



Complex trauma and the question of reasonableness of response in sexual harassment cases: Issues for treatment providers and forensic evaluators

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Abstract

This paper discusses considerations for treating or evaluating sexual harassment claims in individuals with a history of complex trauma. The author reviews how a history of repeated trauma in early childhood increases risk for later victimization, including sexual harassment (Courtois & Ford, 2013; Herman, 1992). Further, she provides a brief overview of how attachment disruptions and other adverse childhood experiences (ACE) create difficulties with emotion and interpersonal regulation. She discusses how the complexity of the symptom profile provides a unique context for therapeutic intervention and evaluation, as well as the importance of staying firmly grounded in one's role when the courts are involved (Greenberg & Shuman *Professional Psychology: Research and Practice*, 28(1), 50–57, 1997). Utilizing her more than 30 years of experience as a forensic evaluator, the author provides case material throughout the manuscript to highlight potential pitfalls and strategies for maintaining the therapeutic alliance or role as a forensic evaluator.

Keywords Complex trauma · Sexual harassment · Forensic treatment · Forensic evaluation · Adverse childhood experiences

Complex childhood developmental trauma, defined as childhood trauma exposure that is repeated, threatens safety, health, attachment capacities, and is usually perpetrated by the child's primary caregivers—has come in the last two decades to be a well-recognized phenomenon (Courtois & Ford, 2013; World Health Organization, 2018). Previously frequently misdiagnosed as some manifestation of characterological pathology, the far-reaching effects of persistent trauma, abuse, and/or neglect are now correctly identified via this diagnostic formulation as arising from trauma to a child's working model of attachment (Brand, Schielke, & Brams, 2017; Brand, Schielke, Brams, & DiComo, 2017; Brand, Webermann, & Frankel, 2016; Dorahy et al., 2017). This kind of repeated trauma and neglect at the hands of a child's adult caregivers pervasively affects almost all components of a person's functioning (Cloitre et al., 2011; Courtois & Ford, 2013; International Society for the Study of Dissociation et al., 2011).

It is distinct from, although may co-occur with, posttraumatic stress disorder (PTSD) because it is not caused by a single episode of overwhelming threat to life and safety, or even by repeated episodes occurring in the life of an adult with an adequate attachment history. Rather, complex trauma is distinguished from PTSD by the extremely large number of typical developmental tasks that are distorted or interrupted by this repeated trauma exposure early in life, and by the necessity for the child to respond to those experiences with the cognitive, affective, and somatic capacities at hand (Cloitre et al., 2011; Courtois & Ford, 2013; Herman, 1992, 2012). These effects are pervasive and ubiquitous, although not always immediately apparent or expressed to an observer, depending upon the nature of the interpersonal context in which the survivor of complex trauma is functioning (Herman, 1992). However, the sequelae of complex trauma represent creative, albeit eventually problematic, attempts to solve the problem of maintaining attachment to adults who are dangerous and/or disengaged (Cloitre et al., 2011; Courtois & Ford, 2013; Freyd, Klest, & Allard, 2005; Herman, 1992, 2012).

Complex trauma, in addition to actual physical, sexual, and verbal abuse, usually involves neglect, experiences of disrupted attachment, and the modeling of ineffective coping strategies on the part of a child's caregiver (Byun, Brumariu, & Lyons-Ruth, 2016; Lyons-Ruth & Dozier, 2016) (Gold,

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2020). As a consequence, the internal working models of attachment present in survivors of complex trauma tend to be problematic as life moves forward into adulthood (Courtois & Ford, 2013; Herman, 1992). These strategies for relating to other humans who are important to the survivor will integrate some combination of anxious, avoidant, and disorganizing attachment strategies (Courtois & Ford, 2013; Pearlman & Courtois, 2005). Again, these problematic attachment patterns will be more or less obvious depending upon what is occurring in the survivor's interpersonal environment. Both the classroom and the workplace are settings in which the survivor's wounded attachment patterns may become activated by the behaviors of others, particular others with more power and authority than survivors themselves.

Complex trauma exposure during childhood interferes with almost all aspects of typical developmental processes for a child (Herman, 1992; Pearlman & Courtois, 2005). These include but are not limited to impairments in distress tolerance, affect regulation, the capacity to self-soothe, capacities to accurately assess the trustworthiness of others, sexual development, and executive functioning when under stress (Courtois & Ford, 2013; Herman, 1992; WHO, 2018). Persons with complex trauma often have a difficult time understanding the unspoken norms of social and work situations, and may misread cues due to their early experiences of problematic attachment. Population statistics on exposure of children to this kind of severe trauma suggest that as much as 25% of the adult population might qualify for a complex trauma diagnosis (Courtois & Ford, 2013).

Complex trauma survivors typically have high rates of Adverse Childhood Experiences (ACES; Felitti & Anda, 2010), which include a number of experiences (e.g., parental substance abuse or incarceration) in addition to various forms of abuse and neglect. These ACES form a problematic interpersonal milieu that worsens the effects of the more obvious ACES such as direct trauma, abuse, and/or neglect. For instance, this population is more likely to have ACES such as having a family member who has been incarcerated, to have experienced parental divorce or the death of a non-abusive and loving parent, or to have been exposed to parental mental illness, or parental substance abuse. ACES exposure has been shown to function as a risk factor for a range of medical and psychosocial consequences in adulthood (Cawthorpe, Marriott, Paget, Moulai, & Cheung, 2018; Jones, Nurius, Song, & Fleming, 2018; Lee & Chen, 2017; Ports, Ford, & Merrick, 2016; Sinnott, Mc Hugh, Fitzgerald, Bradley, & Kearney, 2015). Among these consequences is the risk of repeated victimization throughout the lifespan, as well as the risk of acting out and becoming a victimizer of others (Bockers, Roepke, Michael, Renneberg, & Knaevelsrud, 2014; Classen, Paresh, & Aggarwal, 2005; Ports et al., 2016). Survivors of complex trauma may have difficulty accurately interpreting interpersonal situations, and problems in

understanding their boundaries or those of others. In an interpersonal situation in which another person is behaving in a predatory manner, survivors of complex trauma are often easily perceived as prey.

Given these variables in the lives of survivors of complex trauma, it should be no surprise that among people claiming to have been sexually harassed in the workplace, whether they are forensically involved or not, there are considerable numbers of persons with high ACES scores and a history of childhood complex trauma (Beal et al., 2019). The precise percentage of complex trauma survivors among sexual harassment plaintiffs cannot be known, given the difficulties in obtaining accurate data about the universe of sexual harassment complainants (Ilies, Hauserman, Schwochau, & Stibal, 2003). Many such complaints never rise above the level of a report to a human resources department, and if handled correctly, are resolved there. Even in those matters that proceed to a civil lawsuit, many of these cases are settled at mediation with non-disclosure agreements as part of the settlement package (Farrow, 2019).

However, the anecdotal evidence emerging from forensic trauma psychologists who have worked on more than three decades of sexual harassment cases suggests that the overlap between complex trauma and being severely enough affected by sexual harassment to commence litigation appears to be large. This phenomenon—that many sexual harassment complainants may also be survivors of complex trauma—raises some of the most fundamental questions inherent in sexual harassment litigation.

My Context, Standpoint, Experience, and Perspectives

This article attempts to open the discourse regarding what might be expected in a reasonable survivor of complex trauma who is alleging having been sexually harassed. I discuss, from the perspective of a practicing clinical and forensic psychologist with a specialty in complex trauma and decades of experience as an expert in sexual harassment litigation, what some of the salient issues are for the forensic evaluator as well as the treatment provider working with a survivor of complex childhood trauma who is claiming emotional distress damages due to sexual harassment.

My observations here reflect my experiences, as well as anecdotal data from colleagues who work in the field rather than any formal research. For you, the reader, to accurately evaluate my opinions and critically assess their value, I believe it is necessary for the reader to understand the contexts that have informed the development of those opinions. One of the chief concerns of those who cross-examine forensic experts is that of bias. Since bias is present in all humans, including in every forensic evaluator (e.g., Zappala, Reed,

Beltrani, Zapf, & Otto, 2017), it is best practice to make potential sources of bias as transparent as possible, both to readers and to triers of fact, and not to pretend to an objectivity which no person, no matter their education and training, can have (Faigman et al., 2011).

I have conducted forensic evaluations in sexual harassment cases since 1984 and testified as to my findings at deposition or trial several hundred times. I have encountered a broad range of sexual harassment complainants; the majority of them have been cisgender women reporting what are known as “hostile workplace environment” cases. These are cases in which crude comments, sexist remarks, sexual pictures or cartoons, or unwanted touch occurs. They also include cases in which a person in a senior position is carrying on a supposedly consensual sexual relationship with a peer of the complainant, and giving favorable treatment to the sexual partner, or unfavorable treatment to the person who is not sexually involved with the superior. Few of these cases have been “quid pro quo,” in which a job or retention in training is made contingent on the provision of sexual favors. The recent #MeToo movement has focused primarily on the latter type of sexual harassment narrative, but for both myself and my colleagues, it is far less common. Very few of the people I have evaluated are other than cisgender, heterosexually identified, Euro-American women. Almost all of the alleged harassers have been cisgender, heterosexually identified, Euro-American men.

Most of the attorneys who have hired me to be a testifying expert were working for the plaintiff, that is, the allegedly sexually harassed person. Many attorneys representing employers have called upon me to consult with them in assessing a case, but have not asked me to testify, knowing that any opinions I render will be truthful, and thus frequently not favorable to their case. I am, consequently, perceived by attorneys in my community as a plaintiff-oriented expert due to what component of my work occurs in the public domain. I prefer to perceive myself as someone who is rarely hired by defense attorneys as a testifying expert, and someone who is interested in the most accurate possible assessment of the situation so as to best educate the triers of fact, those who ultimately decide if harassment has occurred, and if damages are present. This perspective contextualizes my comments in the article below in terms of the manner in which I have become acquainted with this topic as well as how I am perceived by the legal community that has sought my services. All of the cases in which I have consulted or given testimony occurred in jurisdictions within the Ninth Circuit Court of Appeals, and almost entirely in the State of Washington. In approximately a dozen cases, I have returned to the attorney who has engaged me to report that there is no credible evidence of emotional distress damages; all of these were cases in which I was retained by plaintiff’s attorney.

Responses to Sexual Harassment

The range of responses to sexual harassment is vast, reflecting the complicated matrix of variables that can include the position of the harasser in relationship to the victim; the response of the larger organization to a report of sexual harassment; the persistence and/or inescapability of the harassment being reported; the financial risks inherent in reporting, e.g., job loss or demotion; the presence or absence of retaliation; the presence or absence of co-victims; and the effects of other intersectional identities of both target and harasser (Fitzgerald, 2017; Fitzgerald et al., 2013; Lawson et al., 2013)—and none of these variables address the question of whether the sexually harassed person is also a survivor of childhood complex trauma.

Consequently, I will be making broad and general statements in this article because no one clear decision rule will apply in the analysis of any given case. Additionally, the roles of forensic experts and treating therapists are quite different (Greenberg & Shuman, 1997). Thus, each professional role requires taking some same, and some quite different, issues into account in dealing with a person claiming sexual harassment.

Reasonable, Not Reasonable? Some Loose Algorithms

Although Cortina, Rabelo, & Holland (2018) have recently advanced the argument that, in cases of sexual harassment claims, the focus should be less on the alleged motivations and pathologies of the victim and more on the notion that perpetrators of this kind of illegal behavior and their potentially predatory actions should become the central question; in the legal system, this more scientifically sound argument tends not to hold sway. Instead, under the laudable legal notion of “innocent until proven guilty,” the accused in a sexual harassment case is protected from scrutiny, while the accuser is carefully and microscopically inspected for distortion, misrepresentation, and inaccurate levels of response.

When was an action essentially harmless in nature and misinterpreted by its target, as versus when was the action an actual boundary violation that crosses lines of policy and law? If one’s boss comments repeatedly on how attractive one looks, is that reasonably to be construed as complimentary, annoying, or harassing? How does the context of the comment matter? And how does the history of the person claiming to have been harassed as a survivor of complex childhood trauma enter into the understanding of what has occurred? All of these questions evoke an underlying legal issue having to do with claims of emotional distress damages; was the response of the allegedly harassed person a reasonable one? Did the

plaintiff read the situation correctly, or was there a distortion that no reasonable person would have made?

Similarly, when was a targeted person's compliance in response to a sexual overture by an academic or workplace superior evidence of consent or interest in the sexual offer, and when, instead was it evidence of a reemergence of a pattern of sexual compliance rooted in childhood sexual trauma in which the person has never developed the capacity to refuse unwanted sexual contact? Since it is not uncommon for someone accused of sexual harassment to respond by saying that they believed their words or advances were wanted or consented to, the question of capacity to accurately judge the intent of the communication, and to indicate consent or its absence is extremely germane (Fitzgerald & Swan, 1995). What, here, is reasonable to expect from a survivor of complex trauma?

When the instigator of the sexual contact is more powerful than the target; older than the target; has authority to hire, fire, or make recommendations; pass or fall the target; or resembles a perpetrator from the target's childhood, it is common for dynamics of a complex trauma survivor's history to become activated. Consequently, an intensely negative emotional response and/or the perception of the behavior is inappropriate, unwanted, or crosses over the boundary into behavior that is actionable may not be directly related to the current situation, but "only" a re-awakening of earlier trauma, as Feldman-Schorrig and McDonald (1992) have suggested.

If the current situation is not on the high end of horrible, with no new trauma necessarily inherent in what is currently being alleged, is the plaintiff having a reasonable response? Did the plaintiff reasonably assess that the behaviors of the other party were violations of a boundary? Would a reasonable person with no childhood complex trauma be able to easily ignore or refuse an uninvited sexual overture from a person in a position of power and authority? In other words, even if sexual harassment as legally defined had in fact occurred, would the "reasonable" response to anything short of forcible physical contact be the absence of psychological harm? In the case of *Harris v. Forklift Systems*, the US Supreme Court, in a unanimous decision authored by Sandra Day O'Connor, opined that psychological harm is not required for a reasonable woman to conclude that sexual harassment has occurred. Thus, the presence or absence of emotional distress should be moot for the question of whether sexual harassment happened or not.

But because in any civil sexual harassment case, the goal of the plaintiff is always the recovery of monetary damages for harm to both earning potential and mental health, the question of what constitutes a reasonable response is one that a forensic psychologist needs to factor into their assessment of what the harms might be (Fitzgerald, Collinworth, & Lawson, 2013; Gold, 1998; Langhout et al., 2005; Lawson, Wright, & Fitzgerald, 2013). Additionally, it is not unknown for the

defense in a sexual harassment case (or for that matter, in a sexual assault criminal trial) to argue that the complainant has, because of their personal history of earlier or other trauma, entirely misperceived, distorted, and thus misrepresented what has happened. Complex trauma, and its effect on the perception of sexual violation or interpersonal betrayal, consequently is an important topic for a forensic evaluator to consider in a sexual harassment case.

When the sexually harassed person appears to be devastated, almost disabled psychologically by what has happened, is this response a reasonable one, or an exaggerated, perhaps malingered response (e.g., Brown, 2009)? If an episode of sexual harassment constitutes a trauma reenactment in which dynamics set in place during childhood are re-activated and played out in such a manner that the survivor of complex trauma experiences no sense of choice or agency in what is occurring, is a severe or disabling emotional response what an evaluator or therapist would expect to see? Would the survivor of complex trauma be able to accurately report the actions of the other person and consequently make a reasonably correct report of behavior that meets definitions for sexual harassment?

Or, as some would argue, is this sort of psychological acuity and severity allegedly resulting from sexual harassment simply an over-reaction, a misinterpretation of a neutral event distorted through the lens of earlier developmental trauma, or a malingered response, exaggerated in the service of a potentially higher damages award?

As early as 1992, Feldman-Schorrig and McDonald suggested that "features of the plaintiff's personality that cause her (sic) to be hypersensitive to workplace behavior that most employees would not find offensive or that might cause her (sic) to create situations between herself (sic) and a boss or coworker that she (sic) might later characterize as sexual harassment" are among the most likely reasons that a sexual harassment complaint would have been brought. They also comment that "a plaintiff may perceive behavior in the workplace to be harassing due to aspects of her (sic) own personality that cause her to be hypersensitive to workplace conduct that other female employees (sic) do not find offensive." In other words, they argue, a reasonable woman with no underlying psychological problems might laugh off the behaviors that are now the subject of complaint.

This language conveys the message that there is a reasonable level of sensitivity, both to certain kinds of sexualized workplace conduct as well as a reasonable response to that conduct. Implied is that sexualized workplace conduct, short of forcible physical contact that would meet definitions of criminal sexual assault, should be treated by its reasonable recipient as an annoyance or an amusement rather than as a betrayal, a violation of trust, or a harbinger of danger (Fitzgerald, 2017; Herrera, Herrera, & Expósito, 2018). While in the era of #MeToo, this argument seems less

credible; it remains one put forward by forensic mental health experts working for defendants in sexual harassment cases. For example, experts commonly opine some version of “The alleged harassment is just a drop in the bucket of this person’s terrible life experiences.” If the plaintiff experienced a childhood that would lead to complex trauma and was functioning adequately in an academic or work setting, why such an extreme and severe response to a sexualized or hostile work or academic setting?

These questions of what constitutes a reasonable, expectable response to sexual harassment are germane in these matters because the triers of fact, usually juries of lay people, find these very questions perplexing to them. As one of the first victims of sexual harassment that I evaluated said to me thirty years ago, “I never understood how any woman would let this happen. I figured you’d just slap the guy in the face and walk away. And then it happened to me, and I couldn’t do any of that. I froze up every time he touched me. It was like being a kid again, with my father touching me.” This woman’s beliefs, which changed only after she was subjected to severe and persistent hostile work environment sexual harassment, mirror those of the general public, and it is members of that public who constitute the juries who hear sexual harassment cases. Mediators, who are frequently attorneys or former judges, are usually as uninformed about complex trauma and its effects as are jurors. As with battered women, the question is often, “Why did this person stay and put up with this? Why not just say take this job and shove it?” (e.g., Fitzgerald & Swan, 1995). Behaviors that are commonly exhibited by targets of sexual harassment, and particularly in those cases where the target is a complex trauma survivor, are perplexing to lay persons. Surprisingly, these are also questions raised by treating therapists who are naïve to complex trauma and its effects (Courtois & Ford, 2013; Herman, 1992).

These are issues that have been raised repeatedly in the employment defense literature (e.g., Collinsworth & Fitzgerald, 2009; Fitzgerald, 2017; Fitzgerald et al., 2013; Gold, 1998; Lawson et al., 2013; Lăzăroiu, Rowland, & Bartosova, 2018; Quick & McFadyen, 2017). Three themes have emerged predictably in these matters over the years.

One theme is that yes, sexual harassment happened, but it wasn’t that bad. The emotional distress is entirely due to earlier childhood trauma. The second theme is that yes, sexual harassment happened, but compared with the horrors of this person’s childhood, that experience looms tiny, a “drop in the bucket” rather than its own emotional deluge. Each of these arguments is a version of “the person with complex trauma is already so damaged that, despite any evidence of being able to function in the world, the current symptoms have nothing at all to do with the sexual harassment that has occurred.” A third argument has been that no reasonable person (woman) would feel sexually harassed by these behaviors; they were harmless flirtation, jokes, a compliment, and an amusing double

entendre, misinterpreted through the lens of the plaintiff’s history of childhood sexual abuse.

The issue of reasonableness is one that has legal implications, and usually factors into whether a forensic psychologist finds that the symptoms presented are consistent with the alleged fact pattern, or probably an exaggeration of some kind. Reasonableness is gendered in the law, because early on in the history of sexual harassment cases, it became apparent that the “reasonable person” standard being applied in these matters actually referred to a “reasonable man.” This began to be corrected in 1991, in the matter of *Ellison v. Brady*, when the US Ninth Circuit Court of Appeals adopted a “reasonable woman” standard, replacing the “reasonable person” standard where the gender of the comparator had been implied to be male, a benchmark that had previously prevailed in matters related to sexual harassment and gender discrimination.

The court in *Ellison* opined that women’s perceptions of what would and would not be reasonable treatment were not those of a generic person, but were in fact informed by the experience of being women in a world dominated by male norms. They noted that in this, as in other matters in the law, the generic human continued to be referred to by masculine pronouns, and that the implication of this pattern was that the “person” spoken of was, in fact, male.

The court’s majority opinion in *Ellison* stated, “Next, we believe that in evaluating the severity and pervasiveness of sexual harassment, we should focus on the perspective of the victim.” This perspective on sexual harassment, e.g., that what is sexually harassing should be judged by what a reasonable woman finds to be sexually harassing, and that the standpoint of the target/victim should be taken into account in a court’s assessment of whether sexual harassment has occurred, has informed much of sexual harassment litigation in the succeeding nearly three decades.

But what the court did not, and at that time, could not, have considered was the question of how many women would reasonably perceive an action as sexually harassing from the context of a history of complex childhood trauma. This question *should* have been laid to rest by the unanimous decision of the US Supreme Court in the case of *Harris v. Forklift Systems*, a sexual harassment case in which the court opined that a reasonable woman need not have suffered emotional injury in order for conduct to arise to the level of actionable sexual harassment (*Harris v. Forklift Systems, Inc. (n.d.)*). *Oyez*. Retrieved February 16, 2020, from <https://www.oyez.org/cases/1993/92-1168>). Sexual harassment could be defined by the law. But when the alleged harassment occurred, as it often does, without witnesses, the credibility and reasonableness of the accuser, and their prior trauma history, are often brought into play to discredit the notion that a line has been crossed.

Given that the concept of complex trauma was not introduced in the professional literature until 1992 (Herman, 1992),

the absence of a query in earlier literature into the effects of complex trauma on reports of sexual harassment as well as on such harassment's psychological sequelae is understandable. Questions of betrayal present in an experience of sexual harassment, and the constructs of Betrayal Trauma (Freyd, 1996) and Institutional Betrayal Trauma (Smith & Freyd, 2014) were even less well-understood at that time.

The Role of the Plaintiff's Treating Therapist—Why it Matters Forensically

While the treating therapist is not the expert witness, their central role in arriving at the most accurate assessment of a plaintiff cannot be understated. This section reviews the role of the treating therapist. It provides educational material that an attorney might want to share with a treating therapist who is naïve to forensic realities, as a strategy for improving the quality of the team involved in the forensic evaluation.

The treating therapist of the sexual harassment complainant may be the first person to whom a target reports an experience of sexual harassment. Or the plaintiff may appear in the therapist's office because either their attorney or the forensic evaluator has insisted that they seek treatment. In all cases, no matter what, remember two things. One, the treating therapist *is not and cannot be the testifying expert* (Greenberg & Shuman, 1997). Two, the treating therapist nonetheless has an important and pivotal role to play in the legal drama that is part of their patient's life.

Treating therapists in these cases must have high tolerance for the ambiguity and apparent cultural oddness of the legal system so as not to become triangulated into struggles with the psychotherapy patient's attorneys (Frankel, 2009). Attorneys work by a starkly different code of ethics than do psychotherapists, something that often comes as a shock to the therapist when first encountering those ethics in action. For instance, an attorney may lie if it serves their client, so long as they do not suborn perjury from a witness under oath. They may trick a witness, representing that something has happened or been said that is simply a figment of the attorney's imagination. They are allowed to be insulting, and to make false statements about other parties in a case. Their job is to win at all costs, and some, although not all attorneys, skate up to the margins of what their ethics allow in order to accomplish that ultimate goal.

When teaching about forensic work to treating therapists, I use the metaphor from Star Trek: Deep Space Nine, of there being a far-away quadrant of the galaxy, run by different laws of physics and biology than our own, the Gamma Quadrant. It is populated by evil Shape-Shifters. I use this metaphor of the Gamma Quadrant to explicate the legal system. Supporting one's psychotherapy client through and out of it requires a comprehension of its norms and cultures so that one is not

blindsided nor confused by them, nor inadvertently acting in ways that harm the psychotherapy client as that person maneuvers through the Gamma Quadrant. Understanding what constitutes a reasonable response by a complex trauma survivor to sexual harassment and understanding how to best document what is happening in therapy, are two of the most essential skills for safely getting back through the wormhole to the normative world of psychotherapy.

A first step has to do with documentation. Some therapists take no notes. Other therapists believe in the two-part system; "personal health information", or PHI notes, and then a second chart with the "real notes." To the legal system, this distinction is meaningless. If your patient signs a release for "all records" pertaining to their treatment (which is a norm in these matters), both the PHI and the process notes, often full of countertransference musings, are included in the "all records" rubric.

The therapist must understand how to take notes that will be useful and not harmful to their therapy client, and what kinds of advice and resources to make available to a therapy client who is anticipating reporting sexual harassment or in the midst of litigation. Thus, a treating therapist needs baseline knowledge about people with a complex trauma history (Courtois & Ford, 2013). It is not unusual for a person with a complex trauma history plus some resilience factors, such as higher social class, education, or talent, to be functioning at a very high level in the world prior to the encounter with sexual harassment. Treating therapists must thus take careful histories, and not discount what they are hearing about prior good functioning from the person who is in their office highly dysregulated, suicidal, or practicing some form of self-inflicted violence as a means of affect regulation.

Treating therapists should be careful and thoughtful in their diagnostic formulations. Very few people look their best selves when they have been living in some kind of trauma reenactment. Jumping to a conclusion about the presence of a personality disorder diagnosis may both hinder effective treatment for the complex trauma survivor who is now being sexually harassed. Such a diagnosis is going to come back to bite the patient repeatedly as their case moves forward.

You Are NOT the Forensic Expert: Protecting the Therapy

One of the cardinal rules for treating therapists is to remember not to be seduced into becoming the forensic expert (Frankel, 2009; Greenberg & Shuman, 1997). For psychologists, this is an ethical necessity. For other professions, it is a matter of preserving the sanctity of the therapy in a context in which there will be continuous attempts to invade this somewhat safer space in the patient's life. It is not unusual for the patient/plaintiff's attorney to play on a therapist's guilt or good will, implying that the plaintiff cannot afford to hire a forensic

expert, or that the therapist will play better to a jury than a “hired gun.”

When a therapist testifies in court, even with the patient’s prior knowledge and consent, it constitutes a form of betrayal that neither party will have anticipated until after it has transpired. Conversely, some treating therapists who do not want to serve as an expert are also attempting to protect themselves from going to court and enact mistaken beliefs about how to reduce their risk of being asked to testify. In some cases, therapists have taken this to the point where they refuse to serve as a collateral (a third party contacted by the forensic evaluator), or balk at making their notes available.

This extreme stance is often a trauma countertransference being enacted (Dalenberg, 2000); the therapist is determined to be the protective, rescuing parent that their patient never had. Such a stance of refusing to collaborate with the other professionals in the patient’s life does not protect the therapy. It is unhelpful, potentially even harmful to their plaintiff-patient, and can affect the therapeutic alliance at a time when a complex trauma survivor client will be most in need of a steady attachment to their treatment provider. Creating a “you/patient and me/therapist against the entire legal system” dynamic denies the important fact that the patient is attempting to empower themselves through participating in litigation. The legal system is not the patient’s enemy, and cannot be treated as such by the treating therapist without the implication to the patient that they should have stayed out of litigation.

Without ever having to get close to a courtroom (which is one of many therapist’s fears, to the extent that some therapists a priori refuse to take on a patient who is, or is contemplating, taking a legal action), a treating therapist can be one of the most important collateral sources for their client, especially as they are more likely to have observed the nature and severity of the plaintiff’s distress at a level of depth that can rarely be achieved in a forensic interview. When the forensic evaluator obtains the notes and/or speaks to the treater, that person is able to incorporate the therapist’s material into their evaluation, which potentially places another level of distance between the treater and the courtroom. Forensic evaluators should, in turn, make every effort to communicate with the treatment provider as a collateral source.

Refusing to take notes, or to make notes available, when the patient has released them may simply stall a case. Deciding to take no notes, or to leave anything related to the case out of the notes, leaves their plaintiff-patient in an untenable situation. If many of the things they may have told the therapist about the sexual harassment experience are simply unavailable to the forensic expert, then this data source has been negated. A nostrum in the legal world is that what is not written did not happen. The therapist who hears their patient describe what is happening in the context of the sexual harassment and fails to record any of those data is leaving their

patient in a position of having a huge hole in the data supporting their case.

In my opinion, treating therapists can and should carefully document their clients’ reports of alleged sexual harassment, as they would anything reported by a client, in order to be the best possible real-time collateral source for their psychotherapy client as well as keep the most accurate notes of sessions. Because they are not the forensic expert, whose job it is to doubt and question self-report, treating therapists need to create an atmosphere of open acceptance of the client’s self-report, even if what is being described sounds bizarre or outside of the therapist’s own experience base. This is particularly true when the client is a survivor of complex trauma.

Why? Because of the frequency with which those individual’s attempts to tell others of the maltreatment to which they were being subjected were brushed off, silenced, or treated as lies or misinterpretations. Complex trauma survivors who were able to tell other adults that a priest was sexually abusing them, or a mother was chronically too affected by a substance to cook dinner or turn a stove off were used to being told not to talk that way about adults, or accused of making things up. The therapist treating the complex trauma survivor who is now dealing with what they perceive to be sexual harassment can avoid a trauma reenactment by reminding themselves that they, as therapists, are not the triers of fact, nor the forensic expert whose task it is to question and challenge. Responding with open-mindedness and holding the space for the patient’s self-report in therapy may go a long way in assisting a patient to downregulate the emotional activation created by sexual harassment, or may make it possible for the more dissociative or avoidant patient to experience and express emotions about what is happening to them in the present (Courtois & Ford, 2013; Herman, 1992).

It can be helpful to carefully note parallels between what happened to the client in childhood and what is occurring in the present day. Carefully, because complex trauma survivors often blame themselves for what happened in their childhoods, and thus are at enhanced risk of blaming themselves for what is occurring now. This, in fact, is one of the issues of what constitutes a “reasonable” response for the complex trauma survivor who is dealing with present-day sexual harassment. Psychoeducating the patient about this reality can be a highly effective therapeutic intervention.

Self-Blame Is Reasonable, Even if it Is Not Correct

To both the lay observer, and to many therapists, there is little that is reasonable about blaming oneself for being maltreated at any time in life. No one deserves to be treated unfairly or to have their sexual boundaries violated. No one deserves a workplace environment saturated with sexualized or misogynist or racist comments, pictures, and email messages. But because self-blame is one of the common problems with

which survivors of complex trauma struggle in general (e.g., Courtois & Ford, 2013), the risk that they blame themselves and feel elevated levels of shame when subjected to sexual harassment is ever-present. Self-blame is, consequently, a reasonable response from a person with complex trauma (Herman, 1992). It is not, however, accurate information about who is legally to blame for what has happened, and a treating therapist should not confuse the two.

Thus, the sexually harassed person with no complex trauma history may engage in some amount of self-blame, but is more likely to be clear that they do not merit this treatment. They are likely to be angry, and to expect to receive justice in the form of the end of the harassment and appropriate consequences for the harasser. The sexually harassed person with no complex trauma history knows who broke the rules; they know that it wasn't them, and they know that they did not cause the other party to violate their boundaries.

The complex trauma survivor who is being sexually harassed, however, has been thrust into a trauma reenactment, often in the setting that they had considered their safe place or coping strategy. Many complex trauma survivors describe retreating into school, sports, or work as a coping strategy for managing the intolerable affects associated with their home environments (Courtois & Ford, 2013). Some of them become targets for sexual harassment in precisely those settings when predatory repeat offenders identify their vulnerability, which may appear as difficulty in setting boundaries, sexualized behavior that had been normalized in the abusive family of origin, or tendencies to be over-compliant.

Consequently, *extreme* self-blame and shame are among the *reasonable* emotional responses of the complex trauma survivor who is being sexually harassed. The treating therapist as well as the forensic expert needs to recognize that these are not “over-reactions.” Notes about self-blame should be bracketed with the information that the patient understands that they did not cause the other person to misbehave, but rather blames themselves as a coping strategy in an out of control situation that resembles their complex trauma childhood. So-called “reality-testing” or reassurance responses invalidate, and may increase emotional activation, for the sexually harassed survivor of complex trauma (Courtois & Ford, 2013; Herman, 1992).

Helpful, instead, is for the treater to provide validation of the survivor's response as normative, as an attempt to regain control (Courtois & Ford, 2013; Herman, 1992). The reasonable survivor of complex trauma who is being sexually harassed is likely to have such accentuated affects because of the trauma reenactment occurring at work or school. Psychoeducation for the client that a trauma reenactment may be occurring can be of assistance in self-soothing and improved emotion regulation (Courtois & Ford, 2013; Herman, 1992). Having the cognition “This is typical for people with my life experience” can then reduce self-blame for one's emotional response to mistreatment in the present, and

may over time generalize to greater compassion for one's childhood responses to maltreatment.

Uh, I Guess I Felt Something: The Avoidant or Dissociative Survivor

There is the other group of survivors of complex trauma whose response pattern has been more dissociative or avoidant in nature. These individuals may report the facts of being sexually harassed in therapy, yet claim that they feel unaffected, or at worst mildly annoyed. Consistent with the findings of the judges in the Harris v. Forklift case, therapists and forensic evaluators alike should not jump to the conclusion that because there is no evidence of distress that no sexual harassment could have occurred.

In such cases, it behooves the professionals involved to explore the degree to which this kind of avoidant or dissociative response is a typical one for the client (Courtois & Ford, 2013). Then, the therapist may note in the record that the client frequently minimizes or even dissociates from emotional distress, and thus may appear more functional and less harmed by an experience that someone who is not a survivor of complex trauma. The treating therapist thus communicates that there is likely some kind of dissociated painful affect to which the patient may currently have little access because of how they were psychologically organized well prior to the alleged harassment. This awareness of dissociative response to maltreatment should also be a component of the forensic evaluator's knowledge base.

This exploration of a possible dissociative or avoidant response to maltreatment as a pattern in the sexually harassed person's life has particular salience with the regard to a claim of emotional distress damages (Brand, Schielke, & Brams, 2017; Brand, Schielke, Brams, et al., 2017). The plaintiff who reports little to no affect to the forensic evaluator, and who flat-lines psychological assessment instruments, may be incorrectly assessed as not having been emotionally harmed by what occurred. However, if the treating therapist has identified and noted in the records that this is a person with a minimizing or dissociative response style to stressful or even traumatic events, this information from a non-forensic context should allow the forensic evaluator to place the results of the independent examination into the larger context of this particular survivor's typical manner of coping with stress.

Thus another *reasonable* response to sexual harassment by a survivor of childhood complex trauma is one of low affect and minimal reactivity. This is not evidence of the absence of harm or emotional distress, but instead be evidence of the *extremity* of emotional distress engendered by the present circumstances, and of a level of *acuity* of distress high enough to recruit dissociative responses that were survival strategies during the plaintiff's dangerous childhood (Brand, Schielke, & Brams, 2017; Brand, Schielke, Brams, et al., 2017). In such

instances, the therapist's observations can be crucial to a complete understanding of the plaintiff's presentation. If time permits, the forensic evaluator may wish to check back with both the plaintiff and their therapist when sufficient time has passed for the therapy process to reduce dissociative reactions, at which point the overt affect related to the sexual harassment (as well as to earlier childhood experiences) may have begun to manifest itself.

The Role of the Forensic Expert and the Plaintiff with a Complex Trauma History

A forensic expert working in the field of sexual harassment requires expertise beyond the basics of how to conduct a forensic psychological examination. This is a specialized area of practice, where a generalist is likely to misinterpret what is heard, be unfamiliar with governing case law, or fail to comprehend the important variables present in a sexual harassment situation (Collinsworth & Fitzgerald, 2009; Fitzgerald et al., 2013). Thus, due diligence suggests being well-grounded in the scholarly literature and research on a broad range of information about gender, trauma, intersectional identities (Hays, 2016), and power as they present in workplace and/or academic settings. This is a research literature that is continuously updating, and in order to accurately assess a plaintiff who is a survivor of complex trauma, a forensic expert should remain current with journals in the fields of trauma and dissociation (American Psychological Association, 2013, American Psychological Association, 2016; Dalenberg, Straus, & Ardill, 2017).

A forensic evaluator must always keep an open mind and must always consider multiple alternative hypotheses about what they are observing in the person being evaluated (Weiner & Otto, 2014). They must also be familiar with the laws of the jurisdictions in which they practice, as well as the differing requirements and expectations of federal versus state and local courts. A forensic evaluator should have basic familiarity with both black letter law and case law regarding sexual harassment in these jurisdictions. I will discuss the role of the evaluator and the question of evaluating for reasonableness at greater length later in this article. All of these factors are a norm for forensic practice across the board. What is specialized here is that the forensic expert needs to be familiar with where and in what settings testimony about complex trauma, betrayal trauma (BTT), and institutional betrayal (IBT), have been admitted or excluded.

I note this because while Federal courts operate under the Daubert standard, which is friendlier to the current state of research on complex trauma, BTT, and IBT as it is based entirely on whether the theory in question has been researched and published about in peer-reviewed journals, some state

courts continue to operate under the earlier Frye standard of admissibility. Frye is, for all intents and purposes, a popularity contest, has the theory been "generally accepted" by the relevant professional community. Given how unlikely it is for a psychologist or psychiatrist to encounter any training in any trauma-related topic during their career (Cook, Rehman, Bufka, Dinnen, & Courtois, 2011; Simiola, Smothers, Thompson, & Cook, 2018), it is not difficult for an opposing attorney to find a psychologist who knows nothing about trauma psychology, nor has read even one of its many peer-reviewed journals, to opine that complex trauma, BTT, and IBT are not generally accepted because the psychologist in question has never heard of them, and for testimony to be disallowed by the judge.

We return to the question of reasonableness in the complex trauma survivor as the forensic expert conducts their evaluation of the plaintiff. This brings us directly to the issue of malingering. Every forensic expert must be concerned with malingering because the motivation to feign symptoms is built in to a civil case (Brown, 2009). Given that symptoms and/or diagnoses are generally considered the method for demonstrating damages, there can be significant motivation to present oneself as gravely disabled or otherwise high symptomatic. Unfortunately, survivors of complex trauma often elevate the validity scales on commonly used psychological measures (Brand & Chasson, 2015; Brand, Chasson, et al., 2016; Brand, McNary, Loewenstein, Kolos, & Barr, 2006; Brand, Tursich, Tzall, & Loewenstein, 2014; Stadnik, Brand, & Savoca, 2013; Briere, 2004), which can create difficulties with interpretation of assessment results when an examiner is unaware of this body of literature.

Evans (2005) stated "...the concept of neutrality is, in fact, to be neutral in which a deep openness to the experience of the person evaluated is leavened with a desire for facts and the knowledge that people naturally wish to escape painful and dangerous experiences or desire other secondary gains." (p. 28). Particularly with individuals with a history of complex trauma, as forensic evaluator can be clear about their role, engage in ethical and comprehensive evaluations in which they maintain a neutral stance, not pretend that they can be objective, be aware of, and check for their biases and not lose track that they are evaluating a human being (Brown, 2009; Dalenberg, 2000; Evans, 2005). This is not to say that if a person has complex trauma and/or marginalized identities that they cannot be engaging in feigning, be deceptive in their responses, or behave problematically on any of the other important variables that evaluators will encounter and have to sift through in forensic evaluations (Brown, 2009). Rather, it is necessary, if the forensic evaluator is to arrive at an accurate assessment, to take those factors into account in interpreting test data and behavior in an interview.

It is also critical to be aware of stand-alone measures that can increase confidence in the assessment results. For instance, the Structured Interview of Report Symptoms-2 (SIRS-2; Rogers, Sewell, & Gillard, 2010) is considered the

gold standard for detecting feigned psychological symptom presentations. Brand and colleagues (Brand et al., 2006; Brand et al., 2014) conducted research using the SIRS-2, demonstrating three primary scales were highly unlikely to be elevated when a client has experienced complex trauma. This was also replicated by the author of the test in a different sample (Rogers, Payne, Correa, Gillard, & Ross, 2009). Recent research has also shown the Test of Memory Malinger (Tombaugh, 2002) differentiates between verified and simulated dissociative identity disorder (Brand, Webermann, Snyder, & Kaliush, 2019). Importantly, there were no modifications to the standardized instructions for this measure.

What appears to be missing from the perspective of many forensic experts is the capacity to contextualize the responses of plaintiffs who are people with complex trauma. This is a form of bias stemming from ignorance of the topic of complex trauma that tends to go unexamined and unexplored, a lacuna in knowledge that is somehow not considered problematic by too many forensic evaluators. Failure to comprehend what is typical for persons with a history of complex trauma, or for any other person who has been exposed to chronic activating events such as micro-aggression (Nadal, 2018), leads to serious errors in the forensic assessment process.

Conclusion

What is reasonable? Being happy at the sound of Christmas carols playing ubiquitously in every public place in the month of December? Feeling annoyed and reminded of one's marginalized status? Not noticing the music because it is simply part of the background of life? Pick your person's intersectional identities and all of these will be reasonable responses when placed into the context of the person listening.

So, too, behaviors in the workplace and academia that sexualize what should be neutral, non-sexual contexts may lead to responses that vary widely based on the person who is on the receiving end of those experiences. The survivors of complex childhood trauma will have *their* reasonable response. Interrogating what is typical for people with complex trauma allows both treating therapists and forensic evaluators to arrive at more accurate responses and assessments. Failing to do so may, in the case of therapy, negatively affect outcome. Failing to do so in the forensic context may undermine justice.

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