

Speaker 1 ([00:00](#)):

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Caroline Keller ([00:22](#)):

This is Caroline Keller, Chair of Greenberg Traurig's Global Pro Bono Program and Litigation Shareholder in the New York office. I'd like to welcome you to Greenberg Traurig's pro bono podcast, Good in Practice, because everyone has a story. This episode is part two of my interview with Samantha Kubek. Samantha is a former equal justice works fellow who was co-sponsored by Greenberg Traurig and Greystone & Company Inc. Her project was to support female veterans who were survivors of sexual trauma during military service by representing them on their veterans administration benefits cases, helping them to obtain monthly compensation for the lasting effects of their trauma. She did this work at the New York Legal Assistance Group, and after her fellowship was over, she continued working at that organization as a staff attorney on the same issues.

Caroline Keller ([01:17](#)):

She recently left the New York Legal Assistance Group to become a visiting assistant clinical professor and director of the Robert W. Entenmann Veterans Law Clinic at the Maurice A. Deane School of Law at Hofstra University. In part two, Samantha and I discuss some of the challenges that her clients face when they're applying for veterans benefits, a little bit about how she practices self care and about long-term efforts in the Senate to pass the Military Justice Improvement and Increasing Prevention Act, legislation designed to reshape the manner in which the US military prosecutes sexual assault within its ranks. How many of the people who you have offered services to, when you get to the point where you might work through it with them, that they have been a victim of a sexual trauma and they are eligible for benefits, do you have any that don't want to pursue the claims because they're scared about telling the stories over again, retribution, anything like that?

Samantha Kubek ([02:20](#)):

Absolutely, absolutely. I have many clients who have never told their story before and the practice of telling that story is really overwhelming. I have clients who, especially with young veterans, a lot of them aren't sure whether they should put in a claim because they're worried, "Well, what if I decide that I want to go back into the military and now I've put it out there that this is an experience I had and that I'm suffering in this way?" So most clients are overwhelmed, the prospect of having to tell their story and it's something that we talk about from even before I meet with them. When I am scheduling a client to meet me and I know that we're going to be potentially diving into something like sexual trauma, I will say to them at the outset, "We are not going to need to talk about the details of your story at this first meeting."

Samantha Kubek ([03:23](#)):

And I found that by doing that, I'm so much more likely to get them in the door because you get to this [inaudible 00:03:31] office, you've never met them before and they're like, "Okay, tell me what happened." And they're like, "I don't know you, I've never spoken with you before." A lot of my clients talk about heightened symptoms around the time of having to retell, and so I don't want them being unable to sleep, having increased nightmares or flashbacks in anticipation of a meeting with me in which I don't plan on getting into the details with them because I feel that I haven't earned their trust yet in

order to hear their story at that first meeting. So at the first meeting, I do give them an overview of what the process is going to look like.

Samantha Kubek (04:07):

And one of the things that I found really helpful and important is first of all, all of my clients are currently receiving treatment. They currently has someone they're talking to, therapist, social worker, psychiatrist, whoever it is, about their experiences so that I know that if there is an increase in their symptoms, they have a safe space and a place to go where they can process through that. The other thing is I am very flexible with my clients in terms of how they can tell what their story. Some clients, speaking aloud what happened to them is overwhelming. And so writing something and sending it to me is easier for them, and that's fine. I have some clients who, the notion of sitting at home alone and writing down what happened to them is really overwhelming and they'd much rather come in and just pour the story out to me and leave the office and have me help put it together into a cohesive statement.

Samantha Kubek (05:13):

I tell all my clients, "Whichever is safest for you is the right answer. There's not a best way of doing this. We can do a hybrid." I've had clients who write something themselves, and I read through it and I realize I have a lot of questions for them and we end up having a whole conversation in which many more details comes out, and that's all fine. It's all okay, whichever way they want to tell this story is the way they should. Because as I said, there is no process by which survivors of sexual assault in our military really get to see justice, and so the least I can do is allow them ownership of the process of telling their story because it's their story. And the process of applying for these benefits, as I said, requires constant retelling. And not just to me, they will have to share their story with a stranger at some point in this process.

Samantha Kubek (06:12):

So I can at least make the part of working with me as safe and supported as possible. And it's one of the reasons why the medical legal partnership model works so well with this population and with this particular issue, because I have an established relationship with most of my clients' therapists, with most of my clients' social workers, with their psychiatrists. We all are in the VA together when it's not COVID and I can talk to my client and say, "Okay, you're coming in to meet with me at 3:00 o'clock to talk about what happened to you. Why don't you set a therapist appointment for right after that? Why don't you have somewhere safe to go immediately after leaving my office?" And that makes them feel better, it makes me feel better, it makes everyone know that there's a safe and supported environment approaching this really difficult experience.

Caroline Keller (07:09):

You mentioned the fact that a lot of these individuals either really will not get justice for what happened to them or they're concerned they won't get justice. You've been doing this work for about five years and you also mentioned in the beginning that you yourself had not been as familiar with sexual trauma, sexual assault in the military when you first started learning about the issue. And I think that depending on where people are getting their news, this issue really began to become highlighted maybe in the past year with the murder of the 20 year old woman at Fort Hood. And I know that recently there's been an introduction of bipartisan legislation called the Military Justice Improvement and Increasing Prevention Act. I was wondering if you could tell us a little bit about in the five years you've been doing this work,

have you seen an increased awareness and response by the government to try to get justice for victims of sexual trauma in the military, or have you seen things go a different way? What's your view of how things are going?

Samantha Kubek ([08:17](#)):

So I certainly think that the awareness of the problem has been increasing. However, I feel like with many issues in our society today, attention ebbs and flows. Back in, I want to say 2012 or 2013, there was a documentary that came out about the epidemic of sexual assault in the military. It was called The Invisible War, it got a ton of attention. People were really moved by the documentary and there was a lot of conversations around this. Then the conversation died. The first big public moment around sexual assault in the military occurred the year-

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Samantha Kubek ([09:03](#)):

... around sexual assault in the military occurred the year I was born, and that was the Tailhook scandal.

Caroline Keller ([09:07](#)):

I remember hearing about that and being appalled and terrified. But for our listeners who may be a little bit younger than the both of us, can you tell us what the Tailhook scandal was?

Samantha Kubek ([09:20](#)):

Yeah. So the Tailhook scandal was a military scandal in which there were Navy and Marine officers, I believe, who were alleged to have sexually assaulted over 80 women and there were several men as well, or engaged in otherwise improper conduct, while there was this symposium that occurred, it was an annual symposium, the Tailhook Symposium, which is how it got its name in 1991.

Samantha Kubek ([09:54](#)):

And there were several survivors who came forward about what happened to them, and it gained national attention at the time and was seen as incredibly shocking. And it was this big reckoning moment of what was going on in the military.

Samantha Kubek ([10:16](#)):

And I bring that up to say, yes, we've made progress, but we have very short-term memories when it comes to our outrage a lot of times. And sexual assault in the military really has been one of those areas.

Samantha Kubek ([10:32](#)):

I do feel like there have been more and more events that have gained attention, and there are more and more activists, survivors themselves, representatives in the government, who are refusing to give up on fixing this problem, and that has really helped.

Samantha Kubek ([10:55](#)):

So the act, for example, that you referenced the Military Justice Improvement Act was first introduced by Senator Gillibrand in 2013. And it has just never passed. She reintroduces it every year. Every year,

just beating that drum, hoping that it will pass. And so, she's really been a champion on this issue for years now.

Samantha Kubek ([11:20](#)):

But this past summer, when Vanessa Guillen was murdered, it felt different. It still feels different. It feels like maybe we're getting somewhere. There have been an increased number of congressional hearings and conversations around this problem.

Samantha Kubek ([11:43](#)):

This is an issue that President Biden has referenced multiple times that he wants to give attention to and pay attention to. And just that alone, having the president speak out about this issue, naming it as a priority, having the defense secretary name it as a day one priority, having the new VA secretary name it as a day one priority, all of these are things that matter. All of these are things that do make a big difference.

Samantha Kubek ([12:14](#)):

And so, I am hopeful that we will see big change, because we have, we have made progress on this issue. We are nowhere near where we need to be, but it is moving in the right direction, albeit far too slowly.

Caroline Keller ([12:32](#)):

As we air this, we will still be in the pandemic, and we've been in the pandemic for over a year, as of the day that we tape this. So I wanted to know if you could describe to us how you've been able to transition so that you can still provide services to clients through the pandemic, and how has that been working out?

Samantha Kubek ([12:54](#)):

Yeah. So the model that my division of NYLAG works through is this medical-legal partnership model, which means that in normal times we are embedded on site in the hospitals. And so, before the pandemic began, I twice a week was on site at a VA hospital. I spent Mondays at the Manhattan VA, Wednesdays at the Bronx VA. And that is where all of my clients had their first meeting with me.

Samantha Kubek ([13:24](#)):

It's a great way of doing everything. It's a place where they're already going for other reasons. They have their doctors and providers nearby. It's familiar to them, so they're not walking into just a strange law office to meet with me. And so, it really enables a faster trust relationship than I think we would have otherwise.

Samantha Kubek ([13:51](#)):

However, with the pandemic, it was very clear early on that our model was going to need to shift. So in early March of 2020, we stopped having our clinics occur at the VA hospital, and we transitioned to a tele-legal model.

Samantha Kubek ([14:11](#)):

I still have my clinic on Mondays and Wednesdays, but now the appointments happen by phone. Clients can still reach us in the ways they always have. They can call our intake line, or they can get referred to us by their social workers or their health care providers. That end of things is still working kind of the way it always did. But now, the appointments happen via telephone or video call, whichever works best for everyone.

Samantha Kubek ([14:39](#)):

And it's been an adjustment, and especially for some of our clients who are elderly and may not have access to all of the technologies that the younger clients have, or they might not be as familiar with some of the technologies that we're trying to use to make things function better, it's definitely been a challenge.

Samantha Kubek ([15:04](#)):

It's one I think that we've been able to meet really well, but things that used to take one meeting with the client, they would come in and they would tell me that they want to file for these benefits, first step, we got to get some records. We've got to request your health records from the VA. We've got to request your records from the military. We got to pull everything in. And in that first meeting with them, I would have that paperwork for them to help fill out so that we could get those records.

Samantha Kubek ([15:31](#)):

Now, we have a meeting. It's by phone or by video. And I have to find out, "Okay, do you use email? Do you have a printer at home? If I email you documents, would you be able to print them and sign them? If not, okay, I'm going to have to physically mail them to you. You're going to have to physically mail them back to me." And so, everything just is a bit more, there's more steps in every process than there used to be.

Caroline Keller ([15:58](#)):

Obviously, because you're getting a lot of your clients through the clinics, some of them already have service providers for mental health issues. Do you ever have a client who comes in and part of the relief that you're able to give them is access to mental health services?

Samantha Kubek ([16:15](#)):

Absolutely. Several clients who have come in not currently receiving mental health services. And they'll come in and say, "I want to put in a claim for what happened to me." And we have to have a conversation at that point about not only what does this process look like, but what does this process require?

Samantha Kubek ([16:38](#)):

Because, as I've said, this process is emotionally very difficult, and I would like my clients to hopefully only go through it once. Well, my goal is, all lawyers' goal, is to not need to appeal anything. And so, I don't want to have to make them go through this more than once.

Samantha Kubek ([16:58](#)):

With this type of claim, you need to have a current diagnosis of some sort of mental health condition. And not only do you need a diagnosis, but the level of compensation that you receive is directly related to how severe your medical condition is now.

Samantha Kubek ([17:15](#)):

So if you're someone, for example, who did experience a sexual assault in the military 30 years ago, and you have managed to somehow be at a place where you are doing okay, and maybe you're not experiencing symptoms of PTSD or anything like that, which is amazing, there is no compensation that you can apply for. Because the compensation isn't for what happened to you, the compensation is for your current suffering.

Samantha Kubek ([17:47](#)):

And so, when someone comes in to see me, and they're not currently receiving treatment... And I mean at all, because if they're receiving treatment outside of the VA, that's fine. But if they're not receiving treatment at all, first of all, they may not have a diagnosis yet. So if they don't have a diagnosis-

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Samantha Kubek ([18:03](#)):

First of all, they may not have a diagnosis yet. So if they don't have a diagnosis yet, there isn't a claim I can put in. But if they have a diagnosis, but they're just not receiving treatment for it, the problem is we can put the claim in, but ultimately they're not going to be awarded either very much or any compensation for that diagnosis. Because if you have a diagnosis, but no symptoms of the diagnosis, the VA will say, sure, we think the diagnosis is this tied to your time in the military, but we're not going to pay you any money because you're not currently suffering from that diagnosis. And so, I'll have a conversation with the client about that, about the realities of what we're talking about, about the fact that this process is not designed to compensate for what happened to you. It is designed to compensate for your current suffering.

Samantha Kubek ([18:52](#)):

And so, it's important that they get the care they need if they need it. So if they are not currently experiencing symptoms or anything like that, then the conversation we're having is this benefit isn't for them situation. I wish there was a benefit I could help you apply for. I think there should be some sort of compensation or way to obtain compensation simply because the military allowed this to happen to you, but in the world we're in now that doesn't exist. And so if you're not having any symptoms, there's not a claim here. If they are experiencing symptoms and they're simply not receiving treatment, which there's a whole host of reasons why people don't engage in treatment, what I would say to them is that absolutely your choice. There is no requirement in the world that because you are suffering from something, you should obtain treatment for that. If you are finding a way to cope and get through life, you are surviving and that's what's important, but the VA isn't going to be able to see it.

Samantha Kubek ([19:57](#)):

And so if we put in this claim, it's likely to be denied because you don't know have what we need to meet the elements of this claim. And so, I'll have a conversation about, are you open to receiving treatment? And if you are, great, let's enroll, let's find you a mental health care provider at the VA. Let's see whatever treatment is needed, let's help you get that. And I absolutely have facilitated that for

many clients over the years of helping them to engage in treatment. And I'll say to them, come back to see me in six months and we'll see what everything looks like. We'll see what the diagnosis is. We'll see how you're doing. We'll see what the medical records are showing.

Samantha Kubek ([20:42](#)):

I also have some clients who are coming in relating to sexual trauma and it might be partially related to compensation, but it's also partially sometimes related to an inability to access healthcare through the VA. Because sometimes with survivors of sexual trauma or assault, whether it be due to retaliation for reporting what happened to them or whether it be due to changes in their behavior that resulted from the assault, many survivors end up with less than honorable discharges from the military. And as a result of that less than honorable discharge, they may have difficulty accessing care through the VA. And so, sometimes that's the route in that the client comes to us is that they want to be able to obtain their care through the VA.

Caroline Keller ([21:39](#)):

Are you ever able to obtain an alteration in the discharge status based upon the fact that changing behavior may be as a result of sexual trauma?

Samantha Kubek ([21:49](#)):

Yes. So a person can seek what's called the discharge upgrade. The logic of getting a discharge upgrade has to be either that something was done improperly when you were discharged. So maybe there was a policy in place at the time that wasn't followed. Maybe you didn't have adequate access to counsel, whatever it is, that's one pathway to getting a discharge upgrade is to say that something happened that shouldn't have happened under the rules that existed at the time that I served. But the other option is what happened to me was unfair because with a fuller understanding of what was going on, this should not have been handled the way that it was. And so, that's the pathway towards a discharge upgrade that a lot of sexual assault survivors are able to access, where the argument that you're making is you have a veteran who may be all of a sudden started being late for their duty assignments, or you have a veteran who all of a sudden was that talking back to their chain of command. So their superior officers.

Samantha Kubek ([23:02](#)):

And when you talk with the veteran, what you learn is that all of those or any of those are them coping with the trauma of what happened. Maybe they're late for duty all the time because they've started having pervasive nightmares and they're unable to sleep. And so, they're waking up late and being late for duty assignment. Maybe they're talking back to their superior officer because that superior officer was their assaulter. Or maybe the entire discipline that was done to them was an act of retaliation for reporting their sexual assault.

Samantha Kubek ([23:41](#)):

Any of those are situations that you can apply for a discharge upgrade. And over the past several years, the military has been continuously putting out new memorandum, directing the boards that receive these discharge upgrade applications to be more and more considerate and lenient towards veterans in this situation, be more and more understanding of the ways in which trauma can cause so many of these types of quote unquote misconduct that veterans might receive a less than honorable discharge from. And so, it is something that clients come in to see us about. It is something that we will assist them with. There is a higher success rate on these particular types of claims, where you are talking about PTSD.

There has been a greater understanding, such that the success rates are a little higher when you're looking at that group of discharge upgrades, but they are difficult lengthy process.

Caroline Keller ([24:50](#)):

Yeah. Years doesn't seem to be swift justice at all. And it's very striking to me when you were talking about how somebody can be able to access these benefits that they actually still have to be suffering. And it's pretty dour that somebody who's been a victim of a crime can't get relief, unless they have been fully traumatized and not recovered from that crime. But you know, that's why you do the great work that you do to support them.

Samantha Kubek ([25:25](#)):

And that's why the work can be as challenging as it can be, because I am not seeing the survivors who are doing great, right? The survivors who are doing great aren't eligible for these benefits. And so the women that I'm speaking with, the men that I'm speaking with are ones where years, decades later, this has still shaped their life in a negative way. And this is still impacting their ability to just live their lives.

Caroline Keller ([26:00](#)):

Can you tell me a little bit if you're comfortable sharing it. Something that I think a lot of attorneys often don't want to take pro bono cases, because they're concerned about dealing with very complicated, emotional cases where they may feel impacted dealing with somebody else's trauma day in and day out can be traumatizing in and of itself and very difficult. What kind of self-care have you put in place to allow you to continue to provide these services and provide them well, because you must be doing something to make sure that you can fully be there for your clients.

Samantha Kubek ([26:38](#)):

It's an ever-changing answer to that question. And it's different things at different times. Setting clear boundaries on the work is really important. I have some clients who due to the nature of their trauma, their brain will sort of go into hyperdrive at night and they will think of things that they couldn't remember. They-

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Samantha Kubek ([27:03](#)):

And they will think of things that they couldn't remember. They will have flashbacks. They will have a lot of symptoms, things like that, and so they'll send me an email at 3:00 in the morning. Or they'll call my office phone at 3:00 in the morning, and leave a voicemail. And in the beginning, the calling my office phone, that would ring in another... That would ring in my office, and I wouldn't be subjected to that. But the email, there would be times where maybe it was midnight or 1:00, and I would see that I'd gotten an email from a client. And I would read it, and I would get very upset because it was clear that they were in distress. That was really difficult, and it was too much to be dealing with this 24 hours a day. And so now, I will have conversations with my clients about what my work hours are when I'm in the office, when I'm available, when I will answer. I will say to them, "If you need to send that email right in that moment, because that's the only way that you're not going to forget what it is that you've remembered, if you need to make that phone call, that's okay. But just know that you're not going to get a response at that hour, because I'm not working at that time." And that's been really helpful both for me in terms of not reading those emails and knowing that the client didn't expect me to be reading that



email at that hour, but it's also good for my clients to know when I'm there and when I'm not there. Having the same conversation with my clients about...

Samantha Kubek ([28:38](#)):

I'm your lawyer and not your therapist. And while a lot of what we do sometimes feels a little bit like therapy because we are talking about what happened and things like that, if they are suffering from an increase in symptoms or things like that, that's something we really need to make sure they're talking with their medical team about. And it's part of why it's so important to me that my clients... Aside from the reasons we discussed earlier about why it's important to have them be engaged in treatment in terms of the likelihood of success, it's also... By having them engaged in treatment, I don't feel like, "Oh my God, if I don't answer this phone call, or if I don't get back to them right away, are they okay?"

Samantha Kubek ([29:18](#)):

They have healthcare providers who are there for them for those reasons, and I'm here to help with the legal process. I think it's important to realize that a lot of times we talk about vicarious trauma as if it's this thing that we can avoid. That we can somehow get to a point where a client tells us a horrific story, and we just walk out of the meeting feeling okay, but that's never going to happen.

Samantha Kubek ([29:46](#)):

And if it has happened, you've probably hit a level of burnout. That's not good either. These stories will impact you. There's not a way around that. It is a sign of your humanity that you are impacted these conversations, particularly... Your clients become people in your life who you care about, and so it's distressing to hear about this. And to know when you need to take a break and to know when you need to take some time. And whether that means actually taking a week-long vacation, or whether it means just going for a walk, having really supportive colleagues with whom you can talk about what you are hearing with your clients and process through it is helpful. I have my own therapist that I can process through what my clients are processing through with me, which is incredibly helpful. And finding things that bring you joy, having hobbies that I enjoy spending time, when it's not COVID with my friends and family, all helps.

Samantha Kubek ([30:55](#)):

The other thing is... And I actually heard this from another Equal Justice Works fellow when I was still a fellow, and it stuck in my head, that we talk a lot about vicarious trauma. And it's real, and we need to talk about it, but there's also such a thing as vicarious resilience. And sometimes, I just think about my clients and what they've been through and the fact that they are waking up every day and putting one foot in front of the other, getting through this. And that's inspiring, and that makes me want to keep fighting for them, and it keeps me going.

Caroline Keller ([31:36](#)):

As of the date of the airing of this podcast, the Military Justice Improvement and Increasing Prevention Act still hasn't been passed. You've been listening to Greenberg Traurig's pro bono podcast, Good in Practice. I'm your host, Caroline Heller, chair of Greenberg Traurig's global pro bono program and litigation shareholder in the New York office. My guest today was Samantha Kubek, former Equal Justice Works fellow co-sponsored by Greenberg Traurig, former staff attorney at the New York Legal Assistance Group, and current visiting assistant clinical professor and director of the Howard W.

This transcript was exported on Aug 31, 2021 - view latest version [here](#).

Entenmann Veterans Law Clinic at the Maurice A. Deane School of Law at Hofstra University. Thanks for listening, and I hope you join us next time for another pro bono story.

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