

JUDICIAL OFFICERS' BULLETIN

Published by the Judicial Commission of NSW

March 2020 | Volume 32 | No 2



The trauma-informed courtroom*

Judge Peggy Hora**

A growing evidence base supports the case for judicial officers to adopt a trauma-informed approach in the courtroom.¹ This approach has emerged from the field of mental health and adopted in the treatment and problem-solving courts of the United States and the NSW Drug Court in the 1990s. This issue of the Bulletin explains the approach and provides practical strategies for implementation in the courtroom.

Why do judges and other justice professionals need to be cognisant of trauma as it relates to court cases? Like it or not, trauma seems to be the overwhelming negative factor affecting many people who come to court.

From treatment court² participants to those who have experienced child abuse and neglect, “adverse childhood events” (ACE) seem to be present in many cases. Tragically, people may leave the courtroom worse off than when they came in having suffered “jurigenic harm.”³

Some of the health issues and risk factors that individuals exposed to ACEs in childhood experience at a higher rate than those who did not have trauma include:⁴

* First published on the Justice Speakers Institute blog series at <http://justicespeakersinstitute.com/the-trauma-informed-courtroom/>, accessed 25/2/2020.

** President, Justice Speakers Institute, LLC; retired judge of the California Superior Court. Judge Hora is an international leader in the solution-focused courts movement and has written comprehensively on justice issues.

1 C Kezelman and P Stavropoulos, “Trauma and the law: applying trauma-informed practice to legal and judicial contexts”, Blue Knot Foundation, at https://communitylegalqld.org.au/sites/default/files/downloads/webinars/blue_knot_paper_trauma_informed_practice.pdf, accessed 25/2/2020.

2 Treatment courts or problem-solving courts (for example, the NSW Drug Court) adopt a therapeutic approach to treating an offender.

3 Just as iatrogenic effects is harm caused by hospitals, jurigenic is harm caused by judges.

4 American Academy of Pediatrics, The Resilience Project, at <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/resilience/Pages/Resilience-Project.aspx>, accessed 25/2/2020.

FEATURES

The trauma-informed courtroom
Judge Peggy Hora 11

Adopting a trauma-informed approach in the District Court of NSW
His Honour Judge
Warwick Hunt 14

Indigenous law students' clerkship graduation ceremony at Supreme Court of NSW 18

REGULARS

Case updates 15

JIRS update 18

Judicial moves 18

Program events 18

Obituary 18



Health issues and risk factors

- | | |
|---|--|
| <ul style="list-style-type: none"> ▪ alcoholism and alcohol abuse ▪ chronic obstructive pulmonary disease (COPD) ▪ depression ▪ foetal death ▪ health-related quality of life ▪ illicit drug use ▪ ischemic heart disease (IHD) ▪ liver disease | <ul style="list-style-type: none"> ▪ risk for intimate partner violence ▪ multiple sexual partners ▪ sexually transmitted diseases (STDs) ▪ smoking ▪ suicide attempts ▪ unintended pregnancies ▪ early initiation of smoking ▪ early initiation of sexual activity ▪ adolescent pregnancy. |
|---|--|

Aligning what we know with what we do

Judge Mary Triggiano says, “Many courts have come to recognise that acknowledging and understanding the impact of trauma on court participants may lead to more successful interactions and outcomes. “Courts that do not practice trauma-informed decision making may inadvertently increase the level of trauma that families experience. Every interaction is an opportunity.”⁵ We need to change the paradigm from “What’s wrong with you” to “What’s happened to you?”

“Dysfunctional families and distressed children go hand in hand,” according to Dr Bruce S McEwan,⁶ and current scientific evidence seems to be backing that up. Judges in child dependency courts must be trained to appropriately respond to improve brain wellness of the children in these cases.

SAMSHA’s⁷ six key principles of a trauma-informed approach

A trauma-informed approach reflects adherence to six key principles rather than a prescribed set of practices or procedures for both litigants and witnesses:

1. safety
2. trustworthiness and transparency
3. peer support
4. collaboration and mutuality
5. empowerment, voice and choice
6. cultural, historical, and gender issues.⁸

Trauma-specific intervention programs generally recognize the following:

1. The survivor’s need to be respected, informed, connected, and hopeful regarding their own recovery.
2. The interrelation between trauma and symptoms of trauma such as substance abuse, eating disorders, depression, and anxiety.

3. The need to work in a collaborative way with survivors, family and friends of the survivor, and other human services agencies in a manner that will empower survivors and consumers.⁹

The US Office of Victims of Crime has four very specific recommendations to have a trauma-informed courtroom:¹⁰

1. Encourage suggestions from other court stakeholders. Encourage parties to cases, attorneys, and guardians ad litem to make specific requests for any possible and reasonable adjustment to the proceedings.
2. Step down and leave the judge’s robe at the bench.¹¹ On a limited basis, if no one’s personal safety is compromised, a judicial officer may consider sitting at the victim’s table, especially if the victim does not have legal representation, or with any minor child and the child’s guardian ad litem or court-appointed special advocate. If a judicial officer elects to join the parties at the tables, the officer might consider literally leaving the judge’s robe on the bench and thus appearing more approachable. The intimidation factor perceived by an unrepresented litigant and children in a courtroom when interacting with an authority figure (dressed differently and seated in an elevated location) can invoke trauma triggers or otherwise discourage interaction.
3. Adjust the lighting in the court room. Often court rooms have multiple lighting options and decreasing the lighting may feel more comfortable to individuals who are light sensitive or have certain sensory limitations. Discuss this with the victim, victim’s case manager, or representative to ensure that dimming the lights is not potentially triggering.
4. Provide simple conveniences like a box of tissues or a bowl of snacks. Aside from providing an energy boost for anyone in the courtroom, a piece of candy or fruit can often help victims feel calmer and more welcome.

5 M Triggiano, “Childhood trauma: essential information for courts,” Wisconsin Association of Treatment Court Professionals, 2015.
 6 B McEwan, “Effects of stress on the developing brain,” Cerebrum, 2011, at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3574783/>, accessed 25/2/2020.
 7 Substance Abuse and Mental Health Services Administration (SAMHSA).
 8 SAMHSA, “Concept of trauma and guidance for a trauma-informed approach”, 2014, at <https://store.samhsa.gov/system/files/sma14-4884.pdf>, accessed 25/2/2020.
 9 MentalHealth.org, “Trauma-informed approach and trauma-specific interventions”, at <https://www.mentalhealth.org/get-help/trauma>, accessed 25/2/2020.
 10 US Office for Victims of Crime, “Trauma-informed courts”, at <https://www.ovcttac.gov/taskforceguide/eguide/6-the-role-of-courts/63-trauma-informed-courts/>, accessed 25/2/2020.
 11 This may not be permitted in every State, see, eg, 2018 California Rules of Court Rule 10.505. Judicial robes.

Specific suggestions for trauma-informed judicial practices¹²

Courtroom procedure	Reaction of trauma survivor	Trauma-informed approach
Court officer handcuffs an individual without warning,	Anxiety about being restrained; fear about what is going to happen.	Tell the court officer and individual you intend to remand them. Explain what is going to happen and when. "The officer is going to walk behind you and you will be handcuffed."
Judge remands one drug court participant for having a positive test but not another. They are both in the courtroom at the same time.	Concern about fairness; feeling that someone else is getting special treatment.	
Individuals who are agitated or "acting out" are required to wait before speaking to the judge.	Increased agitation; anxiety; acting out.	Provide scheduling information so participants know what will be expected of them and when. Prioritize those who appear before you and when. Those who are especially anxious may have the most trouble waiting and be more likely to act out.
A judge conducts a sidebar conversation with attorneys.	Suspicion, betrayal, shame, fear.	Tell participant what is happening and why. "We have to discuss some issues related to your case. We just need a minute to do it on the side."
"Your test came back dirty."	"I'm dirty." "There is something wrong with me."	"Your drug screen showed the presence of drugs." "Your drug test was positive."
"Did you take your meds today?"	"I'm a failure. I'm a bad person. No one cares how the drugs make me feel."	"Are the medications your doctor prescribed working well for you?"
"You didn't follow the contract. You're going to jail. We're done with you. There is nothing more we can do."	"I'm hopeless. Why should I care how I behave in Jail? They expect trouble anyway."	"Maybe what we've been doing isn't the best way for us to support you. I'm going to ask you not to give up on recovery. We're not going to give up on you."
"I'm ordering you to get a mental health evaluation."	"I must be crazy. There is something wrong with me that can't be fixed."	"I'd like to refer you to a doctor who can help us better understand how to support you."

Vicarious trauma

The symptoms of vicarious trauma are closely related to post-traumatic stress disorder

Trauma affects not only the victims, witnesses, and litigants who appear in court, but also judges and other court staff. Vicarious trauma is defined as "repeated or extreme exposure to details of the event(s)." Repeated exposure to pictures or videos (such as autopsy photos; a dead body at a crime scene; the results of an assault) qualifies as vicarious trauma if it is related to work. Anyone who regularly works or appears in courts may be exposed to this kind of repeated exposure to graphic photos, videos, or testimony about horrific events.

The symptoms of vicarious trauma are closely related to post-traumatic stress disorder (PTSD) so that judges, court personnel, or jurors who sit through child abuse, domestic violence, or other case types providing graphic details of someone else's traumatic experience are at risk. Their need

for treatment options is being recognised by many State court systems.¹³

Editor's note: The Judicial Commission is collaborating with UNSW to conduct research into the effects of vicarious trauma. The results of the study, based on a survey sent to judicial officers in 2019, will be published later this year.

Conclusion

Many court participants are trauma survivors. Judicial understanding and acknowledging of trauma helps to engage participants in services, treatment, and judicial interventions, whether or not they have a trauma-related or other mental health diagnosis. Communicating effectively and respectfully with treatment court participants, eliminating unnecessary court procedures that could be perceived as threatening, and modifying the physical environment to create a sense of safety can help to ensure that trauma survivors benefit from judicial interventions.¹⁴

12 SAMHSA, "Essential components of trauma-informed judicial practice: what every judge needs to know about trauma", 2013 at http://www.nasmhpd.org/sites/default/files/JudgesEssential_5%201%202013finaldraft.pdf, accessed 25/2/2020.
 13 National Center for State Courts, "Trauma and State Courts," 2018, at <https://www.ncsc.org/microsites/trends/home/Monthly-Trends-Articles/2018/Trauma-and-State-Courts.aspx>.
 14 SAMHSA, above n 12, p 9.