

# TRAUMA-INFORMED ADVOCACY

The litigation process is daunting for most clients, but it can be especially frightening and overwhelming for sexual assault survivors whose traumatic experience is central to their case. From case intake to depositions, following principles of trauma-informed care will help empower your clients, and, in the end, can lead to a stronger case outcome.

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# A Survivor-Centered Approach

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Representing sexual assault survivors with sensitivity, empathy, and trauma-informed techniques empowers them and leads to better case outcomes.

**T**he litigation process often presents numerous challenges for victims of sexual assault. When handled with conviction, sensitivity, and compassion, the process can be profoundly rewarding and allow survivors to take back their power.

Attorneys litigating a sexual assault case must understand that sexual assault and sexual violence are based on power and control. Survivors of sexual violence lost their power and control at the hands of their perpetrator. Because of this, the number one rule for working with survivors is to *believe survivors*.

Attorneys tend to have a higher level of skepticism than most people, and, while this is helpful in many areas of practice, it is imperative that we listen to and believe our survivor-clients. False reports of sexual assault occur at a rate of less than five percent.<sup>1</sup>

Here are some essential strategies to interview your client with compassion and get all the facts for their case.

## Empower Survivors

The empowerment model provides a strong framework for working with and talking with survivors.<sup>2</sup> The model's purpose is to allow survivors to take their power back from the trauma they have endured. Implementing this within your practice means providing clients with choices and equipping them with knowledge.

To that end, when meeting with your client, provide them with choices related to timing, pace, breaks, and location. This may mean giving them the option to meet at your office or in a different safe space. A safe space looks different for each client; the conference room in your office may not feel safe and secure for all

clients. Offer to meet your client at their house, at a coffee shop, or in a private room at a library.

Cultivate a relationship with your client that is a safe space. This means keeping promises. Don't say you are going to do something if you cannot follow through. If you promise to provide your client with 90-day updates, do it; if you say you will file the complaint on a certain date, do it. Show your client that you mean what you say and that they can trust you. It is also helpful to provide your client with guidance and information, for example, providing a roadmap of what the litigation process looks like. This takes away a lot of the unknown, which can invoke anxiety and fear in survivors.

Intake must be a judgment-free zone. Use active listening skills and reflect the information the potential

client is providing back to them. Active listening means being present and not distracted, maintaining appropriate eye contact, and listening to understand, not just respond.

Use open-ended language for your intake questions. For example, what was the most difficult part of this experience for you? Or, help me understand [details that need clarity].

The safer and less judged your client feels, the more information they will offer. Building rapport and safety with a survivor of sexual assault is essential to building a successful attorney-client relationship and, ultimately, a successful case.

### The Biology of Trauma

Working with survivors of sexual assault is not the same as working with other personal-injury clients.

The biological impacts of trauma pose challenges to obtaining a complete set of facts for your case.

Be patient. Focus on building trust and rapport. Use a trauma-informed approach and empower your client to tell you what happened. To do this, you must understand the underlying biology of trauma. Many people are familiar with fight or flight responses; however, there are actually five automatic nervous system responses.<sup>3</sup>

Understanding each of these reactions on a biological level is important. They all occur because the body is seeking to avoid danger and return a sense of control. Because there is so much already happening within the body during the traumatic event, the portion of the brain that records memory shuts down. This makes eliciting the most complete

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recitation of facts complicated.

**Fight.** Some people's biological response to trauma is to stay and ward off, or "fight," the threat. With this response, the person is usually experiencing a release of the hormones cortisol and adrenaline, which drives the person to stay in the situation and fight. The sympathetic nervous system is responsible for this stress response.<sup>4</sup>

**Flight.** Others respond to trauma by actually, or figuratively, running from the threat. The stress signals released by the body indicate that the threat is so serious that the person must flee from the situation.<sup>5</sup>

**Freeze.** Trauma causes some people to freeze, that is, they are left temporarily paralyzed, unable to move or speak. Often, these people feel numbness or a sense of dread.<sup>6</sup>

**Flop.** A flop response to trauma occurs when a person becomes entirely physically or mentally nonresponsive. They may even faint. The threat of trauma is so overwhelming that they become completely immobilized and unable to respond at all.<sup>7</sup>

**Fawn.** Generally, the fawn response comes after a person's body has tried to initiate fight, flight, or freeze without success. This response is especially important to understand if your client has a history of abuse, particularly with romantic partners.

If your client is a "people pleaser," even if it is to their detriment, they are more likely to experience the fawn reaction. People who experience this response use compliance and helpfulness to try to avoid or minimize abuse. They disregard their own well-being to diffuse conflict and attempt to bring back a feeling of safety.<sup>8</sup>

## Get the Details

A trauma-informed approach will help you elicit the most complete set of facts when interviewing your client. Always

acknowledge the trauma and pain that your client experienced—and may likely be re-experiencing while talking with you. Ask open-ended questions and allow your client time to respond at their own pace.

Start by asking what they remember about the incident. As you gather information from your client, you can then break down your questions and move through the different thought processes they experienced.

Ask about their thought process before, during, and after the assault. If your client struggles to recall memories, ask about their sensory memories: any sounds, sights, smells, or feelings before, during, and after the incident. Ask how the incident affected them physically and emotionally. Strive to understand how they were feeling before, during, and after the incident.

When you are seeking to obtain detailed facts from your client, consider the appropriate cultural lens. This means you provide assistance to your clients in a manner that respects and accounts for their cultural background, beliefs, values, and practices. For example, if your client comes from a particular religious background, tailor your support to their specific needs and in a sensitive manner that avoids offense or misunderstandings.

Also, although lawyers love chronological facts, don't fixate on the chronology during intake. You can work with your client to clean up the timeline later. Focus instead on building rapport and getting the information first.

Keep the empowerment model in mind throughout all interactions with your client, and provide them with easily understandable choices and options. Make sure you don't victim blame, and also make sure you don't reinforce victim blaming.

It is not your client's fault they were sexually assaulted. Avoid asking "why"

questions as this has been shown to re-traumatize survivors because it shifts blame onto the client. Use intentional, thoughtful, and empathetic language. Invest the time with your client, have patience, and always be compassionate.

Ask your client what justice would look like to them. Listen to their answer. Focus on achieving the justice that would make them whole. This may mean fighting for policy changes within the organization where your client experienced the sexual assault. Your client is more than just a large settlement or verdict.

Spend time with your client and allow them space, and you will learn what aspect of the assault they cannot forget, no matter how hard they try. When your client feels safe and supported, they will provide the most complete set of facts for the case. Remember, you don't get to decide that you are a safe space for your client. Your client decides that.

Leave your skepticism and judgment at the door. Show your client that you care about their well-being, and always close your interviews and communications with empathy. Check in at the end of every interview and ask if they are OK. If the interview leaves your client in crisis, sit with them, provide them resources, and help them get grounded. Signs of crisis to look for include heightened anxiety, extreme emotional distress, or cognitive difficulties.

You can help ground your client by providing fidget tools, lighting a candle, or practicing deep breathing with them. If you don't have a survivor advocate on staff or are not trauma-trained yourself, hire a mental health professional or survivor advocate to sit in on interviews. Educate yourself on your local sexual assault services and cultivate a relationship with these organizations. Often, these organizations employ survivor advocates who will meet with

you and the client. You can also connect your client to these services for ongoing trauma support.

## Explain the Process

Survivors carry their trauma with them. The litigation process will inherently re-traumatize them. Trauma-informed representation means providing your client with an understanding of the litigation process.

Don't hide the hard pieces of litigation—whether it is the production of medical records or the plaintiff's deposition. Be honest about what may be perceived as "bad" facts, encourage honesty from your clients, and assure them that you have a plan to approach and confront the "bad" facts. Discuss the role of medical records openly and honestly—explain that the defense may subpoena your client's medical records and how this can be helpful.

Ask your client about any privacy concerns they have. Explain to them what considerations they can and should be thinking about. Do they want their name in the public record? Does your jurisdiction allow them to file under pseudonym? Does your client have previous trauma that may show up in the medical records? Do they have a history of substance abuse? Is there any information about them that would prevent them from pursuing the case if the information became public?

Inform them of specific protections that are available to survivors, such as filing under pseudonym, protective orders, and first-look agreements for document and record productions. Do not make decisions about these protections without your client's input.

Explain the difference between civil cases and criminal cases. Your client may not understand the limitations of a civil case or that incarceration is not a possible resolution. Make sure your client understands these nuances and

can make informed decisions about their case.

As lawyers, we are more comfortable than others are with legal jargon. Take the time to explain pre-litigation and active litigation. Educate your client on discovery, motions, and depositions.

Explain the difference between a settlement and a trial. Use the empowerment model lens to discuss how a settlement can give your client control. Explain how trial removes choice from your client and puts it in the hands of the jurors. Then, point out that settlement allows the client to have control of the case by not leaving the case outcome to a jury. Survivors should understand these key points.

## Provide External Support

Our client's trauma usually triggers them each time they speak with us. Yes, we are on our client's side and fighting for them, however, we also constantly remind them of their sexual assault.

Talk to your client about their support system. Encourage them to seek therapeutic treatment, and ask who they are able to confide in within their life.

Encourage your client to engage in self-care after each meeting with you and after they complete tasks for you. Ask your client how they relax or what they do to unwind. Encourage them to do this after meeting with you.

If your client is unsure how to do so, provide resources like trauma hotlines or your local sexual assault organization for peer support and community resources. Mitigate the harm from the litigation process through every encounter with your client.

Trauma is complex and will likely affect a client for the rest of their life. As lawyers, we are uniquely positioned to seek justice for survivors. However, the litigation process often exacerbates trauma. Trauma-informed advocacy

can lessen the toll and also deepen our relationship with our clients and facilitate the free flow of information. In turn, we are able to provide the best advocacy for our clients. 



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## NOTES

1. Cassia Spohn et al., *Unfounding Sexual Assault: Examining the Decision to Unfound and Identifying False Reports*, 48 Law and Society Review 161 (2014), <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/4F6F7BF60295BFA0DF47AA20E722DB84/S0023921600000475a.pdf/unfounding-sexual-assault-examining-the-decision-to-unfound-and-identifying-false-reports.pdf>.
2. The empowerment model is based on the fundamental premise that a survivor has the tools for healing within themselves. Sexual violence is perpetrated through a power and control model. Trauma from sexual violence often stems from a survivor having their power taken from them. Implementing the empowerment model allows the survivor to reclaim their power and control. See *Principles of Empowerment*, Rape Crisis Cape Town Trust (last visited Feb. 3, 2025), <https://rapecrisis.org.za/principles-of-empowerment/#:~:text=The%20empowerment%20model%20is%20based,determine%20the%20path%20of%20recovery>.
3. *Fight, Flight, Freeze, Fawn, and Flop: Responses to Trauma*, All Points North (last visited Feb. 3, 2025), <https://apn.com/resources/fight-flight-freeze-fawn-and-flop-responses-to-trauma/>.
4. 4. *Id.*
5. 5. *Id.*
6. 6. *Id.*
7. 7. *Id.*
8. 8. *Id.*