Civil Legal Remedies for Sexual Assault Survivors
Many Roads To Justice

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There Are Many Roads to Justice
Survivors Have Options

After a Survivor Reports, the Process is OVERWHELMING

- Criminal Case?
- How do I even begin to heal?
- How do I keep my job?
- Where do I get help?
- Report
- Will the DA prosecute?
- How do I get a restraining order?
Maslow's Hierarchy of Needs

The Victim Isn’t the Only One Who Doesn’t Understand How the Different Systems Are Connected

Oh, What a Tangled Web We Weave

- One system alone can be overwhelming
- When you start combining multiple systems and issues: housing, job, criminal, privacy, lawsuits, school, etc., it becomes far more overwhelming.
- STOP the victim from being able to effectively move forward with their life, the criminal justice system, etc.
Goal: Untangle, Connect and Refer

Learning Objectives

1. Understand the need for Civil Legal Remedies
2. Identify available civil remedies for victims
3. Explain how a civil sexual assault attorney can be of service to the survivor and to inspire collaboration that will decrease the trauma to the survivor
4. Demonstrate effective collaboration with professional involved in SA cases
Civil Legal Remedies Covered:

- Personal Injury
- Education
- Employment
- Housing
- Consumer Issues
- Immigration
- Privacy / Criminal
- Restraining Orders
- Title IX

Non-Linear Thinking

School
- Title IX
- ADA

Work
- Personal Injury
- Employment Law
- ADA
- Unemployment Compensation

Consumer Issues
- Safety
- FCC

So your client tells you...

That she is 19 and was sexually assaulted by a fellow student at university at an off campus party last week that supplied alcohol to her. She got a SART and is now seeing a psychiatrist for post SA related mental health issues. After school, she works at a car dealership part-time and her work performance is suffering from the trauma and she is having difficulty concentrating on day to day tasks. She is also scared to see her attacker at school because they have a class together.
Potential Legal Issues

- Education
- Privacy / Criminal
- Employment Law
- Income Maintenance / Unemployment Insurance
- Restraining Order
- Civil Case

Survivor who was harmed deserves to chose the road to justice they want to take

How Many People Have Worked With A Civil Attorney?
Justice Comes in Many Forms

Civil Justice is one way to help a survivor

The Legal Truth - Where is Justice?

- 9.7% of cases resulted in criminal charges being filed
- 2.5% resulted in convictions

Prosecutors Have a Very Tough Job
The Burden of Proof is Civil Courts is
"More Likely Than Not." 51%

What is a Civil Suit?
- Plaintiff (survivor) initiates the action for monetary damages against the perpetrator and any responsible parties.
- Company
- Innskeeper
- Fraternity
- School
- Parents
- City
- Medical Facility
- Hotel

Case Spotting
- Multiple parties can be responsible
- Examples:
  - Hotel
  - Dram Shop
  - Sexual Harassment in employment context
  - Negligent conduct of child
  - Employer negligence
  - Sexual misconduct by a medical professional
Civil Lawsuit in a Nutshell

- Confidential Pre-Filing Resolution
- File – Litigation

What Civil Justice Looks Like:

- Justice - Validated that it was not the victims’ fault
- Exposed the perpetrator and prevented future victimization
- Damages: money for medical bills, therapy, pain and suffering, lost wages, loss of consortium, loss of enjoyment of life
- Emotional empowerment
- Opportunity to tell their story
- Put the community on notice about the perpetrator
- Punished the perpetrator
- Vindication - actively fought back

How Did We All Work Together?

- Interviewed together reduced # of times victim told story
- Host all Victims that Called Office
- Contact DA/Investigator/Sexual Assault Civil Center
- Reporters Discovered Info
- Employment issues
- Money’s Law Violation
- Immigration
- Housing Problems

How Can We Work Together?

- Efficiency to Reduce Survivor Trauma
- Financial Resources
- Survivor Medical Care
- Evidence to Help Survivor’s Case
- Client Control
- Institutional Change
- Improve Laws that Protect Victims
- Media
- Survivor support
Did you know……Education Law

Under most circumstances, SA victims have the right to accommodations at school such as:

- Making up missed assignments, choosing to take a class pass/fail, withdrawing from a class with no penalty, change in housing or class schedule, school police accommodation.
- Safety accommodations on campus
- Administrative stay-away orders

Sexual Assault in Education

- 3% of college women are raped each academic year, usually by someone they know.
- 20 to 25% of college women are victims of sexual assault or attempted sexual assault during their college years.
- Less is known about the sexual assault of men, but research suggests that up to 10% of campus acquaintance rape victims are men, usually raped by other men.
- The first few weeks of the first and second years of college is the period when college students are most at risk of being sexually assaulted.

Title IX Basics

Promotes equal access to education and prohibits schools that receive federal funds from discriminating on the basis of sex. Includes:

- Gender Based Harassment
- Sexual Harassment
- Sexual Violence
Education

- Is the perpetrator a fellow student?
- Does the client need help with getting an accommodation?
- Has the client been disciplined for missed school or needs accommodations because of the incident?
- Does the survivor feel that s/he cannot do certain things or go certain places?
- Note: Includes Elementary, Junior High and High School students
- Case note: Title IX at Local Law School

Did you know….Employment Law

- In many states, a domestic violence or sexual assault survivor who quits her job to protect herself or her family from domestic violence or sexual assault has “good cause” for leaving that job and therefore is entitled to unemployment pay.

Employment Law Protections

- Numerous pieces of state legislation clarifying eligibility for sexual assault victims in unemployment insurance benefits, the providing of job-guaranteed leave for victims, and the prohibiting of discrimination in employment against victims of domestic violence.

Sexual Assault and Employment

- Studies and surveys show that almost 50 percent of sexual assault survivors lose their jobs or are forced to quit in the aftermath of the crime. [S. REP. NO. 138, 103rd Cong., 2d Sess. 54, n. 69 citing E. Ellis, B. Atkeson and K. Calhoun, An Assessment of the Long Term Reaction to Rape, 50 J. Abnormal Psychology No. 3, 264 (1981)].

Employment

- Has the client been disciplined for missed work related to the incident?
- Has the employer withheld pay the client is entitled to?
- Did the employee quit and is now being denied unemployment?
- Is the perpetrator a fellow coworker?

So your client tells you...

- On her first meeting with you that she doesn’t feel safe at work because the assailant knows where she works. Prior to the assault, he came to her work and left her flowers on Valentine’s Day.
- On your second meeting, that she quit and no longer has any income.
Did you know….Housing Law

- A landlord must change an SA victim’s locks within 24 hours after a victim gives the landlord a restraining order or police report documenting domestic violence, sexual assault, or stalking.
- An SA Survivor can not be evicted because of SA.
- Many victim’s compensation funds can help with moving costs.
- In many states, a victim can break their lease with an advocates’ letter to the landlord.

Housing

- Did the incident occur in the client’s home?
- Does the client share a lease with the perpetrator?
- Is your client being evicted?
- Does the client need safety measures from the landlord?
Did you know….Immigration Law

- That both the parent and the child of a victim of domestic violence can self-petition under VAWA.

Immigration

- Does your undocumented client have a current or former spouse that is a citizen or permanent resident?
- Has the client helped law enforcement with a criminal investigation?

Did you know….Privacy Law

- **Victims Can be** a party to the criminal case.
  - If yes, then you are smarter than most judges 😊
Privacy

- Is there an ongoing criminal case against the perpetrator?
- Has your client been served with a subpoena?
- Case example: Criminal Trial and Restitution trial

Marsy’s Law Violation
(Criminal Defense Attorney Subpoenaed Client’s Psych Records)

- Psych records are confidential and crime victims can prevent their disclosure
- “The Sixth Amendment rights of confrontation and cross-examination do not authorize pretrial disclosure of privileged psych records.” –Hammon
- Constitutional Right to Privacy

Did you know.....Safety Law

- Sexual Assault Protective orders or Civil Harassment Restraining Orders are available in many states?
Safety

- Does the client need immediate and permanent protection from the perpetrator? (CHRO/Letter to Perpetrator)
- Does the client need assistance obtaining a confidential address through the “Safe at Home” program?

So your client tells you...

- That Defendant's attorney has subpoenaed her counseling records, sexual assault counseling records, and Facebook records and she does not want to disclose them.
- Or that the criminal case is not going forward, but she is still afraid of the assailant.

The Case for Referrals

- Civil Legal Attorneys can help support your efforts to:
  - Maintain stability in a survivor’s life
  - Provide short-term safety
  - Provide long-term financial assistance
  - Normalize and stabilize foundational aspects of a victim’s life (home, job, school)
Referrals

The best way to refer is to pick up the phone and call an attorney to find out what they can/can’t do.

What Types of Cases Should I Call a Civil Attorney About?

- Multiple parties can be responsible
- Examples:
  - Hotel
  - High-profile cases
  - Dram shop
  - Sexual harassment in employment context
  - Negligent conduct of child
  - Employer negligence
  - Sexual misconduct by a medical professional

Take Action

- Learn more about what protections and remedies are available to survivors (You’ve already done this today... keep it up!)
- Learn where to refer victims in your jurisdiction
- LAV Grantees: Contact VRLC
- Contact local Legal Aid or Advocacy Non-profit
- Reach out to civil attorneys for information and work together
- Refer, refer, refer!