

## Trauma-Informed Legal Advocacy: Practice Scenarios Series

The Trauma-Informed Legal Advocacy (TILA) Project is designed to offer guidance to legal advocates and lawyers on applying trauma-informed principles to doing legal advocacy with survivors of domestic violence.

This document is part of a series: *Trauma-Informed Legal Advocacy (TILA): Practice Scenarios Series*.<sup>1</sup> Within each scenario in this series, we practice a two-step analysis of (1) what is happening from the perspective of the person we are working with, and (2) what strategies we can try to best support or represent them.

### Scenario: Trauma, Memory & Trust-Building

Someone you are working with doesn't share important information that is relevant to their case. It comes out later, during a court hearing.

#### **Step 1. What happened from their perspective?**

In this case, we can start by recognizing that there are many reasons why someone might not share information with us, some of which may be related to experiencing trauma. In particular, experiencing abuse by someone who is close to us (such as an intimate partner) can make it difficult to trust people in the future. Of course, someone's hesitations about sharing information may also reflect an awareness of real dangers that the information shared will be held against them in court.

Another reason that someone may not share information right away is that they don't remember, or they can't recall it in the way that you are asking for it. In some cases, this may reflect a dissociative response. The Sidran Institute explains that, when someone dissociates, "there is a change in [their] consciousness which disturbs the normally connected functions of identity, memory, thoughts, feelings, and experiences."<sup>2</sup> Thus, when we dissociate, our understanding of what is happening and our experience of what is happening become disconnected. This is a protective coping mechanism that can keep someone emotionally safe during

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<sup>1</sup> The *TILA: Practice Scenarios Series* was created by Rachel White-Domain, JD, NCDVTMH. Find more TILA resources on our the NCDVTMH website:

<http://www.nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/>

<sup>2</sup> Sidran Institute and the Sheppard and Enoch Pratt Health System, *What are Traumatic Memories?* (1994), available at

<http://www.sidran.org/sub.cfm?contentID=74&sectionid=4>.

traumatic events.<sup>3</sup> “People may use their natural ability to dissociate to avoid conscious awareness of a traumatic experience while the trauma is occurring, and for an indefinite time following it.”<sup>4</sup>

The Sidran Institute gives the following factors as relevant to why someone might dissociate:

<b>Factors Influencing Continuous Memory</b>	<b>Factors Influencing Dissociation/Amnesia</b>
<i>Single traumatic event</i>	<i>Multi-event (repetitive)</i>
<i>Natural or accidental cause</i>	<i>Deliberate human cause</i>
<i>Adult victim</i>	<i>Child victim</i>
<i>Validation and support</i>	<i>Denial and secrecy</i>

Despite the fact that it is very common for survivors of trauma to forget information and then remember later, we know that courts often react negatively to this situation. Similarly, courts may also react negatively when information from litigants is not organized in a way that is familiar to them. Survivors’ credibility may be questioned when there are gaps in their memory.

For example, a 2009 study explored the differences between petitions for orders of protection that were granted and those that were denied. Researchers found that petitions filed by lawyers were more likely to be granted than those filed pro se. They also found that the lawyer’s petitions were more likely to (1) have an overarching theme, (2) highlight events that met the legal definition of abuse, and (3) order the events chronologically.<sup>5</sup> Of course, survivors of trauma do not always remember their experiences in chronological order. On the other hand, survivors of domestic violence may remember events but they may ascribe different meaning to the events than reflected in legal definitions of abuse, which often emphasize physical violence. For example, incidents of psychological abuse are often described as more hurtful than physical acts of violence by survivors of domestic violence.

<sup>3</sup> Some of the language about dissociation used here comes from Olga Trujillo, JD. Visit [www.olgatrujillo.com](http://www.olgatrujillo.com).

<sup>4</sup> Sidran Institute, *supra* note 2.

<sup>5</sup> Alesha Durfee, *Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders*, Feminist Criminology (2009).

## Step 2. What might have helped?

This scenario illustrates that a trauma-informed approach includes being thoughtful around issues of trust and memory. Building trust with someone takes time. Unfortunately, in our advocacy and attorney-client relationships, time is often limited due to large caseloads. A key part of building trust when time and resources are limited is being transparent about what we have to offer, including limitations on time.

*"I'm really glad you called. I have about five minutes to talk right now. If we need more time, we can schedule another call."*

You can also build trust by being transparent about why you need the information you are asking for, such as information about mental health history. This practice can help us to avoid communicating an assumption that we have the right to information about a person by virtue of our role as an advocate or lawyer.

*"Is there any reason why your ex might say you are not a good parent? The reason I'm asking is so that we can prepare together for every possible thing that he might say, not because I don't believe you."*

It's also important to look at information gathering as a process that happens over time and, whenever possible, not just during one meeting. As your relationship develops, the person who you are working with may want to share more information, or they may even change parts of their story. This reflects increased trust in you.

*"This meeting was really helpful to me, and I want to remind you that I will keep everything that you've said completely confidential. If it's okay with you, I'd like to come back to some of these topics later."*

Keep in mind that sharing personal information, such as details about experiences of abuse, can make someone feel vulnerable, especially if they have never shared that information before. Thus, in some cases, someone might share a lot about themselves in an initial meeting and then become more guarded, withdraw from the relationship, or even stop responding to our calls altogether.

With regard to helping someone with memory, the best approach is to start by letting the person you are working with tell their story from start to finish. You can lay out the things that you are interested in learning about in broad terms. Use open-ended questions if necessary to gently facilitate this part of the interview. But use clarification questions sparingly.

*"I want to know more about your relationship with your partner, so that we can describe to the judge why you are afraid. Can you tell me what this relationship has been like for you?"*

Once a survivor has shared their story, you can go back and ask question to fill in more details.<sup>6</sup> This is the best approach not only for helping someone remember as much as possible, it also allows time for trust to grow over the course of the conversation.

If you are a lawyer representing someone, you may decide to argue that gaps in memory or other mental health effects of trauma are evidence that someone has experienced abuse. On litigation strategy in family law cases in general, see Denice Wolf Markham, JD, *Mental Illness and Domestic Violence: Implications for Family Law Litigation*, Journal of Poverty Law and Policy (2003).

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<sup>6</sup> Mary Fabri, PsyD, *Interview Guidelines for Attorneys and Legal Staff Working with Survivors of Human Rights Violations*; Jan Russel, JD, *Effectively Interviewing Battered Women* (2008).