

## How does polyvagal theory impact family law matters?

Elisa Reiter and Daniel Pollack | June 6, 2023



Polyvagal theory was developed by Stephen Porges, Ph.D. to describe our “flight or fight” response to stressful situations. When faced with trauma, some individuals react with anger, anxiousness, or shame. Some retreat. Some fight. What induces these reactions? In some homes, people were raised where shouting was a common occurrence. Others may have simply spent time in their room, seeking sanctuary.

Porges developed polyvagal theory to explain the body's physical reactions to stress. How do our bodies recognize and react in the face of danger? Polyvagal theory elucidates how the body recognizes danger and finds safety.

Family law cases are difficult, inducing a variety of emotions. As a case progresses, each party may feel stress, trauma, and threat. Understanding polyvagal theory can help move clients through trying situations.

Difficulty reaching agreement is often inherent in the divorce process. Parents quarrel. Children listen quietly. Litigants may attempt to try their cases on social media platforms to vent their grievances against each other, their lawyers, opposing counsel, judges, mental health professionals, and others involved in their litigation.

Postings may provide a temporary catharsis, but negative posts to social media may be captured during discovery. The same posts which temporarily allowed the purveyor to ease their stress may ultimately form the basis of cross examination or serve as evidence presented to child custody evaluators that compromises an individual's legal position.

Our bodies are full of nerves. The autonomic nervous system (ANS), or our nerves' sympathetic branch, creates the "fight or flight response." In the face of danger, we try to escape. The ANS also contains a parasympathetic branch. There, the vagus nerve creates the ability to self-modulate.

The freeze response comes from the dorsal vagal, which allows us to detach or close off from an intense or traumatic situation.

The ventral vagal nerve allows us to recognize safe havens, and allows us to be open to social connection. The ventral vagal nerve also allows us to calm and center ourselves, even in times of crises.

In 2020, Rebecca Bailey and her colleagues explored the application of polyvagal theory to family law cases. They noted: “A simple image to use in mapping the ANS is a ladder, with ventral vagal at the top, sympathetic in the middle, and dorsal vagal at the bottom.” Perhaps a simplistic analogy is asking whether a litigant is thinking with their heart or with their head. Bailey opines that:

In these difficult cases, judges, attorneys, officers of the court and mental health professionals are pulled into a similar dynamic as the population they serve. The chaos extends outward to include clinicians, judges, attorneys, courts and associated practitioners, and is thus projected back toward families and children. These types of cases are challenging and solutions are needed as the demands on time consume the resources and emotions of professionals trying to help. As the need for treatment increases with prolonged litigation and the chaotic experience of working with multiple professionals, clinicians may become apprehensive about their own involvement. Professionals have experienced threats to self and family in response to the anger often directed at the professional’s person and function as the conflict continues or intensifies. Types of threats include violence and property damage, as well as intentional damage to reputations, and threats of loss of professional license through board complaints, lawsuits and other forms of harassment. These complex and tumultuous cases may be handed from service provider to provider, creating a lack of

predictability and additional turmoil due to inconsistent and often incongruent treatment approaches.

How can attorneys help to ease a client's emotions during high-conflict litigation? Assist them, along with professional mental health experts, to learn how to:

- Diffuse
- Mediate
- Meditate
- Educate
- Engage in therapy
- Create connections
- Communicate
- Forgive

Lawyers are wily. We are measuring physiological responses all the time. We recognize crossed arms or an individual breaking eye contact as a possible sign of deception. Accordingly, we teach our clients to avoid such behaviors. Calm is essential in the face of contentious cases and litigants—from the judge, court personnel, mental health professionals involved in child custody evaluations, or in outcries of physical or emotional abuse.

If we attorneys stay calm, our clients who are embroiled in family litigation, may also learn to self-regulate. We must teach our clients to self-regulate their emotions, especially in difficult cases.

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