Winter 2017, Volume 19, Issue 2

TABLE OF CONTENTS

**Articles »**

**Breaking Bias: Scandal in a Lay Guardian ad Litem Office**
By Adam Ballout
Manufacturing harm: how a volunteer program meant to help children ended up hurting thousands of them.

**The Hidden Cost of Empathy: How to Address Secondary Trauma Stress in a Child Law Office**
By Tamara Steckler and Vicki E. Light
The empathy that brings people to direct service legal work also causes them to be deeply affected by their clients’ personal traumas.

**Tips for Young Lawyers: How to Avoid Burnout as a Children's Lawyer**
By Cathy Krebs
Addressing compassion fatigue is essential to providing ethical and zealous legal representation of children.

**Expunging Criminal Records Promotes Justice**
By Kele Onyejekwe
The expungement of a criminal record allows your client to move forward from a past mistake to pursue a full civic life.

**Practice Points »**

**Watson Chapel, Arkansas, School District Consent Decree**
By Sarah Durham
Both parties are striving to improve student achievement and the overall school climate.
Ensuring an Effective Defender Service for Youth
By Cathy Krebs
The recent report details how children are routinely provided inadequate representation by (or outright denied access to) lawyers.
Breaking Bias: Scandal in a Lay Guardian ad Litem Office
By Adam Ballout – January 11, 2017

One of the most pivotal and formative relationships we will ever have as human beings is our relationship with our parents. Not only is the presence of a parent-child relationship significant, but in many ways the absence of a parent-child relationship can be equally, if not more, influential to a child. Our relationship with our parents sets us on a trajectory that shapes how we engage with the world, how we view ourselves, and the nature of the relationships we form.

Most people have never heard of dependency law, but almost everyone has heard of child protective services and foster care. Dependency law deals with court proceedings, typically in cases of suspected abuse or neglect, involving children who are being removed from their parents and placed into protective custody. This can happen either by law enforcement or a court order. When children are taken away from their parents, a 72-hour emergency hearing known in Washington State as a "shelter care hearing" takes place, during which it is determined whether or not children must remain in state care. Some dependency cases can last for years.

In Washington State, when a foster home or relative placement cannot be found, children are often placed in motels with social workers assigned to stay overnight with them. Siblings are routinely separated from each other and are often placed into different homes, not even necessarily in the same county from which they were removed. The love and support of a brother or a sister can make all the difference in the world to a child in these traumatic situations, and so the separation from siblings results in additional trauma. Children often have no time to say goodbye to family, friends, or pets, and these distressing and destabilizing events happen routinely on a daily basis in every part Washington (and, indeed, around the country).

Washington does not provide a right to a lawyer for children when they are removed by Washington’s Child Protective Services and placed into foster care; however, federal law requires that a guardian ad litem or court-appointed special advocate be appointed to represent the best interest of children (42 U.S.C. § 5106(a)(2)(B)(xiii)). In Snohomish County, Washington, that role is allowed to be performed by lay volunteers, referred to as volunteer guardians ad litem (VGALs). The VGAL program is charged with the sacred obligation of advocating for the best interest of children who are alleged to have been abused or neglected. To that end, VGALs are granted party status, access to court resources, and otherwise restricted investigative tools that ordinary citizens would not have access to. VGALs have discretion to approve or reject service providers for parents in addition to veto authority over visit supervisors and relatives who wish to have contact with a child. Volunteers are supported by
program coordinators who oversee them and by two full-time VGAL program attorneys who represent them in court.

The powers entrusted to the VGAL program inherently come with tremendous deference from the courts. In order for any court system to handle thousands of cases per year, it must rely on reports it receives from the parties in a case. The VGAL system is charged with representing a child’s best interest and given leeway to investigate the facts of the case, so the courts often rely heavily on the VGAL recommendations. Yet, concerns of bias have recently begun to undermine trust in the entire VGAL system.

A House of Cards
On September 11, 2015, following a termination of parental rights case, Superior Court Judge Anita Farris made findings that a VGAL had placed a child’s physical welfare at risk by attempting to manufacture evidence against parents fighting to be reunited with their child. In addition, the VGAL program was caught violating the confidentiality of the parents by leaking private confidential information to nonparties. Evidence related to that misconduct was then deliberately destroyed.

After days of evidentiary hearings in March 2016, Judge Farris went on to find that the VGAL program failed in its duties to represent the best interest of children, maintain independence and professional conduct, avoid conflicts of interest, treat parties with respect, and become informed about the case. Further, in the process of litigating this case, it was also proven that yet another member of the same VGAL program had lied to gain access to the Washington Defender Association’s defense attorney email listserv, a listserv for lawyers representing parents. During her four years on the listserv, the VGAL forwarded strategic information about opposing counsel to the lead attorney of the VGAL program for use in individual cases.

While attempting to cover up these wrongdoings, the VGAL was found to have committed first-degree felony perjury, theft, and fraud. This volunteer was a member of the VGAL program for over 11 years and touched hundreds of cases, thus affecting many children and their families.

Our office, ABC Law Group, formally filed a complaint with Snohomish County against the VGAL for spying on the Washington Defender Association listserv, but it was immediately dismissed by VGAL officials as having "no potential merit." It was later revealed that the VGAL program had dismissed all prior complaints the program had ever received as having "no potential merit" and had done so without a proper grievance procedure and with no disciplinary action ever taken at any level. The VGAL program additionally violated the confidentiality of complainants by leaking their identity to the VGAL being investigated while the complaint was still being considered. This not only violated the VGAL program's duties under the guardian ad litem rules but also created an environment of retaliation and hostility within the legal community.
One foster family filed a complaint that a VGAL never went to see the child placed in the VGAL's care. That family became a target of severe retaliation. Despite no safety concerns related to the child, upon learning of the complaint the VGAL program made the recommendation that the court remove the child from the care of the family.

In a failed effort to cover up years of ongoing systemic violations of ethics rules, the VGAL program engaged in a pattern of personal and professional retaliation against attorneys who moved to expose its wrongdoing. In the above referenced case, Judge Farris specifically found:

> During this case, the Snohomish County VGAL program attacked the mother's attorneys and their small law firm professionally, personally, financially, and sometimes outside of official court process. I find that all of the surrounding facts combined together do prove that the VGAL program engaged in a pattern of retaliation against the mother's attorneys and their ABC Law Firm while this case has been pending.

Oral Decision at 118.

The court went on to find that

> [w]hen VGALs retaliate, they're placing their personal passions for revenge ahead of the needs of any children whose best interest they're supposed to protect. Retaliation is contrary to permanency because termination verdicts in adoption placements will not be secure if it can be shown they were garnered from a system that tolerates personal and financial retaliation against attorneys for zealously doing their jobs.

Id. at 119.

**Interfering with Family Integrity**

The goal of a dependency case is almost always reunification of the child with his or her parents. Services and treatment are to be provided so that reunification can happen quickly, understanding that children do best with their parents. Yet, despite these clear goals, the VGAL program was found to have consistently disrespected parents and undermined the goals of reunification, particularly for low-income parents.

For example, some VGALs were found to have created fake www.match.com dating profiles to lure parents who were working toward reunification with their children in order to gather evidence that would be used against them. Fake dating profiles were designed and calculated to catfish parents based on targeted lies such as identical religious affiliation or specifically desiring women with children. Information gathered in these communications was then used by the VGALs to paint a picture of the parents as somehow unfit. Aside from their blatant dishonesty, these practices also violated Snohomish County rules regarding the private use of email addresses as well as treating all parties fairly and with respect.
Disparate treatment of low-income and indigent parents by the VGAL program has also been an ongoing issue our office has directly experienced. To deter parents' attorneys from gaining access to its files and records, the VGAL program implemented a policy of charging attorneys who represented indigent parents a per page fee for obtaining discovery files. This would occur only after defense attorneys attended a discovery conference and made a subsequent appointment to view discovery, which would be shown only if VGAL staff was present to observe and record what pages were requested.

In contrast, private attorneys representing parents who made too much money to qualify for court-appointed attorneys were provided discovery and records on a CD for free to view at a time and place of their convenience. These disparate accommodations resulted in significant disadvantages to low-income parents involved in the system and came at a time when the VGAL program claimed it lacked the resources to produce discovery electronically at all.

Based on the evidence outlined above, Judge Farris found that the Snohomish County VGAL program engaged in abusive litigation tactics, including "masking misconduct, fabricating facts, and reaping revenge." Id. The VGAL program withheld evidence from opposing counsel, deleted evidence of misconduct, shuffled discovery out of order, and conducted a document dump of 8,000 pages specifically designed to secure and secrete misconduct. The court explained in its ruling:

The document dump is a well-known abusive litigation tactic, often used in large civil litigation involving corporations or government entities. Document dump is defined as the act of responding to a request for information with a large quantity of data that is transferred in an unfriendly and hostile manner. It may be used to hide unfavorable evidence by mingling responsive documents with a large number of nonresponsive documents. Document dumps often produce more information than requested, but in a nonsearchable, unorganized or unlabeled format. The producer then argues it's done the recipient a favor by producing more than requested.

Id. at 75–76.

The VGAL misconduct, as well as the subsequent cover-up of widespread misconduct by the VGAL attorney and the head of the VGAL program, was not designed or intended to help children in any way. Instead, the court found, "[n]ot one of these fabrications did anything to promote the interests of a child. These were not well-intentioned lies. Without exception, their sole purpose was to hide the misconduct of the liar, and that was done at the expense of this child." Id. at 105.

As this case proceeded through months of contested litigation, an underlying issue came to light: The VGAL program has been operating since 1979, yet none of the VGAL program's volunteers, program coordinators, or staff had ever received training or even been made aware
of the Guardian Ad Litem Rules set by the Washington State Supreme Court. This would be equivalent to a fire department claiming it did not know fire codes existed, or a senior Internal Revenue Service auditor claiming never to have heard of a tax code. This epic failure has led to catastrophic ethical and legal violations by the VGAL program on an unprecedented scale.

The most recent Superior Court findings regarding the Snohomish County VGAL program, outlined above, highlight the desperate need for effective, confidential, and ethical representation of Washington's children. Washington State is by far one of the worst states in the entire country when it comes to protecting the rights of children entering into state care. A National Report Card on Legal Representation for Abused & Neglected Children found Washington State to be ranked at the bottom of the country with a grade of F when it comes to providing legal representation to help children in dependency matters.

In 2015, there were 8,400 children in out-of-home care in Washington State. Partners for Our Children, Child Welfare Data at a Glance. One study found that two-thirds of King County youth referred for offender matters in 2006 had some form of Children Administration involvement. It also found that children in foster care had a graduation rate of 41.5 percent, the lowest graduation rate of any tracked group, including homeless youth.


The removal of a child from a family is a very serious action that must be taken only when the child is truly at risk. Once in care, every effort must be made to minimize time in foster care and work toward reunification. Children in foster care risk trauma that comes from removal from family, but they also risk further abuse. Over the past eight years, the Washington State Department of Social and Health Services (DSHS) has been hit with scores of lawsuits on behalf of children who were placed in foster care, paying out $166 million dollars in personal injury claims for failing to protect those children. Will Drabold, "DSHS Employees Rarely Pay a Price for Failing to Protect Foster Children," Seattle Times, Aug. 18, 2015. Many of the most severely injured while in state care were children who were tortured, starved, or raped, while others died. These numbers fail to take into account the personal cost on the victims as well as the suffering of families who must deal with the pain of knowing this abuse occurred while children were placed out of home.

Conclusion

Advocating for the best interest of children in a dependency case requires vigilance and training in maintaining the confidentiality of the families that VGALs are charged with serving and guarding against bias, prejudice, and burnout. In Washington State, it currently takes 300 hours of training to be certified to massage a horse or other large animal (Washington State Dep’t of Health, Animal Massage Certification Requirements), yet it takes less than 24 hours of training...
for a volunteer to walk in off the street and recommend that a child never see his or her parent again.

Imagine what would happen if jury duty was not mandatory for citizens but a voluntary process instead. What demographic of our community would have the time and the interest to be a permanent volunteer juror? Would that demographic be in any way representative of the diversity of the community? Imagine that permanent juror having a seat at the table after a few hours of training to wield massive influence over your case as well as your personal confidential information.

Studies have shown that when attorneys for children are appointed at that initial 72-hour emergency shelter care hearing, cases wrap up sooner and with more successful outcomes. The 2015 Impact Report by Legal Counsel for Youth and Children indicated that on the issue of placement, children who are appointed counsel for the first hearing are more likely than children without counsel to be placed with parents, relatives, or other caring adults they know, throughout their dependency cases. On the issue of permanency, children with attorneys from the first hearing onward are more likely to remain with or successfully return to their parents than children without counsel at the start. Yet, the Children and Youth Advocacy Clinic at the University of Washington School of Law found in its 2016 status report, Defending Our Children, that despite a federal law requiring that an advocate be appointed for the child in all proceedings, 23 percent of children in Washington had no appointed advocate in the court hearings that control their lives. This failure to provide counsel effectively silences the children whom the court needs to hear from the most.

Perhaps the only advantage of Washington being near last place nationwide is that we know what the effective solutions are and what steps need to be taken immediately. No long-term studies need to be done. Determining the best interest of children must be done on a case-by-case basis and cannot be circumvented through shortcuts of bias and prejudice. Training for volunteers regarding cultural issues, racial bias, confirmatory bias, prejudice, domestic violence issues, incarceration of parents, therapeutic approaches, and effective child-centered representation is woefully inadequate though it should be mandatory for anyone to do this work.

Not all children can be returned to their parents when their health or safety cannot be secured. However, when children absolutely must be separated from their parents through state intervention, that process can occur either with care and thoughtfulness or with unnecessary cruelty. The termination of parent-child relationships must be done in a transparent, legal, and ethical way; yet, now more than ever, it must also occur in a therapeutic manner. We have an obligation to those hardest hit by our system's failings to rebuild our child welfare system with compassion, using the voices of the vulnerable and abused to inform our work.
It is easier to build strong children than it is to fix broken men.
—Frederick Douglass

**Keywords:** litigation, children's rights, volunteer guardian ad litem, abuse, retaliation, misconduct

Adam Ballout is a partner at ABC Law Group in Everett, Washington.
The Hidden Cost of Empathy: How to Address Secondary Trauma Stress in a Child Law Office

By Tamara Steckler and Vicki E. Light – January 11, 2017

In February 2006, a staff attorney in the Legal Aid Society's Juvenile Rights Practice (JRP) in the Bronx contacted the director of social work to discuss feeling overwhelmed by the sadness she was experiencing as a result of her work representing children in Family Court. The director quickly acknowledged that she was not alone in her reaction. Indeed, there is a term in the field of psychology for what she was feeling: secondary trauma stress (STS). This conversation began a discussion about how JRP could start educating its staff on identifying STS and explore ways to address it personally and professionally. This article describes the underlying conditions leading to STS, the history of how JRP designed its model for assisting staff, and a description of that model.

The Creation of an STS Committee at the Legal Aid Society

New York City's Legal Aid Society is the nation's oldest and largest private, not-for-profit organization providing free legal assistance. The society represents over 300,000 clients each year through a network of 25 offices, and it provides a comprehensive range of legal services in three practice areas: civil, criminal, and juvenile. The staff of JRP, which includes 350 attorneys, social workers, investigators, paralegals, and support staff, represents more than 30,000 children annually in the five boroughs of New York City's Family Court in child welfare, termination of parental rights, persons in need of supervision, and juvenile delinquency petitions. As a result, staff must deal with traumatic and emotionally charged cases affecting children and their parents and caretakers every day.

The need for an organizational response to identify tools to manage the vicarious trauma and stress that JRP staff experience seems obvious. It was in 2008 that the idea of establishing a programmatic plan to address these experiences began to be developed. Following a retreat with 25 interdisciplinary members of JRP staff that led to a charge from JRP's attorney-in-charge to develop a plan to address this issue, JRP's Secondary Trauma Stress Interdisciplinary Committee was formed. The committee has gone on to develop a comprehensive approach to assessing and dealing with STS within JRP, an approach that may serve as a model for other organizations.

What Is Secondary Trauma Stress?

To address STS in the work place, it is necessary to understand what STS is and how it is linked to vicarious trauma and burnout. Stress is defined as a mentally or emotionally disruptive or disquieting influence, which can arise from positive or negative events. Stress emerges over
time. Each new stress builds on the unresolved past stress, compounding the effect of additional stress. Trauma is any shock that creates substantial damage to the psychological health of the individual. Traumatic stress is the strain on the human mind and body from a specific major event that shocks, stuns, and horrifies.

Vicarious trauma can occur from witnessing and hearing traumatic events experienced by others. Staff who experience vicarious trauma absorb the sight, sound, touch, and feel of the stories told by the victim. The trauma experienced by the client creates distress in the helper, which may cause such symptoms as minor sleep problems, hyper-arousal, intrusive thoughts, recurring dreams, and avoidance or emotional numbing. These experiences can cause the helper to question his or her beliefs about the kindness of others and the safety of themselves or others.

STS is also known as compassion fatigue. It is a combination of exposure to trauma and empathy. It is defined as the behavior and emotions resulting from knowing about a traumatizing event experienced by someone close. It becomes an emotional weight experienced when helping or wanting to help a traumatized person. Some factors that contribute to STS seen in JRP are the chronic nature of this type of work and its stressors, the helper's own experiences with trauma triggered by hearing about the clients' trauma, the lack of control over work life, experiencing the pain of clients, the difference between expectations and reality, the difference between how staff perceive their job and how clients and their families perceive it, and a sense that showing emotions, especially for attorneys, is seen as a weakness. Further along the continuum, unresolved STS can lead to burnout.

**Examples of STS in the Work Place**

As members of a law practice representing children in neglect and abuse cases, persons in need of supervision proceedings, and delinquency proceedings, staff listen to clients talk about the trauma that they have experienced or been exposed to in their lives. Hearing about traumatic experiences over and over, staff sometimes become desensitized to it. Other times, staff relive it with clients as they describe their trauma. Here are two examples of STS from JRP staff.

In the first example, a social worker is assigned to assist an 18-year-old child welfare client. An immigrant, with limited family or friends to visit him and a very severe mental health diagnosis, he seems to be in crisis on a regular basis. Since being assigned to the case, the social worker has visited the client in numerous hospitalizations and placements. In addition, she fields calls from him nonstop, sometimes up to six times a day. The client does not like his current placement and, since being there, has been continually swallowing items. On one particular day, the social worker is informed that the client has somehow managed to swallowed pushpins and has just been released from the emergency room.
From that moment on, the social worker becomes anxious and nervous anytime the phone rings, fearing that the client has had a serious emergency. She also begins to question her social work skills. Her feelings transfer to other cases, as she begins to anticipate the worst for her clients. The social worker is hesitant about discussing this with her supervisor for fear of being seen as "weak" or unable to handle difficult clients.

In a second example, an attorney is assigned a delinquency case and is representing an 11-year-old boy accused of sexually abusing his 5-year-old cousin. The attorney feels the weight of this case on a number of levels: the young ages of those involved, the impact she feels that the case is having on both families, the increasing demands of the client's mother, and knowing that she may need to cross-examine a 5-year-old child.

The attorney finds that she is thinking about the case outside of work. The attorney has a 5-year-old child of her own and begins feeling concerned about her own child's safety, though she never before experienced these worries. She thinks about the case obsessively and becomes teary eyed when doing daily tasks.

**Developing a Model**

The STS committee decided that its first order of business was to determine the nature and scope of the problem, and so in 2010 it developed a survey to identify what contributes the most to STS and vicarious trauma reactions in its staff. Based on the results of the survey, the committee developed trainings and protocols to address the identified problems. To measure the effectiveness of these initiatives and to identify continuing needs, the committee created and released a follow-up survey in 2014.

The data set in these surveys included 223 survey takers in 2010 and 228 in 2014, which was a 65 percent response rate. Each survey was composed of two sets of 30 questions. The first set asked demographic and work-related questions tailored to reflect the particular nature of the individual's specific work. The second set consisted of the standard set of questions from the most current version of the *Professional Quality of Life Scales*. B. Hudnall Stamm, *Professional Quality of Life: Compassion Satisfaction and Fatigue Version 5* (ProQOL) (2009). The measure—developed with data from over 3,000 individuals—has been used since 1995 and has been revised multiple times. The ProQOL measures levels of compassion satisfaction, burnout, and compassion fatigue. It is the "most commonly used measure of the negative and positive effects" of helping others who have experienced or are "experiencing suffering and trauma."

The data in both surveys were analyzed to determine whether STS varied depending on the length of time at JRP, borough, practice area (child protective or delinquency), and discipline area (attorney, manager, social worker, paralegal, or support staff). Using those criteria, the only genuine distinction the committee found was an elevated level of STS for staff attorneys.
The 2010 survey results using the ProQOL reflected that, compared with the JRP-wide average, attorneys scored lower on compassion fatigue, higher on STS, and slightly higher on burnout. However, the results revealed that all disciplines, except for support staff, were experiencing levels of STS above normal limits. Staff attorneys were the only discipline experiencing burnout above normal limits.

The committee was also able to compare the results from 2010 and 2014 using the ProQOL set of questions, which revealed a decrease in STS and burnout, and an increase in compassion satisfaction. In that regard, there were lower levels of "feeling trapped" by the job and being overwhelmed by high caseloads than in 2010. In addition, levels of satisfaction in choosing this work trended higher in 2014 than in 2010. Responses to the JRP-specific questions revealed positive trends as well, including an increase in feeling respected by coworkers and a greater ability to speak more openly and candidly with supervisors about stress. More respondents reported in 2014 that they felt their clients' safety and well-being did not rest primarily on their shoulders. For instance, although more staff reported regularly checking emails outside of work hours, fewer gave clients their personal contact information.

**JRP's Approach to Addressing STS**

Once the committee obtained the results of the first survey and identified that staff were experiencing STS, JRP developed a comprehensive plan. First, the committee decided to conduct trainings on STS to educate staff on its symptoms and techniques for managing it. From the committee's review of social science literature, it became clear that in order to prevent and manage STS, staff needed knowledge, recognition, and responses from three category groups: personal, institutional, and professional.

**Personal techniques for managing STS.** To address the personal element, JRP trained staff in the importance of self-care, the primary objective being to do no harm to yourself when helping others. To achieve that goal, the individual needs to prioritize his or her own physical, social, emotional, and spiritual needs. The training also emphasized the need to be aware of the physical manifestations of STS—in particular, empathic resonance (a tendency to experience the same feelings as the client, e.g., anger, sadness), hyper-arousal, and hypersensitivity (a tendency to overreact to stimuli).

In discussing personal responses to STS, the trainers explained that the best approach is to become one's own advocate and to remember the basics: sleep, eat, exercise, and laugh. It is vital to balance home and work. That means maintaining reasonable work hours and cultivating healthy intimate and family relationships. Attention to physical health is another important component. Spirituality or daily meditation (or both) may be helpful, as may be counseling and professional help.
To manage stress, the team of STS-trained individuals taught colleagues a number of stress management techniques, including breathing and mindfulness exercises, centering and guided imagery, biofeedback, and progressive relaxation.

Mindfulness in the workplace is a very useful strategy for addressing STS. Mindfulness is defined as having "moment-to-moment awareness without judgment," and it can be characterized with these three words: intention, attention, and attitude. Mindfulness in the workplace means being present and attentive to the task at hand, while also implementing skills to effectively cope with both short- and long-term stress. According to Ruth Crocker, an expert on recovery from trauma and personal tragedy, managers who practice mindfulness state that it improves their ability to encourage a calm and stable work environment. In addition, research has linked mindfulness meditation to boosts in productivity level, decreasing work-related stress levels, and promoting self-care. Ruth Crocker, PhD, The Benefits of Mindfulness, July 27, 2014.

The committee suggested several tips on practicing mindfulness and self-care:

- The "STOP" technique: Stop, Take a few breaths, Observe, and Proceed. When a project brings on feelings of being stressed and overwhelmed, take a short break (one to five minutes), focus on one task at a time, and practice mindful listening during meetings. Elisha Goldstein, PhD, "Stressing Out? S.T.O.P.," Mindful, Aug. 2013.
- Smartphone apps for meditation and calming such as Calm, Headspace, Happier, Digipill, Spirit/Junkie, and Buddhify.
- Reserving time for activities that are personally meaningful: contact with nature, spirituality, creative expression, volunteer work, hobbies, or whatever other interests or endeavors nurture the individual's personal needs and growth.
- Encouraging attendance at professional meetings outside the firm or office.

**Institutional techniques for managing STS.** The JRP attorney-in-charge, managers, and staff all recognized the need to address STS in the workplace and to implement measures to create a safe and supportive environment. In that regard, management agreed to ensure regular supervision and peer and individual support, especially during times of crisis, and to balance caseload size and workload. They also agreed to encourage attendance at continuing professional education on all topics, to address the effects of STS and other job issues, and to undertake coalition building with other system players. The broader Legal Aid Society management team has committed to continue to promote a healthy work setting, educate staff on policies and procedures, provide better access to leaders and supervisors, and maintain adequate human resource policies. They provided a method for seeking counseling and professional help.
(through a hotline number and contracted agency), and created awareness of these issues during staff recruiting.

The STS committee also worked with JRP supervisory staff to develop techniques to reduce STS among frontline staff. The supervisors strive to create an open and nonjudgmental professional space in which to identify pertinent cases, discuss issues, validate reactions, and encourage self-care. Good supervision techniques should include dedicated time to address supervision needs, creating a collaborative and mentoring relationship, offering constructive feedback, and being open to self-reflection and self-exploration. Supervision at JRP includes both appreciation and recognition, critical elements of developing a supportive environment.

One of the approaches that the committee and management developed was the Critical Incident Protocol, also known as crisis debriefing. The protocol was developed to create a procedure that allows those involved with an incident such as the death or serious injury of a client, threats to personal or communal safety, or the unexpected death of a colleague, to process the event and reflect on its impact. Under this protocol, managers and employees identify the traumatic event, share current responses, and validate and normalize those reactions. The supervisors are to monitor STS reactions in employees and share self-caring ideas with employees. Both sides are encouraged to practice one stress management technique together and encourage self-care.

The committee and management also developed a screening tool for staff recruiting considerations, for both long-term employment and internships. The tool begins during the hiring process with informing candidates of the inherent stresses of the job, describing the caseload and clients involved, explaining the support and supervision in place, and exploring the candidate's ability to handle stress.

**Professional techniques for managing STS.** The committee created professional responses within the offices to address STS. It did so based on its recognition of the emotional toll this kind of work can take and understanding the need for setting boundaries and limits given the particular time constraints and resources available. It has encouraged individual daily goal setting and self-evaluation as well as making "worker care" a team activity to help each other maintain good work boundaries.

As part of its professional response to STS, the committee has conducted JRP staff trainings and intern trainings, presented at national conferences and law school public interest forums, developed the Critical Incident Protocol, implemented De-stress and Digest meetings, and conducted surveys regarding STS in the offices. The STS committee
is continuing to disseminate information and resources and will continue to address future concerns and to develop or revise protocols as needed.

The goal of the committee is to build resilience and increase compassion satisfaction. Resilience is how a person recovers (bounces back) from stress and trauma. Resilience is related to the delicate balance between the factors and defenses that protect against cumulative stress (prevention and management). It is based on having and employing coping skills that allow for continued stress resolution. It can be inherited or innate, but resilience can also be learned and developed. Compassion satisfaction allows for the perceived stress to be associated with higher compassion and job satisfaction. Workers who are in the same setting who report higher job satisfaction also report less stress. Job satisfaction is associated with higher levels of social support, autonomy, and effectiveness.

**Conclusion**

STS and vicarious trauma are obvious "occupational hazards" in direct service legal work. If not addressed, STS and vicarious trauma affect not only the professional but also the clients with whom that professional is working. It may affect one's ability to empathize and respond to clients, process information, and make decisions. A professional suffering from STS may be apt to avoid "stressful" questions and less likely to identify clients' past trauma, and, therefore, less able to intervene appropriately. The professional also may become hypervigilant and focus on small details to the detriment of the client's overall history, situation, and concerns, also resulting in less effective intervention. Cues may be misread, important information not explored, facts skewed to fit assumptions, incorrect conclusions made, and ineffective responses provided.

Thus, it is essential that direct service legal professionals be prepared for this aspect of the work early in law school. Awareness is key in preventing and addressing STS and vicarious trauma before they cause burnout or have a detrimental impact on client representation. Empathy brings people to this work, but that same empathy causes them to be deeply affected by their clients' personal traumas. The awareness of STS and its effects, knowledge of what STS is, recognition that we are experiencing STS in our field of work, and learning appropriate responses can mitigate the impact of STS and vicarious trauma.

The issues of trauma, empathy, and awareness must be normalized. There needs to be an open discussion of how to deal with clients' legal and personal crises in a way that supports both the client and the legal professional. It is crucial that professionals come to this work with realistic expectations, self-awareness, and acknowledgement of their own personal trauma histories and coping strategies. Mentors and supervisors need to create a supportive environment in
which these issues can be raised. It is incumbent on public interest legal providers to create an awareness of these issues to support both current and future attorneys.

The work of the JRP Secondary Trauma Stress Interdisciplinary Committee, in collaboration with managers at JRP, provides a model for other public interest legal providers and law schools interested in responding to the concerns raised by STS and vicarious trauma. By providing STS training for interns and new staff, encouraging ongoing office discussions and disseminating information on the issue, implementing a Critical Incident Protocol, engaging in community outreach and presentations, and convening central meetings to discuss practice issues and innovative responses, the model provides a menu of institutional responses to STS designed to increase awareness, address workplace issues, provide stress outlets, and encourage self-care and professional care.

**Keywords:** litigation, children's rights, secondary trauma stress, vicarious trauma, public interest legal providers

Tamara Steckler is the attorney-in-charge and Vicki E. Light is the chair of the Juvenile Rights Practice Secondary Trauma Stress Interdisciplinary Committee.
Tips for Young Lawyers: How to Avoid Burnout as a Children's Lawyer

By Cathy Krebs – January 11, 2017

Providing legal representation to children and youth is incredibly important work and can be very rewarding. Whether you are representing children removed from their parents’ custody due to abuse or neglect, children who are at risk of losing their education due to suspension or expulsion, children at risk of deportation, or children accused of committing a crime, the results of a case can have a huge impact on the future of the child you represent. However, these cases are also incredibly challenging and can be emotionally draining. The complexity of representing children cannot be overstated: Lawyers need to have a strong understanding of federal, state, and local law; child development; services for children; administrative law; trauma-informed care. . . ; and the list goes on. Further, the system in which lawyers for children work is often dysfunctional and does not always result in the best interest of the child, adding to the frustration and strain of this work. Given the demands of the representation as well as the worry we carry for our clients, it is easy to burn out. Thankfully, while it is still a relatively new topic for lawyers, we are beginning to realize that addressing compassion fatigue (or, as it is sometimes called, “secondary/vicarious trauma”) is essential to providing ethical and zealous legal representation of children.

The effects of compassion fatigue are well documented. Compassion fatigue can affect self-esteem, relationships (personal and professional), attitude, and personal health. Those suffering from it can experience nightmares, depression, and anxiety. We may begin to lose empathy for clients or even for our own family members. To identify compassion fatigue in yourself considering the following warning signs:

- feeling despair
- not enjoying formerly pleasurable activities
- feeling stressed and anxious even after you leave your stressful environment
- having a pervasive negative attitude
- feeling overwhelmed
- inability to pay attention
- sleep disturbance
- questioning self-worth and professional identity
- feeling guilty and unfulfilled
If these things sound familiar, you may be experiencing compassion fatigue. This issue can also be commonplace in organizations representing children where there may be a culture of compassion fatigue. The good news is that there are ways to address this issue both personally and organizationally.

One of the first ways that you can address vicarious trauma is to take care of yourself. This can be very challenging for lawyers who are generally type A personalities who are very accustomed to working long hours and doing whatever it takes to assist their clients. Yet, we need to be aware that we cannot ethically represent our clients if we are experiencing burn out. Tips from professionals who work on addressing compassion fatigue include taking a walk, listening to music, pausing even briefly to take a few deep breaths, connecting with a friend or colleague who is positive, or finding other mindful activities (there are a lot of different apps to help with this). Organizations should also find ways to address compassion fatigue by doing things like pausing to celebrate victories and encouraging staff to take breaks when needed. Some organizations are even establishing mindfulness rooms where staff can go to take a break, even briefly. For more tips on addressing compassion fatigue, read Jennifer Baum's article from the Winter 2016 issue of this newsletter: "Compassion Fatigue: Caveat Caregiver?"

For tips on addressing compassion fatigue as an organization, read Tamara Steckler and Vicki Light's article from the current issue of this newsletter: "The Hidden Cost of Empathy: How to Address Secondary Trauma Stress in a Child Law Office". While these tips may sound luxurious or unrelated to our work, they instead need to be seen as essential parts of our representation.

As if the above reasons were not enough to address our compassion fatigue, ensuring that we remain empathetic to the client in front of us, that we see him or her as an individual and relate to his or her issues, is one of the best ways that we can work against the implicit bias (see the Section of Litigation's Implicit Bias Initiative, What Is Implicit or Unconscious Bias?) that often affects our juvenile clients. If we can truly see our client, then we can ensure that the judge, school officials, social workers, prosecutors, and others in the case see our client as an individual as well, rather than through "implicit stereotypes and implicit attitudes" that each of us possesses. Section of Litigation, Implicit Bias Initiative.

There are many tools available to help address compassion fatigue so that lawyers can retain empathy for clients and continue to do this work long term. The key is recognizing that this is an issue that must be addressed if we are to ethically represent our clients and then giving ourselves and our coworkers permission to address it. Only when we take care of ourselves so that we are present and empathetic can we hear what our clients are telling us and work zealously to ensure a positive outcome for them.
To learn more, you can listen to the ABA program *Addressing Compassion Fatigue: An Ethical Mandate*.

**Keywords:** litigation, children's rights, compassion fatigue, empathy, burnout

*Cathy Krebs* is the committee director of the ABA Section of Litigation *Children's Rights Litigation Committee*. 
Criminal justice is impossible to achieve without a system of erasing past mistakes. A growing number of states and the federal government have enacted ways to erase past arrests and convictions. A criminal record limits a person's ability to pursue a productive civic life. That record can restrict access to education, employment, public housing, student financial aid, welfare benefits, military service, and the right to vote. Expungement typically clears the arrest and conviction record from the public view and thus ameliorates some of the negative consequences of having a criminal record. When a criminal record is expunged, it is as if it never existed. There are measures, such as the sealing of records, that restrict the availability of records but do not expunge them.

A person with an expunged record may say no, if asked whether he or she has been arrested or convicted. Expungement of records significantly eases barriers to the pursuit of a full civic life. Measures to erase past criminal records, such as the sealing of court records, also enhance the quality of civic participation. The availability of record-erasing measures depends on the jurisdiction.

Federal Law: No Constitutional Right and No General Statute
There is no constitutional right to an expungement and no federal expungement statute. Very few statutes specifically provide for it, and federal courts rarely expunge criminal records except when it is statutorily authorized. The Federal First Offender Act, 18 U.S.C. § 3607 (2012), however, does permit expungement of a federal criminal record in cases where the individual is under 21 and has no prior drug conviction. Two other federal statutes—10 U.S.C. § 1565(e) and 42 U.S.C. § 14132(d)—permit the expungement of DNA records held by the Department of Defense and the Federal Bureau of Investigation, respectively. Courts are divided over whether a federal court possesses the inherent equitable power to expunge a criminal record absent statutory authorization. It is said that federal courts may expunge records in the Second, Seventh, Tenth, and D.C. Circuits. But these courts rarely do so in practice. For example, in *Abdelfattah v. United States*, 787 F.3d 524, 528 (D.C. Cir. 2015), the court acknowledged its power to expunge records but disclaimed a citizen's "right" to it. The court then explained that it could not see "injury to a legally protected interest" that would permit Abdelfattah's criminal record to be expunged. The First, Third, Eighth, and Ninth Circuits do not find any equitable power to expunge records at all. The U.S. Supreme Court has not resolved the split.

State Law: A Patchwork of Expungement Statutes
Almost every state has a mechanism for clearing criminal records. Arizona "sets aside" a
qualifying record. California "dismisses" the record. It is "vacating a judgment" in Washington and "erasure" in Connecticut. Colorado and New York "seal" the record and New Hampshire "annuls" it. The process is "expunction" or "order of nondisclosure" in Texas and "expunction" or "setting aside" in Oregon.

State laws are strict about what can be expunged. Generally, answers to five questions show arrests and convictions that may be expunged.

- Was the applicant merely arrested or was the applicant convicted by a court as well?
- What is the crime?
- How long has it been since the arrest or conviction?
- Has the applicant completed the terms of the sentence or other disposition by the court?
- Is the applicant a repeat offender?

There is no substitute for reviewing the state statute, and it is important to remember that the records are likely located in a county. The Electronic Information Privacy Center, the Papillon Foundation, and the National Association of Criminal Defense Lawyers, provide comprehensive, nationwide resources for expungement.

State expungement statutes vary by the type and severity of crimes covered, whether the court considers other crimes that were committed by the same offender, the persons from whom the records are sealed, and whether statutorily required obligations (such as a waiting period) have been met. Some states allow only the record of an arrest, when no conviction results, to be expunged. Others allow convictions to be expunged as well. Most jurisdictions, like Arkansas and the District of Columbia, expunge only misdemeanors; a fewer number, including California and Wyoming, allow felony records to be expunged as well. But many serious crimes, such as murder, kidnapping, sex crimes, terrorism, child endangerment, and treason, cannot be expunged anywhere.

**Limitations to Expungement**

Likewise, an expungement or sealing may not affect the negative impact a criminal conviction can have on an application for a security clearance for national security jobs or on removal proceedings in immigration court. Public trust professions—like law, child care, or banking—may be able to reach expunged arrests and convictions to certify new entrants.

Courts' websites usually provide forms for expunging criminal records and are excellent places to look for accurate information. See, e.g., Washington Courts, *A Guide to Sealing and Destroying Court Records, Vacating Convictions, and Deleting Criminal History Records in*
Individuals applying for expungement generally are not entitled to appointed counsel under the Criminal Justice Act or the state equivalent, because expungement applications are civil proceedings. Fortunately, legal services agencies, volunteers, local bar associations, and law clinics in the various states provide assistance with expungements for the indigent. Legal Services of New Jersey, for example, provides a six-step guide for clearing a criminal record, *Clearing Your Record: A Six-Step Guide to Expunging Criminal Records in New Jersey* (2015). Nolo.com—no substitute for legal counsel, of course—provides a comprehensive expungement law guide on the webpage *Expungement and Criminal Records*.

### Appeals and Pardons as Other Available Avenues

A person seeking expungement may appeal a court’s denial of his or her petition. For federal crimes, if it is not possible to expunge a record through the courts, a person may seek a pardon from the president of the United States. For a state criminal record, a pardon must be sought from the state governor.

### Conclusion

A criminal record can limit your client’s ability to pursue a productive civic life. The expungement of a criminal record allows your client to move forward from a past mistake to pursue a full civic life. Expungement statutes vary widely. If expungement is not possible, a pardon is another option.

**Keywords:** criminal litigation, expungement, criminal justice, civic life

*Kele Onyejekwe* is an appellate public defender at the Office of the Territorial Public Defender in St. Thomas, U.S. Virgin Islands, and coeditor in chief of the *Criminal Litigation* newsletter. A shorter version of this article appeared in TYL.
Watson Chapel, Arkansas, School District Consent Decree

By Sarah Durham – December 20, 2016

As part of an ongoing 1970 civil case, *United States of America v. Cotton Plant School District #1, Et Al.*, the Department of Justice (DOJ) and the Watson Chapel Arkansas School District have reached an agreement in the form of a consent order outlining specific measures the district must take to prevent discrimination. While the DOJ recently found that the district complied with the desegregation obligations outlined decades ago, the DOJ concluded that suspension and expulsion rates for African-American students during the 2014–2015 school year still occurred at rates significantly higher than those for Caucasian students. The difference in the rates was attributed to the district's discipline policies, procedures, and practices; the consent order aims to reduce such disparities through refocus and reform.

The consent order involves an overall different approach to discipline. The district will transition from a punitive approach to student behavior to a more positive approach, focusing on intervention and support. Various and detailed steps are outlined in the order to achieve such a transition. Among them, the district must employ a School Culture and Climate Specialist whose purpose is to oversee the school's implementation efforts. A defined discipline structure, outlined in the revised Code of Conduct will be implemented. It will consist of three levels of infractions and correlated to specific responses to those infractions. Administrators and Instructional staff, including teachers and aides, will attend mandatory initial and supplemental trainings throughout the transition.

Furthermore, due process must be provided before Exclusionary Discipline measures are enacted. Per the consent order, students and their parents or guardians will be privy to the discipline conversations taking place through school assemblies and community engagement activities.

The Department of Justice and the Watson Chapel Arkansas School District want to improve student achievement and overall school climate. The consent order is a calculated step toward both. For additional information and details, see the consent order.

Sarah Durham is a class of 2019 J.D. candidate at the UNT Dallas College of Law in Dallas, Texas.
Ensuring an Effective Defender Service for Youth

By Cathy Krebs – November 22, 2016

The National Juvenile Defender Center has released the report *Defend Children: A Blueprint for Effective Juvenile Defender Services* that details how children are routinely denied access to lawyers, or receive representation so ineffective as to provide almost no protection. Despite having a right to counsel in delinquency cases, too often children are arrested, prosecuted and incarcerated with no lawyer. Children of color tend to be disproportionately affected by a lack of counsel. This report is informed by thousands of hours of juvenile court observation, assessments of state juvenile defense systems that measure access to and quality of children's legal representation, and invaluable observations and expertise from our community of defenders, researchers, and advocates. The *Blueprint* contains proposed solutions to this crisis and innovative, best practice models that can be replicated to improve children's access to justice.

*Cathy Krebs* is the committee manager for the ABA Section of Litigation's Children's Rights Litigation Committee in Washington, D.C. She is also the newsletter editor for the committee.