

High conflict case management: the Interpersonal neurobiology of why relationship matters and management strategies

McKinley Irvin
2013 Family Law Series

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Mark Baumann

- Litigator, mediator, tribal court judge pro tem
- Associate, High Conflict Institute (this is not an HCI presentation)
- Interpersonal Neurobiology, Graduate Certificate, Portland State University (like an LLM in client relations)
 - <http://www.pdx.edu/ceed/interpersonal-neurobiology-certificate-of-completion>
- WSBA ADR executive committee
- Low Bono Section Formation Committee, Chair
- 25 years in the trenches
- Presentation materials available at <http://markbaumann.com/2013/08/13/mckinley-irvin-managing-high-conflict-cases/>

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Overview

- Bill Eddy's Tips
- IPNB elements of counseling summary
- What drives conflict: protection from danger & relationship
 - Attachment approach
 - Combined "personality in conflict" model
 - Attachment/personality/hemisphere/neurobiology approach
- How to listen & understand
- 4 steps to neural integration
- Example & questions

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Interpersonal Neurobiology

- Aka, Relational Neurobiology
- Combination and interaction of
 - Relationship science and theory
 - Neuroscience, biology, physiology...
- Interdisciplinary: 26 fields
- Conciliatory: Attempts to harmonize and find common language, for issues such as:
 - Emotion, thought, mind
 - Communication, personality, mental health
 - Parenting
 - I am adding: conflict management

IPNB Luminaries

- Dan Siegel (founder), Allan Schore (psychotherapy), Stephen Porges (polyvagal theory), John Bowlby, Mary Main & Patricia Crittenden (attachment), Iain McGilchrist (hemisphere theory), Carl Rogers (client centered theory), Jaak Panksepp (emotion), Gabor Mate (attachment, addiction, ADHD) John Kabat-Zinn (mindfulness), Bonnie Badenoch (psychotherapy), Charles Darwin, Marco Iacoboni (mirror neurons), Bessel van der Kolk (trauma), Jean Decety (empathy)

Interpersonal Neurobiology 3 Key Concepts (conflict)

1. Three core drives of human behavior highly relevant to conflict include:
 - Avoidance of danger
 - Comfort, especially after exposure to danger
 - Being in relationship (feeling connected)
2. Relationships and brain/body function are interconnected
 - We affect each other

3. Neural Integration

- “Integration” is the heart of IPNB
 - Brains/bodies have many parts and subsystems
 - Harmony leads to optimal problem solving
 - Organisms have natural drive towards integration
 - Cf Rogers “actualization”
- Non-integration: leads to individual system bias
 - May be functional, i.e. fight-flight-freeze (amygdala hijack)
 - May be dysfunctional, and leads to chaos or rigidity
- Integration is both:
 - life goal and
 - “in the moment”

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RPC 1.2

- *** “a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.”
- How do you do this if client doesn’t know why they are driven to conflict behavior?
- “She had an affair and I want the court to hold her accountable!”
- “He racked up the credit card debt, I’m not paying!”
- “I want a Parenting Plan that gives me no rights.”

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Assumptions About Conflict

- Conflict may not always be driven by the apparent issues.
- More specifically, conflict is driven by
 1. Genetics (temperament)
 2. Neurobiological systems
 3. Psychological coping methods developed in childhood in response to perceived relationship danger
 4. Relational (partner, family, work)
 5. Context (neighbor 1, neighbor 2)
- Relationship danger is more complex than we normally think
- Conflict drives will spill over into us and affect our thoughts, emotions, behaviors (emotions can be contagious)

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What is “High Conflict”

- Enduring patterns of dysfunctional or maladaptive TEB’s
 - Thinking (thoughts, cognition)
 - Emotions (feelings, affect)
 - Behaviors (actions, self-protective strategies)
- Motivation is challenging
- Tend to be highly predictable behaviors
- “Labels”, or concepts, are essential to understanding anything
- **Caveat:** Understanding what drives conflict in clients necessitates looking at yourself and your relationships. This is not easy.

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Common Problems

- Rigid & uncompromising thoughts
- Chaotic emotions dominate thinking; feelings are facts
- Extreme behaviors
- Inability to reflect on their own behavior
- Cognitive distortions
- Lacks empathy
- Impulsive
- Avoids responsibility (for problem or solution)
- Preoccupied with blaming others
- May be persuasive blamers
- Excessively charming
- Depends on and recruits others to solve problems
- Interpersonal dysfunction

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Development of high conflict theory

- The development of ADR in 1970’s
- Use of social workers & GAL’s with personality theory training
- People who could settle, did and got out
- Richard Gardner’s “Parental Alienation Syndrome” 1992, spurred debate and awareness of psychological aspects
- Mental professionals involved in the legal system:
 - Began to realize fighting was not about issues
 - Began to recognize that those who remained in litigation fit within a psychological group
 - DSM IV Personality Disorders, Cluster B
 - Narcissist, borderline, histrionic, antisocial

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Bill Eddy: pioneer (2003) and leader of high conflict theory

- *"The issue's not the issue, personality is the issue"*
- Personality approach
 - based on DSM IV cluster B
- Narcissist, borderline, histrionic, antisocial, paranoid
- Private working theory of personality type
- Excellent and simple solutions
- Pro's and con's of personality approach

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Bill Eddy's Top 12 Tip list

- Recognize and understand their fear based logic
- Lower your expectations for change
- Maintain appropriate boundaries
- Listen to highly insistent emotions without getting hooked
- EAR: Empathy, Attention & Respect
- Emphasize their strengths, give positive statements
- Confront indirectly, and save face
- Focus on tasks and make lists to engage both brains
- Engage positive advocates
- Get third party recommendations
- Educate about consequences
- Give choices

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Interpersonal Neurobiology Perspective: Interdisciplinary components of what drives conflict

- Brain-body neurobiology (not covered today)
 - Danger/safety and relationship drives
- **Attachment**
- Personality
- Left-right hemisphere theory
- Memory: implicit memory
- All of these drive thoughts-emotions-behaviors (TEB) and affect motivation

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Mark's IPNB Elements of Counseling

- Understand safety/danger drives for self-protective relationship strategies
 - Accept and adjust to lower expectations for change
 - Maintain appropriate boundaries, while engaging in maximum relationship
- Facilitate integrated problem solving being Calm, Understanding, and Present (CUP)
- Create comfort & relationship by Listening with COCOA -RNV (Caring, Observing, Curiosity, Openness, Acceptance, while Reflecting on them and yourself, with awareness of NonVerbal and unverbilized communication)
 - "Power O" to focus: Intentionally Center Attention Now (ICAN)
- To promote neural integration, facilitate Safety, Mastery, Autonomy with relationship linking and differentiating
 - Step 1: Link by deeply understanding the person
 - Step 2: Link by providing a safe & positive place to explore solutions
 - Step 3: Differentiate by safely providing logical feedback
 - Step 4: Integrate by facilitating choices

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Why Do We Care About Relationship?

- Improve client experience
- Improve client's ability to engage in optimal decision making
- Avoid bar complaints
- Enhance negotiation skills with clients and opposing parties
 - And judges and opposing attorneys
- Enhance cross-examination (know your enemy)
- Improve civility (avoid taking things personally)
- Know yourself
 - *"If ignorant both of your enemy and of yourself, you are certain in every battle to be in peril"* Sun Tzu, The Art of War.

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Attachment

Child attaches to a caregiver via relationship to motivate caregiver to keep child from danger and provide comfort after exposure to danger

- Developed by John Bowlby (1958)
- Mary Ainsworth: Strange Situation procedure (1970's)
 - (YouTube video examples available)
- ABC model: only 3 strategies to deal with danger
- Relationship strategy established for infants at 7-11 months

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Attachment: Strange Situation and the ABC Model

- Type B = secure, comfortable, confident, needs easily met, cooperative, flexible, good regulation of emotions
- Type A = insecure, dismissive, cognitive, logical, sequential, narrowly focused, emotion/relationship avoidant, rigid. (Narcissism is an extreme form.)
- Type C = insecure, enmeshed, affective, emotional, relational, broadly focused, cognitive/factual avoidant, chaotic. (Borderline is an extreme form.)
- Type AC & A/C = insecure, alternating or combined of above. (Antisocial is an extreme form)
- (Patricia Crittenden, dynamic maturational model; Mary Main, Adult Attachment Interview (AAI))

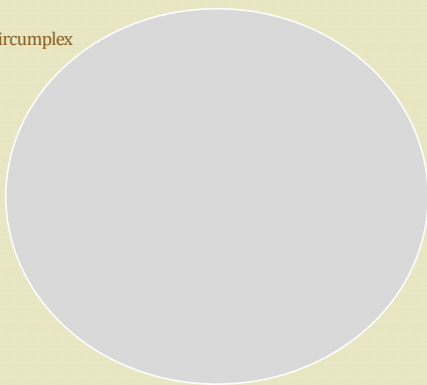
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Adult Attachment

- Mary Main: ABC +D (older model, but still dominant)
- Narrative analysis to understand style (Adult Attachment Interview, AAI)
- Patricia Crittenden: Dynamic Maturational Model (DMM, newer model, numerous improvements)
 - www.patcrittenden.com
- Self-protective (relationship) strategies, to protect oneself from subjectively perceived danger
- Dispositional representation (responses differ)
- Self-protective strategies become more complex with age
- One predominate strategy in response to conflict, and strategy range narrows with increased degree of threat
- May be, or look like, a personality disorder

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Circumplex



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Two Styles

Type A, Cognitive, Left Brain

- Rational, sequential
- Linear, concrete, literal
- Linguistic, verbal
- Rigidly If-Then
- Narratives thin details and context
- Narrowly focused on local parts and things
- Cannot find meaning in parts

Type C, Affective, Right Brain

- Emotional, relational
- Abstract, random, metaphor
- Logic, sequence avoidant
- Confused, chaotic
- Narratives overwhelming emotion and detail
- Broadly focused on environment, relations
- Finds the meaning, not the parts

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Attachment and Neurobiology: Implicit Memory

- Implicit memory: Unconscious way a child remembers a relationship strategy that protects them from danger
- Attachment relationship strategies encoded into brain memory:
 - Prior to language
 - Prior to adult memory skills
 - Implicit memories never go away
 - Hard to access as adult
 - Can be recognized and managed (there is hope!)
- Early strategies may be effective for an infant, but maladaptive for an adult and nevertheless remain a part of unconscious memory

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Right-Brain Left-Brain Integrated Brain

- Iain McGilchrist
- Right brain is highly consistent with Type C strategy styles
 - Broad focus, non-linear, non-verbal, deeply relational
- Left Brain is highly consistent with Type A strategy styles
 - Narrow focus, linear, verbal, logical, non-emotional/relational
- **“Hemispheric Utilization Bias”**
 - McGilchrist, I. (2010). Reciprocal organization of the cerebral hemispheres, *Dialogues in Clinical Neuroscience*, 12(4), 503-15.
- Resources
 - Google “RSA mcgilchrist” for animated 13 minute “Divided Brain” video)
 - Google “left right brain” for artistic depictions on images tab

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Attachment, High Conflict and Client Counseling

- Adapt our approach to attachment strategies & needs
- Be an attachment figure (limited re-parenting)
 - Soon-to-be ex-spouse was an attachment figure
- Provide a safe attuned relationship to maximize optimal brain functioning
- Different approaches to different Types
 - what constitutes rejection/danger? Depends on style
- Reduce or avoid subjective perception of danger
- Rejection is a “danger”
 - Leary, M.R., Twenge, J.M. & Quinlivan, E. (2006). *Interpersonal rejection as a determinant of anger and aggression*. *Personality and social psychology review*, 10:2, 111-132.

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Listening and Understanding Matters in the *Relational Professions*

- Listening, observing & understanding is “king” for mediators, mental health, social work, medicine, diplomacy, anthropology, teaching, mindfulness, clergy, police, hostage negotiators...
- Human neurobiological systems can prevent “hearing”, flexible thinking and accessing executive functioning in frontal lobe, when in danger state
 - (Dr. Stephen Porges, Polyvagal theory)
- The trick becomes how do we maximize our listening skills

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Listening and understanding

- Caring
 - Empathy, sympathy, compassion, warmth, kindness, delight in the other, relational bonding, loving presence, spirituality, neuro/psycho education
- Observing
 - Present, attention, intention, fully experiencing the moment, description, labeling feelings with words, reflection, of the other, of oneself), authentically present
- Curious
 - Interest, playful, lean into the emotion and feeling, explore
- Openness
 - nonjudgmental, non-attached, to someone else's experience, free from one's own internal evaluation, transparent, sharing your experience
- Accepting
 - Non-evaluative, unconditional positive regard, of what is, validation, being affected with awareness and/or reduction of reactivity, accept thoughts and feelings without being "hooked"
- Reflections
 - Reflecting other back, micro-summaries, macro-summaries, conveying you get it, reflecting on oneself and one's own feelings
- NonVerbal and unverballed awareness (most communication is nonverbal)
 - Prosody, facial & body gestures, implicit childhood &/or trauma memories

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Listening and understanding

- Share a CUP of COCOA in Reno, NV
- Top goals: Calm, Understanding, and Present (CUP)
- The elements of listening/understanding: COCOA -RNV
- Caring, Observing, Curious, Openness, Accepting, -Reflections, NonVerbal and unverballed awareness
 - Observe and reflect on other and yourself
- Creates safety and it cascades from there - dominoes

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Presence and observation

- "Power O" to focus
 - Be here now (Tolle)
 - Intentionally Center Attention Now (ICAN) (Altman)
- Highly present and attuned to the "moment-to-moment sensitivity in the here and now, in the immediate present" (Carl Rogers)
- Effective when hooked or triggered

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Facilitate neural integration

- To promote neural integration, facilitate Safety, Mastery, Autonomy with relationship linking and differentiating
- Step 1: Link by deeply understanding the person (safety)
- Step 2: Link by providing a safe & positive place to explore solutions (faux mastery)
- Step 3: Differentiate by safely providing logical feedback (true mastery)
- Step 4: Integrate by facilitating choices (autonomy)

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Summary

- Danger/Safety and relationship are human hallmarks impacted by conflict
- Psychological attachment drives self-protective strategies to protect from danger and stay in relationship
- Create a sense of safety for client - help them regulate thoughts & emotions
- Enhance our own listening skills to understand
- Shared understanding promotes higher brain access and
 - Flexible thinking
 - Emotion regulation
 - Reasonable behaviors
 - Effective choices

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