

***Authors: Olga Trujillo, JD, and Patricia Moen Caminar Latino/Latinos United for  
Peace & Equity  
Resource Center Partners for Trauma-Informed, Culturally Responsive  
Practices***

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