



# Trauma-Informed Lawyering in The Asylum Process: Engagement and Practice in Immigration Law

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## Abstract

**Objectives:** Individuals who have experienced trauma engage more effectively when approached by professionals using a trauma-informed perspective. While trauma-informed (TI) practice has been recognized in legal settings, including immigration law, the nascent concepts are not applied widely or uniformly, and information and training about TI best practices remains minimal. The objectives of this review include the 1) identification of core TI concepts described in the existing legal literature; (2) identification of core TI concepts noted in the literature that are being practiced in legal systems; and 3) presentation of implications and recommendations.

**Method:** A systematic review was conducted across electronic law databases for TI legal practices in immigration and asylum-seeking settings, 389 articles were identified and screened for eligibility resulting in 21 articles being included. Abstracting data from each article, a coding framework was developed that formed into the following five domains: presence of trauma in legal systems; TI lawyering defined; benefits of TI lawyering; TI lawyering skills and techniques, and TI lawyering pedagogy.

**Results:** Despite limited literature, research findings provide 1) justification for the importance and benefits of TI lawyering, and 2) recommendations for the implementation of TI lawyering through all stages of an immigration/asylum lawyer's training and practice.

**Conclusions:** Drawing from the literature, this study highlights the importance of TI legal practice to support increased trust and safety, better attorney-client relationships, client empowerment, and improved representation in proceedings. A definition of TI lawyering emerged, and a series of specific pedagogical and practice recommendations are posited.

**Key words:** Trauma-Informed Lawyering, Trauma, Education, Representation, Advocacy, Empowerment, Immigration

## Introduction

“Trauma” refers to any experience that causes intense physical or psychological stress reactions [1]. Trauma can be any sudden and forceful event that overwhelms a person’s ability to respond to it [2]. According to the Diagnostic and Statistical Manual of Mental

Disorders (DSM-5), trauma is the “exposure to actual or threatened death, serious injury or sexual violence” [3] (p. 271).

Over 65 million people are currently displaced from their homes by conflict, war, or persecution across the world [4]. Individuals seeking refuge in another country are classified as either refugees or asylees, depending on the place where the individual is located when applying for relief (8 U.S.C. §§ 1101(a)(42) & 1158). A refugee seeks relief while outside of the destination country (8 U.S.C. § 1101(a)(42)); an asylee is an individual who meets the definition of refugee set out in 8 U.S.C. § 1101(a)(42) and who seeks relief inside the borders of the destination country (8 U.S.C. § 1158). Asylum-eligible individuals, by statutory definition, have experienced some form of persecution in their home country (8 U.S.C. §§ 1101(a)(42) & 1158).

Although the immigration statute does not define persecution, courts regularly define the types of incidents that constitute “persecution” as emotional, physical, or sexual abuse initiated by individuals associated with the government, or similar actions by non-governmental agents (for example, gang members, domestic partners, or militia groups) about which the government is aware but fails to stop. *See e.g., Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1073 (9th Cir. 2017); *Ivanov v. Holder*, 736 F.3d 5, 13 (1st Cir. 2013); *Escobar v. Holder*, 657 F.3d 537, 544 (7th Cir. 2011); *Baghdasaryan v. Holder*, 592 F.3d 1018, 1023 (9th Cir. 2010); *Tamara-Gomez v. Gonzales*, 447 F.3d 343, 345 (5th Cir. 2006); *Lopez-Galarza v. INS*, 99 F.3d 954, 959 (9th Cir. 1996); *Fatin v. INS*, 12 F.3d 1233, 1243 (3d Cir. 1993). The types of events described by courts as “persecution” in the asylum context can thus readily be seen as “trauma.” For many seeking asylum, common reasons for fleeing their country include experiencing or witnessing violence, gang-related activity, domestic abuse, and torture [5,6]. All of these experiences fall within the definition of “trauma.”

In addition to persecution in their countries of origin, many asylum seekers experience violence or danger travelling to the United States, and may subsequently experience imprisonment or detention upon their arrival [7-12]. These experiences of abuse, violence, danger, and/or imprisonment often result in additional or accrued trauma, affecting the individual’s sense of self, their sense of others, and

their beliefs about the world, and directly impact the individual's ability or motivation to connect with and utilize support services, including legal services [13].

The deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment, or other essentials of life may also constitute persecution. *INS v. Stevic*, 467 U.S. 407, 428 n.22 (1984); *In re T-Z*, 24 I. & N. Dec. 163, 171, 173 (BIA 2007) (quoting H.R. Rep. No. 95-1452, at 5 (1978)). While non-physical incidents may well support an asylum claim, this research addresses the relationship between attorneys and asylum-seeking clients who have experienced some form of physical or mental mistreatment. This is not to suggest that the deprivation of livelihood or employment are not traumatic events for those who have experienced them. As will be discussed below, the concepts of trauma-informed practice can, and perhaps should, be applied broadly throughout legal practice.

A variety of stressors may be traumatic, including car or industrial accidents, medical events, serious injury, war, natural disasters, the experience of sexual or physical violence, and exposure to poverty, neglect or ubiquitous street violence [1]. From a clinical perspective, trauma results from "an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being" [1](p. 7). An individual's experience of trauma and resulting symptomology varies by individual, sociocultural history, environment, the nature and severity of the traumatic event, as well as external supports [1]. For purposes of immigration proceedings, individual responses to trauma are less important than the events which support an asylum claim. For example, an individual may experience trauma as the result of an automobile accident or interpersonal violence in their country of origin, but such events would not necessarily support a persecution claim. By contrast, a physical assault committed in retaliation for divergent political beliefs or sexual orientation would also be traumatic and may serve as the basis for an asylum claim.

The experience of traumatic events can cause physiological changes to the central and peripheral nervous systems that regulate physiological interactions and functioning [14-18]. In addition to physiological impacts, the experience of trauma may result in biological impacts on brain functioning, notably affecting both short-term and long-term memory [14, 19]. The brain's prefrontal cortex, often referred to as the rational or conscious brain, allows an individual to calmly process incoming stimuli, predict what will happen next, and make a conscious decision about what to do in response [20]. During a traumatic event, a different part of the brain, the amygdala, takes over from the rational brain and processes whether incoming information is relevant to survival [20, 21]. In the process, normal memory processing disintegrates, and sights, sounds, smells, and touch associated with the trauma are coded and stored as isolated, disassociated fragments [20, 22]. As a result, research consistently finds that trauma memories are more disorganized in people with PTSD or acute stress disorder compared to healthy controls [23-28].

Dissociation is a mental and psychobiological process intrinsic to trauma and the experiences of trauma [29, 30]. It allows for temporary emotional protection from experiences that overwhelm the ability of an affected individual to process cognitively [31]. Individuals may disconnect from reality and compartmentalize behaviors, thoughts, memories, and feelings related to trauma [31]. For many, dissociation becomes a primary coping mechanism [32, 20]. Individuals who dissociate may describe feeling nothing or appear to be feeling nothing, with no obvious changes in mood or affect, blood pressure, or heart rate [20]. While dissociation may be protective, as it can allow an individual to cope with the overwhelming emotional pain of trauma, it often interferes with thinking, focus, and orientation [33,34,20].

These profound neurobiological changes due to trauma significantly influence an individual's ability to engage with anyone about the trauma experience [35]. Recollection of the traumatic event becomes problematic and challenging, and may cause the trauma to be re-experienced, triggering the brain to return to its subconscious reaction of fight, flight, or freeze to seek a sense of safety [15, 18, 36]. The repeated retelling the story of the trauma to border patrol agents, attorneys or staff members, giving testimony in court, or any other activity that causes the trauma to resurface can cause the trauma to be re-experienced. These reactions may manifest differently depending on the individual, but common behaviors are avoidance of the triggering topic or experience [37, 38] dissociation or diminished awareness and concentration [20, 33, 34] or increased arousal and hypervigilance [36]. Further, the fragmenting of traumatic memories makes it difficult to report the details of trauma in a coherent or linear way and may result in extreme efforts to avoid remembering the event [39,40]. Listeners who hear an abbreviated narrative or a traumatic memory shared with a flat or blunted affect may disbelieve the story without understanding the influence of trauma (8 U.S.C. § 1158(b) (1)(B)(iii) (immigration court may consider the demeanor of the witness in determining credibility) [41]). In practice, a witness might present in court with a flat affect (dissociation) when recounting a sexual assault, rather than presenting with the tears that a judge or immigration official without trauma knowledge might expect. A client might be unable immediately to recall details that an attorney/listener needs or expects in order to create a clear or linear timeline of events [19,42], or experience a panic attack when recounting those details [43]. A client may be habitually late for attorney meetings in which they know the details of a claim will need to be discussed [36]. Consequently, lawyers, judges, and the legal system may miss critical required information, experience communication or trust barriers, prematurely end important lines of inquiry, and misinterpret or misperceive information.

Traditionally, cross-examination has been viewed as a method of uncovering or correcting distorted or false testimony [44,45]. Law students are taught specific and detailed strategies that can be used to confuse, disconcert, and discredit witnesses on cross-examination [46]. Recent research by Segovia and colleagues [47] has demonstrated that cross-examination, particularly using misleading or suggestive questions, is actually detrimental to the accuracy of reported trauma memories and increases witnesses' willingness to change their answers. Cross-examination of vulnerable people, as trauma victims typically are, is particularly detrimental to accurate testimony [48-54]. This conclusion has also been supported based on research with children [54-57], and sexual assault survivors [52].

Given these physical and psychological manifestations of trauma, particularly in a context of adversarial legal proceedings, a more comprehensive understanding of the way trauma impacts memory narrative and reporting is critical to effective advocacy in an immigration context. Post-traumatic stress disorder (PTSD), depression, and anxiety represent common issues associated with trauma exposure [58], but behavioral issues are also noted, including risky sexual behavior [59], substance abuse [60], and sleep difficulties [61]. Approximately one out of every three asylum seekers and refugees suffers from symptoms of depression, anxiety, and PTSD due to their experiences before, during, and after displacement [62,63].

Trauma-informed<sup>1</sup> practice is increasingly utilized across a variety of disciplines, including child welfare [64], domestic violence [65], palliative care [66], school systems [67], and social work [68]. Trauma-informed practices are likewise increasingly recommended when providing mental health care and psychosocial support for refugees [69]. Trauma-informed lawyering appears to be broadly accepted in specific practice areas, including child welfare, juvenile

<sup>1</sup> The literature sometimes calls practice that incorporates a trauma lens "trauma-focused." We utilize "trauma-informed" in this manuscript to reflect the strengths-based perspective that the focus of engagement with individuals is on their humanity, rather than the worst things that have happened to them.

justice, and domestic violence advocacy. [36,70-72]. Nonetheless, the legal literature regarding these principles and practices remains limited. It makes sense, therefore, to consider a more deliberate examination of the use of trauma-informed practices in legal settings, particularly those involving refugees and asylum seekers.

Although the focus of this research is on trauma-informed practice in various legal contexts, the legal literature does not have a standard framework or model with which to address trauma-informed practice. In contrast, the concepts of trauma-informed practice are significantly more fully developed in mental health contexts. Accordingly, this review will also incorporate a trauma-informed framework developed by the Substance Abuse and Mental Health Services Administration [1] that was designed to be utilized across an array of sectors.

By the very nature of the process, the person applying for asylum must repeatedly recount their past persecution or fear of future persecution to prove credibility and eligibility for asylum. During the first processing encounter with a customs and border protection officer, the individual is asked whether they are afraid to return to their home country [73]. Following that initial encounter, which is transcribed and becomes part of the individual's record, the asylum seeker then participates in a credible fear interview, in which they again are asked about fear of return and the details of the alleged persecution [73]. The credible fear interview is also recorded or transcribed and becomes part of the record. If the individual receives a positive credible fear hearing, the next step in the process is finding a lawyer to assist with the merits of their asylum claim [73], which may involve telling their story to several different individuals or agencies before finding a lawyer who will take the claim. The individual then needs to recount their story to the lawyer, and possibly to a legal assistant or investigator. Because of the need to create a paper record, the individual will typically have to tell their story a number of times to the attorney or the attorney's staff members in order to create a sworn declaration. The individual then goes to court where the story must again be repeated to the immigration judge [73].

An asylum applicant bears the burden of proving entitlement to asylum. In order to satisfy that burden, the applicant must be found credible by the trier of fact (8 U.S.C. 1158(b)(1)(B)(iii)). In determining credibility, the immigration court may consider:

the *demeanor, candor, or responsiveness* of the applicant or witness, the *inherent plausibility* of the applicant's or witness's account, the *consistency* between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the *internal consistency of each such statement, the consistency of such statements with other evidence of record* (including the reports of the Department of State on country conditions), *and any inaccuracies or falsehoods in such statements*, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. 8 U.S.C. 1158(b)(1)(B)(iii) (emphasis added).

Although the statute does not make these factors an exclusive list and leaves open the door for additional information to be considered in determining credibility, as a practical matter, these factors feature prominently in credibility determinations. *Zeru v. Gonzales*, 503 F.3d 59 (1st Cir. 2007). Inconsistencies at any point can lead to findings that the individual is not credible, and thus not eligible for asylum (8 U.S.C. 1158(b)(1)(B)(iii); Umberg, 2018, referencing *Zeru*, 503 F.3d 59)).

These credibility factors can be heavily impacted by trauma's effects on the brain [41,74]. For example, there may be gaps in the narrative originally told to a customs and border protection agent due to the stress of encountering an individual who resembles, or wears

a uniform similar to, a police officer in the home country who inflicted trauma. Those gaps might be filled in as the client speaks to a trusted lawyer and prepares for trial testimony. If a lawyer is not aware of, or does not understand how trauma can affect memory, narrative accounts, demeanor, and behavior, the attorney may erroneously judge the client's credibility or potential for success negatively and decline representation. Additionally, an attorney without trauma-informed knowledge and training may not be as effective in supporting a client in preparing to give their account, advocating for the client, or educating the court on how trauma, rather than truthfulness, may contribute to inconsistencies, demeanor, and responsiveness. The credibility statute allows a judge to find the individual not credible simply because of an inconsistency between the first telling and the trial testimony. A fuller understanding of the ways in which trauma impacts the client's narrative could potentially make a significant difference in outcomes.

Asylum seekers who arrive at the U.S. border without legal status, or who arrive with legal status but subsequently fall out of status (for example, an individual who arrives with a valid student or tourist visa but fails to leave the country upon expiration of the visa terms), almost inevitably become involved in adversarial deportation proceedings and processes [73,75]. Although representation is not required at immigration or deportation proceedings, existing research is clear that immigrants with attorneys are much more likely to receive relief [76,77]. A number of legal aid agencies provide pro bono or volunteer legal representation at the U.S. southern border: for example, the South Texas Pro Bono Asylum Representation Project of the American Bar Association Commission on Immigration; Project Corazon, run by the Lawyers for Good Government Foundation; the Refugee and Immigrant Center for Education and Legal Services (RAICES); and HIAS Border Fellows program. In addition, numerous individual law schools and law firms routinely send volunteer lawyer or law student teams to assist these organizations. Most of these agencies rely heavily on volunteer teams of attorneys who travel to the border on their own time to assist asylum seekers [78,79]. Few of these volunteer attorneys have prior experience with immigration [78-80]. As this research demonstrates, law students and lawyers rarely receive any significant education or training in trauma-informed practice.

Lawyers who work with asylum seekers often confront challenges similar to those seen in the medical, social work, or psychological arenas. Lawyers across a wide variety of legal disciplines regularly engage with individuals who have experienced trauma [43,70,71,74,81-84], and many lawyers themselves have experienced personal trauma [85]. However, most attorneys lack the explicit trauma-informed training required to fully and effectively understand, engage, relate, communicate, and work with such clients [36]. Given that trauma is ubiquitous among asylum seekers, this research focuses specifically on how the relationship between attorneys and asylees may be impacted by the trauma experienced by the asylee.

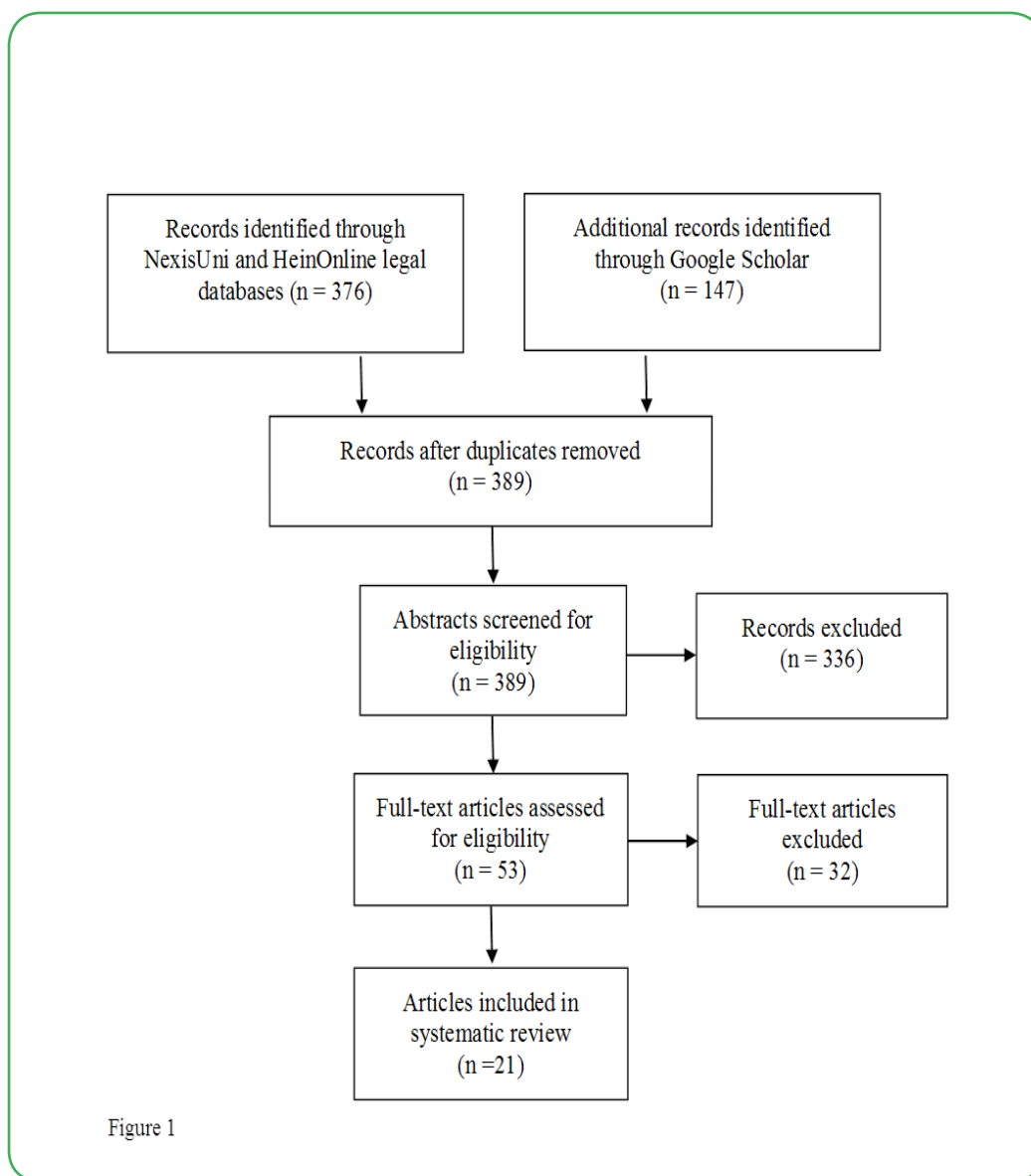
The research objectives of this study include the following: 1) the identification of core TI concepts that have been described in the legal literature; 2) the identification of core TI concepts that are being practiced in legal systems as noted in the legal literature; and 3) the presentation of implications and recommendations.

## Methods

**Data Sources.** The legal databases of Nexis Uni and HeinOnline were searched for peer-reviewed articles, published between January 1, 2000 and July 15, 2020. The initial search was conducted by all authors in consultation with a law librarian. The search included articles matching the following criteria: (1) "trauma-informed" AND law OR lawyering OR advocacy OR practice OR relationship

OR care OR policy OR training OR education OR system; and (2) immigra\*/! OR asyl\*/! OR refugee. Truncation of key terms (e.g., immigration, asylum) differs depending on the database. For example, HeinOnline database uses the truncation symbol ‘!’, while Nexis Uni uses the symbol ‘\*’. The Nexis Uni search found 186 articles. The HeinOnline search identified 190 articles. No relevant articles prior to 2010 were identified in this search of the two legal databases. This research focused on peer-reviewed, academic journals.

To maximize the search and include articles outside of the legal databases, the authors then included the Google Scholar database. As no eligible articles from Nexis Uni and HeinOnline were identified prior to 2010, the Google Scholar database search was limited between 2010 and 2020. Using the advanced search feature for the terms (1) trauma informed, (2) lawyering, (3) pedagogy, train, practice, learn, or educate, and (4) immigrant, refugee, or asylum, 147 articles were identified from the Google Scholar database.



**Coding.** The penultimate results across the three databases included 523 articles: Nexis Uni = 186; Hein = 190; Google = 147. These 523 articles were screened for duplicates, leaving 389 articles’ titles and abstract/introduction to be screened independently for relevance to the research aims. Specifically, this screening process excluded articles (1) that did not address legal practices, policies, or training protocols based in the United States; (2) that focused on trauma-informed care in non-legal settings; or (3) practices, policies or training protocols that did not focus on lawyers or law students. Following this level of review, 336 articles were excluded, resulting in the retention of 53 articles into the next screening stage. The individual reviewers maintained 100% agreement at this phase of review.

In the next stage of the review, 53 full-text articles were independently reviewed by all authors for eligibility based on the research objectives. articles were excluded: (1) articles focused only on international law or practice exclusively in international settings; (2) articles focused on practice in medical settings; or (3) articles focused on post-asylum experiences. Following this screening, 32 articles were excluded, resulting in the final inclusion of 21 articles in this systematic review. The independent reviewers maintained 100% agreement at this phase of review.



Authors	Year	Legal Systems Affected by Trauma	Operationalized Definition	Benefits of Trauma-Informed Lawyering	Knowledge Transfer	Practice Skills & Techniques
Ardalan	2015	√√√		√√	√√	
Ayears	2020			√√√	√√	√√√
Baylor	2015	√√√				
Byrne	2017	√√√				
Gold	2018	√√√	√√√	√√√	√	√√√
Goldstein & Liu	2019	√√√				
Harris	2018				√	√
Jain & Lee	2018	√√√				
Katirai	2020	√√√				
Katz & Halder	2016	√	√√√	√√√	√√√	√√√
Lackmann	2018	√√√				
Lemoine	2017	√√√	√	√√√	√√	√√√
McDonough & Schlabach	2016	√√√				
McVane	2019	√√√				
Oehme & Stern	2019	√√√				
Peña	2019	√√√	√	√		
Phelan, Tye, Saponaro, & Millona	2019	√√√				
Saadati-Soto	2019	√	√√√	√√√	√√	√√√
Scotti	2020	√√√				
Swanson	2019	√	√	√	√	√
Umberg	2018	√√√				

√√√ = Concept supported; √√ = Concept explained; √ = Concept referenced; Blank = Not endorsed

Table 1. Literature Summary Table

**Measures.** Abstracting data from each article, the research team (consisting of all three authors) developed a coding framework of the concepts and domains. Abstracted information was organized into similar concepts that emerged from the coding and were agreed upon by the research team. As concepts with similar foci began to cluster together, they were initially formed into five domains that related specifically to the research aims: 1) the presence of trauma in legal system; 2) trauma-informed lawyering defined; 3) benefits of trauma-informed lawyering; 4) trauma-informed skills and techniques; and 5) trauma-informed lawyering pedagogy.

The domains were then assessed based on the coverage and rigor with which they were presented in each article. The articles demonstrated a wide range of rigor, with some articles presenting academic research and others solely presenting the author's individual expertise or experiences. In order to consistently capture the full range of trauma-informed lawyering within the field, every eligible article was included in this review, and the different domains methodologically identified were coded according to the treatment given by the author to the specific domain. Accordingly, the authors arrived at a coding system that combined the number of academic references (a quantitative measure) with a qualitative assessment of the quality of the coverage of the concept.

Concepts of trauma-informed (TI) lawyering identified in each article were scored on a four-point Likert scale (from zero to three): a three represented that the concept was supported with detailed or extensive coverage that included two or more citations to academic references; a two indicated the concept was explained by moderately detailed coverage, including one academic reference; a one indicated that the TI lawyering concept was described without scholarly

reference or support; zero was used if the TI lawyering concept was absent. While quantity alone may not always be the most appropriate measure of quality, as these articles were reviewed and analyzed in depth, the authors were in agreement that this scale, with the additional qualitative component, was an effective means of assessing the rigor and quality of the research presented in the reviewed articles.

The authors independently rated the twenty-one included articles, and then met as a group to discuss their ratings, where any discrepancies were resolved by consensus. The independent researchers maintained 95% inter-rater reliability across the coding of all articles prior to group discussions, and 100% consensus after group discussion. As this is a systematic review of published literature across three electronic databases, institutional review board approval was not required.

## Results

Twenty-one articles were included in this systematic review. All of the included articles were published within the last 5 years. Increasing interest in this topic is demonstrated by changes in the number of articles published over time: Two articles were published in 2015; 2 articles were published in 2016; 2 articles were published in 2017; 5 articles were published in 2018; 7 articles were published in 2019, and 2 were published in 2020 prior to the conclusion of this review. Of the 21, most (n = 19) clustered around the first domain and addressed the interstitial presence of trauma in a variety of legal systems. Ten articles focused on various aspects of the four other domains: (2) TI lawyering defined, (3) benefits of TI lawyering, (4) TI lawyering skills and techniques, and (5) TI lawyering pedagogy. Elements of trauma-informed (TI) lawyering were defined by 6 of the articles. The benefits of TI lawyering were captured in 8 of the articles.

The first domain, the presence of trauma in legal systems, had the most consistent degree of academic rigor. Domain two, TI lawyering defined, was the least developed, with only three articles providing academic references to support relevant definitional concepts. The third domain, benefits of TI lawyering, was posited in eight articles, with disparate degrees of rigor: with six providing at least one academic reference for the benefits discussed. In domain four, TI skills and techniques were presented in six articles, with five supporting the relevant concepts with significant academic support and references for the skills and techniques presented. Domain five, TI-lawyering pedagogy, including techniques for the teaching of TI practice, was referenced in eight articles, two of which provided no

academic references, while the remaining six explained the relevant concepts with one citation.

### 1) Presence of Trauma in Legal Systems

Nineteen of the 21 articles (90%) addressed the presence of trauma across a variety of legal systems. The major legal systems referenced included those surrounding the immigration/asylum process (n = 9); domestic violence/sexual assault (n = 5); human trafficking (n = 2); family courts (n = 2); poverty (n = 2), and the penal system or similar confinement (n = 2). One article addressed the adverse childhood experiences of lawyers themselves, and how those experiences impacted legal systems more broadly.

Author	Year	Immigration/ Asylum	Domestic Violence/ Sexual Assault	Human Trafficking	Family Courts	Poverty	Penal System/ Confinement	Lawyer Personal Trauma
Ardalan	2015	√√√						
Baylor	2015						√√√	
Byrne	2018			√√√				
Gold	2018					√√√		
Goldstein & Liu	2019		√√√					
Jain & Lee	2018	√√√						
Katirai	2020		√√√					
Katz & Haldar	2016		√		√	√		
Lackmann	2018	√√√						
Lemoine	2017	√√√	√√√					
McDonough & Schlabach	2016			√√√				
McVane	2019	√√√					√√√	
Oehme & Stern	2019							√√√
Peña	2019	√√√	√√√					
Phelan, Tye, Saponaro, & Millona	2019				√√√			
Saadati-Soto	2019	√√√						
Scotti	2020						√√√	
Swanson	2019	√						
Umberg	2018	√√√						
√√√ = Concept supported; √√ = Concept explained; √ = Concept referenced; Blank = Not endorsed								

Table 2. Trauma in Legal Systems

### 2) TI Lawyering Defined

While six (29%) of the total articles included definitional elements of ‘trauma-informed lawyering’, the literature lacked a formal

definition of what it means to be a ‘trauma-informed lawyer’ or what constitutes ‘trauma-informed lawyering’ in practical terms.

Authors	Year	Knowledge	Lawyering Skills	Affirming Relationship	Empowerment
Gold	2018	√	√√		√√
Katz & Haldar	2016	√√√	√√√		
Lemoine	2017	√	√√	√	
Peña	2019				√
Saadati-Soto	2019	√√√	√√	√√	√√√
Swanson	2019	√			
√√√ = Concept supported; √√ = Concept explained; √ = Concept referenced; Blank = Not endorsed					

Table 3. Defining Trauma Informed Lawyering

As presented in the literature, the core components of trauma-informed lawyering contained four key identified elements, specifically: a) trauma knowledge, b) lawyer skills, c) affirming relationship skills, and d) client empowerment. The authors did not attempt independently to define or conceptualize these terms, but rather adopted language used consistently across the articles reviewed. Trauma knowledge was typically used in the articles to describe a basic understanding of the ubiquity of trauma and the impacts it has on individuals in a variety of settings. The articles did not, however, define how much information or understanding was required, or what specific knowledge about trauma was necessary or sufficient. Lawyer skills was used to describe things that lawyers usually do that other professions may not do at all or may do differently from other professions. One example might be interview skills, in which lawyers are trained to be focused and direct in questioning, while a trauma-informed approach might be less focused and more conversational. Affirming relationship skills was used to describe techniques

necessary to building trust and rapport, which might not be typically used by lawyers in their day-to-day relationships with clients. Client empowerment was generally used to describe efforts to give clients control over processes and proceedings where possible. As an example, clients might be asked how they wish to be addressed or given the choice of where to sit at a conference room table, as well as to be involved in broader decisions concerning which forms of legal relief to pursue.

### 3) Benefits of TI Lawyering

The articles consistently reported, either explicitly or implicitly, that trauma-informed lawyering brings value to the profession and practice, with nine (43%) articles referencing a variety of ways that trauma-informed practice is important. The researchers were able to identify six ways in which trauma-informed practice adds value, which were clustered into three practice domains: client benefits, attorney benefits, and system benefits.

Authors	Level Year	Client		Attorney			System
		Empowerment	Safety	Trauma Understanding	Improved Representation	Secondary Trauma Management	Advocacy
Ardalan	2015			√	√		√√√
Ayers	2020	√	√	√	√	√	√√√
Gold	2018		√	√√√	√√√		
Goldstein & Liu	2019				√√		
Katz & Haldar	2016	√	√		√√√	√√	√√√
Lemoine	2017			√	√√√	√√	
Peña	2019	√√		√	√√		
Saadati -Soto	2019			√	√		
Swanson	2019				√		

√√√ = Concept supported; √√ = Concept explained; √ = Concept referenced; Blank = Not endorsed

Table 4. Trauma Informed Lawyering Benefits

Client-based dimensions considered to benefit from TI lawyering clustered primarily in the areas of empowerment and safety, with four articles addressing these concepts. Ayers [86] and Katz and Haldar [36] addressed both concepts. Katz and Haldar [36] and Peña [84] only addressed empowerment, while Gold [43] only addressed safety.

Attorney-based practice dimensions that were reported to benefit from TI lawyering clustered in three areas: trauma understanding, improved representation, and secondary trauma management. Nine articles addressed these arenas. Six articles posited that improved trauma understanding was a specific benefit of TI lawyering. Improved representation was addressed by nine articles. The ability of attorneys to manage the potential for secondary trauma was discussed by three articles.

Legal systems broadly can also benefit from TI lawyering, with three articles addressing the ways in which TI lawyering can benefit the legal systems in which attorneys practice. Benefits to the system included improved advocacy and potentially improved outcomes.

### 4) TI Lawyering Skills and Techniques

The next domain that emerged in this systematic review centered on skills and techniques associated with trauma-informed lawyering. Specifically, these are behaviors a trauma-informed lawyer could use when engaging with vulnerable clients who have experienced trauma, as well as with colleagues and court systems. Seven articles

(33%) contained at least some discussion of trauma-informed lawyering skills or techniques.

In analyzing the articles in detail, six concepts consistently emerged. *Adjusting mindset*, which involves the ability of a lawyer to adjust their mindset based on the legal and environmental moment and the personal experiences of the client, was referred to or described in five articles. This was frequently described as a change from asking “what is wrong with you” to “what happened to you”. *Adjusting strategy*, in which the lawyer modifies legal strategies based on the presence of trauma and client needs and preferences, was presented or described by seven articles. *Client communication*, including the ability to patiently and clearly explain processes and procedures, including the reasons why these procedures were required or necessary, was detailed in five articles. *Fostering safety* was described by three articles. *Interview skills*, including active listening and reframing, were described in four articles. Active listening is a technique commonly used in therapeutic settings that requires the listener to fully concentrate, understand, respond to, and remember not only what is being said, but the complete message being communicated [87]. Reframing is a technique that involves restating a sentence or thought as a way to think differently about a fact pattern or event and also includes a shift in perspective from placing the problem as internal to considering the societal and environmental factors contributing to the problem [88]. *Management of secondary trauma*

was detailed in three articles. Secondary trauma is “the adverse impact of working with clients who have a history of psychological trauma (e.g., sexual and physical abuse, military combat, or community disaster)”. The concept of secondary traumatic stress was originally applied in the context of trauma workers and mental

health professionals but has been recognized as a concern across the “helping” professions, including police officers, fire-fighters and other individuals who engage in emotionally exhausting work with survivors of trauma [89].

Authors	Year	Eperiential	Interdisciplinary Partnerships	Formal Trauma Education	Secondary Trauma Education
Ardalan	2015	√√	√√√	√	√√√
Ayears	2020			√	
Gold	2018	√	√		
Katz & Haldar	2016	√√√	√√	√	√√√
Lemoine	2017	√√	√√	√	√√√

√√√ = Concept supported; √√ = Concept explained; √ = Concept referenced; Blank = Not endorsed

Table 5. Trauma Informed Lawyering Pedagogy

### 5) TI Lawyering Pedagogy

The final domain, TI Lawyering Pedagogy, explored techniques used to teach trauma-informed lawyering. Initially, the researchers sought to identify existing pedagogical techniques that were being used in both legal education (e.g., law schools) and in professional education (e.g., continuing legal education or CLE). However, most continuing legal education programming is created locally, by

regional bar associations or law schools, or even internally within a single law firm. Although national conventions and national and international legal associations offer CLE credits as well, there is no central database that collects or disseminates this information. Accordingly, the information contained in this review is strictly related to legal education in the law school environment.

Authors	Year	Adjusting Mindset	Adjusting Strategies	Cilent Communication	Foster Safe Environment	Interview Skills	Secondary Trauma Management
Ayears	2015	√√√	√√√	√	√√		√√√
Gold	2020	√√√	√√√	√√√	√	√	
Harris	2018		√				
Katz & Haldar	2016	√√	√√√	√√√		√√√	√√√
Lemoine	2017	√	√√√			√	√√√
Saddati-Soto	2019	√√√	√√√	√√√	√		
Swanson	2019		√√√	√√		√√√	

√√√ = Concept supported; √√ = Concept explained; √ = Concept referenced; Blank = Not endorsed

Table 6. Trauma Informed Lawyering Skills

Of the 21 articles reviewed, eight (38%) provided information on pedagogical techniques for teaching trauma-informed lawyering. Only one provided significant information and academic references regarding pedagogical techniques being currently used to teach trauma-informed lawyering. One article solely addressed the pedagogical technique of experiential learning in an immigration detention facility, and provided significant detail about that process, but did not provide any academic references. Six articles provide some information about pedagogy, but with limited academic references to those techniques.

In analyzing the articles, four categories of techniques were consistently referenced: *interdisciplinary partnerships*; *trauma-specific curriculum*; *experiential learning*; and *secondary trauma-specific education*. Secondary trauma management may include the same teaching techniques (e.g., interdisciplinary partnerships, trauma-specific curriculum, experiential learning), yet is directed more toward managing lawyer-specific health and well-being than general knowledge.

Eight articles presented concepts related to teaching trauma-

informed knowledge in the context of legal practice, and most addressed it in a law school clinical setting. Lemoine [41] discussed continuing legal education as a method of sharing trauma-informed knowledge.

Swanson [90] and Peña [84] described the importance of teaching trauma-informed skills but did not discuss any specific pedagogical techniques. Ayres [86] suggested that trauma-informed skills could be integrated into both law school clinic settings and in doctrinal (e.g., constitutional, family law, etc.) classes, but did not describe any pedagogical techniques to facilitate this knowledge transfer.

Three broad categories of pedagogical techniques were endorsed by the remaining five articles: experiential learning, interdisciplinary partnerships, and lecture-style learning. Experiential learning included role-playing, debriefing, reflection exercises, round table discussions, or case rounds. Interdisciplinary partnerships, typically including a social worker or psychologist, suggested that a social worker or psychologist could be a significant participant in all three of these techniques, by teaching and facilitating role-playing and skill-building exercises, facilitating debriefing or case rounds,



and providing formal teaching in the areas of trauma and trauma-informed practice. Lecture-style learning was further subdivided into integrated teaching, in which trauma-informed knowledge was conveyed as a part of a practice or doctrinal class, and academic only, in which material was presented in a lecture or through written materials without a practice component.

Managing secondary trauma was posited by three of the articles as an integral part of trauma-informed lawyering. However, likely because of the differences between self-awareness (secondary trauma) and awareness of others (trauma-informed practice), secondary trauma is usually presented in the literature as a stand-alone topic. Teaching concepts related to secondary trauma included similar pedagogical techniques described above (e.g., experiential, interdisciplinary partnerships, lecture-style teaching, etc.), as well as recommendations for educators to mitigate the consequences of secondary trauma in student populations.

## Discussion

The asylum system, and the attorneys who work within it, serve survivors of persecution. Unlike in the medical, psychological, and social work professions, attorneys are not expected to treat trauma. Despite describing in detail experiences that are unquestionably traumatic (e.g., rape, sexual abuse, assault, torture, witnessing assault, murder, etc.), professionals involved in the immigration or asylum process may at times view these experiences as simply another requirement in determining whether or not asylum is appropriate. Consequently, there is little acknowledgment of the significant impact of these traumatic events on the survivors; rather, the focus in the case law is on the existence of facts supporting a persecution claim. For example, trauma is not mentioned in any of these cases, while the events supporting persecution are described in detail (*Bringas-Rodriguez*, 850 F.3d 1051; *Escobar*, 657 F.3d 537; *Fatin*, 12 F.3d 1233; *Ivanov*, 736 F.3d 5; *Stevic*, 467 U.S. 407; *Lopez-Galarza*, 99 F.3d 954; *Tamara-Gomez*, 447 F.3d 343; *In re T-Z*, 24 I. & N. Dec. 163). In the legal system, the burden of establishing persecution is with the person alleging it (*Stevic*, 467 U.S. at 413). Because lawyers and judges are not provided with basic information about the effects of trauma on memory and issues relating to credibility, there is limited understanding of the way in which trauma may impact testimony or credibility. Because the existence of persecution is the essential and necessary feature of an asylum claim, without a fundamental understanding of trauma, judges and lawyers may come to decisions that lack a full understanding of the actual experiences of the trauma-affected individual.

Trauma-informed lawyering recognizes and acknowledges the impact traumatic events have on survivors, applies that understanding to accommodate the vulnerabilities of trauma survivors, and provides services that support client engagement with the legal system [13]. Trauma-informed practice begins with an attorney's relationship with a client and extends through preparing a legal case, setting collaborative representation goals, and ultimately advocating for those goals in front of a court or judicial tribunal. Trauma-informed practice acknowledges, manages, and mitigates the impact of trauma on the client and the effects of secondary trauma on lawyers, interpreters, advocates, and support staff. Trauma-informed training can improve lawyers' work with traumatized clients, and assist lawyers and other staff (e.g., interpreters, administrative personnel) to understand vicarious trauma and compassion fatigue [36]. Some researchers use the terms "vicarious trauma," "secondary trauma," "compassion fatigue" and "burnout" interchangeably [91], while other researchers describe them as "related but distinct" [92]. These concepts will be discussed and differentiated in greater detail below. Lawyers can use this knowledge to fortify their self-care skills to protect against vicarious trauma and continue being empathetic and attuned to their clients.

Attorneys and immigration judges are trained very differently from social services professionals. Separation of the emotional from the rational is considered critical to competent legal analysis [93]. Lawyers assume a level playing field, in which justice means only that procedures are applied fairly and equally [94]. Health care and social services professionals practice with the recognition that the playing field is not level for vulnerable and marginalized clients [94]. Understanding the ways in which trauma impacts every aspect of a survivor's life, behavior, and thinking is critical to effective legal representation. However, lawyers receive little, if any, training regarding the ways in which trauma impacts the attorney-client relationship, the gathering of pertinent legal information, and the progression of the legal process. This research highlights the importance of trauma-informed legal practice and the need for trauma-informed training across all legal systems, specifically in the context of asylum claims.

Trauma-informed research in healthcare and social science professions suggests six key principles for trauma-informed practice: 1) safety; 2) trustworthiness and transparency; 3) peer support; 4) collaboration and mutuality; 5) empowerment, voice, and choice; and 6) cultural, historical, and gender issues [1]. This trauma-informed framework was created in the context of mental health systems with the goal of better serving individuals and reducing the likelihood of re-traumatization [1,13]. These guiding principles and concepts can readily be adapted to address the practices of the attorney-client relationship and inform the context of legal practice. For example, peer support may not play a significant role in the specific attorney-client relationship, yet it may be a very important factor in understanding trauma and managing and mitigating secondary trauma.

Safety requires attending to the physical and emotional safety of the client [13], including an understanding of how safety is defined by the individual being served [1]. Within a trauma-informed system, practitioners acknowledge the ubiquity of the experience of trauma and understand its impact on survivors, physically, emotionally, and cognitively. When lawyers begin with this understanding about trauma, they are able to make a crucial shift from judgment and skepticism to a trauma-informed curiosity that seeks to understand what has happened [40]. This change in perspective is an important initial step in fostering a sense of safety for the client and can lead to a better understanding by the lawyer of the client's relevant experiences. In legal practice, safety includes an understanding of the trepidation a client might feel walking into a legal office for the first time or walking into a courtroom in which an adverse outcome potentially results in imprisonment or deportation. The lawyer and client can then work together to identify potential triggers (for example, retelling the trauma narrative or seeing an abuser in the courtroom) and create plans to cope with the mind and body responses to trauma during interviews or court.

Trustworthiness and transparency require task clarity, consistency, and interpersonal boundaries [1, 13]. In the attorney-client relationship, these concepts incorporate explanations at every stage of the process about why each different task is necessary [40, 43, 70, 86, 90]. For example, repeated interviews may be required to create affidavits, establish timelines, or to prepare for a hearing. These repeated interviews may be necessary to double-check facts, confirm timelines, or reduce anxiety and provide the client with an opportunity to build confidence. The client, however, may feel that this repeated questioning implies disbelief or untrustworthiness. The lawyer should explain that this process is not meant to question the client's story, but rather builds the accuracy and consistency needed for an effective asylum claim.

Collaboration and mutuality allow decisions to be made with, as opposed to for, the individual client and require the meaningful

sharing of power and decision-making [1,13]. These concepts allow the client to make individual decisions about legal goals. This may include deciding to drop an asylum application and agreeing to deportation, despite the risks of returning to a country of origin. However, in giving an individual power to make decisions, it is important that the lawyer seeks fully to understand the reasons for the decision, in order to offer appropriate guidance. When a lawyer understands and can effectively work with the core trauma-related concepts, it is possible to foster a stronger relationship and generate opportunities for collaboration between the lawyer and client as the client prepares to share their experiences in court [40]. For example, a client may not supply supporting information in a timely fashion or may state that they would rather accept deportation than do the work required to get the necessary information. A lawyer who understands basic trauma-related concepts such as triggers (a stimuli such as an image, smell, or sound that triggers a reminder of the past trauma), potential dissociation (feeling separate or disconnected), memory recall, avoidance, and increased arousal is better able to support the client in working through and past these barriers to full participation. For some clients, this might require referral to a counselor or therapist; for other clients, it might simply require validation of the emotional challenges associated with preparing an asylum claim and patience to work at the client's pace. A trauma-informed lawyering approach looks beyond the apparent refusal to see the fear that is driving the behavior, and helps the client look for solutions.

Empowerment, voice, and choice require the provider to prioritize empowerment of the client, shared decision-making, choice, control, and goal setting to determine the plan of action [1,13]. Choice provides legal clients with clear and appropriate messages about their rights and responsibilities, which could include a range of choices, including where to sit in an interview room, or which aspects of their narrative will be discussed during a given meeting [40]. Also, choice allows clients to make relevant decisions about the different legal options that are available, whether that involves filing a criminal complaint, formalizing a long-term relationship, or even accepting a voluntary deportation if the alternative involves separation from a loved one. Empowerment of the client includes providing an understanding of the abilities and limitations of the court system to achieve the client's goals, giving the client voice to advocate on their own behalf in the court system, and intentionally creating opportunities for the client to rebuild control by making their own decisions and having agency in determining goals.

Understanding systemic racial, cultural, historical and gender biases in a legal context is necessary for trauma-informed practice, although being trauma-informed is not equivalent to being culturally aware. An in-depth discussion of the intersectionality of trauma impacts and cultural considerations, and an attempt to provide examples of all of the myriad ways in which these issues exist, is beyond the scope of this paper; however, the importance of these considerations cannot be overstated.

The American Bar Association (ABA) incorporates cultural competence into its Standards for the Provision of Civil Legal Aid: "A provider should ensure that its staff has the skills, knowledge and resources necessary to provide assistance in a culturally competent manner" (ABA, n.d.). Culture includes the shared traditions, beliefs, customs, history, art, folklore, and institutions of a group of people, and is particularly important when working with racially, ethnically, and culturally distinct communities, and communities and individuals who use a language other than English (National Association of Social Workers [NASW], 2015; ABA, n.d.). Cultural understanding requires an on-going exploration of the different ways in which both lawyers and their clients perceive their environments and experiences based on individual cultural characteristics. At a minimum, this exploration begins with the recognition that every person is shaped

by their own individual history, values, beliefs and behaviors, and that these unique cultural characteristics are further shaped by their family of origin, their community, their religious or spiritual beliefs, their education level, and many other factors (NASW, 2015).

A lawyer should understand, for example, that there are dozens of indigenous languages in the single country of Guatemala beyond the official language of Spanish [95], and ensure that appropriate interpretation assistance is available for client interviews and at trial. Similarly, a trauma-informed immigration attorney should be aware that followers of minority religions in some countries may experience persecution as a result of their faith practices, for example Rohingya Muslims in Burma (United States Commission on International Religious Freedom [USCIRF], 2020a) or Uighur Muslims in China (USCIRF, 2020b). Gender roles in different countries may exert a significant role in an individual's willingness to report abuse or violence, as well as in the responsiveness of authorities to that report. A boy or young man who is raped by relatives for appearing too effeminate may be reluctant to acknowledge his sexual preference or identity, even when necessary to prove a case for asylum (*Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1073 (9th Cir. 2017)). A cultural value that avoids conflict may lead a client to agree with a lawyer, rather than presenting or advocating for the client's individual goals. Individuals who come from cultures that value informal means of dispute resolution may be deeply confused by the adversarial litigation system. In all of these instances, a trauma-informed lawyer who demonstrates a strong degree of cultural competence is better positioned to form a trusted relationship with the client and more accurately understand the client's words, behaviors, and expressions (ABA, n.d.)

An attorney with a trauma-informed approach can further utilize their knowledge surrounding trauma to educate the tribunal, which may otherwise lack understanding of trauma-informed practice on how behaviors and narrative patterns are influenced by trauma's influence on the brain. Throughout an asylum case, applying trauma-informed knowledge to client behaviors and interactions can lead to more effective client engagement and advocacy by the lawyer.

## Implications for Practice and Recommendations

### *Presence of Trauma in Legal Systems*

Many legal systems are affected by the presence of trauma. The literature addresses trauma within various major legal systems, including those that address the immigration/asylum process, domestic violence or sexual assault, human trafficking, family court issues, poverty, and the penal system [40,41,43,7-72,74,81-84,96-100]. One article brought to light the potential personal trauma experienced by lawyers themselves and how that can have effects on the legal system in which they are operating [85]. Acknowledgement of the presence of trauma in a variety of legal systems underscores the prevalence of trauma in the legal field and thus the importance and utility of training and employment of trauma-informed lawyering. The interactions between client and lawyer, and the responses of clients to various parts of the legal process can be heavily impacted by the presence of trauma. Based on this knowledge, it is recommended that training on trauma-informed lawyering be further expanded and available to law students and attorneys regardless of their specialized area.

### *TI Lawyering Defined*

No operationalized definition of TI lawyering was utilized consistently across the reviewed literature. In this systematic review, four core defining concepts of TI lawyering emerged: *trauma knowledge, lawyer skills, affirming relationship, and empowerment* [36,40,41,43,84,90,101]. While some aspects of these four constructs can be found in other approaches to practicing law with vulnerable or at-risk populations, such as client-centered lawyering (this approach

promotes decisions being made by the client, as they can best understand the potential non-legal outcomes of certain actions [40]) or therapeutic jurisprudence (the idea that law is a social force that has legal and emotional consequences [74]), the totality of these concepts is what delineates trauma-informed lawyering as a unique and important approach. Accordingly, drawing from the current state of the field, a trauma-informed lawyer can be defined as *a lawyer who practices law with a basic understanding of trauma and its effects on an individual's memory and emotional and behavioral functioning, who possesses the skills to provide a safer environment that contributes to a relationship of trust, and ultimately strives to promote and foster empowerment and self-determination by the client.*

Although there remain challenges associated with operationalizing these concepts (for example, what constitutes a “basic understanding of trauma,” or what does it mean to provide a “safer environment” or what does “trust” look like in the context of an attorney-client relationship), this working definition provides a starting point for future research in this field. Drawing from the literature, it is recommended that a universal operationalized definition of trauma-informed lawyering be adopted across the immigration practice arena, if not more broadly. This will facilitate greater understanding of the concept and more effective evaluation of the practice and skills that are required to engage in trauma-informed lawyering.

### **Benefits of TI Lawyering**

The findings identified five major benefits of trauma-informed lawyering that can then be grouped into three broader categories: client, attorney, and systems. While the relevant literature identified benefits associated with trauma-informed legal practice, most of the writing in this area was anecdotal and not data driven. Additionally, there was no consistent or operationalized definition of benefit, and several of the identified benefits were not subject to easy quantification. For example, improved representation was frequently mentioned, but the literature does not provide a consistent definition. Improved representation could address outcomes, as in whether the client won or lost their case. Alternatively, improved representation could mean something more amorphous, as when a lawyer does a better job presenting a case, but the client still loses. In the second circumstance, improved representation could result in the client feeling heard and empowered, and thus more accepting of the result, even if it was not the outcome desired. In the further alternative, improved representation might measure system-changing impacts, as when a particular client loses, but an immigration official or judge learns something about trauma that benefits the system in the longer term.

Client-centered benefits include empowerment and safety [36, 43, 86,84]. Both empowerment and safety are key principles of trauma-informed practice generally and have been specifically described as primary considerations in a trauma-informed legal practice [1,13]. Utilizing a trauma-informed approach and intentionally working towards client empowerment were reported as means of empowering the client [36,86,84]. Providing a safe place for the client was beneficial in that the risk of re-traumatization throughout the legal process was lessened. Although these benefits focus on the clients themselves, when a client feels safer and more empowered, better overall engagement with the attorney and with the legal system is achieved.

Benefits that centered around the attorney emerged as trauma understanding, improved representation, and secondary trauma management [36, 40, 41, 43, 70, 74, 84, 86, 90]. Trauma knowledge includes recognizing the way trauma impacts legal systems and individuals, awareness of trauma and the potential of trauma throughout the legal process, acknowledging the prevalence and impact of trauma, and recognizing and understanding trauma

symptoms and diagnoses [36,40,41,43,90,101]. Along with this increased understanding comes a recognition of the limitations of the legal role, permitting the establishment of appropriate boundaries, while providing connections to other services such as counseling and basic needs.

A lawyer grounded in trauma is a more effective advocate, due to greater empathy, emotional intelligence, and cultural competence. An increased awareness of how trauma may influence a client's testimony results in less skepticism, judgment, or lack of trust in the client or the client's presented story. A trauma-informed attorney has a better understanding of how trauma may manifest in a client's body language, way of thinking, behavior, and interaction with the legal process, and is better able to anticipate trauma-related concerns in order to address and discuss alternatives [36,40,41,43,74,84,86]. Attorneys with trauma training may demonstrate an improved ability to build rapport and trust, and reduce some of the effects of trauma, such as client anxiety. Further, this knowledge and training is likely to reduce the attorney's own anxiety about engaging with a trauma-affected client. A lawyer who is hesitant about fully exploring the to supporting a successful asylum claim. Lawyers with a trauma-informed perspective are more effective in working with the client to develop a cohesive narrative of their traumatic experiences [40,41].

Secondary trauma management is the third benefit focused on lawyers themselves. Secondary trauma, sometimes referred to as secondary traumatic stress (STS) or vicarious trauma, is the result of indirect or vicarious exposure to traumatic stressors that have a negative impact on professionals, paraprofessionals, and staff who provide service to trauma survivors [91]. Compassion fatigue and burnout are related yet distinct concepts [92]. All of these terms refer to “patterns of negative emotional outcomes in employment contexts” [92]. Regardless of where particular experiences might fit within these categories, management of negative emotional outcomes is a critical component of trauma-informed practice. Accordingly, “secondary trauma management” will be used to describe techniques that are helpful in moderating all of these concerns.

Secondary or vicarious trauma may result from exposure to a client's retelling of a traumatic event [92]. This is an occupational hazard for immigration attorneys working with asylum seeking clients. As with direct experiences of trauma, experiences of secondary or vicarious trauma may have negative impacts on a practitioner's worldview, primary belief systems, cognitions, and emotional needs [92]. Common symptoms related to secondary or vicarious trauma include disturbances in mood (irritability, depression or anxiety, for example), intrusion symptoms (for example, recurrent thoughts of the incidents reported by the client), and negative cognitions about self-identity (I am not a good enough lawyer to solve this problem) [92, 102].

Compassion fatigue may include symptoms similar to those experienced with secondary or vicarious trauma but does not require exposure to a traumatic event (either directly or vicariously) [92]. Instead, as noted by Pirelli and colleagues [92], compassion fatigue develops through the process of empathizing with a client's emotional pain and suffering. Symptoms of compassion fatigue that do not necessarily present with secondary or vicarious trauma include the inability to process emotional distress related to caring for others' suffering, poor clinical decision making, and the avoidance of, and inability to establish, relationships with clients [92].

With both secondary trauma and compassion fatigue, practitioners may have trouble separating home and work life, experience lower levels of distress tolerance and work satisfaction, and an increase in negative self-soothing behaviors, such as drug or alcohol use [92].

Burnout is defined as a gradual decrease in work engagement because of chronic exposure to stressful situations [103]. Burnout



does not require a trauma exposure and may arise from workplace stress that is not related to the distress of others, for example, heavy caseloads or limited resources [92]. Burnout is characterized by three primary types of employment-related problems: (1) physical, mental, and emotional exhaustion, (2) cynicism and decreased job satisfaction; and (3) inefficiency at work [92].

An attorney who is aware of trauma and its impacts is better able to protect against these negative emotional outcomes, first by identifying the risk, and secondarily by fostering healthy self-care and encouraging the processing of the trauma they hear through appropriate mechanisms [36,41,70,86]. Secondary trauma management specifically lends itself to the peer support component of a trauma-informed system [1]. An attorney who effectively manages secondary trauma is more likely to continue valuable work with vulnerable and at-risk populations and have healthier and more productive relationships both personally and professionally.

Finally, the benefits of trauma-informed lawyering to systems were explored through a theme of advocacy [36,74,86]. Trauma-informed lawyering benefits legal systems as well as broader concepts of social justice. Individual lawyers with a trauma-informed perspective will be more effective advocates within legal systems, resulting in benefits to individual clients, but also by educating opposing counsel, court staff, and judges about the implications of trauma. An attorney who is able to persuade a judge of the credibility of a trauma-survivor through trauma-informed advocacy also positively impacts the fate of the next trauma survivor who appears in that courtroom, as the judge will have increased knowledge of the impacts of trauma on memory and behavior. A lawyer who advocates for cultural competence for one client makes a point that is carried over to the next case in which an individual appears without counsel. A lawyer who effectively explains the safety concerns of a client has served to enhance safety protocols around the next survivor.

Although the existing literature does not directly (if at all) speak to concepts of procedural justice, this is an important component of benefits to legal systems, as well as to individual clients and attorneys. Much of the literature around procedural justice is written in the context of policing and the criminal justice system, but the concepts apply equally in U.S. immigration systems. Procedural justice addresses the idea of fair processes, and specifically whether individual players believe in the fairness of the process, and not just the fairness of the outcomes. When individuals involved with any aspect of the justice system understand what is going on and feel respected by the people they encounter, they express more trust in the system and greater likelihood of compliance with court orders [104].

Procedural justice has four key elements: (1) respect for people and their rights; (2) voice (or an opportunity to tell their story); (3) neutral decision makers, and (4) understanding of the process. As noted throughout this manuscript, many of these concepts are hard to measure or quantify objectively. What does it mean to “respect people and their rights” when some of those people are being detained against their will or forced to wear ankle monitors as they go about their daily lives? What does the “opportunity to tell a story” look like in a courtroom, where parties and witnesses are subject to interruptions by the judge or opposing counsel? How will people know whether a decision-maker is neutral, in an immigration system where the decision-maker and the government attorney report to the same Attorney General? How much understanding of frequently arcane legal processes is necessary for individuals to feel as though they were treated fairly?

The answers to these questions are beyond the scope of this manuscript. However, using a data-driven approach to exploring the connection between trauma-informed practice and the identified benefits would enhance an understanding of which elements of trauma-informed practice are most effective in improving outcomes.

This requires further operationalization of the terms and concepts addressed in this domain. The specific benefit of improved representation, for example, cannot be measured and evaluated without a more concrete definition, one that encompasses the elements mentioned here, and particularly concepts of procedural justice that operate across all aspects of judicial systems.

Given the ubiquity of trauma, ideally, all legal and judicial systems would be designed with a trauma-informed approach, starting with law school education [1,13]. Effective trauma-informed training within law schools and in continuing education programs will have a multiplier effect, improving legal systems for all participants, as law students become practicing lawyers and judges. Similarly, teaching and reinforcing the importance of procedural justice from law school classrooms to professional and judicial education programs will enhance public trust in the systems that impact the lives of trauma survivors, resulting in more acceptance and less possibility of re-traumatization, both of which benefit stakeholders in immigration systems, and more broadly.

### ***TI Lawyering Skills and Techniques***

The final domain incorporates six main concepts: *adjusting mindset, adjusting strategies, client communication, fostering safe relationships, interview skills, and secondary trauma management* [36,40,41,43,101]. Fundamentally, this approach mirrors the strengths-based approach first articulated by social workers in the 1980s. A strengths-perspective “emphasizes the human capacity for resilience, resistance, courage, thriving, and ingenuity, and it champions the rights of individuals and communities to form and achieve their own goals and aspirations . . . the helping relationship is characterized by alliance, empathy, collaboration, and focus on clients’ and communities’ aspirations and goals.” [105]. Using this type of approach enables the client to be fully engaged in the legal process and modifies both the attorney-client relationship and the litigation strategy to ensure client empowerment and safety. Within a trauma-informed framework, these skills address critical aspects of safety, trustworthiness, collaboration, and empowerment. Secondary trauma management is an indispensable skill to protect the lawyer and support personnel from the effects of vicarious trauma.

*Adjusting mindset* is particularly foundational to a lawyer’s trauma-informed practice. This is described as shifting the mindset of the lawyer from a foundation of “what is wrong with you” to the question “what happened to you” [36]. This change in thinking connects the client’s behavior to their experience of and response to trauma, rather than attributing it to a character flaw or untrustworthiness [36,106]. Other aspects of adjusting mindset are anticipating and identifying trauma, avoiding stereotypes, avoiding judgment, focusing on the goals of the client, and utilizing a strengths-based approach. Starting with a strengths-based perspective, avoiding stereotypes might begin with the assumption that a client is fully capable of understanding the complexities of their asylum claim, and not assuming that an uneducated client is an unintelligent client. This might require the lawyer to reframe or even rethink the ways in which particular issues are explained, while avoiding disempowering language like “dumbing down” the explanation for a younger or less educated client. Similarly, using a strengths-based approach, a lawyer would acknowledge that the client is able to make their own risk-benefit analysis with respect to outcomes, and should not be approached with a patronizing or condescending attitude that the lawyer knows the best result for an individual client. With this approach, the lawyer is less likely to judge the decisions a client makes, even when that decision runs counter to the attorney’s instincts. For example, a client may lose a case at trial and the lawyer feels the client has a strong probability of reversal on appeal. The client, however, chooses to accept the outcome and not proceed with an appeal. Allowing the client to make that informed decision, without judgment, is fundamental to a strengths-based, trauma-informed approach.



With a fundamental adjustment to perspective, the lawyer then adjusts strategies in their practice using such techniques as applying trauma-informed skills broadly in all cases thus preparing for potential trauma either in the client's case or in their past. This may mean allowing extra time for preparation with the client for trial and hearings; providing flexibility to allow for client goals to change over the lifetime of the case if necessary [36,40,41,43,70,86] anticipating client reluctance or difficulty engaging due to trauma responses, and setting appropriate boundaries in order to ensure that the lawyer refers needs outside of their professional abilities to the appropriate alternative professional [36]. The most critical factor in adjusting strategies is patience, and allowing adequate time for interviews, meetings, and preparation. While both lawyers and clients could benefit from building in breaks and avoiding marathon sessions to prepare for trial, less pressured strategies are imperative for trauma survivors. Building regular breaks into all meetings so that clients are not forced to focus on emotionally difficult memories for hours at a time both promotes resilience and aids in recollection, leading to better outcomes.

The third set of skills important to trauma-informed lawyering is *client communication*. This set of skills particularly mirrors the trauma-informed principles of safety and trustworthiness/transparency. In order to employ trauma-informed lawyering in client communication, a lawyer should focus on being predictable and managing expectations, meaning consistency in completing tasks or communication in the timeline that is given to the client, and making sure that it is clear what the client can expect from any given part of the legal process. Techniques as simple as informing the client before a meeting that it will last two hours and will cover specific topics are very helpful to reduce client anxiety. In addition, demonstrating transparency by using clear communication, precise language, answering questions, and explaining procedural steps is crucial throughout the process to create a pattern of safety in communication and to avoid re-traumatization. Finally, it is important for the lawyer to be aware of their non-verbal communication (e.g., affect, body language) to avoid being perceived as threatening or punitive, and to practice patience and consistency in communication [43].

Continuing out of effective and mindful *client communication* are the techniques important to *fostering a safe relationship*. These include utilizing trauma-informed skills to foster and emphasize a safe environment and experience for the client and being prepared to make referrals to mental health professionals when appropriate [36,86]. Safety, like trauma, is very much an individual experience. Being alert to non-verbal cues can guide an attorney toward providing additional space or time to allow the client to return to a place of safety and be able to resume a conversation. For example, a client might turn away from the lawyer, or cover her face with her hair, or move his chair slightly backward, or start tapping a foot or a pencil. Awareness of non-verbal cues is critical to fostering a safe relationship. Another vital part of fostering a safe relationship between the lawyer and the client is taking the time and effort to build trust and rapport in the client-attorney relationship [36,41,90]. In practice, this means that meetings are not focused solely on the details of the case, but rather include time for relationship building, asking about children or pets or favorite meals.

The fourth set of skills and techniques important for a trauma-informed lawyer are *interview skills* to be used while gathering information to prepare the case for hearings and trial. The specific techniques include maintaining awareness of the reasons a client may be reluctant to share information, avoiding judgment towards the client and acknowledging that the client is the expert on their own experience [70]. When preparing with a client the lawyer should employ open-ended questions, and remain calm, patient, and present while allowing the client time to answer and think through details [43

70]. Additionally, during interviews the lawyer should validate the feelings of the client, actively listen, and be patient and comfortable with silence. Validation of feelings can be as simple as responding, "that must have been so hard for you" when the client speaks about a traumatic event. Active listening techniques include paraphrasing, in which the attorney has a chance to confirm the accuracy of what was heard, while also offering the client the chance to feel heard. For example, a client approaching a hearing date might report being frightened. The lawyer might paraphrase the client's words, stating "I understand you are anxious about the hearing this week," and might follow up with an open-ended question, "can you tell me what it is that is frightening to you?" The lawyer can also focus and refocus the client and may choose to utilize notes from past interviews to help the client remember important details or timelines [36]. Finally, the attorney can allow time for frequent breaks during interviews and debrief with the client to close sessions [36,70]. In the context of a trauma-informed practice, these skills address the principles of safety, collaboration, and empowerment [1,13].

The final set of techniques discussed consistently in the literature for trauma-informed practice is *secondary trauma management*. In order for the lawyer to protect themselves from vicarious or secondary trauma it is important to practice good self-care, and consistently utilize case rounds, supervision, and/or journaling to debrief, reflect, and self-evaluate [36,41,74]. Self-care for attorneys with busy practices might seem impossible, but it is also critical to avoiding secondary trauma and compassion fatigue. Self-care incorporates many basic elements of healthy living, such as eating well, exercising regularly, and getting sufficient and regular sleep. The use of case rounds or supervision, in which cases are discussed with peers or mentors, and solutions for particularly challenging problems are addressed collectively, can be highly protective against burnout, as well as allowing for the introduction of fresh perspectives in handling a case.

### **TI Lawyering Pedagogy**

A central focus of this research was determining what trauma-informed education and training was available to lawyers and law students. The literature provided limited examples of existing training techniques, and none of the articles detailed any empirical data regarding best practices for trauma-informed pedagogy with law students or lawyers. None of the reviewed articles addressed trauma-informed pedagogy in continuing legal education for practicing lawyers.

Four main categories of training were described by the literature and appear to be the most widely used: *experiential, interdisciplinary partnerships, formal trauma education, and secondary trauma education* [36,41,43, 74,86]. The literature provides examples of how these techniques could be used, but with few recommendations about the specific information to be taught or with respect to best practices for conveying that knowledge.

*Experiential learning* can readily be incorporated into clinical coursework in law schools. In practice, experiential learning could look like creating a role-playing scenario, in which one partner would role-play a trauma-impacted client, while the other partner would role-play the attorney. Case rounds might involve one student presenting a complex case while other students discuss and propose solutions based on trauma-informed practice.

*Interdisciplinary partnerships* between law faculty and mental health professionals was a second common technique. In these partnerships, law faculty and social workers or psychologists facilitate roundtable discussions and debriefing sessions. Outside speakers with expertise in trauma and traumatized populations might also be invited to speak to law students, or external resources for trauma training made available [36,41,43,74].

*Formal trauma* education was defined as the direct presentation of educational information about trauma, typically in a lecture format. This could include integrated experiences, such as trauma training incorporated in clinical (practice skills are taught in a clinical setting) and doctrinal (legal doctrine is taught primarily through the use of case law in a traditional classroom setting) classes, or providing reading materials on the effects of trauma and vicarious trauma [36, 41,74].

*Secondary trauma education* included both direct instruction or reading materials on the importance of self-care, vicarious and secondary trauma, as well as experiential learning such as debriefing and processing using hypotheticals, simulations, storytelling, and role-plays [36,41,74]. The literature further explored considerations for faculty regarding *secondary trauma education*, such as evenly distributing cases with significant trauma history throughout a class in order to ensure no one student is overloaded, creating space for students to discuss their own trauma experiences and reflect on their cases through journaling, case rounds and supervision [36, 41]. Lastly, the importance of faculty modeling appropriate self-care and ensuring that students are aware of accessible mental health services was emphasized [41].

Although application of all of these techniques is recommended to be utilized across both doctrinal, clinical and continuing education programming, it is also recommended that a more standardized curriculum be developed, incorporating learning objectives or competencies that are necessary for effective trauma-informed lawyering. With the development of more standardized curricula, it will be possible to evaluate and assess best practices for teaching. In addition, the lack of any research on continuing education on trauma-informed lawyering for practicing professionals represents a significant gap in the literature, one that should be explored in future research.

## Further Research

In the academic legal literature, there is no uniform definition of trauma-informed lawyering, resulting in a lack of consistency as many authors ascribe their own meaning to the term. While this review presents a proposed definition drawn from the current state of the field, further work in this area is warranted to ensure an industry standard that is supported by both the literature and research, and that appropriately operationalizes critical terms and concepts.

While TI lawyering seems to be accepted as an approach to lawyering in specific practice areas, the available academic literature relies primarily on anecdotal or single system reports of practices, for example, at a single law school clinic or with respect to a particular judicial system, such as family or juvenile courts. There is a gap in the literature with respect to exploring the full extent to which these principles are commonly used in practice. It would be helpful to explore and quantify the extent to which trauma-informed principles are being utilized in actual practice, perhaps through surveys of practicing lawyers or judges.

Although addressing the benefits of TI practice, the literature fails to clarify and explicate benefits in a measurable way. A further recommendation for additional research would be the development of standardized measures for concepts such as “improved advocacy,” “improved representation,” and “empowerment”.

Similarly, although the American Bar Association has incorporated standards for cultural competence into its recommendations for legal aid providers, there is very limited academic research into the specific ways in which cultural competence enhances practice with vulnerable populations. The field would benefit from more research and publication in this arena.

Additional qualitative and quantitative research should be performed to evaluate empirically the ways in which trauma-informed practices

are currently being used in the legal context, and best practices for trauma-informed practices in legal systems both broadly and in the immigration context.

Confronted with the realities of legal practice, including immigration and asylum law, trauma-informed practice should be taught across law school and continuing education curricula, as it has been adapted and taught across other professions. However, this research suggests that these practices are rarely being taught in any systematic way and there is very little literature addressing the components of trauma-informed lawyering or how to effectively train lawyers in this practice. An additional avenue for future research would be a survey of law school curricula to address the ways in which trauma-informed practices are already being implemented, along with a thorough evaluation of best-practices for teaching trauma-informed lawyering in both law schools and continuing education programs.

## Conclusion

Trauma does not occur in a vacuum, but rather in the context of community, whether that community is geographic or systems-based [1]. The way that a community or system responds to individual trauma may determine whether individuals find healing or re-traumatization [1]. This research has established that most legal systems are not trauma-informed, and often result in re-traumatization of trauma survivors, as well as less than optimal results for system participants. While systems from child welfare, juvenile justice, domestic violence, sexual assault, human trafficking, to immigration and asylum all acknowledge that bad things often happen to people, rarely do they acknowledge the pervasive influence that trauma has on full participation in the legal processes that, at least on the surface, are designed to protect these survivors. A criminal justice system that assumes innocence until guilt is proved is unlikely to provide a sense of safety to a rape victim. A child welfare system that fails to acknowledge the trauma of generational poverty and systemic racism may inflict additional trauma in the removal of a child from a loving but impoverished home. An immigration system directed by administrators who view asylum seekers as criminals shows little concern for the trauma inflicted by the separation of children from their parents. Attorneys who are unaware of the ubiquity of trauma may be unlikely to recognize their own experiences of trauma, their heightened risk of experiencing secondary or vicarious trauma, or effective strategies for mitigating or managing that risk, resulting in compassion fatigue or burnout, as well as less effective representation. The focus of this research is specifically trauma-informed practice by individual lawyers and demonstrates that there is significant need for trauma-informed practices to be incorporated throughout the legal systems in which attorneys’ practice.

Immigrants, and asylees specifically, are frequently confronted with traumatic events prior to their formal request for asylum. Unfortunately, the asylum system in the United States is complex and places a heavy emphasis on the demeanor, consistency, and narrative pattern of the asylee, all of which can be significantly influenced by trauma [36, 86, 100]. The literature clearly supports a recognition that trauma-informed lawyering is an important and valuable skill for many types of law, and specifically in the asylum arena [41,43, 100]. Asylees are required to recount their experiences many times, often under very stressful conditions, and a trauma-informed lawyer can support their client and act as an advocate throughout the asylum process [40,41,70,100].

While it is not expected that lawyers would serve as a counselor or therapist to immigration clients, having a core understanding of how trauma influences memory, communication, and emotional and behavioral functioning would significantly aid attorneys in interviewing clients and preparing those clients for trial, as well as in advocating for their clients in the courtroom. Information and knowledge on secondary trauma and effective strategies to manage

the potential negative effects of listening to another's trauma will support and enhance the mental health of lawyers who work with vulnerable populations, enabling them to continue to do valuable and important work to achieve social justice.

Fundamentally the concepts represented in the behavioral and social sciences literature parallel the ideas that are emerging in the legal literature related to trauma-informed lawyering. While trauma-informed training is increasingly common in schools of medicine, psychology, and social work, such training in law schools and in continuing legal education programs remains nascent and has yet to be broadly incorporated into legal education and professional training. Additionally, while trauma-informed practices seem to be woven into clinical teaching in at least some law schools, the academic literature does not yet report on the extent to which this training is available broadly across law school curricula, or the extent to which curricula has been standardized to include specific concepts or practices. Professional practice with trauma-impacted individuals without trauma-informed training can dramatically reduce the effectiveness of the practice relationship; create confusion, distrust, and suspiciousness in the professional-client relationship; limit needed sharing and flow of information; result in further traumatization, and can compromise outcomes. Clients, lawyers, and the legal system can, directly and indirectly, benefit from trauma-informed lawyering, whereas the lack of such training has negative implications.

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