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COMMENTARY

Working Toward an Understanding of a Client's Loss

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Special to the Legal

For almost 30 years I have been representing people who have suffered life-altering injuries, as well as the family members of those who have died. It was difficult for me when speaking to those whose lives had been permanently changed. I felt inadequate and powerless in the face of their overwhelming loss.

Following my 21-year-old daughter Casey's death in July 2009 I realized that, without personally going through a tragedy or suffering a loss, one cannot fully comprehend the experience, but being aware of the common elements of loss and being willing to listen to one who is suffering can lead to greater understanding.

One of the variables that has been identified in studies of loss as predictive of the path personal suffering may take is the perception of the support we receive from others. If we believe that those around us are interested and care about us we are likely to do better.

Mental health professionals describe this as "being present" or empathic listening. This is the ability to listen to someone intently and convey through the process that you understand not only their words, but how they feel and what it's like to be them, and that you deeply care. Empathic listening is not easy, especially given the awkwardness and discomfort surrounding conversations about death and permanent injury. However as a result of my personal tragedy and speaking with many others who have suffered grievous losses, it is clear that empathic listening is what all of us ultimately want as we struggle with our new lives. Whether we are representing



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For more suggestions on how to comfort those who are grieving, please visit <http://tragicloss.blogspot.com/2010/04/simple-acts-ease-great-pain.html>.

clients or just as members of our communities, having an understanding of loss and improving our listening skills can make us better able to provide support to those who need it.

Grief and mourning are not limited to death. Those who suffer life-altering injuries also mourn. Mourning processes, as they relate to the dying, as well as to those who have lost loved ones, have been extensively studied. The various stages of grief and tasks thought necessary to successfully resolve the mourning process for death can also be used as a framework to understand the response of an individual to life-altering injuries.

Death notification is the process through which police officers, EMTs, or hospital staff tell a family that their loved one has died. Those who have received a death notification uniformly relate that they will never forget that moment, in fact, that moment becomes a turning point from which they attempt, knowingly or unknowingly, to create a new "normal" for their lives. Experience has shown that the same is true for those who suffer life-altering injuries. Whether they are told that they

have suffered a life-altering injury that is permanent, or they learn it themselves, the moment of realization that life will never be the same is not forgotten.

In order to fully understand the dimensions of a client's loss, one must ask and learn the specific experience of the client with respect to that moment. Clients will relate the multitude of feelings and thoughts that they experienced, including fear, loss of sense of self and, often, that their ability to control their lives had become limited. Exploring this issue in a respectful and genuine manner can be helpful for your client and can also produce powerful testimony.

In Elisabeth Kubler-Ross' "On Death and Dying," the concept of a progression of mourning, or stages of grief, was first set forth. Although Kubler-Ross was writing of the stages that a dying person goes through, many felt those stages also applied to the stages of grief that persons who had lost a loved one went through. The stages are as follows: denial, anger, bargaining, depression and acceptance.

J. William Worden provided an alternative way to understand the mourning process in his 2009 edition of "Grief Counseling and Grief Therapy." Worden felt that there was too much emphasis placed on specific stages of grief and almost an expectation that each person would progress through the stages in some neat order. He is also of the belief that stages imply passivity, or something that the mourner, as almost a victim, must pass through. He felt it appropriate to view the process as one of completion of specific tasks in order for the mourner to ultimately become reinvested in life. The tasks of mourning are as follows:

- Acceptance of the reality of death.
- Processing the pain of grief.
- Adjusting to a world without the deceased.
- Finding an enduring connection with the deceased while embarking on a new life.

The experience of those permanently injured is similar in many respects to the experience of those whose loved one has died. Injured clients who do not die “mourn,” nonetheless. They mourn for the life that existed before the accident, all that they could do before the accident and can no longer do, and they mourn for a time when health and vitality were likely taken for granted.

Similar to family members who have lost a loved one, seriously injured clients adjust to a new life following their “loss.” In illustrating the process it is helpful to reference one of the tasks of mourning, adjusting to a world without the deceased, or in the case of someone permanently injured, adjusting to a world no longer having the ability to physically or cognitively function as before the accident.

There are multiple adjustments that permanently injured persons must make as they struggle to reconcile their old life with the new life. From an external perspective, the person may not be able to perform all of the routine daily activities that they were able before the accident. These interactions involve dealing with others in the external world and present challenges to develop new skills to successfully perform what had often been taken for granted prior to the accident.

From an internal perspective, how does an injured person who has been permanently injured view him or herself following that injury? How does he or she address the issues of a compromise of self-efficacy, self-esteem, and self-definition? A man whose identity was so intertwined with health and virility, but has become incontinent and impotent following a botched surgery, will mourn his prior “manhood” and might be challenged to redefine who he is and his self-worth. What does one feel, having an obvious significant cosmetic injury that is visible in every encounter with the outside world? Might a permanently injured person feel isolated or different? Can a man who relied upon his physical prowess to define himself as to his value or

self worth, ever feel the same following a crippling injury? Can that person ever feel fully understood by others who have not suffered the same injury?

One of my clients, a 21-year-old man who is paralyzed from the waist down, told me that he would welcome someone asking what it is like to be sitting in a wheelchair. He could see other’s faces, their eyes looking down at him and knew they were thinking about how awful his injury was, but they would not talk about it. What is now part of his life, his new story, was being ignored. Ignoring what had happened was the same as ignoring him. He wanted people to listen and to know that they cared and accepted him. Similarly, those whose loved ones have died yearn for others to speak of the deceased, to say the deceased’s name and to remember the deceased, as our greatest fear is that the deceased will be forgotten. So awkwardness surrounding death, or misinformed beliefs that one should not remind a loved one of the deceased for fear of causing pain, actually increases pain and feelings of isolation.

A spiritual adjustment may be necessary as well. Loss of a limb or the ability to walk can challenge one’s fundamental values and beliefs. Like assumptions about one’s place in the world, assumptions about control or ability to control one’s life may have changed, and often there is a search for meaning following the loss. Why did this happen? Did I do something to deserve this or bring it on? Asking the client how she or he now views the future is vital. Exploration of these questions with the client is likely to elicit testimony that will powerfully connect with others.

Finally, we consider post-traumatic stress disorder. The American Psychiatric Association’s Diagnostic and Statistical Manual (DSM) IV-TR, sets forth diagnostic criteria for post-traumatic stress disorder (PTSD), and includes four categories: (1) exposure to a traumatic event with an intense emotional response involving fear, helplessness or horror; (2) the persistent re-experiencing of the traumatic event through distressing dreams and recollections and feeling as if the event was recurring; (3) the persistent avoidance of stimuli associated with the traumatic event, including thoughts, feelings, conversations, places and persons that serve as reminders of the event, loss of interest in life and

feeling detached from others and emotional numbing; and (4) persistent symptoms of increased arousal, e.g., sleep disturbances, irritability and difficulty concentrating.

Whether or not an accident victim is formally diagnosed with post-traumatic stress disorder, many persons injured in accidents suffer from a number of these symptoms. It is not at all uncommon for symptoms of post-traumatic stress disorder following death or life-altering injuries to persist for many years following the accident up to and including the time of trial. This can provide a framework for an attorney to sensitively and intelligently discuss a client’s reactions, physical and emotional, to the accident. Re-experiencing the accident through dreams and recollections, loss of interest in life’s activities, feelings of isolation and inability to have loving feelings, irritability, anger outbursts and difficulty concentrating are all common for those suffering life-altering injuries. A thorough exploration of these symptoms, factually and emotionally, may result in the client feeling that the attorney is trying to understand what he or she is experiencing and will produce more compelling testimony.

In summary, empathically listening to a client with an appreciation for how loss affects people and how people dealing with loss try to cope can be of immeasurable benefit in understanding a client’s unique story and struggle following a loss. Critical aspects of a client’s story of loss include the circumstances under which the client first realized that his or her life would never be the same, the importance of pre-accident “abilities” in the client’s definition of self-efficacy and self-worth given that those abilities may no longer exist, the struggle to redefine one’s self as a worthwhile and productive person given the limitations occasioned by the injury, the struggle to put in context the limitations of control one has over one’s life and the changed perception and outlook for the future. •