

PREPARING FOR COURT PROCEEDINGS WITH SURVIVORS OF DOMESTIC VIOLENCE

Tips for Civil Lawyers and Legal Advocates

Legal proceedings are often stressful for participants, whether or not they are survivors of trauma. Many survivors of domestic violence find the proceedings challenging in ways specific to the trauma they have experienced—ways that others may not be able to anticipate. Your ability to recognize and adjust to the challenges survivors experience will affect their ability to participate in and contribute to successful outcomes in their cases.

Interpersonal violence is usually traumatic to the survivor, especially when the perpetrator is someone who was loved and trusted. Although the experience of violence is subjective and varies from individual to individual, we know that the greater and more prolonged the trauma, the more likely a survivor is to experience some after-effects. Cases of domestic violence involve an ongoing pattern of coercion, intimidation, and emotional abuse, reinforced by the use and threat of physical or sexual violence. Thus, survivors will most likely have experienced more than one traumatic event.

Many lawyers and legal advocates find legal proceedings challenged or interrupted when a survivor is reminded of a traumatic experience. Reminders of previous trauma can be evoked by seeing people, by places or activities, or by experiencing the feelings and sensations associated with past traumatic events. These reminders can cause feelings of fear or distress or put people “on alert.” They can also “restart” posttraumatic stress reactions or behavior even years after a traumatic event has occurred.*

These reminders can cause a literal re-experiencing of the event itself as well as the feelings and sensory associations with the trauma. The feelings associated with trauma may include panic, anger, disorientation, physical pain, grief, or numbing and shutting down. The sensory associations may be smells, sounds, or physical feelings. Moreover, in order to manage the painful feelings “triggered” by the reminder, survivors of trauma often cope in ways that are instinctive to them but confusing to other people: by dissociating, minimizing, or trying to control unrelated aspects of their environment.

Specific to the court environment, traumatic reminders come in many forms. This may be the first time the survivor has seen the person who abused them in a long time, and they may be triggered by being in the same room as their abuser, by a

* National Child Traumatic Stress Network. (November, 2011). *Emotional Responses to Trauma*. Retrieved from <http://www.nctsn.org/content/resources-parents-and-caregivers>.

particular facial expression, a seemingly benign comment, the color of their abuser's clothes, or the way their abuser smells.[†] Encountering such reminders may cause a survivor to feel uneasy, afraid, or terrified. At that moment, the survivor may re-experience what they felt when they were initially traumatized, as if it is happening at that time. Also keep in mind that the abuser may be intentionally doing things or using the court process itself (e.g., filing motions unnecessarily for the purpose of creating opportunities for contact) in order to try and make the survivor feel uneasy, afraid, or terrified.

It is also helpful to remember that, generally speaking, the intent of perpetrators of domestic violence is to control what the survivor says, thinks, feels, and does. Even though confronting their abuser publicly may in the long run be empowering to a survivor, the contentious nature of the legal process requires them to participate in a very public challenge of their partner and often to tell others what has happened—these actions being in stark contrast to the usual dynamics of their relationship. This public confrontation may be intimidating to the survivor, particularly when standing up for themselves in the past led to retaliation. It may also trigger memories of previously attempted challenges that ended traumatically.

Acting Proactively to Prepare for Triggers

A good course of practice in your work with survivors of domestic violence is to anticipate some of the ways trauma can manifest itself. Start by creating a partnership, proactively providing information about trauma and how it can come up in court, and asking survivors if they would like to strategize with you around ways that the legal process might be triggering or retraumatizing. In general, work with survivors of domestic violence in ways that help them to identify and prepare for trauma triggers in every step of their legal case.

Engaging in even minimal planning steps will help all survivors of domestic violence. Advance planning helps to minimize surprises and unpleasant experiences during proceedings. However, while some survivors are very self-aware and open about their fears and potential triggers, others will not be able to share their fears ahead of time.

Here are some things to keep in mind as you prepare to minimize the

Starting the Conversation...

“For a lot of people, going to court can bring up a lot of uncomfortable or scary feelings. We can prepare for this, just like we will prepare for any other part of the case.

“If you want to, we can come up with a plan for what we will do if you start to feel overwhelmed or scared or ‘checked out’ while we are at court.”

[†] We use the pronouns they/them to be inclusive of the experiences of all survivors, across gender identities.

chances that a survivor will be triggered during the court proceedings:

- For some people who have experienced trauma, knowing what to expect with a new experience can help reduce anxiety. Discussing this with a survivor can also create emotional safety, which over time may help to build their trust in you. Consider incorporating a what-to-expect discussion into every survivor's routine preparation for court, whether or not you know them to experience any after-effects of trauma. Think through and discuss with the survivor the logistical details of the court proceeding, including where both parties will wait before court opens, where they will take breaks, and the location of restrooms. There is a balance here of giving them enough information to help them know what to expect and giving them too much information, which could potentially overwhelm them. Let them guide you. Check in as you discuss each stage of the process and ask whether they have concerns. If so, explore strategies that you might employ to mitigate their concerns. In some cases, you might find it helpful to meet at the court where the case will be held early (before the hearing begins) or even on an earlier date to discuss the steps in the process.
- Ask the survivor if they would like to enlist one or two people to help support them through the court proceeding. If the survivor so desires, coach their supportive people to be prepared to meet them at the parking ramp or bus stop, accompany them to the restroom, and help them manage unexpected events. Ask if they are working with an advocate, and if not, ask whether they would like to see if an advocate is available to accompany them.
- You can use your body to block the view to the opposing party as much as possible during the proceeding. The survivor may want to plan to look away when you are not able to physically block the abuser and to focus on you or a supportive person or advocate.
- If you have already noticed trauma responses or the survivor has expressed fear, discuss and develop a working strategy to manage any reaction they may experience during the proceedings. The survivor is the expert on their own circumstances, so partnership is critical. If they see a clinician, encourage them to discuss with their therapist strategies to get through the court proceeding and how you might be able to help.

Tips for Minimizing the Risks of Emotional Triggers...

- 1. Go over "what to expect."**
- 2. Team up with a domestic violence advocate.**
- 3. Enlist support people that the survivor trusts.**
- 4. Make a plan for how to deal with the abuser's presence in the courtroom.**
- 5. Make a plan for what to do if the survivor is triggered during the court proceedings.**

Managing Triggers that Occur During Proceedings

When a person is in the midst of being triggered, they may have a range of responses that affect their ability, at that moment, to participate in the legal process. For example, they may start crying uncontrollably, become angry, panic to the extent that conversation or cogent testimony is impossible, or dissociate to the point that they disengage from the testimony. Helping them to manage this emotional crisis may lessen the panic they feel, build their trust in you, and make subsequent proceedings go more smoothly.

- Ask the court for a recess when the survivor feels they need one or when you notice them experiencing a trauma response.
- If a survivor's answers to questions are slow and incomplete, this may be a sign of dissociation usually brought on by intense fear or reliving of a particular attack or experience. Once in recess, ask them in a calm voice to take some deep breaths. You may want to ask them if they know where they are and what day it is. This is useful for helping a survivor to ground themselves in the present and bring themselves out of the past. You may need to remind them where they are and that their abuser can't hurt them right now. You might say, for example, "Their attorney asked you a question intended to scare you. You did get scared, you 'went away,' and nothing bad happened."
- If you have taken a break because the survivor became upset or agitated, validate their feelings. Acknowledge that what's happening is very upsetting and that they are doing a great job.
- Follow your plan. If you didn't make a plan or if it's not working, ask the survivor what would help them to feel better and to continue. Sometimes just silently being with someone for a few minutes can help them to calm themselves and be prepared enough to continue.

Going to court can be challenging for anyone and can be even more so when the court process itself is retraumatizing. Our responses as lawyers and legal advocates helping survivors attend to and prepare for trauma triggers can make a tremendous difference to a survivor's experience in court, as well as their ability to follow through with their legal case, and ultimately to the success of their case.

References

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