Practical Strategies for Trauma-Informed Courts

Judicial College of District Court Judge

College of Government

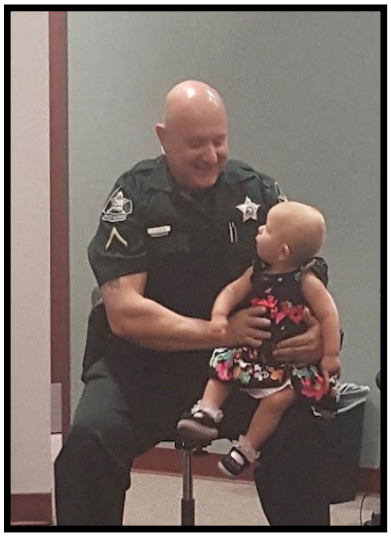
UNC-Chapel Hill

April 28, 2022

Lynn Tepper, Circuit Judge, Retired

6th Judicial Circuit, Pasco County, FL

Shifting perspective from "traditional" to this:

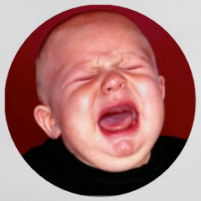


To Make the Impossible Possible.

The Trauma-Informed Court

Chief Justice Newby's Task Force on ACEs-Informed Courts

Courts Are Multigenerational Trauma Centers



Adverse Childhood Experience

High Risk Teen Years

Adverse Adult Experience

ACE Transmission Risk

Child Welfare Court

Juvenile Court

Adult Courts:
Criminal Court
Drug Court
DV Court
Divorce Court
Veteran's Court

Foundation for Healthy Generations 2014

TRAUMA crosses Court Divisions

Circumstances that bring them to court:

- Domestic Violence,
- Delinquency, Truancy, Child Welfare,
- Mental Health issues,
- Explosive Violence,
- Substance Use/Abuse,
- Family disputes

"TRAUMA & DEVELOPMENT are inextricably linked…

…being attuned to what a child, youth, or family needs to promote well-being & healthy development should incorporate consideration of prior adversities *regardless* of what "type" of case came to the attention of the court."

Shawn C. Marsh, Ph.D & Carly B. Dierkhising, MA, JUVENILE AND FAMILY JUSTICE TODAY, Summer 2013, "Toward a Conceptual Framework for Trauma-Informed Practice in Juvenile and Family Courts"

Those who enter our Courthouses & Courtrooms are expected to follow the traditions of "our" Systems:

- Be quiet,
- Be respectful,
- Be patient,
- Wait & wait….,
- Read & follow directions,
- Sit on benches with lots of strangers,
- Follow multiple oral instructions,
- Answer questions quickly, but
- Never react to what is said "about" them,
- Remember what they were told,
- Complete complex case plans/sentences,
- Get to many providers in many places.

https://developingchild.harvard.edu/resources/what-we-can-do-about-toxic-stress/

Those who walk through our doors likely have *Trauma* in their lives or their childhoods.

They may perceive that danger is everywhere:

- ~Entering the Courthouse,
- ~Courtroom,
- ~Going to Providers

- **Guarded & Anxious**
- **Unable to Trust Others**
- **Difficulty with Change & Transitions**
- **Hold onto Grievances**

Annette Streeck-Fischer (Medical Director and Professor of Psychiatry) (Chief of Child Psychiatry and Psychotherapy) &
Bessel A. van der Kolk (2000) , Australian and New Zealand Journal of Psychiatry,
Down will come baby, cradle and all: diagnostic and therapeutic implications of chronic trauma on child development 34:6, 903 918,
DOI: 10.1080/000486700265

- Difficult To Re-direct, Reject Support
- Highly Emotionally Reactive
- Difficulty:
    - ~Calming Down After Outbursts
    - ~Suppressing Inappropriate Behaviors
    - ~Resisting Impulsive Actions
    - ~Getting Along With Others

If we insist that families & children meet the needs of the institutions, we are saying that we value our INSTITUTIONS.

If, *instead*,
we insist that the *institutions*
meet the needs of our families & children
we are saying that
WE VALUE CHILDREN & FAMILIES.

Shawn C. Marsh, Ph.D., **Director & Associate Professor of Judicial Studies, Associate Professor of Communication Studies & Social Psychology**
University of Nevada, Reno NCJFCJ New Judge Institute: April 2021

….in which

- **environments,**
- **practices,**
- **policies, &**
- **persons**

***limit* unnecessary STRESS**

& *promote* HEALING

in those who have been trauma-exposed,

(to include court consumers *and* court professionals.)

It is time to stop punishing children & families who lead punishing lives…

***Shawn C. Marsh, Ph.D.,* Director & Associate Professor of Judicial Studies, Associate Professor of Communication Studies & Social Psychology University of Nevada, Reno NCJFCJ New Judge Institute: April 2021**

Stressful or toxic environments interfere with

- recovery of clients,
- well-being of staff.

Organizational practices may

- trigger painful memories &
- re-traumatize clients with trauma histories.

Re-traumatizing may interfere with healing and recovery:

- Using restraints on a sexually abused person
- Placing a neglected & abandoned child in seclusion.

(In case you wondered WHY it matters that we need to develop strategies for addressing adverse childhood experiences within our court system)

What is a Trauma-Informed Approach?

"One does not have to be a therapist to be therapeutic."

A program, organization, or system that is trauma-informed:

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

Substance Abuse and Mental Health Services Administration. ***SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach.*** **HHS Publication No. (SMA) 14-4884. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014.**

Courts can help resolve or exacerbate trauma issues

Where to begin?
Strategies to Create
Trauma-Informed/Responsive Courts

- Courtroom Environment
- Courtroom Communication
- Courtroom Procedures

https://www.nctsn.org/sites/default/files/resources//nctsn_bench_cards_for_the_trauma_informed_judge.pdf

SAFETY: Policies for Communications & Security

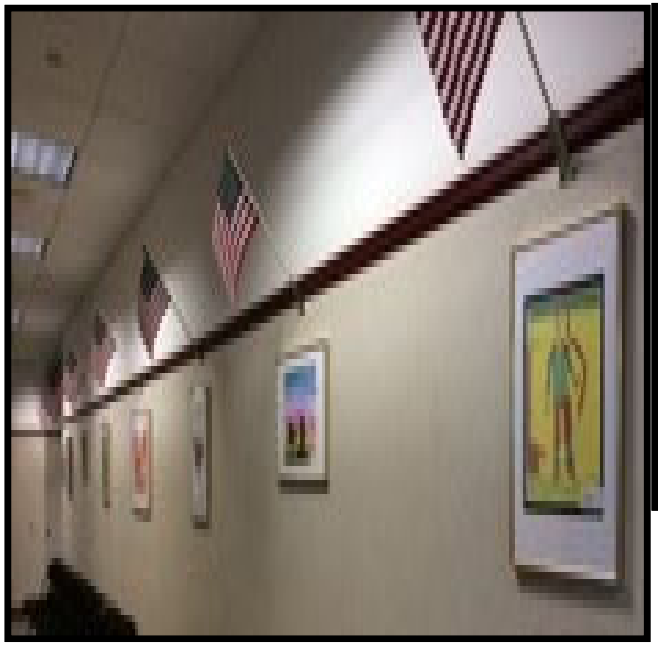
- **Getting to & Entering the Courthouse**
  - *Reasonable access to public transportation? Timely?*
  - *Appearance of the Courthouse: Confusing? Noisy? or Peaceful?*
  - *Personnel: Intimidating? or Helpful, Patient?*
- **Staying safe**
  - *Physically & Emotionally*
- **Meeting the past & the unexpected**
  - *Avoiding re-traumatization*
- **Leaving the Courthouse**
  - *Assure NO Threats, Stalking or Harassment (Bailiff in control)*

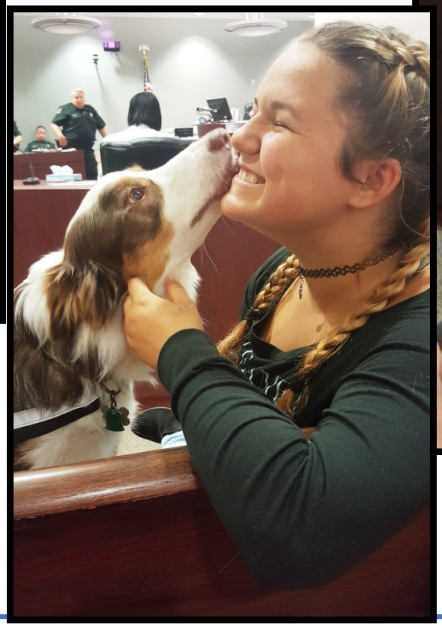
Why not THIS?

We are Honored to Welcome
Dr. Brian Shumate
Troup County
Georgia
DREAM

KINDNESS
MATTERS

A Family That Spends Time Together





FROM

- Congested, mass dockets
- Not feeling safe
- High stress
- Intimidating bailiffs or staff

TO

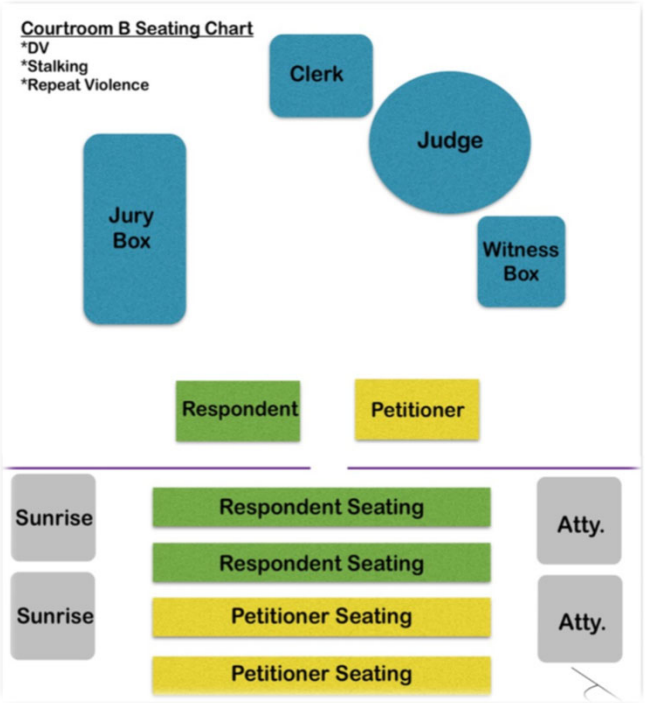
- Adequate trauma-informed security
- Decreased stress (pets)
- Intimidation Eliminated
- Active Listening

Courtroom Environment

PHYSICAL ENVIRONMENT	REACTION OF TRAUMA SURVIVOR	TRAUMA-INFORMED APPROACH
Parties are required to address the court from their place at counsel table	Fear of authority; Inability to communicate clearly, especially if an abuser is in the courtroom	When practical, ask the party to come close; speak to them beside or right in front of the bench.
Multiple signs instruct participants about what they are not allowed to do.	Feeling intimidated; lack of respect; untrustworthy; treated like a child.	Eliminate all but the most necessary of signs; word those to indicate respect for everyone who reads them.

PHYSICAL ENVIRONMENT	REACTION OF TRAUMA SURVIVOR	TRAUMA-INFORMED APPROACH
A court officer jingles handcuffs while standing behind a participant.	Anxiety; inability to pay attention to what the judge is saying; fear.	Eliminate this type of nonverbal intimidation, especially if no intention of remanding the individual. Tell the court officers not to stand too close. Respect an individual's personal space.
A Judge asks a party to explain their behavior or the impact of abuse without acknowledging the impact of the presence of others in the courtroom.	Intimidation or fear of abusers who may be in the courtroom; reluctance to share information in front of family members or others who do not believe them.	Save questions about sensitive issues for when the courtroom is empty or allow the party to approach the bench. If ongoing abuse or intimidation is suspected, engage those people in activities outside the courtroom while the party shares their story.

Clear directions & simple Courthouse rules



Bilingual

- **Waiting areas**
  - ***Advance written instructions on how to seek safety***
    - **Where to wait & where to sit in the Courtroom**
    - **Bailiffs/guards routinely walking through waiting areas**
    - **Bailiffs/guards available to seek safety**
- **Courtrooms, personnel, parties & attendees**
  - ***Where parties are seated can avoid re-traumatization***
  - ***Know who is in your & courtroom; know who presents a danger***
  - ***Personnel: Understand* ACEs & the importance of Patience & Respect**
- **Communications in Court**
  - ***Beware: Conduct or Statements by past abusers including parties or participants may trigger an individual***

Courtroom Procedures

COURTROOM EXPERIENCE	REACTION OF TRAUMA SURVIVOR	TRAUMA-INFORMED APPROACH
Individuals who are frightened & agitated are required to wait before appearing before the judge.	Increased agitation; anxiety; acting out.	Clearly provide scheduling information so parties know what will be expected of them & when. Prioritize who appears before you and when; be mindful of those who are especially anxious, have the most trouble waiting & more likely to act out.
A judge conducts a sidebar conversation with attorneys.	Suspicion, betrayal, shame, fear.	Tell the party what is happening & why: "We have to discuss some issues related to your case. We just need a minute to do it on the side."

Behaviors of Traumatized Individuals

are precisely behaviors that may lead the Court, personnel, providers or schools to respond with or by:

- Raised or sarcastic voices
- Belittling them
- Accusing them of not caring
- Suspending them
- Suspending “family time”

- Harsher penalties
- Resetting or Delaying:
  - ~Proceedings or Appointments
- Holding in Contempt:
  - ~grab, cuff, jail or detain

For a traumatized person, those responses are ineffective.

Inevitably the impact of such actions on them may

- **Increase the disruption**
- **Deepen confusion**
- **Reduce focus**
- **Interfere with memory**
- **Decrease understanding**
- **Re-traumatize them**

Be part of the solution

Time certain dockets with **adequate time to address the issues**:

~No masses in waiting areas or courtrooms;

~Be mindful of children & youth & victims present in court;

~No unnecessary wait times & rescheduling

Read Filings Before Court

Use Provider/Stakeholder/Probation Liaisons in & out of court

Be consistent with

messages of HOPE & a *Path to a Promising Future*

IN RESOLVING & SETTING CASES:

- **Specialized dockets for cross-over cases: Coordinated days for *all* Delinquency & Child Welfare players (*Dispositions, JR, SR)***
- **Set Status Reviews to coincide with due date of Assessments**
- **Staffings: Expect all players invited & attend to discuss & coordinate meeting the needs of youth**
- **Give People a Voice: *"What do you think you need right now?"* *"Will that time/date work for you?"***
- **Self-determination: include addressing 'next steps'**
  - ***Traumatized individuals may not be quite 'ready' to address the past***

https://www.flcourts.org/content/download/215862/file/Quick-refresher-for-trauma-informed-communication.pdf

Courtroom Communication

Words Matter

JUDGE'S COMMENT	PERCEPTION OF TRAUMA SURVIVOR	TRAUMA-INFORMED APPROACH
"Your drug screen is dirty"	'I'm dirty. There is something wrong with me."	"Your drug screen shows the presence of drugs".
"Did you take your pills 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?"
"I'm sending you for 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."

Flip the Script from Adversarial to Therapeutic

Establish trusting RELATIONSHIPS in & with the Court:

- *Eye Contact*
- *Respect*
- *Kindness*
- *Patience*
- *Reassurance*
- *Empathy*
- *Acceptance*
- *Lift them up*
- *Remember Them*

https://www.flcourts.org/content/download/215861/file/Whathurtsandwhathelpscontinuous.pdf

What harms? *What helps?*

Interactions that are:

- humiliating
- disrespectful
- critical
- judgmental

Interactions that are:

- kind
- respectful
- reassuring
- encouraging

What harms? *What helps?*

What harms? *What helps?*

Thinking &/or asking,
"What's wrong with you?"

Think & ask:
"What has happened to you?"
"I see you had some ACEs, how is that effecting your life today?"

Sometimes bad things happen to or in front of children when they're younger.

Those are crimes.
That should not have happened.

It's not your fault. There is nothing you could have done to stop what happened to you or your brothers or sisters.

You deserve to be happy.
You deserve a future free of your past.
You can heal from bad things in the past.

I can get you someone to talk to who could help.
Do you think that might help?

- *Encourage candor & engagement*
- *Give People a Voice/ Self-determination*
- *Meet them where they "are"*
- *Don't "judge" or "scold"*

- *Actively Listen*
- *Hear them*
  ("It sounds like you are saying….")
- *Lose any accusatory tone*
- *Never lose your temper (model 'calm')*

https://www.flcourts.org/content/download/215861/file/Whathurtsandwhathelpscontinuous.pdf

ON the BENCH:

- **Be Consistent,**
- **Trust-worthy (*Never Lie*)**
- **Be Transparent in "Next steps" or explanations**
  - ***Concurrent planning (no surprises)***
- **Be mindful of their Cultural, Historical & Gender issues**

https://www.flcourts.org/content/download/215862/file/Quick-refresher-for-trauma-informed-communication.pdf

The North Carolina Code of Judicial Conduct

CANON 1

A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

A. Adjudicative responsibilities.

[3] A judge should be ***patient, dignified and courteous*** to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity, ***and should require similar conduct of lawyers,*** and of the ***judge's staff, court officials and others subject to the judge's direction and control.***

[4] A judge should accord ***to every person*** who is legally interested in a proceeding, or the person's lawyer, ***full right to be heard according to law***, and, except as authorized by law, neither knowingly initiate nor knowingly consider ex parte or other communications concerning a pending proceeding.

[5] A judge should ***dispose promptly of the business of the court***.

The six family-centered principles of partnership are:

- **Everyone desires respect**
- **Everyone needs to be heard**
- **Everyone has strengths**
- **Judgments can wait**
- **Partners share power**
- **Partnership is a process**

CPS PURPOSE AND PHILOSOPHY, LEGAL BASIS, ADMINISTRATION (May 2020) **NC CHILD WELFARE MANUAL**
The Mission, Vision, and Values for Child Welfare Services purpose.pdf (ncdhhs.gov)

The foundational philosophy of the NC System of Care is family-centered practice.

The six SOC Principles are:

- **Interagency collaboration**
- **Individualized strengths-based care**
- **Cultural competence**
- **Child and family involvement**
- **Community based services**
- **Accountability**

SAMHSA shares this approach:

Key Principles of a Trauma Informed Court Approach

- **Safety**
- **Trustworthiness & Transparency**
- **Peer Support**
- **Collaboration & Mutuality**
- **Empowerment, Voice & Choice**
- **Cultural, Historical, & Gender Issues**

Meeting needs builds trust

Maslow's: Theory of Motivation

If you expect progress, start with

"What can I do to help?"

DEFICIENCY NEEDS: something that needs to be satisfied to avoid "unpleasant feelings" & move to higher needs

PHYSIOLOGICAL: Vital to our survival ***Do they have a place to sleep with water & electricity? Sleep is essential.***

SAFETY: (& Security) Primary need. If they lack "Control & Order" it negatively Impacts behavior; ***Are they in a violent, controlling relationship? Are they safe when they come to court?***

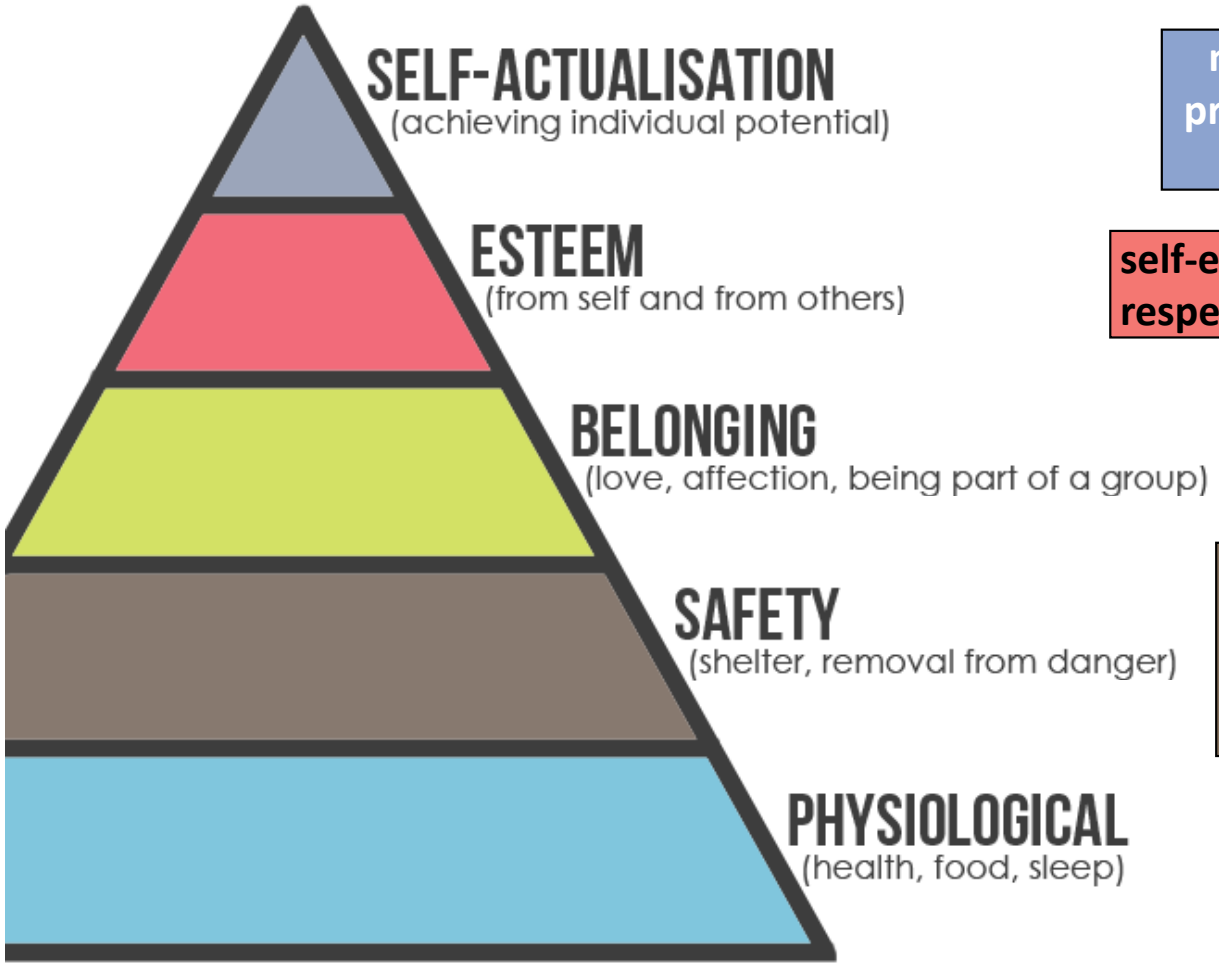
Kendra Cherry "Maslow's Needs of Hierarchy"

SOCIAL NEEDS: Love, acceptance, belonging

BELONGING: Friendships, Romantic attachments, Family,
Social & Community Groups, Church organizations,
Sports teams, book clubs, other group activities.
Feel loved & accepted by others.
These are goals & options that can lead a youth or a parent out of loneliness, depression, and anxiety.

ESTEEM: Appreciation & Respect
The *basic* needs must be satisfied for Esteem to be motivating.
Recognition of others=confidence in one's abilities.
We can each choice to do this, in and out of court.

Maslow's Hierarchy of Needs



morality, creativity, spontaneity, problem solving, lack of prejudice, acceptance of facts

self-esteem, confidence, achievement, respect of others, respect by others

family, friendship, sexual intimacy

Security of:
employment, resources, property, morality, the family, health, body

breathing, food, water, sex, sleep

A Trauma-Informed Court can make change possible…
under precise conditions

Give people what they need the most at a time they seem to deserve it the *least*

CHANGE TAKES TIME.
Adults & children may not be "ready" to trust, to be open and heal.

We must balance timeliness with patience

Focus on Relationships

----Same judge, GAL, CM, therapist, CG

----Builds trust

----Inspires Hope

----Encourages candor & engagement

Foster strong,
responsive relationships
between children & caregivers
which helps buffer a child from the effects of toxic stress.

Risk and Protective Factors |Violence Prevention|Injury Center|CDC

RELATIONSHIPS Buffer ACEs

The single most common factor for **children and teens** ***who develop the capacity to overcome serious hardship is having at least one stable and committed relationship with a supportive parent, caregiver, or other adult.***

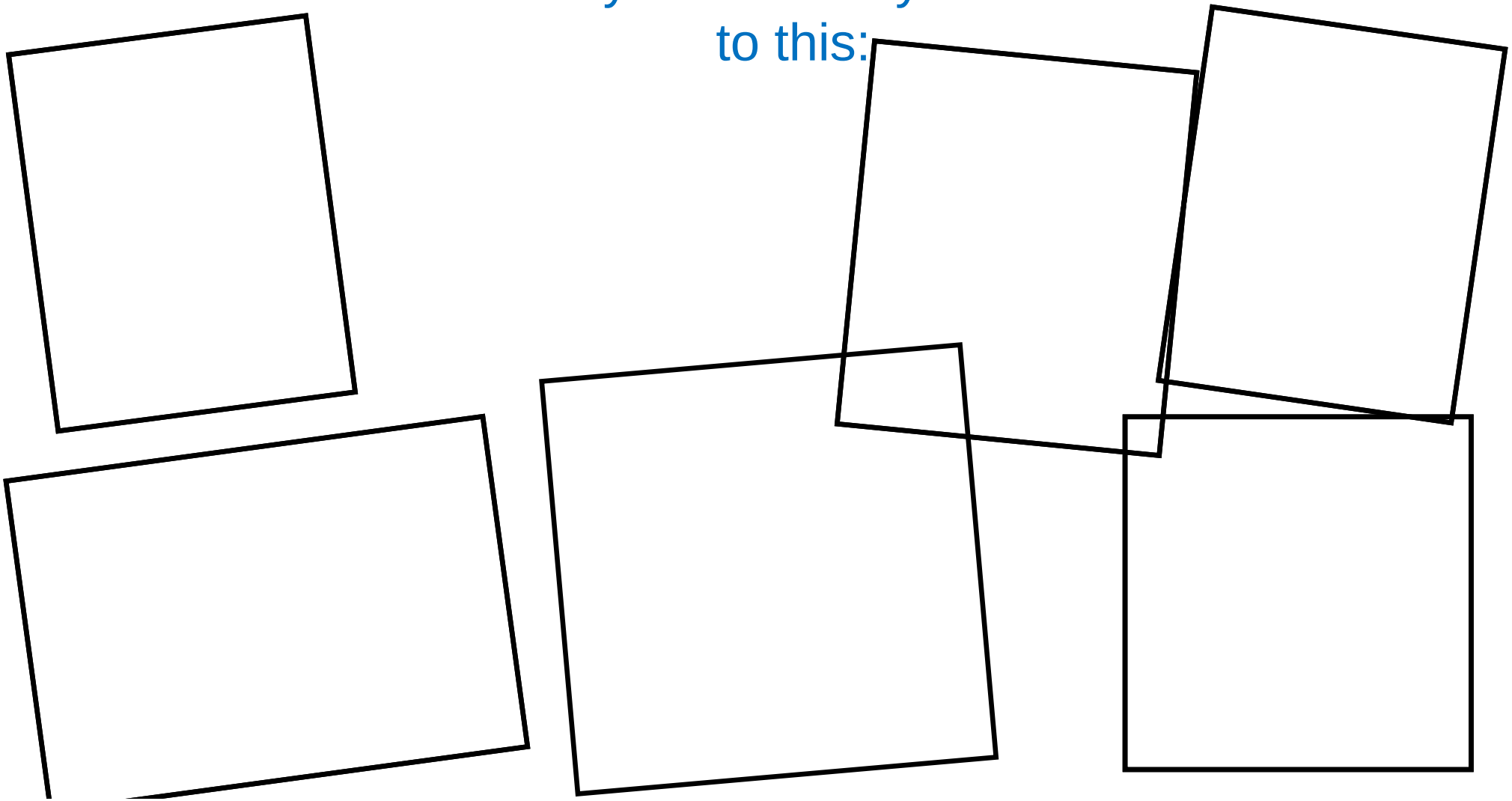
[redacted]

1 minute Video clip of Oprah & Dr. Bruce Perry From 60 Minutes

The Judge Effect

Empathy & Support More Effective Than Sanctions & Threats

- The judge was the single biggest influence on the outcome, with judicial praise, support & other positive attributes translating into *fewer crimes & less use of drugs* by participants. **(Rossman et al, 2011)**
- Positive supportive comments by judge were correlated with few failed drug tests, while negative comments led to the opposite. **(Senjo and Leip, 2001)**
- The ritual of appearing before a judge & receiving support & accolades, & "tough love" when warranted and reasonable, *helped them stick with court-ordered treatment.* **(Farole and Cissner, 2005, Satel 1998)**

Lens, V., "Against the Grain: Therapeutic Judging in a Traditional Court. Law & Social Inquiry." American Bar Association. 2015

Transform the lives you touch & your Courtroom to this: