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IMMIGRATION LAW CONFERENCE

May 17–18, 2019

AT&T Conference Center • Austin, TX

Trauma Informed Lawyering

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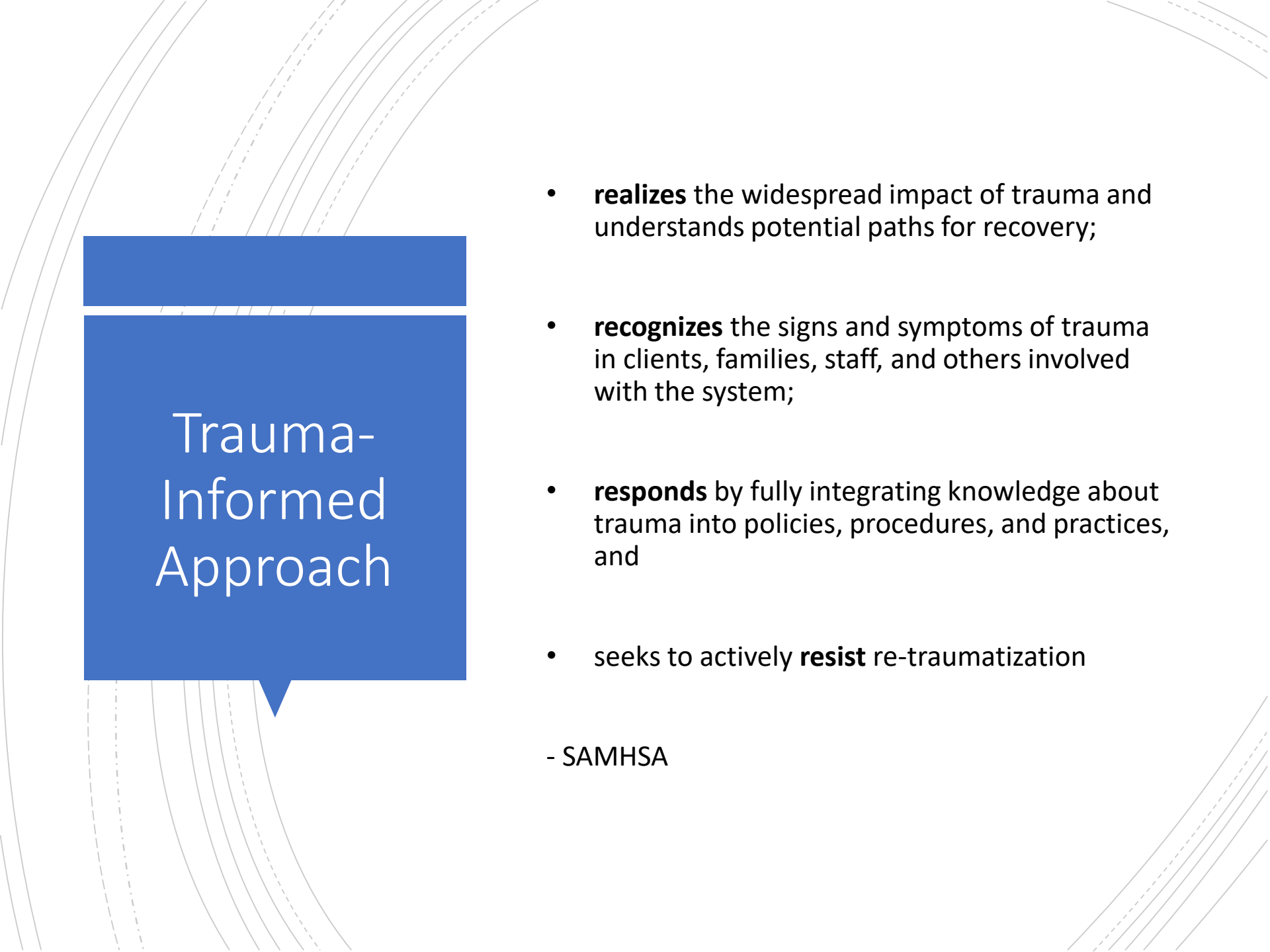
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Overview of Trauma



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Trauma-Informed Approach

- **realizes** the widespread impact of trauma and understands potential paths for recovery;
- **recognizes** the signs and symptoms of trauma in clients, families, staff, and others involved with the system;
- **responds** by fully integrating knowledge about trauma into policies, procedures, and practices, and
- seeks to actively **resist** re-traumatization

- SAMHSA

What is Trauma?

An emotional & physical response to perceived threat

- Associated with a broad range of events
- Unexpected, unpredictable, not preventable
- Involves a loss of resiliency in the nervous system
- Creates new paradigm through which we view our environment

event + experience of the event + effects



Wide range of emotional reactions:

Fear

Hyperarousal or difficulties tolerating stimulation;
heightened response to sounds, images, thoughts

Re-experiencing or intrusive thoughts

Avoidance, numbing, or shutting down

Disruptions in memory, concentration, sleep

Hopelessness

Distrust

Irritability, anger

Self-blame, shame

Responses to Trauma

- **Fight** - Aggression, protest, attack
- **Flight** - Run away, flee from the situation
- **Freeze** - Withdrawal, numbing, tonic immobility, dissociation
- **Appease** – submit, “make nice,” be compliant

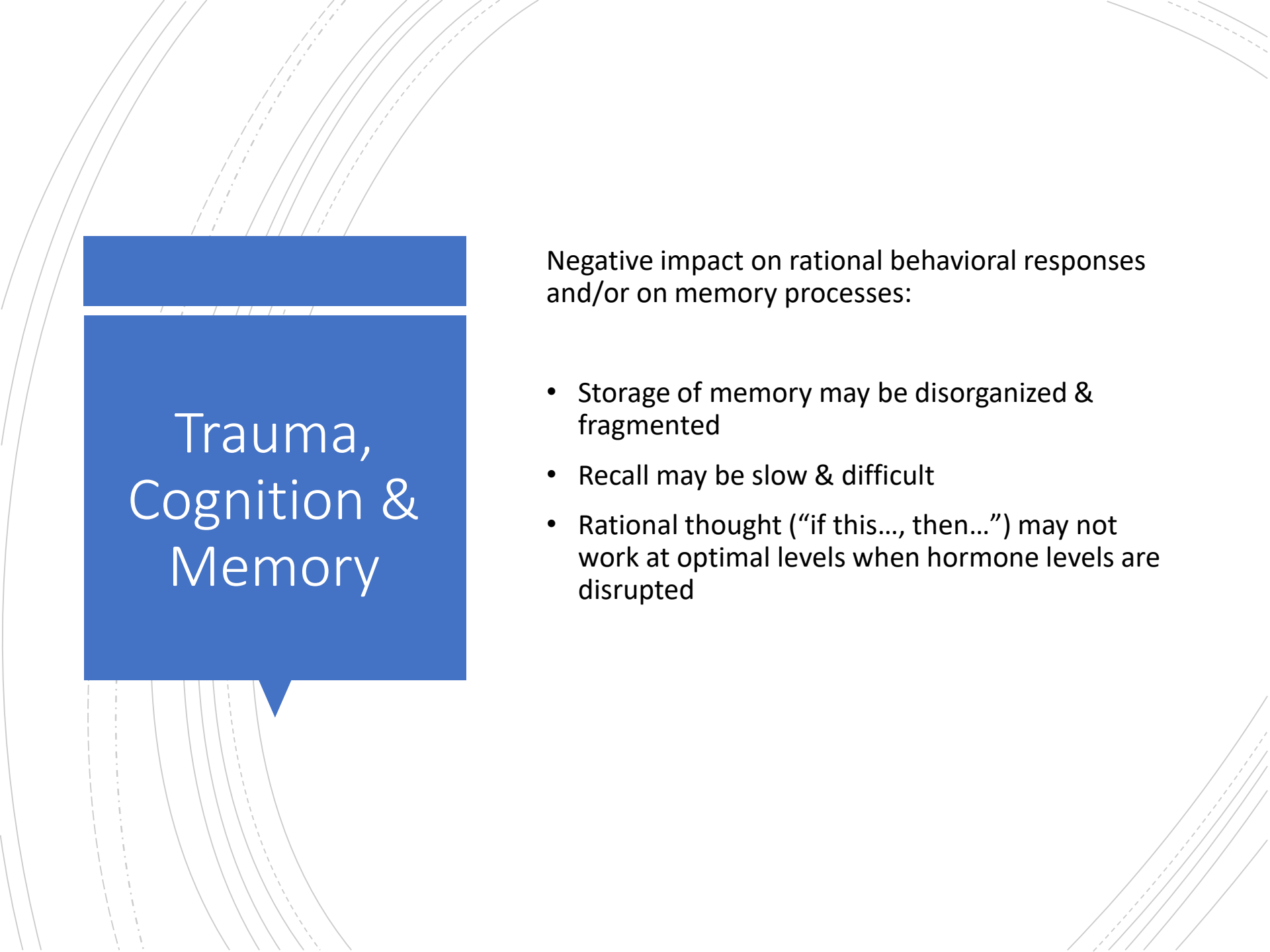
These are autonomic responses; they're uncontrollable; evolutionarily wired into us to protect our own survival.

(Levine, 2010)

Hormonal releases

- Catecholamines – adrenaline, helps with the fight and flee responses
- Cortisol (stress hormone) - affect the amount of energy that the body has to fight back or to try to flee
- Opiates – compensate for, or blunt, physical and emotional pain
- Oxytocin - increase positive feelings

Trauma response may not turn “off” or may turn back “on” more easily

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Trauma, Cognition & Memory

Negative impact on rational behavioral responses and/or on memory processes:

- Storage of memory may be disorganized & fragmented
- Recall may be slow & difficult
- Rational thought (“if this..., then...”) may not work at optimal levels when hormone levels are disrupted

How Trauma Impacts Four Different Types of Memory

EXPLICIT MEMORY

SEMANTIC MEMORY

What It Is

The memory of general knowledge and facts.

Example

You remember what a bicycle is.

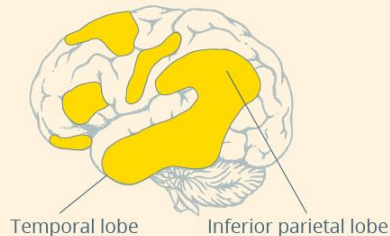


How Trauma Can Affect It

Trauma can prevent information (like words, images, sounds, etc.) from different parts of the brain from combining to make a semantic memory.

Related Brain Area

The temporal lobe and inferior parietal cortex collect information from different brain areas to create semantic memory.



EPISODIC MEMORY

What It Is

The autobiographical memory of an event or experience – including the who, what, and where.

Example

You remember who was there and what street you were on when you fell off your bicycle in front of a crowd.

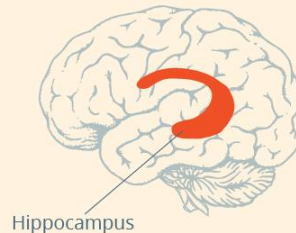


How Trauma Can Affect It

Trauma can shutdown episodic memory and fragment the sequence of events.

Related Brain Area

The hippocampus is responsible for creating and recalling episodic memory.



IMPLICIT MEMORY

EMOTIONAL MEMORY

What It Is

The memory of the emotions you felt during an experience.

Example

When a wave of shame or anxiety grabs you the next time you see your bicycle after the big fall.

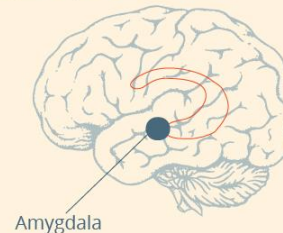


How Trauma Can Affect It

After trauma, a person may get triggered and experience painful emotions, often without context.

Related Brain Area

The amygdala plays a key role in supporting memory for emotionally charged experiences.



PROCEDURAL MEMORY

What It Is

The memory of how to perform a common task without actively thinking

Example

You can ride a bicycle automatically, without having to stop and recall how it's done.

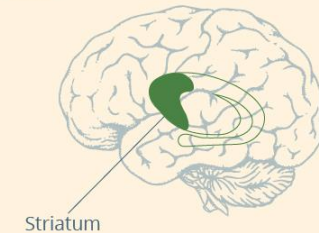


How Trauma Can Affect It

Trauma can change patterns of procedural memory. For example, a person might tense up and unconsciously alter their posture, which could lead to pain or even numbness.

Related Brain Area

The striatum is associated with producing procedural memory and creating new habits.





What about the worker?

Secondary traumatic stress - Vicarious trauma - Burnout

Cognitive, emotional, or behavioral change resulting from chronic exposure to (or practice with) populations that are vulnerable or suffering

Can manifest as distress and mirror symptoms of PTSD:

- Avoidance (professional and personal)
- Hyper vigilance
- Physical, emotional, psychological, and spiritual exhaustion
- Cynicism
- Anger/rage
- Numbing

Normal reactions to hearing vivid, distressing narratives and bearing witness to the suffering of others

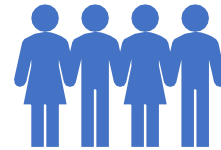
Resilience/Posttraumatic Growth

Resilience is the ability of an individual to respond to stress in a healthy, adaptive way such that personal goals are achieved at minimal psychological and physical cost

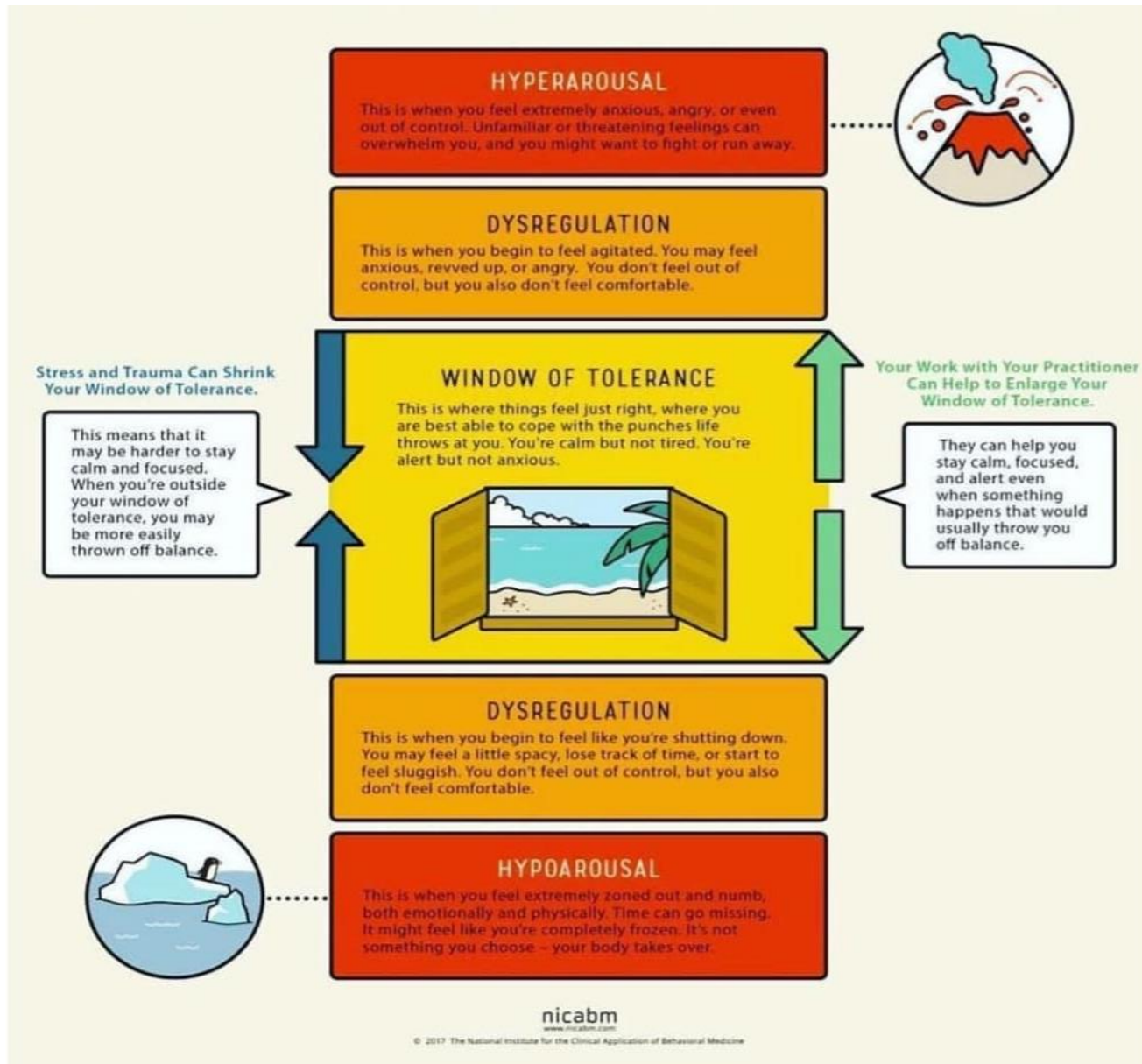
Resilient individuals not only “bounce back” rapidly after challenges but also grow stronger in the process.

Positive impact of interaction with client's stories of trauma and resilience:

- Witnessing and reflecting on humans' immense capacity to heal
- Reassessing the significance of one's own problems
- Developing hope and commitment to ideals
- Articulating personal and professional viewpoints regarding political violence
- Being a part of helping someone to begin a new life, establishing safety



Window of Tolerance





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Working with the Client



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Setting Professional Boundaries with Client

Boundaries:

- Establish limits that allow for safe connections
- Be clear that you are not the client and cannot “rescue” client from their life
- Be friendly, not friends
- Clearly define role as service provider

Compromised Boundaries:

- Gift exchanges/being friends
- Giving out personal information
- Client’s situation is overwhelming service provider – talks about client a lot, thinks about them, dreams about them, attached

STAY IN YOUR LANE!

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Planning for the interview

Schedule well and plan ahead:

- Set aside a two hour block for each interview
- Plan for a break immediately after the interview
- Plan for language – if you do not speak the language, have an interpreter with whom the client can speak openly
- Be sure you and the client have plans for children so they won't be present during the interview
- Take a look at your space and make sure it will be comfortable. Sit in the client seat and look at the room from the client's perspective
- Be sure to have tissues and water readily available

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Lawyer Perspective on Trauma

Client trauma dramatically impacts client functioning in preparation of case.

- Inconsistent testimony in prep and in court
- Dissociation
- Flashbacks
- Lengthens preparation of case
- Can inhibit getting evidence needed from client
- Client may seem uninvolved in case/depressed/hopeless
- Can result in incompetency to undergo hearing

Planning for the interview

Prepare yourself for the interview:

- Read about how trauma presents. Get an understanding of the symptoms of trauma.
- Get some understanding of how trauma functions, how memory is affected, and how the memory might be disjointed. Sometimes sounds or smells might bring back traumatic memory, for example.
- As you plan your questions, keep in mind that you are asking the person to relive the trauma, and when they do, they will not feel safe
- Ground yourself. Pay attention to your surroundings before you start. Feel your feet on the floor, or something in your hands. Breathe slowly and deeply.
- For an asylum case, familiarize yourself with country conditions beforehand so you can focus your questions on specifics of the case



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At the beginning of the interview

At the beginning of the interview, set expectations

- Inform the client of what will happen. If you will type or take written notes, explain that and why you will do it. Tell them how much time it will take. Explain the reason you need to discuss their story. Giving as much information as possible gives the client a sense of safety.
- Give the client control. Let them know where there's more water or where the bathroom is. Tell them you will stop any time they ask. Tell them they can skip over questions if they are too difficult. If you can't skip questions because of time constraints, tell them you need to proceed but they can stop and come back to them.
- Take it slow.
- From the beginning, reset yourself as an attorney. Value your client's input. Follow your client's lead.

During the interview

- Remember eye contact, watching for your client's comfort level. Look up from your notes and engage with your client.
- Assess body language throughout, yours and theirs.
- Continuously watch for signs that the client might need psychological assistance
- Validate your client. Let them know you are listening and acknowledge how hard this is.
- Watch for signs of agitation or dissociation in your client. Ground them by having them use their senses – pick up a stress ball, or look out a window, for example. Remind them where they are and that they are safe.
- When a client is recounting a particularly traumatic memory, you can assist them in staying in the present and in feeling safe by how you ask the question. For example, “if I were there, what would I see?”
- Follow your client's lead in your questioning. While you need to be mindful of what is needed for the case, open questioning and allowing them to tell the story without interruption is helpful. Go with the flow.
- Inform the client when you are switching topics or lines of questioning
- When you finish the interview, once again remind them of what happens next. Talk to them about something that brings them into the present and into safety. Ask if they need anything or if they need help contacting someone.

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After the interview

- If the client needs psychological help or other support, follow up on that
- Write up the notes of the session into an affidavit draft while your memory is fresh. This will also assist you in closing the session and not have the story repeat itself in your mind.
- Use your planned downtime after the interview. Go for a walk, listen to music, read or watch something funny, call a friend, work on something that isn't mentally taxing. Whatever helps you wind down and remove you from your client's memories.
- Observe your feelings right after the session. What do you need?
- If you need to reach out to others to help process the emotional side of the session, do so, but be mindful of not traumatizing the other person



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Working With Mental Health Experts In Immigration Cases



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Choosing Modality of Support

Assess your client early to see what kind of support might be needed:


Psychologist: focuses on mental and emotional state and behavioral assessment/intervention – neutral if just report



Psychiatrist: medical doctor that focuses on medication management for psychiatric conditions – neutral if just report



Counselor/Therapist: typically has at least a masters degree and is licensed. Engages in talk therapy or other modalities, but less formal – not neutral if providing therapy

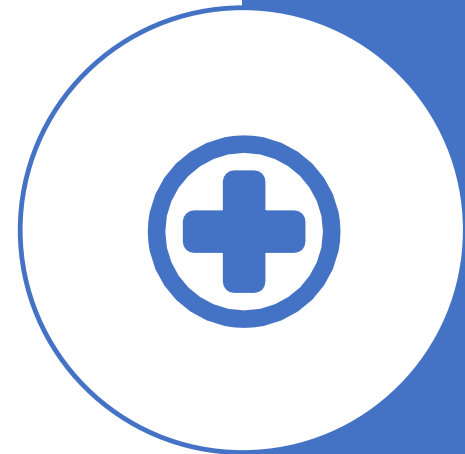


Coach: Least formal and is catch all for many different forms of spiritual, career or life coaching situations – not neutral if providing client services

Primary Types of Immigration Cases That Benefit From A Psychological Evaluation

Psychological Immigration Evaluations and reports are used in five major areas of immigration proceedings:

1. Extreme Hardship Cases
(cancellation/hardship)
2. Spousal Abuse Cases (VAWA)
3. Political Asylum Cases (esp. gender-based)
4. U/T Visa Case
5. Naturalization Cases (competency)



Value Of A Mental Health Expert

- Treat client for trauma and other mental health conditions, documentation of which can support case
- Formal evaluation (including interview and testing) for:
 - Trauma (ex: for asylum case relating to domestic violence)
 - Attachment to a relative (ex: cancellation of removal/waiver – parent-child-spouse relationship)
 - Danger to society (ex: sex-related criminal charges/convictions)
 - Mental health/IQ/overall mental/emotional health/stability (ex: waiver from naturalization test or mental health hearing)
 - Diagnosis of mental health conditions such as drug/alcohol addiction (ex: CAT case to prove person drug addict and would endanger self)
 - Safety plan, support plan, re-integration/rehabilitation (ex: esp. useful for adjustment, cancellation or any other case where judicial discretion is evaluating for rehabilitation)

Selecting A Mental Health Expert

- Determine what you need and the setting for which it will be used: Court (formal) or USCIS (can be less formal).
- Ask for CV and current license (verify license with state licensing board online): education, experience, relevance
- Ask for referrals
- Ask for redacted psych evaluation
- Interview expert before hiring them to check fees, availability, willingness to review report with you, methodology, years of experience, practice areas of expertise (trauma, attachment, competency)
- Language competency, if possible
- If work with interpreter, how and who pays/organizes?

Mental Health Expert's Role

Perform thorough background interview(s) and testing

Documenting the psychological aspects needed for the case, such as the presence of trauma that would corroborate persecution, torture or extreme hardship

Make connections between events and trauma

Documenting the effects of the trauma on client's ability to live and work, as well as ability to accurately tell story of what happened

Assess credibility/malingering and if story is inconsistent to explain why

Assess ability of client to live in home country if, for example, low cognitive functioning, addictions, or past trauma as well as to recommend a course of psychological treatment/therapy

Explain why, due to trauma or incompetency, not able to apply for asylum within one year

Draw clear conclusions on mental state of health

Provide opinion and recommendations to judge on what will happen if client is deported

Review report with assigning attorney

Allow mental health expert to be one to delve into really sensitive things - rape, etc.

What To Provide Expert Prior To Report

- Consider whether lawyer does thorough declaration first or psychologist. Maybe a brief declaration then assign to psychologist and then finish up declaration – assess order. The number of reports can change the affect of a client through re-traumatization, numbing, etc. Talk to expert.
- Any relevant country reports
- Particular evidence in case that would verify facts, such as birth/death certificates/criminal records
- Declaration of client (or draft)
- Let expert know what you hope to get out of his/her testimony – the objectives/theory of case
- Expert can only make changes as told by client, but may be willing to take out things that are not helpful (within reason to not compromise report) or rephrase

What To Look For In Report

- A biographical intro of psychologist
- Who referred to psychologist and for what purpose
- Date and conditions of interview and testing
- Thorough background of client, how presented and client's issues
- Thorough discussion of testing tools used and outcomes
- Findings/Opinions and Recommendations
- Many of reports we get are 15-20 pages, some longer
- Look for overall thoroughness and detail. Language should be neutral but still persuasive/interesting narrative
- If there is in-depth detail about something particularly traumatic then don't necessarily ask client to detail it for your declaration – defer to psych eval

Other Mental Health- Related Evidence to Include

Counseling records – sometimes have greater effect because more long term, however, make sure no evidence in file contradicts

Rehabilitation plans that are grounded and realistic

Certificates of completion of programs like ASAP or anger-management

Letters of support and character references

Reports on availability of mental health support in home country

Preparing Expert For Court

- Carefully go through CV and ask credentialing questions and then thorough, open-ended questions about the report
- Make sure to include CV and license with expert report in filing and reference it in witness list
- Prep your expert – can make or break your case
- In process of preparation and before filing expert report, review thoroughly for any inconsistencies with other evidence in file and bring to attention of expert for discussion
- Don't let judge tell you it is sufficient to have report in file. Have expert testify unless for strategic reasons you don't want your expert to be cross-examined



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Attorney Self Care



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Lawyer Secondary Trauma



Compassion fatigue: “the natural consequent behaviors and emotions resulting from knowing about a traumatizing event experienced by a significant other- the stress resulting from helping or wanting to help a traumatized or suffering person.”
Jenkins and Baird: Traumatic Stress and Vicarious Trauma: A Validation study (2002).



Can be cumulative and exacerbated by stress/long hours



Symptoms: problems sleeping, weepiness, anger, irritability with colleagues, lack of concentration, feeling overwhelmed, severe muscle tension, joint pain, headaches, frequent illness, withdrawal from friends/family

Creation of Trauma Fields in Body

Emotional impact can of event can get lodged in body as well as mind.

Trauma will “land” somewhere in physical body that creates a trauma field.

Left untreated trauma field may dissipate but may not and can cause long-term physical effects as well as emotional effects.

Repeated instances of trauma or a significant singular event can result in guarding or bracing of body cells in particular area of body

Result of blockage can decrease energy and blood flow – cause stagnation, pain, inflammation, perhaps cancer, blockages in arteries, etc.

EXAMPLE: TENSION MYOSITIS SYNDROME



Attorney Self Care

Breathing. More breathing. Deep, slow breaths. Use breathing exercises like breathing in through your nose for 5 seconds, holding, then breathing out through your mouth for 7 seconds, repeating this exercise multiple times. Do this throughout the week, not just when you feel anxious.

Integrate activities that help you regulate breathing, like yoga, swimming, or singing

Remember that the work of preparing a case has a value to the client – not only are they not alone, they are integrating their memories which helps them recover from trauma

Set and keep boundaries. This includes the boundaries between yourself and your client, as well as the boundaries between your work and your home

Be aware of how your work is affecting you. Watch for signs of secondary trauma, vicarious trauma, burnout

Seek support. This can be with others who do similar work, a supervisor or mentor, or with a therapist



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Questions?



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