Trauma Informed Lawyering

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Challenges

- Culture
- Language/interpreters
- Education
- Gender
- Trauma
Trauma informed to be educated about the impact of interpersonal violence and victimization on an individual’s life and development.
• clients’ trauma experiences at the forefront in engaging with clients and
• adjusts how we interact with client
• adjust litigation strategy
• self-care to counterbalance the effect of client’s trauma experience
Challenges

- Identifying trauma
- Drawing appropriate, consistent boundaries
- Understanding the impact of trauma on a client’s actions and reactions
- Adjusting communication and litigations strategies to compensate
Among Syrian refugees

- Adults: 10% to 15% PTSD
- Children: 20% to 25% PTSD

PTSD screening tools

In adults

http://www.ementalhealth.ca/index.php?m=survey&ID=7

In children and youth

http://www.ementalhealth.ca/index.php?m=survey&ID=31
Two approaches

What is wrong with you?

vs

What happened to you?
“It connects a person’s behavior to their trauma response rather than isolating their actions to the current circumstances and assuming a character flaw.”

Psychiatrist Sandra Bloom
What is Trauma?

Trauma has a distinct physiological effect on the brain, which affects behavior short-term and long-term.
Why we need to understand trauma?

To explain otherwise counter-intuitive behaviour

- Demeanour
- Responses
- Behaviours
What Happens?

- Five senses transmit signs of danger to amygdala (brain fear alarm system)
- Puts brain in emergency mode, brain hijacked
- “Stress response” triggered. Chemical and neurobiological events follow
The Fear Response

PARTS of the BRAIN INVOLVED in FEAR RESPONSE

- Medial Prefrontal Cortex
- Thalamus
- Hypothalamus
- Amygdala
- Hippocampus
Telencephalon: Amygdala & Hippocampus

**Amygdala functions**
1. Part of the limbic system
2. Associated with pleasure, fear, addiction
3. Important in forming and storing memories of emotional events

**Hippocampus functions**
1. Part of the limbic system
2. Important in formation of memories, including spatial and navigation memories
3. Damage to hippocampus can result in anterograde amnesia
Fear

- Brain’s fear circuitry, (Amygdala)
  - Controls where attention goes- minute focus or deflected
  - Impact on the hippocampus, impaired ability to encode contextual information, (room layout, time sequencing, uniform worn etc.)
Effect of the Neurochemicals

Catecholamines (adrenaline)

- assists with “fight” “flee” response
- Impairs the circuits in prefrontal cortex “executive functions”
  - Rational thought
  - Ability to analyze and organize logical response
What executive functions are impaired?

- Planning
- Organizing
- Prioritizing
- Shifting
- Memorizing
- Checking
Cortisol

- Increases energy to “fight” or "flee”
- Hyper-alertness, hyper-activity, increased physical responses
Opiates

Natural body morphine

• Block physical and emotional pain of event
• Masking pain, flat or monotone response to the assault
• Impact up to 96 hours post incident
Physical changes

- Increase in heart rate and respiration
- Increased oxygen flow to muscle tissue
- Other non-essential organs shut down (frontal cortex executive functions)
  - Decrease in rational thought (needed to resist)
- Perceptual field narrows, peripheral information not encoded
Freeze or Immobility Response

Body shuts down
Undermines ability to resist
Dissociation

- Disconnection between things usually associated
- Brain overwhelmed, splits off some stimuli
- Perceptual field narrows
- All awareness focused on survival
- Autopilot (spaced out, disconnected, fog)
Impact of Disassociation

- Parts of incident blanked out
- Detachment
- Experienced and narrated in 3rd person
Counter Intuitive Behaviour

Plausibility:

- Inability to take self-protecting actions: fail to evade, fight or resist
- Struggle with decision making
- Deny or minimize experience
  - Delay reporting to police or seeking protection
  - Post incident contact with perpetrator.
- Recanting
Impact on Recall

Related to credibility:

- Difficulty forming a narrative
- Difficulty processing information
- Loss of memory for key events
- Inconsistent statements at different times
- No memory of peripheral details
Common Pattern of Recall

- Fragmented
- Non-linear
- Confused and inconsistent
- Unemotional/monotone
Impact on Demeanour

- Lack of emotional expression
- Hyperarousal - difficulty concentrating, jumpy
- Hypervigilance - tense, wary, inability to trust
Everyone is different

• reactions are psychobiologic influenced by complex individual, social and cultural contexts

• no universal indicators of/ or responses to traumatic events.
Standard test for credibility includes:

- Motives
- Internal consistency
- Inconsistencies
- Contradictions
- Demeanor observations
It is not reasonable to expect a trauma survivor – whether a rape victim, a police officer or a soldier- to recall traumatic events the way they would recall their wedding day. They will remember some aspects of the experience in exquisitely painful detail. Indeed, they may spend decades trying to forget them. They will remember other aspects not at all, or only in jumbled and confused fragments.
Challenges with expectation

How does memory function under the best of circumstances?
Every day non-traumatic memory challenges

- Gain and loss of information over time
- Dates, frequency, duration and sequence
- Repeated events
- Common objects

Hilary Evans Cameron
Impact of trauma

- shame, hopelessness, or distrust in being asked about the traumatic events
- flashbacks/re-experiencing of trauma
- withdrawn, flat emotion, or
- overload of information, anger or suspicion
Terrible witnesses

- unable to present a linear narrative
- no memory or disrupted memory of key elements
- inconsistent narrative
- easily overwhelmed and becomes upset/tearful
- desire to avoid re-traumatization through the court system (avoidance, not following up)
Terrible Witness

- a client’s emotions unnerve or misguide the trier of fact:
  - a flat affect;
  - rush of hysterical emotion; angry or aggressive
- Counter-intuitive post event behavior
Both “truth tellers” and “liars” can exhibit the same behaviour
Adjust to compensate

- What adjustments should we make when representing survivors of trauma?
Adjusting Client Relationship

• Extra time for in-person interviews
• Suspension of judgment, believe, empower and validate the survivor
• Appropriate counseling or support referral
• Work cooperatively, co-investigate to reduce “power over”
- Explore alternative ways to tell the story (write it down, tell it in the 3rd person, tell it to someone else, or to the wall, paint a picture, tape record it)
- Familiarize with process and location, share information with the survivor reduce stressors
- Educate the survivor on systemic inequalities
Adjusting litigation strategy

• Construct chronology
• Practice chronology
• Obtain expert report to explain inconsistencies, responses, or memory gaps
• File material on memory and trauma
Do

- Deal with memories and feelings first, facts later
- Acknowledge and validate feelings
- Explain need for intrusive questions
- Develop a plan cooperatively with client, reduce “power over dynamic”
- Ask open ended questions
- Take frequent breaks
- Refer for counselling, use support workers when available
Don’t

- Judge, blame or confront
- Remain silent
- Tell to “calm down”, or “relax”
- Minimize
- Touch, without consent
- Ask unnecessary questions
- Assume role of counsellor or therapist
Vicarious trauma

“a state of tension or preoccupation with clients’ stories of trauma”
Vicarious trauma

“harmful changes that occur in professionals’ views of themselves, others, and the world, as a result of exposure to the graphic or traumatic experiences of their clients”

Psychologist Mark Evces
Vicarious Trauma

painful images and emotions associated with their clients’ traumatic memories incorporated into their own memory systems.

• safety,
• trust,
• esteem,
• intimacy and
• control
Impact on the lawyer

- denial of clients’ trauma
- over-identification with clients
- no time and energy for oneself
- feelings of great vulnerability, and inadequacy
- alienation, social withdrawal, disconnection from loved ones
- cynicism, generalized despair and hopelessness, disillusionment
- insecurity
- increased sensitivity to violence
- diminished self-capacities
Core competencies

- identifying trauma
- adjusting the attorney-client relationship
- adapting litigation strategy
- preventing vicarious trauma.
Resources

• SARAH KATZ & DEEYA HALDAR, Trauma-Informed Lawyering.

• [Link](http://www.law.nyu.edu/sites/default/files/upload_documents/Katz%20-%20Halder%20Pedagogy%20of%20Trauma-Informed%20Lawyering.pdf)

• Hilary Evans Cameron, Refugee Status Determinations and the Limits of Memory, IJRL, V.22, Issue 4
  [Link](http://ijrl.oxfordjournals.org/content/22/4/469.abstract)

• Jane Herlihy, et al “Asylum claims and memory of trauma: sharing our knowledge”, BJP, http://bjp.rcpsych.org/content/191/1/3full.print
