
(THE PSYCHOLOGY OF) EFFECTIVE JUDICIAL COMMUNICATION

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DISCLAIMER

- The opinions expressed during this presentation are those of the presenter, and does not represent those of the Veterans Administration or the government of the United States.

DISCLOSURE

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WHAT
HAPPENS
WHEN YOU
PUT ON THE
JUDICIAL
ROBE ON
YOUR FIRST
DAY?



COMPONENTS OF COMMUNICATION

THE THREE COMPONENTS OF COMMUNICATION

Verbal

- The words you say

Vocal

- Your tone and volume

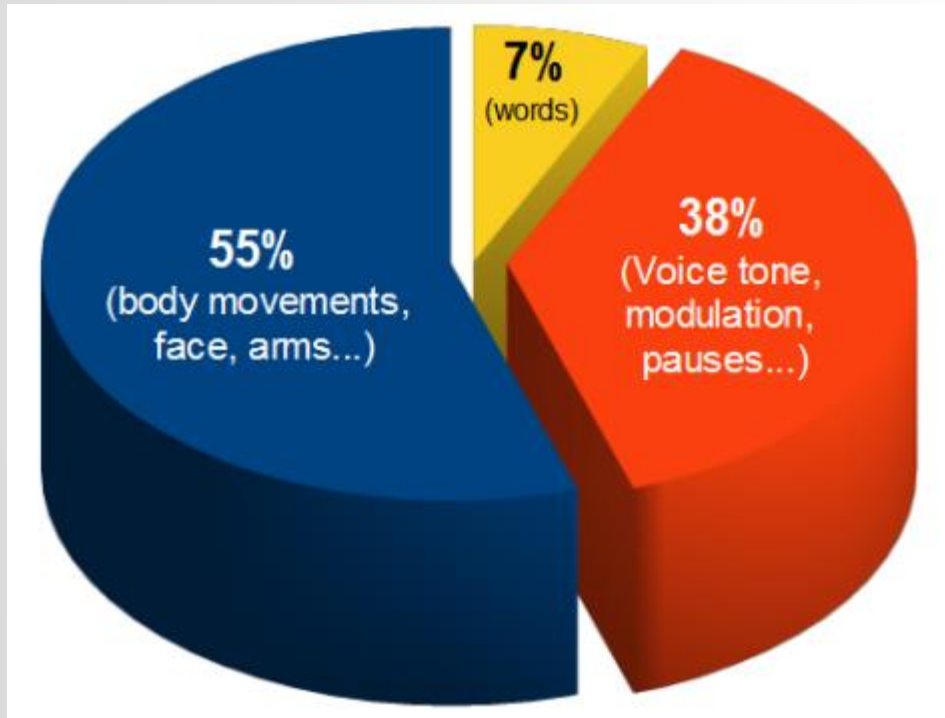
Non-Verbal

- Facial expressions and body language

What percentage of each makes up what the recipient takes in?

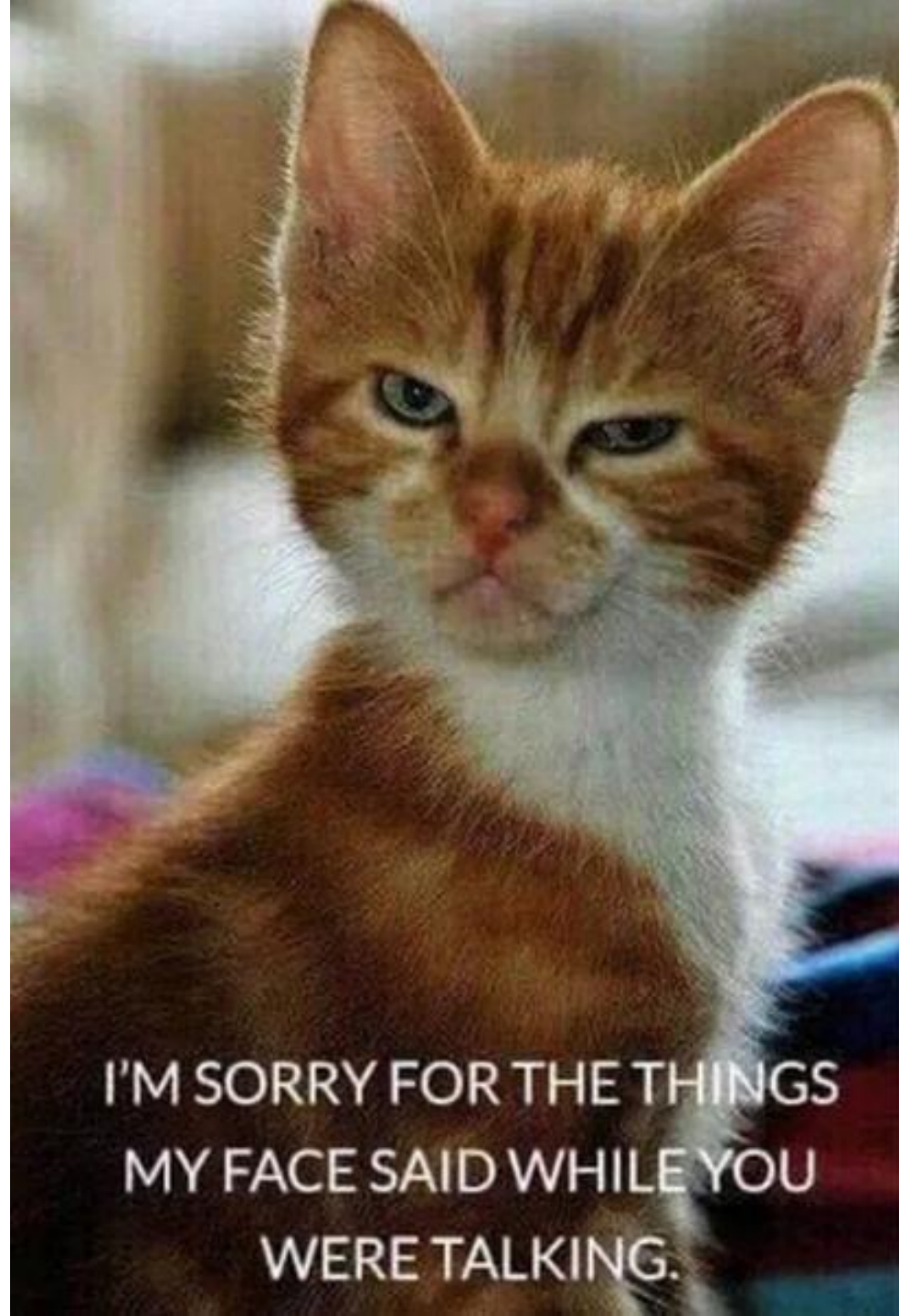
NON-VERBAL COMMUNICATION

How much of your communication is in your words?



- What are your facial expressions?
- What does your body language say?
- What is your tone of voice?
- What is the volume of your voice?

NONVERBAL MESSAGES MATTER



I'M SORRY FOR THE THINGS
MY FACE SAID WHILE YOU
WERE TALKING.

IMPLICATIONS

- You don't know the messages you are sending
 - You can't see yourself the way they see you
 - You can't hear yourself the way they hear you

WHAT CAN YOU DO?

- Look in a mirror
- Record yourself
- Video yourself
- Ask your partner how you come across



YOUR COURTROOM SENDS MESSAGES



- To a participant, the courtroom may look and feel forbidding at first
- Their impressions of courts may not be positive, particularly if they come from a minority population

BE AWARE OF WHAT YOUR COURTROOM CONVEYS TO VISITORS

- Eliminate loud, ticking clocks
- Lower the courtroom temperature
- Decrease the number of signs that say “No”
- Install multilingual signage





WHAT YOU BRING IN TO YOUR COURTROOM





Anyone who has taken the oath I have just taken must feel a heavy weight of responsibility. If not, he has no conception of the powers and duties of the office.

- William Howard Taft

FACTORS THAT CAN INTERFERE WITH YOUR NEUTRALITY

You are not the same from one day to the next:

- What is happening in your life
- Your health
- How well you slept
- Your mood



Takeaway: Check yourself before entering the courtroom

IMPRESSIONS MATTER

- How long does it take to develop a first impression?
 - 7 seconds (van Edwards, 2018)
- Physically attractive defendants are less likely to be convicted (Efran, 1974; Kulka & Kessler, 1978; Leventhal & Krate, 1977)





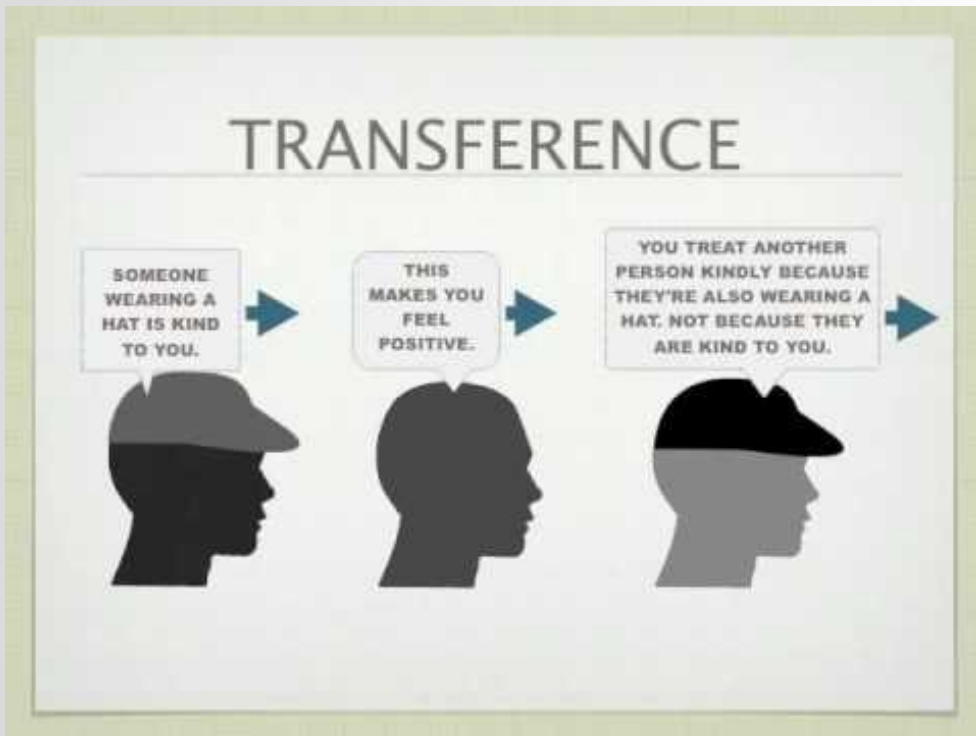
THE WAY YOU
SEE THINGS
MATTERS

WHAT YOU SEE DEPENDS ON HOW YOU LOOK AT IT



What you look for determines what you see.

YOU WILL BE THE OBJECT OF TRANSFERENCES



- Everyone experiences transferences
 - We “transfer” the way we treat someone we know to someone else who reminds us of that person
 - Transferences also occur for role schemas
- We are all “sticky” for some schema transferences
 - You are becoming an authority figure
 - You will “catch” schemas related to authority
 - Many of those schemas will be negative

OTHER THINGS YOU BRING IN

- Your history, including any history of trauma
 - A trauma history can make you vulnerable to secondary traumatization
- The judicial models and mentors you've had
- Your experience
- Your reputation
- Your relationships with attorneys
 - This can raise fairness issues





WHAT OTHERS BRING IN TO YOUR COURTROOM

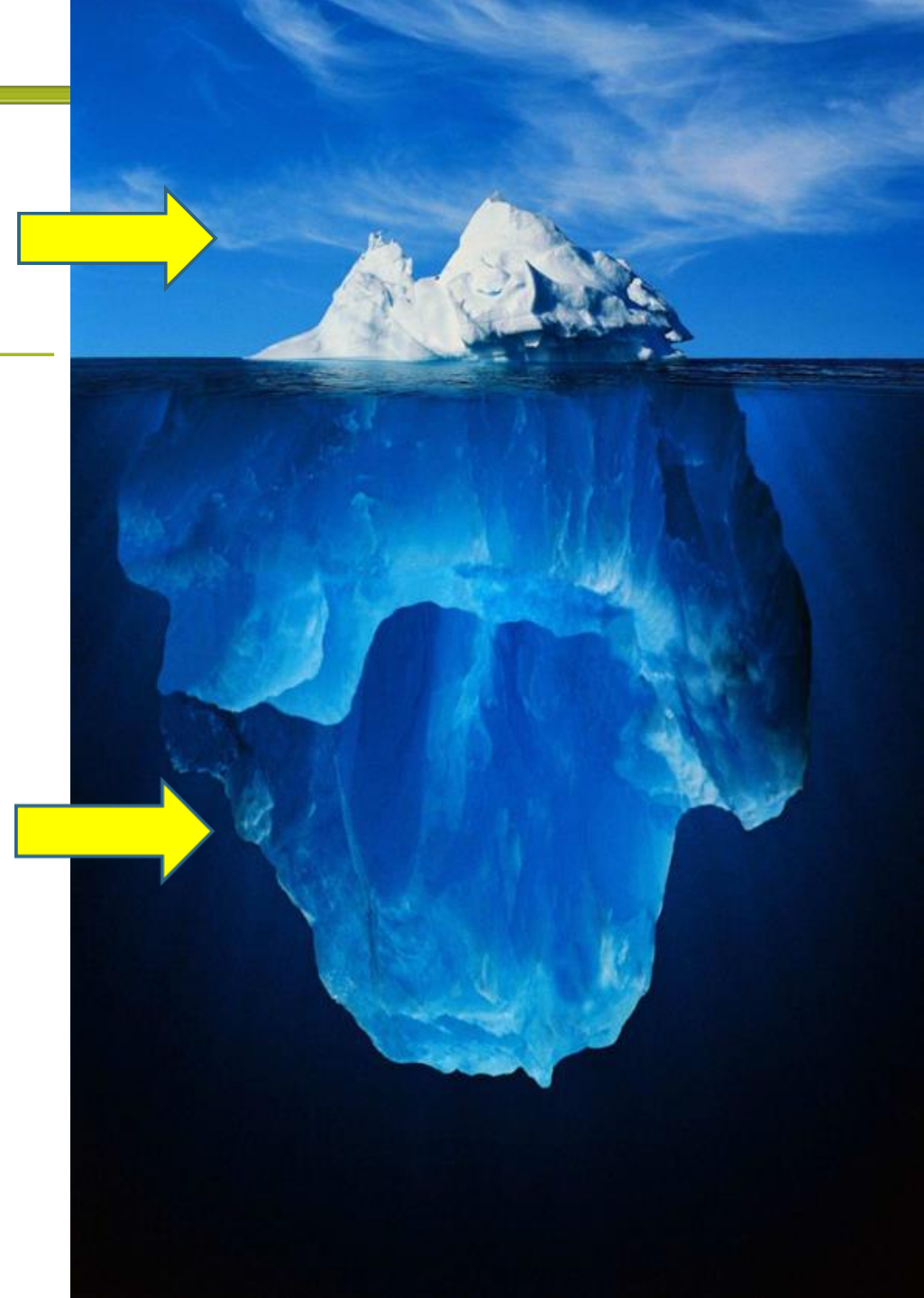


THEY BRING
IN THEIR
STORY

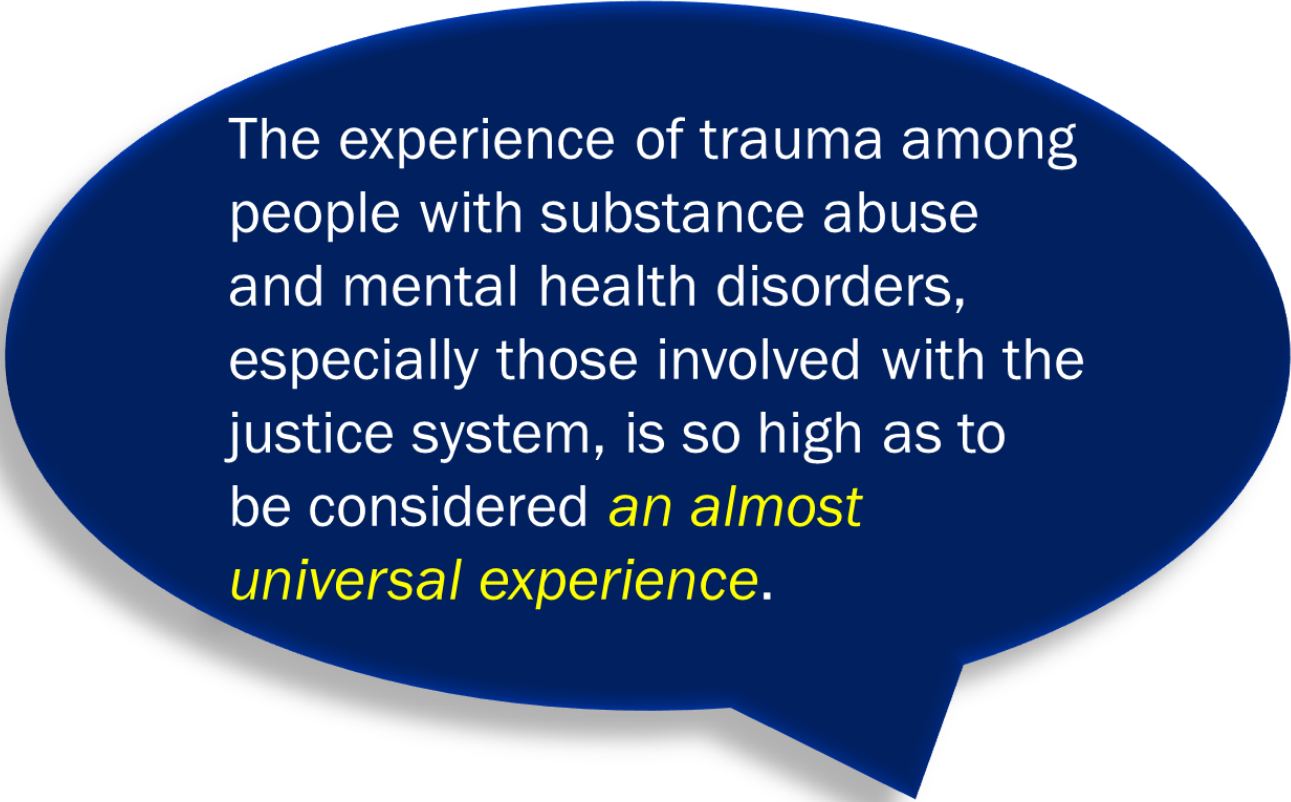
OFTEN
WHAT GETS
THEM THERE
IS TRAUMA

What they did to
get into court

What
happened
to them
that got
them
there



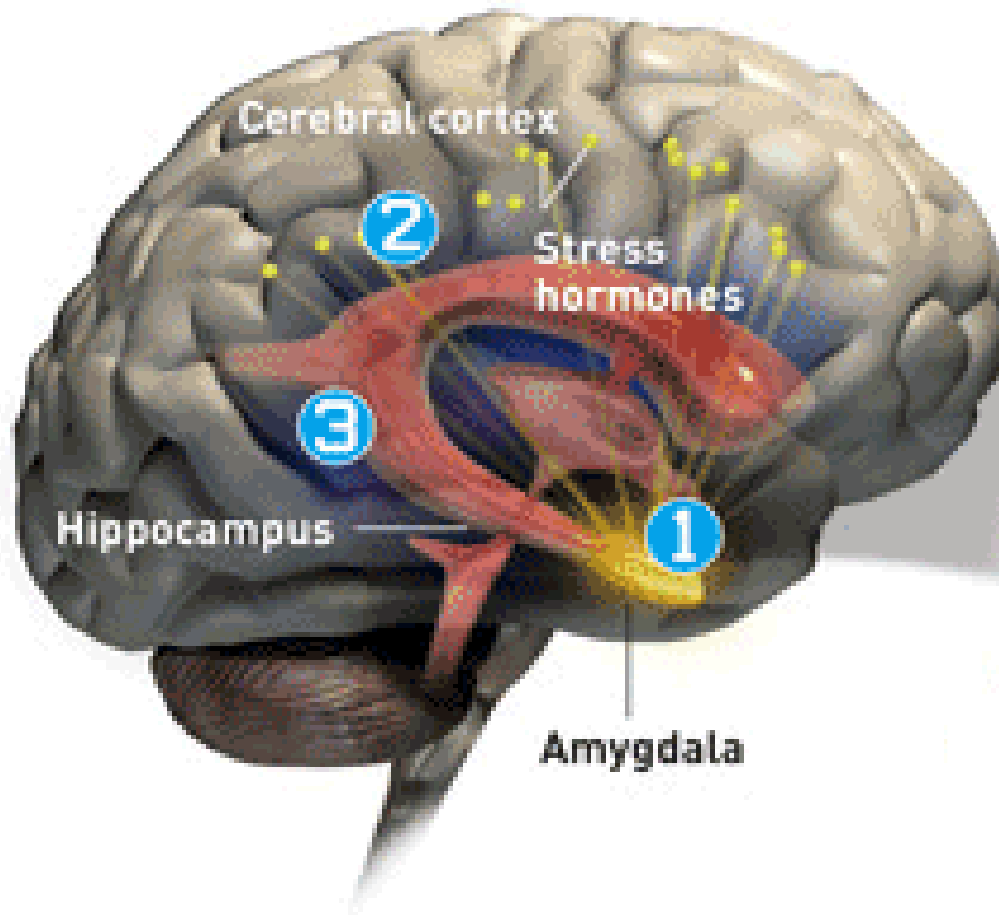
Why Should You Care about Trauma?



The experience of trauma among people with substance abuse and mental health disorders, especially those involved with the justice system, is so high as to be considered *an almost universal experience*.

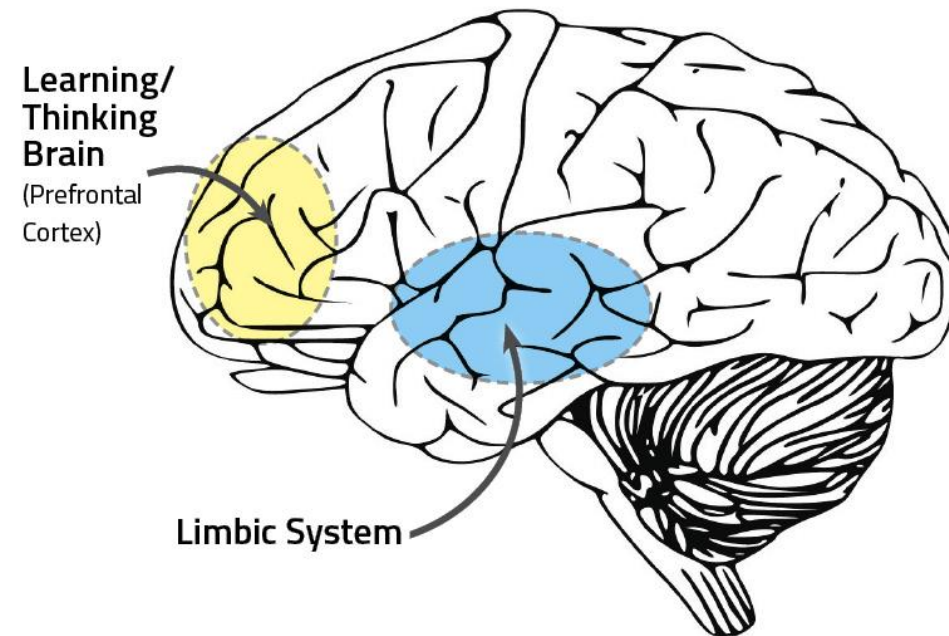
SAMHSA, 2013

TRAUMA CHANGES THE BRAIN



Survival Mode: **Flight/Fight/Freeze**

Frontal lobe (Prefrontal cortex) goes offline
Limbic system / mind and lower brain functions take over



TRAUMA AND JUDICIAL AUTHORITY




- Most traumatized people have negative views of authority
- Often, they have been harmed by people in positions of authority
- They usually perceive authority figures as either harming or abandoning them
- This leads to negative authority transferences
- They will respond in ways they have usually responded to authority: with anger, fear, distrust, and/or shame


WHAT ATTORNEYS BRING IN

- Their experience and history
- Their experience with other judges
- Their relationship with you





CHARACTERISTICS OF EFFECTIVE JUDICIAL COMMUNICATION



BEFORE GOING INTO THE COURTROOM

- Learn what your biases are
- We all have unconscious biases: who we are attracted to, affinity bias, confirmation bias, etc.
- Take the Implicit Bias Test
<https://implicit.harvard.edu/implicit/takeatest.html>
- Check yourself to see if you may have any biases, positive or negative, towards:
 - Attorneys on both sides
 - Participants
 - About the case

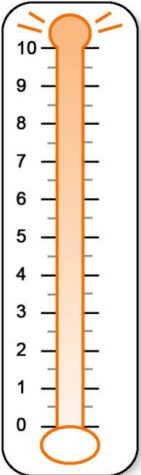
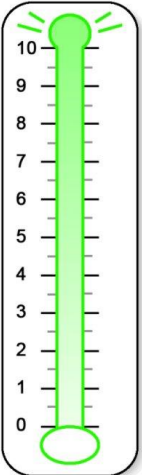
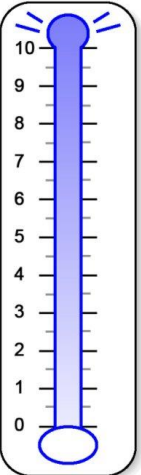
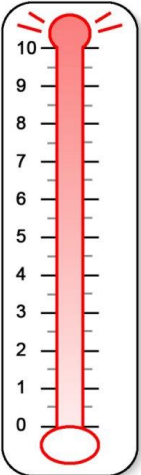
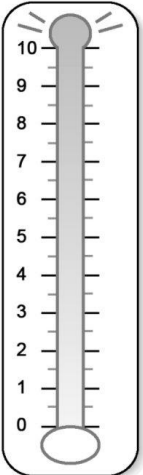


BEFORE GOING INTO THE COURTROOM

Emotion Thermometers 5 items

Instructions

In the first four columns, please mark the number (0-10) that best describes how much emotional upset you have been experiencing in the past week, including today.
In the last column please indicate how much you need help for these concerns.

	1. Distress	2. Anxiety	3. Depression	4. Anger	5. Need Help	
Extreme						Desperately
None						Can manage by myself

Adapted from the NCCN Distress Thermometer, Alex J Mitchell © 2012

- Take your emotional temperature
- Notice if anything is bothering you
- Check your thoughts
- Check your mood
- Check your energy level

“EFFECTIVE COMMUNICATION STARTS WITH SHOWING RESPECT FOR PARTIES AND COUNSEL.”

“Judges work for the People, and we should treat all of those appearing in our courts with dignity and respect.”

- Use proper names, not legal terms such as “defendant” or “plaintiff”
- Avoid using stigmatic language
 - “Addict”, “criminal”, etc.
- Treat people like you would want your grandmother to be treated

EFFECTIVE COMMUNICATION STARTS WITH SHOWING RESPECT



“Although you are in a position of authority, communicate to convey compassion, respect, and empathy even in the most challenging cases.”

SET CLEAR EXPECTATIONS UP FRONT

- Start by stating directly what the hearing or proceeding is about.
- Establish the rules up front.
- Lay out your expectations for courtroom behavior, including respect for others.
- Be transparent: Tell everyone what you will do.
- Be consistent: Do what you said you would do.
- Convey neutrality and openness, especially at the start.
- Treat each case like it is the only one on your docket, even on the busiest days. To them, it is.

“If we could just communicate our expectations in a civil, authoritative manner with patience for those who are really trying to understand, we could eliminate some of the failure to follow a court’s order.”

USE ACTIVE LISTENING SKILLS

Make eye contact.

Be attentive.

Be open to what you hear.

Reflect back their words.

Ask open-ended, probing questions.

Request clarification.

Summarize, using their own words when possible.

Don't interrupt unless absolutely necessary.

BE AWARE OF YOUR NON-VERBAL COMMUNICATION

- Your default facial expression
- Control your face
- Watch for “leaking” body language
- No “Judge Judy” faces or body language
- This requires continuous self-monitoring

**DON'T LOOK AT ME
IN THAT TONE OF
VOICE.**



VOCAL TONE AND VOLUME MATTER

“It only takes one voice,
at the right pitch, to
start an avalanche.”

DIANNA HARDY

Tone communicates
attitude and emotion

- Respectful, firm, clear
- Use a calm tone
- Avoid snarky comments
- No shaming, humiliating, or attacking
- The judge sets the tone

Friedrich Nietzsche



We often refuse to accept an idea merely because the tone of voice in which it has been expressed is unsympathetic to us.

AZ QUOTES

NONVERBAL COMMUNICATION AFFECTS YOU, TOO

- Try to notice it with each person
- The best time to practice is now



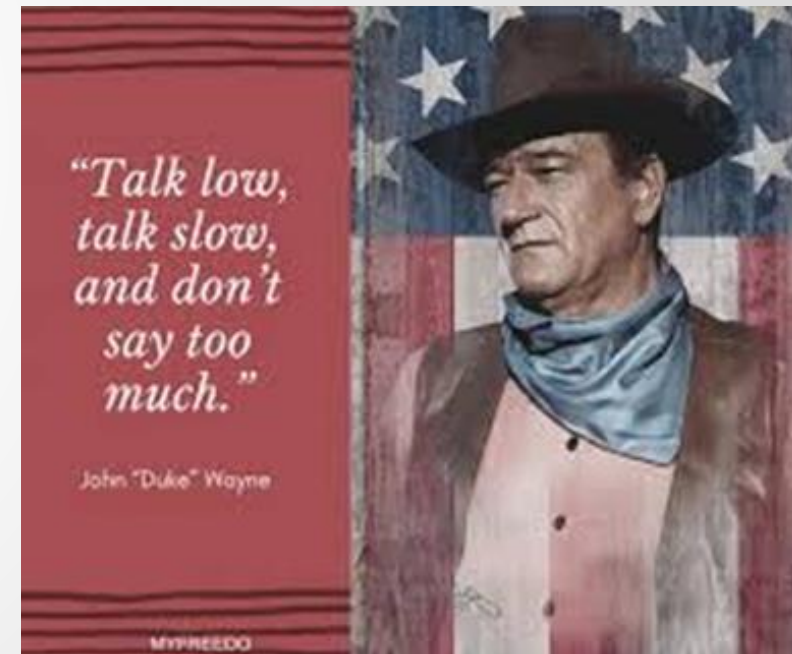


IT'S ALL IN THE
DELIVERY

“IT’S NOT JUST
WHAT WE SAY, IT’S
HOW WE SAY IT.”

USE CLEAR LANGUAGE

- Speak and write in plain, ordinary terms, without talking down to people. Talk as if you were explaining something to your grandmother.
- Use short sentences.
- Avoid Latin phrases unless necessary.
- Avoid legalese.
- Avoid mixed messages.
- Ask litigants, witnesses, and other participants to repeat back to you what you said. People in court are often stressed, which makes it difficult to listen.



USE EFFECTIVE LANGUAGE

- Organize your thoughts and make an outline of what you want to say.
- Use precise words; attorneys may interpret vague statements as potential loopholes.
- When giving consequences, stay calm and stick to the facts - unless you are trying to send a message.
- Remember that “People don’t want a lecture, they want the bottom line.” Don’t overexplain your reasoning; it can backfire on you.

“ASSUME THAT MANY PEOPLE APPEARING IN COURT HAVE SUFFERED SOME KIND OF TRAUMA.”

- When a person has a history of trauma, they commonly respond with fight/flight/freeze responses.
- “Many who have experienced trauma have a poor time managing stress. Court is stressful. When people have a stress disorder, such as PTSD, stress can come across as anger. A judge should not try to match a litigant’s anger in the courtroom. There are ways to make it clear that you are in control of the courtroom without matching anger.”



MANAGING THE TRAUMATIZED OR AGITATED PERSON



- Speak in a calm, quiet voice.
- Have the person wait (outside if possible) until the end of the docket to reduce the number of people he has to appear in front of.
- Ask him to meet with a member of the court staff outside the courtroom to diffuse the situation.
- “Take a break from the bench to make sure you are not punishing someone because you are mad at them.”

RESPOND, DON'T REACT

- Don't use fear to control the courtroom or get someone to feel personally responsible
- Respond, don't react:
 - to hostility with calm and compassion
 - to avoidance with invitation and reaching out
 - to fear with gentleness
- In other words, *respond with the opposite of what is expected**

**This helps dissipate negative transference*

BETWEEN STIMULUS AND
RESPONSE THERE IS A SPACE...
IN THAT SPACE IS OUR POWER
TO CHOOSE OUR RESPONSE.
IN OUR RESPONSE, LIES OUR
GROWTH AND OUR FREEDOM.

~Viktor Frankl, Auschwitz Survivor

RESPOND, DON'T REACT

“Another thing I have seen more of in the recent past is that judges react and fire off things they should never say because they feel they are not being respected by the litigants or especially the lawyers. In my opinion, that only contributes to the problem and solves nothing. I believe judges need to speak after considering the situation carefully and not be reactive. It's hard to do because the world just seems to be a nastier place, but the system of justice should deserve better.”

RESPOND, DON'T REACT

The difference between responding and reacting is a choice. When you react, they're in control. When you respond, you are.



How to *respond*:

1. Take a mental step back
2. Take a deep breath
3. Think for a moment
4. Give a thoughtful, reasonable response

HURTFUL AND HELPFUL COMMUNICATION

Hurtful

- Criticize
- Confront
- Sarcasm
- Talk loudly
- Distracted
- Judgmental
- Disrespectful
- Uses jargon
- Defendant

Helpful

- Express concern
- Support
- Empathy
- Talk quietly but firmly
- Active listening
- Accepting
- Patient
- Uses language everyone understands
- Justice-involved person


END BY CONVEYING A POSITIVE MESSAGE (IF YOU CAN)

- How would you like them to act in the future?
- Something that indicates that you have confidence that they can change their behavior
- Something they did or said that gives you hope for them



BE OPEN TO LEARNING FROM EXPERIENCE

"When I was appointed to the bench, I was 35 years old. I felt as though I needed to be very serious and stern with people in my courtroom. Looking back now, I think part of that was to compensate for my age and gender. When defendants were in front of me, I sometimes felt like I had to match their anger with anger and attempt to control behavior with punishment, but that turned out to be unproductive. Punishment did not seem to be the main game changer in a defendant's behavior; it was rapport and respect. I learned that displays of anger from those appearing in front of me was a symptom of their fear or stress. And responding to that fear and stress with anger and punishment only reinforced the unsought behavior. Now I only respond to anger in the courtroom if it's a safety issue."



**I'VE LEARNED THAT PEOPLE
WILL FORGET WHAT YOU SAID,
PEOPLE WILL FORGET
WHAT YOU DID, BUT PEOPLE
WILL NEVER FORGET HOW YOU
MADE THEM FEEL.**

- MAYA ANGELOU

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