

# Civil Justice for Sexual Assault Victims

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# What is Civil Litigation?

- Criminal System
  - State v. Defendant
  - Witnesses
    - Prosecutor makes decisions
    - To punish the criminal
    - On behalf of the State
    - Victim has no true decision making power
    - No attorney-client privilege
    - Victim is not made whole

# What is Civil Litigation?

- Civil System
  - Plaintiff v. Defendant
  - Plaintiff decides to bring a case
  - Plaintiff makes the essential decisions on the case
  - Plaintiff decides whether to settle the case

# What is Civil Litigation?

- Provides plaintiff with an opportunity to vindicate rights
- Provides plaintiff with sense of empowerment
- Plaintiff can be actively involved in her case
- Plaintiff is made whole
  - Money for counseling
  - Money for health care
  - Money for lost wages
  - Money for human suffering

# What types of lawsuits can be brought?

- Torts
  - Wrongs against an individual
- Types of Torts
  - Against the Perpetrator
    - Assault
    - Battery
    - Intentional infliction of emotional distress
    - Invasion of Privacy

# What types of lawsuits can be brought?

- Type of Torts
  - Against the Perpetrator
    - False imprisonment
    - Wrongful death

# But perps don't have money!

- Current assets
- Expectancies
- Wages
- Insurance
  - Homeowner's policies
    - Intoxication; Mistake of Fact; Insanity
  - Life Insurance
  - Automobile Insurance

# Third Party Liability

- Parents
- Bars/Restaurants
- Employers
- Apartments
- Shopping Centers/Parking Lots
- Hotels/Motels
- Campuses



# Types of Claims Against Third Parties

- Inadequate Security
  - An owner of a property has a duty to take reasonable steps to protect its tenants/guests from a known risk
- Sexual Harassment
- Negligent Hiring
- Negligent entrustment

# Why is Civil Litigation Important?

- Safety is a non-profit item
  - Insurance companies set standards
    - Require compliance with security standards
    - On-site Inspections
  - Deterrent effect of Crime
- Create a record for the perpetrator
- Empower the Plaintiff

# What happens when a victim decides she wants to sue?

- Client intake/interview
- Client Treatment
- Investigation
- Hiring of Experts
  - Security experts, engineer, architect, psychologist, psychiatrist, medical doctors, rehabilitation specialists, life care planners, vocational experts

# Steps of Litigation

- Filing of Complaint
- Answer
- Discovery Period
  - Written discovery
  - Subpoenas
  - Depositions
- Motion for Summary Judgment
- Trial

# Statute of Limitations

- Time period to bring a lawsuit before lose rights
- 180 days: Sexual harassment
- Two years: Any injury
- Childhood Sexual Abuse: 5 years from majority (23 years old)
- Repressed memory: Two years

# Cons of Civil Litigation

- Time for work on the case
- Length of proceedings
- Trial open to the public
- Loss of confidentiality
- Loss of privacy and potential media exposure
- May have to be evaluated by psychologist/psychiatrist of the defense's choosing

# Cons of Civil Litigation

- Reliving your abuse and delaying the healing process
- Alienation from friends and family
- Difficulty of collecting from perpetrator
- Perpetrator could file counterclaim
- Perpetrator present at trial and deposition

# Pros of Civil Litigation

- Expose the wrongdoings of the perpetrator
- Compensation for damages
- Emotional empowerment
- Opportunity to tell the story
- Vindication
- Acknowledgement by the perpetrator
- Acknowledgement by the community



# Pros of Civil Litigation

- Assist in recovery and healing
- Punish the perpetrator
- Increase safety and awareness
- Bring public attention to pervasive problems
- Bring change to environments that foster crime

# Special Needs of Sexual Assault Victims

- Constant questioning of themselves
- Loss of memory
- Inability to make decisions
- Fear
- Rage
- Feelings of going crazy
- Feelings of the system being against them

# Strategies for working with sexual assault victims

- Cultivate listening skills
  - Respect
  - Gentle and soothing
- Do not touch without permission
- “Why” questions
- Put things in writing
- Inform victims about their right to confidentiality

# Victim service provider role

- Inform client about possibility of civil remedies
- Inform client about likelihood of recovery
- Assist victim to locate attorney responsive to a victim's needs
- Elicit relevant facts from victim and provide to victim's civil attorney

# Resource for Crime Victim Attorneys

- National Crime Victim Bar Association
  - <http://www.victimbar.org/>
  - 1-800-FYI-CALL

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