

**Presented by Idaho State Bar  
Fourth District Bar Association  
and  
Seventh District Bar Association**

# **Trauma Informed Lawyering**

February 24, 2023  
Ada County Courthouse and Webcast



*Approved by the Idaho State Bar for 3.5 CLE Credits of which 1.0 is Ethics*

- **CLE Credit:** The Idaho State Bar will automatically record your attendance today by your signing on to the webcast. You do not need submit your credit in your online account and your online account will not reflect your credit for CLE courses that are indicated as “LIVE EVENTS.”
- You will receive a Certificates of Attendance via email in 1 to 2 weeks.
- Your attendance will show on the ISB website’s [Attorney Attendance Records](#) approximately 2-3 weeks after you receive your certificate.
- The Course materials are available in your online classroom, in the upper left-hand corner of the screen under the materials tab.
- To ask questions, please use the Q & A tab at the top of your screen. Our speaker will answer the questions as s/he is able to.

# AGENDA

8:15am - 9:00am	Joe Pirtle <i>Idaho State Bar</i>
9:00am - 10:30am	Brittney Durrell <i>Victim Advocate</i>
10:30am - 10:45am	Break
10:45am - 11:15am	Jolene Maloney <i>Maloney Law Office</i>
11:15am - 12:30pm	Hon. Andrew Ellis Hon. Joanne Kibodeaux <i>Fourth District Magistrate</i>

## *About the Speakers*

### **Joseph Pirtle Idaho State Bar**

**Joe Pirtle** joined Bar Counsel's office in April 2022. Prior to serving as Bar Counsel for the Idaho State Bar, Joe was a shareholder and civil litigator with Elam & Burke in Boise.

Joe is an Idaho native who spent his youth in Eagle, Twin Falls and Boise. Before entering private practice, Joe served as a law clerk to Twin Falls County District Judge John C. Hohnhorst. Joe received his B.S. in Business Finance from the University of Idaho in 2001 and his J.D. from the University of Idaho College of Law in 2004.

Joe has demonstrated his commitment to serving the legal profession through his volunteer service. He participated in and served on the steering committee for the Idaho Academy of Leadership for Lawyers. He is also a past chairperson of the Idaho State Bar Litigation Section and served as a mentor for the Idaho Trial Skills Academy. He currently serves on the Attorney Well Being Task Force, and previously served many years as a member of the Idaho Lawyer Assistance Program.

### **Brittney Durrell St. Luke's Health System**

**Brittney Durrell** is currently working at St. Luke's emergency department with their social worker team. Brittney works with people of all ages needing medical care and those impacted by their loved ones receiving care. Prior to working for St. Luke's, Brittney worked for several Treasure Valley law enforcement agencies as a victim witness coordinator. In that role Brittney worked closely with victims of violent crime as they navigated the court process and helped them find needed resources in the community. Brittney is an LMSW and studied social work at Northwest Nazarene University.

### **Jolene Maloney Maloney Law Office**

**Jolene Maloney** is currently in private practice focusing on criminal law and serves as a conflict public defender. Jolene has handled the full spectrum of criminal cases, including murder and other violent offenses, as both a defense attorney and prosecuting attorney. Jolene has also handled family law cases and a myriad of other civil matters during her nearly twenty years of practice in Idaho. Jolene completed her undergraduate studies at Gonzaga University and law school at the University of Idaho.

**Honorable Andrew Ellis**  
**Fourth District Magistrate**

**Andrew Ellis** is a Magistrate Judge for the 4<sup>th</sup> Judicial District in Ada County assigned to the Child Protection calendar. Prior to becoming a magistrate in 2013, Andrew was a Deputy Prosecuting Attorney with the Ada County Prosecuting Attorney's Office where he handled Child Protection cases exclusively for ten years. He is a member of the Idaho Supreme Court Child Protection Committee and an Adjunct Faculty member for the University of Idaho College of Law teaching a "Children and the Law" seminar course. Andrew graduated from the College of Idaho in 1994 and obtained his J.D. from the University of Idaho College of Law in 2001.

**Honorable Joanne Kibodeaux**  
**Fourth District Magistrate**

**Judge Joanne Kibodeaux** began serving as a Magistrate Judge in October 2013 and is assigned to a traffic and misdemeanor criminal calendar at the Ada County Courthouse. She is currently a member of the Association of Family and Conciliation Courts, the Child Support Guidelines Committee and the Idaho Volunteer Lawyers Policy Council.

Previously, Judge Kibodeaux practiced law for 24 years, concentrating on family law, bankruptcy, and Social Security disability cases in state and federal court. She was a Special Deputy Attorney General for the Idaho Department of Health and Welfare, child Support Services. Judge Kibodeaux holds a Bachelor's Degree in English from the University of Michigan at Dearborn, and a Juris Docto from the University of Wyoming, College of Law.

*This program was produced in 2023. Since the law is constantly changing, you are cautioned to use this information only as a starting point for your own research and are urged to consult applicable resources to determine the current state of the law. Similarly, since the application of law is dependent upon each particular fact pattern, you should always independently research the particular issues in any case.*

# Ethical Considerations in Trauma Informed Lawyering and the Attorney Client Relationship

Joe Pirtle

February 24, 2023

1

## Ethical rules to consider for trauma informed lawyering

- Rule 1.1: COMPETENCE
- Rule 1.3: DILIGENCE
- Rule 1.4: COMMUNICATION
- Rule 1.14: CLIENT WITH DIMINISHED CAPACITY
- Rule 1.16: DECLINING OR TERMINATING REPRESENTATION

2

## I.R.P.C. 1.1 COMPETENCE

- A lawyer shall provide competent representation to a client.
- Competent representation requires the legal knowledge skill, thoroughness and preparation reasonably necessary for the representation.
- Comments generally focus on legal skill and knowledge rather than facts of the case.

3

## I.R.P.C. 1.3: DILIGENCE

- A lawyer shall act with reasonable diligence and promptness in representing a client.
- Comment [1] – “... The lawyer’s duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.”

4

## I.R.P.C. 1.4: COMMUNICATION

- Rule 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client’s objectives are to be accomplished.
- Rule 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.
- Rule 1.4(a)(5) – A lawyer shall consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the I.R.P.C. or other law.

5

## I.R.P.C. 1.4: COMMUNICATION (cont.)

- Rule 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- For clients who suffer from trauma, this may require more explanation.
- More information about the process helps build client trust.

6



## I.R.C.P. 1.14: CLIENT WITH DIMINISHED CAPACITY

- Rule 1.14(a) – When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- Comment [1] – The “normal” relationship assumes that the client, when properly advised, can make decisions about important matters.

7

## I.R.C.P. 1.14: CLIENT WITH DIMINISHED CAPACITY (cont.)

- Comment [2] – The fact that a client suffers a disability does not diminish the lawyer’s obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

8

## I.R.P.C. 1.16: DECLINING OR TERMINATING REPRESENTATION

- Rule 1.16(a)(2) – A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.

---

# Basics of Trauma

1

## A little about me:

### Background

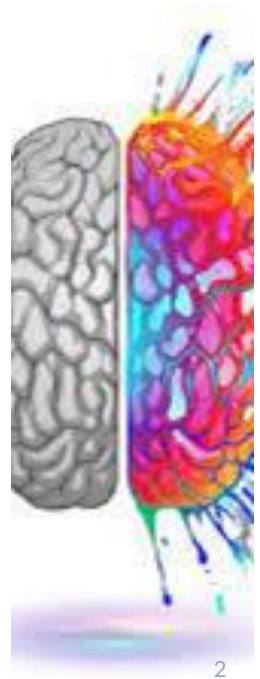
CDFS, Grad Certificate, LMSW

### Work experience

Populations: incarcerated, victims, medical (suicidality)

### Training

FETI, Neurobiology, Trauma Informed Care



2

2

What this training will NOT do:

- ▷ Turn you into a therapist

What this training WILL do:

- ▷ Basic understanding of polyvagal theory
- ▷ Provide practical tools
- ▷ Make your job easier

3

3

1.

# POLYVAGAL BASICS

How the Autonomic Nervous System Works

4

4



# Discussion:

What is trauma?

5

5



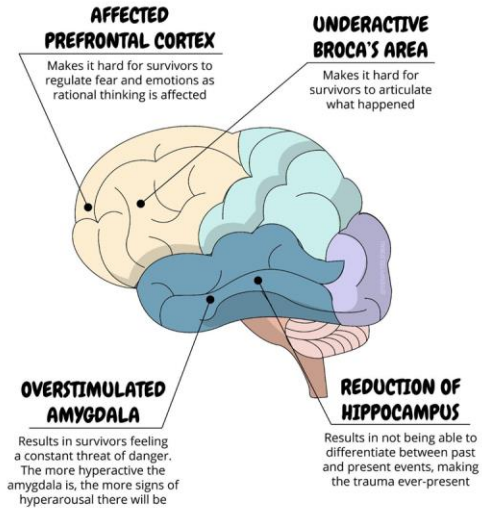
*Trauma compromises our ability to engage  
with others by replacing patterns of  
connection with patterns of protection*

*-Deb Dana*

6

6

# HOW TRAUMA AFFECTS THE BRAIN



## Main brain structures involved:

1. Brain stem
  - a. Information between body and brain
2. Amygdala
  - a. Scans for danger
3. Hippocampus
  - a. Memory
4. Prefrontal cortex
  - a. Logical, sequential thought

## Trauma: sticky notes

7

7

## Types of trauma

### Acute

Single incident

### Chronic

Repeated  
Prolonged

### Complex

Multiple traumatic events  
Long-term (over lifespan)

### Historical

Threat to existence of culture  
Intergenerational

8

8

## Trauma causes dysregulation



9

9

## Drive to Survive

Most important job of our brain: SURVIVAL

- ▷ Body is doing what it is designed to do
  - Hardwired for connection and safety
- ▷ Development
  - Bottom up/inside out
  - Top down (think differently to act differently)
  - Bottom up (trauma, safety, somatic)
- ▷ Brain
  - Lower brain: instinctive (no morality)
  - Mid-brain: memory and attachment
  - Top brain: thinking and rationalizing

10

10

## Dysregulation

Disconnect from top of brain and bottom of brain

- ▷ Emotional brain
  - Foundation of ANS
  - Assesses information GLOBALLY
    - Jumps to conclusions
- ▷ Initiates pre-programed responses
  - Hormone release via neurotransmitters
- ▷ Below level of awareness (neuroception)
  - Am I safe or in danger?

11

11



## PRACTICAL TIP

SCOPE for dysregulation  
Co-regulation

12

12



**S**

**SLOW DOWN**  
Take 10 steps very slowly, noticing any sensations on the bottom of your feet.

**C**

**CONNECT TO BODY**  
Cross your arms and ankles, tuck hands under armpits, lower head, and breathe.

**O**

**ORIENT**  
Slowly look around, noticing colors and shapes. Let your gaze rest on something pleasant or comforting, like a brief visual vacation.

**P**

**PENDULATE**  
Notice a place of ease in the body and a place of tension. Slowly shift attention between ease - tension - ease.

**E**

**ENGAGE**  
Engage socially. Connect with someone who can support you.

13

13



*Being traumatized means continuing to organize your life as if the trauma were still going on—unchanged and immutable—as every new encounter or event is contaminated by the past*  
—Bessel van der Kolk

14

14

# Autonomic Nervous System (ANS)

## Traditional

Sympathetic

→ fight/flight

Parasympathetic

→ soothing/calming

(single vagus nerve)

## Polyvagal

Ventral Vagal (oversees)

→ positive states

Sympathetic (above diaphragm)

→ fight/flight

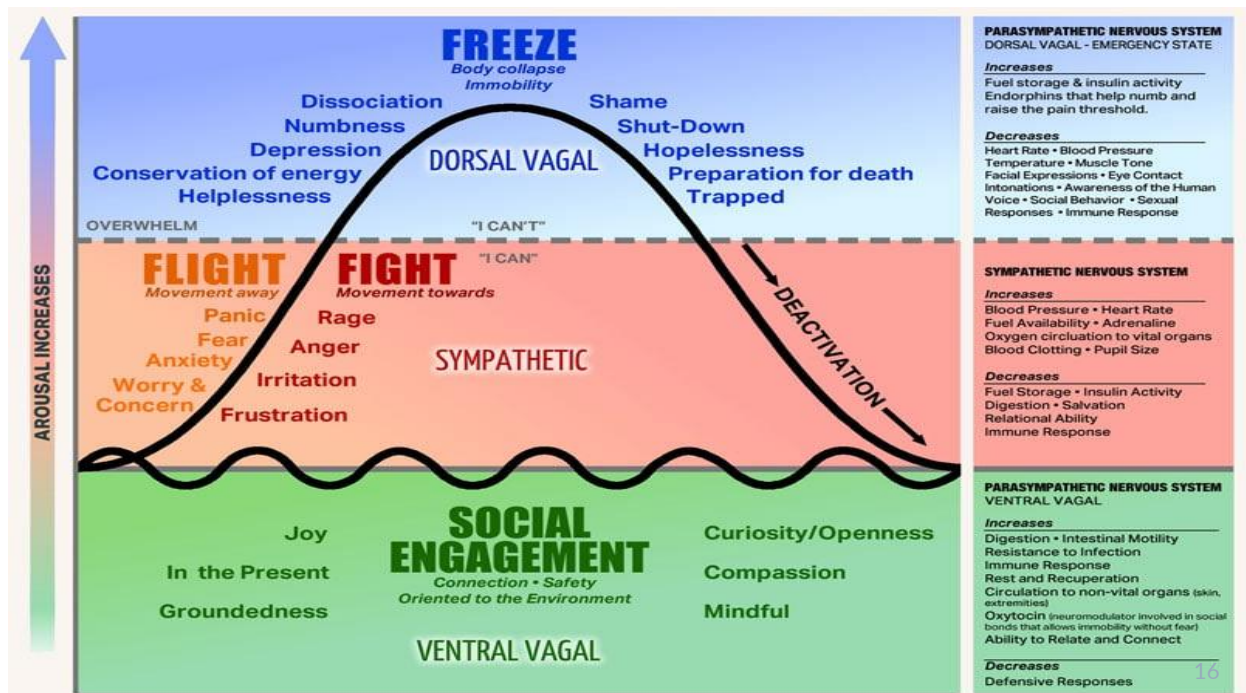
Dorsal Vagal (below diaphragm)

→ shut down

(brain-gut connection)

15

15



16



17

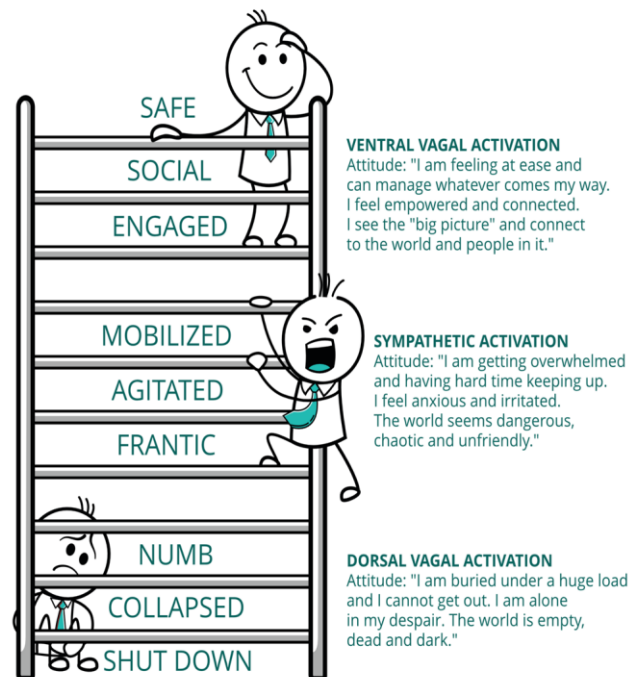
17

Move up/down ladder throughout day

- ★ Sympathetic=gas pedal  
(prepares for fight/flight)
- ★ Parasympathetic=brake  
(window of tolerance)

Trauma informed care

→ learning how to shift gears



Adapted from *The Polyvagal Theory in Therapy* by Deb Dana

18

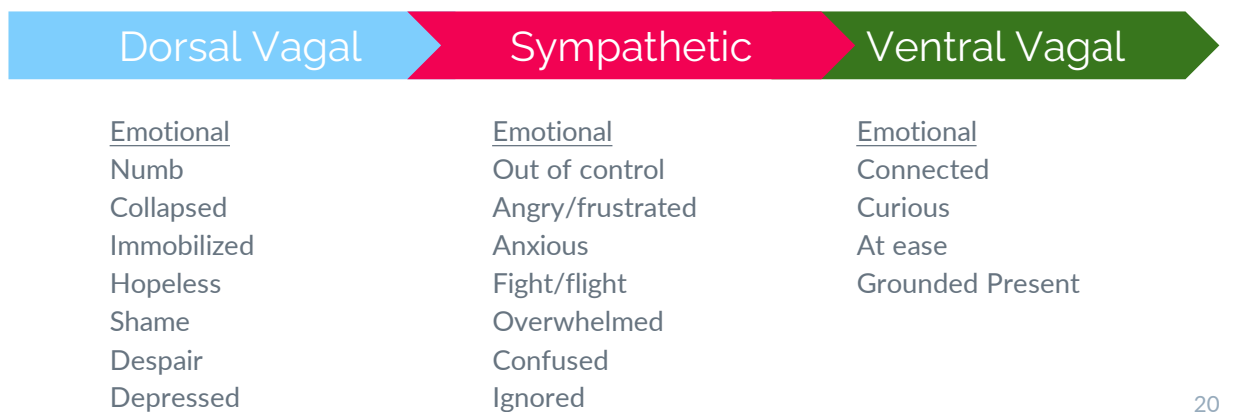
# → PRACTICAL TIP

Recognizing symptoms of ANS activation

19

19

## ANS Hierarchy Activation Signs



20

20

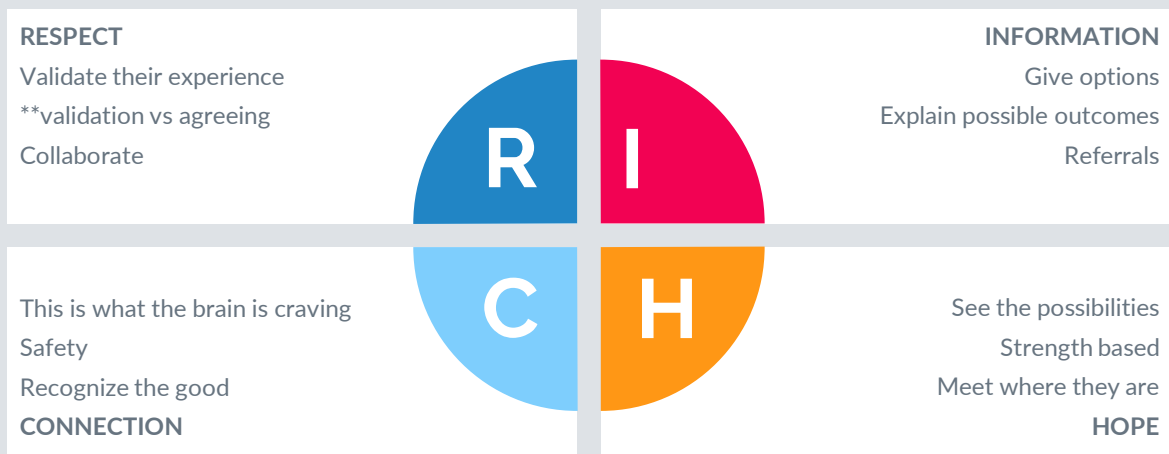
# → PRACTICAL TIP

## Foundational Trauma Informed Care (RICH)

21

21

### RICH model



22

22



23

23

# → PRACTICAL TIP

Importance of language

24

24

## Paradigm Shift

### Trauma Informed Care

- Trust
- Safety
- Choice
- Collaboration
- Empowerment

25

25

## Paradigm Shift

### MUST understand:

- Trauma happens in the brain
- Trauma behaviors are self-protective
- Developed in response to perceived threat/danger
- Importance of checking our own bias

26

26

# Paradigm Shift

## Questioning

- Avoid 'why'
- Avoid questions that require prefrontal recall
- Avoid bias (ie: that's not what I would have done)
- Avoid multiple questions at once
- DO ask sensory questions
- DO ask open-ended questions
- DO give control as much as possible
- DO offer choice as much as possible
- DO provide safety and security (Maslow's Hierarchy)

27

27



# PRACTICAL TIP

Polyvagal Exercises

(just in case you want to moonlight as a therapist)

28

28



## Polyvagal Exercises



### Mindfulness

Deep breathing exercises  
Find a lifeline (mental visual)  
Sit in silence for 5 minutes



### Resource list

Self-regulation ideas  
Co-regulation ideas



### Art

Draw (sculpt, paint, anything creative) what it feels like to be in an activated state—and how it feels to be at homeostasis



### Music

Create playlists that elicit a ventral vagal response



### Reaching out

Name people you feel connected to  
Go on a slow walk with someone  
List out things you enjoy/are good at



### Play

Engage in play—whatever you enjoyed as a child; swinging, go down the slide, sing a song

29

29

# 2.

## FINAL THOUGHTS

Why it matters

30

30

## The 3 R's

### Regulate

Explore somatic clues  
 Move body toward  
 ventral over-ride  
 \*breathing  
 \*moving  
 \*rhythm  
 \*grounding

### Relate

Connect to one person  
 who is safe  
 \*be attuned

### Reason

Review  
 Analyze  
 Revise

31

31

# Call to action

## Implement ONE new piece of information

32

32



*Trauma is not what happens to you;  
trauma is what happens inside you as a  
result of what happens to you*

*-Gabor Mate*

33

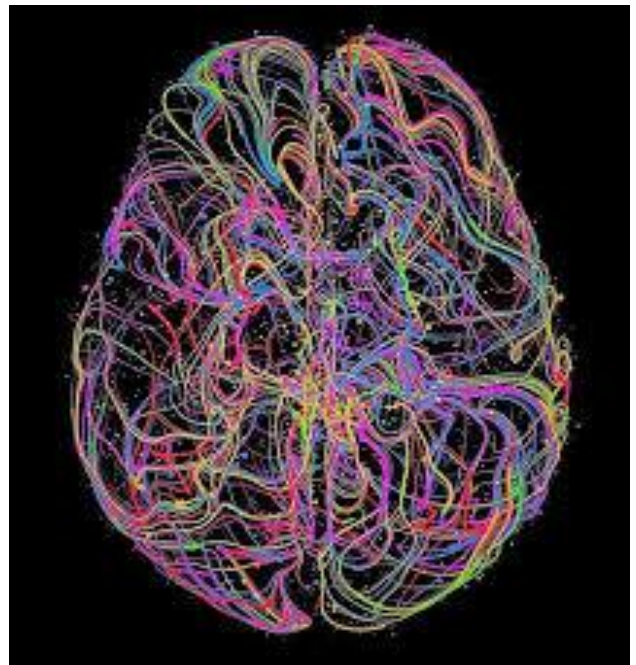
33

Questions?

Contact information:

Britney Durrell

[bdurrell@nnu.edu](mailto:bdurrell@nnu.edu)



34



# NEUROTRANSMITTERS



## Chemical messengers

There are three possible actions in the chemical message:

1. Excitatory - fires off the message which gets passed along to the next cell
2. Inhibitory - blocks or prevents the message from being passed along further
3. Modulatory - influence the effects of other chemical messengers

After the message is delivered, the molecules do one of three things:

1. Fade away (diffusion)
2. Reabsorbed & reused (reuptake)
3. Broken down (degradation)

### Epinephrine (adrenaline)

- An excitatory neurotransmitter
- Dilates air passages to allow you to take in more oxygen
- Contracts blood vessels to redirect blood flow to important muscles and organs
- Reduces ability to feel pain

### Norepinephrine (noradrenaline)

- An excitatory neurotransmitter
- Increases heart rate and glucose levels
- A surge can cause feelings of happiness and euphoria, and can also lead to panic attacks
- Produced naturally through sleep, exercise, achievements, music, meditation, etc.

### Dopamine

- Controls responses to sensory information
- Drives reward and motivation (is released when expecting a reward)
- Contributes to alertness, focus, and happiness
- Chronic impairment of vagus nerve leads to inhibition of dopamine
- Both excites and inhibits depending on the target neuron

### Acetylcholine

- An excitatory neurotransmitter
- Contracts muscles, dilates blood vessels, slows heart, and increases bodily secretions
- Primary neurotransmitter of the vagus nerve

### GABA

- An acronym for gamma-aminobutyric acid
- Most common *inhibitory* neurotransmitter in the nervous system, particularly the brain
- Regulates brain activity to prevent problems such as anxiety, irritability, concentration, sleep, seizures and depression

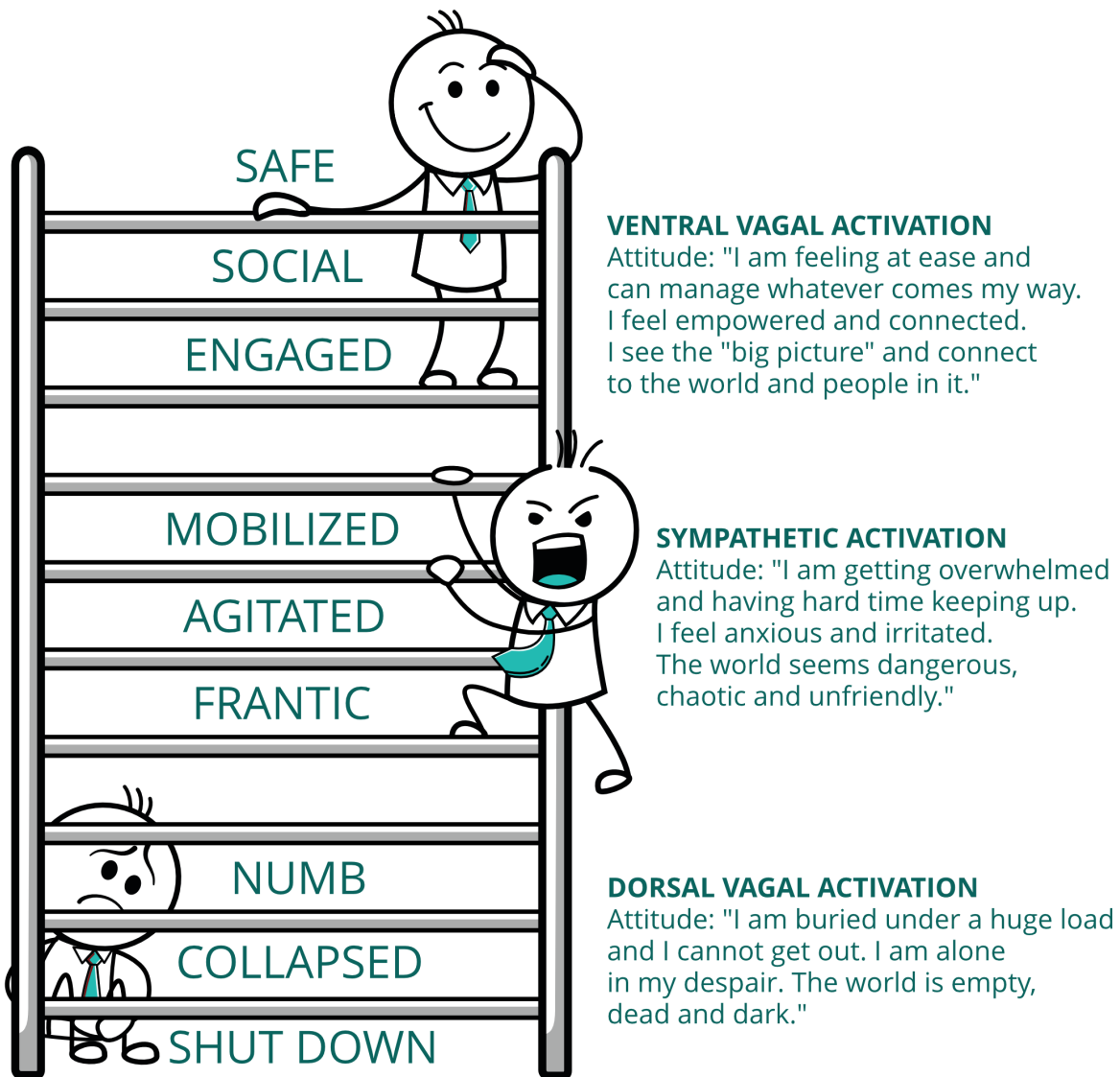
### Serotonin

- An inhibitory neurotransmitter
- Helps regulate mood, sleep patterns, sexuality, anxiety, appetite and pain

### Endorphin

- An inhibitory neurotransmitter
- Short for endogenous morphine
- Involved in pain reduction and pleasure

## AUTONOMIC NERVOUS SYSTEM AS A LADDER



Adapted from *The Polyvagal Theory in Therapy* by Deb Dana

# ZONES OF CONNECTION, ACTIVATION OR WITHDRAWAL

	Energy Flow	Physical Responses	Emotions / Thoughts
<b>CONNECTION</b>  <i>Safety</i> <i>Connection</i> <i>Relational safety</i>	<p>Optimal arousal</p> <p>Right amount of energy for the situation</p>	<p><u>Increases</u></p> <ul style="list-style-type: none"> <li>• Digestion</li> <li>• Immune response</li> <li>• Circulation to skin &amp; extremities</li> <li>• Oxytocin</li> <li>• Eye movement &amp; facial expressions</li> <li>• Communication</li> </ul> <p><u>Decreases</u></p> <ul style="list-style-type: none"> <li>• Defense strategies</li> </ul> <p><u>Other</u></p> <ul style="list-style-type: none"> <li>• Comfortable breathing</li> <li>• Normal heart rate</li> </ul>	<ul style="list-style-type: none"> <li>• I'm interested in what comes next.</li> <li>• I'm happy &amp; confident.</li> <li>• I feel connected and curious.</li> <li>• I feel at ease with what is happening.</li> <li>• I am grounded and present for the moment.</li> <li>• I am open to others.</li> <li>• I feel a calmness in connection.</li> </ul>
<b>ACTIVATION</b>  <i>Fight</i> <i>Flight</i>  <i>"I can"</i>	<p>Too much energy</p>	<p><u>Increases</u></p> <ul style="list-style-type: none"> <li>• Blood pressure &amp; heart rate</li> <li>• Adrenaline</li> <li>• Pupil size</li> <li>• Defense strategies</li> <li>• Chronic stress response</li> <li>• Tense muscles</li> <li>• Metabolic changes to spend energy</li> </ul> <p><u>Decreases</u></p> <ul style="list-style-type: none"> <li>• Fuel storage</li> <li>• Digestion</li> <li>• Immune response</li> <li>• Relational safety &amp; strategies</li> <li>• Clear thinking</li> <li>• Ability to hear voices</li> </ul>	<ul style="list-style-type: none"> <li>• I feel out of control.</li> <li>• I am restless or anxious.</li> <li>• I am angry.</li> <li>• I am frustrated.</li> <li>• I feel pushed to make decisions.</li> <li>• I am uncomfortable.</li> <li>• I feel misunderstood.</li> <li>• I want to talk &amp; be heard.</li> </ul>
<b>WITHDRAWAL</b>  <i>Freeze</i> <i>Shutdown</i> <i>Numbness</i>  <i>"I can't"</i>	<p>Not enough energy</p>	<p><u>Increases</u></p> <ul style="list-style-type: none"> <li>• Endorphins (raises pain threshold)</li> <li>• Metabolic changes to conserve resources</li> <li>• Unhealthy coping</li> </ul> <p><u>Decreases</u></p> <ul style="list-style-type: none"> <li>• Digestion</li> <li>• Immune response</li> <li>• Heart rate &amp; blood pressure</li> <li>• Temperature</li> <li>• Muscle tone</li> <li>• Depth of breath</li> <li>• Eye contact &amp; facial expressions</li> </ul>	<ul style="list-style-type: none"> <li>• I feel criticized &amp; unimportant.</li> <li>• I want to be alone but I don't feel okay about it.</li> <li>• I don't belong.</li> <li>• I am overwhelmed &amp; burdened.</li> <li>• I am trapped.</li> <li>• I feel hopeless and/or helpless.</li> </ul>

# ANS HIERARCHY

## Ventral Vagal Activation

### Thoughts

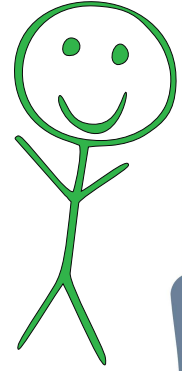
I can see and explore possibilities  
I can navigate the world  
I can manage whatever comes my way

### Physical

Increased digestion & immune response  
Increased eye movement & facial expression  
Decreased defensive strategies

### Feeling

Engaged  
Curious  
Open  
Flexible  
Creative  
Friendly  
Connected



PLAYFULNESS

INTIMACY - PEACEFULNESS

## Sympathetic Activation

### Thoughts

I feel pushed to make a choice  
I feel responsible for too many things  
I am pressed for time

### Physical

Increased blood pressure & heart rate  
Adrenaline release  
Increased defensive strategies  
Tense muscles  
Decreased digestion  
Decreased clear thinking

### Feeling

Mobilized  
Activated  
Overwhelmed  
Confused  
Ignored



## Dorsal Vagal Shutdown

### Thoughts

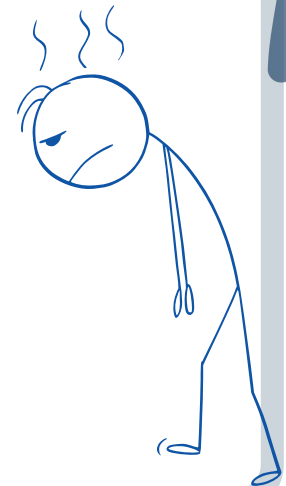
I feel unimportant  
I don't belong  
I feel trapped

### Physical

Decreased blood pressure & heart rate  
Increased endorphins (raises pain threshold)  
Conserving resources  
Decreased digestion  
Decreased eye contact & facial expressions

### Feeling

Numb  
Collapsed  
Immobilized  
Criticized



# **HOW JUDGES WISH ATTORNEYS APPROACHED CASES WITH TRAUMA IMPACTED PARTICIPANTS\***

\*What we think – we certainly don't speak for all judges...

JUDGE JOANNE KIBODEAUX AND JUDGE ANDREW ELLIS – 2/24/23

1

## **DSM-V DEFINITION OF TRAUMA**

Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:

- 1) Directly experiencing the traumatic event
- 2) Witnessing, in person, the event(s) as it occurred to others
- 3) Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental.
- 4) Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (e.g. first responders collecting human remains: police officers repeatedly exposed to details of child abuse).

2



## **PARTIAL LIST OF SYMPTOMS OF PTSD**

- Recurring involuntary intrusive distressing memories
- Intense distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event
- Irritable behavior and angry outbursts
- Reckless or self-destructive behavior (yelling at people, getting into fights, dangerous driving, excessive alcohol and drug abuse)
- Hypervigilance
- Exaggerated startle response
- Problems with concentration
- Sleep disturbance

3

## **TRAUMA IMPACTED PARTICIPANTS IN THE COURT SYSTEM**

- 1) Criminal defendants
- 1) Victims of violent crime and DV
- 2) Family members of victims of violent crime
- 3) Wrongful death/Personal Injury
- 4) Petitioners/Respondents in DVPO/CPO cases
- 5) Parents and Children in Child Protection cases

4

## **TRAUMA IMPACTED PARTICIPANTS** **IN THE COURT SYSTEM – cont.**

7) Family Law participants where domestic violence has occurred

8) Police officers, paramedics, coroners, social workers

9) Participants in Probate cases where the cause of death was violent or accidental

10) The DSM-V puts lifetime risk in the U.S. of experiencing trauma resulting in PTSD at 8.7% so basically any client that walks in your door. Lifetime risk is notably higher for people of color, indigenous communities and LGBTQ+ individuals.

5

## **LAWYERING TECHNIQUES WE'VE SEEN THAT HAVE BEEN SUCCESSFUL WHEN WORKING WITH TRAUMA-IMPACTED COURT PARTICIPANTS**

6

**LAWYERING TECHNIQUES WE'VE SEEN  
THAT HAVE NOT BEEN SUCCESSFUL  
WHEN WORKING WITH TRAUMA-  
IMPACTED COURT PARTICIPANTS**

7

**IS COMMUNICATION BETWEEN  
ATTORNEYS IMPORTANT TO  
FACILITATE RESOLUTIONS WHEN  
WORKING WITH TRAUMA IMPACTED  
PARTIES?**

8

**IS THERE ADDITIONAL TRAINING  
ATTORNEYS SHOULD SEEK OUT TO  
GROW THEIR TRAUMA-INFORMED  
SKILLS?**

9

**CLOSING THOUGHTS**

10