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Cost Effective Ways to Evaluate Crime Victim Cases at Intake

In our first year Torts class we learn, if nothing else, “Torts = Duty-Breach-Causation-Damages.” If only our practices were that easy...

The reality of a plaintiff’s firm tort practice is Liability – Damages – Collectability. The path to cost-effective intake runs right through knowing what you have quickly after you obtain a new case. Thorough and standardized screening and following a few simple protocols when new cases come to your firm will arm you with this knowledge.

I. Liability

A. Evaluating Liability Through Standardized Intake

Standardizing intake sheets for the type of injury makes you ask and follow up with hard questions. Leaving the intake to an open-ended legal pad can miss critical information. Often times we shy from asking difficult questions during initial interviews because we do not want to alienate or trigger a victim. But bad facts exist whether we ask about them or not. The best thing you can do for a potential client is deliver a sober, realistic assessment of their case and then see if that comports with their expectations of what can be obtained through hiring you. Get a complete picture of the liability and the problem areas for your team to review, including a potential universe of litigation defendants and responsible third party defendants.

Understand what the defenses will be and the issues your client will face from the start and the through the conclusion of the case. Although starting with defenses and issues can appear discouraging and overwhelming, your potential client was already brave enough to seek legal help and probably anticipates the minefields in his/her case more profoundly than you think.

Specialized Intake Forms

See appendix for;

- Hazing/Harassment Intake Form
- Sexual Assault Intake Form
- Sexual Assault PTSD Damages Intake Form

Capturing the interview:

1. Voice Recorder HD (iOS)
2. SuperNote Notes Recorder and Photo
3. Rev –transcription
4. Dragon dictation
5. Google Voice - adds a second line to your cell phone (for free). Calling, text and voicemail are included. Also records calls and provides complaint notice.

B. Legal Research (other than the big 2)

1. Fastcase
 - Free option but state case law starts in 1997 (fed circuit cases in 1950)
 - Interactive timeline

- Authority check (similar to Shepards...but not)
 - No secondary sources
2. CaseMaker
 - Casemaker
 - CasemakerPRO (includes CaseCheck+ ... similar to Shepards...but not)
 3. PACER
 - Federal Court records
 - Per page fees (but low)
 4. Findlaw
 - Law Review Commons
 - 200 law reviews
 5. United States Courts Opinions
 - Everything after April 16, 2005
 6. Google Scholar
 - Select “Case Law” under search button
 - Advanced search option to narrow jurisdictions, years, etc.
 - Cases come with a hyperlink so you can track a research trail.

C. Crime Foreseeability Analysis

1. CrimeReports.com
 - Data provided by over 1,000 law enforcement agencies.
 - Toggle through a map around a specific address.
 - Can filter searches for crime trends.
 - Default is for 6 months of crime data, but can set for 24 months.
2. Spotcrime.com
 - Data obtained from law enforcement and media reports
3. Mylocalcrime.com
 - Owned by Spotcrime.com
 - Crime data aggregator that is more user friendly

II. Evaluating Damages

A. Client obtains own medical records.

Provide client with generic, non-lawyerly HIPAA release so they can obtain their own records from their providers. Many providers will hold up medical records if the request “looks like” it came from a lawyer. This is illegal, but still done.

B. HITECH – In theory you can obtain electronic medical records for the princely sum of \$6.50. This sometimes actually happens. A HIPPA release is not necessary because it is redundant under HITECH.

HITECH forms/releases are not overly technical and only require 3 elements:

1. Request be in writing;
2. Signed by the client, and;
3. Directing the medical provider where to send the records.¹

C. Some injuries, particularly sexual assaults, the cost of the medical care or counseling is a tiny fraction of the harms and losses of the victim and medical bills can create an artificially low damages anchor. Yet the damages need to be tethered to actual emotional stresses and events. Provide space for the victim to articulate what harms they suffered.²

III. Evaluating Your Ability to Collect

A. The DIY Method

Use this famous saying as your guide:

“Quick, Good, Cheap – you can only pick two.”

If you attempt to do corporate lineage, institutional, individual defendant asset or discovery of insurance policies on your own, you run a huge risk of partial, incomplete, or incorrect information. Unless you are really comfortable with your ability to uncover *all* the accurate information, you should be extremely cautious about doing high-level defendant investigations on your own. If you worked as a detective, researcher or investigator before attending law school then maybe you will be just as good as someone who does these tasks full-time.

B. Private Investigators

Private investigators have deeper access to information than most lawyers can obtain. They are also highly trained in interpreting data and information, which may seem foreign to someone who does not work with it every day. Retaining or using a private investigator should be done very quickly in the appropriate case. As in criminal law, the temporally closer to the incident that you can use a private investigator to begin working on the case, the better it will be for uncovering and discovering evidence.

Detectives believe that the first 48 hours after a crime are the most crucial for solving it. The same is usually true for civil law cases based on criminal events. Defendants will lawyer up, witnesses start to forget or become reluctant to get involved as time elapses. In more mundane matters, private investigators can often avoid time-consuming issues with bad addresses, and you can avoid costly alternative service by obtaining personal service.

¹ Anything that could ever be said about the HITECH act with respect to injury cases can be found here: <https://thelockefirm.com/hitech>

² Your client can articulate their harms and losses by reviewing and filing out adult client questionnaires such as those found at Pennsylvania Coalition Against Rape, Victim Service Program Evaluation, found at; https://s3.us-east-2.amazonaws.com/wcasa/old-website-resources/Evaluation-Selecting%2BIndicators-Measure%2BDatabase%2B25.%2BVSPE_BOOK-0417.pdf (sample pages included in the appendix).

Big data that was the realm of a select few has been democratized. Abundant databases of various quality can be accessed for single searches or for monthly or yearly subscriptions.

1. Accurint – Lexis/Nexis
2. Intelius- monthly fee or single reports
3. BeenVerified – 1 to 3 month memberships or a trial report.
4. TLO
 - Has the best information since it comes from credit unions
 - Lawyer version is not as robust as investigator PI version
 - Most accurate contact/cell phone numbers which is crucial because there is no directory of cell phone numbers
5. Tracer
6. OSINT info

IV. Apps and Practice Tools

A. Social Media

If social media did not exist, you could not dream up a better way of finding out information about someone unless you actually lived with them. As long as a person's profile is not set to private³, you can bathe in almost endless insights into your research subject.⁴ Never underestimate a person's propensity to show off or expose their inner thoughts, attitudes and beliefs online. It boggles the mind what a person chooses to share about their private lives, thoughts, "likes", posts and actions. Information that a person would never print out and tape to his or her office or home door (where it would only be seen by a few people in close proximity), is instead posted online for anyone in the world with an internet connection to read, copy and save. Social media is a godsend to learn about potential defendant's associations, friends, activities, hobbies, family, employment, education, drinking, drug use, travel political affiliations.

Social media research into an individual defendant should include a dive into:

Facebook*
Instagram
Twitter
Pinterest
LinkedIn*
Reddit
YouTube
TikTok

³ The default for social media settings is public.

⁴ Never "Friend" a potential opposing party or instruct someone else at your behalf to "Friend" an opposing party. Since this conference covers many states, this footnote would be too long to include all the states ethical prohibitions against directly contacting adverse party.

*Caution regarding research through LinkedIn and Facebook--
looking up a person by using your personal Facebook will probably trip up the Facebook algorithm and suggest you as a “Friend” to the research subject. Do you want them looking at your vacation pictures? If you have a LinkedIn account, if you look someone up the research subject be notified that you were looking at them. Is that something beneficial to your case?

B. Miscellaneous

Capture documents, pictures, maps, etc., and have in your files in pdf form without taking originals with you.

1. Adobe Scan
2. Microsoft Office Lens (can convert scans into Word documents)
3. Cam Scanner
4. Genius Scan
5. Camera to PDF

Locate coworkers or former employees

Stratejic, LLC identifies employees at an establishment, corroboration of fact witnesses of policies, permitted conduct and knowledge at time of incident.

www.statejic.com

Paul Littrell, Jr. paul@stratejic.com

Google Earth/Scene visit – this generally costs nothing, but gives you an understanding and insight that you would never get without seeing the scene with your own eyes. To stand in parking lot at 11pm and look around and see what your client saw right before

Public Information Requests

Investigating an officer or criminal case files can be done through a PIA request. You do not need to justify or explain the reason you're your search and any member of the public can make a search and the method can be very easy⁵ -

“Address your public information request to a governmental body’s chief administrative officer or its “officer of public information.”

A written request can also be submitted by U.S mail, hand delivery, e-mail or facsimile. Some governmental bodies also have online submission forms. Public information requests submitted by e-mail or fax must be addressed to a governmental body’s chief administrative officer or its “officer of public information.” If you can, keep a copy of the request and proof of the governmental body’s receipt of the request.

Check the governmental body’s website. The information you are seeking may be online. Also, governmental bodies may have information on their websites on how to submit a request for public information. Many governmental bodies have standard forms to help you with your request.

⁵ <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.552.htm>

If you believe a governmental body has not properly responded to you Public Information Act request, contact the Open Records Hotline at: [\(512\) 478-6737](tel:(512)478-6737) Toll free: [\(877\) 673-6839](tel:(877)673-6839)⁶

And after all of that, if you cannot help them, do not leave them empty-handed. Provide them with tools, terminology, guidance or thoughts on going forward. Give them the phone number to another law firm that has a crime victim practice, the website to NCVBA, your state's Crime Victims' Compensation Fund⁷, a local bar association, law school clinics, etc. Leave someone who came to your for help in a better place with legal terminology for their next consultation.

Lastly, no one remembers how fast you did a job, they remember how well you did it.

⁶ Found at: <https://www.texasattorneygeneral.gov/open-government/members-public/how-request-public-information> accessed 9/4/2019.

⁷ <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/crime-victims/Printed%20CVC%20Application.pdf>

Sexual Assault
Intake Form

What happened (victim's own words)

Defendant

Do you know defendant? How long?

Contact since assault?

Verbal or physical threats?

Has perpetrator tried to contact you since the assault?

Do you anticipate future contact with the perpetrator through your

School

Housing

Employment

Social circle

Preserve all text messages (from/to)

Does the perpetrator have access to any of your personal information – address, SSN, keys to house, etc?

What do you think the defendant will say about the assault?

Why do you think s/he will say that?

Location of Assault

Private home/Dorm/Frat/Condo/Hotel

Do you know if other people have been assaulted there?

Witnesses before/after?

Cameras at location?

Disclosures

Who else knows about the assault?

Report assault to any school counselors, faculty, campus officials?

When did they learn about the assault?

How did they learn about the assault? (e.g. from another person)

If under 18, was it disclosed to a mandatory reporter?

Employment

Assault at work?

Work function? Did employer provide or pay for alcohol?

HR/manual/handbook regarding protocols?

Does anyone at your workplace know about the assault?

Before assault, what kind of work performance reviews (2 most recent)?

Background

Ever had a lawsuit before?

What private information of yours are you most worried about?

Have you been arrested for anything?

Prior Victimization?

Report to Police?

Did you speak to law enforcement?

Detective?

Victim's advocate?

Police officer/Campus

Police report Number?

What did you tell the police?

Did you leave out anything to the police?

Why?

Who did you speak with in law enforcement?

Did you leave anything out?

Have you signed a release for your medical records?

If not reported to police why not:

Afraid	No physical evidence	Do not want to go to court/testify	Embarrassed
Don't want parents/family to know	Blame-self	SOL	Other

Drugs Involved in assault?

Alcohol involved in assault?

Hospital

Toxicology?

HIV prophylaxis?

Rape kit?

Emergency Contraception?

Interview with advocates?

Harassment or Hazing Intake Form

- 1) Date and Time of Incident

- 2) Address of Incident

- 3) On Campus?

- 4) Off-Campus at school event?

- 5) Offensive Behavior
 - A) Assault

 - B) Verbal Harassment

 - C) Threats
 - i. Verbal

 - ii. Physical

 - D) Physical Assault

 - E) Social Media messaging

 - F) Damage to Property

 - G) Graffiti

 - H) Phone/Text Harassment

 - I) Threat of outing

J) Stalking

K) Other

Documentary proof of the behavior? Pictures, texts, witnesses?

6) What happened (victim's own words)

7) Police Notified?

8) RA Notified?

9) Why or why not?

10) Identities or descriptions of perpetrators

11) Relationship of perpetrator(s) to victim

- A) Stranger
- B) Acquaintance
- C) Friend
- D) Roommate
- E) Coworker
- F) Classmate
- G) Professor/Instructor/TA
- H) Supervisor
- I) Other

APPENDIX I

A. Adult Client Questionnaire (ACQ)

ADULT CLIENT QUESTIONNAIRE (ACQ)						
Experiencing or remembering a hurtful or violent event often impacts how people feel or behave. Please circle the answer that best describes how much you have been bothered by that problem <u>in the past month</u> . Provide one response and one response only on the scale provided.						
(This information will not be used for counseling purposes; if you have immediate needs, please talk to your counselor.)						
		Not at all	A little bit	Moderately	Quite a bit	Extremely
1.	Repeated, disturbing memories, thoughts, or images of the victimization?	1	2	3	4	5
2.	Repeated, disturbing dreams of the victimization?	1	2	3	4	5
3.	Suddenly acting or feeling as if the victimization were happening again (as if you were reliving it)?	1	2	3	4	5
4.	Feeling very upset when something reminded you of the victimization?	1	2	3	4	5
5.	Having physical reactions (e.g., heart pounding, trouble breathing, sweating) when something reminded you of the victimization?	1	2	3	4	5
6.	Avoiding thinking about or talking about the victimization or avoiding having feelings related to it?	1	2	3	4	5
7.	Avoiding activities or situations because they reminded you of the victimization?	1	2	3	4	5
8.	Trouble remembering important parts of the victimization?	1	2	3	4	5
9.	Loss of interest in activities that you used to enjoy?	1	2	3	4	5
10.	Feeling distant or cut off from other people?	1	2	3	4	5
11.	Feeling emotionally numb or being unable to have loving feelings for those close to you?	1	2	3	4	5
12.	Feeling as if your future will somehow be cut short?	1	2	3	4	5
13.	Trouble falling or staying asleep?	1	2	3	4	5
14.	Feeling irritable or having angry outbursts?	1	2	3	4	5
15.	Having difficulty concentrating?	1	2	3	4	5

		Not at all	A little bit	Moderately	Quite a bit	Extremely
16.	Being "super-alert" or watchful or on guard?	1	2	3	4	5
17.	Feeling jumpy or easily startled?	1	2	3	4	5
18.	Using alcohol or drugs not prescribed to you to deal with your feelings?	1	2	3	4	5
19.	Doing risky things?	1	2	3	4	5
20.	Doing things to physically harm yourself?	1	2	3	4	5
21.	Drinking or using drugs too much?	1	2	3	4	5
22.	Eating too much?	1	2	3	4	5
23.	Having no interest in sexual activity?	1	2	3	4	5
24.	Having difficulty becoming sexually aroused?	1	2	3	4	5
25.	Not eating enough?	1	2	3	4	5

Weathers, F., Litz, B., Herman, D., Huska, J., & Keane, T. (October 1993). The PTSD Checklist (PCL): Reliability, Validity, and Diagnostic Utility. Paper presented at the Annual Convention of the International Society for Traumatic Stress Studies, San Antonio, TX.