

ASYLUM ATTORNEY BURNOUT AND SECONDARY  
TRAUMA

*Lindsay M. Harris & Hillary Mellinger*

## ASYLUM ATTORNEY BURNOUT AND SECONDARY TRAUMA

*Lindsay M. Harris\* & Hillary Mellinger\*\**

*We are in the midst of a crisis of mental health for attorneys across all practice areas. Illustrating this broader phenomenon, this interdisciplinary Article shares the results of the 2020 National Asylum Attorney Burnout and Secondary Traumatic Stress Survey (“Survey”). Using well-established tools, such as the Copenhagen Burnout Inventory and the Secondary Stress Trauma Survey, the Survey assessed the well-being of over 700 immigration attorneys navigating the tumultuous asylum space. As the largest such study of United States attorneys to date, it is particularly timely. Between 2017 and 2021, the Trump administration’s extreme policies, sweeping regulatory changes, and Attorney General decisions catapulted immigration law practice into the public spotlight and created deeper dimensions of stress in an already dysfunctional and traumatizing system. The*

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\* Professor of Law, Associate Dean for Clinical and Experiential Programs, Director, Immigration & Human Rights Clinic, University of the District of Columbia – David A. Clarke School of Law, JD Berkeley Law School, LLM Georgetown University Law Center. This work benefitted from the insight of Dr. Stuart Lustig, MD, MPH, at various stages and we are humbled by his big heart and readiness to assist. We also thank Hannah Cartwright, Amy Kimpel, Laila Hlass, Mallika Kaur, Lin Piwowarczyk, Jaya Ramji-Nogales, Sarah Sherman-Stokes, Brittany Stringfellow Otey, Nicole Tuchinda, Virgil Wiebe, and participants of the 2020 Mid-Atlantic Clinicians Workshop and the 2020 New York University Clinical Writers’ Workshop for insights shared on this Article. Thank you to Rawad Ahmad, Jennifer Araujo, Stephanie Brown, Annie Haji, and Jamila Hubbard for research assistance at various stages in this project. Thanks also go to UDC Law for the summer research grant support for this research. We commend the editors of the *Wake Forest Law Review* for their careful and thoughtful editorial assistance.

\*\* Assistant Professor in the Department of Criminal Justice and Criminology at Washington State University, PhD American University, MA George Mason University. Dr. Mellinger is also an affiliate of Brandeis University’s Language, Justice, and Culture Hub. Eric Schuler was instrumental in supporting the quantitative coding and analysis of this project; we are deeply grateful for the significant amount of time and guidance that he tirelessly provided to us. Finally, we thank Hector Figueroa, Heidi H. Liu, and Maya Barak, for offering their thoughts on our final statistical analysis.

*Survey findings include much higher self-reported symptoms of burnout and secondary traumatic stress among asylum attorneys than previously surveyed populations, including immigration judges, social workers, hospital doctors, nurses, and prison wardens. In addition, female-identifying attorneys, attorneys of color, and solo practitioners reported higher symptoms of burnout and secondary traumatic stress.*

*This Article explores the inherently traumatic nature of asylum seeking and asylum lawyering, briefly touching on the ever-changing landscape of asylum law and policy. In doing so, the Article considers specifically how these changes impact asylum attorneys as one subset of immigration attorneys and as attorneys exposed to trauma. We contribute to the literature around trauma stewardship and a need for self-care, institutional care, and proactive measures to support those joining and continuing in the field. Further, the Article provides data to inform funders and other stakeholders about the need to normalize a culture of openly discussing burnout and secondary trauma within law school settings, nonprofits, government agencies, and law firms. Ultimately, this Article argues for a fundamental shift in legal education and the legal profession more broadly in terms of how we think, talk, and teach about the psychological realities of lawyering.*

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## INTRODUCTION

This original study uncovered high levels of secondary traumatic stress and burnout among 718 surveyed asylum attorneys.<sup>1</sup> This is the largest study to date, not only of immigration attorneys but of any attorney population measuring levels of burnout, trauma, or stress.<sup>2</sup>

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1. Data on file with the authors. Throughout this Article, all data and italicized quotes come from the authors' Survey responses. All data and quotes are on file with the author.

2. See Andrew P. Levin et al., *Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working with Trauma-Exposed Clients*, 199 J. MENTAL & NERVOUS DISEASE 946, 947 (2011) (a study of 238 attorneys and 109 administrative staff surveyed from the Wisconsin State Public Defender's Office); see also Justin Anker & Patrick R. Krill, *Stress, Drink, Leave: An Examination of Gender-Specific Risk Factors for Mental Health Problems and Attrition Among*

As an introduction to this Article, we share just a handful of the 321 responses to the final open-ended question in The National Asylum Attorney Burnout, Trauma, and Stress Survey (“Survey”). These responses are quite representative of the whole by exemplifying the sense of futility that many feel while practicing, the ever-changing nature of the area of law, the weight of the constant barrage of animus against asylum seekers, the personal and financial sacrifice many asylum attorneys make in continuing this work, and a general despondency and lack of hope for the future.

*“I think this administration has created a generation of public service workers with serious [Posttraumatic Stress Disorder] from the absolute chaos and horror of the changes in the immigration system. It feels like we are all drowning and there is no one to save us.”*

*“It’s like hacking away at a cement wall with a plastic spoon. There are no words to describe how awful it is to tell a client they have to go back to the place where they are in so much danger, that the law doesn’t protect them[—]especially after we grow so close to our clients.”*

*“I have decided to quit law altogether. It’s impossible to deal with the financial crush of serving a low-income population AND cope with the secondary trauma. I’ve lost my appetite for the law altogether after this shit show area of law. I have no faith in justice or the law anymore.”<sup>3</sup>*

As the quotations above illustrate, the surveyed population of asylum attorneys is experiencing high levels of both burnout and secondary traumatic stress (“STS”). Although the overall self-reported symptoms of burnout and STS were high for the population surveyed, the Survey also revealed differential levels of the phenomena based on certain attorney characteristics. For example, the results of our study show that responding attorneys identifying as female are associated with higher levels of both burnout and STS,

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*Licensed Attorneys*, PLOS ONE, May 12, 2021, at 1–3 (examining data from 2,863 attorneys surveyed on mental health more broadly).

3. Seventeen attorneys shared that they had already quit working with asylum seekers or taking on certain types of cases (i.e., removal defense or detained cases) or were planning to retire or end their practice of law because of their self-described burnout and mental health effects of the work. Two respondents specifically stated that they would quit if former President Trump was reelected, and seven attorneys shared that they were thinking about quitting. Additional Survey responses are available online. See Lindsay M. Harris, *Asylum Attorney Burnout (Model Survey and Additional Survey Responses)*, UNIV. OF THE D.C. DAVID A. CLARKE SCH. OF L., [https://digitalcommons.law.udc.edu/fac\\_journal\\_articles/112/](https://digitalcommons.law.udc.edu/fac_journal_articles/112/) (last visited Oct. 5, 2021).

as were attorneys of color.<sup>4</sup> Likewise, solo practitioners responding to the Survey were also associated with higher levels of burnout and STS than attorneys practicing in other work environments.<sup>5</sup> These findings and others are explored in more depth throughout the Article.

Part I explores the lack of prior research on trauma exposure in immigration attorneys and the phenomena of burnout, STS, and vicarious trauma. Part II explains the process of seeking asylum in the United States and how it can be a source and amplification of trauma for both asylum seekers and their attorneys. Part III presents findings of the Survey of 718 asylum attorneys across the United States for both STS and burnout, with the findings organized by attorney characteristics studied, including gender; race/ethnicity; office environment; jurisdiction; support staff; working hours; and when the Survey was taken (prepandemic or during the early months of the COVID-19 pandemic).

Part IV argues for a major shift in legal education and the legal profession, with prescriptions for change to address the current mental health crisis among asylum attorneys, immigration attorneys, and attorneys more broadly. These prescriptions include proposals for law school curricular reform, support, and continuing legal education for attorneys; funding to reduce caseloads and increase work-life balance; and measures to move beyond individual self-care and ensure institutional support for sustainable careers for asylum attorneys. Part V explores areas ripe for future exploration, which may include a longitudinal study of the same group of asylum attorneys, examining nonattorney staff working with the same population, focusing on how an attorney's identity along with prior traumatic experiences may affect outcomes, and a contemporary examination of immigration adjudicators and their well-being.

## I. ATTORNEYS AND TRAUMA EXPOSURE

### A. *Landscape of Existing Research on Secondary Traumatic Stress and Burnout*

The American Psychological Association (“APA”) defines “trauma” as “an emotional response to a terrible event like an accident, rape or natural disaster.”<sup>6</sup> This Article uses the term

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4. Specifically, female Survey respondents were associated with higher levels of burnout and STS compared to male respondents, which were the reference group, while holding all other variables constant. Respondents who identified as attorneys of color were associated with higher levels of burnout and STS compared to White respondents, which were the reference group, holding all other variables constant. *See infra* Part III.

5. All other variables were held constant.

6. *Trauma*, AM. PSYCH. ASS'N, <https://www.apa.org/topics/trauma/> (last visited Sept. 9, 2021). There are different types of trauma, including acute trauma, resulting “from a single stressful or dangerous event”; chronic trauma,

“trauma exposure” to refer to professional contact that individuals have with survivors of trauma. The effects of trauma exposure have been explored in members of many “helping professions,”<sup>7</sup> including social workers,<sup>8</sup> therapists,<sup>9</sup> nurses,<sup>10</sup> firefighters,<sup>11</sup> police officers,<sup>12</sup> disaster workers,<sup>13</sup> and relief workers.<sup>14</sup> In the past couple of decades,

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resulting “from repeated and prolonged exposure to highly stressful events”; and complex trauma, resulting “from exposure to multiple traumatic events.” See Jayne Leonard, *What Is Trauma? What to Know*, MED. NEWS TODAY (June 3, 2020), <https://www.medicalnewstoday.com/articles/trauma#definition>.

7. See Sarah Knuckey et al., *Trauma, Depression, and Burnout in the Human Rights Field: Identifying Barriers and Pathways to Resilient Advocacy*, 49 COLUM. HUM. RTS. L. REV. 269, 280 (2018); Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245, 280 (2003) (providing a more in-depth discussion of studies of mental health and well-being among other professions).

8. See, e.g., Brian E. Bride, *Prevalence of Secondary Traumatic Stress Among Social Workers*, 52 SOC. WORK 63, 63–69 (2007).

9. See Joan Laidig Brady et al., *Vicarious Traumatization, Spirituality, and the Treatment of Sexual Abuse Survivors: A National Survey of Women Psychotherapists*, 30 PRO. PSYCH. RSCH. & PRAC. 386, 386–92 (1999); see also C.D. Craig & G. Sprang, *Compassion Satisfaction, Compassion Fatigue, and Burnout in a National Sample of Trauma Treatment Therapists*, 23 ANXIETY, STRESS, & COPING 319, 319–37 (2010).

10. See, e.g., Colleen Delaney et al., *Pilot Testing of the NURSE Stress Management Intervention*, 34 J. HOLISTIC NURSING 369, 369–86 (2016).

11. See, e.g., Dieter Wagner et al., *Prevalence of Symptoms of Posttraumatic Stress Disorder in German Professional Firefighters*, 155 AM. J. PSYCHIATRY 1727, 1727–31 (1998).

12. See Bengt B. Arnetz et al., *Trauma Resilience Training for Police: Psychophysiological and Performance Effects*, 24 J. POLICE CRIM. PSYCH. 1, 1–8 (2009); Robyn R. M. Gershon et al., *Mental, Physical, and Behavioral Outcomes Associated with Perceived Work Stress in Police Officers*, 36 CRIM. JUST. & BEHAV. 275, 275–86 (2008).

13. See William Berger et al., *Rescuers at Risk: A Systematic Review and Meta-Regression Analysis of the Worldwide Current Prevalence and Correlates of PTSD in Rescue Workers*, 47 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 1001, 1001–09 (2011); Robert J. Ursano et al., *Posttraumatic Stress Disorder and Identification in Disaster Workers*, 156 AM. J. PSYCHIATRY 353, 353–59 (1999).

14. See Cynthia B. Eriksson et al., *Trauma Exposure and PTSD Symptoms in International Relief and Development Personnel*, 14 J. TRAUMATIC STRESS 205, 205–11 (2001); Orin Nuttman-Schwartz, *Shared Resilience in a Traumatic Reality: A New Concept for Trauma Workers Exposed Personally and Professionally to Collective Disaster*, 16 TRAUMA, VIOLENCE, & ABUSE 466, 466 (2015).

lawyers, including public defenders<sup>15</sup> and family lawyers,<sup>16</sup> have also been studied. A study of criminal and domestic violence attorneys found that “[c]ompared with mental health providers and social service workers, attorneys surveyed demonstrated significantly higher levels of secondary traumatic stress and burnout.”<sup>17</sup> A follow-up study found that while gender, age, years on the job, and office size did not predict any outcomes, attorneys’ levels of exposure to traumatized clients significantly affected their symptoms of posttraumatic stress disorder (“PTSD”), depression, and functional impairment.<sup>18</sup>

There has been no major study of STS and burnout amongst asylum and immigration attorneys in the United States, although some work has focused on those engaging in human rights work more broadly, of which asylum advocacy is clearly a part.<sup>19</sup> Other studies have found higher levels of stress among criminal versus civil attorneys.<sup>20</sup> Scholars have also explored the benefits for case outcomes of collaborations between lawyers and mental health professionals.<sup>21</sup> Finally, scholars have explored the mental health

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15. See Andrew Levin et al., *The Effect of Attorneys’ Work with Trauma-Exposed Clients on PTSD Symptoms, Depression, and Functional Impairment: A Cross-Lagged Longitudinal Study*, 36 LAW & HUM. BEHAV. 538, 538–46 (2012); see also Amy F. Kimpel, *Violent Videos: Criminal Defense in a Digital Age*, 37 GA. ST. L. REV. 305, 327–52 (2021) (sharing the results of a survey indicating that exposure to disturbing video content exacerbates burnout in criminal defense attorneys); Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathetic, Heroic Public Defender*, 37 U.C. DAVIS L. REV. 1203, 1204–65 (2004).

16. See Jennifer Brobst, *The Impact of Secondary Traumatic Stress Among Family Attorneys Working with Trauma-Exposed Clients: Implications for Practice and Professional Responsibility*, 10 J. HEALTH & BIOMEDICAL L. 1, 19–20 (2014); Ann E. Freedman, *Fact-Finding in Civil Domestic Violence Cases: Secondary Traumatic Stress and the Need for Compassionate Witnesses*, 11 AM. U. J. GENDER SOC. POL’Y & L. 567, 569–653 (2002).

17. Levin & Greisberg, *supra* note 7, at 245 (sharing results from a survey including attorneys, mental health providers, and social service workers all working with the same client population).

18. See Levin et al., *supra* note 15, at 545.

19. See, e.g., Sarah Knuckey et al., *Trauma, Depression, and Burnout in the Human Rights Field: Identifying Barriers and Pathways to Resilient Advocacy*, 49 COLUM. HUM. RTS. L. REV. 267, 291–92, 303–07 (2018) (sharing the results of a study of 346 individuals working in the human rights field, focused on measuring trauma exposure, anxiety, PTSD, burnout, and depression, as well as factors to contribute to positive or negative mental health).

20. See, e.g., Lila Petar Vrklevski & John Franklin, *Vicarious Trauma: The Impact on Solicitors of Exposure to Traumatic Material*, 14 TRAUMATOLOGY 106, 114 (2008) (finding that criminal attorneys reported more depressive symptoms, subjective stress, and changes in feelings of safety and intimacy than civil attorneys).

21. See Sabrineh Ardalan, *Constructive or Counterproductive? Benefits and Challenges of Integrating Mental Health Professionals into Asylum*



effects of adjudicating immigration claims on immigration judges (“IJs”).<sup>22</sup>

Moving beyond the United States, studies of attorneys in Canada and the United Kingdom shed some light on stress and burnout of asylum lawyers operating in those systems. A study of 476 Canadian lawyers found that trauma-exposed lawyers were 2.62 times more likely to meet a probable threshold for a PTSD diagnosis.<sup>23</sup> Another U.K. study of 70 asylum lawyers specifically found “significant association between higher contacts with trauma-exposed clients and anxiety; higher weekly work hours and fewer years of experience in asylum law with more stress; fewer years of experience with general trauma scores and intrusion symptoms; and more clients per week with cognitive changes regarding trust in others.”<sup>24</sup>

Little research to date has specifically focused on U.S. immigration attorneys and the effects of trauma exposure on them as a population.<sup>25</sup> Indeed, there is little research on immigration attorneys as a population overall. In one of the first such research efforts, the National Immigration Lawyer Survey, conducted in 2018,

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*Representation*, 30 GEO. IMMIGR. L.J. 1, 9 (2015); Lindsay M. Harris, *Learning in “Baby Jail”: Lessons from Law Student Engagement in Family Detention Centers*, 25 CLINICAL L. REV. 155, 172, 207, 215 (2018) (discussing partnerships with social workers for clinics engaged in intensive fieldwork within family detention centers, including traveling with a social worker as part of the team).

22. See Kate Aschenbrenner, *In Pursuit of Calmer Waters: Managing the Impact of Trauma Exposure on Immigration Adjudicators*, 24 KAN. J.L. & PUB. POL’Y 401, 403 (2015); Stuart L. Lustig et al., *Inside the Judges’ Chambers: Narrative Responses from the National Association of Immigration Judges Stress and Burnout Survey*, 23 GEO. IMMIGR. L.J. 57, 57 (2008).

23. Marie-Eve Leclerc et al., *The Unseen Cost of Justice: Post-Traumatic Stress Symptoms in Canadian Lawyers*, 26 PSYCH. CRIME & L. 1, 5–6 (2020) (assessing trauma exposure rather than the type of law practiced).

24. Line Rønning et al., *Vicarious Traumatization in Lawyers Working with Traumatised Asylum Seekers: A Pilot Study*, 27 PSYCHIATRY, PSYCH., & L. 665, 665, 667, 670 (2020) (sharing results of a small study of seventy U.K. asylum attorneys); see generally Neil Graffin, *The Emotional Impacts of Working as an Asylum Lawyer*, 38 REFUGEE SURV. Q. 30, 30–54 (2019) (sharing a study including ten semistructured interviews with asylum practitioners in England and the Republic of Ireland).

25. But see Hannah C. Cartwright et al., *Vicarious Trauma and Ethical Obligations for Attorneys Representing Immigrant Clients: A Call to Build Resilience Among the Immigration Bar*, 2 AILA L.J. 23, 33 (2020) (raising awareness of vicarious trauma and proposing that managing trauma stewardship is an ethical obligation and requirement to be a successful immigration attorney); Lin Piwowarczyk et al., *Secondary Trauma in Asylum Lawyers*, 14 BENDER’S IMMIGR. BULL. 1, 4 (2009) (sharing the results of a survey of fifty-seven attorneys in the Boston area who volunteered to do asylum cases, mostly on a part-time basis, revealing concerning levels of STS).

broadly focused on immigration lawyers and their motivations for entering the field but did not touch on mental health.<sup>26</sup>

While substance abuse and mental illness among the attorney and law student population in general has been explored,<sup>27</sup> there has been less focus on the effects of working with traumatized clients or attorney burnout,<sup>28</sup> and no focus at all specifically on immigration attorneys.<sup>29</sup> This Survey fills this gap through an examination specifically of burnout and STS among attorneys representing asylum seekers.<sup>30</sup> Of course, immigration attorneys more broadly are also likely to suffer from the effects of trauma exposure,<sup>31</sup> but this Article focuses specifically on asylum attorneys.<sup>32</sup> As Part II below explains,

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26. See NAT'L IMMIGR. L. SURV., <http://immigrationlawyersurvey.org> (last visited Sept. 9, 2021); see also Notes from Public Stakeholder Meeting, American University Washington College of Law (May 29, 2019) (on file with author). The American Immigration Law Association periodically conducts a marketplace study on the economics of immigration practice, the most recent study being in 2019. See AM. IMMIGR. LAWS. ASS'N, THE 2019 AILA MARKETPLACE STUDY: A NATIONAL REFERENCE ON THE ECONOMICS OF IMMIGRATION LAW PRACTICE 43 (2019).

27. See, e.g., Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 123–24 (2016) (analyzing survey responses from over 3,000 law students in fifteen law schools); see also Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 47 (2016) (releasing the results of their survey in 2016, which surveyed 12,825 lawyers in nineteen states).

28. But see Levin & Greisberg, *supra* note 7, at 245.

29. See Kate Aschenbrenner, *Ripples Against the Other Shore: The Impact of Trauma Exposure on the Immigration Process Through Adjudicators*, 19 MICH. J. RACE & L. 53, 78 (2013) (noting the lack of focus on immigration attorneys).

30. See Piwowarczyk et al., *supra* note 25, at 4 (summarizing the results of a small survey with fifty-seven responses from attorneys engaged in asylum work in 2006, the focus of which was on attorneys handling pro bono cases from a nonprofit and included 54% of respondents who worked for large firms of fifty or more lawyers, and only 33% of the respondents focused their practice on immigration law).

31. See Jill E. Family, *An Invisible Border Wall and the Dangers of Internal Agency Control*, 25 LEWIS & CLARK L. REV. 71, 81–82 (2021) (sharing the results of interviews with twenty-five business immigration attorneys where frustration with the system came through and one attorney described the Trump administration's changes as "making practice a living hell").

32. See Aschenbrenner, *supra* note 29, at 71–77, 91 (explaining that noncitizens more broadly have exposure to trauma not only in their daily lives but also through specific immigration petitions including U visas, T visas, and VAWA applications); Hannah C. Cartwright et al., *Self-Care in an Interprofessional Setting Providing Services to Detained Immigrants with Serious Mental Health Conditions*, 65 SOC. WORK 82, 83 (2020) (discussing working with individuals with mental health challenges in immigration detention: "[L]awyers and social workers face court-imposed, arbitrary time constraints, high caseloads, and limited resources, all against the backdrop of society's dehumanizing biases

asylum has always been an inherently emotionally fraught area of the law.<sup>33</sup> In recent years, however, asylum law has become more complex and the barriers to accessing protection so extreme<sup>34</sup> that attorneys practicing in this area warrant special attention. Studying the mental health of immigration attorneys in general is a worthwhile endeavor, but this project begins with asylum attorneys, who, as explained in Part III below, provide especially strong exemplars of the problems of burnout and STS among immigration attorneys.<sup>35</sup>

Lawyers as a population suffer from high levels of depression, mental health challenges, and substance abuse,<sup>36</sup> and bar associations have focused increasingly on attorney mental health. The year 2020 saw the first ever National Lawyer Well-Being Week.<sup>37</sup> State bar associations have also rallied in recent years to address mental health issues among attorneys.<sup>38</sup> The Mindfulness in Law Society was launched in 2016 with a core goal of promoting lawyer well-being through spreading awareness of mindfulness to manage stress and other emotions.<sup>39</sup>

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against immigrants, people with criminal convictions, and people with mental illness.”).

33. See *infra* Part II.

34. See, e.g., Bill Frelick, *The Trump Administration’s Final Insult and Injury to Refugees: New Rule Creates Barriers to Asylum in the US*, HUM. RTS. WATCH (Dec. 11, 2020, 6:00 AM), <https://www.hrw.org/news/2020/12/11/trump-administrations-final-insult-and-injury-refugees> (discussing the “death to asylum” rule as a further barrier to asylum seekers).

35. See *infra* Part III.

36. See Page Thead Pulliam, Comment, *Lawyer Depression: Taking a Closer Look at First-Time Ethics Offenders*, 32 J. LEGAL PRO. 289, 290, 293 n.26 (2008) (discussing the prevalence of depression and substance abuse plaguing the legal profession).

37. Jonathan Beitner, *Welcome to the First Annual Lawyer Well-Being Week*, VAULT (Apr. 30, 2020), <https://www.vault.com/blogs/vaults-law-blog-legal-careers-and-industry-news/welcome-to-the-first-annual-lawyer-well-being-week>. See generally NAT’L TASK FORCE ON L. WELL-BEING, *THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE* 7, 11–47 (2017), <https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf> (discussing recommendations and the need to increase education on mental health in the legal profession).

38. See Monica M. Márquez & Jonathan White, *Call to Action: The Colorado Supreme Court’s Task Force on Lawyer Well-Being*, 96 DENV. L. REV. 247, 262–65 (2019); Eric Quitugua, *The Lawyer Well-Being Movement: A National Task Force Report Recommends 44 Ways to a Healthier Environment for Attorneys*, 80 TEX. BAR J. 596, 596 (2017).

39. *The MILS Mission*, MINDFULNESS IN L. SOC’Y, <https://www.mindfulnessinlawsociety.org/mission> (last visited Sept. 9, 2021) (“The mission of the Mindfulness in Law Society is to help promote well-being and alleviate suffering in the legal profession, nationally and internationally, by educating about the benefits of mindfulness, yoga, and other contemplative practices for legal and related professionals, and to develop, promote, coordinate,

During the Trump administration, the term “asylum lawyer” gained some understanding in mainstream American society. Whereas before, claiming “*I am an asylum lawyer*,” would be met with blank stares, or sometimes a perplexed “*like an insane asylum?*,” nowadays more Americans have at least some cursory understanding of what “asylum” means.

The media has started to notice that immigration lawyers are struggling, with pieces short and long discussing the emotional toll of immigration lawyering.<sup>40</sup> The APA has raised concerns about compassion fatigue among immigration attorneys in the current immigration landscape.<sup>41</sup> Although President Biden and the new political leadership has brought some respite for asylum seekers and immigrants more broadly,<sup>42</sup> the challenges facing immigration and asylum lawyers remain. The immigration system has long been highly dysfunctional and operated in racist, unjust, and harmful ways.<sup>43</sup> Specifically, the asylum process is, as discussed in Part II, inherently traumatizing for both asylum seeker and advocate.<sup>44</sup>

Before turning to *why* asylum attorneys are at risk of suffering burnout, trauma, and stress, we outline these phenomena, including the range of associated symptoms and health outcomes.

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and assess activities to support the continued learning and growth of its members in this regard.”).

40. See Marcia Brown, *The Loneliness of the Immigration Lawyer*, AM. PROSPECT (Oct. 29, 2020), <https://prospect.org/justice/loneliness-of-the-immigration-lawyer/> (citing survey data and interviews with immigration attorneys across the country); Noel King, *Immigration Lawyers, Judges Deal with Extreme Burnout as Migration Crisis Continues*, NPR (July 11, 2019, 4:28 PM), <https://www.npr.org/2019/07/11/740871314/>.

41. Rebecca Raney, *Compassion Fatigue: A Side Effect of the Immigration Crisis*, AM. PSYCH. ASS’N (Oct. 15, 2019), <https://www.apa.org/members/content/compassion-fatigue>.

42. See Tressa Stuart, *Biden Promised a New Era for Immigration After Trump. How's That Going?*, ROLLING STONE (Sept. 26, 2021, 9:00 AM), <https://www.rollingstone.com/politics/politics-news/biden-plan-immigration-del-rio-haiti-1231488/>. The Biden administration made some positive announcements on inauguration day, along with a series of three immigration executive orders on February 2, 2021. See, e.g., *FACT SHEET: President Biden Outlines Steps to Reform Our Immigration System by Keeping Families Together, Addressing the Root Causes of Irregular Migration, and Streamlining the Legal Immigration System*, THE WHITE HOUSE (Feb. 2, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/02/fact-sheet>.

43. See David J. Bier, *Deregulating Legal Immigration: A Blueprint for Agency Action*, CATO INST. (Dec. 18, 2020), <https://www.cato.org/publications/study/deregulating-legal-immigration-blueprint-agency-action>; see also U.S. COMM’N ON C.R., *TRAUMA AT THE BORDER 12–20* (2019), <https://www.usccr.gov/pubs/2019/10-24-Trauma-at-the-Border.pdf> (discussing current and historical policies that have plagued the immigration system).

44. Graffin, *supra* note 24, at 33–35; see *infra* Part II.

### B. *Definitions of Burnout and Secondary Traumatic Stress*

Various terms are used to describe the psychological responses to work with trauma-exposed populations or “trauma exposure.”<sup>45</sup> This Article focuses on burnout and STS.<sup>46</sup> Related phenomena include “compassion fatigue”<sup>47</sup> or “vicarious traumatization,”<sup>48</sup> which include symptoms like countertransference<sup>49</sup> and even effects on memory.<sup>50</sup> The most recent edition of the APA’s Diagnostic and Statistical Manual of Mental Disorders (“DSM-5”) now includes repeated indirect exposure to aversive details of an event (or events) in the course of a professional duty as a stressor criterion for PTSD.<sup>51</sup> Because this change is quite recent, and because the tools used in this study do not measure PTSD, we focus on burnout and STS. Below we briefly explain each phenomenon in turn, beginning with burnout, then addressing STS, with a note on vicarious trauma. We explore these definitions and symptoms to underscore the importance of preventing and treating these phenomena and to understand how they can affect attorney work product, outcomes, and efficacy.

#### 1. *Burnout*

Burnout has gained popular currency in the last few years, and in 2019 the World Health Organization (“WHO”) officially listed it as a medical diagnosis.<sup>52</sup> Burnout can result from “working in

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45. Jason M. Newell & Gordon A. MacNeil, *Professional Burnout, Vicarious Trauma, Secondary Traumatic Stress, and Compassion Fatigue: A Review of Theoretical Terms, Risk Factors, and Preventive Methods for Clinicians and Researchers*, 6 BEST PRACTS. IN MENTAL HEALTH 57, 58 (2010).

46. The Article does not focus on trauma-informed lawyering and how to actually work with trauma-exposed clients. For an excellent discussion of this topic, see Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 360–93 (2016).

47. Charles R. Figley, *Compassion Fatigue as Secondary Traumatic Stress Disorder: An Overview*, in COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED 1, 2 (Charles R. Figley ed., 1995).

48. Lisa McCann & Laurie Anne Pearlman, *Vicarious Traumatization: A Framework for Understanding the Psychological Effects of Working with Victims*, 3 J. TRAUMATIC STRESS 131, 133 (1990).

49. *Id.* at 135 (explaining that countertransference places emphasis on the preexisting personal characteristics of the person working with a trauma survivor and how they may respond as a result of their own unresolved psychological conflicts).

50. *Id.* at 142–43 (explaining the potential effects on memory of therapists working with survivors of trauma).

51. See U.S. DEP’T OF HEALTH & SERVS., A TREATMENT IMPROVEMENT PROTOCOL: TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES 82 (2014), <https://www.ncbi.nlm.nih.gov/books/NBK207201/pdf>.

52. Ryan Prior, *Burnout Is an Official Medical Diagnosis, World Health Organization Says*, CNN, <https://www.cnn.com/2019/05/27/health/who-burnout-disease-trnd/index.html> (May 27, 2019) (explaining that the WHO handbook

environments characterized by high stress/low rewards.”<sup>53</sup> It may stem from an overload of responsibilities, lack of respect or inequity at the workplace, lack of community at the workplace, few financial or emotional rewards with the work, little control of quality of services provided, and conflict between individual values and organizational goals and demands.<sup>54</sup>

Experts conceptualize burnout in three domains: (1) emotional exhaustion, (2) depersonalization (or cynicism), and (3) reduced sense of personal accomplishment.<sup>55</sup> “[S]ymptoms of burnout have been described as depression, cynicism, boredom, loss of compassion, and discouragement.”<sup>56</sup> Burnout develops “gradually due to the accumulation of stress and the erosion of idealism resulting from intensive contact with clients.”<sup>57</sup> Factors contributing to burnout amongst those that work with victims include “professional isolation, the emotional drain of always being empathetic, ambiguous successes . . . nonreciprocated giving and attentiveness, [and] failure to live up to one’s own (perhaps unrealistic) expectations.”<sup>58</sup>

## 2. Secondary Traumatic Stress

STS is defined as “the natural consequent behaviors and emotions resulting from knowing about a traumatizing event experienced by a significant other—stress resulting from helping or wanting to help a traumatized or suffering person.”<sup>59</sup> STS may also

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diagnoses burnout where an individual presents with the following symptoms: “1. feelings of energy depletion or exhaustion; 2. increased mental distance from one’s job, or feelings of negativism or cynicism related to one’s job; 3. reduced professional efficacy.”; *see also* Aschenbrenner, *supra* note 29, at 56–60 (discussing “What is trauma?” and the “effects of trauma,” such as burnout).

53. LAURIE ANNE PEARLMAN & KAREN W. SAAKVITNE, TRAUMA AND THE THERAPIST: COUNTERTRANSFERANCE AND VICARIOUS TRAUMATIZATION IN PSYCHOTHERAPY WITH INCEST SURVIVORS 451 (1995); *see also* Christina Maslach & Michael P. Leiter, *Understanding the Burnout Experience: Recent Research and its Implications for Psychiatry*, 15 WORLD PSYCHIATRY 103, 106 (2016) (“[B]urnout increases in work environments characterized by interpersonal aggression.”).

54. CHRISTINA MASLACH & MICHAEL P. LEITER, THE TRUTH ABOUT BURNOUT 10–17 (1997).

55. *See, e.g.*, Newell & MacNeil, *supra* note 45, at 59.

56. McCann & Pearlman, *supra* note 48, at 133; *see also* Levin & Greisberg, *supra* note 7, at 248–49 (“[Burnout is] characterized by physical symptoms such as fatigue, poor sleep and headaches, emotional changes including anxiety, irritability, depression and hopelessness, and behavioral manifestations including aggression, cynicism, and substance abuse, leading to poor job performance, deterioration in interpersonal relationships, and significant attrition among professionals working with traumatized populations.”).

57. *See* Levin & Greisberg, *supra* note 7, at 248 (citing B.A. Farber & L.J. Heifetz, *The Process and Dimensions of Burnout in Psychotherapists*, 13 PRO. PSYCH. 293, 298 (1982)).

58. McCann & Pearlman, *supra* note 48, at 133.

59. Figley, *supra* note 47, at 7.

result from hearing traumatic material and can include psychological distress, cognitive deficits, and emotional challenges.<sup>60</sup>

Symptoms of STS often mirror PTSD symptoms and can include “intrusive thoughts, traumatic memories or nightmares associated with client trauma, insomnia, chronic irritability or angry outbursts, fatigue, difficulty concentrating, avoidance of clients and client situations, and hypervigilant or startled reactions toward stimuli or reminders of client trauma.”<sup>61</sup>

### 3. *Vicarious Trauma*

Burnout and STS often overlap with vicarious trauma (“VT”).<sup>62</sup> For that reason, we spend some time here discussing definitions and symptoms of VT. Although our Survey tools measured burnout and STS specifically, it is certainly possible that the asylum and immigration attorney population, if assessed, would also display high levels of VT.

VT is “a transformation in [one’s] inner experience [resulting from] empathic engagement with clients’ traumatic material,”<sup>63</sup> or, as another expert explains, “shattered assumptions.”<sup>64</sup> People working with trauma survivors will experience “lasting alterations in their cognitive schemas” that significantly impact their “feelings, relationships, and life.”<sup>65</sup>

Four basic assumptions (or schemas) are disrupted by trauma: “[b]eliefs that the world is benign, the world is meaningful, the self is worthy, and people are trustworthy.”<sup>66</sup> Despite this, VT is a normal response to trauma exposure.<sup>67</sup> VT can, however, cause an individual to become more cynical and question assumptions about the world

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60. S. Collins & A. Long, *Working with the Psychological Effects of Trauma: Consequences for Mental Health-Care Workers — A Literature Review*, 10 J. PSYCHIATRIC & MENTAL HEALTH NURSING 417, 418 (2003).

61. Newell & MacNeil, *supra* note 45, at 60; *see also* Piwowarczyk et al., *supra* note 25, at 3 (listing additional symptoms of STS).

62. *See* Lee Norton et al., *Burnout and Compassion Fatigue: What Lawyers Need to Know*, 84 UMKC L. REV. 987, 988 (2016) (“Unlike burnout, which is related to work conditions, compassion fatigue has to do with the response to the content of clients’ stories and experiences.”); Ronald Tyler, *The First Thing We Do, Let’s Heal All the Law Students: Incorporation Self-Care into a Criminal Defense Clinic*, 21 BERKELEY J. CRIM. L. 1, 5–7 (2016) (discussing burnout as the long-term phenomenon and VT as an acute time-limited experience).

63. PEARLMAN & SAAKVITNE, *supra* note 53, at 31.

64. RONNIE JANOFF-BULMAN, SHATTERED ASSUMPTIONS: TOWARDS A NEW PSYCHOLOGY OF TRAUMA 52 (2010).

65. McCann & Pearlman, *supra* note 48, at 136.

66. *Id.* at 138.

67. *Id.* at 145 (“Just as PTSD is viewed as a normal reaction to the stressful and sometimes traumatizing reaction to an abnormal event, we view vicarious traumatization as a normal reaction to the stressful and sometimes traumatizing work with victims.”).

and personal safety.<sup>68</sup> Individuals experiencing VT may become suspicious of others and their motives, may lose idealism, and may have a heightened sense of their own mortality.<sup>69</sup> As a result, individuals can become alienated from loved ones or coworkers and may try to control others or engage in victim blaming.<sup>70</sup> VT sufferers may also experience some symptoms similar to PTSD, including intrusive thoughts, dreams, or images.<sup>71</sup>

Ultimately, the precise boundaries of VT, STS, and burnout are not important for the purposes of this Article. These phenomena are overlapping, and the lines between stress and trauma are difficult to draw.<sup>72</sup> The effects of these phenomena can cause professional impairment, resulting in decreased productivity, reduced access to justice, and an increased risk of attorneys receiving discipline and a poor reputation.<sup>73</sup> Personal impairment is also possible, including substance abuse, depression, and suicide.<sup>74</sup>

The asylum attorneys who responded to the Survey self-reported high levels of STS and burnout. The next Part of this Article explores the factors that may contribute to these results.

## II. SECONDARY TRAUMA AND BURNOUT INHERENT IN ASYLUM LAWYERING

Asylum lawyering has always exposed lawyers to traumatic stories, yet a series of changes under the Trump administration made the practice of asylum law even more difficult. Together, these factors make asylum lawyering uniquely fraught with the potential for STS and burnout for asylum attorneys. This Part moves through the various traumatic stages or elements of asylum law and process: (a) the structure of asylum law; (b) the process of seeking asylum; (c) the process of preparing an asylum application; (d) the role of the asylum attorney; and (e) the limitations of asylum as a remedy or form of relief for harm suffered.

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68. *Id.* at 138.

69. *Id.* at 138–40.

70. *Id.* at 139, 141.

71. *Id.* at 142; see also Brittany Stringfellow Otey, *Buffering Burnout: Preparing the Online Generation for the Occupational Hazards of the Legal Profession*, 24 S. CAL. INTERDISC. L.J. 147, 169–70 (2014) (discussing VT and how an analytical mindset (“prefer[ring] ‘thinking to feeling’”) and inadequate training play a role in making lawyers vulnerable to VT).

72. See Aschenbrenner, *supra* note 29, at 63 (“Regardless of formal diagnoses, it is highly likely that all individuals affected by trauma will display some set of symptoms . . . exactly which ones, their intensity and duration, and when and how they are displayed will vary from person to person.” (citation omitted)).

73. Otey, *supra* note 71, at 178–82; see also Cartwright et al., *supra* note 25, at 25.

74. Michele W. Gazica et al., *Well-Being Among Arizona Lawyers: Survey Finds Attorneys Stressed but Satisfied*, 55 ARIZ. ATT’Y 26, 26 (2018).



A. *The Traumatic Structure of Asylum Law*

Asylum seekers are, by definition, fleeing and/or fearing traumatic circumstances. An asylum seeker must meet the definition of a refugee, an individual with a well-founded fear of persecution in the future or who has suffered persecution in the past, based on one of five protected grounds.<sup>75</sup> Persecution is not defined by statute, but a whole host of atrocious treatments perpetrated by one or more persons towards another have been found to meet the definition—from rape, sexual assault, prolonged detention, torture, threats to life, female genital cutting, slavery, and more.<sup>76</sup> Studies of asylum seekers have found that, as a population, they present high levels of PTSD, Major Depressive Disorder, and other mental health challenges.<sup>77</sup> It is unsurprising that attorneys working closely with asylum seekers, listening to the details of and fears of persecution, may experience the mental health consequences of that work.

The very structure of asylum law focuses on the powerlessness of the asylum seeker.<sup>78</sup> To be granted asylum, you must make clear that you cannot prevent the harm you face by relocating within your own country, that your own government either cannot or will not protect you, and that you have either sought help to no avail or that seeking assistance from your government would be futile or dangerous.<sup>79</sup> Individuals who are successful in avoiding persecution or in holding their persecutors accountable will have a harder time obtaining a grant of asylum. Thus, asylum law requires a certain level of victimhood. An asylum seeker must, in some ways, demonstrate their own powerlessness and lack of agency.

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75. A refugee is “any person who is outside any country of such person’s nationality . . . and who is unable or unwilling to return to, and is unwilling or unable to avail himself or herself or the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1101.

76. DREE K. COLLOPY, AILA’S ASYLUM PRIMER: A PRACTICAL GUIDE TO U.S. ASYLUM LAW AND PROCEDURE 66–70 (8th ed. 2019).

77. See Piwowarczyk et al., *supra* note 25, at 2 (discussing a study where 82% of sampled asylum seekers in the United States suffered from PTSD and 96% suffered some form of depressive disorder); Derrick Silove et al., *Anxiety, Depression and PTSD in Asylum Seekers: Associations with Pre-Migration Trauma and Postmigration Stressors*, 170 BRIT. J. PSYCHIATRY 351, 351 (1997).

78. See CTR. FOR VICTIMS OF TORTURE, DESIGNING A TRAUMA-INFORMED ASYLUM SYSTEM IN THE UNITED STATES 4–6 (2021); see also NATALIE NANASI, *Domestic Violence Asylum and the Perpetuation of the Victimization Narrative*, 78 OHIO ST. L.J. 733, 738 (2017).

79. See *Elements of Asylum*, IMMIGR. EQUAL., <https://immigrationequality.org/asylum/asylum-manual/asylum-law-basics-2/> (last visited Sept. 9, 2021).

*B. The Traumatic Process of Seeking Asylum*

In order to obtain asylum, while recounting their stories, the applicant must relive their traumatizing experiences and face a daunting evidentiary standard. Seeking asylum in the United States has always been an inherently disempowering and dehumanizing experience. Most of these challenges already existed and were merely exacerbated by the Trump administration's extreme anti-asylum focus, leading to changes in policy, procedure, and law.<sup>80</sup>

While there are three procedural postures from which asylum seekers may apply for protection, all of them are dehumanizing and traumatic in overlapping but distinct ways. Each system, and their respective traumatic effects, is addressed below.

First, an asylum seeker already physically present in the U.S. can apply for asylum "affirmatively" by filing an I-589 form.<sup>81</sup> The form is currently twelve pages long and involves small print legal terminology.<sup>82</sup> The application requires reducing one's life history and experiences to boxes on a form and checking other boxes to indicate whether or not one fears torture or future harm. Upon receipt of the form (which may be rejected for any number of highly technical reasons),<sup>83</sup> the U.S. government issues the asylum seeker a nine-digit "alien number."<sup>84</sup> From then on, the asylum case is pending, and the asylum seeker is living in limbo awaiting an interview date. Policies around whether applications received most recently are addressed first go back and forth, but currently many asylum seekers wait upwards of three years for an asylum interview.<sup>85</sup>

Second, asylum seekers who arrive physically at a U.S. border and desire to seek asylum go through a similarly disempowering process, with further indignities and challenges. The first hurdle is

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80. See Peniel Ibe, *How Trump Is Making It Harder for Asylum Seekers*, AM. FRIENDS SERV. COMM., <https://www.afsc.org/blogs/news-and-commentary/how-trump-making-it-harder-asylum-seekers> (last updated Nov. 2, 2020).

81. See Dagmar R. Mylinska, *How to Prepare an Affirmative Asylum Application*, NOLO, <https://www.nolo.com/legal-encyclopedia/how-prepare-affirmative-asylum-application.html> (last visited Sept. 9, 2021).

82. See U.S. CITIZENSHIP & IMMIGR. SERVS., FORM I-589, APPLICATION FOR ASYLUM AND FOR WITHHOLDING OF REMOVAL 1–12 (2020).

83. See Lindsay M. Harris, *Asylum Under Attack: Restoring Asylum Protection in the United States*, 67 LOY. L. REV. 1, 50, 61–62 (2021).

84. See Jonathan Petts, *What Is an Alien Registration Number (a-Number), and Where Can I Find It?*, IMMIGR. HELP.ORG (July 14, 2020), <https://www.immigrationhelp.org/learning-center/what-is-an-alien-registration-number>.

85. See, e.g., HUM. RTS. FIRST, PROTECTION POSTPONED: ASYLUM OFFICE BACKLOGS CAUSE SUFFERING, SEPARATE FAMILIES, AND UNDERMINE INTEGRATION 2 (2021) (386,000 asylum seekers are awaiting an interview as of the end of the fiscal year 2020; 80% of Human Rights First clients in the affirmative backlog have been waiting for longer than two years for an interview).

articulating a fear of return or an intention to seek asylum to a uniformed, often armed, Customs and Border Protection (“CBP”) officer, who may or may not accurately record that fear or intention.<sup>86</sup> If the asylum seeker makes it over that hurdle, she waits in a detention center or jail for a credible fear interview with a U.S. Asylum Officer to explore her fear-based claim.<sup>87</sup> That fear may be found “credible” or not, and if she moves on in the process, the asylum seeker may remain detained and prepare for her hearing from the confines of a detention center before presenting her claim, often by video teleconference (even pre-pandemic), to an IJ in a different location.<sup>88</sup> If the asylum seeker is released from detention to pursue her claim on parole, or more rarely an immigration bond, she will experience the backlogs in immigration court, currently at close to 1.3 million cases, and may wait several years for her day in court.<sup>89</sup>

Third, undocumented individuals who encounter Immigration and Customs Enforcement (“ICE”) while already within the United States will also be detained in a private detention center near the border, or if detained in the interior of the United States, will most likely be detained in ICE custody in a local county jail.<sup>90</sup> Such individuals may apply for asylum as a defense to removal (i.e., deportation) before an IJ, but like asylum seekers at the border, they will be detained throughout the asylum adjudication process unless they are eligible for an immigration bond or parole.<sup>91</sup> These individuals are often detained in inhumane conditions, exacerbated further by the COVID-19 pandemic,<sup>92</sup> lacking access to adequate medical and mental health care, and access to legal counsel due to the often remote locations of detention centers. Such conditions frequently worsen symptoms of the trauma or torture endured by the asylum seeker, which led to their seeking asylum.<sup>93</sup>

Throughout this process, asylum seekers are required to repeatedly retell their stories. Before securing legal representation, asylum seekers must often articulate their past persecution and fear

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86. See Lindsay M. Harris, *Withholding Protection*, 50 COLUM. HUM. RTS. L. REV. 1, 22 (2018).

87. *Id.* at 24.

88. See *id.* at 26.

89. *The State of the Immigration Courts: Trump Leaves Biden 1.3 Million Case Backlog in Immigration Courts*, TRAC IMMIGR. (Jan. 19, 2021), <https://trac.syr.edu/immigration/reports/637/>.

90. AM. IMMIGR. COUNCIL, IMMIGRATION DETENTION IN THE UNITED STATES BY AGENCY 3 (2020), [https://www.americanimmigrationcouncil.org/sites/default/files/research/immigration\\_detention\\_in\\_the\\_united\\_states\\_by\\_agency.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/immigration_detention_in_the_united_states_by_agency.pdf).

91. *Id.* at 2–6.

92. HAFSA S. MANSOOR & KATHERINE COMLY, A LONG TIME COMING: HOW THE IMMIGRATION BOND AND DETENTION SYSTEM CREATED TODAY’S COVID-19 TINDERBOX 2 (2020), <https://law.shu.edu/docs/publications/clinics/how-immigration-bond-and-detention-system-created-todays-covid-19-tinderbox.pdf>.

93. See Harris, *supra* note 86, at 30.

of return to their home country several times. If the asylum seeker is able to find legal counsel, the lawyer plays a role in requiring the client again to tell and retell that story. Professor Harris, one of the authors of this Article, often tells clients that unfortunately the asylum process requires reliving the worst days of their lives, over and over again. Attorneys force their clients through this painful process because credibility is paramount before the asylum office and immigration court, meaning that attorneys will engage in rigorous interviewing to explore the details of the asylum claim.<sup>94</sup> Asylum law also puts an increasing emphasis on detail to demonstrate credibility. The asylum adjudication process forces a survivor of torture and/or trauma to go to the places in her mind that she is most reluctant to go and draw out the harrowing details of what she has endured. Not only that, but asylum adjudicators must assess an asylum seeker's credibility—whether or not she is telling the truth. Asylum seekers are subject to extreme scrutiny, and any discrepancies or inconsistencies between what an asylum seeker said in one document or one interview versus another, even if minor, could raise serious challenges to asylum eligibility.<sup>95</sup> None of this, of course, takes into account how experiences of trauma can affect memory.<sup>96</sup>

Most attorneys craft a detailed client declaration to explain the harm suffered and feared.<sup>97</sup> Ordinarily, an asylum seeker will undergo one or more “moots” to prepare for an interview or court hearing, again retelling the story.<sup>98</sup> Some asylum seekers will engage with a mental health professional not only to assist them with the mental load of seeking asylum but also to evaluate their mental health status and craft an expert report to support their claim.<sup>99</sup> If the asylum seeker has physical scars or symptoms of persecution, she will meet separately with a medical doctor who will evaluate the physical symptoms and write their own report after interviewing the asylum seeker.<sup>100</sup>

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94. Rønning et al., *supra* note 24, at 666 (“The asylum lawyer has to listen empathetically, and elicit and be receptive to the details of a person’s trauma story, as this is critically important for an asylum application.”).

95. *See* 8 U.S.C. § 1158(b)(1)(B)(i)–(iii).

96. *See, e.g.,* Michele Bedard-Gilligan & Lori A. Zoellner, *Dissociation and Memory Fragmentation in Posttraumatic Stress Disorder: An Evaluation of the Dissociative Encoding Hypothesis*, 20 *MEMORY* 277, 277 (2012).

97. *See* Piwowarczyk et al., *supra* note 25, at 2 (explaining that asylum attorneys must review the story with their client multiple times for many hours).

98. *See id.*

99. Ardalan, *supra* note 21, at 11–15.

100. *See Global Conflicts, Civil Wars, and Injustice Have Driven Immigration to an All-Time High Since 1990. Seeking Asylum from Persecution is a Human Right*, PHYSICIANS FOR HUM. RTS., <https://phr.org/issues/asylum-and-persecution/> (last visited Sept. 9, 2021).

The requirement to repeatedly review and share past persecution and torture is clearly triggering for both asylum seekers and their representatives. As two Survey respondents explained:

*“It is not unusual [for an attorney] to be physically ill, following an asylum hearing with past persecution for up to 3 days.”*

*“I am pretty sure I have vicarious trauma from all the clients’ stories of persecution, and having to hear them over and over again as we draft affidavits and prepare for interviews or individual hearings is emotionally exhausting.”*

While the asylum seeker navigates the process of seeking asylum, she is ineligible for any federal benefits or financial assistance and is very rarely eligible for any state assistance.<sup>101</sup> Not only this, but the asylum seeker is also ineligible to even apply for legal work authorization to support herself until roughly five months to one year after the initial asylum application is filed.<sup>102</sup> The permit will be granted at some point following the application, but delays are frequent.<sup>103</sup> During this time, the asylum seeker is vulnerable to exploitation and living on the margins of society, ineligible for any assistance, and unable to provide for herself.<sup>104</sup>

Some Survey respondents shared that they are uncomfortable working within a dysfunctional and traumatizing system. One attorney shared, *“I feel complicit in a system that is antiquated and racist.”* In preparing client cases, another attorney shared:

*“I often feel complicit in perpetuating the good immigrant/bad immigrant narrative[<sup>105</sup>] . . . . Our laws are terrible and so limiting and oftentimes my biggest frustration is having to neatly package my clients’ stories into this very awful binary.”*

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101. See Lindsay M. Harris, *From Surviving to Thriving? An Investigation of Asylee Integration in the United States*, 40 N.Y.U. REV. L. & SOC. CHANGE 29, 46 (2016).

102. See Harris, *supra* note 83, at 54. This is a complex and evolving area of law. See *Employment Authorization Documents Adjudication Delays*, AM. IMMIGR. COUNCIL, <https://www.americanimmigrationcouncil.org/litigation/employment-authorization-documents-adjudication-delays> (last visited Sept. 9, 2021).

103. See Harris, *supra* note 83, at 53–54 (discussing barriers to work authorization introduced by the Trump administration).

104. See Piowarczyk et al., *supra* note 25, at 6 (explaining that asylum seekers struggle with housing instability, hunger, paying for educational expenses, calling home, and having money for transportation and incidentals).

105. See generally Elizabeth Keyes, *Beyond Saints and Sinners: Discretion and the Need for New Narratives in the U.S. Immigration System*, 26 GEO. IMMIGR. L.J. 207, 209–56 (2012) (exploring “the polarized narratives told about ‘good’ and ‘bad’ immigrants”).

One other attorney reflected that, while initially listening to “*horrific stories*” was the most challenging part of the job, as time goes on, she is “*more and more conflicted about whether [her] participation legitimates the structure, and whether [she] should quit and stand [or] participate in civil disobedience.*”<sup>106</sup>

### C. *The Trauma of Being an Asylum Attorney*

Over the years, research has focused on the difficulties that traumatized individuals face while telling their stories and navigating the adjudication gauntlet, and also on training law students to engage in this work with survivors.<sup>107</sup> There has been less focus on training the lawyers on how to navigate their own emotional responses to the traumatic stories with which they engage and the stress they face in advocating for asylum seekers.<sup>108</sup> This emphasis, as the results of this Survey shared in Part III demonstrate, is needed now more than ever. The Part below explores how changes in asylum law, policy, and procedure under the Trump administration have likely exacerbated and contributed to high levels of burnout and STS among asylum attorneys.

Survey respondents spontaneously shared comments like, “*I have been doing this continuously since 1985, and these are the most difficult times,*” and “*I have practiced since the Clinton Administration[–]never has it been so awful for immigrants[–]in every aspect of immigration law-not just asylum-based applications.*” Such comments were frequent, with at least twenty-five attorneys emphasizing that their trauma did not come from working with

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106. These anecdotal experiences are consistent with a recent study of eighty-seven public defenders that examined the occupational stress inherent in working in an unfair and dysfunctional system in the criminal context. Valerio Baćak et al., *The Stress of Injustice: Public Defenders and the Frontline of American Inequality* 1, 12–23 (Dec. 12, 2020) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3765714](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3765714) (sharing the results of semistructured interviews with eighty-seven public defenders focused on occupational stress and examining the stress of injustice including “penal excess, divestment in indigent defense, and the criminalization of mental illness” and finding public defenders are “highly vulnerable to chronic stress”).

107. See Julie Marzouk, *Ethical and Effective Representation of Unaccompanied Immigrant Minors in Domestic Violence-Based Asylum Cases*, 22 CLINICAL L. REV. 395, 436–38 (2016) (describing the need to train law students to ethically represent children survivors of trauma by avoiding retraumatization as much as possible); Lynette M. Parker, *Increasing Law Students’ Effectiveness When Representing Traumatized Clients: A Case Study of the Katharine & George Alexander Community Law Center*, 21 GEO. IMMIGR. L.J. 163, 177–80, 179 nn.57–59 (2007).

108. *But see* Otey, *supra* note 71, at 158–77, 202 (focusing on burnout, stress, and trauma among law students generally).

clients but from the system within which they operated, the inadequacies of which were exacerbated during the Trump era.<sup>109</sup>

The inauguration of President Trump in 2017 heralded an era of anti-immigrant sentiment and actions specifically focused on making the asylum-seeking process more difficult. The sweeping changes to the asylum system, combined with persnickety regulatory changes at the granular level, cannot be overstated, but this Part attempts to outline, broadly, the ways in which the asylum adjudication process changed. Asylum lawyering became even more challenging, exhausting, and an experience akin to whiplash. These changes may explain the high levels of attorney burnout and STS that Survey respondents reported.<sup>110</sup> The changes particularly upended the asylum-seeking process at our southern border.<sup>111</sup> The chances of being granted asylum are now lower than ever.<sup>112</sup> One Survey respondent reflected at the end of the Survey that there was a “[s]ense of futility: that time put in and quality of work net no benefit.”

In a separate piece, Professor Harris discusses in great detail the myriad of ways in which the Trump administration attacked the asylum system from early 2017 through the end of 2020.<sup>113</sup> Here, we simply outline the broad categories of changes to asylum law and policy in the past few years in order to paint a picture of the increasing difficulty of obtaining asylum and of practicing asylum law. The following response to the open-ended Survey question illustrates some of the ways in which asylum attorneys have themselves felt attacked over the last four years:

*“We are barraged with new policies and case law seemingly every week that cause us to have to scramble to re-frame our cases, come up with new strategies on the fly, and absorb new rules that are increasingly punitive towards our clients and at odds with*

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109. To review comments where asylum attorneys explain that their clients are not the cause of their trauma, see Harris, *supra* note 3.

110. Rønning et al., *supra* note 24, at 666 (citing Colin Yeo, *The Hostile Environment: What Is It and Who Does It Affect?*, NEW EURS.NET (June 3, 2017, 2:46 PM), <https://neweuropeans.net/article/1927/hostile-environment-what-it-and-who-does-it-affect>) (explaining that in the U.K., there are well-documented “hostile environment policies,” which impact asylum seekers and asylum attorneys).

111. See Press Release, U.S. Comm’n on C.R., *Trauma at the Border: The Human Cost of Inhumane Human Rights Policies* (Oct. 24, 2019), <https://www.usccr.gov/press/2019/10-24-Trauma-at-the-Border-PR.pdf>. For an explanation of how the expedited removal process used to function at our southern border, which was far from ideal, see Harris, *supra* note 86, at 51–52.

112. Jennifer Lee Koh, *Barricading the Immigration Courts*, 69 DUKE L.J. ONLINE 48, 55 (2020) (citing U.S. DEP’T JUST., *STATISTICS YEARBOOK FISCAL YEAR 2018*, at 26–27 (2018), <https://www.justice.gov/eoir/file/1198896/download>) (showing that in fiscal year 2018, only thirty-eight percent of all asylum claims decided were granted).

113. See Harris, *supra* note 83, at 8–10.

*decades of established case law. We bear witness to the erosion of due process and humanitarian consideration and how it has a direct impact on the lives of our immigrant clients and their families. As a lawyer, it is a huge responsibility to be in charge of someone's immigration case, and essentially their only hope for safety and security. Now it feels like the deck is stacked against us, no matter how hard we work. This situation is definitely taking its toll on me personally in terms of emotional exhaustion and burnout."*

Below are six broad categories of ways in which the Trump administration attempted to dismantle our system of asylum protection.

First, the Trump administration instituted various policies focused particularly on the southern border with Mexico to restrict access to asylum. The policy that catapulted asylum seekers into the spotlight was the "Zero Tolerance" policy, resulting in the mass separation of immigrant parents from their children.<sup>114</sup> Many of these separated families were asylum seekers.<sup>115</sup> Another lesser known border policies affecting asylum seekers is "metering," the process by which the CBP limited the number of asylum seekers coming into the United States each day, which entirely ground to a halt during the COVID-19 pandemic.<sup>116</sup>

Beyond metering, in 2019, the Trump administration launched the Migrant Protection Protocols ("MPP"),<sup>117</sup> requiring certain asylum seekers to await adjudication of their asylum claims in U.S. immigration court on the Mexican side of the border in dangerous conditions.<sup>118</sup> The Biden administration suspended any additional enrollments in MPP<sup>119</sup> and is slowly processing those asylum seekers still waiting in Mexico. The Trump administration included two other programs to expedite the asylum process, further undermining

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114. *Id.* at 13–15.

115. *See id.* at 13.

116. *Id.* at 9–12.

117. *See* AM. IMMIGR. COUNCIL, POLICIES AFFECTING ASYLUM SEEKERS AT THE BORDER: THE MIGRANT PROTOCOLS, PROMPT ASYLUM CLAIM REVIEW, HUMANITARIAN ASYLUM REVIEW PROCESS, METERING, ASYLUM TRANSIT BAN, AND HOW THEY INTERACT 1–2, 4 (2020), [https://www.americanimmigrationcouncil.org/sites/default/files/research/policies\\_affecting\\_asylum\\_seekers\\_at\\_the\\_border.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/policies_affecting_asylum_seekers_at_the_border.pdf); *see also* Harris, *supra* note 83, at 18–20.

118. HUM. RTS. FIRST, A YEAR OF HORRORS: THE TRUMP ADMINISTRATION'S ILLEGAL RETURNS OF ASYLUM SEEKERS TO DANGER IN MEXICO 1 (2020), <https://www.humanrightsfirst.org/sites/default/files/MPP-aYearofHorrors-UPDATED.pdf>; *DHS Expands MPP to Brazilian Nationals*, U.S. DEP'T HOMELAND SEC. (Jan. 29, 2020), <https://www.dhs.gov/news/2020/01/29/dhs-expands-mpp-brazilian-nationals>.

119. *DHS Statement on the Suspension of New Enrollments in the Migrant Protection Protocols Program*, U.S. DEP'T HOMELAND SEC. (Jan. 20, 2021), <https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-migrant-protection-protocols-program>.



already pitiful due process protections and access to counsel, known as the Prompt Asylum Claim Review (“PACR”) and the Humanitarian Asylum Review Process (“HARP”).<sup>120</sup> Finally, the United States signed bilateral Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador, in an attempt to send asylum seekers for processing in those countries rather than in the United States.<sup>121</sup>

Second, the Trump administration instituted several asylum “bans” over the years, which included attempting to bar asylum seekers from asylum eligibility if they entered the United States between ports of entry.<sup>122</sup> The second ban made individuals who had transited through a third country ineligible for asylum protection.<sup>123</sup> These bans have been subject to legal challenges in federal court with mixed results, but they contributed to the constantly shifting legal landscape on which asylum attorneys stand.

Third, Attorneys General under President Trump frequently exercised a power available to them (although previously infrequently used) to certify multiple decisions to themselves, taking the decisions outside of the normal appeals adjudication process—attempting to change the shape of asylum law.<sup>124</sup> These decisions focused on curtailing due process, increasing detention, and denying protection to asylum seekers fleeing gender- and gang-related violence.<sup>125</sup>

Fourth, the Trump administration utilized the immigration bureaucracy to create additional hurdles for asylum seekers. This included attempting to require an unprecedented fee for asylum, fees for the first work permit application with no access to a fee waiver, restrictions on work authorization depending on manner of entry and when the application was submitted, and highly technical rejections of asylum applications.<sup>126</sup> In October 2019, for example, United

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120. These policies were suspended thanks to the COVID-19 ban, as discussed in Harris, *supra* note 83, at 24.

121. These agreements were suspended by Secretary of State Antony J. Blinken. Press Release from Antony J. Blinken, Sec’y of State, Dep’t of State, Suspending and Terminating the Asylum Cooperative Agreements with the Governments El Salvador, Guatemala, and Honduras (Feb. 6, 2021), <https://www.state.gov/suspending-and-terminating-the-asylum-cooperative-agreements-with-the-governments-el-salvador-guatemala-and-honduras/>.

122. Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations, 83 Fed. Reg. 55,934, 55,939 (Nov. 9, 2018) (to be codified at 8 C.F.R. pt. 208, 1003, 1208) (barring asylum to anyone in violation of Presidential Proclamation); Proclamation No. 9822, 83 Fed. Reg. 57,661, 57,663 (Nov. 9, 2018) (suspending entry temporarily to any non-U.S. citizen or non-lawful permanent resident seeking to enter outside ports of entry); Harris, *supra* note 83, at 37.

123. See Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33,829, 33,830 (July 16, 2019) (to be codified at 8 C.F.R. pt. 208, 1003, 1208); Harris, *supra* note 83, at 26.

124. Harris, *supra* note 83, at 40–43 (discussing the various Attorney General decisions changing asylum law under the Trump administration).

125. *Id.* at 9.

126. *Id.* at 49–53.

States Citizenship and Immigration Services (“USCIS”) issued a new policy instructing immigration officers to reject asylum applications because an applicant had failed to write their name in pen, instead of pencil, on the back of the photos accompanying their application, or failed to write “None” or “N/A” for the names of siblings where the applicant was an only child, or, worse still, failed to indicate a geographic location for a family member who was deceased.<sup>127</sup> This policy was later halted in response to litigation.<sup>128</sup> But, these pedantic rejections of asylum applications and constantly shifting minutiae of regulations around applications and work permits have left attorneys in a Kafkaesque nightmare, constantly scrambling to keep up with changes and explain them to bewildered and traumatized clients. Lack of transparency around changes has compounded this stress. For example, throughout the Trump administration, the agencies charged with adjudicating asylum cases, specifically the Executive Office for Immigration Review and USCIS, communicated largely through Twitter rather than ordinary means of communication.<sup>129</sup>

Fifth, the Trump administration co-opted the COVID-19 pandemic and attendant public health crisis to ban migrants and asylum seekers at the southern border, including returning unaccompanied minors to their countries of origin without proper screening, due process, or access to counsel.<sup>130</sup> The Biden administration has maintained this policy under Title 42 of the Public Health Act, continuing to expel asylum seekers without proper access

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127. See Dree K. Collopy & Lindsay M. Harris, *USCIS Hypocrisy Reaches New Levels*, AM. IMMIGR. LAWS. ASS’N: THINK IMMIGR. (June 30, 2020), <https://thinkimmigration.org/blog/2020/06/30/uscis-hypocrisy-reaches-new-levels/>; Catherine Rampell, *The Trump Administration’s No-blanks Policy is the Latest Kafkaesque Plan Designed to Curb Immigration*, WASH. POST (Aug. 6, 2020), [https://www.washingtonpost.com/opinions/the-trump-administration-imposes-yet-another-arbitrary-absurd-modification-to-the-immigration-system/2020/08/06/42de75ca-d811-11ea-930e-d88518c57dcc\\_story.html](https://www.washingtonpost.com/opinions/the-trump-administration-imposes-yet-another-arbitrary-absurd-modification-to-the-immigration-system/2020/08/06/42de75ca-d811-11ea-930e-d88518c57dcc_story.html).

128. *Featured Issue: USCIS’s Blank Space Policy*, AILA Doc. No. 20102030, AM. IMMIGR. LAWS. ASS’N (July 29, 2021), <https://www.aila.org/advo-media/aila-practice-pointers-and-alerts/uscis-blank-spaces>.

129. See @DOJ\_EOIR, TWITTER (Feb. 10, 2021, 12:27 PM), [https://twitter.com/doj\\_eoir/status/1359554579554308099?lang=en](https://twitter.com/doj_eoir/status/1359554579554308099?lang=en) (noting the resuming of some immigration hearings as well as the postponing of others); @USCIS, TWITTER (Jan. 8, 2021, 4:58 PM), <https://twitter.com/uscis/status/1347663922170654721> (noting that the USCIS filing system would be experiencing significant delays).

130. Sarah Sherman-Stokes, *When Racist Immigration Policies Masquerade as Public Health: Continued Attacks on Central American Asylum Seekers*, GEO. IMMIGR. L. REV. (forthcoming 2021); see Julián Aguilar, *Judge Orders Trump Administration to Stop Immediate Deportations of Unaccompanied Immigrant Minors*, TEX. TRIB. (Nov. 18, 2020, 5:00 PM), <https://www.texastribune.org/2020/11/18/immigration-deportation-minors/>.

to our asylum system and their legal rights under domestic and international law.<sup>131</sup>

Sixth, in addition to the regulatory changes already referenced above, in June 2020 the Trump administration issued a set of sweeping and comprehensive proposed regulations, which have been referred to as the “Death to Asylum.”<sup>132</sup> More than 87,000 public comments were submitted on the regulations, many penned by asylum attorneys.<sup>133</sup> Despite this, the Trump administration issued the final regulations, which would have eviscerated asylum protection and made grants of asylum exceedingly rare.<sup>134</sup> Although a federal district court enjoined the regulations at the eleventh hour<sup>135</sup> and the Biden administration has since put in place a temporary freeze on the regulatory process and all proposed rules,<sup>136</sup> these regulations, among others, required asylum attorneys to advocate against changes in the system and to stay abreast of a rapidly evolving area of law.<sup>137</sup>

Asylum attorneys engage deeply and frequently with traumatized clients in a fraught and ever-changing area of law in cases that are high stakes with devastating consequences for an erroneous denial.<sup>138</sup> In recent years, however, asylum attorneys have also been burdened with the additional responsibility of taking regular action to try to protect the very institution of asylum. This ranges from engaging in media work with clients, submitting public comments, and participating in legal challenges to the changes discussed above and more. It is not hard to understand why asylum

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131. Molly O’Toole, *Biden Promised Change at the Border. He’s Kept Trump’s Title 42 Policy to Close It and Cut Off Asylum*, L.A. TIMES (Mar. 19, 2021, 5:12 PM), <https://www.latimes.com/politics/story/2021-03-19/a-year-of-title-42-both-trump-and-biden-have-kept-the-border-closed-and-cut-off-asylum-access>.

132. Several other sets of proposed regulations were also issued in between December 2019 and December 2020 affecting asylum seekers specifically and immigrants in removal proceedings and those seeking immigration relief more broadly. These are discussed within Harris, *supra* note 83, at 57–62.

133. *See id.* at 58.

134. *See* Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 80,274, 80,274–75 (Dec. 11, 2020) (to be codified at 8 C.F.R. pt. 208, 235, 1003, 1208, 1235).

135. *Pangea Legal Servs. v. U.S. Dep’t of Homeland Sec.*, No. 20-cv-09253, 2021 WL 75756, at \*7 (N.D. Cal. Jan. 8, 2021).

136. The White House Briefing Room, *Regulatory Freeze Pending Review* (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/>.

137. *See, e.g., supra* note 83, at 39–40.

138. *See* Piwowarczyk et al., *supra* note 25, at 6 (“[A]sylum lawyers also carry the burden that if someone they represented has been denied asylum, that person may be deported and face incarceration or death.”); Rønning et al., *supra* note 24, at 666 (“If a client is denied asylum, the lawyer might be burdened by the fact that the individual might be deported back to his or her country of origin, and as a consequence be exposed to further harm.”).

attorneys today may be more emotionally depleted and exhausted than ever.

*D. Asylum Attorneys in a Hostile, Ever-Changing Legal Landscape*

The asylum system and recent attacks on it mentioned in previous Parts result in challenges for asylum attorneys. These challenges include not only having to work harder to win cases but also the vilification of immigration and asylum attorneys, concerns regarding the physical safety of the attorneys themselves, and the financial instability and low income of asylum attorneys in particular. For example, one Survey respondent explains:

*“[L]ately the cases I’ve taken had good case law at the time, and by the time it comes to the [individual calendar hearing], there is no law to support their claim. It starts to feel depressing and hopeless.”*

The changes to the asylum system outlined above represent extreme instability for asylum lawyers, with constantly shifting goal posts. Attorneys spend more time preparing cases that are harder to win. They lose cases they previously would have won. Evolving case law and standards mean that attorneys spend more time preparing clients for testimony, securing and preparing expert witnesses, preparing forms that may be rejected multiple times before acceptance, and preparing and presenting documentary evidence in support of their cases. Immigration courtrooms have also become increasingly hostile litigation environments, with the government prosecutors working for the ICE Office of Chief Counsel less likely to negotiate or reach agreement prior to trial<sup>139</sup> and new IJs appointed with demonstrable anti-immigrant track records.<sup>140</sup>

While the highly technical and arcane regulatory changes absolutely affect asylum seekers and their eligibility for work authorization, potential for detention, and likelihood of obtaining asylum protection, the client experience of seeking asylum is sometimes not so different from the experience of their advocates.<sup>141</sup>

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139. One attorney describes this as: “going into the courtroom knowing that I will always be the least favorite child and that the favorite child will get every preference and maximum flexibility (e.g.,] continuances, late filings, etc[.] but I will be held to the harshest possible expectation as an attorney.” Correspondence with Indiana Attorney Hannah Cartwright (Jan. 31, 2021) (on file with author).

140. See, e.g., Hannah Albarazi, *Ex-FAIR Research Director Among 46 New Immigration Judges*, LAW360 (July 20, 2020, 11:11 PM), <https://www.law360.com/legalindustry/articles/1293543>.

141. The asylum-seeking process has been radically altered, however, for those seeking asylum who have not yet been physically allowed to come into the United States due to Trump era policies including metering, the MPP, or other rapid removal programs like PACR and HARP. All of these are discussed in more depth in Harris, *supra* note 83, at 18–25.

Asylum attorneys have the responsibility to interpret and dissect each regulatory shift, figure out whether it applies to each of their clients, change course or strategy accordingly, and communicate the changes or potential changes to their clients. Legal strategies are constantly shifting, and attorneys are having to spend more time than ever on continuing legal education—including reading through new practice advisories, attending webinars, and consulting with colleagues to understand how each new law, policy, or regulation plays out in practice. This may be especially challenging for those in private practice who depend on billable hours and may find it difficult to allocate time for nonbillable activities or to convince existing clients that new fees are necessary.

In addition to all of the legal, regulatory, and policy changes to undermine asylum protection, the Trump administration specifically called out and vilified immigration attorneys.<sup>142</sup> In an October 2017 speech, Attorney General Jeff Sessions referred to “dirty immigration lawyers” who prepared clients with “magic words” to seek asylum.<sup>143</sup> President Trump himself critiqued immigration lawyers,<sup>144</sup> and former Department of Homeland Security Secretary Kirstjen Nielsen threatened to prosecute those who “coach” asylum seekers on “false claims.”<sup>145</sup> Indeed, immigration lawyers have been under scrutiny in recent years with one case even making it to the Supreme Court.<sup>146</sup> The court declined to reach the question of whether 8 U.S.C. § 1324, which makes it a federal felony to “encourag[e] or induc[e] an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law,” was overbroad.<sup>147</sup> Advocates for migrants more broadly have also been on edge following the zealous prosecution of No More Deaths volunteer Scott Warren, who was prosecuted for

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142. This is not the first time in which immigration attorneys and advocates have been vilified and even targeted by the federal government. See, e.g., Jason Cade, *“Water is Life!” (and Speech!): Death, Dissent and Democracy in the Borderlands*, 96 IND. L.J. 261, 299–300 (2020).

143. *Attorney General Jeff Sessions Delivers Remarks to the Executive Office for Immigration Review*, U.S. DEP’T OF JUST. (Oct. 12, 2017), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review>.

144. *Remarks on Illegal Immigration and Border Security and an Exchange with Reporters*, ADMIN. OF DONALD J. TRUMP (Nov. 1, 2018), <https://www.govinfo.gov/content/pkg/DCPD-201800758/html/DCPD-201800758.htm> (“An alien simply crosses the border illegally, finds a Border Patrol agent, and using well-coached language—by lawyers and others that stand there and—trying to get fees or whatever they can get—they’re given a phrase to read.”).

145. Press Release, U.S. Dep’t of Homeland Sec., Secretary Nielsen Statement on the Arrival of Central American ‘Caravan’ (Apr. 25, 2018), <https://www.dhs.gov/news/2018/04/25/secretary-nielsen-statement-arrival-central-american-caravan>.

146. *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1577, 1581–82 (2020).

147. *Id.*

assisting migrants in the Arizona desert.<sup>148</sup> One Survey respondent explained:

*“Sometimes I expect that I’m going to be killed because I advocate on behalf of immigrants and many people where I live don’t like undocumented immigrants.”*

In addition to verbal attacks, some asylum attorneys actually experience threats to their physical safety. In March 2020, an asylum attorney in San Diego arrived at her office to find a swastika spray-painted on her office door.<sup>149</sup> Asylum attorneys at the border face constant threats to their own safety when traveling back and forth over the border in places where cartel violence is rampant and cartels target asylum seekers and even their legal representatives for extortion.<sup>150</sup> As one article explains in discussing women attorneys working in Matamoros, Mexico, “[t]o be here, these women have put their lives on pause and at risk.”<sup>151</sup> Asylum attorneys and advocates also lived in fear of their own government, with several traveling across the southern border pulled aside for questioning and secondary inspection with CBP.<sup>152</sup> One Survey respondent described feeling targeted: *“At this time we are being persecuted by our own [government] just like our clients are—that lack of safety is a huge burnout factor.”*

The COVID-19 pandemic added a new level of threat in terms of attorneys’ physical safety. As one attorney shared, *“Being afraid of covid virus when I see clients or go to court makes the work extremely stressful.”* Access to clients is already difficult, but visiting clients also exposed attorneys to potentially contracting COVID-19.<sup>153</sup>

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148. See Teo Armus, *After Helping Migrants in the Arizona Desert, an Activist Was Charged with a Felony. Now, He’s Been Acquitted.*, WASH. POST (Nov. 21, 2019), <https://www.washingtonpost.com/nation/2019/11/21/arizona-activist-scott-warren-acquitted-charges-helping-migrants-cross-border/>; see also Cade, *supra* note 142, at 275–77.

149. Facebook Messenger Communication from Attorney Anna Hysell (Jan. 1, 2021) (on file with author).

150. Nick Fouriezos, *Meet the Women Fighting America’s Border Battle*, OZY (Mar. 15, 2020), <https://www.ozy.com/the-new-and-the-next/immigration-remain-in-mexico-women-attorneys-trump/287537/>.

151. *Id.*

152. Julia Ainsley, *More Lawyers, Reporter Stopped and Questioned at Border by U.S. Officials*, NBC NEWS (Mar. 18, 2019, 7:02 AM), <https://www.nbcnews.com/politics/immigration/more-lawyers-reporter-stopped-questioned-border-u-s-officials-n984256>.

153. See *Stopping Policies Endangering Immigration Attorneys, Clients, and the Public During COVID-19 Pandemic*, AM. IMMIGR. COUNCIL, <https://www.americanimmigrationcouncil.org/litigation/stopping-policies-endangering-immigration-attorneys-clients-and-public-during-covid-19> (last visited Sept. 9, 2021).

Finally, many attorneys that focus on asylum representation make significant financial sacrifices to do so. Often asylum seekers lack the financial resources to pay,<sup>154</sup> so attorneys who handle a significant number of asylum cases either work for a nonprofit organization with low salaries, or struggle to make ends meet in private practice without taking on a high volume of asylum cases, which exacerbates all of the aforementioned problems.

Individual responses to the open-ended question at the end of the Survey touched on these issues. One attorney commented, asylum lawyering is “*a very difficult task, and not financially rewarding.*” Another shared, “*I am financially underwater from trying to make this legal practice work.*” One attorney highlighted the financial strain along with the trauma of asylum lawyering as factors driving her to leave the practice of immigration law: “*I’m trying to quit practicing immigration law because of the trauma I’ve experienced. As a solo attorney with no money, this is fraught with difficulty including the possibility of bar complaints or losing my license in the process.*”

Ultimately, as one attorney shared, “*getting paid for asylum, running a firm, and having a decent standard of living is nearly impossible.*”

#### *E. Asylum Is a Limited Remedy*

Finally, asylum is a limited remedy. This can potentially undermine job satisfaction and fulfillment. Each asylum claim is adjudicated individually and confidentially so as to not expose the asylum seeker to future harm by their government if their claim is denied. Therefore, systemic change or progress to end the human rights abuses leading to the harm that they suffered is not possible. Perpetrators of the past or potential persecution suffered by the asylum seeker face no repercussions. An American adjudicator has no mechanism to hold a foreign perpetrator accountable for harm perpetrated against the asylum seeker. No closure or final moment of reckoning for the persecutor or any other opportunity for restorative justice exists.<sup>155</sup> All the asylum seeker “wins” is the opportunity to rebuild her life in safety in a different place.

For this reason, being granted asylum is a fundamentally inadequate remedy for the human rights abuses, trauma, and practical consequences of forced displacement often suffered by asylum seekers. The asylum grant does, of course, avoid the possibility of deportation to a place where the asylum seeker fears harm. Critically, it can also mean the difference between detention

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154. This issue is exacerbated by delayed access to work authorization. See Harris, *supra* note 83, at 53–55.

155. This is in contrast to, for example, transitional justice mechanisms such as truth and reconciliation commissions in countries that have experienced large-scale human rights abuses or genocide. BEYOND RETRIBUTION: PROSPECTS FOR RESTORATIVE JUSTICE IN SOUTH AFRICA 66–75 (Traggy Maepa, ed., 2005).

and liberty, start the process of reunifying an asylum seeker with family members overseas, and render the asylum seeker eligible for a limited set of benefits.<sup>156</sup> But, for some, particularly those who have been pursuing an asylum claim outside of detention together with family members, the grant of asylum may not dramatically change the asylee's life in the United States.<sup>157</sup> The trauma and any attendant mental health challenges from the persecution experienced or feared does not disappear with the asylum grant. In fact, many asylees navigate life in the United States as non-English speakers and as people of color navigating the racism and xenophobia woven into the fabric of U.S. society.

Attorneys are intimately familiar with the struggles that asylees face after an asylum grant. Thus, the potential upsides for a “win” in an asylum case can quickly feel grossly inadequate, especially in the face of the overwhelming need for representation. For some, this inadequacy triggers the question of whether asylum attorneys are complicit in an unjust system each time they submit an asylum application.

### III. METHODOLOGY, RESULTS, AND ANALYSIS

#### A. *Overview of Survey Methodology*

The Survey included two standard tools to measure trauma, stress, and burnout—the Copenhagen Burnout Inventory (“CBI”)<sup>158</sup> and the Secondary Traumatic Stress Scale (“STSS”).<sup>159</sup> Both the CBI and the STSS are routinely used by the mental health community to gauge the severity of individuals’ symptoms of burnout and STS.<sup>160</sup> These symptoms are self-reported and do not provide a professional diagnosis of burnout or STS. The following paragraphs briefly explain how the CBI and STSS measure levels of burnout and STS, respectively.

The CBI consists of nineteen questions that measure the degree to which individuals experience three types of burnout: personal

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156. See Harris, *supra* note 101, at 48.

157. *Id.* at 55 (chronicling inadequate financial benefits and social services for asylees, along with delays and challenges with accessing mental health services and family reunification).

158. Tage S. Kristensen et al., *The Copenhagen Burnout Inventory: A New Tool for the Assessment of Burnout*, 19 J. WORK & STRESS 192, 196 (2005) (introducing the CBI as a tool to measure burnout in three domains: personal, work-related, and client-related).

159. Brian E. Bride et al., *Development and Validation of the Secondary Traumatic Stress Scale*, 13 RSCH. SOC. WORK PRAC. 1, 3 (2004).

160. See, e.g., Lustig et al., *supra* note 22, at 59–61.



burnout,<sup>161</sup> work burnout,<sup>162</sup> and client burnout.<sup>163</sup> For example, one of the items from the CBI personal burnout questionnaire asks the following: “How often do you feel tired?”<sup>164</sup> Each item on the CBI questionnaire asks individuals to rate how they feel on a scale of 0 to 100.<sup>165</sup> At the end of the questionnaire, an individual’s average score is calculated by summing the scores for each question and dividing them by the total number of questions. Average scores that are closer to 100 indicate higher levels of burnout, while average scores closer to 0 reflect lower levels of burnout.<sup>166</sup>

The STSS consists of seventeen questions that assess whether individuals have symptoms of STS as a result of their interactions with trauma survivors.<sup>167</sup> The STSS has three subscales: intrusion, avoidance, and arousal.<sup>168</sup> Each subscale measures a particular aspect of STS. For example, the intrusion subscale focuses on intrusive thoughts, such as nightmares or unintentionally thinking about client-related work during nonwork hours.<sup>169</sup> Each question asks individuals to rate how they feel on a scale of 1 to 5.<sup>170</sup> At the end of the questionnaire, an individual’s average score is calculated by adding the scores for each question and dividing them by the total number of questions. Average scores that are closer to 5 are

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161. Kristensen et al., *supra* note 158, at 197 (“Personal burnout is the degree of physical and psychological fatigue and exhaustion experienced by the person.”).

162. *Id.* (“The degree of physical and psychological fatigue and exhaustion that is perceived by the person as related to his/her work.”).

163. *Id.* (“The degree of physical and psychological fatigue and exhaustion that is perceived by the person as related to his/her work with clients.”). In our Study, the internal reliability for CBI was: 0.87 personal burnout, 0.85 work-related burnout, 0.87 client-related burnout, and 0.92 overall burnout. For those readers who are less familiar with statistical terminology, the internal reliability score (also referred to as an internal reliability coefficient) assesses the extent to which questionnaire items within the same subscale relate to one another. For additional information, see Lee J. Cronbach, *Coefficient Alpha and the Internal Structure of Tests*, 16 *PSYCHOMETRIKA* 297, 297–332 (1951).

164. Kristensen et al., *supra* note 158, at 200 tbl.2.

165. *Id.*

166. *See id.*

167. Bride et al., *supra* note 159, at 5.

168. *Id.* The internal reliability scores within the current study for STSS were: 0.77 intrusion, 0.73 avoidance, 0.75 arousal, and 0.87 overall. For those readers who are less familiar with statistical terminology, the internal reliability score (also referred to as an internal reliability coefficient) assesses the extent to which questionnaire items within the same subscale relate to one another. For additional information, see Cronbach, *supra* note 163, at 297–332 (1951).

169. Laura Ting et al., *The Secondary Traumatic Stress Scale (STSS): Confirmatory Factor Analyses with a National Sample of Mental Health Social Workers*, 11 *J. HUM. BEHAV. SOC. ENV'T* 177, 182–84 (2005).

170. *Id.* at 182.

indicative of more severe STS symptoms, whereas average scores that are closer to 1 are reflective of lower STS symptoms.<sup>171</sup>

In addition to the CBI and STSS questionnaires, additional survey questions to explore respondent demographics were developed in consultation with Dr. Stuart Lustig, MD, MPH. The Survey was administered using Qualtrics survey software, and responses were anonymized but coded to enable potential longitudinal research studies of the surveyed population.<sup>172</sup> Participants were invited largely through listservs—including national listservs for immigration advocates, law professors, law school clinics, and Facebook groups including the “Association of Mother Immigration Lawyers,” “Nerdy Immigration Lawyers,” “CAMI-589,” and “Asylum Attorneys R Us.” The American Immigration Lawyers Association (“AILA”), a national association with more than 15,000 attorney members, featured the Survey in its “Daily News” emails with a link on its website, which was also distributed by email to members, particularly during the 2020 Lawyer Well-Being Week.

The Survey was completed by 981 individuals between February 25, 2020, and May 16, 2020. Of the 981 Survey respondents, our Study focuses on the 718 respondents who met two criteria: consent to participate in the Study and completion of at least 90% of the Survey.<sup>173</sup> This is the largest study to date, not only of immigration attorneys but of any attorney population measuring levels of burnout and STS.<sup>174</sup> The coronavirus pandemic occurred during this time period; 420 respondents took the Survey before social distancing measures were put in place across the United States on March 15, 2020,<sup>175</sup> while 298 took it during the pandemic itself. This

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171. *Id.* at 182–84.

172. Participants were asked to share the last name of their favorite teacher and the sum of the last four digits of their social security number.

173. All surveys have limitations, and ours is no exception. While our findings hold true for the respondents of this Survey, we cannot generalize our findings to the entire population of asylum attorneys with the same amount of confidence. All surveys have some amount of sample bias, which is the bias that results from some people opting to take the Survey whereas others do not. The attorneys who choose to take our Survey may differ from the attorneys who choose not to take our Survey. The use of online recruitment, of course, also could lead to various biases including internet literacy. That said, our Survey did garner hundreds of responses, and thus our findings represent a strong first step towards capturing the degree to which asylum attorneys self-report their stress levels. Even one respondent identified themselves as a fully accredited DOJ Representative, and their response is included in our analysis.

174. *Cf.* Levin et al., *supra* note 2, at 953 (claiming to be the largest study of attorneys to date with 238 attorneys and 109 administrative staff surveyed from the Wisconsin State Public Defender’s Office); *see also* Anker & Krill, *supra* note 2, at 1–3.

175. Individual states varied as to when “stay at home” orders were actually put in place, but we chose to use March 15 as the date to delineate pre-COVID-19 and during the COVID-19 pandemic Survey takers.

chronological disparity obviously may have an effect on the results analyzed below.

In the initial part of the Survey, attorneys were asked to provide basic demographic information (age, gender identity, race/ethnicity) and to answer questions about their place of employment. These questions included the number of paralegal staff, percentage of their practice constituting asylum cases, number of asylum cases on their docket, affirmative cases before the asylum office versus those before the immigration court, percentage of detained clients, region or origin of the majority of their asylum clients, jurisdiction in which they practice, membership in various organizations, and, finally, the estimated number of hours they work per week. The web-based Survey then included questions, as discussed above, from the CBI and STSS.

The Survey concluded with a free-form response question, without a word limit, asking: “Is there anything else you would like to share about the challenges of your job as an immigration/asylum attorney?”

The Survey took about fifteen minutes to complete. Participation was voluntary, and no compensation was offered. The study was approved by the University of the District of Columbia’s Institutional Review Board.

## *B. Findings and Analysis*

In this Subpart we share the findings from the Survey, along with some analysis of those findings. We first share the average (hereafter “mean”) scores for both burnout and STS. We then analyze the results of eight regressions. Our main goal was to better understand the relationship between different attorney characteristics and self-reported symptoms of burnout and STS. Our analysis focused on nine attorney characteristics: gender identity, race/ethnicity, workplace environment, number of support staff, number of asylum cases on an attorney’s docket, estimated working hours per week, jurisdiction in which an attorney practices, age, and, finally, the timing of the survey response (i.e., pre- or postpandemic).

### *1. Mean CBI and STSS Scores*

Consistent with other studies that found that helping professions exhibit STS symptoms, our Study found that asylum attorneys scored much higher on the CBI and STSS scales compared to the top possible scores in the range for both scales.<sup>176</sup> Table 1, found in the Appendix, shows the average CBI and STSS scores for the surveyed population of asylum attorneys. We will first discuss the mean CBI scores and compare them to the mean CBI scores for other helping professions.

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176. See Levin & Greisberg, *supra* note 7, at 247.

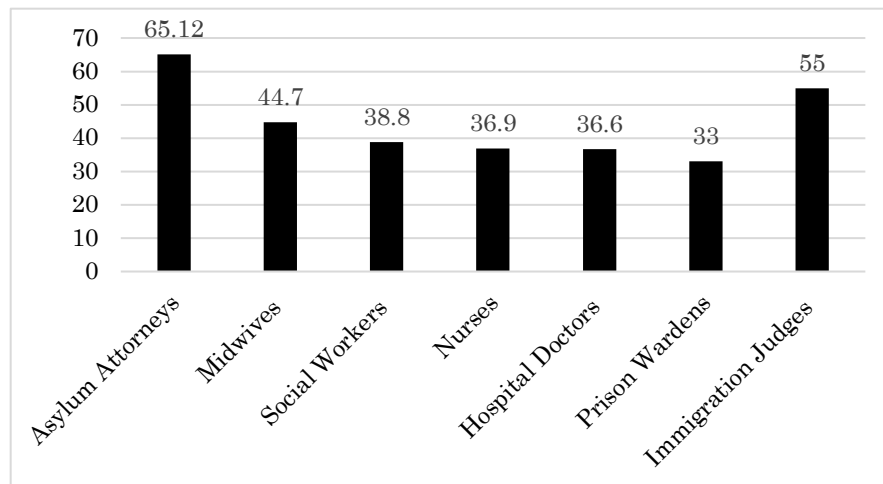
Thereafter, we discuss the mean STSS scores and compare them to the mean STSS scores for IJs.<sup>177</sup>

a. Burnout

As Table 1 reflects, Survey respondents' mean overall CBI score was 58.15. The mean personal burnout score was 65.12, the mean work burnout score was 63.6, and the mean client burnout score was 44.75.

The mean personal burnout score of the surveyed asylum attorneys is quite a bit higher than the mean personal burnout scores for surveyed populations of workers in other professions. For example, based on previous studies of fifteen populations, including hospital doctors, social workers, nurses, and prison wardens, the highest mean personal burnout score came from midwives, with 44.7.<sup>178</sup> By comparison, the surveyed population of asylum attorneys had a mean personal burnout score of 65.12, almost twenty points higher. The differences between populations are displayed in the bar chart below.

FIGURE 1. MEAN PERSONAL BURNOUT SCORE



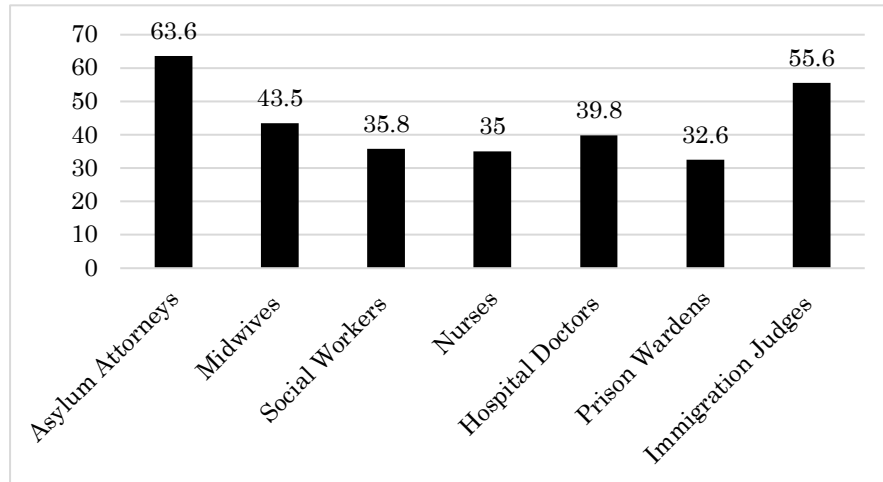
Next, we address the mean work burnout score. Echoing our earlier finding, the same fifteen populations previously studied had lower mean work burnout scores, ranging from 33 to 45 on the scale,

177. It is important to note that while making these comparisons is helpful, our Survey was administered from February 25 to May 16, 2020, which was a different time period than when other studies administered their surveys; this timing matters, since perhaps the other studies' findings would have been different had they been administered in the same year and circumstances as our Survey.

178. Kristensen et al., *supra* note 158, at 201 tbl.3.

whereas the mean work burnout score for the surveyed asylum attorneys was 63.6. Again, this is at least eighteen points higher than midwives, nurses, doctors, prison wardens, and other helping professions.<sup>179</sup>

FIGURE 2. MEAN WORK BURNOUT SCORE



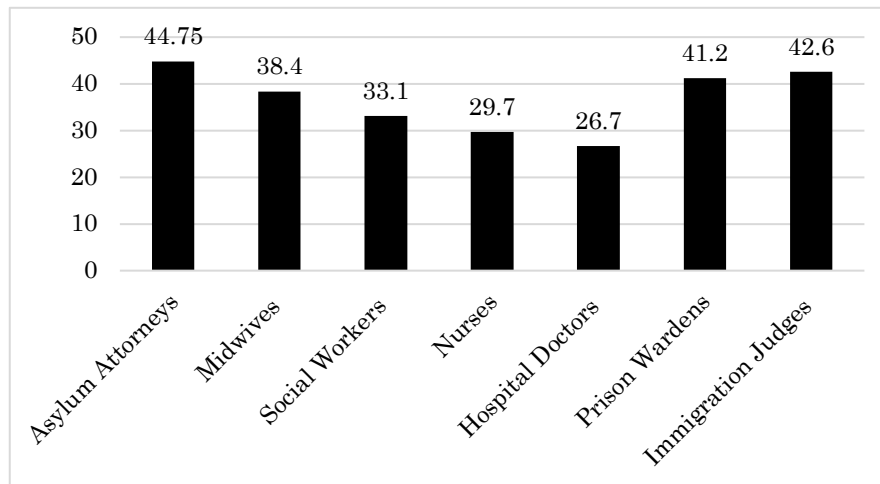
Finally, we analyze the mean client burnout score. Asylum attorney respondents' mean client burnout score was higher than the mean burnout score of each of the other fifteen professions in the database. Specifically, the surveyed asylum attorneys had a mean client burnout score of 44.75, compared to the highest of the fifteen professions (prison wardens), which had a mean client burnout score of 41.2.<sup>180</sup>

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179. *Id.*

180. *Id.*

FIGURE 3. MEAN CLIENT BURNOUT SCORE



Notably, a previous study of IJs found that they scored higher than all of the above fifteen professions referenced.<sup>181</sup> Moreover, female IJs' mean overall CBI score of 59.9 was higher than male IJs' mean overall CBI score of 44.9.<sup>182</sup> Similarly, our Study found that surveyed female asylum attorneys' mean overall CBI score of 59.44 was higher than surveyed male asylum attorneys' mean overall CBI score of 52.36.<sup>183</sup> Although our Survey was administered in 2020, which is more than a decade later than the study of IJs, it is interesting to note that surveyed females had higher mean overall CBI scores in both studies. In addition, if we remove the breakdown by gender, and look at *all* surveyed asylum attorneys, their mean overall CBI burnout score is 58.15.

Surveyed asylum attorneys also had higher mean scores for personal burnout, work burnout, and client burnout compared to the aforementioned study of IJs. For example, surveyed asylum attorneys' mean personal burnout score was 65.12, which is ten points higher than IJs' mean personal burnout score of 55. Similarly, surveyed asylum attorneys' mean work burnout score was 63.6, which is eight points higher than IJs' mean work burnout score of 55.6.<sup>184</sup> Finally, surveyed asylum attorneys' mean client burnout score was

181. Stuart L. Lustig et al., *Burnout and Stress Among United States Immigration Judges*, 13 BENDER'S IMMIGR. BULL. 22, 26 (2008).

182. *Id.*

183. In addition, the standard deviation for surveyed female asylum attorneys was 14.73, and the standard deviation for surveyed male asylum attorneys was 15.91. Although we include this breakdown by gender as a way to respond to feedback from readers, it is important to note that the best comparison of how different characteristics (such as gender) relate to burnout can be found in the regressions, which are discussed in the next Subpart of this Article.

184. *Id.*

44.75, about two points higher than IJs' mean client burnout score of 42.6.<sup>185</sup>

b. Secondary Traumatic Stress

In terms of the mean scores on the STSS, the asylum attorneys surveyed in our Study scored higher on overall STS and on all three subscales than a previous study surveying IJs.<sup>186</sup> Surveyed female asylum attorneys' mean overall STSS score of 3.00 was higher than surveyed male asylum attorneys' mean overall STSS score of 2.71.<sup>187</sup> Specifically, female IJs' mean overall STSS score of 2.5 was higher than male IJs' mean overall STSS score of 1.84.<sup>188</sup> Again, it is important to note that our Study was administered more than a decade later than the earlier study of IJs; nevertheless, surveyed females had higher mean overall STSS scores in both studies.<sup>189</sup> Future scholarship in this area could collect current burnout and STSS scores from multiple professions to better situate the results within the current time and events.

In addition, the surveyed asylum attorneys in our Study had higher mean overall STSS scores than the IJs in the previous study.<sup>190</sup> The previous study of IJs did not report the mean overall STSS scores for *all* IJs (in other words, including all genders).<sup>191</sup> However, our Study did calculate the mean overall STSS scores for *all* surveyed asylum attorneys (in other words, including all gender identities); it was 2.95.

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185. *Id.*

186. *See id.* at 27.

187. In addition, the standard deviation for surveyed female asylum attorneys was 0.61, and the standard deviation for surveyed male asylum attorneys was 0.59. As previously stated, although we include this breakdown by gender as a way to respond to feedback from readers, the best comparison of how different characteristics (such as gender) relate to STS can be found in the regressions, which are discussed in the next Subpart of this Article.

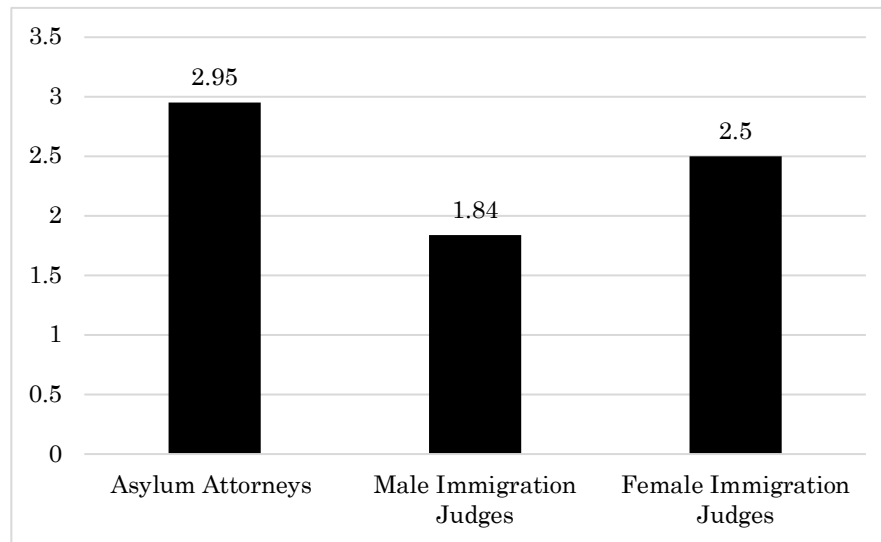
188. *Id.* at 27.

189. *See id.* at 22, 27.

190. *See id.* at 27.

191. *See id.*

FIGURE 4. OVERALL MEAN STSS SCORE



For intrusion, surveyed asylum attorneys' mean score was 2.85, while IJs' mean score was 2.0.<sup>192</sup> For avoidance, surveyed asylum attorneys' mean score was 2.87, while IJs' mean score was 2.3.<sup>193</sup> Finally, for arousal, surveyed asylum attorneys' mean score was 3.16, while IJs' mean score was 2.4.<sup>194</sup> These higher levels may not be surprising given that asylum attorneys work closely with asylum seekers over many hours during weeks, months, and sometimes even years of preparation in order to tease out the full narrative around persecution and fear of return to the home country. IJs experience only the neatly packaged testimony during the day of the trial.

c. Commentary on Mean Scores for CBI and STSS

Essentially, the surveyed asylum attorneys' mean scores on the CBI and the STSS scale were closer to 100 and 5, respectively, and thus may be indicative of higher levels of self-reported burnout and STS. For both the CBI and the STSS, mean scores that are closer to 100 for the CBI and closer to 5 for the STSS are indicative of higher levels of burnout and stress. In the paragraphs that follow, we explain what Survey respondents' mean scores were and how they should be interpreted in conjunction with the CBI and the STSS.

Table 1, found in the Appendix, displays Survey respondents' mean scores on the CBI and the STSS (see the column labeled "M"). Table 1 also reports the standard deviations for the mean scores (see

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192. *Id.*

193. *Id.*

194. *Id.*



the column labeled “SD”), which indicates how “spread out” the mean scores are.<sup>195</sup>

Table 1 generates two main takeaways. First, Survey respondents reported high levels of burnout and STS. Specifically, Survey respondents’ mean scores exceed the mid-point of 50 points for the CBI and the mid-point of 2.5 for the STSS. Indeed, all but one of the mean scores is above the mid-point, indicating that surveyed attorneys’ level of burnout and STS are closer to the high end of the CBI and the STSS indexes. Interestingly, the only mean score that was *not* above the mid-point was for CBI client-related burnout. As we discuss later in this Article, this suggests that Survey respondents’ self-reported burnout levels may be less prominent for client-related work compared to stressors emanating from personal life and work.

The second main takeaway from Table 1 is that many of the subscales for the CBI and STSS are highly correlated with one another. Specifically, row eight, column four, shows a correlation of .73, which is a strong positive relationship between CBI overall and STSS overall (here, the term “overall” indicates that we are speaking about the entire CBI and STSS scales, rather than focusing on a particular subscale, such as client-related burnout). Table 1 also shows that different subscales have different levels of correlation with one another; in other words, the strength of the correlation varies, with some subscales being more strongly correlated with one another than other subscales. Thus, although the CBI and the STSS measure two separate phenomena, it could be that an attorney struggling with burnout symptoms may also be struggling with STS symptoms.

Ultimately, these findings of high levels of burnout and STS are unsurprising. Attorneys are struggling,<sup>196</sup> and some are even leaving the profession or expressing a desire to leave.<sup>197</sup> To better understand levels of burnout and STS, we also relied upon a regression analysis, discussed below.

## 2. Regression Findings

Our main goal was to better understand the relationship between different attorney characteristics and self-reported symptoms of

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195. Rephrased, not every attorney who took the Survey will have the same mean score; thus, the standard deviation represents how close or far apart all of the attorneys’ mean scores are. Finally, the columns that are numbered one through seven indicate how closely correlated the CBI and STSS are to one another. In statistics, correlations are from -1 to 1, with 1 representing a strong, positive correlation, -1 representing a strong, negative relationship, and 0 showing no relationship.

196. See Laura Murray-Tjan, *What It’s Like to Be an Immigration Lawyer in the Trump Era*, WBUR (Oct. 24, 2018), <https://www.wbur.org/cognoscenti/2018/10/24/immigration-law-trump-administration-laura-murray-tjan>.

197. See Jawziya F. Zaman, *Why I Left Immigration Law*, DISSENT (July 12, 2017), [https://www.dissentmagazine.org/online\\_articles/left-immigration-law](https://www.dissentmagazine.org/online_articles/left-immigration-law).

burnout and STS. Our analysis focused on nine attorney characteristics:

- Gender identity;
- Race/ethnicity;
- Workplace (i.e., solo practice, small firm, medium firm, etc.);
- Number of support staff;
- Volume of asylum cases on an attorney's docket;
- Estimated number of hours an attorney works per week;
- Jurisdiction in which an attorney practices;
- Age; and
- Timing of the Survey response (prior to March 15, 2020, or after March 15, 2020).

The quantitative method that we used in this study was a regression.<sup>198</sup> Regressions are commonly used to analyze the relationship between various characteristics and particular phenomena.<sup>199</sup> For example, a regression asks: “Which characteristics (such as gender identity, race/ethnicity, age, etc.) are associated with higher or lower levels of burnout or STS?”

A regression tries to make sense of the complicated nature of the world; it elucidates, for example, the relationship between two things, such as gender identity and burnout. Most importantly, one of the greatest strengths of a regression is that it looks at the whole picture.<sup>200</sup> In other words, instead of just looking at gender identity by itself, a regression analyzes the relationship between someone's gender and additional characteristics of interest to better understand which characteristics are positively or negatively related to symptom severity. In so doing, a regression recognizes that gender identity does not operate in isolation but instead exists alongside other characteristics that could also be related to burnout and STS, such as someone's race, ethnic identity, or age. In statistical terms, a regression tries to “hold constant” or “control” all of these characteristics, except for the one characteristic being interpreted at the moment of analysis.<sup>201</sup> Essentially, a regression asks: “Given a

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198. In particular, we used Ordinary Least Squares (“OLS”) Regressions.

199. BRUCE THOMPSON, FOUNDATIONS OF BEHAVIORAL STATISTICS: AN INSIGHT-BASED APPROACH 7 (2008).

200. For additional information about regressions, see *id.* at 215–46.

201. Regressions individually calculate a number (known as a coefficient) for each characteristic (known as an independent variable). This individual calculation is the only part of a regression that is *not* held constant; for example, a regression would focus on gender identity, and would calculate a coefficient for each type of gender identity, while holding all other characteristics (such as race, ethnicity, age, etc.) constant. The regression simultaneously does this for each characteristic of interest. When this process is done, a “regression table” is created (see Appendix: Tables 2 and 3). The table shows the coefficients for each characteristic (i.e., gender, race, ethnicity, age, etc.). What these coefficients

particular person's gender identity, race, ethnicity, age, and other salient information, what can we infer about the relationship between each of those characteristics and levels of burnout and STS?"

In total, we ran eight regressions because there are a total of eight scales across the CBI and the STSS: (1) CBI overall burnout; (2) CBI personal burnout; (3) CBI work burnout; (4) CBI client burnout; (5) STSS overall score; (6) STSS intrusion; (7) STSS avoidance; and (8) STSS arousal. That said, we focus most of our attention on two specific regressions, CBI overall burnout and STSS overall score, because these two regressions incorporate all the subscales within them, thus providing a more holistic understanding of the CBI and STSS scales. The results of our regression analysis can be found at our companion website to this Article.<sup>202</sup> Below, we discuss our findings focusing on each attorney characteristic at a time.

a. Gender Identity

Figure 5, shown below, displays the three gender identities captured by our Survey. The Survey respondents, like previous surveys of immigration attorneys, predominantly identified as female (79.8%).<sup>203</sup> The demographics of our Survey respondents are largely reflective of the composition of the private immigration bar as a whole, which has a high proportion of female-identifying practitioners.<sup>204</sup>

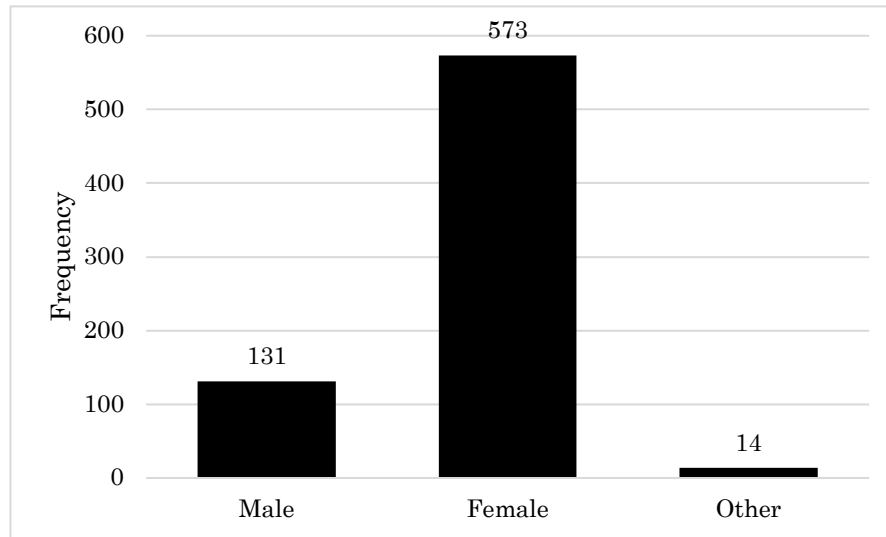
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represent will depend upon the underlying data. For this Survey, the coefficients represent a prediction for how many points a Survey respondent would increase or decrease in their CBI and STSS scores for each characteristic of interest.

202. See Harris, *supra* note 3.

203. See, e.g., AM. IMMIGR. LAWS. ASS'N, *supra* note 26, at 2.

204. *Id.*

FIGURE 5. SURVEY RESPONDENTS' GENDER IDENTITIES<sup>205</sup>

Our findings for gender identity were particularly noteworthy compared to the other attorney characteristics that we analyzed. Before explaining why this is the case, we offer the following two qualifications: (1) we used male-identifying respondents as the reference group,<sup>206</sup> and (2) we held all characteristics constant, apart from the characteristic that was being interpreted (in this case, gender identity). This procedure for interpretations is used for the remaining eight characteristics addressed in this Article. We ask that you keep this information in mind as it is foundational to all our statistical analyses.

Recall that we are focusing on two regressions in particular: the regression for CBI overall score and the regression for STSS overall score. Both of these regressions found that female respondents were

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205. The category “Other” includes three types of respondents: (1) those who selected “other” on the Survey questionnaire; (2) those who selected “prefer not to disclose” on the Survey questionnaire; and (3) those who skipped/did not answer this Survey question.

206. Regression analyses use a “reference group,” or a comparison group. Because statistical programs require numerical data, researchers have to code their data in a numerical format (even if that data is descriptive, such as someone’s gender identity). This allows the statistical program to assess for potential differences across categories, such as different races/ethnicities. For example, to understand the relationship between gender identity and burnout, the regression would need a reference group from which to compare all other gender identities. A reference group is simply a required comparison group for regression analysis; it does not signify anything else in this study. For additional information, see ELAZAR J. PEDHAZUR & FRED N. KERLINGER, *MULTIPLE REGRESSION IN BEHAVIORAL RESEARCH: EXPLANATION AND PREDICTION* 341–42 (2d ed. 1982).

associated with more symptoms of burnout and STS (see Tables 2 and 3 in the Appendix).

*i. Gender Identity and Burnout*

For the CBI overall regression (see Table 2), female respondents had an increase of 6.86 points in CBI overall burnout. In interpreting these results, it is important to remember that the 6.86 points increase is on the CBI, which ranges from 0 to 100.

*ii. Gender Identity and Secondary Traumatic Stress*

For the STSS overall regression (see Table 3), female respondents had an increase of 0.27 points in their STSS overall scores. In addition, respondents whose gender identity was “other” had an increase of 0.49 points in their STSS overall score.<sup>207</sup> The STSS scale assigns values of 1 to 5 points. Thus, the point increase of 0.27 and 0.49 for females and “others” should be interpreted in relation to the STSS’s measurement index of 1 to 5 points.

*iii. Commentary on Gender Identity Findings*

Challenges for women in the legal profession are generally well-documented.<sup>208</sup> The immigration field is majority female.<sup>209</sup> AILA’s 2019 marketplace study reveals that 56 percent of surveyed immigration lawyers are women working full-time.<sup>210</sup> Research notes that women in the workplace engage more in the office than men and offer more emotional support than men to colleagues.<sup>211</sup> In immigration courts specifically, a recent investigation revealed unaddressed instances of discrimination, sexual harassment, and

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207. The “other” category included respondents who did not identify as male or female, as well as respondents who preferred not to disclose their gender identity.

208. See, e.g., Jane R. Bambauer & Tauhidur Rahman, *The Quiet Resignation: Why Do So Many Female Lawyers Abandon Their Careers?*, 10 U.C. IRVINE L. REV. 799, 802–03 (2020); Lisa Blatt, *Reflections of a Lady Lawyer*, in WOMEN & LAW 57, 57–59 (2020) (joint publication of flagship law reviews at the top sixteen law schools) (sharing some of the challenges inherent in lawyering as a white female).

209. Nick Fouriezoz, *Meet the Women Fighting America’s Border Battle*, OZY (March 15, 2020), <https://www.ozy.com/the-new-and-the-next/immigration-remain-in-mexico-women-attorneys-trump/287537/> (“Nearly all of these lawyers [at the border] are women, many working for far less pay and recognition than they could receive in different fields and different cities.”).

210. See AM. IMMIGR. LAWS. ASS’N, *supra* note 26, at 5.

211. See Lieke ten Brummelhuis & Jeffrey H. Greenhaus, *Research: When Juggling Work and Family, Women Offer More Emotional Support Than Men*, HARV. BUS. REV. (Mar. 21, 2019), <https://hbr.org/2019/03/research-when-juggling-work-and-family-women-offer-more-emotional-support-than-men>.

bias against women.<sup>212</sup> In many ways, then, it is unsurprising that the surveyed female-identifying asylum attorneys reported higher symptoms of burnout and STS.

Our finding that female-identifying Survey respondents had higher symptoms of burnout and STS than male-identifying respondents is consistent with prior studies,<sup>213</sup> including one finding that female-identifying judges reported higher levels of burnout symptoms than male-identifying judges.<sup>214</sup> The clearly higher levels of self-reported burnout and STS from respondents to this Survey, consistent with previous findings, should inform efforts to address the issues that are discussed in Part IV of this Article. Our concerns for male attorneys should remain under consideration, however, as it is entirely possible that female attorneys are socialized to be more comfortable admitting and reporting symptoms of burnout and STS, similar to how men are socialized to avoid admitting symptoms of depression<sup>215</sup> and are also potentially more likely to take a survey in the first place.

b. Race/Ethnicity

Figure 6, below, depicts Survey respondents' self-reported races and ethnicities. The vast majority of Survey respondents identified as White/Caucasian, followed by Latinx/Hispanic. The remaining categories of race/ethnicity had very small numbers of Survey respondents. The demographics of our Survey respondents largely reflect the racial and ethnic composition of the private immigration bar as a whole, which has a larger proportion of White/Caucasian practitioners than practitioners from other races and ethnicities.<sup>216</sup>

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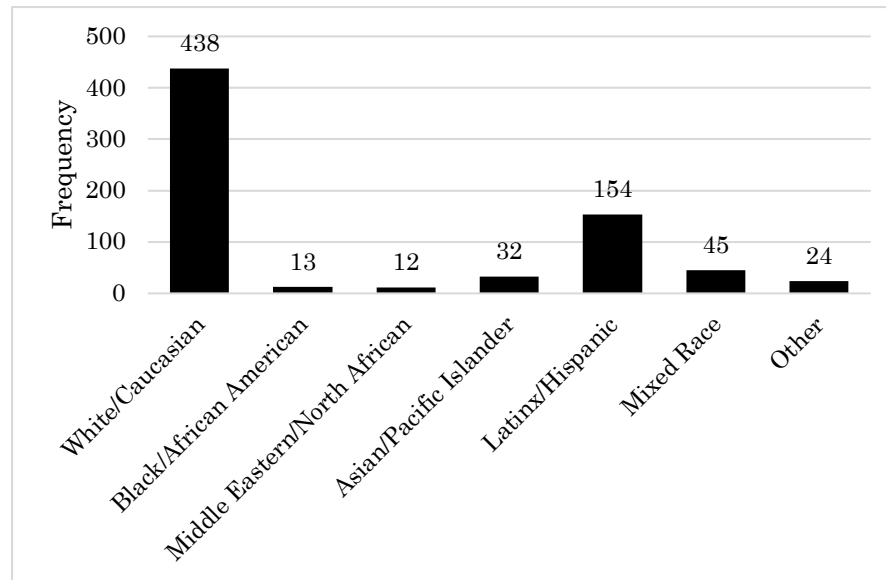
212. See Tal Kopan, *Sexually Inappropriate Behavior Runs Rife in Immigration Courts. And the System Allows It to Flourish*, S.F. CHRON. (Jan. 21, 2021), <https://www.sfchronicle.com/politics/article/Sexually-inappropriate-behavior-runs-rife-in-15889003.php>.

213. See, e.g., Marie-Eve Leclerc et al., *The Unseen Cost of Justice: Post-Traumatic Stress Symptoms in Canadian Lawyers*, 26 PSYCH. CRIME & L. 1, 16 (2020) (finding that more female attorneys surveyed than male attorneys met the probable PTSD diagnosis and that female attorneys had more severe PTSD symptomatology than men).

214. See Lustig et al., *supra* note 181, at 28.

215. See, e.g., Hara Estroff Marano, *The Trouble with Men*, PSYCH. TODAY (Dec. 1, 2001), <https://www.psychologytoday.com/us/articles/200112/the-trouble-men> (discussing underreporting and underdiagnosing of depression among men, which is at least partially attributed by experts to men being socialized to repress feelings, emotions, and vulnerability).

216. *Immigration Attorney Demographics and Statistics in the US*, ZIPPPIA (Apr. 30, 2021), <https://www.zippia.com/immigration-attorney-jobs/demographics>.

FIGURE 6. SURVEY RESPONDENTS' RACE/ETHNICITY<sup>217</sup>

These are our exploratory results. We cannot assess our regression models with certainty given the small sample sizes of minority Survey respondents. Before delving into our findings, we ask that our readers note the following, as explained above: (1) we used White/Caucasian as the reference group, and (2) we held all variables constant.

*i. Race/Ethnicity and Burnout*

The regression for CBI overall (see Table 2) shows that all racial/ethnic categories of color are associated with higher levels of burnout.<sup>218</sup> The most notable category is that of Middle Eastern/North African respondents, who had an increase of 11.79 points in CBI overall burnout.

The next highest point increase was for Black/African American Survey respondents, who had an increase of 5.85 points in CBI overall

217. To ensure the anonymity of respondents, we grouped together individuals who identified as either Asian or as Pacific Islander to mitigate the possibility of them being identified. The category “Other” includes individuals who either identified as a race/ethnicity that was not listed on the Survey instrument, or who preferred not to disclose their race/ethnicity.

218. For readers who wonder why we did not make our reference groups other categories (i.e., why we did not make them female, or why we did not make them a racial or ethnic group of color), the answer is that if we had taken this route, we would not have been able to discern any potential increases or decreases in symptom severity for Survey respondents within these categories. This is because the regression only displays information for nonreference groups since the findings are all derived in comparison to the reference group.

burnout. Continuing this trend, Asian/Pacific Islander respondents had an increase of 4.74 points, Latinx/Hispanic respondents had an increase of 2.55 points, and Mixed-Race respondents had an increase of 2.44 points. All of these findings are reported in comparison to White/Caucasian respondents, which was the reference group, and all variables are held constant.<sup>219</sup> These points are the regression's best estimate of how much a Survey respondent's burnout symptoms might increase or decrease given their particular race/ethnicity.

*ii. Race/Ethnicity and Secondary Traumatic Stress*

By contrast, the regression for STSS overall (see Table 3) shows that race/ethnicity were only *sometimes* associated with an increase in STS symptoms.

Three races/ethnicities had an *increase* in STS symptoms for STSS overall score: Middle Eastern/North African respondents (0.21 points), Asian/Pacific Islander respondents (0.07 points), and Mixed-Race respondents (0.10 points). Two races/ethnicities had a *decrease* in symptoms for the STSS overall score: Black/African American respondents (a reduction of 0.11 points) and Latinx/Hispanic respondents (a reduction of 0.01 points).

*iii. Commentary on Race/Ethnicity Findings*

Although these findings are conspicuous, we should note that they result from a very small number of Survey respondents. While the regression findings are an accurate representation of what these Survey respondents disclosed, they cannot be extrapolated or generalized to the entire population of immigration attorneys who identify as these races/ethnicities. This is particularly important to note given the low representation in our Survey from these races/ethnicities compared to White/Caucasian respondents.

Future studies should continue to explore the relationship between race/ethnicity and stress symptoms. Possible questions to explore include whether having a shared racial or ethnic identity with immigration or asylum clients may affect STS but also may include enhanced propensities for resilience. Most Survey respondents stated that the majority of their clients were from Central America, with much lower numbers of respondents sharing that the majority of their clients came from other parts of the world.<sup>220</sup>

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219. The only category of race/ethnicity that was not predictive of higher stress levels was that of "Other," which was comprised of respondents who either did not answer the race/ethnicity Survey question or who did not identify as any of the previously stated categories of race/ethnicity.

220. Specifically, our Survey asked the following question: "Where are the majority of your asylum clients from?" The answer to this question was as follows: Central America, 572; South America, 13; Sub-Saharan Africa, 21; Middle East, 10; Asia, 9; Europe, 4; No one particular region, 87.



As with previous studies of asylum and immigration attorneys, Survey respondents were primarily White women.<sup>221</sup> Like other studies, this Survey had a low number of ethnically diverse asylum attorneys.<sup>222</sup> Indications from the raw data, however, are that Survey respondents of color are associated with higher levels of burnout but not necessarily higher levels of STS. Women of color especially are underrepresented in the legal profession, particularly in the most senior roles.<sup>223</sup> Indeed, a 2020 ABA report, which focused on women of color in private law firms, concluded that women of color feel “invisible and unsupported” in the legal profession.<sup>224</sup>

In terms of future research, the legal profession should take steps to address the relationship between burnout, STS, and race/ethnicity. Our regression findings for race/ethnicity, like our findings for gender identity, signal a need for additional research on the relationship between these characteristics and attorneys’ symptoms of burnout and stress.

### c. Workplace Environment

As depicted below in Figure 7, the largest proportion of Survey respondents worked at nonprofit organizations, followed by solo practitioners and immigration attorneys who worked at small firms, which we defined as those firms that contained between two and five attorneys.

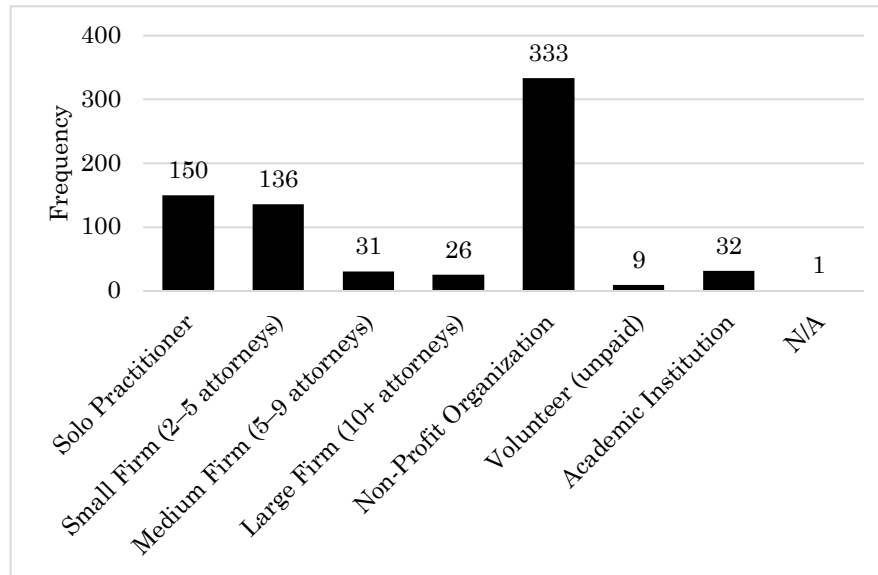
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221. Rønning et al., *supra* note 24, at 667 (participants in a survey of seventy asylum attorneys in the United Kingdom were 82.4% women and 66.7% White); *see also* AM. IMMIGR. LAWS. ASS’N, *supra* note 26, at 5 (56% of immigration attorneys practicing full time are women).

222. Rønning et al., *supra* note 24, at 674.

223. *See* Tsedale M. Melaku, *Why Women and People of Color in Law Still Hear “You Don’t Look Like a Lawyer,”* HARV. BUS. REV. (Aug. 7, 2019), <https://hbr.org/2019/08/why-women-and-people-of-color-in-law-still-hear-you-dont-look-like-a-lawyer>; Kimberly Jade Norwood, *Gender Bias as the Norm in the Legal Profession: It’s Still a [White] Man’s Game*, 62 WASH. U. J. L. & POL’Y 25, 31 (2020) (“Data released for 2019 reveals that women are nearly fifty percent of associates at law firms throughout the United States. Yet, they are only 22.7% of partners and nineteen percent of equity partners.”).

224. *See* DESTINY PEERY ET AL., LEFT OUT AND LEFT BEHIND x (2020).

FIGURE 7. SURVEY RESPONDENTS' WORKPLACES<sup>225</sup>

Before explaining our findings, we ask that our readers keep in mind two facts: (1) we used solo practitioners as the reference group, and (2) we held all variables constant.

*i. Workplace Environment and Burnout*

Our regression for CBI overall indicated that, compared to the reference group of solo practitioners, *all* other workplaces were associated with fewer symptoms of burnout. Specifically, Survey respondents who were volunteers had a reduction of 20.68 points in CBI overall burnout. The next largest point value was for Survey respondents who worked at academic institutions; they had a reduction of 9.67 points in CBI overall burnout. This was followed by nonprofit organizations (a reduction of 6.11 points), small firms (a reduction of 5.46 points), medium firms (a reduction of 2.10 points), and large firms (a reduction of 1.05 points). As always, recall that the CBI is from 0 to 100 points, and that these numbers should be understood in relation to that scale.

*ii. Workplace Environment and Secondary Traumatic Stress*

Our regression for STSS overall (see Table 3) also indicated that all workplaces were associated with fewer symptoms of STS compared to the reference group of solo practitioners. In addition, it showed the same trend as our regression for CBI overall in that the greatest reduction in points was for volunteers (0.45 points) and Survey

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<sup>225</sup>. The label “N/A” refers to the one respondent who did not answer this question.

respondents who worked in academic institutions (0.21 points). Thereafter, the ranking of workplaces from greatest point reduction to least point reduction is as follows: small firms (0.17 points), medium firms (0.15 points), nonprofit organizations (0.12 points), and large firms (0.11 points). The STSS is scored from 1 to 5 points, so the reduction in points is in relation to those values. These findings are based on a small number of Survey respondents (see *supra* Figure 7). Although these findings cannot be taken as an absolute truth for the entire immigration bar, they serve as compelling evidence that the solo practitioner attorneys surveyed may be struggling more than others, and this should serve as a foundation for future studies.

*iii. Commentary on Workplace Environment Findings*

The fact that all workplaces, compared to the reference group of solo practitioners, were associated with lower levels of burnout and STS is perhaps unsurprising, especially given that previous studies have suggested that “working in isolation can contribute to the cumulative effects of stress.”<sup>226</sup> In response to the Survey’s open-ended question, a couple attorneys shared that they found the work alienating. For example, one attorney shared: “*In addition to the above I find it alienating in the sense that I feel nobody I talk to can understand the work unless they are also doing it.*” Another described the isolation of this work and found comfort in being around others who do the same work:

*“It is exhausting to be around people, even close friends, who don’t [do the same kind of work] because so much explanation goes into ‘how are you doing?’ That is isolating in and of itself because the circle of people in your life who you can really talk to becomes smaller and smaller.”*

Further research should be done to analyze whether solo attorneys’ connection through membership in AILA or other attorney affinity groups (including listservs, Facebook groups, or other groups) has any effect on levels of self-reported burnout or stress. A few responses to the open-ended Survey question specifically identified the attorney respondent as a clinical law professor, and these respondents attributed their reduction in STS and burnout to a lighter caseload and to daily interactions with law students.

Further research is also needed regarding best management practices for law firms and nonprofit legal service organizations with medium and large staffs whose staff is continually exposed to vicarious trauma through their daily work. It is also worth considering whether there is efficacy in building more of a role for professional organizations, such as AILA or the ABA, to train and assist members to recognize and respond to the symptoms of STS.

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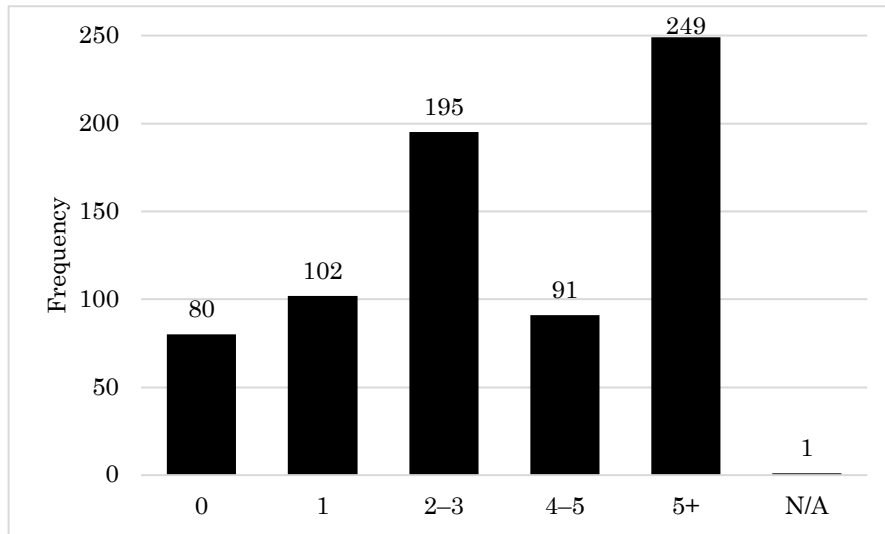
226. Piowarczyk et al., *supra* note 25, at 7.

This is especially pertinent because there are few other unifying groups for immigration attorneys after graduation from law school and licensure due to the nationwide practice of asylum law.

d. Support Staff

Figure 8, displayed below, shows the number of support staff available to Survey respondents. A majority of Survey respondents reported that they had five or more supporting staff members. The next largest category of Survey respondents indicated that they had two to three supporting staff members.

FIGURE 8. SUPPORT STAFF IN SURVEY RESPONDENTS' OFFICES<sup>227</sup>



Perhaps unsurprisingly, having support staff was associated with fewer symptoms of burnout and stress compared to having no support staff.

i. Support Staff and Burnout

In terms of CBI overall (see Table 2), having more support staff was associated with fewer symptoms of burnout. Survey respondents' estimated burnout scores were reduced by 2.01 points as they moved from one category to another (i.e., from "1 support staff member" to "2-3 support staff members" to "4-5 support staff members," etc.). In other words, the regression suggests that there is an inverse

227. The Survey question asked the following: "How many part-time or full-time support staff do you have in your office working with you (paralegals, staff assistants, office managers, legal interns, etc.)?" The label "N/A" refers to the one respondent who did not answer the question.

relationship between support staff and burnout, such that *more* support staff is associated with *less* burnout.<sup>228</sup>

*ii. Support Staff and Secondary Traumatic Stress*

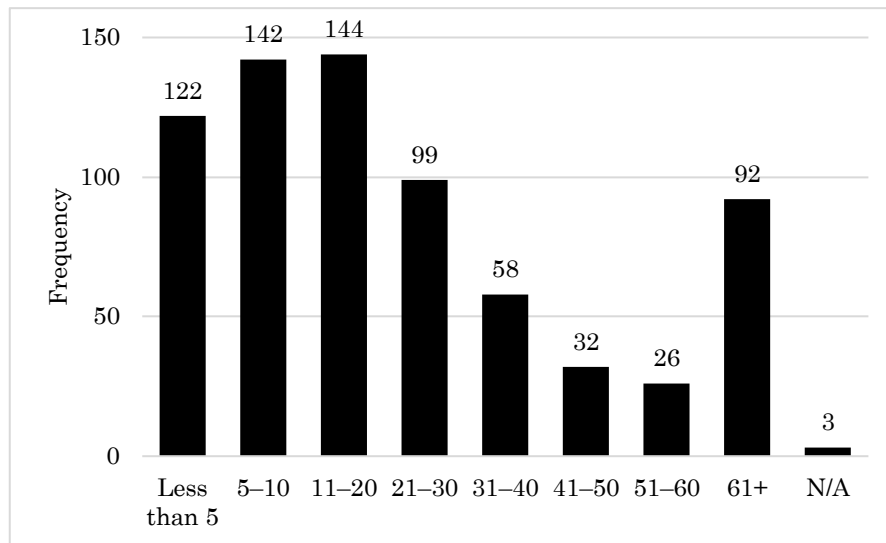
Having additional support staff was also associated with a lower STSS overall score (see Table 3). Survey respondents' estimated STS scores were reduced by 0.08 points as they moved from one category to another (i.e., from "1 support staff member" to "2–3 support staff members" to "4–5 support staff members," etc.). In other words, respondents who had some number of support staff were associated with lower STSS overall scores than respondents who had no support staff.

*e. Volume of Asylum Cases*

Figure 9, displayed below, shows the number of asylum cases on Survey respondents' dockets. Most respondents had between eleven to twenty asylum cases, with the next largest proportion of respondents having five to ten cases, followed by respondents with less than five cases. Overall, higher caseloads were associated with more symptoms of burnout and stress than lower caseloads.

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228. Interestingly, the regression for CBI overall also found that the relationship between support staff and burnout may not be linear in nature. This is shown in Table 2b in the Appendix, which shows that the cubic relationship between support staff and burnout is statistically significant.

FIGURE 9. SURVEY RESPONDENTS' ASYLUM DOCKETS<sup>229</sup>

*i. Volume of Asylum Cases and Burnout*

In terms of the CBI overall regression (see Table 2), Survey respondents' estimated burnout scores increased by 2.26 points as they moved from one category to another (i.e., from "less than 5 cases" to "5-10 cases" to "11-20 cases," etc.).

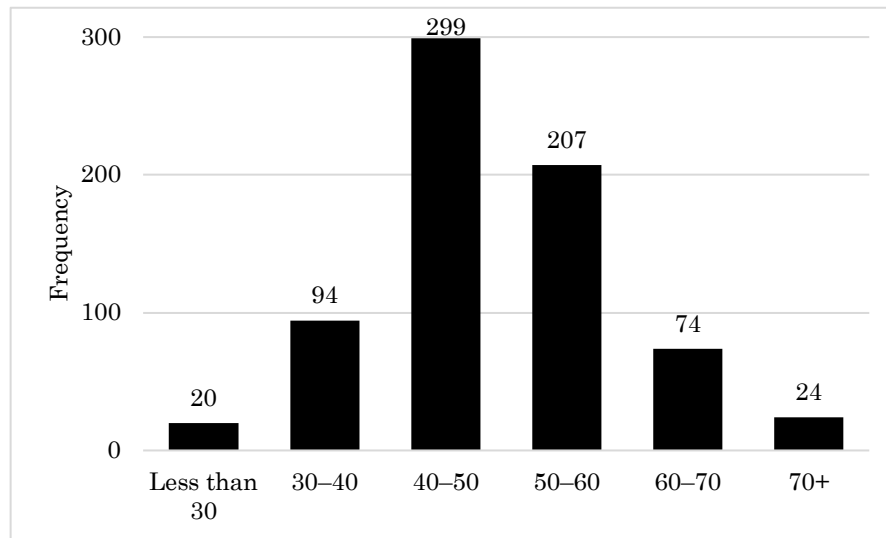
*ii. Volume of Asylum Cases and Secondary Traumatic Stress*

Larger asylum dockets were also related to a higher STSS overall score (see Table 3). Specifically, Survey respondents' estimated stress scores increased by 0.10 points as they moved from one category to another in terms of the numbers of asylum cases on their docket.

*f. Weekly Hours Worked*

Figure 10, displayed below, shows the estimated number of hours that Survey respondents worked each week. The largest proportion of respondents worked forty to fifty hours per week, followed by respondents who worked fifty to sixty hours per week.

<sup>229</sup>. The label "N/A" refers to the three respondents who did not answer this question.

FIGURE 10. SURVEY RESPONDENTS' WEEKLY HOURS WORKED<sup>230</sup>

Survey respondents' estimated burnout and STS scores increased in relation to the number of hours they worked per week. What is most interesting about our findings, however, is the noticeable *increase* in scores on the CBI personal burnout subscale and the STSS intrusion subscale and the marked *decrease* in scores on the CBI client burnout subscale. (There was no decrease in scores in the STSS subscales.) This suggests that an uptick in weekly hours worked was related to higher levels of STS and burnout for some subscales but not for all.

*i. Weekly Hours Worked and Burnout*

In terms of CBI overall score (see Table 2), Survey respondents' estimated burnout scores increased by 3.57 points as they moved from one category to another (i.e., from "less than 30 hours worked" to "30-40 hours" to "40-50 hours," etc.). This finding will likely seem commonsense to many readers; it is logical that working more hours each week would have a concomitant rise in burnout symptoms. What may intrigue readers, however, is how nuanced our CBI findings are when compared across the three CBI subscales.

Readers will recall that the CBI overall score is comprised of three subscales: personal burnout, work burnout, and client burnout, each scale running from 0 to 100 points. Our findings for two of these subscales—personal burnout and work burnout—were not surprising. But what *did* catch our attention was our findings for the third subscale—client burnout.

<sup>230</sup> The Survey question asked: "How many hours do you estimate you work per week?"

Regarding the first two subscales, Survey respondents' personal burnout scores were estimated to increase by 11.38 points as they worked additional hours each week. Similarly, Survey respondents' work burnout scores were estimated to increase by 5.10 points as they worked additional hours each week. Again, these findings are logical; if an individual works more hours each week, they may experience additional burnout in their personal life and in their workplace.

However, we found that client burnout scores were estimated to *decrease* by 5.53 points as Survey respondents worked additional hours each week. Client burnout refers to the extent to which individuals may feel frustrated or exhausted as a result of working with clients.<sup>231</sup> We can only surmise why we have this finding. It could be that Survey respondents gained satisfaction and meaning from working with clients, while simultaneously feeling exhausted and burned out in their personal and work lives. It is also possible that asylum attorney respondents who do not suffer as much from client burnout opt to work a higher number of hours per week.

*ii. Weekly Hours Worked and Secondary Traumatic Stress*

In terms of STSS overall score (see Table 3), Survey respondents' estimated STS scores increased by 0.25 points as they moved from one category to another (i.e., from "less than 30 hours worked" to "30–40 hours" to "40–50 hours," etc.).

However, our most interesting finding comes from a comparison of the STSS subscales: intrusion, avoidance, and arousal. Each of these subscales taps into a particular source of STS, such as intrusive thoughts (e.g., nightmares), avoidance (e.g., procrastination), and arousal (e.g., being short-tempered).

Survey respondents' estimated STS scores increased across all three subscales in relation to an increase in weekly hours worked. Specifically, Survey respondents' scores were estimated to increase by 0.36 points for the intrusion subscale, by 0.35 points for the arousal subscale, and by 0.10 points for the avoidance subscale in relation to an uptick in the number of hours worked per week.

We can only speculate as to why our findings are nuanced across the three STSS subscales. Working additional hours may prompt an increase in intrusion (such as nightmares) as well as an increase in arousal (such as being short-tempered). Working more hours and confronting work tasks may also mitigate feelings of avoidance (such as procrastinating on tasks). These are just possible rationales for our findings; our quantitative analysis can only show that a statistical

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231. Specifically, the CBI has six questions that assess client-related burnout. For example, three of the questions are as follows: "Do you find it hard to work with clients?" "Does it drain your energy to work with clients?" "Do you find it frustrating to work with clients?" For additional questions, please refer to our Survey questions, available at: Harris, *supra* note 3.



relationship exists, not *why* it exists. We urge additional scholarship in this area to explore these dynamics.

*iii. Commentary on Weekly Hours Worked Findings*

Our findings are consistent with prior studies of other helping professions which reveal that the length of service and number of distressing interactions reported by Survey respondents are related to higher STS symptoms.<sup>232</sup> One 2009 study of seventy asylum attorneys, for example, reported that the number of hours spent working on asylum cases each week “was a strong predictor” of higher levels of STS.<sup>233</sup>

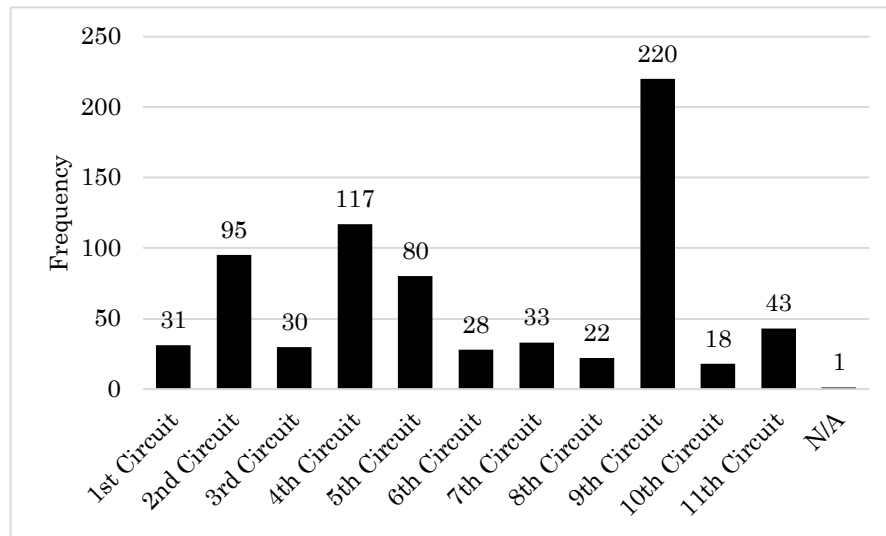
*g. Jurisdiction*

Figure 11, displayed below, shows the United States Courts of Appeals jurisdictions before which Survey respondents practice immigration law. Before further discussing the variations across the Courts of Appeals, we must first state the following: (1) our reference group was the First Circuit, and (2) we held all variables constant. Most Survey respondents practiced in the Ninth Circuit, followed by the Fourth Circuit, Second Circuit, and Fifth Circuit.

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232. Levin & Greisberg, *supra* note 7, at 246–47; *see also* Levin et al., *supra* note 2, at 948.

233. Piwowarczyk et al., *supra* note 25, at 5.

FIGURE 11. SURVEY RESPONDENTS' JURISDICTION<sup>234</sup>

Our regression findings for burnout and STS were the exact opposite of one another. For burnout, all but two jurisdictions (the Third and Fourth Circuits) were associated with *higher* symptoms of burnout compared to the First Circuit. For STS, all but three jurisdictions (the Second, Sixth, and Tenth Circuits) were associated with *lower* symptoms of burnout compared to the First Circuit.

*i. Jurisdiction and Burnout*

Apart from the Third and Fourth Circuits, all remaining jurisdictions were associated with *higher* levels of CBI overall scores compared to the reference group of the First Circuit (see Table 2). Importantly, the jurisdictions varied in *how much* respondents' burnout scores were estimated to increase; the Fifth Circuit had an increase of 0.03 points, whereas the Sixth Circuit had an increase of 4.86 points. Again, these regressions only tell us that a relationship exists; they cannot explain *why* a relationship exists or even if the relationship is causal in nature (i.e., if a particular jurisdiction is causing an increase in stress). Nevertheless, our findings indicate that some jurisdictions are associated with higher burnout scores than other jurisdictions.

*ii. Jurisdiction and Secondary Traumatic Stress*

With the exception of the Second, Sixth, and Tenth Circuits, all remaining jurisdictions were associated with *lower* levels of STSS

234. The Survey question asked: "In which jurisdiction do you primarily practice?" The label "N/A" refers to the one respondent who did not answer this question.

overall scores compared to the reference group of the First Circuit (see Table 3).

This result is the exact opposite of our findings for CBI overall scores, indicating that the jurisdiction in which a Survey respondent practices immigration law may have a greater association with burnout scores than STSS scores. This result also provides a clear example of how the CBI and the STSS, while related to one another, measure two distinct phenomena: burnout and STS.

*iii. Commentary on Jurisdiction Findings*

Asylum grant rates, of course, vary widely across the U.S.<sup>235</sup> It would be easy to imagine that an asylum attorney practicing in a jurisdiction known to be hostile to asylum seekers would potentially self-report more symptoms of burnout. For a more nuanced understanding of this hypothesis, additional research is needed because some hostile jurisdictions (referred to by advocates as “asylum free zones”) are actually geographically located within circuits that are relatively generous in terms of their interpretation of asylum law. For example, Charlotte, North Carolina, and Las Vegas, Nevada—both asylum free zones—are located within the Fourth and Ninth Circuits, respectively,<sup>236</sup> which are two circuits typically considered friendlier to asylum seekers. Additional research should specify the courts before which attorneys practice, rather than the broader circuit. It may also be possible to control for asylum seeker nationality in a regression—asylum seekers in different jurisdictions (or regions of the country) do tend to come from different countries, and this may make a difference in terms of the success of their claim.

*h. Age*

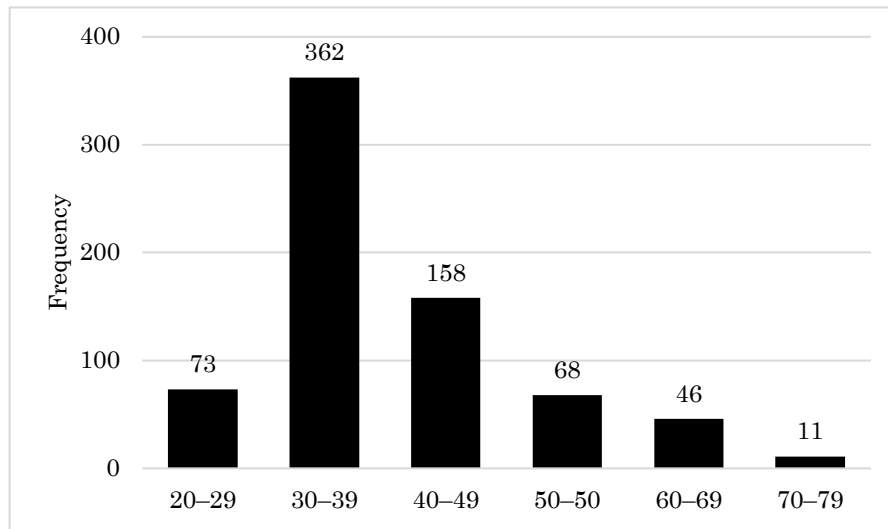
Figure 12, displayed below, shows Survey respondents’ ages. The vast majority of Survey respondents’ ages were thirty to thirty-nine, with the next-largest category being forty to forty-nine, followed by twenty to twenty-nine.

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235. See, e.g., JAYA RAMJI-NOGALES ET AL., REFUGEE ROULETTE: DISPARITIES IN ASYLUM ADJUDICATION & PROPOSALS FOR REFORM 37 (2009); ANDREW I. SCHOENHOLTZ ET AL., LIVES IN THE BALANCE: ASYLUM ADJUDICATION BY THE DEPARTMENT OF HOMELAND SECURITY 144 (2014).

236. John Washington, *These Jurisdictions Have Become ‘Asylum Free Zones,’* NATION (Jan. 18, 2017), <https://www.thenation.com/article/archive/these-jurisdictions-have-become-asylum-free-zones/> (sharing the petition filed with the Inter-American Commission for Human Rights highlighting parts of Georgia, Nebraska, Nevada, North Carolina, South Carolina, and Texas as asylum free zones).

FIGURE 12. SURVEY RESPONDENTS' AGE



We found that respondents' ages were inversely related to high levels of burnout and STS. Specifically, older respondents were associated with lower levels of burnout and STS, whereas younger respondents were associated with higher levels of burnout and STS.<sup>237</sup>

*i. Age and Burnout*

As respondents' ages increased<sup>238</sup> from one Survey category to another (i.e., 20-29, 30-39, 40-49, etc.), respondents had a decrease of 3.09 points in CBI overall burnout.

Readers will also remember that the CBI consists of three subscales: personal burnout, work burnout, and client burnout.<sup>239</sup> One subscale caught our attention in particular: personal burnout. As respondents' ages increased, their personal burnout scores

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237. During the process of receiving input on draft versions of this Article, one reader inquired as to whether women of childbearing age were associated with higher levels of burnout and STS. Our Survey did not solicit information about whether or not respondents had children, let alone when they had them, so we are unable to address this point. We also did not ask respondents about the gender identity of the primary caretaker in their families or if they had other dependents in addition to children. Future studies could explore the relationships between an asylum attorney's gender identity, whether they have children (or other dependents), and their levels of burnout and STS.

238. Here, the phrase "as respondents' ages increased" refers to the age categories included in the Survey. Our Survey placed specific age ranges into categories (e.g., 20-29, 30-39, 40-49, etc.). Because of this, we can only compare Survey respondents who fall within particular age ranges; for example, we can compare 20-29-year-olds to 30-39-year-olds.

239. See *supra* notes 161-63 and accompanying text.

decreased by 7.58 points. Their work burnout scores decreased by 5.87 points, and their client burnout scores decreased by 4.42 points. In short, older respondents are particularly associated with lower *personal* burnout scores.

*ii. Age and Secondary Traumatic Stress*

We found a similar trend between Survey respondents' ages and their levels of STS. Specifically, as respondents' ages increased from one Survey category to another (i.e., 20–29, 30–39, 40–49, etc.), respondents had a decrease of 0.06 points in STSS overall scores.

In terms of the STSS subscales, the arousal subscale findings stand out. As respondents' ages increased, their arousal scores decreased by 0.24 points. Their intrusion scores decreased by 0.02 points, and their avoidance scores decreased by 0.01 points. Because the STSS overall score is predicated upon respondents' scores on the three subscales, we can infer that older respondents' decrease in STSS overall scores may largely be driven by a decrease in their "arousal" scores.

*iii. Commentary on Age Findings*

Respondents' ages are not the *only* characteristic related to symptoms of burnout and STS. A concrete example may help illustrate this point: although older respondents were associated with lower burnout and STS levels, this might not hold true if those same respondents also belong to categories that were associated with higher levels of burnout and stress (e.g., females, certain races/ethnicities, large asylum dockets, etc.). This is also true of the other attorney characteristics that we discuss; for example, although some races/ethnicities are associated with higher symptoms of burnout and STS, this could potentially be mitigated if those same respondents had low asylum dockets, identified as males, or were older. The Survey did not ask the attorney respondents about their level of asylum or immigration-specific experience, and while, generally, we may be able to assume that older attorneys have been practicing for longer, that is certainly not always the case. Previous studies have shown that asylum officers who have held that position longer have higher asylum grant rates.<sup>240</sup> It is possible that, as one supervising asylum officer suggested, asylum officers who grant a lot of cases are happier in their jobs and remain in their positions for longer.<sup>241</sup> The same may be true for asylum attorneys—those who find a way to manage the stress may remain in the field longer. We must be careful about drawing conclusions about the relationship between age and STS or burnout, because the concept of survivor bias

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240. See, e.g., SCHOENHOLTZ ET AL., *supra* note 235, at 189.

241. See *id.* at 191.

may apply.<sup>242</sup> Survivor bias is “a common logical error where we draw conclusions based upon those who have passed some sort of selection process while ignoring those that did not, typically because they are less visible to us.”<sup>243</sup> Here, the finding that older asylum attorneys report lower STS and burnout may be problematic: These asylum attorneys may be the “survivors,” and we neglected to survey those attorneys who left the field and did not continue with this work. Those attorneys may have reported different levels of STS and burnout had they remained.

i. COVID-19 Pandemic

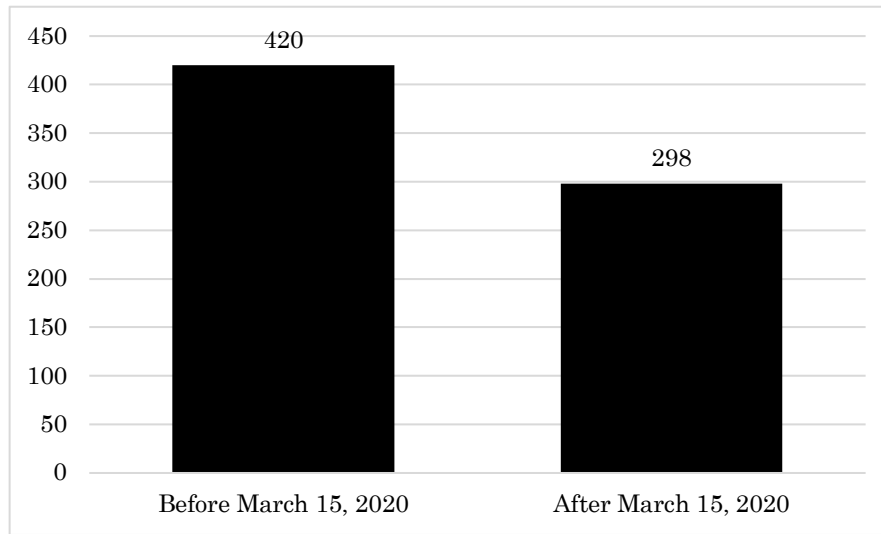
Figure 12, displayed below, shows that a majority of respondents took our Survey prior to March 15, 2020, which is the date by which several states had implemented some combination of stay-at-home orders, mask mandates, or social distancing requirements in response to the COVID-19 pandemic. This date also represents when many universities, schools, hospitals, businesses, and local governments began to address the challenges of COVID-19.<sup>244</sup>

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242. See Carmine Gallo, *High-Tech Dropouts Misinterpret Steve Jobs' Advice*, FORBES (Dec. 6, 2012), <https://www.forbes.com/sites/carminegallo/2012/12/06/high-tech-dropouts-misinterpret-steve-jobs-advice/?sh=6d496cb67fe0> (“It’s a classic case of survivor bias. We make judgments about what we should do based on the people who survived, totally ignoring all the guidance from the people who failed.”).

243. Dave Hemprich-Bennett, *The Perils of Survivorship Bias in Science and Academia*, SMALL POND SCI. (Apr. 22, 2020), <https://smallpondscience.com/2020/04/22/the-perils-of-survivorship-bias-in-science-and-academia/#more-25726>.

244. See, e.g., Eliza Shapiro, *New York City Public Schools to Close to Slow Spread of Coronavirus*, N.Y. TIMES (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/nyregion/nyc-schools-closed.html>; Lauren Thomas & Christina Cheddar Berk, *These Retailers Are Closing Stores to Slow Coronavirus Outbreak*, CNBC (Mar. 15, 2020), <https://www.cnn.com/2020/03/15/these-retailers-are-closing-stores-to-slow-coronavirus-outbreak.html>; *Stay on Top of “Stay at Home” – A List of Statewide Orders*, LITTLER MENDELSON (May 20, 2020), <https://www.littler.com/publication-press/publication/stay-top-stay-home-list-statewide>.

FIGURE 13. RESPONSE RATE PRE- AND POST-SOCIAL DISTANCING<sup>245</sup>

We found that respondents who took our Survey after March 15, 2020, were associated with lower levels of burnout and STS compared to respondents who took the Survey prior to March 15, 2020.

*i. The COVID-19 Pandemic and Burnout*

Respondents who took our Survey after March 15, 2020, had a decrease of 1.84 points in CBI overall burnout. In addition, we assessed all three CBI subscales and found one to be particularly interesting: the personal burnout subscale. Specifically, respondents who took our Survey after March 15, 2020, had a decrease of 3.09 points in their personal burnout scores. Their work burnout scores decreased by 2.17 points, and their client burnout scores decreased by 0.53 points. Thus, taking the Survey after March 15, 2020, is particularly associated with lower *personal* burnout scores.

*ii. The COVID-19 Pandemic and Secondary Traumatic Stress*

Respondents who took our Survey after March 15, 2020, had a slight decrease of 0.06 points in STSS overall scores. Our analysis of the avoidance subscale was notable—respondents who took the Survey after March 15, 2020, had a decrease of 0.14 points in their avoidance scores. They also had a decrease of 0.04 points in arousal and a decrease of 0.03 points in intrusion. This finding indicates that taking the Survey after March 15, 2020, is particularly related to lower avoidance scores.

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245. We distinguish between respondents who took the Survey before or after March 15, 2020, because that was the date by which many states had implemented social distancing measures due to the COVID-19 pandemic.

iii. *Commentary on the COVID-19 Pandemic Findings*

It is difficult to assess the role that the COVID-19 pandemic may have had in Survey respondents' lives. On the one hand, the pandemic may have, during that initial lockdown period in which the Survey was taken, made asylum lawyering slightly less stressful and resulted in less direct contact between asylum lawyers and trauma survivors. Asylum offices, for example, were temporarily closed for individual interviews between March 13, 2020, and June 4, 2020, and even then, interviews resumed only on a reduced schedule.<sup>246</sup> Many attorneys were presumably working from home, reducing their commutes and potentially increasing their leisure time.

Some attorneys explained that they were doing better since the pandemic began:

*"It's not as bad now, with the pandemic."*

*"Many of my answers have changed since the COVID-19 shelter-in-place orders have been in effect[—]basically my cases are at a standstill now, and I have had some time to recuperate and rest. I am working much less now also."*

Conversely, the lines separating work and personal life increasingly blurred as attorneys worked in their home environments, and many asylum attorneys (especially women) may have borne the brunt of additional childcare or other caregiving responsibilities in the home.<sup>247</sup> While asylum offices closed temporarily, immigration courts remained open for detained hearings, with sporadic closings by courts only throughout the pandemic.<sup>248</sup> Nondetained hearings were temporarily cancelled during the time period when the Survey was administered but have since resumed on a limited basis.<sup>249</sup> Those with detained clients during the period from March to May 2020, when the Survey was still

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246. *USCIS Preparing to Resume Public Services on June 4*, U.S. CITIZENSHIP & IMMIGR. SERVS. (May 27, 2020), <https://www.uscis.gov/news/alerts/uscis-preparing-to-resume-public-services-on-june-4>.

247. One Survey respondent shared, *"I work part-time, and recently returned from parental leave. Some of my answers (exhaustion, burnout, workload) reflect my outside-of-work reality as well as inside."* Another Survey respondent shared that the work they do affects their parenting: *"I can't do full-time direct rep anymore. Am focusing my practice on ghostwriting for other attorneys. I think about rape/sexual abuse all the time. I have very little hope for/faith in humanity. My work has permanently damaged me, and it affects my parenting . . . ."*

248. See Daniel Connolly & Maria Clark, *Amid COVID-19, Trump Administration Keeps Immigration Courts Open, Putting Judges, Lawyers and Immigrants at Risk*, USA TODAY (July 2, 2020), <https://www.usatoday.com/story/news/nation/2020/07/02/trump-immigration-courts-open-despite-covid-19-risks/5362169002/>.

249. See *id.*



live, were under tremendous stress with the requirement to appear in person, especially given the acute shortage of personal protective equipment during that time.<sup>250</sup> Some asylum attorneys during that time period also engaged in heroic (and as of this Article's publication, ongoing) efforts to advocate for the release of immigrant clients vulnerable to coronavirus in detention.<sup>251</sup> One attorney who serves detained clients shared, "*I feel substantially more burnt out and discouraged now during quarantine.*" Throughout the pandemic, immigration court closures were announced at the last minute, often via Twitter, and electronic filing was only available for a short period of time.<sup>252</sup>

Finally, response bias<sup>253</sup> makes it difficult to assess the relationship between the pandemic and respondents' burnout and STS levels. While it is quite possible that those who were most acutely affected during this time period were too overwhelmed to respond to the Survey, it is also possible that those individuals were more inclined to respond given the relevance of the substance of the Survey to their experience at that time.<sup>254</sup> Ultimately, the global

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250. See Yamiche Alcindor, *Immigration Courts Are Still Open as Coronavirus Cases Grow*, PBS NEWS HOUR (Mar. 19, 2020), <https://www.pbs.org/newshour/nation/immigration-courts-are-still-open-as-coronavirus-cases-grow> (detailing the difficulties of in-person hearings during the pandemic); Megan L. Ranney et al., *Critical Supply Shortages – The Need for Ventilators and Personal Protective Equipment during the Covid-19 Pandemic*, NEW ENG. J. MED. (Apr. 30, 2020), <https://www.nejm.org/doi/pdf/10.1056/NEJMp2006141?articleTools=true> (outlining the personal protective equipment shortages in early months of the COVID-19 pandemic).

251. In general, it is worth exploring the effects of working with detained populations. Attorney respondents shared in the open-ended response at the end of the Survey:

*"Having clients in detention is the most stressful part. I wake in the middle of the night thinking about them and worrying about how can I get them out."*

Another attorney explained,

*"Everything is 1000% harder when the clients are detained. That is by far the most traumatic aspect of the work—the ongoing brutalization of people who have already suffered so much."*

One attorney mentioned that they had stopped representing detained clients because of the mental health consequences of engaging in that work, and another explained that, "*Personally I find the trauma of detention itself to be disturbing.*"

252. See Connolly & Clark, *supra* note 248.

253. See Adrian Furnham, *Response Bias, Social Desirability and Dissimulation*, 7 PERSONALITY & INDIVIDUAL DIFFERENCES 385, 385 (1985) ("[R]esponse bias . . . is a generic term for a whole range of responses to interviews, surveys or questionnaires which bias the response (from the correct, honest, accurate response).").

254. See Knuckey et al., *supra* note 7, at 302. Knuckey and her coauthors discuss response bias in their survey of individuals engaged in the human rights field. *Id.* Anecdotally, some individuals did not respond to that survey, which pertained to mental health issues, because they were "doing fine" and it was "not

pandemic makes addressing attorney mental health, along with everyone else's mental health, more important than ever; therefore, it also makes the measures suggested in the final Part of this Article more salient.

#### IV. PRESCRIPTIONS FOR CHANGE

The high levels of STS and burnout among Survey respondents are troubling and possibly indicative of broader trends among immigration attorneys and attorneys practicing other areas of law. The last several years have been a low point in history, not only for asylum seekers but also for asylum attorneys. Studies clearly show that legal representation makes a tremendous difference in the chances of success on an asylum application.<sup>255</sup> As such, we have a fundamental need to keep competent and compassionate asylum attorneys in the practice of asylum law, and we must come up with ways to prevent and mitigate asylum attorney burnout and STS.

This Part presents ideas to remedy the high levels of burnout and STS among asylum attorneys through normalizing a focus on self-care and mental health, which requires individual and institutional attention to preventing and managing burnout and STS.

Of course, to stabilize and prevent the harms of the Trump era and broad attacks on our system of asylum protection, that system must be insulated from political interference. We join the chorus of scholars advocating for the creation of independent Article I immigration courts and for taking USCIS out from underneath the Department of Homeland Security.<sup>256</sup> These reforms would go a long way to addressing disparate outcomes in immigration courts (and in asylum cases specifically), as well as diluting the volatile and ever-changing nature of asylum law.<sup>257</sup> Even with an independent

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relevant to them," while others did not engage because it "might hit too close to home." *Id.*

255. See Lindsay M. Harris, *Contemporary Family Detention and Legal Advocacy*, 21 HARV. LATINX L. REV. 135, 160–61 (2018); Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 9 (2015) (sharing that legal representation for immigrants between 2007 and 2012 correlates with an immigrant being 5.5 times more likely to be granted relief from removal).

256. Lustig et al., *supra* note 22, at 82 (calling for an independent immigration court system); ABA, *ACHIEVING AMERICA'S IMMIGRATION PROMISE: ABA RECOMMENDATIONS TO ADVANCE JUSTICE, FAIRNESS, AND EFFICIENCY 2–3* (2021), [https://www.americanbar.org/content/dam/aba/administrative/immigration/achieving\\_americas\\_immigration\\_promise.pdf](https://www.americanbar.org/content/dam/aba/administrative/immigration/achieving_americas_immigration_promise.pdf) (recommending that Congress establish an independent Article I immigration court).

257. In Levin and Greisberg's study finding significantly higher levels of burnout and STS stress among attorneys as opposed to other helping professions, the attorneys surveyed "noted that frustrations encountered with the legal and governmental systems required to assist [traumatized] clients were a significant contribution to their distress, e.g., high caseloads, hostile courts and law

immigration court system, without additional reform, the traumatic process of seeking asylum will continue. This reform must go hand in hand with a focus on self-care and mental health. Further, legislative reform is far from certain—deep and meaningful immigration reform requires legislation—and it remains to be seen whether bipartisan agreement on such a proposal can be reached.<sup>258</sup> In one of Professor Harris’s prior articles, she outlines the various ways in which the U.S. government should move forward in improving and protecting our asylum system.<sup>259</sup> This set of recommendations includes working with, rather than against, asylum advocates, including asylum attorneys.<sup>260</sup>

Regardless of improvements to the asylum system that may occur to make our immigration system, asylum seeking, and asylum lawyering less traumatic, trauma is, to a certain extent, inherent in working with asylum seekers. Asylum seekers are often survivors of human rights abuses, so even if the system is improved and the dysfunction and inequities remedied, this high-stakes work still presents challenges.<sup>261</sup> Because the need for structural immigration reform has been broadly discussed elsewhere,<sup>262</sup> this Article focuses

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enforcement personnel, indifferent administration and supervisors.” Levin & Greisberg, *supra* note 7, at 251.

258. See Rachel Weiner, *How Immigration Reform Failed, Over and Over*, WASH. POST (Jan. 30, 2013), <https://www.washingtonpost.com/news/the-fix/wp/2013/01/30/how-immigration-reform-failed-over-and-over/> (listing examples of unsuccessful legislative attempts at immigration reform over time); Alberto Gonzales, *True Immigration Reform Requires Compromise From Both Sides of the Aisle*, HILL (May 5, 2021), <https://thehill.com/opinion/immigration/551800-after-more-than-30-years-its-time-for-comprehensive-immigration-reform> (former U.S. Attorney General arguing for the importance of bipartisan legislation in reforming immigration policy).

259. See generally Harris, *supra* note 83 (addressing these issues).

260. *Id.* at 188.

261. As one asylum attorney surveyed explained:

*“The weight of the fact that if you lose your client’s case, they will be sent to their persecution/death has led to waking me up in the middle of the night, thinking of something I should have already done for a case, constantly thinking about what I should be doing on their case to make sure they get the protection they need. It’s a huge weight to hold, especially when there are derivative children attached.”*

See also *Asylum Seekers & Refugees*, NAT’L IMMIGR. JUST. CTR. (last visited Oct. 7, 2021), <https://immigrantjustice.org/issues/asylum-seekers-refugees>.

262. See e.g., MARSHALL FITZ & ANGELA KELLEY, PRINCIPLES FOR IMMIGRATION REFORM: GUIDELINES FOR FIXING OUR BROKEN IMMIGRATION SYSTEM (2009) (proposing broad recommendations for immigration reform in the U.S.); Rebecca Sharpless, *“Immigrants Are Not Criminals”: Respectability, Immigration Reform, and Hyperincarceration*, 53 Hous. L. Rev. 691, 764–65 (2016) (discussing the need for immigration reform to go beyond criminality considerations); David A. Super, *The Future of U.S. Immigration Law*, 53 U.C. DAVIS L. Rev. 509, 589–90 (2019) (recommending a multidimensional framework for future immigration reform).

on other reforms meant specifically to address the mental health challenges inherent in asylum attorneys' work.

Although self-care is often thought of as a practice of dominant White American culture, the concept actually has radical and progressive roots in the Black Power movement of the 1960s and 1970s.<sup>263</sup> As discussed below, a focus on attorney mental health and self-care should begin in law school<sup>264</sup> and be implemented throughout the legal profession (i.e., through bar associations, professional organizations, and continuing legal education). This should also include structural reforms, including the development of mental health resources and groups, to ensure adequate support for attorneys, particularly solo practitioners. This is imperative for lawyers because as Jean Koh Peters has explained:

The lawyer who fails to mitigate the negative effects of stress and vicarious traumatization in his or her life . . . ends up harming the client as well as himself or herself. The lawyer who addresses these occupational hazards and harnesses the positive effects, particularly of vicarious traumatization, can benefit both himself or herself and the client.<sup>265</sup>

In line with the quotation above, several Survey respondents spontaneously shared the mental health consequences of their work:

*"I am in a better place than I was several months ago. I was hospitalized for a month with severe depression with psychotic features, and then in a partial hospitalization program for another month. I am on medication, see a therapist and am in group therapy. One of the root causes of my depression is my work with asylum seekers. I am back at work, trying to practice what I preach about self-care."*<sup>266</sup>

Another attorney shared:

*"I was diagnosed with secondary trauma and went to therapy and took medication. I think that has a lot to do with why I am feeling better about life now than I was before. I also just had a baby and she is bringing me a lot of joy and hope where I didn't find it before."*

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263. *The Radical History of Self-Care*, BBC, <https://www.bbc.co.uk/programmes/articles/5GwXsvJp6q8PM2RLL2Dgc00/the-radical-history-of-self-care> (last visited Oct. 7, 2021).

264. See, e.g., Krystia Reed et al., *Problem Signs in Law School: Fostering Attorney Well-Being Early in Professional Training*, 47 INT'L J.L. & PSYCHIATRY 148, 155 (2016).

265. JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL & PRACTICAL DIMENSIONS 452 (3d ed. 2007).

266. Another attorney responded, *"It's not as bad now, with the pandemic. I got very sick when the government started kidnapping children. I have vertigo from stress and can no longer drive."*

Yet another shared that “*I wasn’t like this before [President] Trump took office; I’ve been diagnosed with vicarious trauma by my therapist and am undergoing [Eye Movement Desensitization and Reprocessing] therapy.*”

It is not only a “good idea” for immigration attorneys to engage in self-care and responsible trauma stewardship, but it is also ethically required.<sup>267</sup> Attorneys suffering from unabated effects of trauma exposure may be unable to meet the basic requirements of attorney competence: zealous advocacy, diligence, and client communication.<sup>268</sup>

We will adopt the definition of self-care as “the practices providers use to (a) effectively address trauma exposure responses and thereby (b) enhance the sustainability of their direct client work.”<sup>269</sup> Self-care as a term can be controversial because it suggests a selfishness or indulgence that perhaps does not fully acknowledge the experiences and circumstances of those who experience the trauma directly.<sup>270</sup> We need to reorient ourselves to the concept of self-care and recognize that it benefits clients, too, by “enabl[ing] healthy relationships with clients and . . . improv[ing] the long-term sustainability and effectiveness of the work.”<sup>271</sup> As Angela Davis has said, “[a]nyone who’s interested in making change in the world also has to learn how to take care of herself, himself, theirselves.”<sup>272</sup> Ultimately, “[s]elf-care is both a preventative and restorative response to stress, burnout, and vicarious trauma.”<sup>273</sup> As a community, we must normalize practicing self-care and talking about stress, burnout, and trauma.<sup>274</sup>

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267. Christine E. Doucet, *Law Student, Heal Thyself: The Role and Responsibility for Clinical Education Programs in Promoting Self-Care*, 23 J.L. SOC. POL’Y 136, 144 (analyzing the ethical imperative for self-care under the Canadian Association for Social Workers’ *Code of Ethics and Guidelines for Ethical Practice*).

268. See Rønning et al., *supra* note 24, at 666 (“[I]t is possible that the numbing, avoidance, and loss of trust associated with [vicarious trauma] can result in lawyers questioning their clients’ credibility and failing to pick up on clients’ distress. Consequently, they may fail to request medico-legal psychological assessment reports and refer to mental health services where appropriate.”).

269. Cartwright et al., *supra* note 32, at 83.

270. See, e.g., *id.* at 85.

271. *Id.* at 86 (advocating for a relationship-centered framework for self-care, which is rooted in the person-centered approach discussed in social work practice and the recovery model articulated by Dr. Mark Ragins, and acknowledging that lawyers and social workers cannot control outcomes but “can control the quality of the relationship they create in the time they share with the client.”).

272. AFROPUNK, *RADICAL SELF CARE: ANGELA DAVIS*, YOUTUBE (Dec. 17, 2018), <https://www.youtube.com/watch?v=Q1cHoL4vaBs>.

273. Stringfellow Otey, *supra* note 71, at 194.

274. As a resource, see *Human Rights Resilience Project*, <https://www.hrresilience.org> (last visited Oct. 7, 2021).

A. *Law Schools Must Take the Lead in Integrating Education About “Being a Lawyer” into the Curriculum*

In order to preserve and prepare law students for the stresses that accompany law practice and thus avoid the many pitfalls of the profession, it is important for legal education to not only teach the basics of “thinking like a lawyer.” It must also provide the skills and necessary tools for “being a lawyer.”<sup>275</sup>

Law schools have long been criticized for inadequately addressing trauma and its effects and for failing to prepare law students to consider psychological and emotional responses to lawyering.<sup>276</sup> Indeed, law school has even been described as “stress-based learning.”<sup>277</sup> And it is clear that attorney mental health struggles often begin in law school.<sup>278</sup> What is *not* being taught in law school is as important as what is being taught.<sup>279</sup> As Brittany Stringfellow Otey explains, “[t]he law school’s hidden curriculum includes ignoring stress and its consequences, focusing on studies to the exclusion of all else in a student’s life, utilizing substance abuse for escape, and failing to pay attention to mental health.”<sup>280</sup> Indeed, more than simply “ignoring stress,” in some ways, law school and the legal profession glorifies stress—all-nighters, lack of sleep, and martyrdom for the cause are all common occurrences.<sup>281</sup> Legal

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275. Stringfellow Otey, *supra* note 71, at 201.

276. See, e.g., Marjorie A. Silver et al., *Stress, Burnout, Vicarious Trauma, and Other Emotional Relatives in the Lawyer/Client Relationship: A Panel Discussion*, 19 *TOURO L. REV.* 847, 849 (2004) (stressing the importance of addressing trauma and its effects on attorneys and clients within the law school curriculum); Stringfellow Otey, *supra* note 71, at 150 (“[L]egal education has yet to find a comprehensive and effective way to educate and prepare young lawyers to mitigate or even prevent these professional impairments.”); see also Mallika Kaur, *Negotiating Trauma & Teaching Law*, 35 *J.L. & SOC. POL’Y* 113, 115–16 (2021).

277. Norton et al., *supra* note 62, at 992, 994 (concluding that lawyers’ “education and training do not provide protective factors that buffer them from the long-term effects of an adversarial (read: adverse) work environment.”).

278. Stringfellow Otey, *supra* note 71, at 188; Organ et al., *supra* note 27, at 144–45 (reporting not only high levels of law student drinking, anxiety, and depression but also extreme reluctance to seek help to address mental health issues).

279. Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 *CLINICAL L. REV.* 259, 282 (“Commentators have noted that the inattention to interpersonal skills in law schools contributes to the impairment of psychological well-being among law students and lawyers.”).

280. Stringfellow Otey, *supra* note 71, at 187.

281. This culture of martyrdom is similar to attitudes shared among human rights advocates. See Knuckey et al., *supra* note 7, at 274 (discussing martyrdom culture among human rights advocates, who sacrifice time and well-being for the cause).

culture in general defines success as “winning cases.”<sup>282</sup> As others have pointed out, this “outcomes oriented focus may make apparent ‘failure’ much more devastating to lawyers . . . .”<sup>283</sup>

Legal educators must address issues of trauma and burnout within their clinical and nonclinical classrooms. This begins with creating an awareness of the phenomena of burnout and STS, along with related mental health challenges facing law students and lawyers.<sup>284</sup> It should also include creating a supportive learning environment through modeling self-awareness and self-care.<sup>285</sup> Educators should consider connecting students with alumni or attorneys through career panels or other settings and introducing this topic for discussion. Experienced attorneys may be able to serve as mentors and share helpful advice on how to handle STS and burnout in this work. Finally, addressing these issues adequately means assigning relevant readings, marshalling in-class discussions, and requiring reflection exercises to prepare students for the realities of lawyering in high-stakes, high-stress environments.

One key measure to prevent and manage STS is awareness of the phenomenon.<sup>286</sup> Some reasons *not* to explore this topic in the law school context likely mirror the social work context. In the social work context, it has been suggested that there is limited time to address issues of mental health in an already packed core curriculum<sup>287</sup> and that there is a general reluctance to present the practice of law in a negative light. In the law school context, an additional reason for not properly addressing these issues is the culture of law school. Law school is commonly described as a cutthroat, intense, and demanding environment full of “Type A” personalities.<sup>288</sup> Among social-justice-

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282. Cartwright et al., *supra* note 32, at 84 (“[L]awyers generally define success as winning cases.” (citation omitted)).

283. *Id.* at 84 (explaining that in contrast to lawyers, social workers measure “process-oriented growth and development,” meaning that “[e]ven if the desired outcome in the legal case was not attained, a client’s experience of a relationship of trust or being heard is itself considered a success and valuable” (citations omitted)).

284. See Piwowarczyk et al., *supra* note 25, at 269 (encouraging the formal incorporation of “the topics of vicarious trauma and secondary traumatic stress into education and supervision of lawyers who are exposed to traumatic material”).

285. Jill C. Engle, *Taming the Tigers: Domestic Violence, Legal Professionalism, and Well-Being*, 4 TENN. J. RACE GENDER & SOC. JUST. 1, 6 (2015).

286. Newell & MacNeil, *supra* note 45, at 64 (“It has been suggested that the best defense against these conditions is education about them, including a clear understanding of the phenomena themselves, their risk factors, and symptoms.” (citations omitted)).

287. *Id.*

288. Richard C. Reuben & Kennon M. Sheldon, *Can Mindfulness Help Law Students with Stress, Focus, and Well-Being? An Empirical Study of 1Ls at a*

oriented law students and lawyers, there is sometimes a reluctance to make it “about them” and a preference to focus on the communities they serve, all the while adopting a “burn it all down” mentality.<sup>289</sup>

Increasingly, though, legal educators recognize a need to push back against the individualistic, tough mentality often encouraged by legal education.<sup>290</sup> Finding work-life balance is even more crucial for the millennial generation because the lines between work and life are blurred due to increasing digital fluency, among other factors.<sup>291</sup> This problem has likely been further exacerbated by the shift to remote working and learning as a result of the COVID-19 pandemic.<sup>292</sup> Indeed, during the pandemic, there has been a heightened focus on trauma and self-care: in panels held at the 2020 and 2021 AALS Clinical Conferences,<sup>293</sup> law review symposia focused on the topic,<sup>294</sup> and a Society of American Law Teachers Webinar on Trauma-Informed Teaching and Lawyering.<sup>295</sup>

Stringfellow Otey proposed a three-pronged approach to preparing law students to thrive as lawyers, which was adapted from the social work context and included psychoeducation, preparedness,

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*Midwestern Law School*, 48 SW. L. REV. 241, 260 (2019) (noting the law student culture of an “aversion in the first year to appearances of vulnerability”).

289. Helen Baillot et al., *Second-Hand Emotion? Exploring the Contagion and Impact of Trauma and Distress in the Asylum Law Context*, 40 J.L. & SOC'Y 509, 539 (2013) (sharing the results from a small study which indicated that “seeking support for the emotional aspects of their role would be viewed as admitting a weakness or failure, or inability to perform one’s work effectively”).

290. See generally Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515 (2007) (suggesting multiple ways to reform legal education against the current competitive culture).

291. See Stringfellow Otey, *supra* note 71, at 153–54.

292. See Theresa Agovino, *Create Boundaries Between Work and Home—Even When You Work from Home*, SHRM (June 10, 2020), <https://www.shrm.org/resourcesandtools/hr-topics/employee-relations/pages/create-boundaries-between-home-and-work-even-when-you-work-from-home-.aspx>.

293. At the 2021 AALS Clinical Conference, for example, there were at least eighteen concurrent sessions, lightning rounds, working groups, or poster presentations focused on the law student well-being—with key words in the titles of the sessions including burnout, empathy, resilience, vicarious trauma, health, mindfulness, trauma stewardship, and wellness. See AALS, *2021 Conference on Clinical Legal Education: Reckoning with our Past and Building for the Future*, <https://clinical.aals.org/program/>.

294. See, e.g., Wake Forest Law Review, *2021 Spring Symposium: Secondary Trauma in the Legal Profession* (Feb. 12, 2021), <http://www.wakeforestlawreview.com/2021-spring-symposium/>; Mitchell Hamline Law Review, *Trauma Informed Practice Symposium* (Mar. 22–26, 2021), <https://libguides.mitchellhamline.edu/c.php?g=1090505>.

295. Society of American Law Teachers, *Trauma-Informed Teaching and Lawyering* (Feb. 26, 2021), [https://mediaspace.msu.edu/media/SALT+Teaching+Social+Justice+Webinar+-+Trauma+Informed+Teaching+and+Lawyering/1\\_yvuqki7w](https://mediaspace.msu.edu/media/SALT+Teaching+Social+Justice+Webinar+-+Trauma+Informed+Teaching+and+Lawyering/1_yvuqki7w).



and practice.<sup>296</sup> Similarly, Mallika Kaur identified fourteen strategies that law professors can implement within their classrooms.<sup>297</sup> As Kaur noted, “in 2021, most law students are no longer willing to accept that their legal education must suppress emotions, including trauma.”<sup>298</sup> These strategies go beyond giving a “trigger warning” and instead deeply engage with what it means to adopt trauma-centered teaching.<sup>299</sup>

Ronald Tyler’s focus on “high-stress, high-touch practice settings” in his criminal work is applicable to immigration law, too.<sup>300</sup> As Tyler suggests, law school clinics are the places that we should be experimenting with practical tools to support lawyers, “in line with foundational premises of law school clinics as laboratories to develop practical tools for active lawyers.”<sup>301</sup>

Tyler developed an eight-week self-care workshop within his criminal defense clinic and has talked about his students graduating to join a “growing vanguard of effective attorneys who care for their clients and care equally for themselves.”<sup>302</sup> Tyler emphasizes the responsibility law schools have to care for students’ well-being— “[a] student in a criminal defense clinic can be seen as at the center of three concentric circles, each representing a domain that causes unique, but cascading, stress: law school, clinical education, and indigent defense.”<sup>303</sup> The same can of course be said of students engaged in immigration work. Tyler highlights that law students are in distress; there is legitimate cause for concern with law student well-being.<sup>304</sup>

Stringfellow Otey proposes that law schools must train students in practicing strategies for well-being, starting during law school orientation and continuing throughout the curriculum.<sup>305</sup> This

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296. Stringfellow Otey, *supra* note 71, at 182–201.

297. Kaur, *supra* note 276, at 117–19.

298. *Id.* at 113.

299. *Id.* at 115. Kaur prefers the term “trauma-centered teaching” over “trauma-informed” teaching. *See id.* at 115 n.8.

300. Tyler, *supra* note 62, at 5.

301. *Id.* at 18; *see also* Ardalan, *supra* note 21, at 46 (“Interdisciplinary teamwork in law school asylum clinics may thus serve as a laboratory for collaboration, encouraging and inspiring greater investment in this model in other settings.”).

302. Tyler, *supra* note 62, at 2.

303. *Id.* at 9.

304. *Id.* at 9–14.

305. Stringfellow Otey, *supra* note 71, at 199; *see also* Silver, *supra* note 279, at 310 (“We must teach [emotional intelligence] skills pervasively, throughout the curriculum. Students need to know from the first day of law school that understanding basic psychological principles and processes is as important to the practice of law as understanding legal principles and processes.”). Silver goes further to suggest that law school faculties should include mental health professionals. *Id.* This is also in line with the recommendations from the National Task Force on Lawyer Well-Being. *See* NAT’L TASK FORCE ON LAW.

includes devising and implementing a “‘maintenance’ self-care plan, demonstrat[ing] a supportive structure, and implement[ing] a ‘crisis’ self-care plan.”<sup>306</sup> In UDC Law’s Immigration and Human Rights Clinic, students engage in the “life well exercise,” delineating what replenishes their “well of energy or resilience” and what depletes their well.<sup>307</sup> Students engage in this exercise individually, then engage in a class discussion which generates a shared visual for the class to refer back to throughout the semester.<sup>308</sup> Others use the “Life Tree” tool to encourage introspection on well-being.<sup>309</sup>

Jill Engle proposes that it is important for law professors to “model [their] own coping tactics deliberately and openly, to normalize them and prompt reflection by . . . students about what coping mechanisms would work for them.”<sup>310</sup> In addition to her own efforts to model self-awareness and balance to students, Engle consciously brings in successful attorneys already working in her Clinic’s field of law to serve as partners and mentors for the students in navigating the emotional challenges of lawyering.<sup>311</sup> Engle emphasizes that “[a]s a teacher, [her] capability to be student-centered, which was bolstered by [her] own self-care, fostered their ability to be client-centered.”<sup>312</sup>

Ultimately, Tyler’s concluding remarks offer food for thought for all those engaged in legal education:

Just as my students owe a duty of zealousness to their clients, I owe a high duty of care to my students. I strive to ensure that their full engagement in the heartfelt work of representing people on the margins of society will not result in lasting

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WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE, 36–41 (2017) (outlining recommendations for law schools to seriously tackle the challenges of student well-being).

306. Stringfellow Otey, *supra* note 71, at 195–96, 199.

307. This exercise was derived from an exercise led by the Harvard Immigration and Refugee Clinic’s staff social worker, Liala Buoncuoti.

308. Jill Engle describes a similar exercise based on an article by Jean Koh Peters “urging law clinic students to engage in activities that ‘delight’ them as a way to manage the stress associated with clinic work.” Engle, *supra* note 285, at 8 (citing Jean Koh Peters, *Habit, Story, Delight: Essential Tools for the Public Service Advocate*, 7 WASH. U. J. L. & POL’Y 17 (2001)).

309. See, e.g., *Tree of Life: A Workshop Methodology for Children, Young People and Adults*, CATH. RELIEF SERVS. (2016), <https://www.crs.org/sites/default/files/tools-research/tree-of-life.pdf>.

310. Engle, *supra* note 285, at 5, 12. Engle also discloses her own use of mental health therapy for stress management and other techniques, which include eating a healthy diet, debriefing with trusted mentors and friends, and practicing yoga. *Id.*

311. *Id.* at 14–22.

312. *Id.* at 23.

damage from secondary traumatization and incipient burnout.<sup>313</sup>

Law students are increasingly interested in how to carve out a sustainable career in this field in the long run.<sup>314</sup> One potential tool for law students and lawyers alike is mindfulness.<sup>315</sup> Some law schools have incorporated mindfulness programs and courses into their curriculum.<sup>316</sup> Indeed, although mindfulness and meditation are often viewed as solo endeavors that are practiced on an individual basis, institutions can support the practice through teaching classes,<sup>317</sup> offering trainings, and encouraging mindfulness practices during the academic or work week.<sup>318</sup>

The University of Missouri School of Law implemented a mindfulness meditation program for first-year law students between 2013 and 2014.<sup>319</sup> The eight-week training program resulted in statistically significant benefits for law student participants in terms of stress and well-being.<sup>320</sup> Scholars suggest that mindfulness should

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313. Tyler, *supra* note 62, at 35; *see also* Doucet, *supra* note 267, at 153–55 (urging that clinics play a role in a cultural shift to normalize self-care and talking about stress management in the legal profession).

314. *See* Norton et al., *supra* note 62, at 1002 (“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.”).

315. Peter H. Huang, *Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, and Leadership*, 55 HOUS. L. REV. 63, 64 (2017) (suggesting research studies to determine whether mindfulness practice enhance legal ethics, decision-making, and leadership); Tim Iglesias, *Mindfulness as Resistance*, 48 SW. L. REV. 381, 395 (2019) (exploring myths around mindfulness and offering mindfulness as resistance by explaining that “(1) mindfulness meditation resists the mind’s tendency to let attention wander; and (2) mindfulness meditation and mindful practice resist certain dominant cultural and legal tendencies”).

316. *See, e.g.*, Charity Scott, *Mindfulness in Law: A Path to Wellbeing and Balance for Lawyers and Law Students*, 60 ARIZ. L. REV. 635, 669–72 (2018) (describing Georgia State University College of Law’s efforts to incorporate mindfulness and other wellness practices and encouraging other schools to do the same).

317. *See, e.g.*, Wake Forest Law, *Courses Catalog: Contemplative Practices and the Law*, <http://courses.law.wfu.edu/?id=475> (last visited Oct. 7, 2021) (“The mission of this class will be to train legal professionals to incorporate contemplative practices, mainly mindfulness and meditation practices, into daily life and into the practice of law in order to be more effective and ethical practitioners as well as achieve balance in life.”).

318. Scott, *supra* note 316, at 645.

319. Reuben & Sheldon, *supra* note 288, at 249.

320. *Id.* at 258–59.

be incorporated into the law school setting to address some of the commonly noted challenges facing law students and lawyers.<sup>321</sup>

In line with mindfulness, education in law school needs to focus on developing an awareness of and tools to manage vicarious trauma.<sup>322</sup> Exposure and discussion to these topics in law school is important to ensuring a healthy and sustainable legal career.<sup>323</sup> This should include discussion even within doctrinal courses, such as when professors and students discuss “the effect of client or witness testimony on the attorney, judge, or jury.”<sup>324</sup> As Amy Kimpel explains, “sustainable practice needs to take up more space in law school education; it should not be ghettoized to the clinical program but should be discussed in doctrinal classes as well.”<sup>325</sup> Ultimately, education in law school needs to redefine “success” as a lawyer, and this redefinition should move away from “winning cases”<sup>326</sup> and towards embracing what it takes to maintain a sustainable, fulfilling, and healthy career in the law.

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321. See, e.g., Shailini Jandial George, *The Cure for the Distracted Mind: Why Law Schools Should Teach Mindfulness*, 53 DUQ. L. REV. 215, 233 (2015) (“Because mindfulness training is linked with helping many conditions that negatively affect law students and lawyers, law schools should include it as part of their academic requirements, giving students and practicing lawyers tools they can use to combat these conditions.”).

322. See, e.g., Parker, *supra* note 107, at 183–93 (describing the vicarious trauma training provided to the students in her immigration clinic).

323. Norton et al., *supra* note 62, at 1002 (“Prevention, early identification, and intervention of burnout and compassion fatigue are most robust when they are a part of law school curricula.”); Leclerc et al., *supra* note 23, at 23 (“Shining some light on the issue of lawyers’ mental health and starting a dialogue would facilitate the process of increasing self-care among this group of professionals. However, self-care is a multi-level process that should be initiated at the educational level, maintained by the lawyers and supported at the organizational level to maximize outcomes.”).

324. Stringfellow Otey, *supra* note 71, at 189, 201. At Berkeley Law, since 2019, Mallika Kaur has taught a two-credit course titled “Negotiating Trauma, Emotions and the Practice of Law.” See Berkeley Law, *Law Schedule of Classes: Negotiating Trauma, Emotions & the Practice of Law* (Spring 2020), <https://www.law.berkeley.edu/php-programs/courses/coursePage.php?cID=25650> (last visited Oct. 7, 2021).

325. Kimpel, *supra* note 15, at 378.

326. See, e.g., Cartwright et al., *supra* note 32, at 84–85 (discussing how lawyers and social workers are trained differently and have different measures for success in a client relationship) (“Social workers, in contrast [to lawyers], measure process-oriented growth and development . . . Even if the desired outcome in the legal case was not attained, a client’s experience of a relationship of trust or being heard is itself considered a success and valuable.”).

*B. Reforms Beyond the Walls of the Law School: Institutional and Community Care in the Legal Profession*

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 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.<sup>327</sup>

Law school curricular reform, which entails infusing a discussion of emotional responses to lawyering throughout the curriculum, is a good place to start. But reform must go beyond the walls of the law school.<sup>328</sup> As the above quote makes clear, “the cost of caring is catching”;<sup>329</sup> unmitigated burnout and STS can spread throughout offices and institutions.<sup>330</sup> One Survey respondent shared:

*“I am an attorney supervisor at a non-profit organization representing detained immigrants in removal proceedings (and continuing on their cases if they are released). I am exhausted and numb. I work 13–14+ hour days 6–7 days a week. One of the most significant causes of my own burnout is the mass burnout of the attorneys in my office who I am supervising. The attrition rate is incredible and it has been difficult to keep people on staff for more than a year. I have had friends and colleagues stop working in immigration removal defense due to the onset of panic attacks and other anxiety issues.”*

Previous scholarship has highlighted findings that “[o]rganizational factors shown to contribute to professional burnout include excessively high caseloads, lack of control or influence over agency policies and procedures, unfairness in organization structure and discipline, low peer and supervisory support, and poor agency and on-the-job training.”<sup>331</sup> It is well past time to move beyond

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327. Norton et al., *supra* note 62, at 997.

328. *Id.* at 1002 (“[T]he 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.”).

329. *Id.* at 997.

330. *Id.*

331. Newell & MacNeil, *supra* note 45, at 59 (citing Michàl E. Mor Barak et al., *Antecedents to Retention and Turnover Among Child Welfare, Social Work, and Other Human Service Employees: What Can We Learn from Past Research? A Review and Metaanalysis*, 75 SOC. SERVS. REV. 625 (2001); CHRISTINA MASLACH & MICHAEL P. LEITER, *THE TRUTH ABOUT BURNOUT: HOW ORGANIZATIONS CAUSE PERSONAL STRESS AND WHAT TO DO ABOUT IT* (1997)).

encouraging individuals to practice personal self-care, seek counseling, increase exercise and leisure time, and build their own resilience. Instead, institutional intervention and institutionally supported self-care must become a reality.<sup>332</sup>

Before proposing what institutional care in the immigration legal field should entail, we must first identify what the relevant institutions are. Some places to start are state bar associations and licensing authorities. Most states include Continuing Legal Education (“CLE”) requirements as a condition to maintain a law license.<sup>333</sup> Many CLE offerings include sessions focused on working with survivors of trauma or focused on alcoholism, substance abuse, and stress management more generally.<sup>334</sup> CLE offerings should be expanded to include more content related to STS and the emotional responses lawyers have to lawyering.<sup>335</sup>

Beyond state bar associations, by institutions we refer to not only individual employers, including private law firms and nonprofit organizations that serve asylum seekers and immigrants more broadly, but also to membership organizations like AILA. AILA is by far the largest bar association of immigration attorneys in the United States, with over 15,000 immigration attorney and law professor members.<sup>336</sup> AILA is organized into thirty-nine member chapters and more than fifty committees.<sup>337</sup> In 2016, AILA launched the Self-Care Center in response to demand from members for additional support managing the stresses of immigration practice.<sup>338</sup> In 2020, AILA created a Lawyer Well-Being Committee, which hosted the first Lawyer Well-Being Week in May 2020, which they continued in

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332. See, e.g., Levin et al., *supra* note 2, at 953 (encouraging institutional interventions); Baillet et al., *supra* note 289, at 537–39 (discussing reliance on peer emotional support networks and the downsides of that practice but also raising concerns about the extent to which individuals would take advantage of more formalized, organizational support).

333. *CLE FAQs for Newly-Admitted Attorneys*, ABA, [https://www.americanbar.org/events-cle/mcle/new-lawYERS/cle-faqs-for-new-LAWYERS/](https://www.americanbar.org/events-cle/mcle/new-lawYERS/cle-faqs-for-new-lawYERS/) (last visited Oct. 7, 2021).

334. See, e.g., *CLE Marketplace*, ABA, <https://www.americanbar.org/cle-marketplace/> (last visited Oct. 7, 2021) (providing search categories by credit type titled “Mental Illness Awareness,” “Substance Abuse Awareness,” and “Wellness”).

335. See generally *Finding the Compassion Balance: Mindful Lawyering & Vicarious Trauma (Webinar)*, N.Y. STATE BAR ASS’N (July 21, 2020), <https://nysba.org/events/finding-the-compassion-balance-mindful-lawyering-vicarious-trauma-webinar/> (offering a CLE program regarding vicarious trauma).

336. *About*, AM IMMIGR. LAWS. ASS’N, <https://www.aila.org/about> (last visited Oct. 7, 2021).

337. *Id.*

338. Email from Reid Trautz, Senior Dir., Prac. & Professionalism Ctr., Am. Immigr. Laws. Ass’n, to Lindsay Harris, Professor of L., Univ. of the Dist. of Columbia (Feb. 9, 2021, 5:19 PM) (on file with author).

2021.<sup>339</sup> In October 2020, AILA launched their Well-Being Center, an online collection of resources to support attorney self-care and mental health.<sup>340</sup> Individual AILA Chapters may also have well-being programs.<sup>341</sup>

The National Immigration Project of the National Lawyers Guild (“NIP”) has over 1,000 members.<sup>342</sup> The Immigration Law Section of the Federal Bar Association has over 600 members.<sup>343</sup> The recommendations below apply not only to organizations like AILA, the NIP, and the Federal Bar Association (“FBA”), which play a particularly crucial role in supporting solo practitioners, but they also apply to small, medium, and large firms, along with academic institutions and nonprofit organizations.

Having identified some of the relevant institutional actors—what should institutional care include? The following are essential:

- (1) Reducing and diversifying caseloads;
- (2) Training within workspaces on burnout, STS, and related phenomena, along with self-assessments and screening within the workplace;
- (3) Policies that encourage work-life balance, including vacation, sabbaticals, parental and caregiving leave, flexible work policies, and personal time;
- (4) Cultivating resilience and finding ways to celebrate the “small wins”; and
- (5) Access to group and individual therapy.

### *1. Reducing and Diversifying Case Loads*

Attorneys surveyed were associated with higher levels of burnout and STS when they handled a higher number of asylum cases. Previous studies attribute higher levels of STS and burnout among attorneys to “attorneys’ higher caseloads and lack of supervision around trauma and its effects.”<sup>344</sup> Other studies of nonattorneys have also suggested that having a heavy caseload of traumatized clients exacerbates the risk of STS.<sup>345</sup>

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339. *Well-Being Week in Law*, AM. IMMIGR. LAWS. ASS’N, <https://info.aila.org/wellness2021> (last visited Oct. 7, 2021).

340. Email from Reid Trautz, *supra* note 338.

341. *Resources by State*, AM. IMMIGR. LAWS. ASS’N, <https://www.aila.org/infonet/state> (last visited Oct. 7, 2021).

342. *See Internships*, NAT’L IMMIGR. PROJECT NAT’L LAWS. GUILD, <https://www.nationalimmigrationproject.org/internships.html> (last visited Oct. 7, 2021).

343. *Immigration Law Section*, FED. BAR ASS’N, <https://www.fedbar.org/immigration-law-section/> (last visited Oct. 7, 2021).

344. Levin & Greisberg, *supra* note 7, at 245.

345. Grace Maguire & Mitchell K. Byrne, *The Law Is Not as Blind as It Seems: Relative Rates of Vicarious Trauma Among Lawyers and Mental Health Professionals*, 24 PSYCHIATRY, PSYCH. & L. 233, 234 (2017); *see also* Knuckey et al., *supra* note 7, at 300 (noting that nonlegal professionals have used tactics such

No comprehensive data exists on the number of cases that the average asylum or immigration attorney handles. The most recent 2019 AILA Marketplace survey reported that in 2019, one third of immigration attorneys shared that they were overwhelmed by their workload.<sup>346</sup> What is clear is that trauma exposure has an effect on attorney symptomatology.<sup>347</sup> We know from other data that the number of asylum seekers has increased in recent years and that immigration courts<sup>348</sup> and other agencies dealing with immigration are overwhelmed.<sup>349</sup>

Of course, higher case numbers will logically result in increased work hours. This Survey shows that higher hours worked is associated with increased levels of STS and burnout. It is of course not only the *number* of cases but also the substance of the work involved on the cases that makes a difference.<sup>350</sup> For this reason, institutions should consider diversifying caseloads and dividing up work between attorneys to permit a break from intensive asylum work as well as work with survivors of trauma or torture more broadly.<sup>351</sup> This can be challenging, however, and while diversifying caseloads may potentially reduce STS, it also may actually increase burnout or STS in other dimensions given that diversifying caseloads requires immigration lawyers to master different areas of law or forms of relief. While there may be no right way to strike this balance, the tension is worth bearing in mind as lawyers and supervisors navigate reasonable workloads and caseloads.

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as training and education support, along with reducing or diversifying caseloads to minimize trauma exposure, to effectively avoid vicarious trauma).

346. See AM. IMMIGR. LAWS. ASS'N, *supra* note 26, at 45.

347. Marie-Jeanne Léonard et al., *When the Lawyer Becomes Traumatized: A Scoping Review*, SAGE OPEN 1, 7–8 (2020).

348. See generally Lindsay M. Harris, *The One Year Bar in the Age of the Immigration Court Backlog*, 2016 WIS. L. REV. 1185 (discussing the “overburdened immigration court system”).

349. Eisha Jain, *The Interior Structure of Immigration Enforcement*, 167 U. PA. L. REV. 1463, 1470 (2019) (sharing that immigration cases “not only dominate the workload of federal prosecutors; they have eclipsed every other area of prosecution”); Jason A. Cade, *Enforcing Immigration Equity*, 84 FORDHAM L. REV. 661, 699 (2015) (lamenting the prosecutorial bias that is exacerbated by heavy workloads for Immigration and Customs Enforcement trial attorneys).

350. McCann and Pearlman recognize that other helpful coping methods for therapists confronted with burnout and STS include work/life balance; mixing up the casework and other work to be done; creating and respecting personal boundaries; setting realistic expectations; taking time to experience fully any emotional reactions that come up; nurturing and supporting ourselves; and seeking out activities that provide hope and optimism. McCann & Pearlman, *supra* note 48, at 146.

351. See, e.g., Kimpel, *supra* note 15, at 375–76 (suggesting diversifying caseloads for public defenders who are increasingly exposed to violent video content in the cases they handle).



2. *Training, Self-Assessments, and Screening for Burnout and Secondary Trauma*

Institutions must provide training on STS, burnout, and related phenomena.<sup>352</sup> In addition, institutions must create spaces *within* the workplace<sup>353</sup> to process emotions and debrief cases both in supervisory relationships and also peer-to-peer relationships.<sup>354</sup> Finally, self-assessments on STS and burnout should be regularly encouraged and made a mandatory part of any attorney evaluation process.

In the context of public defender burnout, and particularly in response to the increase in violent video content public defenders must process in the course of their work, Kimpel suggests that organizational responses must be robust.<sup>355</sup> Kimpel suggests that organizations should implement self-assessment and screening tools,<sup>356</sup> along with establishing relationships with treatment providers, ensuring a diverse caseload, facilitating peer support groups and therapy, and embracing mindfulness as a practice.<sup>357</sup>

Training on these topics must be provided to all new and temporary staff (including legal interns) in a work environment. Nonprofit organizations should build funding for such training into their grant applications and budget. Within all institutions, this training should be ongoing, and self-assessments on burnout and STS should be embedded into the institutions' evaluation processes. As part of a six-month or annual review, for example, an attorney should be asked to take the ProQOL test<sup>358</sup> or another similar test, and the attorney should compare results over time, reflecting on caseload and workload, along with the level of supervisory and administrative support that the attorney enjoys. These measures would increase transparency around these challenging topics in the workplace.

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352. Major Evan R. Seamone, *Sex Crimes Litigation as Hazardous Duty: Practical Tools for Trauma-Exposed Prosecutors, Defense Counsel, and Paralegals*, 11 OHIO ST. J. CRIM. L. 487, 573 (2014) (“[T]he organization must warn its members of the inherent risks of trauma work. This translates into producing training about the realities of experiencing STS and allowing the time, space, and encouragement to obtain assistance when required.” (citations omitted)).

353. *See, e.g.*, Cartwright et al., *supra* note 32, at 86.

354. *See* Piwowarczyk et al, *supra* note 25, at 7 (noting that debriefing with outsiders, peers, and supervisors has value).

355. Kimpel, *supra* note 15, at 375–76.

356. *Id.* at 375.

357. *Id.* at 376–77.

358. *See Professional Quality of Life, PROQOL*, <https://www.proqol.org> (last visited Oct. 7, 2021).

### 3. *Strong Organizational Policies to Encourage Work-Life Balance*

Institutions must create strong organizational policies to support work-life balance. This includes ensuring that there are organizational policies to not only allow but also encourage taking vacation and time off more broadly as needed for illness and personal issues. It should also include measures like sabbaticals and separation from work.<sup>359</sup>

Balance is even more important with the digital age and the COVID-19 pandemic rise in remote work. Today's technology has rendered the "four walls of the office . . . nonexistent."<sup>360</sup> The commitment to attorney mental health must come from the top down, and organizations must foster a collaborative work environment, as well as provide and develop resources to cultivate emotional resilience and promote activities to foster "connection, understanding, and appreciation."<sup>361</sup>

The AILA Marketplace survey shares that 56 percent of immigration attorney respondents are women in full-time practice.<sup>362</sup> Given this percentage, along with the higher levels of self-reported STS and burnout associated with female-identifying attorneys who were surveyed, workplaces for immigration attorneys in particular need to ensure that they have strong practices to support working parents (such as maternity and paternity leave) and those with other caregiving responsibilities. Organizational policies should also focus on creating flexibility for attorneys. The COVID-19 pandemic has revealed how effectively we can work remotely. Organizations should consider allowing teleworking periodically to enhance work-life balance, reduce commute times, and minimize other stress. Organizations should also consider regular and emergency childcare support for working parents.

### 4. *Cultivating Resilience and Finding Ways to Celebrate the "Small Wins"*

Most asylum attorneys are drawn to this work by the resilient and inspiring clients with whom they work. Institutions must find ways to create a culture of appreciation and ways to celebrate the wins, big and small. Cultivating optimistic perseverance, which is the ability to "maintain[] optimism and hopefulness in the face of tragedy," is critical.<sup>363</sup> Reminding ourselves of the positive

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359. See Norton et al., *supra* note 62, at 999 ("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.").

360. Stringfellow Otey, *supra* note 71, at 151.

361. Norton et al., *supra* note 62, at 1001–02.

362. See AM. IMMIGR. LAWS. ASS'N, *supra* note 26, at 5.

363. McCann & Pearlman, *supra* note 48, at 146.

contribution our work has on victims of trauma is important too.<sup>364</sup> This may have become more challenging in recent years. As one Survey respondent explained, “[W]hen I win a case (I have been doing this for 10 years) the happiness and euphoria lasted sometimes weeks. Since [the] Trump assault to our asylum law the euphoria is just momentary . . . .”

Institutions and even solo practitioners must create ways to celebrate the small wins. Ideas could include creating a culture of appreciation and shout-outs. Starting staff meetings or check-ins by acknowledging positive results or outcomes from the previous day or week is one way to do this. Offices may want to implement specific protocols around client victories and to define these victories broadly. Such a broad definition would include not only an asylum grant, a green card approval, or a client being released from detention, but it would also include a work permit approval, a client opening up about a necessary but difficult topic, or discovery of a great piece of evidence on a case. Acknowledging small milestones as well as major victories, and appreciating the work and effort that goes into those achievements, can help create this culture of positivity. Perhaps the office should also create a visual representation of positive results.<sup>365</sup>

Ultimately, solo practitioners and attorneys at firms or legal service providers alike must view crafting resilience for sustaining a career in immigration law. Some excellent work has been done exploring stress hardiness (also known as “resilience”) and lawyers. In 2018, after a survey of 530 law students and lawyers along with 106 in-depth interviews, researchers shared that lawyers with stress hardiness seemed to share (1) a sense of purpose, (2) a sense of control, and (3) cognitive flexibility, including an ability to shift from one style of coping to another.<sup>366</sup>

Abbe Smith frames this as a question of individual attorney values;<sup>367</sup> she describes three motivating and sustaining values for a sustained career in criminal defense—respect for clients, a love of the professional craft of defense lawyering, and a sense of outrage.<sup>368</sup> These three qualities combined fuel and sustain Smith, and she

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364. *Id.* at 147.

365. This practice has been implemented in private firms, law school clinics, and nonprofit organizations. One Boston University Clinic has students write the victory on a small white stone that is then dropped in a “victory vase” as a visual representation of successes. Email from Sarah Sherman-Stokes, Assoc. Dir. & Clinical Assoc. Professor, Immigrants’ Rts. and Hum. Trafficking Program, Boston University Sch. of L., to Lindsay Harris, Professor of L., Univ. of the Dist. of Columbia (Sept. 1, 2021, 07:32 EDT) (on file with author).

366. *See* Pierson et al., *Stress Hardiness and Lawyers*, 42 J. LEGAL PRO. 1, 4 (2017).

367. *See* Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathic, Heroic Public Defender*, 37 U.C. DAVIS L. REV. 1203, 1264–65 (2004).

368. *Id.* at 1265.

believes they do the same for other “career defenders.”<sup>369</sup> Perhaps for immigration attorneys it is these same three qualities along with a commitment to trauma stewardship that create a foundation for “career asylum attorneys.”

##### 5. Access to Group and Individual Therapy

Attorneys must be able to access therapy without fear of judgment or retribution.<sup>370</sup> Institutions should give immigration attorneys access to group and individual therapy. For solo practitioners, membership organizations like AILA should negotiate discounted rates for therapy for members and their support staff. For nonprofit organizations, funding for group and individual therapy should be aggressively worked into grant applications. Even more broadly, employers and membership organizations like AILA should negotiate and fund health insurance plans that provide adequate coverage for mental health services. Currently, many plans cover just a limited number of sessions in a year, which may be inadequate for many attorneys navigating burnout and STS in their daily work.<sup>371</sup>

Therapy in a group setting can be helpful to “acknowledge, express and work through . . . painful experiences in a supportive environment.”<sup>372</sup> The risks of failing to work to “openly acknowledge[] and resolve[]” these feelings are that the individual “may begin to feel numb or emotionally distant, thus unable to maintain a warm, empathetic, and responsive stance with clients.”<sup>373</sup> In the therapeutic setting, individuals avoid and manage reactions to working with trauma clients through engagement with other professionals who also work with survivors of trauma, and these interactions provide professional, intellectual, and emotional support.<sup>374</sup>

Support groups or therapy circles for attorneys may be very beneficial.<sup>375</sup> Much like the benefits from debriefing that occurs daily for attorney and law student volunteers in family detention centers<sup>376</sup>

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369. *Id.*

370. Chris Ritter, *Ten Helpful Tips for Lawyers Dealing with Stress, Mental Health, and Substance Use Issues*, IMLA (May 2021), <https://imla.org/2021/05/ten-tips-for-lawyer-well-being/>.

371. Knuckey et al., *supra* note 7, at 278.

372. McCann & Pearlman, *supra* note 48, at 144.

373. *Id.* at 144.

374. *Id.* at 145.

375. *Id.* (stressing that support groups can help normalize reactions that helpers experience during their work, provide a deeper understanding of one’s own specific reactions, and provide a space to speak freely); *see also* Lustig et al., *supra* note 181, at 30 (recommending a support network for immigration judges suffering from burnout and stress).

376. *See* Harris, *supra* note 21, at 164 (describing benefits from practices like the “big table,” which was first developed at the end of the day for lawyers engaged in crisis lawyering in Artesia, New Mexico, and the practice of sharing highs and lows for each day).

or for volunteers at the border in Tijuana, Mexico,<sup>377</sup> there are huge benefits to group debriefing and processing more generally. Resolving trauma that asylum attorneys themselves have endured is also especially important.<sup>378</sup> Some institutions have created book clubs to read through key texts, creating dedicated safe spaces to discuss trauma exposure and trauma stewardship.<sup>379</sup>

Now it is more important than ever to provide support for new attorneys entering the field, as one Survey respondent explained:

*“I started being an attorney under the [T]rump administration, and I may end my career under the [T]rump administration. I do not enjoy being an immigration attorney[,] and I do not feel that I am making a difference. We are losing and losing fast.”*

## V. AREAS FOR FUTURE EXPLORATION

It may make sense to engage in a longitudinal study of this population, particularly as some variables begin to change, like the hostility of a presidential administration towards asylum seekers or a reduction in caseloads. Survey respondents can be tracked using the unique identifier embedded in the Survey<sup>380</sup> to enable an assessment of how respondents fare over time in terms of levels of STS and burnout.

One question not posed by the Survey was whether respondents themselves are trauma survivors. Prior studies have found that survey participants with a history of prior trauma in their own lives had higher levels of PTSD relative to those without a personal history of trauma.<sup>381</sup> A whole host of factors may affect an individual's likelihood of developing STS, including one's own trauma experiences

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377. See generally Kayleen Hartman, *Lawyering Over the Line: Teaching Crisis Lawyering with Law Students Serving Asylum Seekers in Mexico*, 35 GEO. IMMIGR. L.J. 47 (2020).

378. McCann & Pearlman, *supra* note 48, at 146 (proposing that awareness of personal conflict areas or unresolved trauma can be beneficial for helpers engaged in work with survivors).

379. E-mail from Hannah C. Cartwright, Exec. Dir. & Att'y, Mariposa Legal, to Lindsay Harris, Professor of L., Univ. of the Dist. of Columbia (July 31, 2021, 12:58 AM) (on file with author) (sharing two nonprofits where such book clubs were held examining LAURA VAN DERNOOT LIPSKY & CONNIE BURK, *TRAUMA STEWARDSHIP: AN EVERYDAY GUIDE TO CARING FOR SELF WHILE CARING FOR OTHERS* (2009) and LAURA VAN DERNOOT LIPSKY, *THE AGE OF OVERWHELM* (2018)).

380. This was the name of the Survey respondent's favorite teacher along with the sum of the last four digits of their social security number.

381. See Leclerc et al., *supra* note 213, at 15–16; Maguire & Byrne, *supra* note 345, at 234 (noting that a personal history of trauma was associated with higher reports of vicarious trauma).

and whether those trauma issues are “resolved.”<sup>382</sup> One Survey respondent shared:

*“It is hard working with traumatized clients on a daily basis, especially when you’ve suffered personal trauma yourself. I don’t know how much of my survey answers are because of my personal (recent) trauma or because of secondary trauma from clients. Certainly one is making the other one worse. I’ve been in therapy for my personal trauma for almost two years. My work with asylum seekers and the effects of [the Trump] administration’s immigration policies comes up frequently in sessions.”*<sup>383</sup>

The many ways in which asylum attorney identity and client identities overlap should also be explored. A small study of fifty-seven asylum attorneys found, for example, that being born outside the United States was statistically significant and associated with an elevated trauma score.<sup>384</sup> Other personality attributes, including perfectionism and low levels of self-efficacy, may also predispose individuals to PTSD and other related phenomena.<sup>385</sup>

Other research should explore how other helping professionals working with asylum seekers are affected by their work. The surveyed helping professionals should include paralegals, staff assistants, accredited representatives, interpreters, social workers, and case managers. One Survey respondent noted, “*While it is hard for me to listen to and read so many accounts about violence and death, I know it is even more difficult for the staff I work with, for whom it brings back vivid personal memories of the countries they left.*”

A 2011 study found that administrative support staff surveyed in the Wisconsin State Public Defender’s Office had lower levels of PTSD, depression, functional impairment, burnout, and STS than the attorneys surveyed in the same office.<sup>386</sup> This may or may not bear out for administrative staff, including paralegals, engaged in immigration and specifically asylum work, because paralegals very often draft detailed declarations for asylum applicants explaining the

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382. The study of 476 Canadian attorneys explained that “women who had previously experienced a direct trauma in their personal lives and those who worked more hours a week were at increased risk for depression and anxiety symptoms.” Leclerc et al., *supra* note 213, at 16.

383. Another Survey respondent wrote:

*“As a survivor of abuse myself, I find that my ‘primary’ and ‘secondary’ traumas meld. The questions about “do you avoid people and places related to your work with asylum seekers” is difficult, because in fact I avoid things that remind me of my personal trauma, but all of those responses are endlessly amplified by my experience working with asylum seekers.”*

384. See Piwowarczyk et al., *supra* note 25, at 4.

385. See Knuckey et al., *supra* note 7, at 312–14.

386. Levin et al., *supra* note 2, at 953.

persecution feared and endured. This direct contact with asylum seekers and trauma exposure would potentially mean that administrative support staff working in the immigration setting could have similarly high levels of burnout and STS to the asylum attorneys surveyed in this study, or potentially even higher.

Another limitation to our Survey is possible omitted variable bias. In other words, it could be that a variable not included within our regression models could account for part of our findings regarding burnout and STS.<sup>387</sup> For example, respondents who took our Survey after March 15, 2020, may have struggled with childcare, illness, finances, or other sources of burnout or STS that were related to the COVID-19 pandemic. Similarly, respondents who took our Survey prior to March 15, 2020, could have experienced burnout or STS for reasons not captured by either the CBI or STSS. In response to the open-ended question at the end of the Survey, some respondents shared that they struggled with the stress of their work because they were pregnant or parents of young children. Given that female Survey respondents were associated with higher levels of STS and burnout compared to men, future research should further explore the relationship between immigration practice and parenting.

It may also be important to consider the role of supervision in mitigating—or conversely, exacerbating—STS for asylum attorneys. The small U.K. study of seventy asylum attorneys shared mixed results regarding supervision—receiving more supervision was actually associated with higher anxiety levels.<sup>388</sup> The authors of that study suggest that the quality and content of the supervision would make a difference, and this issue needs to be studied in more depth.<sup>389</sup> In the social work context, for example, supervision is thought to make a difference.<sup>390</sup> In the open-ended responses to this Survey, one attorney respondent emphasized the importance of the quality of supervision: “*I feel more burn out [sic] when I have a bad supervisor. Having a good supervisor makes this work so much more sustainable.*” Two respondents highlighted the challenges of being a supervisor and managing one’s own vicarious trauma along with the responsibility for those you are supervising: “*It is very challenging to be in a supervisory/leadership role in managing one’s own vicarious trauma and burnout while also supporting a cascade of attorneys to effectively steward their own trauma and vicarious trauma.*” Further efforts to explore psychological responses to lawyering should focus on the

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387. *Omitted Variable Bias: Definition & Examples*, STATOLOGY (Sept. 20, 2020), <https://www.statology.org/omitted-variable-bias/>.

388. Rønning et al., *supra* note 24, at 670, 672.

389. *See id.* at 673.

390. Maguire & Byrne, *supra* note 345, at 234 (“[I]t is suggested that professionals who report having good support systems, particularly with colleagues and supervisors, may be more resilient . . . due to the opportunity of addressing responses to their clients’ trauma.” (citations omitted)).

dynamics between lawyers and the pressures that various structures or hierarchies may impose. CLE efforts should focus on training lawyers to be trauma-sensitive managers and supervisors.

Finally, research to revisit and assess how adjudicators, including IJs and asylum officers, are affected by their work with asylum seekers should be explored in a more robust way.<sup>391</sup> As mentioned earlier, Professor Lustig and his colleagues explored IJ burnout specifically.<sup>392</sup> It would be worthwhile to revisit and resurvey the population given the requirement in recent years that adjudicators, more than ever, implement policies with which they do not agree.<sup>393</sup> IJs were under more stress than ever with new performance metrics announced in March 2018 and implemented later that year.<sup>394</sup> At the same time, in November 2020, the Federal Labor Relations Authority decertified the National Association of Immigration Judges, stripping the IJs of their collective bargaining rights.<sup>395</sup> Some of this has and will change under the Biden administration and future administrations.<sup>396</sup> Still, immigration judges remain under tremendous pressure to complete cases and face an ever-mounting backlog of cases for adjudication, and many of those cases necessitate trauma exposure.<sup>397</sup>

#### CONCLUSION

This Article is the beginning of a larger conversation, and one in which we hope to normalize discussions of STS, burnout, and the psychological toll of asylum lawyering, immigration lawyering, and lawyering more broadly.

We know from larger studies that attorneys as a population are struggling with a range of mental health challenges. That immigration attorneys would suffer from burnout and STS is no surprise, and asylum attorneys as a subset of immigration attorneys

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391. See, e.g., Aschenbrenner, *supra* note 22, at 439.

392. Lustig et al., *supra* note 22, at 57–58.

393. See, e.g., Doug Stephens, *Why I Quit My Job Carrying Out Trump's Immigration Policies*, N.Y. TIMES (Nov. 20, 2019), <https://www.nytimes.com/2019/11/20/opinion/trump-asylum-remain-mexico-policy.html>.

394. Fatma E. Marouf, *Executive Overreaching in Immigration Adjudication*, 93 TUL. L. REV. 707, 733–35 (2019).

395. *Featured Issue: FLRA Strips Immigration Judges of Collective Bargaining Rights*, AM. IMMIGR. LAWS. ASS'N (June 28, 2021), <https://www.aila.org/advo-media/issues/all/doj-move-decertify-immigration-judge-union>.

396. Jens Manuel Krogstad & Ana Gonzalez-Barrera, *Key Facts About U.S. Immigration Policies and Biden's Proposed Changes*, PEW RSCH. CTR. (Mar. 22, 2021), <https://www.pewresearch.org/fact-tank/2021/03/22/key-facts-about-u-s-immigration-policies-and-bidens-proposed-changes/>.

397. Marissa Esthimer, *Crisis in the Courts: Is the Backlogged U.S. Immigration Court System at Its Breaking Point?*, MIGRATION POL'Y INST. (Oct. 3, 2019), <https://www.migrationpolicy.org/article/backlogged-us-immigration-courts-breaking-point>.



seem particularly susceptible given the high stakes and trauma inherent in asylum lawyering. We now have concrete data to support those suspicions.

As we emerge from a particularly low point with regards to the state of immigration in the United States, this moment, combined with the data from this study, warrant a more thoughtful approach to the training and support of current and future asylum attorneys—supporting attorneys in engaging in the representation of asylum seekers and other trauma-exposed populations.

With this, it is critically important that we acknowledge trauma-related phenomena and actively work to prevent and address the symptoms as they manifest. We cannot keep training law students and lawyers in the same way and expect a different result. Acknowledging attorney STS and burnout should in no way minimize what asylum-seekers themselves have endured. Indeed, in fully preparing for and acknowledging the effects of trauma, and by moving these effects from the subconscious to the conscious, asylum attorneys can be better supported, more ethical, more engaged, and more thoughtful partners in the quest for justice and protection.

## APPENDIX

*Table 1: Means, standard deviations, and correlations with confidence intervals*

Scale	<i>M</i>	<i>SD</i>	1	2	3	4	5	6	7
CBI Personal	65.12	17.11							
CBI Work	63.60	16.48	.82** [.80, .85]						
CBI Client	44.75	20.29	.42** [.35, .48]	.51** [.45, .56]					
CBI Overall	58.15	15.15	.86** [.84, .88]	.91** [.89, .92]	.77** [.74, .80]				
STSS Intrusion	2.85	0.73	.53** [.47, .58]	.57** [.52, .62]	.35** [.28, .41]	.56** [.51, .61]			
STSS Avoidance	2.87	0.68	.57** [.52, .62]	.64** [.59, .68]	.54** [.49, .59]	.69** [.65, .73]	.55** [.50, .60]		
STSS Arousal	3.16	0.76	.59** [.54, .64]	.62** [.58, .67]	.35** [.29, .42]	.61** [.56, .65]	.60** [.55, .65]	.64** [.60, .68]	
STSS Overall	2.95	0.61	.66** [.61, .70]	.71** [.68, .75]	.49** [.44, .55]	.73** [.70, .76]	.82** [.79, .84]	.88** [.86, .90]	.86** [.85, .88]

*Note.* *M* and *SD* are used to represent mean and standard deviation, respectively. The columns labeled 1 to 7 show the extent to which different scales are correlated with one another. The values in square brackets indicate the 95% confidence interval for each correlation. The confidence interval is a plausible range of population correlations that could have caused the sample correlation (Cumming, 2014). \* indicates  $p < .05$ . \*\* indicates  $p < .01$ .

Table 2a: Copenhagen Burnout Inventory (CBI) Regression Results

<i>Predictors</i>	<b>CBI Overall</b>		<b>CBI Personal</b>		<b>CBI Work</b>		<b>CBI Client</b>	
	<i>Estimates</i>	<i>RSE</i>	<i>Estimates</i>	<i>RSE</i>	<i>Estimates</i>	<i>RSE</i>	<i>Estimates</i>	<i>SE</i>
(Intercept)	57.52***	3.45	63.08***	3.80	61.73***	3.89	47.55***	4.60
Age [linear]	-3.09	3.26	-7.58*	3.90	-5.87	4.18	4.42	4.57
Gender [Female]	6.86***	1.48	8.43***	1.74	7.44***	1.63	4.40*	2.05
Gender [Other]	7.11	4.43	7.19	5.36	8.45	4.36	3.01	5.78
Race: Black / African American	5.85	5.50	4.21	6.02	5.11	6.04	8.16	5.70
Race: Middle Eastern / North African	11.79*	2.10	16.11**	3.48	13.42**	2.84	5.64	6.17
Race: Asian / Pacific Islander	4.74	2.27	3.79	2.85	2.89	2.20	7.82*	3.71
Race: LatinX / Hispanic	2.55	1.44	2.95	1.55	1.55	1.52	2.80	1.95
Race: Mixed Race	2.44	2.51	1.64	2.87	2.51	2.61	3.01	3.15
Race: Other	-0.32	4.13	1.91	4.65	-2.10	4.02	-0.71	4.47
Workplace: Small Firm (2-5 Attorneys)	-5.46**	2.00	-6.06**	2.32	-5.97**	2.17	-4.43	2.59
Workplace: Medium Firm (5-9 Attorneys)	-2.10	3.34	-5.78	3.30	-2.84	3.39	2.67	4.39
Workplace: Large Firm (10+ Attorneys)	-1.05	2.99	-1.70	3.78	0.36	3.69	-2.06	4.51
Workplace: Non-Profit Organization	-6.11**	1.84	-5.45**	2.07	-4.25*	1.96	-8.69**	2.50

Table 2b: Copenhagen Burnout Inventory (CBI) Regression Results

<i>Predictors</i>	CBI Overall		CBI Personal		CBI Work		CBI Client	
	<i>Estimates</i>	<i>RSE</i>	<i>Estimates</i>	<i>RSE</i>	<i>Estimates</i>	<i>RSE</i>	<i>Estimates</i>	<i>SE</i>
Workplace: Volunteer (NotPaid)	-20.68***	6.86	-12.81	7.97	-18.15**	8.00	-31.33***	7.98
Workplace: Academic Institution	-9.67**	3.14	-7.22*	3.48	-8.44**	3.23	-13.57**	4.06
Number of Support Staff [linear]	-2.01	1.61	-1.24	1.83	-2.20	1.77	-2.00	2.17
Number of Support Staff [cubic]	-3.29*	1.55	-2.28	1.71	-2.41	1.66	-5.64**	2.07
Asylum Caseload per Attorney [linear]	2.26	1.74	-0.24	2.11	3.36	1.93	3.81	2.61
2nd Circuit	2.10	2.99	0.54	3.15	2.28	3.32	3.36	4.22
3rd Circuit	-1.74	3.58	-2.51	4.06	-0.43	4.12	-2.12	5.19
4th Circuit	-3.24	2.91	-4.14	3.17	-3.66	3.31	-1.65	4.16
5th Circuit	0.03	3.14	-0.77	3.34	-0.79	3.48	1.87	4.34
6th Circuit	4.86	3.54	3.35	3.97	6.65	4.10	4.33	5.25
7th Circuit	0.86	4.23	0.70	4.74	1.12	4.48	0.99	5.19
8th Circuit	0.04	4.38	3.17	4.51	-4.92	4.55	1.19	5.67
9th Circuit	0.43	2.82	-0.82	3.04	0.74	3.14	1.10	3.92
10th Circuit	0.76	4.07	2.48	4.64	3.36	4.78	-4.40	6.01
11th Circuit	0.98	3.62	-1.98	4.02	-1.03	3.93	6.45	4.84
Weekly Hours Worked [linear]	3.57	3.71	11.38**	4.21	5.10	4.19	-5.53	4.19

*Table 2c: Copenhagen Burnout Inventory (CBI) Regression Results*

<i>Predictors</i>	<b>CBI Overall</b>		<b>CBI Personal</b>		<b>CBI Work</b>		<b>CBI Client</b>	
	<i>Estimates</i>	<i>RSE</i>	<i>Estimates</i>	<i>RSE</i>	<i>Estimates</i>	<i>RSE</i>	<i>Estimates</i>	<i>SE</i>
COVID-19: After 3/15/2020	-1.84	1.17	-3.09*	1.32	-2.17	1.31	-0.53	1.60
<b>R<sup>2</sup> / R<sup>2</sup> adjusted</b>	0.147 / 0.087		0.154 / 0.095		0.161 / 0.103		0.124 / 0.063	

*Notes.* Estimates = unstandardized coefficient; RSE = Robust Standard Error; SE = StandardError; RSEs were used when the assumption of homoskedasticity was violated.

For ordinal independent variables (age, number of paralegals, asylum caseload per attorney, weekly hours worked), the relationships of linear, quadratic, cubic, fourth degree, and fifth degree were assessed on the dependent variable. This table only reports the linear relationship, unless another relationship (i.e., cubic) was statistically significant, in which case it is also reported. For gender, the reference group is male. For race, the reference group is White / Caucasian. For office size, the reference group is solo practitioners. For COVID-19, the reference group is pre-COVID-19 (prior to 3/15/2020). For circuits, the reference group is the 1<sup>st</sup>Circuit.  
\* =  $p < .050$ ; \*\*  $p < .010$ ; \*\*\*  $p < .001$