



NVLSP

NATIONAL VETERANS LEGAL SERVICES PROGRAM

Effective Communication with Veterans to Build Better VA Claims

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“A soldier, if they hear fireworks, they may run and take cover. Traumatic memories are not remembered, they are relived and re-experienced.” – Dr. Ruth Lanius

<https://news.yale.edu/2023/11/30/study-reveals-distinct-brain-activity-triggered-memories-trauma>

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Road Map

- Trauma-Informed Advocacy
- Client Centered Advocacy and Military Cultural Competency
- Setting the Stage – The Three Es
- The Personal Statement and Oral Testimony
- Clients in Crisis (with Resources)
- Recognizing Vicarious Trauma and Burnout

 <p>Veteran</p> <p>A man in a plaid shirt is sitting at a desk, looking stressed and holding his head in his hand. He is surrounded by papers and a laptop.</p>	 <p>Attorney/Agent</p> <p>A woman in a grey blazer is sitting at a desk, looking down at a document and holding a pen. She is surrounded by papers and a laptop.</p>	 <p>VBA</p> <p>The U.S. Department of Veterans Affairs logo, featuring the letters "VA" and the seal of the U.S. Department of Veterans Affairs.</p>
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The Translator

Attorney/Claims Agent

- Knows the law
- Understands VA language

Veteran

- Has a claim (possibly involving a stressor) they need assistance with

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The Translator



Through understanding trauma and trauma-informed interviewing, you'll be translating for both VA and the veteran, making sure each one understands the other and that the veteran's story gets to the VA in a way that best supports their claim.

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Background



Work in trauma-informed advocacy, vicarious trauma and burnout, and interviewing methods comes from numerous fields. These have been studied and taught in other professions long before the legal field.

- Psychiatry/Psychology
- Social Work
- Law School Clinics
- Organizations that focus on IPV (DV), family law, and immigration

However, work with veterans has long informed the research on trauma

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Trauma-Informed Advocacy



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What is Trauma-Informed Advocacy?



“...the hallmarks of trauma informed practice are when the practitioner puts the realities of the client’s trauma experiences at the forefront in engaging with the client, and adjusts the practice approach informed by the individual client’s trauma experience.”

- Sarah Katz & Deeya Haldar, The Pedagogy of Trauma-Informed Lawyering, 22 CLINICAL L. REV. 359, 367 (2016)

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Trauma-Informed Advocacy



- How can we best work with and for our veterans? How can we be the best translator for our clients and our case?
 - Beyond being knowledgeable about the law, being knowledgeable about trauma and the impact it has on our thoughts and behaviors will help bring together a successful claim

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Trauma-Informed Advocacy



- Component 1: Identify trauma and it’s effects
- Component 2 : Adjust the attorney/agent-client relationship
- Component 3: Adapt litigation strategies

- Adapted from: Sarah Katz & Deeya Haldar, The Pedagogy of Trauma-Informed Lawyering, 22 CLINICAL L. REV. 359, 367 (2016)

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Trauma-Informed Advocacy



Component 1

IDENTIFY TRAUMA AND ITS EFFECTS

How does it present?

What does it look like?

How does it impact memory?


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Trauma – Defined

- **DSM-5 (PTSD):** when a person is exposed to “actual or threatened death, serious injury, or sexual violence
- **American Psychological Association (APA) Dictionary:** Any disturbing experience that results in significant fear, helplessness, dissociation, confusion, or other disruptive feelings intense enough to have a long-lasting negative effect on a person’s attitudes, behavior, and other aspects of functioning

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Trauma – Defined

- **APA Dictionary (cont'd):**
 - **Traumatic events include those caused by**
 - human behavior (e.g., rape, war, industrial accidents)
 - nature (e.g., earthquakes)
 - **Traumatic events often challenge an individual's view of the world as a just, safe, and predictable place**

Trauma – Types

Trauma –

Traumatic Brain Injury

Trauma – *Disclaimer*



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- Just because someone is a veteran does not mean they experienced trauma or that they have PTSD
- For those veterans who do experience trauma, not all are diagnosed with a condition such as PTSD, TBI, or depression (but they may still be impacted by the trauma they have experienced)
- People experience re-telling of the trauma differently

• NVLSP (Lawyers Serving Lawyers) – Trauma Informed Best Practices Manual for Pro Bono Attorneys

PTSD

Risk v. Protective Factors

PTSD

The logo for the National Veterans Legal Services Program (NVLSP) features a shield with a scale of justice and a sword, with the acronym NVLSP in bold letters to the right.

Risk v. Protective Factors

- 1) Pre-trauma variables (risk: younger age, female, hx of psych problems in family, previous trauma, and previous MH problems)
- 2) Features of the traumatic experience (severity of trauma, perceived threat of injury or death more potent than actual combat tally, dissociation)
- 3) Post-trauma variables (protective: social support, stronger for military pop and women, but fears about retirement is a risk factor in older vets)

***50-60% of people are exposed to trauma, but only 5-15% will develop PTSD**

- Park, Crystal L., and others, 'Risk and Resilience Factors for Traumatic Stress Disorders', in J. Gayle Beck, and Denise M. Sloan (eds), *The Oxford Handbook of Traumatic Stress Disorders*, 2nd ed., Oxford Library of Psychology (2022; online ed., Oxford Academic, 7 May 2020)

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Common Trauma Responses

Trauma Responses

- Drug/Alcohol addiction
- Unpredictable responses to routine questions
- Inability to remember relevant events
- Missing scheduled phone calls or meetings
- Difficulty trusting
- Sudden, seemingly unexplained lack of contact (avoidance)

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Memory and Trauma

During a threatening event, the brain focuses on what is central to survival. It does not focus on insignificant and peripheral details, so it does not encode them.

- The Impact of Trauma on Adult Sexual Assault Victims 2019, Report Submitted to Research and Statistics Division, Justice Canada, Dr. Lori Haskell, C. Psych., Dr. Melanie Randall, https://justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf

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Memory and PTSD

“Abnormalities in memory (e.g., intrusive memories, avoidance of trauma-related memories) and attention (impaired concentration, hypervigilance) are central to the clinical presentation of PTSD and are included among the diagnostic criteria.”

- Dolan S, Martindale S, Robinson J, Kimbrel NA, Meyer EC, Kruse MI, Morissette SB, Young KA, Gulliver SB. Neuropsychological sequelae of PTSD and TBI following war deployment among OEF/OIF veterans. *Neuropsychol Rev*. 2012 Mar;22(1):21-34

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Effects of Trauma on the Brain and Body



When a flashback is triggered:

- Significant decrease in activity in the speech center of the brain
- Broca's area (left frontal lobe) goes offline when a flashback was triggered
- “Deactivation of the left hemisphere has a direct impact on the capacity to organize experience into logical sequences and to translate our shifting feelings and perceptions into words.”

- “The body keeps the score: brain, mind, and body in the healing of trauma.” New York, New York: Viking 2014.

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Effects of Trauma on the Brain and Body



“When something reminds traumatized people of the past, their right brain reacts as if the traumatic event were happening in the present. But because their left brain is not working very well, they may not be aware that they are re-experiencing the past—they are just furious, terrified, enraged, ashamed or frozen.”

- “The body keeps the score: brain, mind, and body in the healing of trauma.” New York, New York: Viking 2014

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Memory and Trauma Dissociative Amnesia



Diagnosis of dissociative amnesia is clinical, based on presence of the following criteria in the DSM-5:

- Patients cannot recall important personal information (usually trauma- or stress-related) that would not typically be lost with ordinary forgetting
- Symptoms cause significant distress or significantly impair social or occupational functioning

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Types of Trauma that Impact VA Claims

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Betrayal Trauma



A traumatic violation of trust in a close relationship, one where the victim depends on the perpetrator for survival or important needs. Betrayal can be by an individual or an institution.

What makes it different other forms of trauma?

- Betrayal of unit and/or leadership; betrayal of military service values
- Continued exposure to perpetrator
- Potentially serious loss of advancement, other occupational consequences

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Cumulative Trauma



Both men and women who join the military have higher rates of sexual and physical abuse victimization history than the general population

- Irene Williams & Kunsook Bernstein, Military Sexual Trauma Among U.S. Female Veterans, 25 Archives of Psychiatric Nursing 138, 141 (2011)

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Cumulative Trauma

When it is not possible to determine what portion of the current disability is related to service and what portion is related to pre-service, the entire disability must be attributed to service.

- *Mittleider v. West*, 11 Vet. App. 181 (1998); 38 U.S.C. § 5107(b) (benefit of doubt)

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Moral Injury

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CLIENT-CENTERED ADVOCACY

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Client-Centered Advocacy



The NVLSP logo is located in the top right corner. It features a stylized eagle with its wings spread, perched on a shield. The text "NVLSP" is written in a bold, sans-serif font to the right of the eagle, with "NATIONAL VETERANS LEGAL SERVICES PROGRAM" in smaller letters below it.

Client-Centered Advocacy



The NVLSP logo is located in the top right corner. It features a stylized eagle with its wings spread, perched on a circular emblem. The emblem contains the letters "NVLSP" in a bold, sans-serif font. The entire logo is rendered in a golden-yellow color.

Military Cultural Competency

Military Cultural Competency


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Language is Important

- In how a veteran describes their trauma, trauma verbiage may not be used at all
 - Ex: Men may be less likely to acknowledge and/or describe harassment or hazing in service as having a sexual component in MST claims
- Use person-first Language
 - Ex: “Veteran with a disability” not “disabled veteran
- <https://design.va.gov/content-style-guide/health-content>
- Seameon, E. R. and Traskey, D. M. (2014) “Maximizing VA Benefits for Survivors of Military Sexual Trauma: A Practical Guide for Survivors and Their Advocates”, *Columbia Journal of Gender and Law*, 26(2)

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Trauma-Informed Advocacy



Component 2

ADJUSTING THE CLIENT-ATTORNEY/AGENT RELATIONSHIP



SETTING THE STAGE

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Setting the Stage

How can we build a relationship in a way that veterans feel comfortable, feel safe, and trust us, so that we are supporting them as people, but also increasing the odds of creating a winning case?

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Setting the Stage – Three “E”s

Frame the *Experience* and *Expectations*; then *Evaluate*

- Set yourself up for a successful interview or conversation by framing the Experience and Expectations
- Then Evaluate and respond with care

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Experience and Expectations

Experience and Expectations

Experience and Expectations

Experience

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Expectations

- **Managing Expectations:** Don't overpromise—you will be taken at your word. Let the veteran know you may need to follow up with more questions.
- **Reliability:** Being reliable, calling back when you say you will, updating client in a timely manner, calendaring follow up when there's avoidance, etc.
- **Patience:** Not only does trust take time, but sometimes getting a story can as well

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Evaluate



NAVIGATING DIFFICULT RESPONSES




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Navigating Difficult Responses – Low Volume

- Use open-ended questions. Avoid yes/no questions. Be affirming.
 - “I understand it may be difficult to be here today. You show a lot of courage in coming here and I appreciate that. Can you please tell me more about...?”
 - “It is often hard to talk about some things that may have happened while.... I understand that and have worked with a lot of clients who had trouble talking about their experiences. Can you tell me more about...?”
- Once the client starts to self-disclose, the interviewer should refrain from asking questions and just listen
 - National Council for Behavioral Health (now the National Council for Mental Wellbeing)
Adapted by Dr. J. Johnson and E. Tarloski

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Navigating Difficult Responses – High Volume

- Communicate care in short outbursts that redirect the conversation back to the task at hand, while reassuring the client of your care
 - Ex: “What a terrible experience. I know that was overwhelming to share, but thank you. That really helps me understand the situation better. Now I need to ask you more about....”
- When you need to interrupt, acknowledge with care:
 - Ex: “I’m so sorry to interrupt, this has been really helpful, but I need to move onto some of these other questions.”

• National Council for Behavioral Health (now the National Council for Mental Wellbeing)
Adapted by Dr. J. Johnson and E. Tarloski

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Navigating Difficult Responses – Anger

Navigating Difficult Responses - Anger

Navigating Difficult Responses – Grief

OARS



Open-ended questions: Can't be answered with "yes" or "no"

Affirmations: Supportive, encouraging words

Reflections: Restatements of what the client says

Summaries: Recaps to make sure you are on the same page

- National Council for Behavioral Health (now the National Council for Mental Wellbeing)
Adapted by Dr. J. Johnson and E. Tarloski, Adapted from handouts by David Rosengren and from Miller & Rollnick, Motivational Interviewing, 2nd Ed., 2002)

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Trauma-Informed Advocacy



Component 3

ADAPTING LITIGATION STRATEGY

How do you prepare for a hearing or write a good personal statement?

- Adapted from: Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 367 (2016).

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THE PERSONAL STATEMENT



Putting Together the Personal Statement



- Lay statements alone can establish the in-service event/disease/injury element of SC claim for most disabilities, if veteran is reporting something within their competence and found credible by VA
 - Exception: PTSD stressors (including MST), other than those that occurred during combat and fear of hostile and military terrorist activity, require corroboration
 - 38 CFR 3.304(f)

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Lay Evidence



- Lay evidence can also:
 - Establish continuity of symptoms
 - Establish current disability (ex: tinnitus)
 - Trigger duty to assist:
 - VA medical exam/opinion
 - Obtaining records
 - Show severity of disability

Credibility and Competency



- **Credibility** is a blanket term for the fact finding of whether evidence is believable or not believable
- **Competent evidence** refers generally to evidence offered from a qualified source. A determination of evidentiary competency involves analysis of whether a person offering evidence is qualified to establish a matter.

- Manual M21-1, V.ii.1.A.2.b, c

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The Personal Statement

- Focus of the statement depends on what element(s) you need supported. Make sure it contains correct and relevant information for the claim or appeal
 - Ex: When seeking review of the denial of an increased rating claim, you will focus the statement on the severity of symptoms, as opposed to in-service event or continuity of symptoms

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The Personal Statement: Starting Points

The Personal Statement: Different Approaches

The Personal Statement: Different Approaches

The Personal Statement: Different Approaches

The Personal Statement: Tips and Tricks

The Personal Statement: Tips and Tricks



- Trouble with recall of dates: Placing the event near a time of year or holiday, what they were wearing (heavy coats or light gear), whether they just received a promotion or disciplinary action, etc. can help jog memory
- When describing symptoms, specific examples can always help

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The Personal Statement: Tips and Tricks



- Include things that may seem very obvious, but that VA may question
 - Why they did not go to sick call (it was combat, there were more important things to worry about)
 - Why they did not report a stressor (**Remind Vet most DO NOT report things like sexual harassment / assaults because of possible retaliation, shame, fear, loss of job advancement; VA recognizes this, but explaining these reasons may strengthen the claim, especially if markers are weak**)

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The Personal Statement: Tips and Tricks



- **Example: DC 8100, Migraine**
 - With very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability.... 50
 - With characteristic prostrating attacks occurring on an average once a month over last several months..... 30
 - With characteristic prostrating attacks averaging one in 2 months over last several months..... 10
 - With less frequent attacks..... 0
 - 38 C.F.R. § 4.124a

The Personal Statement



- **Language for Statement:**

- “When I get one of these migraines, I need to lay down for an entire day in the dark with no noise.”

instead of

- “I can’t go to work, it really messes up my day”

instead of

go to work, it really messes up my

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The Personal Statement: Family and Friends



- Family and Friends can submit “Buddy Statements”
- Spouse’s statements can be especially helpful if a veteran tends to underreport
 - Veteran: “I hardly get any sleep, I’m always tossing and turning.”
 - Spouse: “This has been going on for at least ten years and has gotten worse in the last two, almost every night. Shannon [Vet] accidentally punched and kicked me while asleep and was screaming out. Finally, I started sleeping in a separate room.”

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The Personal Statement: Family and Friends



- Helpful:
 - Contemporaneous accounts: The person knew the veteran at the time X happened
 - Describing symptoms as they're observed by another person
- Not as helpful:
 - When veteran is trying to prove in-service stressor 30 years ago and the person writes that they met the veteran last year and told them about the stressor

*Again, always have statements sent to you. Can also send them bullet points on what to write about

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Oral Testimony



- When client has a moving or sympathetic story
- They really want to have their “day in court”
- There are no rules of evidence
- No rules against “leading the witness”
- Prepare, prepare, prepare!

**Be prepared to “rehabilitate the witness.”
Trauma survivors are not always able to give
coherent, linear accounts

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VETERANS IN CRISIS



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Veterans in Crisis



- Recognize your role as an attorney/agent, and not therapist or doctor
- Recognize limitations on legal advice
- Preparing for potential crisis:
 - Is there someone you can call that the veteran trusts if you cannot get a hold of them?
 - Know your organization's policies for when a veteran is in crisis or threatening suicide
 - Have a list of resources readily available

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Veterans in Crisis

- Client-centered, trauma-informed advocacy requires us view our veterans *as someone with other worries outside the law*
- Recognize that their VA case might not be a priority for them, especially if:
 - Basic needs are not met (housing, food)
 - Struggling with mental or physical health problems
 - They are a caretaker
 - Necessary to work long hours/multiple jobs/looking for a job

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Veterans in Crisis

- More than 1.6 million veterans have family incomes below 125% of Federal Poverty Line
 - \$18,225 (Household of 1)
 - \$37,500 (Household of 4)
- Low-income veterans and other military personnel only seek professional legal help for 34% of their civil legal problems
- Prevalence of Civil Legal Problems
 - 76% had 1+ problems
 - 44% had 5+ problems
 - 27% had 10+ problems
- Legal Services Corporation. 2022. The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans. Prepared by Mary C. Slosar, Slosar Research, LLC.

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Veterans in Crisis

- **Top unmet legal needs of veterans in low-income households**
 - **Health:** difficulty getting sufficient health insurance coverage, incorrect billing for medical services, difficulty accessing needed health care from providers
 - **Consumer Issues:** medical debt, having utilities disconnected, harassment from creditors, falling victim to scams
 - **Income Maintenance:** difficulty accessing benefits to supplement income and meet their household's basic needs (ex: TANF, unemployment benefits)
- Legal Services Corporation. 2022. The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans. Prepared by Mary C. Slosar, Slosar Research, LLC.

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Veterans in Crisis



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- Have a list of resources to which you can provide a warm handoff. Engage in cross-organizational information sharing. Example: time lines.
- Build partnerships/relationship with organizations, particularly in your area, that provide other resources



Veterans in Crisis

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Veterans in Crisis

- Don't be afraid to use direct language in engaging with a veteran who is threatening suicide
- Take VA's S.A.V.E. Training or other similar training, such as training on use of Columbia Protocol / Columbia-Suicide Severity Rating Scale
- Talk to your firm about policies that are in place for when a veteran threatens harm to themselves or others

Veterans in Crisis

Other Resources

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Veterans in Crisis

- ABA Model Rule 1.6(b)(1) – permitted to reveal confidential information to the extent necessary to prevent certain death or substantial bodily harm.

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Veterans in Crisis

In some counties, there are Veteran Response Team (VRT) members, specially trained law enforcement officers (LEO), and first responders who coordinate with local VA Veterans Justice Outreach (VJO) specialists when they interact with Veterans

- [www.va.gov/coatesville-health care/stories/responding-to-veterans-in-crisis/](http://www.va.gov/coatesville-health-care/stories/responding-to-veterans-in-crisis/)
- cops.usdoj.gov/html/dispatch/03-2023/defusing_crises.html

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Trauma Informed Advocacy



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VICARIOUS TRAUMA AND BURNOUT

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Vicarious Trauma and Burnout

Vicarious Trauma



- “the psychological signs and symptoms that result from ongoing involvement with traumatized clients”
- When one experiences, to a lesser degree, symptoms similar to those who experienced the primary trauma
- Also known as “secondary trauma”

• Fischman, Y. (2008). Secondary trauma in legal professions, a clinical perspective. *Torture*, 18(2), 107-115

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Burnout



- Results from chronic workplace stress that has not been successfully managed
- Can present as:
 - a sense of reduced accomplishment
 - loss of personal identity
 - Sustained feelings of exhaustion

• Substance Abuse and Mental Health Services Administration (SAMHSA): Addressing Burnout in the Behavioral Health Workforce Through Organizational Strategies. SAMHSA Publication No. PEP22-06-02-005. Rockville, MD: National Mental Health and Substance Use Policy Laboratory, Substance Abuse and Mental Health Services Administration, 2022.

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Identifying Burnout and Vicarious Trauma



Vicarious Trauma

- Fear, helplessness, horror
- Anger, rage, sleep disturbances
- Alterations in memory, irritability, difficulty concentrating
- Avoidance, numbness, detachment and estrangement from others

Fischman, Y. (2008). Secondary trauma in legal professions, a clinical perspective. *Torture*, 18(2), 107-115

Burnout

- Apathy, feelings of hopelessness, rapid exhaustion
- Disillusionment, melancholy, forgetfulness
- Irritability, experiencing work as a heavy burden
- An alienated, impersonal, uncaring and cynical attitude toward clients
- Tendency to blame oneself, coupled with a feeling of failure

Pross, C. (2006). Burnout, vicarious traumatization and its prevention. *Torture*, 16(1), 1-9

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Addressing Vicarious Trauma and Burnout Early



Figuring out ahead of time how you will respond to your own burnout and vicarious trauma is just as important as your preparation for clients' trauma responses

- Adapted from Saakvitne, K. & Pearlman, L. (1996). *Transforming the Pain: A Workbook on Vicarious Traumatization for Helping Professionals who Work with Traumatized Clients*. New York, New York: W.W. Norton and Company.

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Addressing Vicarious Trauma and Burnout Early



- Try to designate specific times/checkpoints at which you will stop to assess how you are doing
- Decide what to do if you are not at your best
- Follow through and remain accountable to yourself
- Create check-ins with coworkers or weekly standing meetings

- Adapted from Saakvitne, K. & Pearlman, L. (1996). *Transforming the Pain: A Workbook on Vicarious Traumatization for Helping Professionals who Work with Traumatized Clients*. New York, New York: W.W. Norton and Company.

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Helping the Helper



The risks of vicarious trauma for attorneys working with survivors of trauma may be even higher than those in other helping professions, because those in the legal profession tend to have higher caseloads and to not be trained in the dynamics of trauma.

- Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 367 (2016)

Helping the Helper

Awareness, Balance, Connect



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Awareness

- Learn
 - ❖ Learn the warning signs of burnout and vicarious trauma as we are doing now
- Take
 - ❖ Take your “emotional pulse”
- Reflect
 - ❖ Take time for self-reflection to determine if any of those signs are appearing in your life

• Adapted from Saakvitne, K. & Pearlman, L. (1996). *Transforming the Pain: A Workbook on Vicarious Traumatization for Helping Professionals who Work with Traumatized Clients*. New York, New York: W.W. Norton and Company

Awareness, Balance, Connect

Balance

- **Take Time**
 - ❖ Take time away from work
- **Outside**
 - ❖ Spend time with your loved ones outside of work
- **Create**
 - ❖ Create thoughtful boundaries
- **Write**
 - ❖ Write out how you are feeling in the moment
- **Pause**
 - ❖ Take time to exercise or meditate
- **Celebrate**
 - ❖ Celebrate the positives when they happen


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Addressing Vicarious Trauma and Burnout

Professional Quality of Life Scale (ProQOL)

- The ProQOL (Professional Quality of Life Scale) was developed as a measure of both the negative and positive effects of working with those who have experienced traumatic stress. The ProQOL has subscales for compassion satisfaction, burnout, and compassion fatigue. It has proven to be a valid measure of compassion satisfaction and fatigue, and was developed with data from over 3000 people.

- www.ptsd.va.gov/professional/treat/care/toolkits/provider/selfAssessmentProQOL.asp

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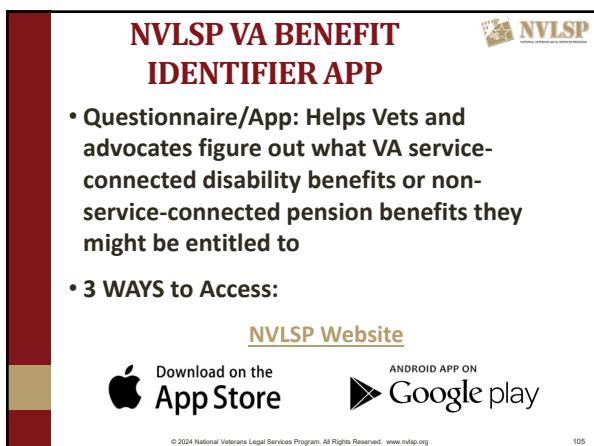
Addressing Vicarious Trauma and Burnout

- SAMHSA's (Substance Abuse and Mental Health Services Administration) National Helpline for individuals and families facing mental and/or substance use disorders

• 1-800-662-HELP (4357)

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NVLSP TRAINING OPPORTUNITIES



- NVLSP offers private in-person and webinar training tailored to the needs of your organization
- If you are interested in finding out more info, please contact Director of Training and Publications, Rick Spataro, at richard@nvlsp.org

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