

Trauma Informed Lawyering

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Challenges

- Culture
- Language/interpreters
- Education
- Gender
- Trauma

Trauma informed

to be educated about the impact of interpersonal violence and victimization on an individual's life and development

“Trauma Informed” Practice

- clients’ trauma experiences at the forefront in engaging with clients and
- adjusts how we interact with client
- adjust litigation strategy
- self-care to counterbalance the effect of client’s trauma experience

Challenges

- Identifying trauma
- Drawing appropriate, consistent boundaries
- Understanding the impact of trauma on a client's actions and reactions
- Adjusting communication and litigations strategies to compensate

Among Syrian refugees

- Adults : 10% to 15% PTSD
- Children: 20% to 25% PTSD



- <http://www.cbc.ca/news/canada/treatment-for-syrian-refugees-suffering-from-ptsd-1.3349123>

PTSD screening tools

In adults

<http://www.ementalhealth.ca/index.php?m=survey&ID=7>

In children and youth

<http://www.ementalhealth.ca/index.php?m=survey&ID=31>

Two approaches

What is wrong with you?

VS

What happened to you?

What happened to you?

“It connects a person’s behavior to their trauma response rather than isolating their actions to the current circumstances and assuming a character flaw.”

Psychiatrist Sandra Bloom

What is Trauma?

Trauma has a distinct physiological effect on the brain, which affects behavior short-term and long-term.

Why we need to understand trauma?

To explain otherwise counter-intuitive behaviour

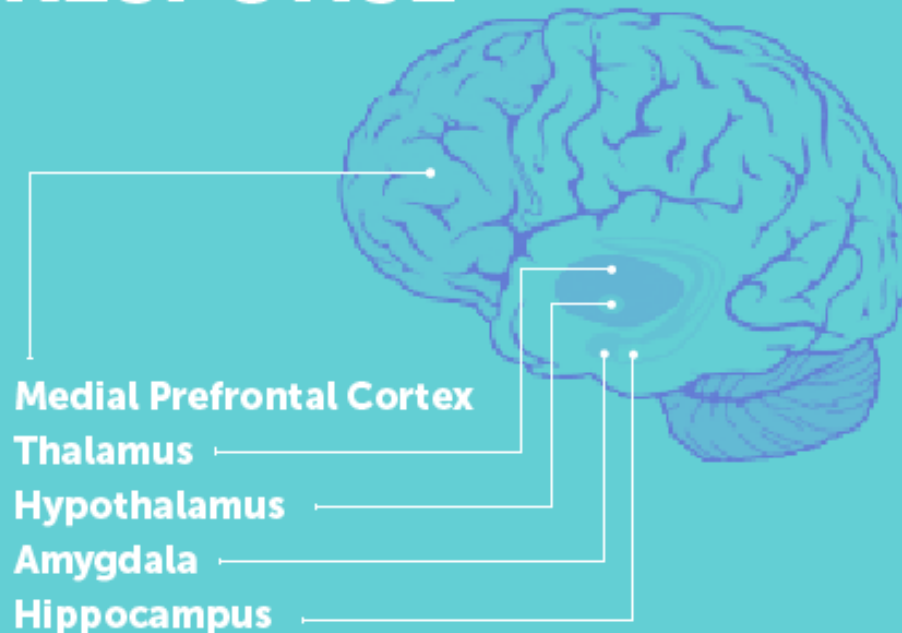
- Demeanour
- Responses
- Behaviours

What Happens?

- Five senses transmit signs of danger to amygdala (brain fear alarm system)
- Puts brain in emergency mode, brain hijacked
- “Stress response” triggered. Chemical and neurobiological events follow

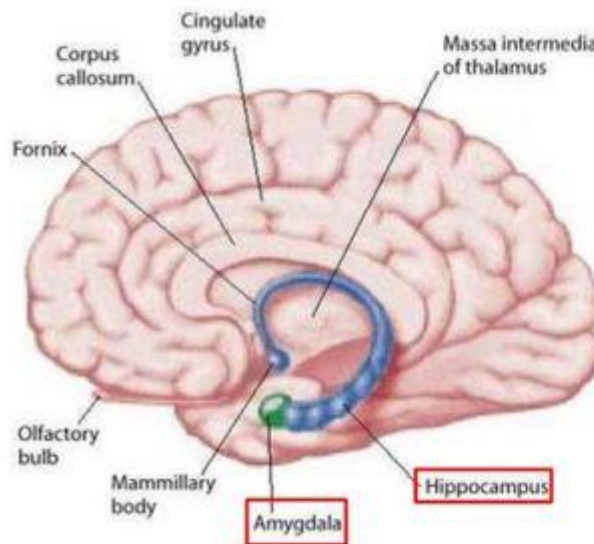
The Fear Response

PARTS of the BRAIN INVOLVED in FEAR RESPONSE



Telencephalon: Amygdala & Hippocampus

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Amygdala functions

1. Part of the limbic system
2. Associated with pleasure, fear, addiction
3. Important in forming and storing memories of emotional events

Hippocampus functions

1. Part of the limbic system
2. Important in formation of memories, including spatial and navigation memories
3. Damage to hippocampus can result in *anterograde amnesia*

Fear

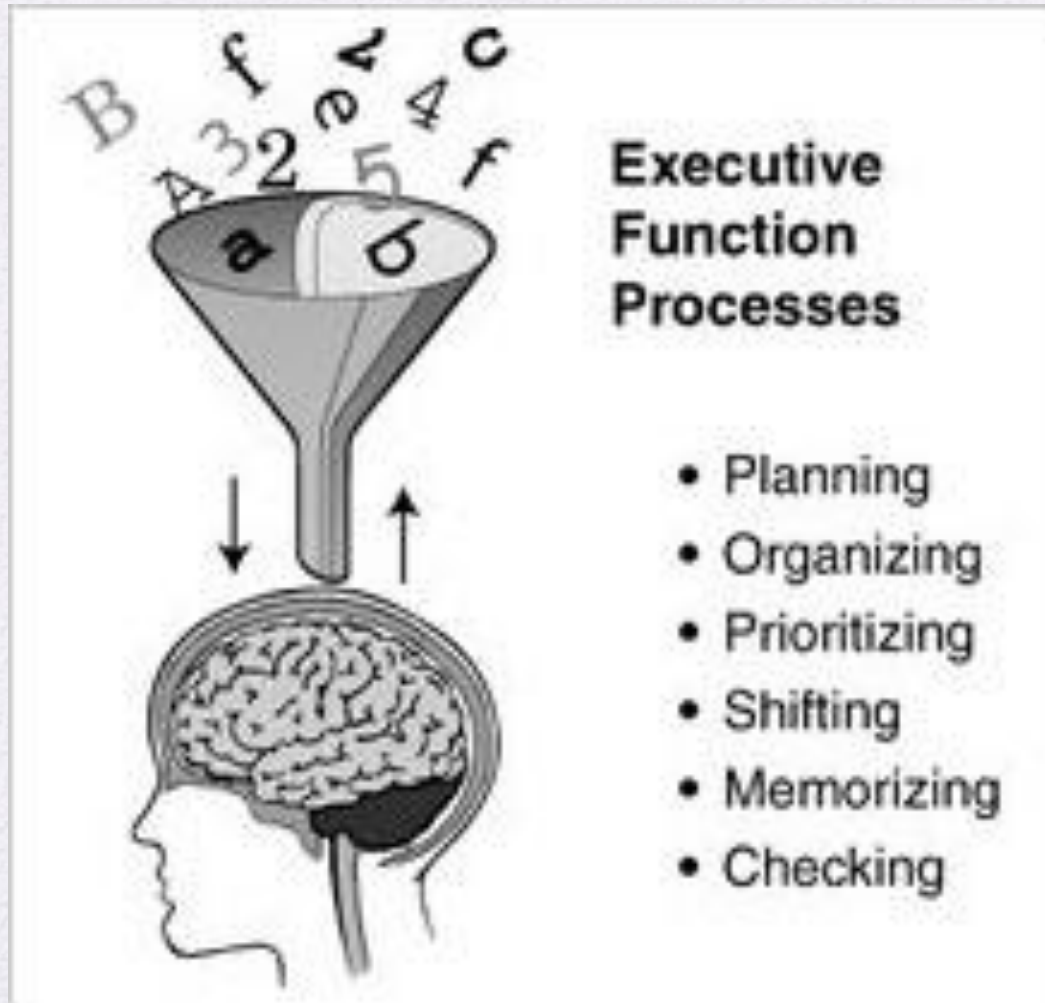
- Brain's fear circuitry, (Amygdala)
 - Controls where attention goes- minute focus or deflected
 - Impact on the hippocampus, impaired ability to encode contextual information, (room layout, time sequencing, uniform worn etc.)

Effect of the Neurochemicals

Catecholamines (adrenaline)

- assists with “fight” “flee” response
- Impairs the circuits in prefrontal cortex “executive functions”
 - Rational thought
 - Ability to analyze and organize logical response

What executive functions are impaired?



Cortisol

- Increases energy to “fight” or “flee”
- Hyper-alertness, hyper-activity, increased physical responses

Opiates

Natural body morphine

- Block physical and emotional pain of event
- Masking pain, flat or monotone response to the assault
- Impact up to 96 hours post incident

Physical changes

- Increase in heart rate and respiration
- Increased oxygen flow to muscle tissue
- Other non-essential organs shut down (frontal cortex executive functions)
 - Decrease in rational thought (needed to resist)
- Perceptual field narrows, peripheral information not encoded

Freeze or Immobility Response

Body shuts down

Undermines ability to resist

Dissociation

- Disconnection between things usually associated
- Brain overwhelmed, splits off some stimuli
- Perceptual field narrows
- All awareness focused on survival
- Autopilot (spaced out, disconnected, fog)

Impact of Disassociation

- Parts of incident blanked out
- Detachment
- Experienced and narrated in 3rd person

Counter Intuitive Behaviour

Plausibility:

- Inability to take self-protecting actions: fail to evade, fight or resist
- Struggle with decision making
- Deny or minimize experience
 - Delay reporting to police or seeking protection
 - Post incident contact with perpetrator.
- Recanting

Impact on Recall

Related to credibility:

- Difficulty forming a narrative
- Difficulty processing information
- Loss of memory for key events
- Inconsistent statements at different times
- No memory of peripheral details

Common Pattern of Recall

- Fragmented
- Non-linear
- Confused and inconsistent
- Unemotional/monotone

Impact on Demeanour

- Lack of emotional expression
- Hyperarousal- difficulty concentrating, jumpy
- Hypervigilance- tense, wary, inability to trust

Everyone is different

- reactions are psychobiologic influenced by complex individual, social and cultural contexts
- no universal indicators of/ or responses to traumatic events.

Cugliari v. Teleefficiency Corp. 2006 HRTO 7

Standard test for credibility includes:

- Motives
- Internal consistency
- Inconsistencies
- Contradictions
- Demeanor observations

J. Hopper

It is not reasonable to expect a trauma survivor – whether a rape victim, a police officer or a soldier- to recall traumatic events the way they would recall their wedding day. They will remember some aspects of the experience in exquisitely painful detail. Indeed, they may spend decades trying to forget them. They will remember other aspects not at all, or only in jumbled and confused fragments

Challenges with expectation

How does memory function under the best of
circumstances?

Every day non-traumatic memory challenges

- Gain and loss of information over time
- Dates, frequency, duration and sequence
- Repeated events
- Common objects

Hilary Evans Cameron

Impact of trauma

- shame, hopelessness, or distrust in being asked about the traumatic events
- flashbacks/re-experiencing of trauma
- withdrawn, flat emotion, or
- overload of information, anger or suspicion

Terrible witnesses

- unable to present a linear narrative
- no memory or disrupted memory of key elements
- inconsistent narrative
- easily overwhelmed and becomes upset/tearful
- desire to avoid re-traumatization through the court system (avoidance, not following up)

Terrible Witness

- a client's emotions unnerve or misguide the trier of fact:
 - a flat affect;
 - rush of hysterical emotion; angry or aggressive
- Counter-intuitive post event behavior

Biggest Challenge

Both “truth tellers” and “liars” can exhibit the same behaviour

Adjust to compensate

- What adjustments should we make when representing survivors of trauma?

Adjusting Client Relationship

- Extra time for in-person interviews
- Suspension of judgment, believe, empower and validate the survivor
- Appropriate counseling or support referral
- Work cooperatively, co-investigate to reduce “power over”

- Explore alternative ways to tell the story (write it down, tell it in the 3rd person, tell it to someone else, or to the wall, paint a picture, tape record it)
- Familiarize with process and location, share information with the survivor reduce stressors
- Educate the survivor on systemic inequalities

Adjusting litigation strategy

- Construct chronology
- Practice chronology
- Obtain expert report to explain inconsistencies, responses, or memory gaps
- File material on memory and trauma

Do

- Deal with memories and feelings first, facts later
- Acknowledge and validate feelings
- Explain need for intrusive questions
- Develop a plan cooperatively with client, reduce “power over dynamic”
- Ask open ended questions
- Take frequent breaks
- Refer for counselling, use support workers when available

Don't

- Judge, blame or confront
- Remain silent
- Tell to “calm down”, or “relax”
- Minimize
- Touch, without consent
- Ask unnecessary questions
- Assume role of counsellor or therapist

Vicarious trauma

“a state of tension or preoccupation with clients’ stories of trauma”

Vicarious trauma

“harmful changes that occur in professionals’ views of themselves, others, and the world, as a result of exposure to the graphic or traumatic experiences of their clients”

Psychologist Mark Evces

Vicarious Trauma

painful images and emotions associated with their clients' traumatic memories incorporated into their own memory systems.

- safety,
- trust,
- esteem,
- intimacy and
- control

Impact on the lawyer

- denial of clients' trauma
- over-identification with clients
- no time and energy for oneself
- feelings of great vulnerability, and inadequacy
- alienation, social withdrawal, disconnection from loved ones

- cynicism, generalized despair and hopelessness, disillusionment
- insecurity
- increased sensitivity to violence
- diminished self-capacities

Core competencies

- identifying trauma
- adjusting the attorney-client relationship
- adapting litigation strategy
- preventing vicarious trauma.

Resources

- SARAH KATZ & DEEYA HALDAR, Trauma-Informed Lawyering.
- http://www.law.nyu.edu/sites/default/files/upload_documents/Katz%20-%20Halder%20Pedagogy%20of%20Trauma-Informed%20Lawyering.pdf
- Hilary Evans Cameron, Refugee Status Determinations and the Limits of Memory, IJRL, V.22, Issue 4
<http://ijrl.oxfordjournals.org/content/22/4/469.abstract>

- Diane Bogner, et al. “Impact of sexual violence on disclosure during Home Office Interviews”, BJP, (2007), 191, 75-81, <http://bjp.rcpsych.org/content/191/1/75>
- Jane Herlihy, et al “Asylum claims and memory of trauma: sharing our knowledge”, BJP, <http://bjp.rcpsych.org/content/191/1/3full.print>
- Lori Haskell and Melanie Randal, “Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping, Fall 2013, The Dalhousie Law Journal, 501, <http://crjc.ca/wp-content/uploads/Trauma-Informed-Approaches-to-Law-Why-Restorative-Justice-Must-Understand-Trauma-and-Psychological-Coping.pdf>

- Lori Haskell, “Coping with Abuse leads to Psychological Adaptations”, Canadian Journal of Psychiatry, volume 3, No. 2, April 2007, https://www.researchgate.net/publication/237318708_Coping_with_Abuse_Leads_to_Psychological_Adaptations
- Hopper, J. Lisak, D. (2014) Why rape and Trauma Survivors have Fragmented and Incomplete Memories. <http://time.com/author/james-hopper-and-david-lisak/>