

SECONDARY TRAUMA IN LAWYERING: STORIES,
STUDIES, AND STRATEGIES

Mark Rabil, Dawn McQuiston, & Kimberly Wiseman

SECONDARY TRAUMA IN LAWYERING: STORIES, STUDIES, AND STRATEGIES

Mark Rabil, Dawn McQuiston** & Kimberly D. Wiseman****

In this Article, we emphasize the need for lawyers, judges, jurors, and others affected by the lawyering and litigation processes to come forward with their stories of how they have been directly or indirectly traumatized by their work or by their duties. We summarize the moving discussions by panelists for the Wake Forest Law Review's 2021 Spring Symposium about their experiences with secondary traumatic stress ("STS"), including testimonials from capital defense attorneys, innocence lawyers, military lawyers, a prosecution social worker, the former wife of a big-firm lawyer who self-medicated to deal with job stress, and a juror traumatized from a horrendous death penalty trial over two decades ago. We discuss important studies that have been conducted on the STS experiences of public defenders and others. We relay our own survey findings about STS among capital defense attorneys in North Carolina. Dr. McQuiston discusses her research and findings about STS

* J.D., Clinical Professor of Law, Director of Innocence & Justice Clinic, Wake Forest University School of Law. I thank my cowriters and collaborators, my colleagues from the North Carolina capital defense world who helped formulate the ideas for this project, Liz Johnson, a research librarian at Wake Forest University School of Law, and all of my research assistants over the years who have helped me with this project, including Amanda Manzano, Brad Simon, Meghan Holland, and Lauren Emery.

** Ph.D., Associate Professor of Psychology, Department of Psychology, Wofford College; Affiliate of the Wake Forest University School of Law's Innocence & Justice Clinic. Thank you to Abbey Brasington, Jalen Carter, Jordan Holmes, Dylan Hooper, Emily Ledford, I.K. Nnodim, Alisa Rogers, Shaffer Runge, Erin Tinkler, and Samantha Wei for their research assistance in conducting interviews with judges in South Carolina and North Carolina. I am grateful to the judges in South Carolina and North Carolina who were willing to be interviewed for the projects on jurors' and judges' stress described herein.

*** M.S., Department of Social Sciences and Health Policy, Wake Forest University School of Medicine. My colleagues and I are each very grateful to Stephannie Walker Seaton, Ph.D., Wake Forest University School of Health Sciences, for her contributions to the development of the survey instrument used in the North Carolina capital defender survey and for her participation in the 2021 Spring Symposium.

among judges and jurors. We then discuss the need for further studies to document STS in lawyering in order to educate leaders, lawyers, and students about important structural and individual changes that must take place to minimize STS and promote resilience.

TABLE OF CONTENTS

INTRODUCTION	826
I. STORIES.....	827
II. STUDIES EXAMINING CAUSES AND EFFECTS OF STS	833
A. <i>Stress, Trauma, and Lawyering</i>	833
B. <i>Can Jury Duty Be Hazardous to Your Health?</i>	838
C. <i>Sources and Effects of Judicial Stress</i>	842
III. STRATEGIES	846
A. <i>Managing Attorney Stress and Exposure to Trauma</i>	846
B. <i>Efforts to Mitigate Juror Stress</i>	853
1. <i>Pretrial Conversations</i>	853
2. <i>Post-Verdict Debriefing</i>	853
3. <i>Juror Counseling</i>	854
C. <i>Managing Bench Stress</i>	855
CONCLUSION	857

INTRODUCTION

Our bodies keep the score of the legal system. To some, it is direct, or primary, trauma, but to others, it is secondary trauma. This is true for many who encounter legal systems or even the lawyering process. Posttraumatic stress disorder (“PTSD”)¹ is a state in which people who are directly traumatized, injured, or abused get stuck in a recurring cycle of physical, emotional, or psychological reactions to the memory of the trauma as if it were still presently occurring.² Symptoms can include flashbacks, avoidance, nightmares, anxiety, and depression. Secondary traumatic stress (“STS”) can affect those in helping professions who bear witness to the traumatic stories of others.³ Many symptoms of PTSD are also seen in those experiencing STS, including burnout, fatigue, depression, disruption of family life, anxiety, and substance abuse, with STS now included in the same diagnostic category as PTSD.⁴ In this Article, we tell some of the stories of those who suffer because of legal systems or the lawyering

1. See AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 271–80 (5th ed. 2013) (describing the diagnostic criteria PTSD) [hereinafter *DSM-5*]; *DSM-5 Criteria for PTSD*, BRAINLINE (Mar. 28, 2019), <https://www.brainline.org/article/dsm-5-criteria-ptsd>.

2. See BESSEL VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* 2, 21 (2014).

3. See *DSM-5*, *supra* note 1, at 271.

4. *Id.* at 271–72, 276, 280.

process, including lawyers, jurors, judges, and their families. We discuss studies of STS with some of those affected. We propose methods for increased awareness that lawyering and legal systems can be traumatizing, further studies of groups and practice areas affected, and normalization of strategies and practices for prevention and management of the effects of STS.

I. STORIES⁵

Capital criminal defense and immigration work produce high levels of STS and its effects. In *Secondary Trauma in Lawyering: An Introduction*, Professor Mark Rabil tells his story of STS after decades of defending capital cases and pursuing innocence claims.⁶ In their article, Professors Lindsay Harris and Hillary Mellinger describe the increased STS experienced by lawyers who practice asylum law, a very difficult subspecialty of immigration practice.⁷ In her essay, Seema Saifee describes STS effects from her work with Guantanamo Bay detainees and numerous innocence clients.⁸

It is not just death penalty defense, immigration, and innocence work that can be traumatizing. At the *Wake Forest Law Review's* 2021 Spring Symposium, we heard from many others who explained how secondary trauma is a risk for prosecutors, criminal defense lawyers, family lawyers, civil litigators, and judges, as well as others who did not invite the legal system into their lives, such as jurors and the partners and children of lawyers.⁹

Lieutenant Colonel Andrea Hall, a U.S. Air Force JAG Officer, Iraq War veteran, and criminal defense attorney for many years, described publicly for the first time at this Symposium the effects of her work as a defense lawyer for those charged with sexual abuse of children.¹⁰ Lieutenant Colonel Hall remembers three of these cases in particular, and she very emotionally described not only the difficulty of getting through cross-examination (“holding it together”) and the trials but also the effects on her and her family. She became

5. Part I retells some of the stories and discussions shared by panelists during the *Wake Forest Law Review's* 2021 Spring Symposium. See generally *Wake Forest Law Review, 2021 Spring Symposium: Secondary Trauma in the Legal Profession*, YOUTUBE (Feb. 15, 2021), <https://www.youtube.com/watch?v=hDCGWaB71Gg> [hereinafter *2021 Spring Symposium*].

6. Mark Rabil, *Secondary Trauma in Lawyering: An Introduction*, 56 WAKE FOREST L. REV. 719, 720–21, 723–24 (2021).

7. Lindsay M. Harris & Hillary Mellinger, *Asylum Attorney Burnout and Secondary Trauma*, 56 WAKE FOREST L. REV. 733, 735–37 (2021).

8. See Seema Tahir Saifee, *Sustaining Lawyers*, 56 WAKE FOREST L. REV. 907, 934–36 (2021).

9. See generally *2021 Spring Symposium*, supra note 5.

10. *Id.* at 00:44 (marking where Lieutenant Colonel Andrea Hall begins speaking). Throughout this Article, all *2021 Spring Symposium* video time stamps appear in an “hour:minute” format.

“hardened” to the work and engaged in “gallows humor” the way other criminal practitioners do.¹¹ But she also worried a lot about the child victims in the cases and how her clients’ actions would make their lives so much harder. She suffered miscarriages during two of the cases and drank alcohol to cope. She and her husband stopped communicating, and she feared interaction with her children. She recognized these were not healthy behaviors. Lieutenant Colonel Hall remembered hearing a colleague speak, ten years earlier, about the traumatic effects of defending child sex cases. For example, this colleague feared bathing his own children because of the work. When Lieutenant Colonel Hall realized she also had these fears, she followed her colleague’s advice and sought counseling. Now, with that help, she is able to be an active part of her family.¹²

Judges, lawyers, and policymakers must be aware that it is not only those who choose to be part of lawyering and the legal processes who are affected by the trauma stories but also those who are inadvertently drawn into the zone of contagion. Even proximity to the trauma stories is a risk factor for undue suffering.¹³ Within the concentric circles of those traumatized by lawyering and legal systems are partners, spouses, families, and close friends, as discussed at the 2021 Spring Symposium by Eilene Zimmerman, the former wife of a big-firm lawyer, and Robbie Grier, the foreman of a death penalty jury.

Eilene Zimmerman,¹⁴ a journalist turned social worker, was married to Peter, a big-firm intellectual property lawyer. A few years after they separated, Peter died from substance abuse, something from which he suffered for years while they were married but about which Zimmerman and their two children were unaware. Zimmerman tells her story in *Smacked: A Story of White-Collar*

11. *Id.* at 00:49.

12. See also 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, 534 (2014); 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, 35 (2014) (explaining that, for individuals with PTSD, evidence-based treatment is the best bet for recovery).

13. In South Africa, for example, truth commissioners and staff reported suffering secondary trauma after hearing the harrowing stories of victims. PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: FACING THE CHALLENGE OF TRUTH COMMISSIONS 152 (2002). Counselors working with Holocaust survivors or children after 9/11 suffered secondary trauma. Aaron Reuben, *When PTSD Is Contagious: Therapists and Other People Who Help Victims of Trauma Can Become Traumatized Themselves*, ATLANTIC (Dec. 14, 2015), <https://www.theatlantic.com/health/archive/2015/12/ptsd-secondary-trauma/420282/>.

14. 2021 Spring Symposium, *supra* note 5, at 00:30 (Eilene Zimmerman).

Ambition, Addiction, and Tragedy.¹⁵ Just as Professor Rabil made excuses for his colleague Darryl Hunt's disappearances, memory lapses, and extreme weight loss due to substance abuse,¹⁶ Zimmerman justified Peter's behavior and physical changes.¹⁷ After he had been unreachable for two days, she found Peter on the floor of his home in July 2015, dead from a systemic infection related to intravenous drug abuse.¹⁸ Zimmerman discovered that, as Peter was dying, the last call he made was a work conference call, not a call to tell his children how much he loved them or to 911 for help.¹⁹ Even at Peter's memorial service, Zimmerman noticed attorneys from his firm checking their phones.²⁰

In her book, Zimmerman cited an American Bar Association study published six months after Peter died, showing that nearly 30% of lawyers surveyed suffered from depression and almost 20% from anxiety.²¹ The same study also found that as many as one in five lawyers was a problem drinker, which is twice the national average.²² Since publishing her book, many lawyers and their partners have contacted Zimmerman to describe how the stresses of lawyering had led them to addiction as a means of coping with the STS of their work. For instance, a former prosecutor of sex crimes against children suffered from substance abuse as a result of his work and spoke to Zimmerman about how he felt. Other jobs are stressful, he said, "like being a surgeon, but . . . it's not stressful in the same way as being a

15. See generally EILENE ZIMMERMAN, *SMACKED: A STORY OF WHITE-COLLAR AMBITION, ADDICTION, AND TRAGEDY* (2020) (detailing the impact of STS on Zimmerman).

16. See *THE TRIALS OF DARRYL HUNT* (Break Thru Films 2007).

17. *A Widow, Not a Wife: Smacked Explores an Ex-Husband's Secret Addiction*, NPR (Feb. 4, 2020, 1:18 PM), <https://www.npr.org/transcripts/802479660> ("[Y]ou could explain it away with stress or lack of sleep or, you know, too much work.").

18. *2021 Spring Symposium*, *supra* note 5, at 00:32 (Eilene Zimmerman).

19. See ZIMMERMAN, *supra* note 15, at 154–55.

20. *Id.* at 154.

21. See *id.* at 234 (citing Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 51 (2016) (detailing the results of a study funded by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs)). During the 2021 Spring Symposium, Zimmerman cited a survey that *The American Lawyer* published in 2020, just before the pandemic lockdown, showing that 31.2% of lawyers felt depressed and 64% felt anxious. *2021 Spring Symposium*, *supra* note 5, at 00:33 (Eilene Zimmerman) (citing Lizzy McLellan, *Lawyers Reveal True Depth of Mental Health Struggles*, AM. LAW. (Feb. 19, 2020), <https://www.law.com/2020/02/19/lawyers-reveal-true-depth-of-the-mental-health-struggles/?slreturn=20210311101538>).

22. See ZIMMERMAN, *supra* note 15, at 234 (citing Krill et al., *supra* note 21, at 51).

lawyer . . . that's like being a surgeon with another doctor across from you trying to undo your operation."²³ Others described

the punishing culture of an Am Law 200 firm, the misery of billable hours requirements, the 24/7 never-off culture that technology has made possible, and the inability to admit weakness—to admit to not being at the top of one's game, and instead suffering in silence, which often leads to the use of a variety of drugs and alcohol [T]hat use doesn't just affect the attorney, but their family, their friends, and colleagues.²⁴

Zimmerman and her two teenage children have spent years in therapy to cope with not only the trauma of their loss but also the guilt over not recognizing Peter's addiction.

Zimmerman was married to her husband before he attended law school and throughout his profitable legal career. She decided to write her book so that others would not similarly suffer. She found research that puts a name to part of what "thinking like a lawyer" can mean. It is called "negativity mindset."²⁵ Lawyers are trained to be on the lookout for anything that can go wrong in their cases so that their clients are prepared for the worst.²⁶ This means that lawyers are at a great risk of failing to see and experience the love of their families and the beauty around them.²⁷ When combined with the pressures of a big firm to win cases, bill clients, and bring in new business, there is a serious risk of secondary, or even direct, trauma from their work.²⁸ Lawyers, usually reluctant to seek counseling, tend towards self-remedies like getting lost in the work or becoming addicted to alcohol or substances.²⁹ The addicted, lost lawyer is not the only victim. As with Zimmerman, there is also a risk that the lawyer's family will suffer from STS.

The effects of STS extend beyond lawyers and their families. Robbie Grier was the foreman of a jury for the two-month 1996 death penalty trial of Henry Louis Wallace in Charlotte, North Carolina.³⁰ The jury convicted Wallace of raping and murdering nine women and

23. *2021 Spring Symposium*, *supra* note 5, at 00:38 (Eilene Zimmerman).

24. *Id.* at 00:33.

25. ZIMMERMAN, *supra* note 15, at 162. Zimmerman cites research by Dr. Larry Richard, a consulting psychologist and former litigator, who noted, "We suffer from an occupational hazard—specifically, the nature of what most lawyers do is that we hunt for the negative in order to protect our clients." Larry Richard, *The Mind of the Lawyer Leader*, LAW PRAC., Sept.–Oct. 2015, at 47, 47.

26. Richard, *supra* note 25, at 47–48.

27. *See id.* at 48.

28. *See* Hallie Neuman Love, *Lawyers Are at Risk for Secondary Traumatic Stress*, BAR BULL., Feb. 15, 2017, at 8, 8.

29. Krill et al., *supra* note 21, at 50–51.

30. *2021 Spring Symposium*, *supra* note 5, at 00:18 (Robbie Grier). *See generally* North Carolina v. Wallace, 528 S.E.2d 326 (N.C. 2000) (detailing the facts of the case where Grier served as foreman of the jury).

assaulting the ten-month-old baby of one of the victims.³¹ The evidence included horrible photographs. Grier said he “was spared most of the really graphic photographs, but we did see some. And they were in and of themselves graphic enough”³² Wallace’s recorded confessions were the hardest on Grier. Jurors listened on headphones to understand the poor-quality tapes, which meant spending many hours with a murderer whispering in their ears about the most horrific crimes these citizens had ever encountered.³³ On those tapes, Grier said Wallace “went into great detail about how he had murdered the young women, how he had sexually assaulted them, what he did with their bodies afterwards in order to hide the fact that he was involved, and in some cases even hide the fact that they’d been murdered.”³⁴ Not only the close encounter with the facts of the case, but also the court process itself, was traumatizing to Grier. A “particularly chilling moment” for Grier was when he had to sign his name to all the verdicts, including the death verdict.³⁵

Grier recounted bursting into tears several times in the hours and days following the trial. When he heard a report on the radio about the trial verdict, he “started crying so hard [he] couldn’t drive.”³⁶ At work he was “nearly zombie-like,” and his supervisor sent him home.³⁷ Over the years he did not talk about the case, and he was never prepared to share details with his friends. It took more than twenty years for Grier to seek counseling, during which he could not talk about the case without getting emotional. Grier’s therapist diagnosed him with PTSD as a result of his jury duty.³⁸

When I was going back to work, I knew I needed therapy, I knew there was something wrong with me, but, like so many people and that toxic masculinity, particularly back in the ’90s . . . felt like that was saying that there’s something wrong with me, and I should just be able to suck it up and deal with this, and I wish now I had gotten help back then. I do believe if either the attorneys or the judge had said, “Here’s a resource that you may need to contact,” that would have made a difference. I would have felt a certain amount of, that it was okay . . . that this was not to be unexpected and here’s some help in dealing with it. I wish now I’d had . . . someone reach out to me in that way. I’m

31. *See Wallace*, 528 S.E.2d at 331.

32. *2021 Spring Symposium*, *supra* note 5, at 00:20 (Robbie Grier).

33. *Id.* at 00:20.

34. *Id.* at 00:21.

35. *Id.* at 00:24. Prosecutors are allowed to ask potential jurors during the selection process whether they think they have “the intestinal fortitude” to sign their name to a death verdict and then return to the courtroom and announce it. *See North Carolina v. Murrell*, 665 S.E.2d 61, 72 (N.C. 2008).

36. *2021 Spring Symposium*, *supra* note 5, at 00:26 (Robbie Grier).

37. *Id.* at 00:27.

38. *Id.* at 00:28.

not positive I would have taken advantage of it, but I believe I would have, and it certainly would have made those years a lot easier.³⁹

There are a number of stories of STS in the lawyering process and the legal system.⁴⁰ These accounts get the attention of practitioners and the imagination of those like John Grisham, a practitioner turned writer.⁴¹ They also get the attention of the media. For example, *The New York Times* reported in real-time that a juror serving in the 2021 trial of Derek Chauvin for the murder of George Floyd had a physical stress reaction to the case and evidence that resulted in her having trouble sleeping and necessitated a brief halt in the trial.⁴² There are too many similar stories among too many involved in the legal system to count. But there must be evidence-based surveys and studies to convince courts, law firms, defender agencies, and governments to create guidelines—perhaps even laws—in order to normalize STS prevention and management, promote healing, and recognize STS in the lawyering process as a potential “occupational disease.”⁴³

39. *Id.* at 00:28.

40. *See, e.g., id.* at 02:22 (Mark Godsey) (discussing STS among innocence lawyers and fellows at the Ohio Innocence Project); Saifee, *supra* note 8, at 921–23, 933–34 (detailing the author’s experience with STS while working for detainees and innocence clients); Cynthia F. Adcock, *The Collateral Anti-Therapeutic Effects of the Death Penalty*, 11 FLA. COASTAL L. REV. 289, 294–99 (2010) (describing STS experienced by a death row lawyer); Seamone, *supra* note 12, at 506–16 (discussing sex abuse cases and the resulting STS experienced throughout the legal system, affecting lawyers, judges, juries, law enforcement officers, and sexual assault responders); *see also* Brobst, *supra* note 12, at 16–18 (identifying family law as a practice area at a high risk for STS but noting that its prevalence has not been adequately researched).

41. *See generally* JOHN GRISHAM, *THE GUARDIANS* 20–29 (2019) (portraying the protagonist as having a mental and emotional collapse, a subsequent hospitalization, and a divorce before quitting the profession of law following an assignment to defend a client accused of an especially violent crime).

42. Shaila Dewan, *A Juror Briefly Halted Today’s Trial, Suffering a ‘Stress-Related Reaction’*, N.Y. TIMES (Mar. 31, 2021, 1:21 PM), <https://www.nytimes.com/live/2021/03/31/us/derek-chauvin-trial-live/a-juror-briefly-halted-todays-trial-suffering-a-stress-related-reaction>.

43. *See, e.g.,* Pulley v. City of Durham, 468 S.E.2d 506, 510 (N.C. Ct. App. 1996) (upholding “occupational disease” recovery for a police officer after a finding that her depression was causally connected to “dealing with situations in which people were the victims of or had committed criminal acts”).

II. STUDIES EXAMINING CAUSES AND EFFECTS OF STS

A. *Stress, Trauma, and Lawyering*

Despite ongoing widespread conversations about, and the wealth of anecdotal evidence exposing, the traumatic stress lawyers experience, only a handful of studies have actually investigated and empirically documented the extent of this problem. A 2003 survey was the first to address the potential for attorneys to suffer trauma as a direct result of their work.⁴⁴ In this study, Andrew P. Levin and Scott Greisberg compared the prevalence of secondary trauma among attorneys (specifically among those who handled family law, legal aid, and domestic violence cases) with two groups commonly thought to regularly deal with trauma during the course of their work: mental health professionals and social workers.⁴⁵ Of the three groups, attorneys ranked highest in levels of STS and burnout and also reported the highest caseload of working with traumatized clients.⁴⁶ Specifically, attorneys reported experiencing some of the typical symptoms of STS like intrusive thoughts, avoidance behaviors, trouble sleeping, and trouble concentrating.⁴⁷ A lawyer from this study conveyed to the authors:

It actually feels good to hear that I am not the only one who feels depressed and helpless and that these issues are worth studying. Fortunately, the stress has decreased with experience and time for me, but I still have vivid memories of quite traumatic experiences representing victims of domestic violence who were so betrayed that it was difficult to continue to have faith in humankind.⁴⁸

Findings from a similar and more comprehensive Australian study measuring vicarious trauma, depression, anxiety, and personality among thirty-six criminal and family law lawyers and thirty mental health workers echoes the findings above: Lawyers suffered from vicarious trauma, depression, anxiety, and stress at greater rates than mental health professionals.⁴⁹ Lawyers also indicated feeling more helpless and less optimistic than their mental health counterparts.⁵⁰ Another in-depth survey of one hundred Australian lawyers using a variety of psychological measures found

44. Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245, 247–49 (2003).

45. *Id.* at 249.

46. *Id.* at 250.

47. *Id.*

48. *Id.* at 250–51.

49. 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, 235–37 (2017).

50. *Id.* at 238.

that those working in criminal law suffered from higher levels of depression, stress, and vicarious trauma than noncriminal lawyers did.⁵¹ Interestingly, several studies now show that lawyers with a history of mental health issues, victimization, or trauma exposure are particularly vulnerable to experiencing distress in their legal career.⁵²

Utilizing a novel methodology, data from both interviews *and* observations of Crown prosecutors working for the Department of Justice in one Canadian province showed that prosecutors are routinely extremely overworked because of staffing shortages, high caseloads, and long working hours, resulting in negative outcomes consistent with STS: fatigue, anxiety, helplessness, overwhelm, and health problems.⁵³ One lawyer noted:

I live with it. We go out somewhere . . . an activity of a social nature and I'm listening but I don't hear anything because it's on my mind. Right from . . . [when I start the case until its completion] seven days a week twenty-four [hours a day]—I would have dreams at night about it. I'd wake up in the morning . . . and the first thing that would be on my mind would be that case. The last thing at night when I went to bed would be the case.⁵⁴

Another study of seventeen sexual abuse prosecutors across the United States echoed these findings: nearly half of those surveyed reported symptoms consistent with experiencing vicarious trauma, and about a third were suffering from symptoms of burnout.⁵⁵

Likewise, frequent exposure to trauma is inherent to the work of immigration attorneys. Immigration lawyers and those specializing in asylum work regularly face trauma exposure, including working with a client population that is highly susceptible to PTSD; hearing continuously from traumatized clients who tell and retell their stories about violence, persecution, and fear; being vilified and having their work scrutinized by other agencies; worrying about their own

51. Lila Petar Vrklevski & John Franklin, *Vicarious Trauma: The Impact on Solicitors of Exposure to Traumatic Material*, 14 TRAUMATOLOGY 106, 109, 111 (2008).

52. Levin & Greisberg, *supra* note 44, at 250–51; *see* Vrklevski & Franklin, *supra* note 51, at 106 (noting that criminal lawyers are particularly susceptible to increased rates of depression and vicarious trauma compared to noncriminal attorneys); *see also* Amy Russell, Nat'l Child Prot. Training Ctr., St. Paul, Minn., *Vicarious Trauma in Child Sex Abuse Prosecutors*, 2 CTR. PIECE, no. 6, 2010, at 1, 1–3 (explaining how the mental health of both judges and attorneys is adversely impacted by hearing repeated stories of domestic violence and child sexual abuse).

53. Ian M. Gomme & Mary P. Hall, *Prosecutors at Work: Role Overload and Strain*, 23 J. CRIM. JUST. 191, 195–96 (1995).

54. *Id.* at 195.

55. Russell, *supra* note 52, at 5.

financial insecurity; and facing concerns about their personal safety. In their recent research examining STS among immigration lawyers (specifically focusing on asylum lawyers), Professors Harris and Mellinger point out that the emotional toll of this work is so great and so apparent—including feelings of demoralization, complete overwhelm, exhaustion, and helplessness—that the American Psychological Association recently published a piece⁵⁶ highlighting the potential for trauma among immigration attorneys and providing recommendations for mental health support.⁵⁷ In their survey of over seven hundred asylum lawyers, Professors Harris and Mellinger found that respondents exhibited greater—in some cases, *much* greater—levels of burnout and STS than what has been found in previous studies of immigration judges and in studies of others in helping professions.⁵⁸ They also found that respondents who identified as female, those of color, and solo practitioners were the hardest hit when it came to suffering from STS and burnout.⁵⁹ Notably, a 2021 meta-analysis shows that the experience of burnout overlaps considerably with symptoms of depression.⁶⁰

The intensity of criminal defense work is, of course, its own animal, involving excessive case overloads, settlement of conflicts for clients who are often hostile and mistrusting (and dealing with their angry families), and advocacy in cases that sometimes violate an attorney's own value system.⁶¹ In addition to these factors, a study of 207 New York public defenders found that stress-inducing parts of the job also include trying cases in front of judges perceived to not be impartial, arguing with prosecutors, and preparing for trials to defend the indefensible.⁶² More recently, another group of researchers examined PTSD, depression, STS, burnout, compassion satisfaction, and functional impairment (i.e., how trauma exposure interferes with normal everyday life) among 238 Wisconsin public defenders.⁶³ Comparing attorney outcomes to those of the administrative support staff who were not as frequently exposed to trauma in the work, their main findings showed that attorneys had

56. 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>.

57. Harris & Mellinger, *supra* note 7, at 743.

58. *Id.* at 766–71.

59. *See id.* at 774–82.

60. Renzo Bianchi et al., *Is Burnout a Depressive Condition? A 14-Sample Meta-Analytic and Bifactor Analytic Study*, 9 CLINICAL PSYCH. SCI. 579, 579 (2021).

61. David R. Lynch, *The Nature of Occupational Stress Among Public Defenders*, 19 JUST. SYS. J. 17, 19–20 (1997).

62. *Id.* at 17, 28.

63. Andrew P. Levin et al., *Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working with Trauma-Exposed Clients*, 199 J. NERVOUS & MENTAL DISEASE 946, 946–47 (2011).

higher scores on nearly all measures, with 11% meeting the screening criteria for PTSD and 34% meeting the criteria for STS.⁶⁴ Greater exposure to trauma (in terms of both work hours and clients) was related to worse mental health outcomes on all measures.⁶⁵ A follow-up survey ten months later of about nearly half of the original Wisconsin sample largely replicated these findings, indicating that these psychological outcomes persisted.⁶⁶

When it comes to capital cases, Professor Rabil and his friend, Larry Hammond, believe that death penalty defense lawyers, as well as mitigation and private investigators, legal assistants, and student interns, are particularly at risk of suffering secondary trauma.⁶⁷ The American Bar Association's Guidelines for death penalty defense lawyers mandate that the lawyers and investigators repeatedly meet with traumatized clients and their families, gathering their tragic life experiences as "mitigation evidence," in addition to paying exhaustive attention to the details of the aggravated murders.⁶⁸ Capital defense work, both before and during trial, is arguably entry into a veritable incubation zone for trauma. As one capital defense lawyer puts it: "If we lose, our client gets killed."⁶⁹

In order to get the attention of capital defense practitioners and their institutions, Professor Rabil believed that it was necessary to begin documenting the extent of STS specifically among capital defenders. We conducted a survey—the first of its kind—measuring traumatic stress among capital defenders. Approximately three hundred capital defense attorneys in North Carolina were invited to complete an online anonymous survey, utilizing many of the same methods and psychological measures Levin and his colleagues used in their study of Wisconsin public defenders.⁷⁰ After collecting demographic measures such as age, gender, race/ethnicity, and total number of years practicing, we measured PTSD using the Impact of

64. *Id.* at 948.

65. *Id.* at 953–54.

66. 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 L. & HUM. BEHAV. 538, 538, 543–44 (2012).

67. 2021 Spring Symposium, *supra* note 5, at 00:15 (Professor Mark Rabil and Larry Hammond interview excerpt).

68. See AM. BAR ASS'N, SUPPLEMENTARY GUIDELINES FOR THE MITIGATION FUNCTION OF DEFENSE TEAMS IN DEATH PENALTY CASES, *reprinted in* 36 HOFSTRA L. REV. 677, 688–89 (2008) (highlighting Guidelines 10.4(A)–(B) and 10.11(C), which require mitigation teams to do in-depth research on the defendant's life history to locate potential mitigating circumstances).

69. Kyoto Yoshida Tavassoli, *Secondary Trauma in Capital Trial Defense Practice for Indigent Clients* 80 (May 2016) (Ph.D. dissertation, Arizona State University) (on file with the Arizona State University Library digital repository).

70. Because of the impact of the COVID-19 pandemic, we modified some items in our survey to ask participants to respond based on a typical time period prior to the start of the pandemic in March 2020.

Event Scale—Revised, STS using the Professional Quality of Life Scale (V5), depression using the Center for Epidemiologic Studies Depression Scale, mood/emotion using the Positive and Negative Affect Schedule-Short Form, and functional impairment using the Sheehan Disability Scale.⁷¹

As of the time of this writing, our sample includes sixty-five capital defense attorney respondents⁷² who are mostly male (70.8%) and White (80%) with an average age of fifty-seven years. About half (52.3%) have been practicing as capital defense attorneys for twenty-one or more years. Our main findings show that 23.1% of participants *met the screening criteria for STS* (26.6% among attorneys practicing for more than fifteen years, 15.0% among those practicing for fifteen years or less). Notably, 12.3% of participants met the screening criteria for PTSD, all of whom had been practicing for more than fifteen years. These outcomes are similar to the findings of the Wisconsin study of public defenders upon which we modeled our methodology⁷³ and are also consistent with the results from studies of other attorney subspecialties described above. Findings from our study also show that the negative effects of the job may be cumulative in nature and have a greater effect on those who have been practicing longer. And generally speaking, since male attorneys comprise the majority of participants in the studies described here yet are less likely than females to report experiencing distress, this data overall could be an *underestimation* of the prevalence of psychological distress and STS among attorneys.

More research is needed to examine the extent of negative psychological outcomes among capital defenders. A broader, more geographically representative and ethnically diverse sample should be studied. There might be state-level variation in the mental health consequences of capital defense work that would be important to document and address. Mitigation investigators and other staff working on capital defense, who are integral players in capital defense cases and probably more directly in contact with the trauma stories of clients and families, also must be studied. Of course, another important population to consider that makes critical decisions within the law yet is routinely exposed to the traumatic experiences and suffering of others—through no choice of their own—is the juror.

71. See Levin et al., *supra* note 63, at 947–50, for a detailed description of many of these psychological measures.

72. We are unable to know the extent to which the COVID-19 pandemic might have influenced our response rate or responses.

73. See Levin et al., *supra* note 63, at 953.

B. Can Jury Duty Be Hazardous to Your Health?

The prevalence of juror stress and trauma, in both the short- and long-term, is the subject of growing interest empirically amongst the judicial community and in the media. Even a quick Google search readily demonstrates concerns for jurors' mental health as former jurors anecdotally recount their emotional anguish during a trial and afterward.⁷⁴ Similar to the others performing their requisite duties in the legal system who are detailed in this article, jurors can also experience trauma-related symptoms, depending on the nature and circumstances of a case, and have the potential to experience STS. Questions to consider include: Does the court have a responsibility to protect jurors from—or at least to attempt to minimize—the negative effects of psychological trauma they may experience during jury duty or posttrial, and if so, how? Or is this the price of justice? During jury selection, lawyers usually tell jurors that they may be shown graphic, gruesome photographs or evidence of crimes,⁷⁵ but no one tells jurors that they are at risk of long-term traumatization from their civic experience.

Jurors consume a lot of information during the course of a trial, and the evidence presented in cases involving violent crimes or otherwise significant offenses can be extremely difficult to process. For many people, exposure to explicit and gruesome descriptions of a crime scene and injuries (both physical and psychological), graphic and shocking visuals (photographs or videos), and emotionally distressing testimony is a novel and overwhelming experience. A profound empathy for victims and families (or even a defendant) may develop, and life-altering decisions about a defendant are often made. One capital juror from a 2019 South Carolina trial involving a man convicted of murdering his five young children said afterward, “Many times during the trial, I went in the jurors’ bathroom and just wailed—cried my eyes out,” while another noted that participation in the trial gave him flashbacks and nightmares from having witnessed “mass war crime graves in Bosnia” while a soldier there.⁷⁶

For days, weeks, or maybe longer, jurors are isolated in having to be silent about what they see, hear, and think about. Deliberations and tension between jurors can be distressing. Jurors fear making a

74. See, e.g., Shoba Sreenivasan & Linda E. Weinberger, *Can Serving on a Jury Be Harmful?*, PSYCH. TODAY (May 3, 2019), <https://www.psychologytoday.com/us/blog/emotional-nourishment/201905/can-serving-jury-be-harmful>.

75. See Noelle Robertson et al., *Vicarious Traumatization as a Consequence of Jury Service*, 48 HOW. J. CRIM. JUST. 1, 1–2 (2009) (“Once at court . . . [jurors] will be expected to handle exhibits and examine explicit and gruesome photographs.”).

76. *Jurors Report Experiencing Continuing Trauma After Serving in South Carolina Death-Penalty Trial*, DEATH PENALTY INFO. CTR. (Oct. 3, 2019), <https://deathpenaltyinfo.org/news/jurors-report-experiencing-continuing-trauma-after-serving-in-south-carolina-death-penalty-trial>.

mistake, particularly in capital cases.⁷⁷ Routine stressors or general inconveniences like arranging childcare, missing work, or awaiting trial during significant downtime at the courthouse only adds to the weight of jurors' experiences. Once the trial is over, some jurors fear retribution. For instance, the 2021 trial of Derek Chauvin in Minneapolis, Minnesota, required "heavy-duty jury service," according to the trial judge.⁷⁸ Jurors shouldered the weight of a case with extraordinary worldwide publicity, knowing that whichever verdict they decided would have far-reaching implications concerning issues of racial justice and police brutality. Jurors from high-profile cases over the years have given accounts of receiving death threats after delivering their verdict (e.g., the jurors for the trial of police officers charged with the beating of Rodney King in Los Angeles;⁷⁹ the jurors for the trial of Harvey Weinstein, who was charged with various sex crimes in Hollywood⁸⁰). For this reason, some suggest that—at least in high-profile trials—jurors' names should be anonymous.⁸¹

Is jury duty hazardous to one's health? It can be. Researchers have been interested in examining stress and the juror experience dating back to the mid-1980s. Studies involving free-flowing interviews with ex-jurors from capital cases and others involving violent crime indicated that many were experiencing symptoms consistent with PTSD or depression, including nightmares, intrusive thoughts, insomnia, interpersonal difficulties, substance misuse, headaches, upset stomach, and chest pains.⁸² Structured interviews

77. Robertson et al., *supra* note 75, at 9.

78. See Laurel Wamsley, *Derek Chauvin Found Guilty of George Floyd's Murder*, NAT'L PUB. RADIO (Apr. 20, 2021, 5:37 PM), <https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/04/20/987777911/court-says-jury-has-reached-verdict-in-derek-chauvins-murder-trial>; see also Philip Bump, *The Chauvin Jurors Deserve Better Than Partisan Armchair Assessments of Their Decision*, WASH. POST (Apr. 21, 2021, 11:49 AM), <https://www.washingtonpost.com/politics/2021/04/21/chauvin-jurors-deserve-better-than-partisan-armchair-assessments-their-decision/>.

79. See *King Jurors Receive Threats*, TAMPA BAY TIMES (Oct. 11, 2005), <https://www.tampabay.com/archive/1992/05/09/king-jurors-receive-threats/>.

80. See *A Juror Who Found Harvey Weinstein Guilty Now in Hiding After Receiving Death Threats*, FILM-NEWS (Feb. 28, 2020), <https://www.film-news.co.uk/news/UK/73034/>.

81. See Carrie Johnson, *Why Courts Use Anonymous Juries, Like in Freddie Gray Case*, NAT'L PUB. RADIO (Nov. 30, 2015, 4:46 PM), <https://www.npr.org/sections/thetwo-way/2015/11/30/457905697/why-courts-use-anonymous-juries-like-in-freddie-gray-case> (describing examples of historical uses of anonymous juries).

82. See Stanley M. Kaplan & Carolyn Winget, *The Occupational Hazards of Jury Duty*, 20 BULL. AM. ACAD. PSYCHIATRY & L. 325, 328 (1992); Sally Costanzo & Mark Costanzo, *Life or Death Decisions: An Analysis of Capital Jury Decision Making Under the Special Issues Sentencing Framework*, 18 L. & HUM. BEHAV.

with over one thousand Capital Jury Project ex-jurors showed that a great many jurors suffered adverse effects from their trial service, including difficulties with insomnia, nightmares, substance use, flashbacks, interpersonal difficulties, isolation, and strains on their social relationships.⁸³ Research utilizing more structured interviews and psychologically validated measures aimed at scientifically assessing psychological trauma and stress-related disorders found that many ex-jurors exhibited severe trauma symptoms that met the clinical criteria for a mood disorder, anxiety disorder, depression, or PTSD, with women exhibiting more severe symptoms than men.⁸⁴

To examine how judges view jurors' susceptibility to psychological distress, Dr. McQuiston, M. Dylan Hooper, and Abbey E. Brasington conducted semi-structured interviews with thirteen South Carolina circuit court judges.⁸⁵ The judges varied in legal experience (serving an average of twelve years on the bench), had presided over civil, criminal, and family court proceedings, and had backgrounds as criminal and civil litigation attorneys (spending sixteen years practicing on average). These judges universally agreed that the role of a juror is a stressful one, and the judges most often cited the unfamiliar courtroom setting, the high emotionality of the jury trial experience, and juror duties and the deliberation process (with one judge noting "we have heard jurors scream at each other" during deliberations) as what they thought to be jurors' biggest stressors. The judges had witnessed jurors' distress most often in the form of crying, looking away from distressing evidence, or emotional breakdowns and outbursts that involved, for example, anger, anxiety, or panic, which were typically reactions to information concerning harm to a child or other trauma. One judge gave this example:

We had a week-long medical malpractice case . . . [involving a] wrongful death [claim for] . . . a young mother about twenty-eight years old who had died of a really aggressive strain of cervical cancer. The jurors . . . cried every single day . . . because it was so sad. The facts were painful The jurors can't avoid feeling some emotion They found against

151, 165 (1994); Stanley M. Kaplan, *Death, So Say We All*, PSYCH. TODAY, July 1985, at 48, 50–51.

83. Michael E. Antonio, *Stress and the Capital Jury: How Male and Female Jurors React to Serving on a Murder Trial*, 29 JUST. SYS. J. 396, 396, 400–02 (2008).

84. For a comprehensive review of research on this topic, see Michelle Lonergan et al., *Prevalence and Severity of Trauma- and Stressor-Related Symptoms Among Jurors: A Review*, 47 J. CRIM. JUST. 51, 52–54, 58 (2016).

85. Dawn E. McQuiston et al., *Vicarious Trauma in the Courtroom: Judicial Perceptions of Juror Distress*, 58 JUDGES' J. 32, 34 (2019).

the plaintiff . . . [, but] when I went back in the jury room they were still crying and noticeably upset.⁸⁶

Around two-thirds of judges thought that the stress experienced during a trial could negatively affect a juror's participation in the trial process.⁸⁷ Almost forty percent of the judges interviewed believed or thought it was a possibility that jurors would experience trauma-related symptoms following jury duty, with some specifically mentioning PTSD or symptoms thereof.⁸⁸ While a few judges were in favor of explicitly warning jurors at the beginning of trial about evidence that could be difficult emotionally, others argued that this instruction might taint the jury.⁸⁹ Overall, judges were largely in favor of initiatives like posttrial debriefing and posttrial counseling to manage jurors' stress-related symptoms but voiced concerns about limited resources.⁹⁰ One judge suggested: "[I]t probably wouldn't be a bad idea to give the jurors a questionnaire at the end of the trial . . . 'if you need any counseling or want to talk to someone about your experience' . . . give them a lifeline."⁹¹

Overall, these interview responses suggest that while potential stress associated with jury duty is indeed on some judges' radar, some may fail to recognize the great potential for negative psychological symptoms to develop into something much greater in the posttrial period.⁹² Others "believe the psychological impact of jury duty is beyond the scope of what judges or the judicial system can manage."⁹³ Notably, all judges agreed that this potential negative consequence of jury duty does not outweigh the jurors' necessity in the trial process.⁹⁴

A concern that is critical—yet understudied in the literature and understated among judges—is whether or how overwhelming stress felt by some jurors during the trial affects the decisions jurors make about evidence, witnesses, and the defendant.⁹⁵ If juror decision-making is adversely affected, there could be unfair trials for the parties.⁹⁶ For criminal defendants, there is a constitutional right to

86. Interview on file with Dr. Dawn McQuiston.

87. Data on file with Dr. Dawn McQuiston.

88. See McQuiston et al., *supra* note 85, at 34 ("About a third of the judges agreed that in-trial stressors could affect jurors emotionally and psychologically following the conclusion of the trial, while the remaining judges were either unsure or believed a 'society of victims' was to blame for any in- or posttrial trauma.").

89. *Id.*

90. *Id.*

91. Interview on file with Dr. Dawn McQuiston.

92. McQuiston et al., *supra* note 85, at 35.

93. *Id.*

94. *Id.*

95. MONICA K. MILLER & BRIAN H. BORNSTEIN, STRESS, TRAUMA, AND WELLBEING IN THE LEGAL SYSTEM 263 (2013).

96. Monica K. Miller & Brian H. Bornstein, *Do Juror Pressures Lead to Unfair Verdicts?*, MONITOR ON PSYCH., Mar. 2008, at 18.

a neutral and impartial jury that discharges duties honestly, intelligently, and *free from the influence and dominion of impairing conditions*.⁹⁷

C. Sources and Effects of Judicial Stress

Research findings concerning juror health spark a different but related fundamental question as it concerns STS in the courtroom: *Are the judges okay?*

Various professional environments routinely involve confronting traumatic situations, including child welfare, mental health clinicians, first responders, etc. The potential to experience STS in these professions is quite openly acknowledged and discussed, with many of these workplace environments directly supporting their employees' potential for crisis and having mental health services at the ready.⁹⁸ General recommendations at the organizational level for preventing and treating stress in STS-prone professions involve encouraging open discussions of stressful experiences, providing supervision of those most at risk, reducing the workload, helping to decrease feelings of isolation, and providing educational workshops.⁹⁹

But the judiciary faces unique challenges when it comes to confronting workplace stress.¹⁰⁰ Judges are susceptible to experiencing STS, but while this has been broadly acknowledged in legal and scientific writings for decades,¹⁰¹ it remains largely unacknowledged at the organizational level, leaving the judges to cope on their own. Judges are routinely exposed to highly emotional circumstances, gruesome evidence, child abuse, graphic testimony, sexual and domestic violence, death, and troubling or emotional family situations. Across several studies, judges indicated that their top sources of stress include the impact of their decisions, a heavy workload, unprepared attorneys and self-represented litigants, caretaking of jurors, and personal safety.¹⁰² Judges are also

97. U.S. CONST. amend. VI; *see also, e.g.*, *State v. Jenkins*, 20 S.E. 1021, 1022 (N.C. 1895) (some of the jurors “were under the influence of whisky while they were engaged in making up their verdict”).

98. *See, e.g.*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov> (last visited Sept. 30, 2021) (providing a link on the home page to “find help for a personal situation”); NAT'L ALL. MENTAL ILLNESS, <https://www.nami.org/Home> (last visited Sept. 30, 2021) (providing access to an extended-hours helpline).

99. *See, e.g.*, Joy D. Osofsky et al., *How to Maintain Emotional Health When Working with Trauma*, 59 JUV. & FAM. CT. J. 91, 100 (2008).

100. *See, e.g.*, Alexis Resnick et al., *Surviving Bench Stress*, 49 FAM. CT. REV. 610, 610 (2011).

101. *See, e.g.*, Shely Polak et al., *Secondary Traumatic Stress in the Courtroom: Suggestions for Preventing Vicarious Trauma Resulting from Child Sexual Abuse Imagery*, 70 JUV. & FAM. CT. J. 69, 72 (2019).

102. Dan Crystal, *Why Judges Are Stressed: Key Revelations from a National Survey*, NW SIDEBAR (Jan. 27, 2020), <https://nwsidebar.wsba.org/2020/01/27/why-judges-are-stressed-key-revelations-in-the-national-judicial-stress-and->

concerned about burnout, isolation, and public image. Professor Brian Bornstein and his colleagues created a model to make predictions about judges' negative personal and professional outcomes based on their levels of stress and job satisfaction.¹⁰³ Differing personal characteristics (e.g., age, gender, social support, experience, or coping ability) can predict the rate at which judges reach "burnout."¹⁰⁴ High levels of compassion and empathy for victims are also associated with higher levels of anxiety.¹⁰⁵

Several studies have examined judicial stress using survey methodology. Professor Peter Jaffe and his colleagues surveyed 105 judges about the trauma symptoms they experienced, their coping mechanisms, and their methods to mitigate stress.¹⁰⁶ Nearly two-thirds (63%) indicated having experienced both short- and long-term symptoms related to STS, with greater experience on the bench being correlated with both the presence of symptomatology and the experience of stronger negative emotions like anger and hostility.¹⁰⁷ Female judges reported a greater number of symptoms than male judges reported, drawing a striking parallel to the available data examining gender differences amongst jurors' trauma symptoms.¹⁰⁸

In a study surveying 212 immigration judges, Stuart L. Lustig and his colleagues found that up to about one-fourth of those surveyed reported stress-related symptoms, with female judges again reporting greater symptoms than male judges.¹⁰⁹ Professor Joy D. Osofsky and her colleagues examined a sample of forty-five judges in focus groups, finding that many felt overwhelmed by the level of trauma they were

resilience-survey/; David M. Flores et al., *Judges' Perspectives on Stress and Safety in the Courtroom: An Exploratory Study*, 45 CT. REV. 76, 76 (2008); 2021 Spring Symposium, *supra* note 5, at 01:19 (Dr. Dawn McQuiston). Note that although personal safety has been documented for years as a concern among the judiciary, the actual risk based on violence directed toward judges remains low, even though threats on federal judges increased four hundred percent from 2015 through 2019. See Meredith Deliso, *Threats to Judges Are Increasing, and Experts Say Misogyny Is a Problem*, ABC NEWS (Aug. 2, 2020, 8:27 AM), <https://abcnews.go.com/US/threats-judges-increasing-experts-misogyny-problem/story?id=72061296#>. Dr. McQuiston notes that at least one of the judges she interviewed acknowledged carrying a firearm at all times. Interview on file with Dr. Dawn McQuiston.

103. Brian H. Bornstein et al., *Judges and Stress: An Examination of Outcomes Predicted by the Model of Judicial Stress*, 102 JUDICATURE 51, 52, 54 (2018).

104. *Id.*

105. *Id.*

106. Peter Jaffe et al., *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 54 JUV. & FAM. CT. J. 1, 1 (2003).

107. *Id.*

108. *Id.*

109. See, e.g., 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, 60 (2008).

exposed to in cases.¹¹⁰ Likewise, a recent study of hundreds of judges found that a substantial proportion indicated experiencing stress as a result of their profession, with a great many showing symptoms of vicarious trauma.¹¹¹ In a more comprehensive study of judges' views on stress, safety, and jurors, David M. Flores and several colleagues surveyed 163 judges about issues related to stress and safety, utilizing several direct measures of depression and anxiety.¹¹² The judges reported experiencing a moderate amount of stress both generally and during trial, indicating that their stress often manifested as anxiety, irritability, and sleep disturbances.¹¹³ The judges' scores on the depression and anxiety scales exceeded that of the general population.¹¹⁴ Consistent with prior research, female judges indicated experiencing greater stress and greater concern for their personal safety than male judges.¹¹⁵

Professors Jared Chamberlain and Monica K. Miller conducted semi-structured interviews with nine judges, the majority of whom were male, general jurisdiction judges.¹¹⁶ Interviews involved structured items about stress, safety, workplace experiences, and relationships.¹¹⁷ Analyses of the content of interviews indicated that judges were certainly susceptible to experiencing STS, as many described the emotional setting of a courtroom, trauma experienced by those involved in their cases, and empathy they felt for plaintiffs and defendants.¹¹⁸ Using similar methodology, Dr. McQuiston held semi-structured interviews with eighteen majority male circuit court judges with an average of fifteen years on the bench.¹¹⁹ Questions focused on the types of cases, evidence, and circumstances that have an impact emotionally, the ways stress manifests itself, and stress mitigation methods.¹²⁰ When asked to name their top sources of stress in the courtroom, the most frequent responses included having to make life-altering decisions, presiding over cases involving children, viewing gruesome evidence, and witnessing others'

110. Osofsky et al., *supra* note 99, at 98.

111. *See, e.g.*, Charles P. Edwards & Monica K. Miller, *An Assessment of Judges' Self-reported Experiences of Secondary Traumatic Stress*, 70 *JUV. & FAM. CT. J.* 7, 7–8 (2019).

112. Flores et al., *supra* note 102, at 79.

113. *Id.* at 81.

114. *Id.* at 82.

115. *Id.* at 84–85.

116. Jared Chamberlain & Monica K. Miller, *Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogeneous Group of Judges in a Single Jurisdiction*, 37 *J. AM. ACAD. PSYCHIATRY & L.* 214, 217 (2009).

117. *Id.*

118. *See id.* at 218.

119. *See 2021 Spring Symposium, supra* note 5, at 01:20 (Dr. Dawn McQuiston).

120. *Id.* at 01:20.

trauma.¹²¹ When asked how judges maintain their composure during a particularly difficult situation in court, one judge responded: “You have to remain calm The first thing you have to keep in mind is that everyone’s watching you, and that you are in charge of that courtroom, and if you lose your composure then it profits absolutely no one.”¹²²

The judges indicated that evidence involving gruesome details or children was the most upsetting, and they indicated that high-profile cases evoked additional stress.¹²³ The majority of judges said they still think about cases over which they presided.¹²⁴ According to one judge, “I did probably more than my share of death penalty cases in my career . . . I think about them a lot.”¹²⁵ Over half the judges surveyed acknowledged that judges are prone to experiencing anxiety or PTSD.¹²⁶

Overall, judges are clearly vulnerable to experiencing STS as a result of the experiences unique to their profession. Professor Jaffe and his colleagues keenly point out the difficulty of “judicial culture” being steeped in isolation due to the necessity of ethical constraints,¹²⁷ but judges’ sense of isolation likely contributes greatly to their emotional difficulties described here. The consequences of this stress are clear as a variety of negative outcomes are reported, both professional and personal. The potential for workplace burnout is a recurring theme in the literature examining judicial stress, as judges do their best to cope with the frustration of heavy caseloads, constant pressure of the position, and conflict in the courtroom.¹²⁸ Physical effects like sleep disturbances, fatigue, and elevated blood pressure are common, along with mental health consequences like feelings of isolation, depression, irritability, overwhelm, and anxiety.¹²⁹ While, overall, the literature provides a solid picture of the effects of STS on judicial health, the ways STS may negatively affect judicial decision-making is arguably a critical question to explore next. Indeed, a body of research shows that chronic stress and trauma exposure can negatively impact neurological and physiological functioning, leading to, for example, increased anxiety, loss of rational thought, difficulty regulating emotions, and increased

121. *Id.* at 01:21.

122. Dawn McQuiston et al., *Judicial Stress: Implications for Emotional Health and Courtroom Decision Making*, Presentation at the American Psychology-Law Society Virtual Conference (Mar. 20, 2021).

123. *2021 Spring Symposium*, *supra* note 5, at 01:21 (Dr. Dawn McQuiston).

124. Interviews with judges on file with Dr. Dawn McQuiston.

125. Interview with judge on file with Dr. Dawn McQuiston.

126. Interviews with judges on file with Dr. Dawn McQuiston.

127. *See* Jaffe et al., *supra* note 106, at 6.

128. *See* Chamberlain & Miller, *supra* note 116, at 216.

129. *See* Flores et al., *supra* note 102, at 81; Jaffe et al., *supra* note 106, at 4–5; *2021 Spring Symposium*, *supra* note 5, at 01:22 (Dr. Dawn McQuiston).

risk for depression.¹³⁰ Moreover, another avenue for consideration is the role of emotion in judicial decision-making, as research shows that emotion indeed influences judges' interpretation and application of laws.¹³¹

III. STRATEGIES

A. *Managing Attorney Stress and Exposure to Trauma*

Secondary trauma not only affects physical health but also directly impacts the lawyering process. Lawyers can suffer from memory, attention, and concentration problems, which can lead to malpractice, ineffective assistance of counsel, prosecutorial misconduct, or state bar disciplinary action. The effects of STS can also result in the confirmation bias or tunnel vision that develops when advocates feel threatened by those on opposing sides or by the anger resulting from the crime evidence itself, the unfairness of the system, or structural racism.¹³² We should all heed the advice of Michael Corleone in *The Godfather Part II*: "Never hate your enemies. It affects your judgment."¹³³ But how do we avoid this anger and the health problems and clouded judgment when doing our difficult jobs? The panelists at the 2021 Spring Symposium presented practical advice. Lieutenant Colonel Hall had three takeaways from her experience with the effects of her difficult work,¹³⁴ which we expound upon here in devising strategies to avoid STS and its effects:

(1) *Secondary trauma is real.* We must acknowledge that our reactions to trauma are natural, real, and normal responses. To exemplify this, the Symposium opened with a panel of stories from those affected by the trauma of lawyering and the legal process. As a society, we have made great strides since the time when PTSD was dismissed as mental or emotional weakness.¹³⁵ There need be no battle over the reality of PTSD or STS, because both are now included

130. Megan Zwisohn et al., *Vicarious Trauma in Public Service Lawyering: How Chronic Exposure to Trauma Affects the Brain and Body*, 22 RICH. PUB. INT. L. REV. 269, 277–78 (2019).

131. Andrew J. Wistrich et al., *Heart Versus Head: Do Judges Follow the Law or Follow Their Feelings?*, 93 TEX. L. REV. 898, 898–99 (2015).

132. See Mark Rabil, *Panzer Mind, False Statements: How the Sheriff Got Two Men to Say Beetle Borings Were Gunshot Wounds*, TRIAL BRIEFS, Oct. 2011, at 23, 23–26; see also Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 WIS. L. REV. 291, 291–92 (2006); Mark Rabil, *My Three Decades with Darryl Hunt*, 75 ALB. L. REV. 1535, 1567–74 (2012).

133. THE GODFATHER PART II (Paramount Pictures 1974).

134. 2021 Spring Symposium, *supra* note 5, at 00:50 (Lieutenant Colonel Andrea Hall).

135. Matthew Friedman, *PTSD History and Overview*, U.S. DEP'T OF VETERAN AFFS., https://www.ptsd.va.gov/professional/treat/essentials/history_ptsd.asp (last visited Sept. 30, 2021).

in the DSM-5 as types of “Trauma and Stressor-Related Disorder.”¹³⁶ Professor Mark Godsey, Director of the Ohio Innocence Project; Dr. Donna Mayerson, a psychologist who volunteers to help attorneys, fellows, and staff with the Ohio project; and Cheryl Niccum, a clinical social worker with the Department of Justice, each spoke of the need to “normalize” awareness of and practices to deal with STS.¹³⁷

(2) *Try not to take it home.* Your partner should not be your primary therapist. One should assuage the traumatizing effects by speaking with colleagues in the office, within a network of similar attorneys, or with a counselor or therapist who specializes in trauma. Attorneys with difficult work should create boundaries, try not to spread the trauma to their families, and engage in self-inventorying (mindfulness) and self-care. We should also listen to Eilene Zimmerman’s experience: if your partner points out that you seem angry, burned out, silent, or depressed, then you should seek help. Lieutenant Colonel Hall regretted that she did not seek help sooner “so that [she] could start employing healthier habits in [her] life.”¹³⁸

(3) *The work is honorable.* Lieutenant Colonel Hall said: “I have absolutely no regret in defending those men for any minute. They have constitutional rights, and I am proud to say I defended them.”¹³⁹ It is important to remember that attorneys, whether prosecutors, criminal defense attorneys, family lawyers, civil litigators, or transactional attorneys, perform services that are designed to prevent suffering. We try to settle disputes, advocate for parties, or dispense justice peaceably, without violence, and within the constitutional and ethical boundaries. Being mindful of the value of our work is important in becoming resilient and engaging in posttraumatic growth.

Several speakers for the 2021 Spring Symposium offered other important lessons on how to avoid and manage the effects of STS, including some practical advice on how they handle STS in their own offices:

Recognize that there are natural causes and remedies for STS. Dr. Katherine Porterfield,¹⁴⁰ a clinical psychologist, reminds us

136. See DSM-5, *supra* note 1, at 271–72.

137. See 2021 Spring Symposium, *supra* note 5, at 02:17, 02:31 (Professor Mark Rabil, Dr. Donna Mayerson, and Professor Mark Godsey); see also *id.* at 02:37, 02:42 (Cheryl Niccum).

138. *Id.* at 00:50 (Lieutenant Colonel Andrea Hall).

139. *Id.*

140. *Id.* at 03:16 (Dr. Katherine Porterfield). Dr. Porterfield recommends these books as necessary for an understanding of trauma and STS: NADINE BURKE HARRIS, *THE DEEPEST WELL: HEALING THE LONG-TERM EFFECTS OF CHILDHOOD ADVERSITY* (2018); JUDITH HERMAN, *TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR* (1992); and BESSELL VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* (2014).

that the origin of our STS is that we are biological, psychological, and social beings who are hardwired for survival.¹⁴¹ She notes that it is important to listen to our bodies and minds as they warn us of danger signs, and she cautions that failure to pay attention affects the lawyering process. Automatic reactions can occur when we suffer STS: nightmares, irritability, anger, intrusive imagery, fatigue, attention or concentration problems, and social isolation.¹⁴² After exposure to other people's trauma, attorneys can have trouble receiving and processing information, difficulty writing, and "trouble functioning with . . . attention and concentration"—the normal tasks of lawyering.¹⁴³

Another significant impact of STS is "moral injury," which is a difficulty in ascribing meaning to the work.¹⁴⁴ Dr. Porterfield sees this with lawyers who handle difficult cases, such as with challenging prosecutions, oppressive systems, or factors beyond the lawyers' control, such as those often encountered by asylum lawyers.¹⁴⁵

Porterfield recommends some effective strategies for dealing with STS:

1. *Regularly do a self-assessment:*

- Pause: build into your work a moment of stopping.
- Notice: take stock of your physical, psychological, and social reactions; ask where you are seeing resilience and where you are seeing struggle.
- Ask yourself how you are doing in your "window of tolerance." Are you hyperaroused (agitated, overenergized, overactivated) or hypoaroused (fatigued, low energy)? If you are hyperaroused, take a break, take a ten-minute walk, do ten push-ups and sit-ups, drink a big glass of ice water, or splash your face with ice water. If you are hypoaroused, take a twenty-minute nap, splash ice water, take a walk, connect with a trusted friend. Be mindful that when your body is entering one of these zones it is *helping you* by letting you know that you need to take action to return to your window of tolerance.
- Use a chart to remind yourself to check in on how you feel physically.¹⁴⁶ (What are you thinking? Are you connected with others?)
- When situations seem overwhelming, ask yourself: How much of this situation did I have control over and what

141. See Zwisohn et al., *supra* note 130, at 269.

142. *2021 Spring Symposium*, *supra* note 5, at 03:01 (Dr. Katherine Porterfield).

143. *Id.* at 03:02.

144. *Id.* at 03:04.

145. *Id.*

146. *Id.* at 03:09.

part did I not? In her experience working with attorneys, Dr. Porterfield sees that many aspects of the situation fall into the category of factors over which the attorney does not have control (e.g., racism, systemic injustice, economic injustice). By narrowing the list down to what you *do* have control over, you can focus on those tasks and reduce the overwhelming feelings.

2. *Notice whether your own risk factors for STS have been activated, such as:*
 - Personal history of trauma or identification with a story or person, as there may be something in your background that brought you to this work and reminders can be triggering
 - Concurrent life stressors (divorce, job insecurity, family illness, physical illness, etc.)
 - Working on your own, without connection, which can be a huge life stressor
3. *Implement protective factors to protect against developing STS:*
 - Mentoring newer attorneys on coping with work stress
 - Team cohesion
 - Sense of accomplishment
 - Training in STS risk factors and management
 - Balance in life outside of work
 - Connection to others
 - Self-care

Normalize the Reality and Impact of STS. Cheryl Niccum, a clinical social worker, works with prosecutors in human trafficking and child sexual abuse cases, and she normalizes discussions in the office about STS.¹⁴⁷ Niccum began her remarks during the 2021 Spring Symposium with a quote from Dr. Rachel Naomi Reman: “The expectation that we can be immersed in suffering and loss daily and not be touched by it is as unrealistic as expecting to be able to walk through water without getting wet.”¹⁴⁸ Niccum said, “I see our job as helping people to walk through that water and avoid drowning.”¹⁴⁹ When Niccum came from her career in the Army to work with prosecutors, she saw that they needed help, but she also confronted the obstacles of “culture” and “stigma.”¹⁵⁰ She found that some were so impacted by the work that they moved into other professions.

147. *Id.* at 02:38 (Cheryl Niccum).

148. *Id.* at 02:39 (quoting RACHEL NAOMI REMAN, KITCHEN TABLE WISDOM: STORIES THAT HEAL 52 (2006)).

149. *Id.*

150. *Id.* at 02:40.

Feeling that offices should be doing more to help attorneys and others to “stay in the job and stay healthy in the job, as well as [helping] their family and friends,” Niccum developed a model to approach the problem of STS in working with prosecution teams.¹⁵¹ She developed a peer support group of prosecutors and support staff (“Allies in the Trenches”) to increase awareness that there would be psychological reactions to the work, decrease the stigma of STS, and promote the healthiness of open discussions. She trained managers to encourage participation in support groups or counseling and screen employees to determine whether the work would be a good fit. To protect personal relationships, she encouraged people to warn their partners when a particularly difficult day was expected.

In addition to the work with prosecutors, Niccum’s team now also works with prosecutors’ families to help them understand STS. Niccum notes the importance of debriefing during or after cases to remind the attorneys and staff of the rewards of the work.¹⁵² She encourages people to take an online compassion fatigue test like the ProQOL 5¹⁵³ and then retake it in six months to see how they have changed. She also stresses taking time off after a case to allow time for recovery, restoration, and “posttraumatic growth.”¹⁵⁴

Seek Social Support. Professor Lindsay M. Harris recommends normalizing and prioritizing one’s own self-care, which is “counter-cultur[al]” in public interest law, and doing the same for one’s own social support.¹⁵⁵ She recommends creating “an accountability practice” with a few others who have similar work, like sending a text chain each day about what you did “for yourself” or what you did “to carve out a moment of time for yourself.”¹⁵⁶ Professor Harris emphasizes that this means individual lawyers must push back against their law firms and other institutions.¹⁵⁷

Understand that Reactions are Individual. Dr. Mayerson discussed the need to have individual conferences with attorneys, fellows, and staff because personalities and circumstances vary and can lead to different reactions to traumatic stress.¹⁵⁸ As Dr. Mayerson

151. *Id.*

152. Critical incident debriefing with peers has been a regular procedure in aviation for many years and takes place immediately after an incident. See Johanna O’Flaherty, *Critical Incident Stress Management in Airlines*, in *CRITICAL INCIDENT STRESS MANAGEMENT IN AVIATION* 93, 102 (Jörg Leonhardt & Joachim Vogt eds., 2006).

153. Professional Quality of Life—Version 5 is used to measure compassion satisfaction, STS, and burnout. *ProQol Measure in English and Non-English Translations*, PROQOL, <https://proqol.org/proqol-measure> (last visited Sept. 30, 2021).

154. *2021 Spring Symposium*, *supra* note 5, at 02:53 (Cheryl Niccum).

155. *Id.* at 02:09 (Professor Lindsay M. Harris).

156. *Id.* at 02:10.

157. *Id.* at 02:11.

158. *Id.* at 02:32 (Dr. Donna Mayerson).

discussed, some lawyers or staff may have their own personal history of trauma or concurrent life stressor that is being aggravated by the work.¹⁵⁹ Many times, this cannot be dealt with on a group basis or on one's own.

Institutions Must Take Notice and Action. As Dr. Mayerson, Niccum, and Professor Godsey discussed at the 2021 Spring Symposium, the institutions employing lawyers, such as law firms, prosecutor offices, public defender offices, law school clinics, and others, should take the lead in normalizing the fact that there will be difficult work, negative results, and angry responses from opponents and clients.¹⁶⁰ These employers should have policies to train managers and staff to be aware that STS may occur and that there is help available.¹⁶¹ To help solo practitioners in different areas, such as in asylum work and capital defense, the networks of similar practitioners should educate members, set up peer groups, and foster awareness of STS.¹⁶² For example, the National Innocence Network established a Secondary Trauma Working Group to produce guidelines for attorneys and staff working on innocence cases.¹⁶³ State or national organizations of prosecutors, criminal defense attorneys, and bar organizations should take similar action.

Awareness and Training Should Start in Law School. Zimmerman (whose lawyer husband died of complications of substance abuse) warns of the negativity bias instilled in future lawyers while in law school.¹⁶⁴ Regardless of what area of law one practices, there is a natural predisposition towards planning for future problems and foreseeing the negative.¹⁶⁵ Training one to “think like a lawyer” should also include reminding law students to remember that life is more than potential problems. Professor Rabil noted that law students in his Contemplative Practices class at Wake Forest University School of Law uniformly felt that they changed the way they saw their fellow students and the law school environment simply by noting three things each day that gave them joy.¹⁶⁶

Law schools should acknowledge and teach about the risk of STS in all practice areas. Professor Ronald Tyler, director of the Stanford Criminal Defense Clinic, focuses on awareness of secondary trauma

159. *Id.*

160. *Id.* at 02:34; *id.* at 02:50 (Cheryl Niccum); *see id.* at 02:26 (Mark Godsey).

161. *Id.* at 02:44 (Cheryl Niccum).

162. *See id.* at 02:31 (Dr. Donna Mayerson).

163. Information on the Secondary Trauma Working Group is on file with Professor Mark Rabil, who serves as its chairperson.

164. *2021 Spring Symposium, supra* note 5, at 00:39 (Eilene Zimmerman).

165. Richard, *supra* note 25, at 48.

166. *2021 Spring Symposium, supra* note 5, at 00:42 (Professor Mark Rabil). *See generally* JAMES BARAZ & SHOSHANA ALEXANDER, AWAKENING JOY: 10 STEPS THAT WILL PUT YOU ON THE ROAD TO REAL HAPPINESS (2010) (providing the inspiration for this contemplative practice).

and burnout in his clinic: “Inspired by mindfulness-based stress reduction programs from medical education, the self-care curriculum alerts students to sources of stress in their attorney/client relationships and provides strategies to address those stressors.”¹⁶⁷ Professor Tyler notes, “Qualitative student feedback demonstrates that the self-care workshops significantly enhance wellbeing.”¹⁶⁸

There is also a growing understanding that lawyers and law students in clinics working for clients who have been traumatized—such as victims of abuse, trafficking, and torture—must be taught about “trauma-informed” lawyering. This is important not only so that clients or victims are not retraumatized but also so that the lawyers do not suffer traumatization themselves from bearing witness to their clients’ stories and the gruesome, disturbing evidence in their clients’ cases.¹⁶⁹

There are medical and psychological remedies when STS gets too bad. This article is focused on the practical steps that lawyers can take to minimize the risk of STS. The practices outlined here may not be sufficient for the times when PTSD and STS become pervasive or overwhelming. One should consult a psychiatrist or psychological counselor trained in the appropriate modalities, which can include trauma-focused psychotherapies, Prolonged Exposure (“PE”), Cognitive Processing Therapy (“CPT”), Eye Movement Desensitization and Reprocessing (“EMDR”), counseling, medication, or other treatments.¹⁷⁰

There must be acknowledgement of historical and systemic racial, ethnic, and gender bias as causing direct and STS. As discussed by Black lawyer and judge panelists in the 2021 Spring Symposium panels on “The Intersection Between Secondary Traumatic Effects and Race” and “Lawyers Taking Leadership,” no discussion of trauma in the legal profession and legal systems can begin until there is an open dialogue—informed by the history of racial, ethnic, and gender identity bias and the experience of marginalized participants—about the effects of systemic racism in these systems.¹⁷¹

167. Ronald Tyler, *The First Thing We Do, Let’s Heal All the Law Students: Incorporating Self-Care into a Criminal Defense Clinic*, 21 BERKELEY J. CRIM L. 1, 1 (2016).

168. *Id.*

169. See Mark Rabil, *supra* note 6, at 725; Susan Ayres, *Trauma-Informed Advocacy: Learning to Empathize with Unspeakable Horrors*, 26 WM. & MARY J. RACE GENDER & SOC. JUST. 225, 225 (2020). See generally Amy Kimpel, *Violent Videos: Criminal Defense in a Digital Age*, 37 GA. ST. L. REV. 305 (2021) (noting the secondary trauma risk for criminal attorneys required to view video footage).

170. *PTSD Treatment Basics*, NAT’L CTR. FOR PTSD, https://www.ptsd.va.gov/understand_tx/tx_basics.asp (last visited Sept. 30, 2021).

171. See *2021 Spring Symposium*, *supra* note 5, at 04:03 (Hon. Gregory Weeks, Hon. Karen Eady-Williams, Christina Swarns, Henderson Hill, and Satana Deberry); *id.* at 05:33 (Hon. Carlton Reeves, Hon. Cheri Beasley, and

B. *Efforts to Mitigate Juror Stress*

Over the years, judges have largely shouldered the efforts to mitigate juror distress. Surveys reveal that judges are indeed sensitive to the factors that can negatively affect those who serve on juries.¹⁷² Judges report assuming a moderate degree of responsibility for jurors' stress, indicating they attempt to reduce it by, for instance, providing additional warnings and instructions, being mindful of the timing of breaks, limiting the volume of gruesome evidence, attempting to create a positive rapport with jurors, and asking court staff to be attuned to the needs of jurors.¹⁷³

Several strategies explicitly aimed at mitigating juror stress have been formally suggested, some of which are routinely implemented:

1. *Pretrial Conversations*

Judges utilize pretrial conversations with jurors to educate them about the potential to experience stress-related symptoms during the trial and how to cope with them. In a survey of hundreds of ex-jurors, they reported that it would have been beneficial for the initial orientation conducted by court staff or the judge to include greater detail and more comprehensive instruction on what to expect concerning, for example, various aspects of the trial process and jury deliberations.¹⁷⁴ An interesting consideration could be whether jurors should have to provide "informed consent," similar to that required of participants in research studies, that describes the possible risks to their involvement in the trial and requires the jurors' explicit consent to participate.¹⁷⁵

2. *Post-Verdict Debriefing*

Immediately following a trial, a post-verdict debriefing that is typically led by the trial judge (but sometimes by a professional clinician) gives jurors an opportunity to discuss their experiences as a group and share thoughts and reactions to being exposed to traumatic evidence and other stressful circumstances during their time on the jury. These debriefings are often modeled after Critical Incident Stress Management protocols, which are designed to help

Derrick Johnson). The leading book not only on racism in the criminal justice system but also on being a Black attorney and advocate in that system is BRYAN STEVENSON, *JUST MERCY: A STORY OF JUSTICE AND REDEMPTION* (2014).

172. Flores et al., *supra* note 102, at 78; NAT'L CTR. FOR STATE CTS., *THROUGH THE EYES OF THE JUROR: A MANUAL FOR ADDRESSING JUROR STRESS* 18, 40 (1998).

173. Flores et al., *supra* note 102, at 78.

174. Lorie L. Sicafuse et al., *Promoting Positive Perceptions of Jury Service: An Analysis of Juror Experiences, Opinions, and Recommendations for Courts*, 34 JUST. SYS. J. 85, 99 (2013).

175. See NAT'L CTR. FOR STATE CTS., *supra* note 172, at 11 ("Staff should try to keep jurors informed about the process, explain necessary delays, and give jurors choices and control over their experiences when feasible.").

first responders and those in similar professions cope with on-the-job stress.¹⁷⁶ These post-verdict group discussions have been used following high-profile cases that involved gruesome evidence (e.g., the trial of serial killer Jeffrey Dahmer).¹⁷⁷ A singular debrief held immediately following the verdict, however, is not likely to be an effective mechanism to promote any meaningful or long-term stress reduction.¹⁷⁸ Also, sharing in a group setting is not comfortable for everyone. At a minimum, post-verdict debriefing should be run by a properly trained clinician who is highly skilled at treating stress and trauma, but these debriefings are rarely offered due to a lack of funding. Also, in the worst of cases, critical debriefing for jurors should perhaps be implemented *daily*.

3. *Juror Counseling*

Arguably the best strategy to help jurors cope with the stress experienced during jury duty and reduce trauma-related symptoms in the long term is posttrial counseling that can be utilized *when the ex-juror is ready*. Under some circumstances, jurors have been offered a series of free counseling sessions funded through the federal government's Employee Assistance Program.¹⁷⁹ This is a rare occurrence but could prove to be a valuable solution. Following the trial of Boston Marathon bomber Dzhokhar Tsarnaev, the trial court judge arranged for jurors to take advantage of counseling services using federal funding.¹⁸⁰ A similar program was offered to Connecticut jurors who served on a high-profile triple murder case involving grisly evidence.¹⁸¹ A Wisconsin pilot study analyzing the proportion of jurors who would potentially utilize a counseling program based on the incidence of trials involving violent crime indicated that such a small number would be confronted with such disturbing evidence that offering the program would be unlikely to

176. See George S. Everly, Jr. & Jeffrey T. Mitchell, *A Primer on Critical Incident Stress Management (CISM)*, INT'L CRITICAL INCIDENT STRESS FOUND., INC., <https://icisf.org/a-primer-on-critical-incident-stress-management-cism/> (last visited Sept. 30, 2021).

177. Kate Dar Rauch, *After the Verdict*, WASH. POST (Apr. 14, 1992), <https://www.washingtonpost.com/archive/lifestyle/wellness/1992/04/14/after-the-verdict/4c95300d-4c0b-4922-ab8d-417d5bdb5709/>.

178. Kaitlyn R. Zander, *Proposal for a Wisconsin Court System Counseling Program for Jurors Subject to Detrimental Stress*, 20 U. WIS.-LA CROSSE J. UNDERGRADUATE RSCH. 1, 3 (2017).

179. *Who's Taking Care of the Jurors? Helping Jurors After Traumatic Trials*, U.S. CTS. (May 20, 2015), <https://www.uscourts.gov/news/2015/05/20/whos-taking-care-jurors-helping-jurors-after-traumatic-trials>.

180. *Id.*

181. Erik Ortiz, *Serving Jury Duty? Why Jurors Are Often Left Without Counseling*, NBC NEWS (Jan. 9, 2016, 5:43 AM), <https://www.nbcnews.com/news/us-news/serving-jury-duty-why-jurors-are-often-left-without-counseling-n491361>.

create a financial burden.¹⁸² A handful of states (e.g., Arizona, California, Ohio, Oregon, Washington, Wisconsin) offer counseling programs to jurors when needed, but the utilization and success of these efforts are rarely tracked.¹⁸³ Alaska enacted legislation which allows up to ten hours of state-funded posttrial counseling to be used within 180 days of the verdict for jurors who served on trials involving violent crime.¹⁸⁴ Texas has similar legislation but provides no state funding for the program.¹⁸⁵

C. *Managing Bench Stress*

The literature examining judges' susceptibility to experiencing STS is clear: judges can and do experience significant stress both indirectly through their continuous exposure to others' trauma and directly as a result of public scrutiny, caseloads, personal safety, and constant pressure to make the right decisions. "Controlled empathy"—the continuous process of monitoring all that occurs in the courtroom while simultaneously being intentional about restricting any physical and emotional reactions—takes an enormous amount of cognitive effort and can be particularly harmful psychologically.¹⁸⁶ It is easy to see why occupational burnout is so common in the judicial profession. In order for judges to function effectively, they need sufficient coping strategies. Support at the institutional level is critical.

Concerning effective ways to cope at the individual level, self-care can act as a partial antidote to workplace burnout and includes strategies that promote good health and wellness, like adopting proper nutrition habits, exercising, and engaging in leisure activities. Taking brief breaks during the workday, wellness days every now and then, and vacations are all essential.¹⁸⁷ One judge in Dr. McQuiston's study said: "[B]e self-aware at all times, you need to know yourself, that is, you need to recognize when you are becoming tired, because generally speaking, the worst decisions that you will make . . . are when you are tired."¹⁸⁸ Food breaks can help overcome mental fatigue

182. Zander, *supra* note 178, at 6–7.

183. See John G. Browning, *When the Trial Isn't Over: Counseling Services for Jurors*, 75 TEX. BAR J. 289, 290 (2012); Ortiz, *supra* note 181; Rauch, *supra* note 177; Libby Denkmann, *Guilty or Innocent, Debriefers Help Jurors Recover from Trauma After Verdict*, MYNORTHWEST (Apr. 10, 2015, 5:37 AM), <https://mynorthwest.com/14483/guilty-or-innocent-debriefers-help-jurors-recover-from-trauma-after-verdict/>.

184. ALASKA STAT. § 12.45.018 (2021).

185. See Browning, *supra* note 183, at 290–91.

186. Resnick et al., *supra* note 100, at 613.

187. Shai Danziger et al., *Extraneous Factors in Judicial Decisions*, 108 PROC. NAT'L ACAD. SCIS. 6889, 6889 (2011); Edwards & Miller, *supra* note 111, at 25.

188. Interview on file with Dr. Dawn McQuiston.

and improve clarity.¹⁸⁹ Mindfulness activities may be beneficial. Since being a judge is such an isolating career, an informal network of social support from family, friends, or other judges is essential.¹⁹⁰

It is clear that resources at the institutional level are needed, but few are available to help minimize judges' risk for developing STS.¹⁹¹ Notably, the Psychologist Advocate Program offers confidential sessions using a cognitive-behavioral approach in which a psychologist is paired with a judge for monthly sessions.¹⁹² Sessions can center around whatever is needed by each judge, often focusing on ways to manage a high-stress environment like problem-solving strategies, overload in casework, and work-life balance.¹⁹³ Mandated sessions would remove the stigma that is often associated with seeking help.

Increased judicial training on the seriousness of STS, methods for handling high-stress cases, and approaches to high-stakes conflict resolution could be offered.¹⁹⁴ A professional mentoring program is a good strategy, allowing for a smoother transition for new judges and greater job satisfaction among mentors.¹⁹⁵ Opportunities for judicial sabbaticals can provide time for stress reduction, a mental break, professional development, and personal growth. Interventions similar to those utilized with jurors—for instance, posttrial debriefings or even counseling sessions that follow particularly tough cases—could benefit judges.¹⁹⁶ Judges would likely benefit from seminars that are generally focused on healthy ways of coping.

Obviously, there is no one stress-reduction strategy that will work for all judges, as perceptions of and methods for dealing with stress are highly individualized. Importantly, most judges in Dr. McQuiston's research favored a formalized voluntary stress-reduction program tailored specifically to meet their emotional needs.¹⁹⁷ Many professions readily acknowledge and deal with the potential for their employees to experience STS in a comprehensive way, thus it is clear that a focus on "bench well-being" is long overdue.¹⁹⁸

189. See Danziger et al., *supra* note 187, at 6892.

190. Jaffe et al., *supra* note 106, at 6 (describing both the importance of a judge connecting with his or her family and the difficulties judges face because they cannot share their particular struggles with their families).

191. Polak et al., *supra* note 101, at 73, 75 (2019).

192. Resnick et al., *supra* note 100, at 614.

193. *Id.* at 615.

194. Osofsky et al., *supra* note 99, at 98–100.

195. Celeste F. Bremer, *Reducing Judicial Stress Through Mentoring*, 87 JUDICATURE 244, 245–46 (2004).

196. Flores et al., *supra* note 102, at 88.

197. Interviews on file with Dr. Dawn McQuiston.

198. Jaffe et al., *supra* note 106, at 2.

CONCLUSION

Secondary traumatic stress threatens the health and well-being not only of the individuals in the legal profession but also those who interact with legal systems or who are closely related to lawyers and judges. We are becoming aware of this “normal” stress reaction to the difficult work of the law. Those affected must tell their stories. Researchers should continue to gather evidence, by studies and surveys, to document the pervasiveness of STS in the different areas of legal practice and to shine a light on the traumatization of those involuntarily affected, such as jurors, partners, and families. Leaders in the profession, the legal systems, and law schools must take the initiative in allowing these discussions, in advancing the conversations, and in promoting remedies and resilience. And to move forward, we must pay close attention to the trauma caused by historical discrimination and bias in race, ethnicity, and gender identity within the legal profession and in our legal systems. This attention to STS in the profession and in the court systems is imperative, for the accuracy of decision-making and the health of participants are at stake.