

# Trauma-Informed Courtrooms and Generational Trauma: Trauma-Informed Lawyering and Advocacy: Practical tips for attorneys with a focus on communication



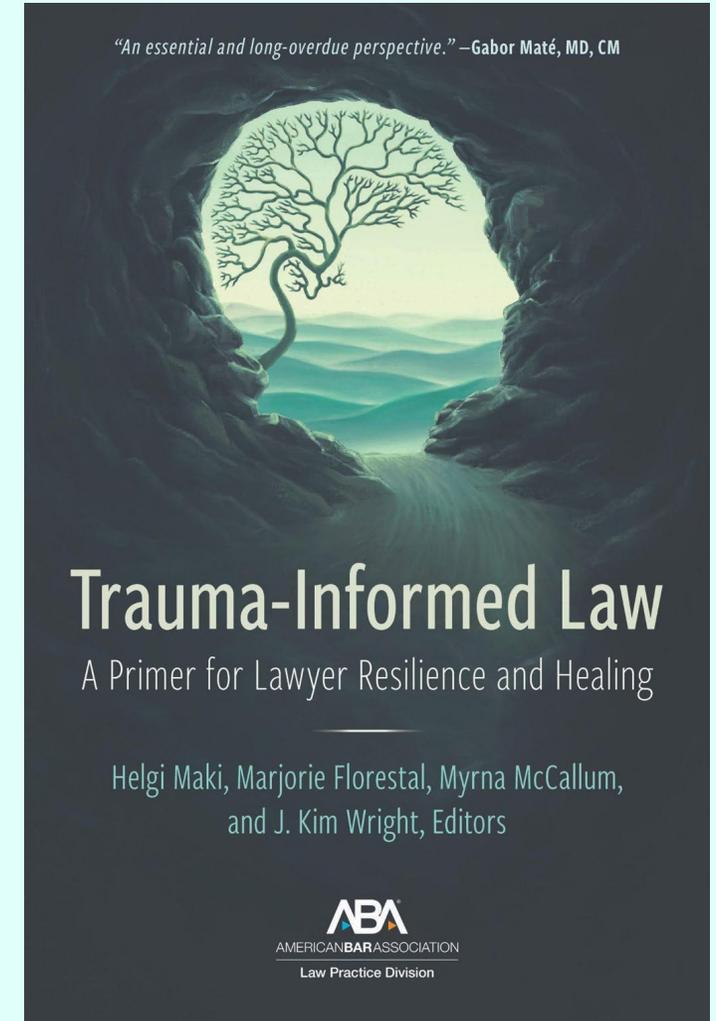
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Generativity Co., Coaching & Consulting

# Based on...

Trauma-Informed Law: A Primer for Lawyer Resilience and Healing,  
Helgi Maki, Marjorie Florestal, Myrna McCallum and  
J. Kim Wright, Editors

American Bar Association, Law Practice Division

<https://www.americanbar.org/products/inv/book/430137593/>



## Overview: Today's Learning Objective and Poll Questions

- Increase attorney capacity to serve clients with a trauma informed perspective
- Group question(s)
- Review scenario and any facts to focus on (or new facts)

## Outline

- 1. Learning and communication needs – working with clients and the “biopsychosocial” model of trauma
- 2. Vicarious, secondary and direct trauma – attorneys’ own trauma or toxic stress and its impacts
- 3. Best practices for communication and related strategies to support trauma and promote resilience
- 4. Scenario: linking the scenario to strategies for communication, including being a translator and educator for children and families

**1. Learning and communication  
needs – working with clients and  
the “biopsychosocial” model of  
trauma**

“ We have to be willing to do things that are uncomfortable and inconvenient, because justice doesn't come when you only do the things that are comfortable and convenient...We advance justice only when we're willing to do things that are uncomfortable.

**-Bryan Stevenson** (American Bar Association Medal of Honor speech, August 2018) ”

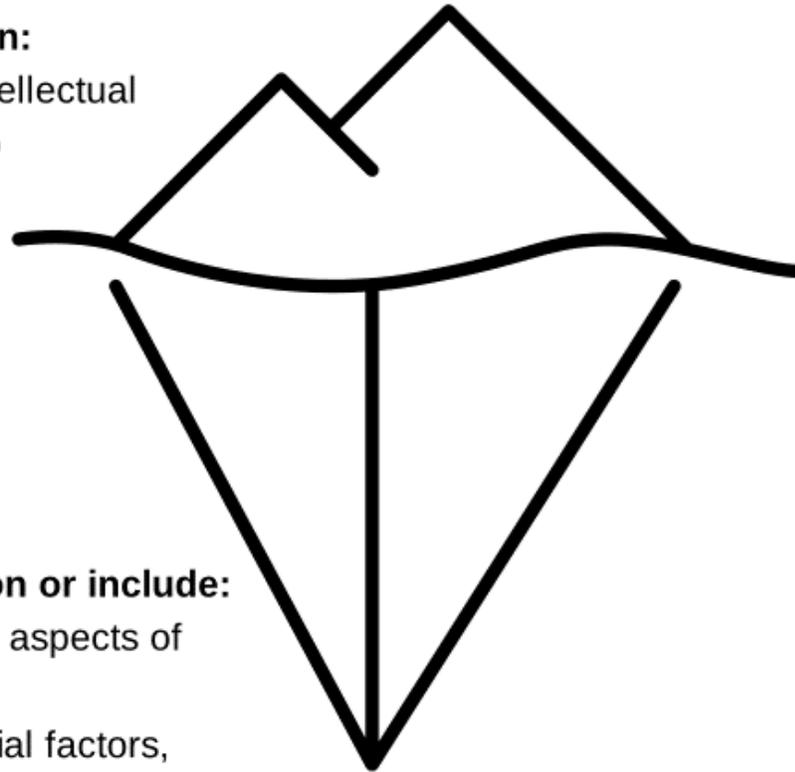
Source:

[https://www.abajournal.com/news/article/bryan\\_stevenson\\_calls\\_on\\_lawyers\\_to\\_get\\_uncomfortable\\_and\\_deep\\_en\\_commitment](https://www.abajournal.com/news/article/bryan_stevenson_calls_on_lawyers_to_get_uncomfortable_and_deep_en_commitment)

# TI practice means looking beyond the surface to include how trauma shows up in practice

## What we're taught to focus on:

Conscious & cognitive responses (intellectual matters, linear narrative, etc.)



## What we're not always taught to focus on or include:

physical state / wellbeing, non-cognitive aspects of mental processing (beliefs),  
mental state / wellbeing, emotions, social factors, relationships, culture, values, social context etc.

## Why does it matter? Context for trauma-informed practice

### ○ **Prevalence - commonality of trauma & toxic stress, including in the legal system:**

- People with 4 or more ACEs (adverse childhood experiences) are 32.6 times more likely to experience learning & behavior challenges.
- lawyer & client feedback on impact of legal system involvement: too often, legal system involvement hurts more than it helps. (Or hurts more than it should.)

# Key principles of trauma-informed practice

## ○ Key Trauma-Informed Principles:

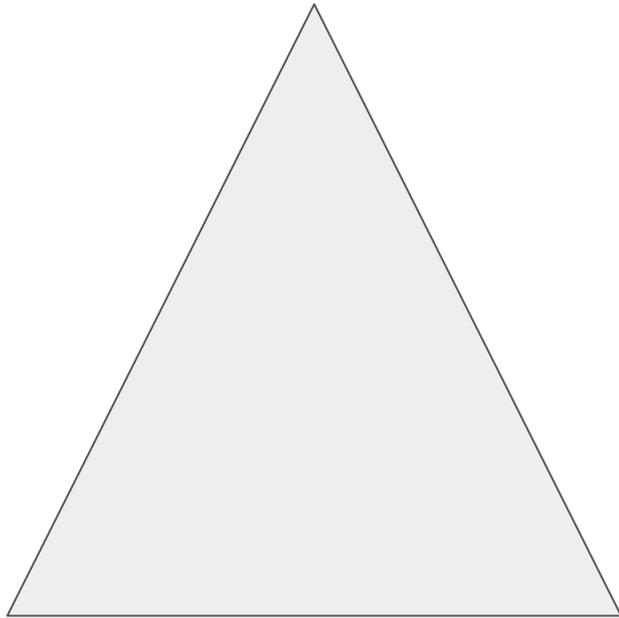
- 1) safety;
- 2) trustworthiness & transparency;
- 3) peer support;
- 4) collaboration & mutuality;
- 5) empowerment voice & choice, and
- 6) cultural, historical and gender issues are included. (Sometimes referred to as “humility & responsiveness” or “social context”).



(Source: CDC, Centers for Disease Control, 2018-2021, in collaboration with SAMHSA (Substance Abuse and Mental Health Services Administration) National Center for Trauma-Informed Care (NCTIC). See: <https://stacks.cdc.gov/view/cdc/138924>.)

# A “Parallel Process”: The translation process of seeing a trauma response within behavior

- The **survival response** to trauma is a biopsychosocial experience. It always happens in **context**.



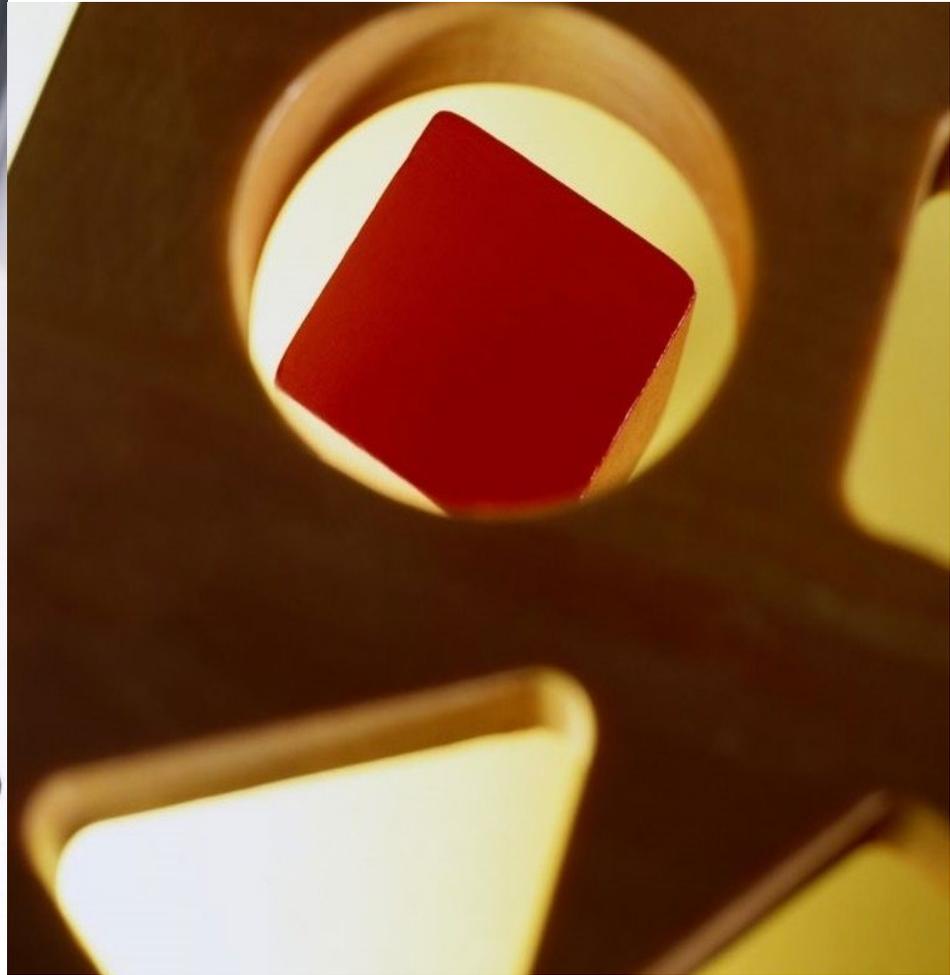
**Biology + psychology + social factors**

<b>Biology</b>	<b>Psychology</b>	<b>Social Factors</b>
“Rest & Digest” (or not)	Emotions & resulting behavior	Relationship formation & behavior
Parasympathetic or sympathetic (and cortisol/adrenaline)	Learning	Safety, trust & belonging
Chronic pain / ability to move	Memory	Communication
Hypervigilant/hypovigilant	Thought patterns & mindset	Attunement
Neurobiology & behavior	Worldview	Inundate / withdraw
And many more factors...including "		

# Key themes:

- understanding that grief & trauma involve intense learning (extra “courses”)
- complicated grief and complex trauma are like long term “advanced courses”
- stress load is high from loss, grief and trauma and yet recovery and restoration is possible

## What does trauma look like?



# Understanding what trauma response looks like in legal work

<b>Biology</b>	<b>Psychology</b>	<b>Social Factors</b>
Fatigue & inconsistent meals (sleep & digestion)	Emotions	Relationship formation
Eye responses (pupils dilate, eye contact)	Learning	Trust
Nervous system state (heart rate)	Memory	Communication
Pain (tension, chronic pain, back pain)	Thought patterns	Attunement
Neurobiology	Worldview	Inundate / withdraw
Ex: Can show up as overwhelmed, afraid (or aggressive) and working in chaos		

“

“When I say that grief is a kind of learning, I don't mean learning something easy. This is not like mastering a specific skill such as riding a bike, learning how to keep your balance and how to use the brakes. This type of learning is like traveling to an alien planet and learning that the air cannot be breathed, and therefore you need to remember to wear oxygen all the time. Or that the day has 32 hours, even though your body continues operating as though it has 24. Grief changes the rules of the game, rules that you thought you knew and had been using until this point.

”

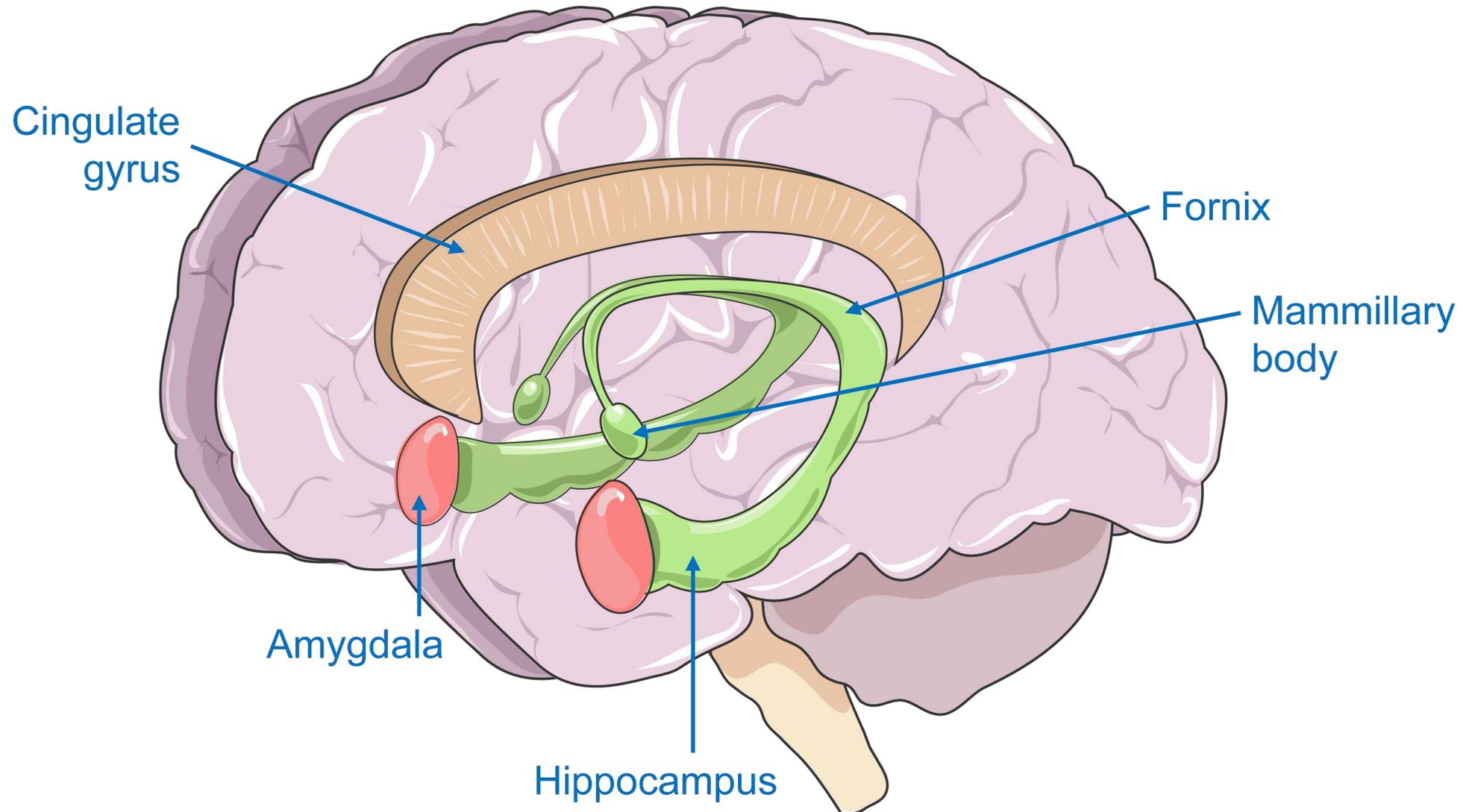
**-Mary-Frances O'Connor, The Grieving Brain**

Source: Mary-Frances O'Connor, *The Grieving Brain, The Surprising Science of How We Learn from Love and Loss*, New York: HarperOne, 2022.

# Neurobiology of Trauma Response

- Key aspects include:
- 1. **Decision quality:** high quality decisions, problem solving & learning depend on prefrontal cortex activation (rather than limbic brain)
- 2. **Threat or fear of any type can diminish cognition or decision quality:** whether chronic or acute, our limbic brain (amygdala & hippocampus) can still respond to perceived threat and it acts faster than the prefrontal cortex
- 3. **Co-occurring responses (like loss or grief, burnout or fatigue) may activate the limbic brain too:** the limbic brain deals with different types of pain response as well as fear or threat

# Limbic System



Source: "[Servier - Drawing Limbic system - English labels](https://anatomytool.org/content/servier-drawing-limbic-system-english-labels)" by [Servier Medical Art](https://anatomytool.org/content/servier-drawing-limbic-system-english-labels), license: Creative Commons Attribution, CC BY. Available at: <https://anatomytool.org/content/servier-drawing-limbic-system-english-labels>

**2. Vicarious, secondary and direct trauma– attorneys' own trauma or toxic stress and its impacts**

# Trauma in communities – Where do we see ACEs?

\*Note: Legal issues often involve or create one or more “adverse experiences”

## Adverse Childhood Experiences

➔  
Branches = Private level  
(individual or family)

Mental Illness  
Emotional & Sexual Abuse  
Substance Abuse  
Domestic Violence

Physical & Emotional Neglect  
Divorce or Separation  
Maternal Depression  
Incarceration  
Homelessness

## Adverse Community Environments

➔  
Roots = Public level  
(group or community)

Poverty

Discrimination

Community Disruption

Lack of Opportunity, Economic  
Mobility & Social Capital

Violence

Poor Housing Quality  
& Affordability

Source: W. Ellis and W.,Dietz, (2017) A New Framework for Addressing Adverse Childhood and Community Experiences.

The Building Community Resilience (BCR Model. Academic Pediatrics. 17 (2017) pp. S86-S93. DOI information: 10.1016/j.acap. 2016.12.011,

<https://publichealth.gwu.edu/sites/default/files/downloads/Redstone-Center/BCR%20Pair%20of%20ACEs%20Webinar%20Slides.pdf>

“ The expectation that we can be immersed in suffering and loss daily and not be touched by it is as unrealistic as expecting to be able to walk through water without getting wet.

This sort of denial is no small matter. The way we deal with loss shapes our capacity to be present to life more than anything else. The way we protect ourselves from loss may be the way in which we distance ourselves from life and help.

”

**-Rachel Naomi Remen**

Source: <http://www.collaborativecurriculum.ca/en/modules/CanMEDS-professional/canmeds-professional-physicianhealth-01.jsp>

# Secondary trauma from loss & grief for Professionals: which “wellness buffer” will you prioritize as support for trauma and resilience?

Which falls away first in ourselves? Which do we see as a usual strength? (And clients?)

1. Regular sleep
  2. Healthy nutrition
  3. Regular exercise
  4. Mindfulness practice
  5. Healthy relationships
  6. Mental health supports
- Reflect: For each factor, what are the supports and challenges? Validating experiences. And noticing strengths.

# **3. Best practices for communication and related strategies to support trauma and support resilience**

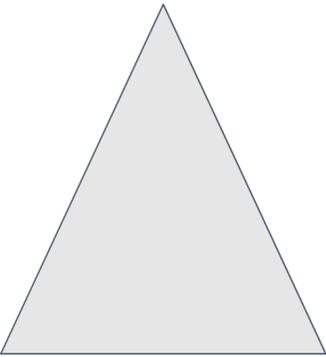
## **“Modifiable factors” are...**

Aspects of delivering a service that can be adapted to create a supportive environment, including policies, practices and communication.

They can help mitigate adverse experiences with more positive experiences.

# What are “modifiable factors”?

Biology / Behavior	Psychology	Social Factors
Timing (breaks, long or short timing plan, pacing, etc.)	Mindset or perspective (i.e. thought framing, curiosity or judgement)	Communication style (relational or transactional)
Resource allocation (effort or energy)	Emotional regulation (or awareness / intelligence)	Trust levels
Routines (sleep, meals, exercise)	Learning or contemplating (versus judgement)	Relationship type or formation (i.e. conflict-oriented, conflict-avoidant)
Movement or mobilization	Decision-making or problem solving	Interaction patterns (i.e. attunement, empathy, compassion etc.)
Nervous system state (which affects neurobiology through afferent neurons)	Self-reflection or meaning-making	Relational patterns (i.e. Inundate / withdraw, engage / disengage)
<p>Ex: For trauma-impacted (or graphic) evidence, we might modify how to: 1) obtain it; 2) plan handling it; 3) strategize viewing it; 4) disclose it; 5) structure discussions about it; 6) debrief about it for future planning.</p> <p>For instance: structured evidence vs. unstructured. Use content labeling in advance, structured viewing or disclosure (in terms of team or time), prepare an agreed summary instead of wide viewing/discussion.</p>		



# Communication Strategies

1. **Relational vs. transactional communication:** does it build trust?
2. **Trauma-Informed Questions vs. assumptions:** does it ask openly or assume?
3. **Meaning-making (moral repair) vs. moral injury:** what does it mean?

# Communication strategies

## 1. Relational communication versus transactional communication

- Transactional prioritizes outcome: “We’re here to discuss the events of X date that led to the incident of loss.”

Client may think they’re a means to an end or another piece of evidence.

- Relational prioritizes relationship, building trust and including needs: “Tell me more about what happened. How were the people involved impacted?”

Client may see they matter and their priorities will be included in the process. For the model litigant, think in terms of the “special relationship”.

Note: During stress, parties are likely to engage in “survival learning” which is learning from someone already trusted versus an expert or professional.

# Communication strategies cont'd

## 2. Trauma-informed questions versus assumptions

- Assumptions usually focus on or presume a problem. Questions invite connection, trust and discussion of needs.
- Questions phrased in fair, open, curious, non-judgmental language (i.e. what are you experiencing / what happened? Versus focus on perceived problem within person, such as personality or character.)
- Are communications perceived as consistently open and transparent? Or as an unpredictable lottery system? For the model litigant, think in terms of “high standards of civility and advocacy”.

# Trauma-Informed Practice Lens for Communication

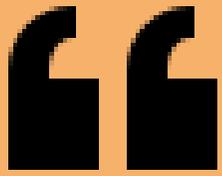
	<b>Possible Assumptions ("trauma awareness")</b>	<b>Possible Avoidance Positions ("loss avoidance")</b>	<b>Replace with Trauma-Informed Questions</b>
1. Client behavior:	Client is difficult or has a problem.	Avoid reminding client of difficulty or problem.	What is the client experiencing? (i.e. what is supportive or challenging? On "better days"? And on hard days?)
2. Client relationship:	Client should trust me because I'm a lawyer.	Avoid talking about relationships due to client's loss.	What does the client need to feel safe, to trust or to disclose? (i.e. who is "safe" or trustworthy on better days and hard times? Who do you/ can you tell?)
3. Client needs:	Client needs to read the documents & provide the info lawyer needs. Client needs to express their needs in linear terms.	Avoid mentioning loss directly when dealing with client needs or planning.	What types of support might the client need to learn under stress, to prepare or to work together? (i.e. what helps with learning, stress or working?)
4. Client narrative:	Client sometimes can't get their story straight or remember (about needs or otherwise).	Avoid parts of client's story involving loss.	What is the broader context of the client's response including memory & narrative? (i.e. what else would be helpful for me to know about the better times and harder times like anniversaries or holidays?)
5. Client impact:	Only clients are impacted by traumatic legal issues.	Avoid thinking about our own exposure to loss or witnessing loss.	What have professionals experienced? Impact can include vicarious (or secondary) trauma in ourselves. What helps me on better days and harder days? Who can I tell about needs?

# Communication strategies cont'd



## 3. Meaning-making versus moral injury (and moral repair)

- Moral injury as a type of injury from process not aligning with moral code of parties (including lawyers)
- sense of fundamental values or fairness being violated, which may be for reasons beyond our direct control. Common when human rights and related issues such as discrimination dignity or integrity involved.
- signs of moral injury include: sense of chronic lack of fairness, disproportionate injustice, cynicism, futility (“why bother”), hopelessness, burnout or feeling haunted by a case. Can be challenging to address because the personal and professional context of these factors can vary widely (social, cultural or systemic context.)



## What youth say ...

“Having somebody to talk to and express how I was feeling; I never really had that...and that would have actually **helped me** more than like me doing like some drug, or smoking weed or doing all this stuff that I done to cope with it so I wouldn't know like what else to do 'cause I just didn't have anybody to talk to...”

- Wendy, study participant

“It **made me feel human**. She brought me back to life 'cause the way I would describe my actions and the way I felt, I felt like a zombie, I wasn't really living. I felt like I was living in prison. And I haven't done anything wrong; I got harmed.”

- Luis, study participant

Source: From 212 interviews of youth in foster care between 2010 and 2015. Monique Mitchell. ““No One Acknowledged My Loss and Hurt”: Non-death Loss, Grief, and Trauma in Foster Care.” *Child and Adolescent Social Work Journal* 35.1 (2017): 1-9.

# Trauma-Informed Legal Practice

- Lawyers can consider the impact of trauma on these client needs & issues when advising a client affected by trauma.
- Lawyers can use a trauma-informed lens regarding what they say & do (and how).
- Keep the high prevalence of trauma & neuroscience of trauma throughout our work.



**4. Scenario** – linking the scenario to strategies for communication, including being a translator & educator for children and families

# Practical things to think about...?

- **Active trauma vs post-trauma and intensity:** more focus on immediate needs (such as learning, narrative, communication vs. meaning). Safety may be priority first versus other tools.
- **Front line nature of work can mean survival learning:** primed to learn from peers during crisis vs establishing trust with new people
- **Isolation in nature of practice:** may not have others to discuss grief with. See book on loneliness and litigation by lawyer J.W. Freiberg called Surrounded by Others and Yet So Alone (2020).
- **Timing & resources:** frequency may be useful rather than length (preparation sessions or cadence of communication including reminders or chunking down info?)
- **Sustainable practices:** reflect on vicarious or secondary trauma? Frequency / intensity of exposure to factors involving trauma and connection to professional or personal experience? (i.e. What is the nature of the workload you swim in?)

## Scenario – How could a trauma-informed approach apply to it?

- **1. Which facts stand out to you as involving trauma?** Which aspects of the scenario provide signals regarding trauma-informed practices?
- **2. Which “modifiable factors” stand out to you as being potentially useful in connection with this scenario while working with clients?** Which aspects of the three parts of the “biopsychosocial” model might be able to be introduced to incorporate “modifiable factors”? (i.e. biology/behavior, psychology including thought patterns and emotions, and social factors including relationships and communication)
- **3. Which communication strategies would you focus on?** How would you approach building a relationship, focusing on trauma-informed questions and fostering meaning (or countering moral injury)?

## Scenario continued...?

- **Which communication strategies would you focus on?** How would you approach building a relationship, focusing on trauma-informed questions and fostering meaning (or countering moral injury)?
- **How would you address and include the context?** Consider the social context of the scenario. What communication and other strategies can help you with trauma-informed practice in this context?
- **Dealing with uncertainty?** How might you address and deal with uncertainty in this context? Is it better to be transparent about potential changes (including lack of certainty) or not?
- **Sustainable practices:** What professional strategies would you include to support your own approach to sustainable legal practice?

# Questions & Vision for the future

- . questions?
- . future focus: from awareness, to action to access pathway similar to adverse childhood experiences (“ACEs”) and developmental health.

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<https://helgi154719.typeform.com/to/HuyqJ55K> and fill out the 2 minute survey

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