

From Compassion to Fatigue – The Trauma Exposed Jurist

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It (making a decision) is not altogether so clear and somebody usually benefits by your decision and somebody is usually harmed by it in some way: it costs them money, or they lost property, they go to jail, or are on probation. And so it's stressful to me to make those decisions because I tend to go out of here and think about them for a day or two, or wake up in the middle of the night and wonder if it's the right thing.³

When embarking on the role of a judge does one think about the impact of stress on daily functioning? Calendars, limited resources and the expectation to make comprehensive decisions are the foreseeable challenges of ascending to the bench. That is just part of the role. However, judges are challenged by the emotional effects of presiding over cases with litigants who have experienced trauma. To put it simply, trauma is contagious. Unlike specialists in traditional helping fields, such as social

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³ Jared Chamberlain and Monick K. Miller, *Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogeneous Group of Judges in a Single Jurisdiction*, *The Journal of the American Academy of Psychiatry and the Law* 37: 214, 220 (2009).

workers or nurses, judges and attorneys receive little to no training on how to recognize and address compassion fatigue or secondary trauma. To compound the issue, judges often lack knowledge about trauma and its effects, and court systems like many workplaces may not have built in systems for judges to handle this impact personally or professionally. As a result, impaired work performance, low morale, increased interpersonal conflicts, and behavioral changes on and off the bench may be an outcome. Self-awareness paves the way to taking steps to mitigate the effects of trauma. While the authors are legal services managers and not judges, we manage people, have clients who experience trauma, make a multitude of decisions every day and are often an arbiter in many difficult and trauma ridden situations. Our goal is to understand stress, put it in perspective and realize that you have to confront it to manage it. In this article, we will define terms and share the importance of identifying and addressing compassion fatigue and secondary trauma. We will also talk about developing an organizational culture that makes the dialogue and training a priority professionally and hope that you can utilize some of our suggestions.

What Is Compassion Fatigue and Secondary Trauma?

Judges deal with death, paraplegia, burning, and infant trauma. Evidence heard in the courtroom can be traumatic and we deal with people being horribly hurt or murdered.⁴

The reality is that we all, no matter what profession, experience stress. As a leader in a practice, office or courtroom you are managing multiple issues, interfacing with diverse people and have numerous deadlines to meet and decisions to make. Much

⁴ *Id.* at 218 (paraphrased).

of the stress that adversely affects our lives stems from the structure of our daily lives and experiences. As you can imagine, it is not a one-time occurrence but emerges over time. To put it simply, stress exacerbates stress.⁵ If one were to look at stress as a continuum, the concepts discussed here can be understood as building on and moving from an acute stress response to that of a deeper, intensive, and all pervasive reaction to hearing and handling traumatic material.

Compassion fatigue is a term that refers to a gradual lessening of compassion over time. Individuals who work directly with people who have suffered from trauma often experience it. Symptoms may include hopelessness, decreased pleasure, stress and anxiety, and a pervasive negative attitude. This can have detrimental effects on staff, but in particular leaders such as judges on the “hot seat” may both professionally and personally experience feelings of frustration and ineffectiveness, resulting in the inability to focus, and a decrease in productivity.

Secondary trauma is a term that refers to the internalization of other people’s suffering. From the bench, judges may hear stress bearing stories and this can start to shape how they feel about themselves, other people, and the world around them. Jean Koh Peters, a law professor at Yale Law School in New Haven, Connecticut, likens secondary trauma to a boulder falling into raging river: “The raging river is the client’s life,” she says. “The boulder falling is the trauma occurring. The image of secondary trauma is a lawyer standing in the river. They don’t get hit by the boulder, but they feel

⁵ Pearlman and Schooler, *J. Health Soc. Behavior*, 19:2-21, 1978. The Structure of Coping

the ripple effect”.⁶ Symptoms from this ripple effect may parallel those of post-traumatic stress disorder.

In fact, a 2003 anonymous survey of 105 judges exploring symptoms of vicarious trauma, coping, and prevention were investigated and assessed. The majority of judges (63%) reported one or more symptoms that they identified as work related vicarious trauma.⁷ Significantly, female judges reported more symptoms, as did judges with seven or more years of experience. In addition, female judges were more likely to report internalizing difficulties, such as anxiety, depression, and somatic problems. In contrast, judges with more experience reported higher levels of externalizing and hostility symptoms, such as anger, frustration, cynicism, and interpersonal difficulties. Additionally, a 2004 survey found that attorneys, who were recruited from domestic violence, family law, and legal aid criminal services, experienced more symptoms of secondary trauma and burnout compared with comparison groups of mental health providers and social workers. In the study, attorneys “demonstrated higher levels of intrusive recollection of trauma material, avoidance of reminders of the material and diminished pleasure and interest in activities, and difficulties with sleep, irritability, and concentration”.⁸

Critically, symptoms of vicarious trauma and compassion fatigue may be exacerbated by the fact that judges may also experience feelings of vulnerability and insecurity as they may be burdened with concerns about their safety and that of their

⁶ Arin Greenwood, *Ripple Effects: Education and Self-Care Can Help Lawyers Avoid Internalizing Client Trauma*, ABA Journal (January 2006), http://www.abajournal.com/magazine/article/ripple_effects/.

⁷ Jaffe, Peter et al, *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 54 Juv. & Fam. Ct. J. 2 (Fall 2003).

⁸ Andrew Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 Pace L. Rev. 245 (2003-2004)

families.⁹ In addition, given the importance of social support and debriefing, the reality is that some judges “work in isolation, they cannot consult about a case, they see horrific crimes, make weighty decisions and have to keep their mouths shut about everything.”¹⁰

What to Look For

I struggle to keep my emotions in check and I have to let my emotions go because of my experiences and my personality. I find myself having to watch myself from striking out in response to what I perceive to be a personal attack on the victim.¹¹

The sheer volume of each day’s work makes me fear I’m just processing people and have lost touch with my better self. Am I becoming indifferent to horror?¹²

Occupational stress research has shown that “stress lowers one’s memory capacity, undermines one’s decision-making processes, and increases social stereotyping, thus leading to biased decisions. High cognitive demand (i.e. cognitive load) can influence the ability to recall facts and make impartial judgments.”¹³ What we have learned as leaders is that judges should be aware of their reactions to stress, burnout, compassion fatigue and secondary trauma. The first step is by assessing how they are experiencing their workload, their reactions and decisions on the cases before them, their own morale, interpersonal relationships, behavioral changes, and any personal pressures that may contribute. A decrease in the quality and quantity of work, low motivation, and avoidance of job tasks are signs that a judge should be aware of and reflect on to

⁹ *Supra* Note 3 at 216.

¹⁰ *Supra* Note 7.

¹¹ *Supra* Note 3 at 218 (paraphrased).

¹² *Supra* Note 7.

¹³ *Supra* Note 3 at 215.

determine whether one or some of the phases of the burnout to vicarious trauma continuum are at play. With respect to morale, a judge should be watchful for a decrease in confidence in self and decision making, a loss of interest in listening and issuing decisions, dissatisfaction, apathy, and numbness to the litigants, jurors or attorneys. Also, judges should be aware of how their experiences and reactions in the work environment is mirrored in their court staff since they could be experiencing some of the same issues or reacting to the judge's shift in behavior. Interpersonal conflicts are also signs to be aware of, including withdrawal from colleagues, impatience, decrease in quality of relationships, and poor communication. Finally, behavioral symptoms may manifest, including absenteeism, exhaustion, faulty judgment, irritability, and overwork - working through lunch and late at night, and letting case and courthouse needs overwhelm their own needs. These same behaviors are those that we look for in ourselves and staff who work on high conflict cases in the legal services workplace. As the research illustrates, judges are no less immune.

How to Address From the Bench

Laugh often, develop collegial relations in the work setting.
Get involved in "happy groups" – not totally court related.¹⁴

A five year study which examined successful attorneys found that important factors included self-development, passion, engagement, and stress-management¹⁵. In our work we foster a regular dialogue amongst managers. This allows us to work on

¹⁴ *Supra* Note 7.

¹⁵ Barbara Fines & Cathy Madsen, *Caring Too Little, Caring Too Much: Competence and the Family Law Attorney*, 75 UMKC L. Rev. 965, 985 (2006-2007)

spotting this issue in our staff and fostering and encouraging their dialogue. With this in mind, what can you do to address compassion fatigue and secondary trauma while sitting on the bench?

First, educate yourself and assess and define your own work/life balance as you have to take care of your own well-being. Then commit to creating a dialogue about compassion fatigue and secondary trauma and how judges experience it. Encourage that it as a topic that should be addressed in initial training as well as ongoing training. With fellow colleagues create retreats or getaways big and small. Realistically you may not be able to get away for a day, but you can commit to a meeting dedicated to this topic to strategize about tips to work on. You can build into future meetings 5 to 10 minutes devoted to follow up. We like the term retreat because it is visual and believe they are a great way to present the issue and to help facilitate the conversation, even over lunch.

Make a deliberate effort to taking the frenzy out of the day to day. Create identifiable goals that everyone can do to address compassion fatigue and secondary trauma personally, professionally and organizationally, and check in with yourself, colleagues and staff on a quarterly basis to assess these goals and set new ones if appropriate. Strategies taken from the ABC¹⁶ model of vicarious trauma, which identifies the importance of Awareness (i.e., being attuned to one's needs, limits, emotions, and resources), Balance (i.e., among activities, especially work, play, and rest), and Connection (to oneself, others, and to something larger) can shape such a discussion.

At a minimum, even in the frenzy of the profession, focus on the very basics: sleep, eat, breathe, laugh, and exercise. Accept that you can only accomplish so much with limited hours and personal resources and allow yourself to employ simple strategies

¹⁶ Saakvitne, K.W. & Pearlman, L.A. *Transforming the Pain: A Workbook on Vicarious Trauma* (1996).

to improve your daily outlook and experiences. For example, block time for yourself and take control of your calendar. You have the power to schedule actual lunches with friends, staff or colleagues rather than review briefs or attend meetings. Build into your day and calendar time to take a 5 to 15 minute walk behind the scenes to gather your thoughts and rest your voice. Build in vacation time including planned extended weekend time to travel, and spend more time with family and friends or enjoy a favorite sport or hobby.

By implementing any of these strategies, you are making a commitment to a healthy and supportive environment, and ensuring that you remain passionate and committed to the decision-making which first brought you to the practice of law and the bench.