

Chapter

1

The Price of Empathy: Learning to Cope with Trauma in the Criminal Courtroom

Jennifer K. Johnson

As various chapters in this book show, any criminal justice professional who has been exposed to someone who has committed suicide is impacted long after the event. As a young public defender, Jennifer Johnson had a colleague whose client committed suicide. This chapter describes how that tragedy has stayed with her, as well as with the colleague and the judge who presided over the case. Attorney Johnson explores how she felt woefully unprepared and unequipped to deal with this. But as she now knows, she was not alone.

In recent years, the legal profession, led by the American Bar Association, has acknowledged that being a lawyer is stressful in countless ways—and not the helpful kind of stress that produces adrenaline and inspires excellence. Rather, chronic stress can begin in law school and adversely impact the way we practice, and the way we live. For criminal justice professionals, the feeling of impotence in a hopeless system for lawyers can create burnout and compassion fatigue for lawyers who care.

2 • Suicide and Its Impact on the Criminal Justice System

This chapter explores the unique demands of criminal practice; the neurobiology of stress and how it can lead to burnout and compassion fatigue; and explores possible solutions for building resilience across the profession.

One of the many takeaways of this chapter is that things do not have to be this way.



We have not been directly exposed to the trauma scene, but we hear the story told with such intensity, or we hear similar stories so often, or we have the gift and curse of extreme empathy, and we suffer. We feel the feelings of our client. We experience their fears. We dream their dreams. Eventually, we lose a certain spark of optimism, humor and hope. We aren't sick, but we aren't ourselves.

—C. Figley, 1995

When Ksenia “Kay” Tsenin took the bench of San Francisco’s Department 15 in the 1990s, her courtroom seemed fairly typical. The procession of defendants standing before her faced charges of petty theft, drunk driving and prostitution. But within the span of a few years, Tsenin found herself presiding over a de facto mental health court. Her misdemeanor court, like others in San Francisco’s Hall of Justice and across the nation, was increasingly home to men and women who had fallen through the cracks of our decimated mental health system. They were now cycling through our jails, our hospitals, and the streets, and their crimes could be traced directly to untreated mental health and addiction. Our outdated criminal courts were unprepared and ill-equipped for the onslaught of men and women who were—quite simply—in the wrong system. Long before therapeutic courtrooms became a regular feature of our criminal justice system Judge Tsenin realized she had to improvise.

To the delight of the defense bar and the frustration of the district attorney, Judge Tsenin launched a quiet end-run around the antiquated legal system. She began offering defendants in her courtroom an informal diversion that included a pathway to treatment and recovery, one that would result in a more just resolution of the charges. One that could offer healing and hope. Her process was not institutionalized, it was not replicated in other courtrooms, and it drew equal amounts of praise and criticism from her colleagues on the bench. Still, despite the judge’s

unconventional approach, the process seemed to be working for the growing number of defendants appearing on her special docket.

And then, a young woman named Sheila killed herself.

Judge Tsenin was devastated, as were all of the lawyers working in Department 15. I was one of them. The last thing we were expecting was for Sheila to commit suicide. She was a star student at UCLA who had been appearing regularly in court. She was smart. She had promise. She had bipolar disorder, and by all accounts, she was doing extremely well in her mental health treatment.

“I’m not very good at talking about things like this,” Judge Tsenin said of that day in a recent interview for this piece. “What I remember is that we were all happy. We were expecting another good progress report. Instead, her case manager told us that she had killed herself the night before.”

I was new to the Public Defender’s Office and Sheila wasn’t even my client. Yet decades later I still recall the uncomfortable tug of two competing feelings: a sense of powerlessness to have stopped this suicide, and an overwhelming regret at our failure to have done so. Because it wasn’t just the judge who was invested in her. We *all* wanted to see her succeed—down to the court clerks, the bailiff, even the reluctant prosecutor. For many of us, it marked the first time we had been so close to suicide.

Not her. She was doing so well.

We were not prepared. We were also expected to walk back to the office from the Hall of Justice and keep working like nothing had happened. It affected all of us, but none more than Sheila’s public defender, Scott Burrell. Along with Judge Tsenin and the rest of us in Department 15 that day, Burrell learned of Sheila’s death in court. In that moment, and for years to come, he would replay the signs he realized too late that he had missed and imagine what he—her public defender—might have done differently.

“I had spoken to the program a couple of days before because I wanted to see her progress,” Burrell recalled in a recent interview. “I knew some things were not going well and she had stopped going to counseling or classes. So, I knew that she was having some trouble and I knew they were afraid she wasn’t taking medication. I tried to reach her a couple of days before just to talk to her and find out where she was. And I couldn’t find her.”

Most of all, Burrell said, he felt blindsided by his own lack of education.

“It never occurred to me until then that we were dealing with a person with a disease—a mental illness—that could kill them. Sheila’s mental illness came back and won.”

Judge Tsenin softened the blow. Even in a misdemeanor court overwhelmed by a high volume of defendants, Burrell said, “she, more than any other judge, was different ... She valued them all as people.” Judge Tsenin spoke of Sheila’s death openly. She shared her own pain. But looking back on a full career in law, Burrell said, she proved to be the exception. When he walked out of that courtroom, it was “back to the office and next case up.”

There was no counseling available—not for Burrell or for any of us—nor any process to seek supervision or guidance. Even if there had been, Burrell doubts he would have availed himself of it. That would have been viewed as a sign of weakness. *He* would have viewed it that way, because “trial lawyers are supposed to be indestructible.” Just as police officers—even today—must be reminded over and over that it is okay to seek help when they’ve been exposed to trauma, Burrell said, trial lawyers need the same kind of reassurance.

With no formal resources to turn to, we were left to seek guidance from our more experienced colleagues in the misdemeanor unit, or the ultra-seasoned ones who had made it to the felony unit and had developed the tough exterior that comes with witnessing tragedies that most humans never see—that most never *should* see.

“My supervisor didn’t have any reaction that was memorable,” Burrell recalled. “I know what it *wasn’t*. She didn’t ask me how I was or tell me to take the day off. What I imagine her saying is, ‘Oh, is that your first?’”

Although it has been more than two decades since Sheila’s suicide, the culture of the profession has not changed much. Most lawyers practicing in the criminal justice system today are not prepared for the death of a client by suicide. Not because it is a shocking and unexpected tragedy—which it is. We are not prepared because no one has prepared us. We are not prepared because, from the time we are law students through the sunset of our careers as seasoned attorneys, we receive very little, if any, training that informs us that this can happen in our job—or worse yet, that it *might* happen. The suicide of a client is not commonplace. But that lack of preparedness for the stress and trauma we see on a daily basis is, sadly, all too common. We operate in a chronic state of psychic disrepair that does not afford us the emotional bandwidth to absorb shocking and unexpected tragedies such as suicide. In fact, the system that molds us, lays out the expectations for our behavior, and defines our successes and failures inherently counters and undermines our ability to respond in a healthy way.

Even today, we are not encouraged to seek help, and we lack proper training in mental health and addiction. This impacts our ability to understand our mentally ill and addicted clients, but it also impacts our own self-knowledge as we struggle with human responses to chronic stress. The stigma of mental health is so pervasive that lawyers often hide rather than disclose a disability, for fear of repercussions. The coping mechanisms that we have learned as lawyers not only don't help us, they likely cause further harm. We have been conditioned since law school to react to the trauma of what we witness in a way that is counterproductive and harmful to our own mental and physical health. And yet, we still have a duty to provide competent representation.

In this chapter, we use the premise of client suicide to take a deeper look into the structural failures that leave lawyers in criminal courtrooms unprepared to cope with trauma in a healthy way. In Part I, we examine a profession in crisis that puts us at a disadvantage when it comes to processing traumas such as client suicide. In Part II, we consider the neurobiology of stress and how it can lead to burnout and compassion fatigue. In Part III, we explore possible solutions—ways that we can build resilience in ourselves as individuals and in our profession as a whole.

I. The Legal Profession

We are at a crossroads. To maintain public confidence in the profession, to meet the need for innovation in how we deliver legal services, to increase access to justice, and to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now. Change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer.

—*Path to Lawyer Well-Being*, at 1

In 2017, the National Task Force on Lawyer Well-Being issued a comprehensive report on the state of the field, entitled *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (2017), at 1; hereinafter *Path to Lawyer Well-Being*). This groundbreaking report found the legal profession to be at an inflection point: If it does not begin to prioritize the health and

well-being of the workforce, it risks losing the public trust. The task force was assembled in 2016 in the wake of two studies that showed unusually high rates of chronic stress, substance abuse, and depression among both practicing lawyers and law students (P. R. Krill, R. Johnson, & L. Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016); J. M. Organ, D. Jaffe, & K. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116 (2016); hereinafter *Suffering in Silence*). As the report correctly pointed out, the rate of dysfunction in the profession is simply not sustainable: “This research suggests that the current state of lawyers’ health cannot support a profession dedicated to client service and dependent on the public trust” (*Path to Lawyer Well-Being*, at 1).

This alarming information prompted a deep dive into the health of the profession and a commitment on the part of the legal community to prioritize the well-being of attorneys. To date, approximately 200 law firms, law schools, and other legal employers have signed onto the American Bar Association’s “Well-Being Pledge.” The signatories to the pledge acknowledge that substance use and mental health problems represent a significant challenge for the legal profession and commit to do more to improve the health and well-being of lawyers.

It is heartening and important that, as a profession, we have begun to address these institutional failures. But we have by no means arrived. The culture of the profession and the nature of the adversarial system make lawyers a tough population to reach, and the law a reluctant profession to reform. Understanding the factors that put law students and working attorneys at risk of distress—from client suicide and countless other lesser traumas—is key to making positive changes to our own behavior, and in holding our profession accountable.

It Starts in Law School

Law students tend to be competitive, academically oriented, driven people. Legal education encourages and rewards those high-achieving personality traits. Students learn early how to handle a heavy workload with little free time. They walk into class knowing they may be subjected to rigorous questioning by a professor using the Socratic method of teaching. Expectations are set high for law students and success is defined by

external measures such as grades, on-campus interviews, and moot court and trial competitions. The emphasis on achievement in a high-pressure atmosphere is undoubtedly one of the reasons that law students graduate, pass the bar exam, and succeed in practice. However, something is clearly missing because our law students are suffering.

The conclusion drawn from the 2016 Survey of Law Student Well-Being is that “law students are among the most dissatisfied, demoralized, and depressed of any graduate student population” (*Path to Lawyer Well-Being*, at 34). The survey found disturbingly high rates of alcohol abuse, illegal drug use, anxiety, and depression among law students, as well as a reluctance to seek treatment. More than a quarter of participants were at risk for problem drinking, yet only 4% sought help (*Suffering in Silence*, at 140). Earlier studies on law students found relatively normal rates of depression before law school. Those levels skyrocket in the first year of law school, peak in the third year, and never return to baseline (SUSAN SWAIM DAICOFF, *LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES* 9 (American Psychological Association 2006) [hereinafter DAICOFF]).

So, what is it about law school education that is producing such impaired young professionals? The answer is layered and complex. Law school may not be what students are expecting when they walk through those campus doors the first time. Portrayals of the law in media and entertainment do not comport with reality. Many students enter law school without a clearly defined career goal and find themselves directionless. The experience can be lonely and isolating. Students may also be disillusioned by the study of law. A common complaint from students is that there is a lack of positive feedback from professors. Beyond that, Burrell notes that “most” of his professors hadn’t even practiced law; they’d been on an academic career path from the start. That ruled out any discussion of vicarious trauma, healthy coping, or other wisdom that would offer an avenue beyond the dark gallows humor that Burrell and others resorted to in order to “close yourself off from the feelings.”

The stress in law school, meanwhile, is extreme. For students who are used to being at the top of the class, suddenly competing with academic equals can be both daunting and dispiriting. Furthermore, maintaining a front of confidence and control despite internal feelings of awkwardness and insecurity can create cognitive dissonance. Yet law students are expected to perform at the highest levels.

There is little counterbalance in law school to the high-pressure atmosphere and intense curriculum. The emphasis from the top down on external measures of success overshadows the importance of support for intrinsic rewards like community, personal growth, and emotional health. Students lack resources and avenues for support and also struggle with the stigma of needing help. We owe it to our new lawyers-to-be to teach them the value of self-care and to recognize the warning signs of distress. We owe nothing less to those already in the field.

Profile of a Lawyer: Individual Risk Factors

The qualities that got us through law school are the same ones we carry to the practice of law. We are competitive. We have a drive to achieve and to succeed. We work long hours under time pressure, with high caseloads and little relief. The stakes are particularly high for attorneys working in the criminal justice system. The population we serve has high social service needs and we are often divided in our mission. One side of the courtroom is tasked with protecting the rights and the liberty of the accused, the other side with seeking justice and ensuring public safety. In the broadest sense, that adversarial system leads to an emphasis on rights and obligations over emotions and interpersonal harmony. It also encourages dominance and aggression, which can impair relationships at work and at home. It is no surprise that, like law students, lawyers have higher than normal rates of depression and psychological distress (DAICOFF, at 9).

To complicate matters, lawyers have a duty to zealously advocate for all of their clients, and young lawyers have little choice in who they are assigned to represent. For both public defenders and district attorneys, that decision may be as simple as what day he or she happens to be in court. The restricted ability to choose our clients and cases can feel depersonalizing and the lack of agency can cause internal conflict and stress. The ethical duty to advocate for a person or a cause may force a lawyer to subordinate his or her own emotional response to the needs of the case. That takes a toll. “For some lawyers that have been doing this for a long time, you can tell that they are dealing with humans and human problems,” Burrell said, “but they no longer see the clients as human. It’s a defense mechanism.”

Layered on top of the duty of zealous advocacy is the duty of confidentiality. Lawyers cannot discuss their cases or their clients outside

the workplace. The attorney-client privilege is a sacred part of our legal system and those conversations, those communications are untouchable. The inability of a lawyer to share painful, disturbing, or even confusing information with close family or friends can contribute to mental health conditions. Burrell, for example, said he never talked to his longtime partner about Sheila's suicide. "I literally didn't talk to anybody at all," he said. The same went for other distressing cases that followed. "Our clients tell us difficult things," he said, and "you promise that you will keep it in confidence." Beyond that, Burrell said, "I didn't want to bring the darkness home." That had consequences for Burrell, who began to keep much more than client conversations to himself, keeping them from his partner, close family, and friends. "You even shut down things that have nothing to do with the law," he said. "I started ignoring my feelings. And instead, I just started trying to appear like a lawyer is supposed to appear."

In short, simply abiding by the oath that all attorneys take in order to practice law may make us more vulnerable to distress (L. Norton, J. Johnson, & G. Woods, *Burnout and Compassion Fatigue: What Lawyers Need to Know*, UMKC L. REV. 84, no. 4 (2016) 987, at 996 [hereinafter "Norton et al."]. See ch. 12, *Suicide in the Criminal Justice System: Ethical Considerations*).

Profile of a Profession: Institutional Risk Factors

Our vulnerabilities as individual lawyers do not exist in a vacuum. Lawyers are part of an old and venerated profession that is steeped in tradition. As much as we are shaped by our own ambition, we are also shaped by the institution. To be sure, many of the stressors that lawyers face also exist in other professions: high workload, little time, pressure to perform. Yet criminal law is unique, as noted earlier, *because* of its adversarial nature. That takes a deeper toll than many attorneys realize. We spend most of our days engaged in active disputes, arguments, and confrontation in a public courtroom. The job we have chosen also exposes us to endless stories of loss, poverty, victimization, mental illness, and other human suffering—including, on some occasions, the shock of client suicide.

For criminal law practitioners who are in court daily, the relentlessly confrontational nature of the work can be destructive over the long term if it is not left in the courtroom when the lawyers walk out. While the gladiator mentality is necessary and useful in front of a jury, living in that

adversarial state of mind and body has long term, negative physiological consequences. Dr. Lee Norton is a noted traumatologist and lead author of a 2016 law review article, to which I also contributed, entitled *Burnout and Compassion Fatigue: What Lawyers Need to Know*. She explains it this way:

Adversarial thinking is useful in trials when the lines have already been drawn. But, when it prevails within the workplace, it undermines essential social engagement and fluid, generative problem solving. Habitual adversarial thinking often generates a chronic oppositional posture. This brittle stance is characterized by a black-and-white, either-or, good-bad, yes-no, win-lose world view that damages personal and professional relationships, is physically destructive, and leaves the affected individual at much higher risk for medical and emotional health conditions (Norton et al., at 995).

A barrage of trauma exposure complicates matters. Our justice system has been flooded with people who come from impoverished communities, are addicted to drugs and alcohol, and may suffer from both mental and physical health problems. Sometimes the criminal charges are the least of their worries. As a result, we become more than just defense lawyer, prosecutor, or judge: we are also social worker, therapist, and coach. The defendants, victims, and witnesses in our system of justice often do not understand the limitations on the lawyers or the constraints of the law. The criminal justice process is not swift, and constant delays and continuances can frustrate those who are not familiar with just how slowly the wheels of justice turn. Expectations of lawyers and judges in a criminal court are high, and our inability to deliver on those expectations can cause distress. As a society, we have watched our social safety network disappear. Treatment services that *should* be available to our clients are thin or often nonexistent. That can lead us to feel a deep sense of powerlessness and even guilt.

After Scott Burrell learned in court of his client's death, he walked back to his office and played his phone messages. There was one from Sheila. One he received too late. One that would torment him.

"I don't know if there's anything I could have or would have said that would have changed things, but it kills me that I didn't get the message," Burrell said. "That's what I thought about all day. I still think about it. She's deciding on ending her life and she called me—she called her lawyer." That feeling of "failure" is common, even if client suicide is not. Said Burrell: "We meet with people who are desperate and need us to save the day. Most of the time we can't save the day."

When we begin a career in criminal law we knowingly sign up for those realities. What we do not sign up for is walking into court without the tools to psychologically process the content of the work. The unique combination of both individual and institutional risk factors for lawyer distress makes us susceptible to suffering from both burnout and compassion fatigue. In part II, we explore the ways that unaddressed stress can lead to poor performance at work, relationship problems, mental illness, addiction, and medical problems.

II. The Neurobiology of Stress

Chronic fight, flight, or freeze reactions become ingrained in our nervous system, making us inclined to perceive threat where it does not exist. This means we react instead of respond, act instead of reflect, speak instead of think, and accuse instead of consider, and that we do so in a way that is highly inflammatory to all aspects of our physical body. In short, we make ourselves mentally and physically ill.

—Norton et al., at 992

The response of our bodies and brains to stress is an evolutionary adaptation for which we should all be thankful. Stress triggers a primitive physiological reaction that puts us into survival mode, and we remain in that excited state until the danger passes. However, when stress becomes chronic, our bodies are unable to return to a normal state of arousal. Advances in the scientific understanding of the neurobiology of chronic stress teach us that it has long-term consequences: physically, emotionally, and cognitively. Although a thorough examination of the neurobiology of stress is beyond the scope of this chapter, an overview of the science is helpful.

What Happens to a Body Under Stress?

When faced with a threat or a dispute, our nervous system goes into a state of high alert, activating a series of neurological and chemical reactions. The “fear center” of our brain, called the amygdala, activates our central stress response system. Those instinctive responses take place in our autonomic nervous system which is further divided into the sympathetic and the parasympathetic systems. The sympathetic nervous system acts as a gas pedal, increasing our heart rate, pulse, and respiration, and causing a spike in blood sugar. It increases blood flow to the muscles in

our arms and legs, the pupils dilate, and we release the stress hormones adrenaline and cortisol. We are in “fight, flight, or freeze” mode.

When the threat has passed, our parasympathetic nervous system engages and acts as a brake, slowing down the heart rate, pulse, and respiration and conserving sugars that give us energy. The parasympathetic nervous system is governed by the vagus nerve, the longest and most complex of our cranial nerves. It runs from the brain through the face and thorax and down to the abdomen. It acts as a freeway carrying information between the organs of the body and the brain. The vagus nerve controls the body’s relaxation system and counteracts the stress response produced by the sympathetic nervous system. The parasympathetic nervous system calms the stress hormones and puts us in a relative state of relaxation.

That reaction to stress is automatic and designed for our survival as a species. Under healthy conditions, threats are intermittent. But what if they are constant? For criminal lawyers, the workplace is permeated by the perception of threat. Every time we enter the courtroom and argue, fight, disagree, or blame, we activate that process. If stress becomes chronic and our relaxation mechanism does not have the time or opportunity to return the body to a resting state, we are at risk of living in that heightened state of arousal. Over time, the body’s response can become generalized, putting us in a constant vigilant and reactive state.

Some lawyers have a natural or learned ability to regulate their autonomic nervous systems in a way that deflects and depersonalizes contentious situations. Most of us are not that fortunate. The consequences can be dire. That uncontrolled negative cycle eventually erodes our ability to solve problems and resolve conflicts—the very qualities we count on in the courtroom (*see generally* Norton et al.).

Understanding Burnout and Compassion Fatigue

Ignored or left unaddressed, chronic stress can wreak havoc on our bodies, our emotional well-being, and our ability to provide competent counsel to those we represent. We are at risk of developing both burnout and compassion fatigue—two related conditions that can exist individually or together. Understanding the nuances between them will help us recognize and address our symptoms.

Burnout is a state of emotional, mental, and physical exhaustion brought on by prolonged work stress. It stems from a gap between expectations and

outcomes or situations where perceived demands are greater than perceived resources. Burnout is caused by a number of factors, including long hours, lack of support, lack of control over the job, high levels of scrutiny, unclear job expectations, and a lack of resources. The condition is characterized by a diminished interest in work, decreased sense of personal accomplishment, increased cynicism, and a loss of personal identity. It may result in fatigue, anxiety, loss of hope, feelings of detachment, and reduced performance and productivity. Burnout can happen in any job at any level and is connected to the demands rather than the nature of the job.

Compassion fatigue is the cumulative physical, emotional, and psychological effect of exposure to traumatic stories when working in a helping capacity. Unlike burnout, compassion fatigue is directly related to the *content of the material* rather than the job conditions. For those of us in the criminal legal system, witnessing a barrage of sadness, trauma, poverty, and mental illness—up to and including suicide—has come to define our day-to-day work in court. Burrell likens the accumulation of vicarious trauma to being slowly boiled like a frog: “You feel something, but you get used to it and you keep trying to work through it. And then you’re cooked.”

For years, he said, he “felt unhappy” professionally, “and I couldn’t put my finger on it.” It’s only in retrospect that he realized “there’s an aspect of dealing with people’s problems and taking them home that impacted me.”

Acknowledging that our own feelings of distress may be symptoms of compassion fatigue is critical to healing. For simplicity, they can be divided into three domains: emotional symptoms, physical symptoms, and cognitive symptoms. Emotional symptoms of compassion fatigue include chronic anxiety, self-doubt, inexplicable guilt and shame, withdrawal and isolation, irritability and anger, powerlessness, and a feeling of numbness. People suffering from compassion fatigue are overwhelmed by small challenges and may have persistent intrusive concern about cases and clients.

Physical symptoms of compassion fatigue include changes in breathing, changes in heart rate, difficulty sleeping, headaches, problems of the immune system, changes in appetite, decreased libido, headaches, and chronic musculoskeletal pain. These symptoms come about because of the overactivation of the autonomic nervous system we discussed above, which directs the body to produce adrenaline and cortisol, putting the body in that perpetual mode of fight, flight, or freeze.

Finally, and importantly, given the duties of our profession, cognitive symptoms include rigid black-and-white thinking, difficulty concentrating,

confusion and memory loss, inability to recognize cause and effect, loss of sense of direction and purpose, minimization of problems, lack of insight and preoccupation with events and stressors that cannot be controlled (Norton et al., at 989).

Lawyers may not recognize symptoms of emotional, physical, or cognitive distress for what they are: possible signs of vicarious trauma. In fact, they may not realize anything is wrong at all. These conditions develop over time and happen quietly and incrementally. The symptoms may be subtle. Because our colleagues are responding in a similar way, both the symptoms and how we process them are normalized. As those signs of distress translate into poor coping strategies and maladaptive, self-destructive behaviors, the danger to our health becomes real.

The Consequences: All Paths Lead to Chronic Dysregulation

What lawyers too often do is excuse, minimize, or ignore the signs and symptoms of burnout and compassion fatigue and simply tough it out: *I always have trouble sleeping, I'm used to the stress, I can handle it, I don't have time to go to the doctor.* Lawyers are masterful at dodging and denying when faced with the potential that they themselves might need help. The profession conditions us this way and the culture of the criminal law reinforces it. But the danger of that lack of insight is serious. All paths lead to behavioral dysregulation; that is to say, we engage in self-destructive emotional regulation strategies that have long-term consequences. Specifically, lawyers are at risk of self-medication, relationship problems, poor health, and poor performance at work (*see generally* Norton et al.).

As we learned in Part I, lawyers are already vulnerable to using substances to mitigate work stress. They are more than three times more likely to suffer from depression and twice as likely to have an addiction to drugs or alcohol than non-lawyers. Adding burnout and compassion fatigue increases our vulnerability to using alcohol and drugs as a coping strategy. Lawyers may also engage in other forms of self-medication, such as sexual compulsions, reckless spending, gambling, and binge eating. Obviously, these behaviors can spell trouble on the job or at home. Although not the highest among professionals, lawyers have a divorce rate that hovers around 27% (Dan P. Ly, Seth A. Seabury, & Anupam B. Jena, *Divorce Among Physicians and Other Healthcare Professionals in the United States: Analysis of*

Census Survey Data, BMJ 350 [Feb. 18, 2015], <https://doi.org/10.1136/bmj.h706>). As for suicide rates, among lawyers they are six times that of the general population, making suicide the third leading cause of death in our profession (*The Lawyer's Epidemic: Depression, Suicide and Substance Abuse*, ABNORMAL USE [blog], <http://abnormaluse.com/2012/03/the-lawyers-epidemic-depression-suicide-and-substance-abuse.html>).

The number-one cause of death for lawyers is cancer, followed by heart disease—trends that underscore the medical consequences of chronic stress. The adrenaline and cortisol that are key to the fight, flight, or freeze response can turn on us, causing digestive problems like ulcers, acid reflux, ulcerative colitis, and irritable colon. Chronic stress affects the circulatory system, leading to high blood pressure, heart disease, high cholesterol, abnormal heart rhythms, and stroke. Our respiratory system is impacted, causing ailments like asthma, allergies, and pneumonia. Chronic inflammation caused by stress can result in musculoskeletal pain and injury and a compromised immune system.

Finally, and perhaps most distressingly, chronic dysregulation leads to poor job performance. If we don't recognize and address symptoms of distress, we will put our clients in jeopardy and we will put our jobs at risk.

Neuroscience shows us that chronic stress can have far-reaching consequences. But those consequences are not inevitable. Neuroscience also tells us how we can prevent, avoid, and mitigate the damage. In Part III, we discuss possible solutions: ways that we can build resistance in ourselves and in our profession.

III. Possible Solutions: Building Resilience

To be a good lawyer, one has to be a healthy lawyer.

—*Path to Lawyer Well-Being*, at 1

As criminal lawyers, we know the price of our empathy is high. We also know that in the courtrooms we inhabit, there is a relentless need for our compassion. Still, sometimes, our empathy and compassion are just not enough. In Department 15 in the late 1990s a group of young lawyers and an unconventional judge learned that hard lesson. Scott Burrell says he will never forget that day and that he has thought of Sheila, and that missed call, so often. Yet despite the span of more than two decades, he

hasn't had the opportunity until now to explore the full context of his experience. "It is helpful to talk about it," he said. And that's why a cultural shift is so critical.

As criminal lawyers, we need to step up and make changes in the way we live—both at work and away from work. While setting reasonable expectations for ourselves and making time for self-care may not be our custom, it should be. We need to develop strong, supportive social networks outside of the office comprised of people who are not in the business of criminal law. We should also strive to incorporate non-work-related activities and hobbies during time away from the job. Interests and activities that use different skills and different parts of the brain provide a mental respite. In that vein, we also need to take time away from the office that is commensurate with the nature of the work, not based on outdated cultural norms (Norton et al., at 998-99).

But lawyers cannot do this alone. It's incumbent on the legal profession to make a concerted effort to prioritize the well-being of the lawyers in its employ. That effort needs to start in law school. In an encouraging trend, schools have begun to address this gap. In 2016, the same year the law student survey revealed its distressing findings and the Task Force on Lawyer Well-Being first convened, Stanford professor Ronald Tyler authored a law review article entitled *The First Thing We Do, Let's Heal All the Law Students: Incorporating Self-Care into a Criminal Defense Clinic* (R. Tyler, *Berkeley Journal of Criminal Law* 21, Issue 2 (2016), art. 1, at 1). Stanford has since created an innovative self-care curriculum in the Stanford Criminal Defense Clinic that encourages mindful self-reflection, teaches coping skills, and increases resilience. Meanwhile, in 2018, first- and second-year students at Berkeley Law launched a student-run Peer Wellness Coalition to encourage a conversation about wellness that would be woven throughout the three-year curriculum. These programs are promising.

For those who employ lawyers, *The Path to Lawyer Well-Being* report set forth five straightforward recommendations for employers that are intended to minimize lawyer dysfunction and reinforce the positive relationship between wellness and excellence in the practice of law: (1) identifying stakeholders and the role that each of us can play in reducing the level of toxicity in the profession; (2) ending the stigma surrounding help-seeking behaviors; (3) emphasizing that well-being is an indispensable

part of a lawyer's duty of competence; (4) expanding educational outreach and programming on well-being issues; and (5) changing the tone of the profession one small step at a time (*Path to Lawyer Well-Being*, at 10-11).

Law offices and government agencies can and must develop a culture that establishes a hierarchy of well-being: self-care first, all else second. In the courtroom we argue, compete, bicker, fight, and withhold. But inside the office, we should be expected to be cooperative, helpful, open, compassionate, and nonjudgmental. By providing counterbalance to that heightened state of alert, we can allow lawyers to move back and forth between the sympathetic and the parasympathetic nervous systems in a way that gives our mind and body a break from constant conflict (Norton et al., at 1001).

True and lasting cultural change in our profession will come from within and will come from courageous and sometimes unconventional players in the criminal justice system. A few years after Sheila committed suicide, Judge Tsenin became the supervising judge of the criminal court. With the expanded reach of her authority, she gathered a reluctant group of stakeholders from across the criminal justice system to figure out how San Francisco could better serve people with mental illness. Her motivation stemmed in large part from Sheila's suicide. It led to the formation in 2002 of San Francisco's first collaborative mental health court. As Judge Tsenin recently explained, "I finally had the power to do something. And I did."

Behavioral Health Court's success in reducing recidivism, violence, and psychiatric hospitalizations has been recognized nationally. Mirroring a nationwide trend toward problem-solving courts, San Francisco now has expanded the concept into a community justice center, a neighborhood court, a veteran's court, and a young adult court.

The impact on defendants in collaborative court programs has been sweeping and overwhelmingly positive. But the benefits do not end there. Along with the core mission of addressing the root causes of criminal behavior, collaborative programs also serve the emotional health and well-being of the lawyers working in them. By turning down the temperature of the adversarial system, we allow lawyers to recover. The criminal legal system has long prized jury trial work over some of the less combative aspects of practice. As a profession, we should be encouraging the idea that therapeutic jurisprudence benefits not only those facing criminal charges, but the lawyers and judges in the courtroom as well.

Conclusion

Client suicides do not happen in isolation. The distress and sense of powerlessness experienced by the judge, the prosecutor, and that client's defender are almost always additive. They are layered on top of exposure to myriad other traumas, and occur against the backdrop of a work environment that counteracts healthy coping mechanisms. Viewed in this light, it is no surprise that a client suicide can sometimes push us to a breaking point. We will never come to expect or to accept the suicide of a client. However, we can and should be better prepared.

The culture of the legal professions runs deep, and it is difficult to change. One of the first steps is pulling back the cloak that has kept the dysfunction of the profession hidden from view. Going forward, it will be up to lawyers to challenge the norms of the profession, hold our agencies accountable, and insist that self-care remain a priority. By raising the standards of the profession, and prioritizing our own physical and mental health, we can strive to be healthy lawyers, which will make us better lawyers.



Jennifer K. Johnson is a partner in the Johnson Woods Group which provides education and consulting services at the intersection of mental health and law. For nearly two decades, she was a trial attorney at the San Francisco Public Defender's office where she specialized in representing clients with serious mental illness. From 2002 until 2016, she worked with a diverse group of community stakeholders to develop, implement, and supervise San Francisco's felony and misdemeanor Behavioral Health Courts. For more than 15 years, Ms. Johnson was the lead attorney in both courts while also representing clients with serious mental illness on homicide and attempted homicide charges.

In addition to her work in the courtroom, Ms. Johnson has helped shape mental health and criminal justice policy at the local, state, and national levels. She was a lead stakeholder in the development of the San Francisco Police Department's Crisis Intervention Team Training Program in 2011. She remains part of the CIT program where she focuses on the training curriculum. She is a Senior Consultant with SAMHSA's GAINS Center for Behavioral Health and Justice Transformation and conducts Sequential Intercept Mapping Workshops and trauma training throughout the country. She is a member of the Criminal Justice Advisory Panel

for the Arc's National Center on Criminal Justice and Disability and a board member of San Francisco nonprofit Legal Assistance to the Elderly.

Ms. Johnson is a lecturer at Berkeley Law where she co-teaches a seminar in mental health and law with Dr. George Woods. She is the co-author of a number of articles, including *Burn Out and Compassion Fatigue: What Lawyers Need to Know*, UMKC LAW REVIEW, 84(4) (Summer 2016), and *Justice that Heals: Promoting Behavioral Health, Safeguarding the Public and Ending Our Overreliance on Jails* (June 2016). She recently authored a chapter on mental health courts in the American Bar Association publication, *Representing People with Mental Disabilities: A Practical Guide for Criminal Defense Lawyers* (Elizabeth Kelley, ed., American Bar Association, 2018).

Ms. Johnson has been recognized for her work with awards from the California State Association of Counties, the Council on Mentally Ill Offenders, Pioneer Institute, and the San Francisco Superior Court. She can be reached at jenniferkjohnson@comcast.net.

Complete citations are available from the author upon request.