

BURNOUT AND COMPASSION FATIGUE: WHAT LAWYERS NEED TO KNOW

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Burnout and compassion fatigue are not unique to individuals who work in social welfare or the mental health professions. Ironically, lawyers are more susceptible to these problems. This is so for several reasons, notably the extreme value placed on competition, self-sufficiency, and abnegating individual emotional needs; the isolated work conditions characteristic of most law practices; and the effect of the adversarial system on all spheres of professional and personal life. Burnout and compassion fatigue cause chronic health problems, poor job performance, substance abuse and other forms of self-medication, and impoverished relationships. Attorneys must understand the dynamics, symptoms and effective intervention for burnout and compassion fatigue in order to provide competent representation.

Burnout and compassion fatigue are related conditions that result from exposure to distressing or traumatic experiences. While the terms are often used interchangeably, there are differences worth noting since the two problems can exist individually or together.

I. BURNOUT

Burnout results from a discrepancy between expectations and outcomes, or the perceived needs of a task exceeding the perceived resources.¹ It is caused by a combination of factors spanning personality traits to organizational culture.² Individuals who are especially idealistic, have poor personal and professional boundaries, find themselves in jobs that do not match their skills and interests, and define themselves by their work, are more vulnerable to burnout.³ Similarly, organizations characterized by unrealistic expectations, lack of collaborative

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¹ Chungsup Lee et al., *Low Staff Morale & Burnout: Causes & Solutions*, OFFICE OF RECREATION & PARK RESOURCES 1, 2-3 (May 2012), <https://illinois.edu/lb/files/2012/06/01/39974.pdf>.

² *Id.*

³ TREATING COMPASSION FATIGUE 4-5 (Charles Figley ed., 2002).

work teams, and an inability to recognize and address individual and collective needs create a greater likelihood of burnout.⁴ These traits lead to “closed systems”—environments that foster isolation, stifle creativity, and prevent the ability to assess problems in novel ways and gain access to effective resources.⁵ Symptoms of burnout include loss of hope, avoidance of clients and colleagues, agitation and irritability, self-doubt and loss of self-confidence, cynicism, apathy, and diminished problem-solving skills.⁶ Sufferers try to work “more and harder,” renew their commitment, and use professional and interpersonal tools that have long lost their efficacy.⁷ The universal lament of professionals who suffer from burnout is, “I hate my job.” Efforts to ease overwhelming frustration and emptiness include use of alcohol and drugs, transient relationships, and other distractions such as excessive spending and gambling.⁸

II. COMPASSION FATIGUE

Compassion fatigue results from the cumulative emotional, psychological and physical effects of exposure to the pain, distress or injustice suffered by clients.⁹ Unlike burnout, which is related to work conditions, compassion fatigue has to do with the response to the content of clients’ stories and experiences.¹⁰ Charles Figley, a pioneer in the field of compassion fatigue describes the phenomenon in this way:

There is a cost to caring. Professionals who listen to clients’ stories of fear, pain, and suffering may feel similar fear, pain, and suffering because they care. Sometimes we feel we are losing our sense of self to the clients we serve . . . Those who have enormous capacity for feeling and expressing empathy tend to be more at risk of compassion stress.¹¹

Individuals at a high risk for compassion fatigue tend to be conscientious, perfectionist and self-giving.¹² Other risk factors include being exposed to environments with low social support, high personal stress, or having

⁴ ENCYCLOPEDIA OF MENTAL HEALTH 223 (Howard S. Friedman ed., 2d ed. 2015).

⁵ VALIDATION OF PHARMACEUTICAL PROCESSES 451 (James Agalloco and Frederick J. Carleton eds., 3d ed. 2008) (“Closed systems provide for complete separation between the environment in which personnel (uniformly accepted as the primary source of contamination in aseptic environments) are separated from that in the materials are processes.”). *Id.*

⁶ Dennis Portnoy, *Burnout and Compassion Fatigue: Watch for Signs*, CATHOLIC HEALTH ASS’N OF THE UNITED STATES 47, 47 (2011), available at <http://www.compassionfatigue.org/pages/healthprogress.pdf>.

⁷ *Id.*

⁸ *Id.* at 48.

⁹ *Id.* at 47-48.

¹⁰ *Id.*

¹¹ COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED 1 (Charles R. Figley ed., 1995).

¹² PROVIDING COMPASSIONATE HEALTHCARE: CHALLENGES IN POLICY AND PRACTICE 215-16 (Sue Shea, Robin Wynyard, & Christos Ionis eds., 2014).

experienced significant loss or other trauma.¹³ These often combine with characteristics of the legal profession to further heighten vulnerability to compassion fatigue. The role of zealous advocacy forces attorneys to subordinate their emotional response to the more objective needs of the case.¹⁴ Chronic disregard of one's own feelings negatively affects social, cognitive and physical well-being. This unavoidable lack of awareness leads to numerous problems in all spheres of life. Cognitive symptoms include rigid, black and white thinking, difficulty concentrating, confusion and memory loss, loss of sense of direction and purpose, an inability to recognize cause and effect, minimization of problems, consequences or conditions, and preoccupation with current stressors that cannot be externally changed or controlled.¹⁵ Compassion fatigue causes or worsens many emotional symptoms as well. People complain of chronic fear and anxiety, inexplicable guilt and shame, self-doubt, withdrawal and isolation, feeling overwhelmed by small challenges, irritability and anger, powerlessness, numbness, an inability to remain engaged with and connected to people and to areas of life not related to work, unbidden thoughts about work-related events and stories, and persistent, intrusive concern about the problems of cases, clients and others.¹⁶

Physical complaints (due largely to over-activation of the autonomic nervous system, which tells the body to produce stimulating chemicals such as adrenalin and cortisol in order to prepare for fight-or-flight) comprise a broad swath of symptoms.¹⁷ These include changes in breathing, heart rate and circulation (many false alarms in emergency rooms are due to shortness of breath and chest pain that result from sudden changes in cortisol and adrenalin production versus cardiac crisis), difficulty falling or staying asleep, problems with appetite and digestion (hunger and appetite are different; individuals suffering from stress and compassion fatigue describe feeling hungry but having no appetite and vice versa, or eating as a means of self-soothing), headaches, decreased libido, chronic musculoskeletal pain, including burning, throbbing, tightness and piercing sensations (back pain is one of the most common complaints), and immune problems, such as vulnerability to colds, allergies, viruses, ulcers, and infections.¹⁸

Long-term compassion fatigue undermines our convictions about ourselves and the world. We question previously held and cherished beliefs, our value to ourselves and others, the usefulness of our efforts, and the purposes to which we have committed ourselves. Meaning-making is compromised, and we

¹³ *Id.*

¹⁴ Feng-Jen Tsai et al., *Occupational Stress and Burnout of Lawyers*, 51 J. OCCUPATIONAL HEALTH 443, 449 (2009).

¹⁵ Peter G. Jaffe et al., *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 45 JUDGES J. 12, 15 (2006).

¹⁶ *Id.* at 16.

¹⁷ Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245, 248 (2003).

¹⁸ *Id.*

languish with inertia. Compassion fatigue leads to attrition and the loss of invaluable human resources.

III. THE BIOLOGY OF BURNOUT & COMPASSION FATIGUE: HOW IT WORKS

A basic understanding of the brain and nervous system helps us understand how burnout and compassion fatigue develop. Let's begin with the brain. It is the most complex organ in the human body, far more sophisticated than any computer, and able to perform complicated algorithms simultaneously. It is divided into two halves that work together but have different jobs.¹⁹ The left side of the brain is in charge of language, time, sequencing, logic, and analysis.²⁰ The right side of the brain is as interesting for what it does not do as for what it does do. It has no ability to talk—it is mute.²¹ It has no sense of time—it does not know if something occurred today, yesterday, or thirty years ago. As a result it cannot put events in order; it records things in scattergun fashion.²² It has an acute memory, though events are not stored verbally; they are recorded in images, feelings and body sensations.²³ Up until recently our society has emphasized Descartes' notion, "*I think therefore I am*"²⁴ and placed greater weight upon our ability to analyze, think, and talk about our experiences. The problem with this strategy is it fails to listen to, and take counsel from, the enormous amount of information provided through emotions, sensations, images, impulses, and spot-on intuition that are essential to effectively interpreting and acting on our experiences. One may say, then, that the left hemisphere represents the forest, and the right hemisphere can not see the forest for the trees.

It takes both hemispheres of the brain to create a coherent understanding of our experiences. When they work together, we get the feelings, sensations, and images of events, and can interpret these and place them in the context of things previously learned and what is now occurring. We know what we know and we know why. This creates *explicit memory*.²⁵

The left hemisphere, which is smart but slow, makes a valiant effort to analyze, organize, and interpret overwhelming or confusing experiences.²⁶ But,

¹⁹ *Hemisphere Brain Functions*, CTR. FOR NEURO SKILLS, <http://www.neuroskills.com/education/hemisphere-brain-functions.php> (last visited Nov. 6, 2015).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ DANIEL GOLEMAN, *FOCUS: THE HIDDEN DRIVER OF EXCELLENCE* 28 (2013); see also LOUIS TINNIN, *THE INSTINCTUAL TRAUMA RESPONSE AND DUAL-BRAIN DYNAMICS: A GUIDE FOR TRAUMA THERAPY* 12 (2013).

²⁴ *Descartes: I Think Therefore I Am*, NEW LEARNING, <http://newlearningonline.com/new-learning/chapter-7/descartes-i-think-therefore-i-am> (last visited Nov. 6, 2015).

²⁵ Anne Uecker et al., *Neuroanatomical Correlates of Implicit and Explicit Memory for Structurally Possible and Impossible Visual Objects*, 4 *Learning & Memory* 337, 337-38 (1997).

²⁶ See *Hemisphere Brain Functions*, *supra* note 19.

when the information exceeds the resources of the left hemisphere, it throws up its hands and goes off line, screaming *help* to the right hemisphere.²⁷ The right hemisphere nobly comes to the rescue. A chief first-responder is the *amygdala* (almond), which serves as the brain's sentry and is always on the look-out for danger (anything strange gets special scrutiny).²⁸ It is incisive, and works like lightening to mobilize powerful defenses.²⁹ It sends a distress call to other organs, which produce chemicals such as adrenaline (epinephrine) and cortisol that prepare us for fight or flight.³⁰ While this response is essential to our survival (physical and psychological), there is a cost. Amygdala-driven behaviors protect us from perceived threats, but in the process we lose precision and perspective.³¹ In this mode, we have a high idle and are poised to shoot at everything that moves; we act first and talk later (Sandy Bloom calls this "a paucity of language and a propensity to act").³²

Then there is the aftermath. Following this quick-response, the right hemisphere begins to wonder what exactly happened. What did all this mean? It knocks on the door of the left hemisphere for answers. The left hemisphere says, "I'd love to help you, but I was off-line." The right hemisphere wanders off for a time, but is soon back asking the same questions. This creates a cycle in which each side of the brain, both eager for answers but hindered by their unhitching in the heat of the moment, continually engage each other for answers. Stressful events result in *implicit memories* that are fragmented and disjointed.³³ Because the events called for right-hemisphere dominance, we do not have a cohesive story of what happened, with a distinct beginning, middle and end. Instead, unrelated pieces repeat themselves in an effort to bring out attention to the need for completion. The adrenalin created an emotional *brand* of the feelings associated with the experience, primarily fear and anger. Sometimes we have *flashbulb memories* of events that intrude unbidden into our consciousness and interfere with our thoughts. And our bodies recall the tension, flushing, and other responses, such as myopia, increased heart rate and blood pressure, sweating, digestive changes (in fight and flight, our first response is to empty the gut and bladder and send all reserves to the heart and head), and, in extreme cases, numbness and a sense that we are not fully in our bodies.³⁴ We do not have a coherent account of the details of what happened and why, so we fill in the blanks with what *might* have happened. Much of our perceptions and beliefs

²⁷ *Id.*

²⁸ THE PRAEGER HANDBOOK OF LEARNING AND THE BRAIN, VOL. 1 83 (Sheryl Feinstein ed., 2006).

²⁹ *See id.*

³⁰ *See id.*

³¹ *Id.* at 109.

³² Lee Norton et al., *From the Cutting Edge: Trends in Trauma Practice*, 1 INT'L J. TRAUMA RES. PRAC. 28, 31 (2014).

³³ TINNIN, *supra* note 23, at 62.

³⁴ *See* DANIEL J. SIEGEL, MINDSIGHT: THE NEW SCIENCE OF PERSONAL TRANSFORMATION 145-65 (2010).

about what happened are largely sequestered in our subconscious awareness, and are distorted and colored by fear, anxiety, and confusion.

What happens when the environment in which we live or work is permeated by the perception of threat; e.g. constant argument, dispute, conflict, controversy and blame? It depends. Some people have a natural or learned ability to regulate their autonomic nervous systems in a way that deflects and depersonalizes contentious situations. They are the minority. The rest of us take it on the chin (or elsewhere) sooner or later. Chronic fight, flight, or freeze reactions become ingrained in our nervous system, making us inclined to perceive threat where it does not exist.³⁵ This means we react instead of respond, act instead of reflect, speak instead of think, and accuse instead of consider, and that we do so in a way that is highly inflammatory to all aspects of our physical body. In short, we make ourselves mentally and physically ill. In other words, we develop burnout and compassion fatigue.

IV. ARE LAWYERS SUSCEPTIBLE TO BURNOUT AND COMPASSION FATIGUE?

There is growing research and literature about the incident of stress-related disorders in the legal profession, and the conclusion is simple: of course lawyers, judges and other related personnel suffer from burnout and compassion fatigue.³⁶ Why wouldn't they? Their nervous systems work the same as those of people in other professions. Two other factors are relevant: they labor under conditions that are inherently stressful, and their education and training do not provide protective factors that buffer them from the long-term effects of an adversarial (read: adverse) work environment.

A study conducted by Andrew P. Levin at Pace Women's Justice Center compared the levels of secondary trauma (another term for compassion fatigue) in mental health providers and social service workers with that of attorneys representing domestic violence victims and criminal defendants.³⁷ The author found the attorneys suffered significantly higher levels of secondary trauma than the mental health professionals.³⁸ The differences appeared to be attributable to several factors, including the attorneys' higher caseloads, lack of education about the effects of working with traumatized populations, and lack of support in the form of multidisciplinary consultation.³⁹

A similar study conducted a preliminary exploration of secondary trauma in judges who served in criminal, domestic relations, and juvenile courts.⁴⁰ Of the 105 judges surveyed, sixty-three percent endorsed one or more

³⁵ TINNIN, *supra* note 23, at 6.

³⁶ See generally Levin & Greisberg, *supra* note 17; see also Jaffe et al., *supra* note 15.

³⁷ See generally Levin & Greisberg, *supra* note 17.

³⁸ *Id.*

³⁹ See *id.*

⁴⁰ Jaffe et al., *supra* note 15, at 14.

symptoms consistent with secondary trauma.⁴¹ The authors suggested several factors that may contribute to their findings, including the enduring way in which the curriculum and pedagogy used in law schools shapes the thinking and world view of its graduates.⁴² Unlike many fields, such as medicine and mental health, which use instruction and curricula that emphasize collaboration, consultation, and an interdisciplinary approach in professional practice, law schools tend to emphasize a more competitive model of teaching.⁴³ The legal model results in greater isolation both in law school and in practice.⁴⁴ As a whole, lawyers are not taught or encouraged to routinely work in teams, where they can garner support in developing their cases, and express some of the concerns and anxiety that any given case can cause.⁴⁵ This climate of isolation is prominent in state and federal public defender and prosecution agencies, for example, whose lack of resources create additional stress; absent co-counsel and support staff, attorneys are faced with examining very disturbing evidence and facts without any means of working through the effects or reducing the valence of such difficult experiences.

Judges face similar obstacles in identifying and managing the effects of secondary trauma. This begins with their inviolate pledge to maintain impartiality in all cases.⁴⁶ They labor in autonomous work environments, with few outlets for reflecting upon their own feelings and impressions about the facts and circumstances of their cases.⁴⁷ Perhaps more so than attorneys, judges are required to defend “Lady Justice,” who holds a sword in one hand and a scale in the other. She wears a blindfold so justice can be meted out objectively. Though a noble aspiration, it unfortunately does not take into account the great emotional sacrifices this requires of mere mortals.

V. WHY DO LAWYERS GET BURNOUT AND COMPASSION FATIGUE?

Several factors lead to stress symptoms in lawyers, including self-reliance to the exclusion of collaboration, lack of multidisciplinary work models, lack of education about the effects of working with disenfranchised and traumatized populations, and the immutable requirement of confidentiality. Let’s take a closer look at these and other causes.

⁴¹ *Id.*

⁴² *See id.*

⁴³ *Id.*

⁴⁴ *Id.* at 16.

⁴⁵ *Id.* at 14.

⁴⁶ *See id.* at 12.

⁴⁷ *See id.* at 13.

A. Training/Education

“[J]ustice is indeed both wisdom and virtue...” Socrates⁴⁸

Lawyers are predisposed to various degrees of burnout and compassion fatigue in many ways, including by virtue of the pedagogy used in most law schools.⁴⁹ The Socratic method was originally intended to inspire inquiry, discussion and the exchange of ideas, but this is not how it is typically used in legal education today. Instead, rigorous questioning exposes whether students have studied course material and, more important, to what degree. This turns an otherwise collaborative method of learning on its head. It creates an emphasis on extrinsic motivation that sacrifices the inherently satisfying process of learning to the prize of “winning.” Competition is highly rewarded, and a premium is placed on finding the “right answer” instead of “learning how to learn.” The former is necessary in the practice of law, but ultimately is insufficient. The latter is a tool that is transferable to all spheres of life, where most answers exist in the murky grays created by the nuanced interplay of knowledge, intuition, and experience.

When external motivation and fierce competition are integral to the educational culture, attention is directed toward the approval of instructors, grades, and class ranking (dopamine-driven activities), often at the expense of compassion, empathy, and other important components of social and emotional competence.⁵⁰ The “we” of situations is lost to the “me.”⁵¹ Intense rivalry puts the autonomic nervous system into overdrive. Thinking tends to become concrete, and rigid, resulting in either-or rather than both-and solutions. Learning may become more difficult as the ability to attend to, organize and synthesize new information is taxed.⁵² Stress-based learning can become an enduring pattern that follows lawyers from college to career.

Other characteristics of contemporary legal education set the stage for stress later in life. For example, extreme workloads intended to prepare students for the demands of their profession instead often inculcate in them an unhealthy work/play balance. Similarly, the inherent ambiguity of the law, the conflict posed by the adversarial system, unfamiliarity with the course content, and the lack of positive feedback in order to encourage “self-reliance” all combine to imbue students with a perspective that does not easily yield to other points of view about how to work effectively while remaining resilient and balanced.

⁴⁸ PLATO, *The Republic of Plato Book I*, in THE REPUBLIC OF PLATO 1, 29 (1991).

⁴⁹ Lawrence Silver, *Anxiety and the First Semester of Law School*, 1968 WIS. L. REV. 1201, 1202.

⁵⁰ *The Brain and Emotional Intelligence: An Interview with Daniel Goleman*, TRICYCLE (May 18, 2011), <http://www.tricycle.com/blog/brain-and-emotional-intelligence-interview-daniel-goleman>.

⁵¹ See *id.*

⁵² GOLEMAN, *supra* note 23, at 15.

B. Adversarial System

The American legal system is fundamentally adversarial. Concepts such as restorative justice and mediation are slowly being incorporated as means of saving time, effort and money, and arriving at the best outcomes for all involved. But these models fly in the face of hundreds of years of a win-lose system. The idea of win-win is a new and strange twist, and not one easily digested by most. As Thomas Kuhn pointed out, paradigm shifts are always slow coming, and usually are the result of the attrition of an old and increasingly insufficient way of thinking.⁵³ Newer models of justice are based on accountability and repair instead of shame and punishment. They have a growing place in our society, for the times they are “a-changing.”

Adversarial and cooperative thinking are not mutually exclusive. There is a time for each, and the key is to know when to use which. A problem with how and what most lawyers learn in college and therefore how they practice is that it causes a lack of *neuroplasticity*, including the inability to move back and forth between competition and collaboration.⁵⁴ Singular exposure to the adversarial process is noxious—to oneself and others. Humans are pack animals, intended as much for collaboration as competition.⁵⁵ Indeed, humans *require* interaction, positive feedback, and empathy. Without these, their ability to identify and employ important internal physical and emotional information is diminished, as is their ability to use mirror neurons and “caring chemicals” (like oxytocin) to accurately understand and respond to the experiences and the needs of others. This degrades the integrity of important relationships and important goal-directed behavior. Adversarial thinking is useful in trials when the lines have already been drawn. But, when it prevails within the workplace, it undermines essential social engagement and fluid, generative problem solving. Habitual adversarial thinking often generates a chronic oppositional posture. This brittle stance is characterized by a black-and-white, either-or, good-bad, yes-no, win-lose world view that damages personal and professional relationships, is physically destructive, and leaves the affected individual at much higher risk for medical and emotional health conditions.

An adversarial and competitive *weltanschauung* in the workplace results in habits, traits, and procedures that militate against optimal outcomes and employment satisfaction. One of the most detrimental of these is an emphasis on quantity versus quality. As competition rises, so does the value of output. Numbers take on special importance and the ends come to justify the means. Collateral damage in the form of impaired relationships and reduced fidelity to the mission of the agency are accepted as the necessary “cost of doing business.”

⁵³ THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 43-51 (1962).

⁵⁴ See generally Eberhard Fuchs & Gabriele Flügge, *Adult Neuroplasticity: More than 40 Years of Research*, 2014 *NEURAL PLASTICITY* 1.

⁵⁵ See generally Kim Hill, *Altruistic Cooperation During Foraging by the Ache, and the Evolved Human Predisposition to Cooperate*, 13 *J. HUMAN NATURE* 105 (2002).

For example, billable hours may take on greater importance than the quality of the time spent with the population served. Lawyers who take time to listen to clients until they have a full appreciation of what “all” is going on are often seen as weak, to be “bleeding hearts,” or to wear their hearts on the sleeves—traits often considered with scorn or disdain. This stands in stark contrast to some of the examples from the arts. Dorothy Delay, a famous and prolific violinist, was known for spending so much time with each of her Julliard students that it was not unusual for them to be standing in line at midnight as they waited for their private lesson.⁵⁶ She spent exactly the time needed with each student to meet the standard of his or her potential, and she refused to compromise quality for quantity.⁵⁷ Naturally, this is extreme; lawyers have timelines and deadlines, and no one has infinite time and energy. Still, there is an important message here. When we lose sight of our purpose, something essential is lost, and this loss of vision contributes significantly to burnout and compassion fatigue.

Highly competitive organizational cultures influence employees to shift from an internal to an external locus of control and validation. Instead of flying by their own professional lights, they adopt bureaucratic measuring sticks to evaluate their worth and contribution. They compromise their own values in the interest of meeting the expectations of the agency. This leads to an insidious dissonance that sometimes slowly, sometimes quickly, erodes the fabric of one’s identity. And in not knowing who we are we become quite susceptible both to burnout and compassion fatigue.

C. Ethical/Moral Conflict of Zealous Practice

The adversarial system rests upon the notion that everyone is entitled to rigorous, impassioned representation—regardless of whether the client is right or wrong, entitled or not, guilty or innocent. This restricted ability to choose who one represents can make the attorney feel depersonalized, like an interchangeable cog in the huge, never ceasing wheel of justice. This can, and often does, cause enormous internal conflict and stress, whether or not the individual knows it. In addition to having little or no agency in choosing clients, attorneys are bound by law to protect client confidentiality. This can be an unbearable burden. Clients often tell attorneys the most intimate and sensitive information, which attorneys are expected never to reveal regardless of the circumstances. This causes a climate of isolation that cannot be remedied and that is not salutary. The inability to share painful, disturbing or confusing information can contribute to medical and mental health conditions, including burnout and compassion fatigue, and their sequelae.⁵⁸

⁵⁶ BARBARA LOURIE SAND, TEACHING GENIUS: DOROTHY DELAY AND THE MAKING OF A MUSICIAN 73 (2000).

⁵⁷ *Id.* at 64.

⁵⁸ TREATING COMPASSION FATIGUE, *supra* note 3, at 4.

D. Adverse Circumstances and Human Suffering

*There is a cost to caring.*⁵⁹

The amount of energy that can be dedicated to one's workload and clients is finite. However, the needs of clients often seem infinite. They seldom come with one readily discernible problem. To the contrary, they often disgorge complex, detailed stories about their lives and the circumstances that led them to seek help. These stories are often delivered under the pressure of having waited to see the attorney, having a limited amount of time to voice their concerns, and under an array of emotions, including anger, sadness, and desperation. As a result, attorneys may feel they are being asked to be a therapist, marriage counselor, social worker, friend and confidante, and innumerable other roles for which they are not trained nor qualified to fill. The sense of expectation and entitlement can be overwhelming, and leave attorneys feeling objectified and frustrated, like a "solution vending machine" that is sold out. Seldom does the client understand the limits of the professional relationship or the resources within the behemoth legal system in which they are ensconced. And as much as the attorney may try, no amount of patience or compassion will suffice the seemingly never-ending needs of the client.

Burnout is associated with "too much for too long," long working hours, organizational failures, objectification, scrutiny, evaluation by open comparisons, constant pressure to "produce," and limited resources to perform one's role effectively.⁶⁰ Compassion fatigue is associated with *the content* of the information provided by the client, and the practitioner's response to the client's experiences.⁶¹ It is the cumulative physical, emotional, and psychological effect of exposure to traumatic stories. It develops more slowly than burnout and has a greater relationship to the material lawyers work with rather than a singular lack of resources. Moreover, the cost of caring is catching. The effects of both burnout and compassion fatigue can contaminate an office or an entire agency, especially when the organization is not designed to recognize or address the effects of stressful events, difficult fact patterns, and tragic circumstances. Absent the means and commitment to integrate knowledge about burnout and compassion fatigue into the day-to-day operations of law practices, both individuals and the agency are at a much greater risk of developing numerous symptoms that, like bacteria in a petri dish, multiply and affect others.

⁵⁹ *Id.* at 2.

⁶⁰ See generally Christina Maslach & Julie Goldberg, *Prevention of Burnout: New Perspectives*, 74 J. APPLIED PREVENTIVE PSYCHOL. 63 (Dec. 1998).

⁶¹ TREATING COMPASSION FATIGUE, *supra* note 3, at 3.

VI. PREVENTION & TREATMENT

The best treatment is always prevention, and prevention begins with knowledge about any given problem. Education and training about burnout and compassion fatigue are readily accessible and do not require excessive amounts of time. A growing number of professionals are dedicating their practices to disseminating information and helping others to develop policies and skills aimed at preventing burnout and compassion fatigue.

As information is incorporated into the infrastructure of agencies and made available to all employees, the remedies become built-in. Resilience may be viewed in two categories: personal and work-related factors that develop immunity and recovery.

A. Personal Factors

Strong, supportive social networks outside of work. “Neurons that fire together wire together.”⁶² So, if we are “stuck” in work mode, our thoughts tend to return to the problems, frustrations, and challenges associated with work. We can not give it a rest. Through purposefully changing our behavior, we use different pathways and indeed create new pathways of learning and responding. This is powerfully fostered through interactions with people who think differently than we—i.e. whose neural highways are different than ours—and who extend to us compassion and understanding. A diverse social network allows us to exercise our minds in novel ways, and serves as a mirror that we may use to reflect on ourselves both inwardly and in a larger social context. Workaholics generally have great difficulty moving fluidly from one environment to another, and tend to isolate themselves in ways that galvanize limited neural firing. This rigid feedback loop can adversely affect work performance.

Sufficient non-work related hobbies and activities. Just as we need to be with different people who have different strengths and interests, we need to invest ourselves in activities that use and create different neural pathways. We need to use *all* of our brain, not just the part useful to our work. Intense focus on one topic or activity for too long impairs our ability to think divergently, and reduces our problem solving strategies relative to that task. Toggling back and forth between work and other activities increases plasticity and ultimately the quality of work while increasing our resilience to stressful material.

Reasonable expectations. If you want to be happy, lower your expectations. The greater the adversarial climate and emphasis on competition, the higher and more unreasonable our expectations of ourselves and others may

⁶² See Rick Hanson, *Fire up Those Neurons for Positive Thinking*, HUFFINGTON POST, http://www.huffingtonpost.com/rick-hanson-phd/taking-in-the-good_b_732117.html (last updated Nov. 17, 2011).

be. Burnout and compassion fatigue are always driven by dysregulation. Ensuring that our expectations are reasonable is one way we can remain regulated and appropriately responsive. People not associated with our profession often provide the most accurate and useful reality checks for our goals and expectations.

Time away. The geographic cure works. By changing the sensory stimuli in our environment, we engage different parts of our brain that allow the over worked regions to calm down and recalibrate. It is not just getting away that is important, it is where we go and for how long. Using vacation time to do volunteer work in a war-torn country does not count as time away. Intense legal work and all that goes with it should be balanced by exposure to nature, art, music, sports, people and activities that allow us to experience *the other* us. While this is not possible for everyone, it illustrates the kind of thinking that helps keep us balanced and at ease with ourselves and our surroundings. And the two-week ethic certainly should be revisited. More can be accomplished in eleven months than in twelve. That is because we hit critical mass long before we limp across the finish line to claim our “restorative” two-week vacation, which generally accomplishes little more than to allow us to disengage from work. Organizations should closely examine the nature of the work in which they are engaged, and calculate time away so that it is sufficient to allow true rest and relaxation.

Self-care. Even today, many lawyers are taught to be lone rangers in their work, and to engage in self-abnegation. It is understandable in the sense that, like physicians and other professionals, lawyers undertake daunting responsibility in representing clients. The buck has to stop somewhere. But when this model is taken to an extreme it can produce exactly the results we don't want, especially when it is employed over long periods of time. By constantly subordinating our own needs—physical and mental—to those of clients, agencies and organizations, we exhaust our internal resources in dangerous ways. The Veteran's Administration estimates over \$42 billion dollars are spent each year on stress-related illnesses. Why is this so? There are several answers, but one is this: when we continue to run on empty, our sympathetic nervous system and amygdala become over-activated. They cease to distinguish between real and perceived demands (threats), and send signals throughout the body to remain locked and cocked. Over time, this can affect our respiratory, circulatory, digestive, metabolic and immune systems. We simply do not have sufficient energy to devote both to normal physiological functions and excess demands, and our body bears the brunt in one way or another. This is why understanding and fulfilling our mental, emotional and physical needs is so important. Here we may trot out the well-worn analogy about placing the oxygen mask on ourselves first. But it is true. If we are not attuned and responsive to our needs, we place ourselves at much higher risk for mental and physical problems, including those associated with burnout and compassion fatigue. Self-care is both prophylactic and ameliorative. Treating ourselves with

tolerance and kindness helps prevent problems, and reduces the intensity of those that do arise.

Self-care comes in many forms but always has to do with noticing and responding to needs within and around us. It can be as fundamental as knowing and accepting our temperament—whether we are introverted or extroverted, a global thinker or having a keen sense of details, more sensitive and feeling or more analytical and impassive, comfortable with things unfolding as they may or having a need for structure and well-defined goals. Understanding and employing our natural strengths and inclinations allows us to work more efficiently and effectively.

Other aspects of self-care involve awareness of basic physical needs, chief among them sleep and food. Clinicians remark how frequently they must address with clients lack of sleep and irregular sleep cycles, and the failure to distinguish between hunger and appetite. For sleep, the magic number is six.⁶³ For most people, less than six hours of sleep sends the body into a state of arousal and alarm.⁶⁴ It produces stress hormones and avoids the deep sleep required to use protein and perform other essential metabolic functions.⁶⁵ Overtaxed people often have very little insight about the relationship between sleep, attention, decision-making, and control over responses. Similarly, those burdened by stress seldom know the difference between hunger and appetite.⁶⁶ Hunger alerts us to changes in our metabolism, such as a drop in our blood sugar, a signal we need to eat.⁶⁷ Appetite is the desire for food. Stress leads us to crave carbohydrates (sugar) as a means of remaining vigilant for new demands.⁶⁸ They are used quickly and lead to a renewed appetite.⁶⁹ Or, they are stored as glycogen in the liver and can be quickly converted to sugar in times of perceived stress.⁷⁰ Sugars that are not used are turned to fat.⁷¹ Learning to understand what our body needs in the moment is the greater part of stress management.⁷²

An integral component of self-care is the ability to calm oneself in the moment. In this way, we can think about and respond to an event or

⁶³ See Lisa Rapaport, *The Scary Truth About Getting Fewer Than 6 Hours of Sleep Each Night*, HUFFINGTON POST (Oct. 24, 2015), http://www.huffingtonpost.com/entry/health-risks-of-too-little-sleep_562a57c1e4b0aac0b8fca384.

⁶⁴ See *id.*

⁶⁵ See Bruce S. McEwen, *Central effects of Stress Hormones in Health and Disease: Understanding the Protective and Damaging Effects of Stress and Stress Mediators*, 582 EUROPEAN J. PHARMACOLOGY 174, 176 (2008).

⁶⁶ *Id.*

⁶⁷ *Id.* at 185.

⁶⁸ Richard J. Wurtman et al., *Brain Serotonic, Carbohydrate-Craving, Obesity and Depression*, 3 OBESITY RESEARCH 477S, 477S (1995).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² THOMAS M. SKOVHOLT, *THE RESILIENT PRACTITIONER: BURNOUT PREVENTION AND SELF-CARE STRATEGIES FOR COUNSELORS, THERAPISTS, TEACHERS, AND HEALTH PROFESSIONALS* 187-88 (2nd ed. 2011).

circumstance rather than react quickly and often ineffectively. We first learn this in our parents' arms, where their ability to calm us evolves into our ability to calm ourselves. Even highly dysregulated reactive people can learn to calm themselves in the moment through self-observation and by practice. Simply noticing our patterned responses and "triggers" reduces quick reactions. Even more so does the act of wondering why we react as we do. Observation and inquiry change neural pathways, as do yoga, meditation, being in nature and with animals, listening to certain kinds of music, gardening, playing with children, and immersing ourselves in activities that have great intrinsic value. Because of mirror neurons, our ability to calm ourselves, even in the midst of stressful events, "contaminates" others, and allows them respond in kind. This creative engagement enhances problem solving and improves the way we relate to others.

B. Work-Related Factors

Top-down values. Each agency, organization or practitioner has implicit and explicit values that influence roles, rules, goals and objectives. A rule that every lawyer must wear his or her jacket when outside of one's individual office implies a value of professionalism that is demonstrated in part by specific attire. Similarly, the value of human resources may be expressed by requiring every member of a practice or agency be well versed in the genesis, dynamics, prevention and treatment of burnout and compassion fatigue, and that this knowledge be incorporated into the organizational design.

Recurrent training in cooperative work models, effective communication, conflict resolution, collective problem solving, and egalitarianism. These are important components of healthy work environments and are integral to preventing and addressing burnout and compassion fatigue. But they do not become part of the office culture and value system if they are brought up in passing as part of a briefing or intra-agency circular. They are established over time and in a variety of ways, including expressly designed education and incorporation into all aspects of daily operations.

Collaborative work environment. An adversarial posture is essential for rigorous advocacy. It is the basis of our judicial system. But it is essential to recognize who the adversary is and is not, and to collaborate with our colleagues and co-workers. For, as we have seen, a sympathetic-dominant, amygdala-driven work environment quickly becomes stilted and toxic. It robs us of goodwill, creativity, and mutuality, and the end result is outcomes that are distorted, unsatisfying, and lackluster.

Activities that foster connection, understanding and appreciation. Closely akin to a collaborative work environment are activities that allow us to see the ways in which all are similar. This does not require getting in a circle and singing kumbaya. Rather, it involves interacting within and outside of work with attention and intention. There are structured group events intended for this purpose, though these goals can be achieved in many subtle ways that are woven seamlessly into the collective social DNA.

Resources for emotional resilience. We need not focus solely on the problems associated with burnout and compassion fatigue. Ways to address burnout and compassion fatigue include employee assistance programs and counselors who specialize in work- and stress-related conditions.

Prevention, early identification, and intervention of burnout and compassion fatigue are most robust when they are part of law school curricula. In the same way the dangers of smoking have been universally disseminated through primary schools where students are most vulnerable to peer-influence, burnout and compassion fatigue are best understood and appreciated in law school, when professional demands are reified through rigorous assignments and high standards of performance. Likewise, the importance of preventing and treating burnout and compassion fatigue should be incorporated in continuing legal education in offices, agencies and leadership organizations, where they become key threads in the fabric of ethical conduct.

VII. CONCLUSION

Burnout and compassion fatigue are insidious, debilitating conditions that undermine the professional efficacy of practitioners and the agencies in which they work. Growing research shows that they are found in the legal profession to a greater degree than in many other inherently stressful professions and result from the institutional structure of law offices, the adversarial nature of the practice of law, and lack of prevention and early intervention for the effects of burn out and compassion fatigue.

New evidence shows that lawyers are increasingly unwilling to work in non-collaborative environments where the effect of fierce competition among peers destroys social support and other resources that promote professional success and mental and physical health. The affirmative response to burnout and compassion fatigue that other professions (including law enforcement, first responders, and all areas of medicine and mental health) have been implementing for decades are now seen in the legal profession, though progress is slow and resistance remains an obstacle.

However, there is good reason for optimism, as changes can be seen in the way law firms are organized and run. The nature of law is changing in positive ways, too. Increasingly, collaborative courts, mediation, and therapeutic jurisprudence are replacing competitive, lone-ranger approaches to law. These and other innovative methods are gradually becoming the new standard of practice that promotes much more effective outcomes for individual practitioners, clients, firms, agencies, and the field at large. These trends, led by a new generation of legal professionals, hold great promise for the profession and those that practice it.