

**VICARIOUS TRAUMA: A GROWING PROBLEM
AMONG LEGAL PROFESSIONALS THAT MAY
BECOME A MORE PREVALENT CAUSE OF
ACTION**

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*“There are wounds that never show on the body that are deeper
and more hurtful than anything that bleeds.”*

— Laurell K. Hamilton, Mistral’s Kiss

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Isaac James¹ is an associate in a prominent law firm that handles catastrophic injuries. He can appreciate the clients’ pain because his parents were killed in a plane crash when he was a child. His job is very demanding, and counsel works long hours. Recently, he participated in a case in which a family of four was killed when their car exploded in a ball of fire after being hit by an out-of-control tractor-trailer. He did a great job developing the testimony and creating the exhibits shown to the jury.

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1. This is a fictitious character and the story is not real.

Following the trial, Isaac requested a two-week vacation, which was certainly well-deserved. At the end of that period, however, he notified the law firm's managing partner that he would not be returning to his job. The associate claims that as a result of the long-term exposure of handling cases involving people with devastating injuries, he is suffering from vicarious trauma. Mr. James asserts that he is plagued with various physical and emotional manifestations, including diarrhea, the inability to sleep, loss of weight, and irritability, that make him unable to function. He concluded his communication by noting that he will be filing claims for worker's compensation and long-term disability insurance.

Cases involving vicarious trauma will only increase in prevalence unless a concerted effort toward awareness of the disorder and training to mitigate its effects within the legal field becomes more commonplace. This Article will explore this phenomena, the brain's physiological response to stress, why attorneys, judges, and their staff are susceptible to vicarious trauma, and the court cases on the topic.

I. VICARIOUS TRAUMA

Vicarious trauma bears some resemblance to Post Traumatic Stress Disorder (PTSD),² which is perhaps best known as affecting military members who see combat but can affect anyone who has experienced or witnessed an unsettling event.³ A frightening incident prompts PTSD—either experienced or seen firsthand.⁴ Symptoms may include flashbacks, nightmares, severe anxiety, as well as overwhelming feelings about the experience.⁵ Trauma, however, is not always a firsthand occurrence.⁶ During the past twenty-five years, and specifically after the addition of PTSD to the Diagnostic and Statistical Manual of Mental Disorders—Third Edition (DSM-III) published in 1980, the mental health field has developed a keen interest in psychological trauma and its effects.⁷ A decade after the publication of DSM-III, the mental health community started to acknowledge the impact of working with trauma victims on helping professionals themselves.⁸ A new phenomenon known as vicarious trauma emerged, a

2. Jennifer Brobst, *The Impact of Secondary Traumatic Stress Among Family Attorneys Working with Trauma-Exposed Clients: Implications for Practice and Professional Responsibility*, 10 J. HEALTH & BIOMEDICAL L. 1, 2 (2014).

3. *What Is Posttraumatic Stress Disorder?*, AM. PSYCHIATRIC ASS'N, <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd> (last visited May 12, 2021).

4. *Id.*

5. *Id.*

6. Dawn E. McQuiston, M. Dylan Hooper & Abbey E. Brasington, *Vicarious Trauma in the Courtroom: Judicial Perception of Juror Distress*, 58 JUDGES' J. 32, 32 (2019).

7. Andrew Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245, 245 (2003).

8. *Id.*

condition that affects victim services, law enforcement, emergency medical and fire personnel, the legal field, and related occupations.⁹

Vicarious trauma is also known as compassion fatigue, secondary traumatic stress, and empathetic strain.¹⁰ The term vicarious trauma was coined in 1990 to define a situation in which “helpers begin to display a constellation of symptoms comparable to their traumatized clients’ set of symptoms.”¹¹ This psychological impact can stem from such encounters as listening to individuals recounting their victimization, viewing videos of abused or injured children, and examining files of traumatized or injured people.¹² It can also occur from responding to the repercussions of violence and other distressing occurrences day after day, and replying to catastrophic events that involve multiple traumas and deaths.¹³ Victims of compassion fatigue begin to experience the trauma’s effects as if it had happened to them.¹⁴ Human services workers—such as caseworkers, social workers, counselors, and child welfare workers—are most likely to be affected by vicarious trauma.¹⁵ Lawyers who work directly with victims can also be impacted.¹⁶ A 2017 study compared the manifestations of vicarious trauma in lawyers and mental health professionals (MHPs), finding that “law professionals and MHPs are both affected by exposure to trauma. However, professionals in the mental health field may be better at managing the impact of this exposure.”¹⁷ This result is likely due to their training.¹⁸ The symptoms of vicarious trauma are similar to PTSD.¹⁹ They can include the following: “Increased aggression, decreased sex drive, sexual dysfunction, difficulty with boundaries, sleep problems, intrusive imagery, sudden increase in cynical outlook, depression, issues around trust and intimacy and greater sensitivity to violence.”²⁰ It is significant to mention, however, that vicarious traumatization is not considered maladaptive on the part of the person who

9. *The Vicarious Trauma Toolkit*, OFF. FOR VICTIMS OF CRIME, <https://ovc.ojp.gov/program/vtt/about-the-toolkit> (last visited May 12, 2021).

10. Barbara Glesner Fines & Cathy Madsen, *Caring Too Little, Caring Too Much: Competence and Family Law Attorney*, 75 UMKC L. REV. 965, 987 (2007).

11. M. Lynne Jenkins, *Teaching Law Students: Lessening the Effects of Vicarious Trauma*, 37 MANITOBA L.J. 383, 383 (2013).

12. *The Vicarious Trauma Toolkit*, *supra* note 9.

13. *Id.*

14. Levin & Greisberg, *supra* note 7, at 246.

15. McQuiston et al., *supra* note 6, at 32.

16. Grace Maguire & Mitchell Byrne, *The Law Is Not as Blind as It Seems: Relative Rates of Vicarious Trauma Among Lawyers and Mental Health Professionals*, 24 PSYCHIATRY PSYCHOL. & L. 233–43 (2017).

17. *Id.* at 241.

18. *Id.*

19. *Trauma, Vicarious Trauma and Post-Traumatic Stress Disorder*, HUMAN SERVICES EDU. ORG., <https://www.humanservicesedu.org/trauma-pst/> (last visited May 12, 2021).

20. *Id.*

suffers the disorder. Instead, it is the internalization of the traumatic incidents of others, including clients.²¹

Compassion fatigue should not be confused with burnout. The two problems share certain common elements since they can cause physical, emotional, and/or behavioral manifestations, occupational worries, and interpersonal issues.²² Similarly, both conditions may produce diminished concerns and regard for the client, which may cause a deterioration in the quality of care and attention that the client receives and expects.²³

Burnout is not a medical diagnosis but a unique form of employment-generated stress—a position of physical or emotional collapse that also includes a feeling of diminished achievement and loss of personal identity.²⁴ Vicarious trauma and burnout are not the same things, but vicarious trauma can lead to burnout, resulting in separating traumatized clients from their advocates.²⁵ The field of family law is significantly affected by vicarious trauma and burnout.²⁶ It is suggested that those concerns be confronted “by (1) offering voluntary classes to educate attorneys about the dangers of, and ways to cope with, the emotional burnout that comes with working with traumatized clients in family law and (2) organizing support groups among local family law communities.”²⁷

II. TRAUMA-INFORMED TRAINING AND CARE

Trauma-informed training and care have existed in the mental health and human services spheres for some time,²⁸ but there is a movement in the legal community to expand training to those working with traumatized clients. Vicarious trauma has been studied most often in emergency workers, mental health professionals, and other human services workers but is beginning to be studied in attorneys.²⁹ Mental health experts, Andrew Levin and Scott Greisberg, surveyed attorneys to assess their presence of secondary trauma and burnout symptoms, and compared them to other professionals to

21. Megan Zwisohn, Wayne Handley, Danielle Winters & Alyssa Reiter, *Vicarious Trauma in Public Service Lawyering: How Chronic Exposure to Trauma Affects the Brain and Body*, 22 RICH. PUB. INT. L. REV. 101, 115 (2019).

22. Fines & Madsen, *supra* note 10, at 988.

23. *Id.*

24. *Job Burnout: How to Spot It and Take Action*, MAYO CLINIC, <https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/burnout/art-20046642> (last visited May 12, 2021).

25. *See* Zwisohn et al., *supra* note 21, at 115.

26. Lisa Morgillo, *Do Not Make Their Trauma Your Trauma: Coping with Burnout as a Family Law Attorney*, 53 FAM. CT. REV. 456, 458 (2015).

27. *Id.* at 157.

28. *SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf (last visited May 12, 2021).

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

identify possible risk factors.³⁰ They found that the attorneys questioned demonstrated “higher levels of intrusive recollection of trauma material, avoidance or reminders of the material and diminished pleasure and interest in activities, and difficulties with sleep, irritability, and concentration” than mental health providers and social service workers completing the same survey.³¹ A lack of educational programming for law students and attorneys regarding the effects of trauma on their clients and themselves could explain part of the discrepancy.

Proper training can help protect the person working with the victim—whether it be an attorney, victim advocate, judge, juror, or other courtroom personnel, and it can potentially impact and improve the way that victims of crimes, such as human trafficking, are addressed in the legal process. In her 2013 article “*Teaching Law Students: Lessening the Potential Effects of Vicarious Trauma*,” M. Lynne Jenkins notes that for lawyers, taught to focus on logic and not feelings, teaching and training can provide the tools needed to mitigate the effects of vicarious trauma and allow attorneys to work more effectively on behalf of their clients.³² Jenkins’ paper focuses on a potential training module for law students that begins with defining trauma effects and vicarious trauma to reach a fourfold goal:

[T]o help students develop skills to enable them to respond competently to the emotions, reactivity, and responses of traumatized clients; to help students cope with their own emotions, reactivity, and responses to clients’ collective trauma symptoms; to develop a vicarious trauma action plan; and to prepare students to be more effective lawyers when working with this population³³

The training focuses initially on familiarization with PTSD, what it is, and the fact that most victims of trauma with whom an attorney may work—whether victims of violence, refugees, or victims of human trafficking, to name just a few, would meet the criteria.³⁴ An ability to identify the signs and symptoms of PTSD is crucial.³⁵

Vicarious trauma is a manifestation of how working with traumatized people changes us.³⁶ That adjustment is inevitable, according to Jenkins. To remain effective advocates, she says, we must “be able to take the steps necessary to ensure we maintain our own mental and physical health.”³⁷

30. *Id.* at 249.

31. *Id.* at 250.

32. Jenkins, *supra* note 11, at 385.

33. *Id.* at 386.

34. *Id.* at 387.

35. *Id.*

36. *Id.* at 389.

37. *Id.* at 390.

III. HOW TRAUMA AND STRESS AFFECTS THE BRAIN

The brain is the part of the central nervous system housed inside the skull's cranial cavity. This anatomical part is superior not only in anatomic orientation but also in performance, because more than any other body part, it overshadows and dictates to other organs and systems.³⁸ The brain's facility to reason and be creative makes it mankind's primary claim to superiority over all other creatures.³⁹ Therefore, when the brain is disrupted by trauma or stress, its operation is inherently impacted.⁴⁰ Cognitively, the person will develop memory or concentration problems, mood alternations or swings, as well as feeling depressed or anxious.⁴¹ To appreciate how the brain is influenced by these conditions, it is critical to appreciate the anatomy and physiology of this important organ and which parts of the structure are most affected by exposure to an insult.⁴²

A. *The Anatomy of the Brain*

Research has discovered that chronic stress causes long-term alterations in the structure and function of the brain.⁴³ These changes could explain why those who suffer chronic stress are more apt to develop mood and anxiety conditions later in life.⁴⁴ The brain has the texture of thickened gelatin that pulsates with each heartbeat and is divided into three major parts: the cerebrum, brainstem, and cerebellum.⁴⁵

The cerebellum is the biggest of these three divisions and is split into a right and left hemisphere, connected by a series of nerve fibers known as the corpus callosum.⁴⁶ In turn, each half consists of four lobes, with each undertaking specific tasks.⁴⁷ The frontal lobe, situated at the front of the brain, is responsible for controlling behavior, conversations, and abstract thought.⁴⁸ Situated just behind the frontal lobe is the parietal lobe, the part of our brain that recognizes sensations and permits us to make associations,

38. SAMUEL D. HODGE, JR. & JACK E. HUBBARD, CLINICAL ANATOMY FOR LAWYERS 279 (Am. Bar Ass'n 2012).

39. *Id.*

40. *Traumatic Brain Injury*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/traumatic-brain-injury/symptoms-causes/syc-20378557> (last visited May 12, 2021).

41. *Id.*

42. Zwisohn et al., *supra* note 21, at 103.

43. Kendra Cherry, *5 Surprising Ways That Stress Affects Your Brain*, VERYWELLMIND.COM (Mar. 20, 2020), <https://www.verywellmind.com/surprising-ways-that-stress-affects-your-brain-2795040>.

44. *Id.*

45. JACK HUBBARD & SAMUEL HODGE, JR., HEAD TRAUMA AND BRAIN INJURIES FOR LAWYERS 3 (Am. Bar Ass'n 2016).

46. *Id.*

47. *Id.*

48. *Id.* at 30.

equating our sensory encounters with memories.⁴⁹ The next part is the temporal lobe, which is responsible for speech and memory, as determined by the hippocampus within the temporal lobe.⁵⁰ The last unit is the occipital lobe, situated in the back of the brain, that is responsible for vision.⁵¹

When the brain is dissected and cut into sections, many visible structures appear either white or gray, appropriately dubbed white matter and gray matter.⁵² The color difference is caused by the accumulation of the nervous system's microscopic cells, the neurons.⁵³ This functional unit operates like a computer's microprocessor by managing and dispatching signals along a specific pathway. This is accomplished by the subparts of the neuron: dendrites, a cell body, and an axon.⁵⁴ Signals are transmitted from one neuron to the next by a synapse or contact point.⁵⁵ The cell body itself consists of metabolic substances to keep the neuron working, and it is the place that stores DNA within the nucleus of the cell.⁵⁶ A single axon or nerve fiber reaches out from the cell body, acting as the neuron's output to create a synaptic connection with other neurons or muscle cells.⁵⁷

A neuron is unique because it can generate electricity by producing electrical potentials across the cell membranes. When these potentials reach a certain charge, they cause an electrical signal known as the action potential, which is quickly sent along the axon's length by rapid ionic exchanges.⁵⁸ In turn, neurotransmitter chemicals are released, including dopamine and serotonin, which stimulate receptors in the adjacent neuron.⁵⁹ This conduction speed can accelerate to 270 miles per hour by enclosing the axon in an insulating material called myelin.⁶⁰ The overproduction of myelin, made up of protein and fatty substances, has been discovered in those with chronic stress, and this finding does not just cause short-term alterations in the balance between white and gray matter; it can also result in lasting changes in the brain's structure.⁶¹

The second major component of the brain is the brainstem, which connects to the cerebrum at one end and the spinal cord at the other.⁶² This structure also contains the medulla oblongata, which is critical to sustaining

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* at 31.

55. *Id.*

56. *Id.* at 32.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 33.

61. Cherry, *supra* note 43.

62. HUBBARD & HODGE, *supra* note 45, at 34.

life because it controls heart rate, blood pressure, and breathing.⁶³ The brainstem contains a gathering of cell bodies for most cranial nerves and the myelinated tracts that go up to the cerebrum and down to the spinal cord.⁶⁴

The cerebellum is the last major component of the brain, and it is referred to as the little brain.⁶⁵ This structure is nestled between the back of the cerebral hemisphere and brainstem and is essential for balance and coordinated movement.⁶⁶ It also helps the body to develop movements that necessitate repetition and fine-tuning such as learning to ride a bike or playing the guitar.⁶⁷

B. The Hippocampus

When examining the role of long-term traumatic responses on the brain, the hippocampus plays a crucial part and is classically the stimulus for a post-traumatic stress disorder type response.⁶⁸ This brain part is an “S” shaped structure located deep in the temporal lobe.⁶⁹ It can be recognized as a layer of closely packed neurons.⁷⁰ As an integral component of the limbic system,⁷¹ it plays an important role in fostering learning, memory encryption, memory union, and spatial routing.⁷² Everything we learn, read, do, and understand relies on the hippocampus to function properly.⁷³

The hippocampus is particularly susceptible to continuing emotional distress because of the harmful effects of cortisol, the fight-or-flight hormone, thereby causing it to become less functional.⁷⁴ When humans experience continued stress, cortisol modifies the degree to which neurons are either added to or subtracted from the hippocampus.⁷⁵ Brain cells confronted by too much cortisol causes the hippocampus to lose neurons, thereby diminishing the structure’s size.⁷⁶ This abnormal stress reaction

63. *Id.* at 34–35.

64. *Id.* at 35.

65. *Id.*

66. *Id.*

67. *Everything You Need to Know About the Cerebellum*, MEDICAL NEWS TODAY, <https://www.medicalnewstoday.com/articles/313265> (last visited May 12, 2021).

68. Zwisohn et al., *supra* note 21, at 106.

69. Kuljeet Singh Anand & Vikas Dhikav, *Hippocampus in Health and Disease: An Overview*, 15 ANN. INDIAN ACAD. NEUROL. 239–46 (2012).

70. *Id.*

71. Sanchari Dutta, *Limbic System and Behavior*, NEWS MEDICAL LIFE SCIENCES (Aug. 23, 2018), <https://www.news-medical.net/health/Limbic-System-and-Behavior.aspx>. The limbic system is the brain’s center responsible for controlling emotional drives and memory formation. *Id.*

72. Sanchari Dutta, *Hippocampus Functions*, NEWS MEDICAL LIFE SCI. (Aug. 20, 2019), <https://www.news-medical.net/health/Hippocampus-Functions.aspx>.

73. Gail Gross, *Effects of Stress on the Hippocampus*, LET’S TALK (Mar. 19, 2013), <http://drgailgross.com/academia/effects-of-stress-on-the-hippocampus/>.

74. *Id.*

75. *Id.*

76. *Id.*

happens when the hippocampus is incapable of determining that a traumatic threat is no longer viable or that the activating incident has terminated.⁷⁷ While this structure in the brain is responsible for generating a response to trauma, it also plays a key role after the stimuli. If the hippocampus does not fulfill its expected role in timekeeping, that part of the brain,⁷⁸ which influences emotion and behavior, never receives the appropriate signal that the stress-related event is over.⁷⁹ This failure causes the brain to continue to replay the traumatic event repeatedly, thereby causing a malicious succession of stress hormone release.⁸⁰ This is why some individuals are not able to remember the details of a traumatic event.⁸¹ Cortisol discharged during a stress response has also been shown to impact memory negatively, signifying that remembrances may be produced, but their context is vague or hazy.⁸²

C. Fight-or-Flight Response

Those who have worried about an exam or complying with an approaching deadline know what stress feels like. In one way, stress can be beneficial by helping our bodies and brains remain sharp and watchful—prepared to respond to any circumstance life tosses in our way. However, chronic stress can cause chaos, resulting in a variety of problems such as heart disease, high blood pressure, depression, and anxiety.⁸³

Our body's reaction to short-term stress is vital for survival. It generates the well-known “fight-or-flight” response that permits humans to react rapidly to any sign of danger. When we are frightened or actively stressed, the “fear center” of the brain, dubbed the amygdala, stimulates our central stress response system.⁸⁴ This structure is located near to the hippocampus, in the frontal part of the temporal lobe.⁸⁵ This is recognized as the hypothalamic-pituitary-adrenalcortical (HPA) axis because it consists of the hypothalamus, pituitary gland, and adrenal cortex.⁸⁶ In turn, this stress response system controls the release of cortisol.⁸⁷ By quickly increasing

77. Zwisohn et al., *supra* note 21, at 106.

78. *See id.* This part of the brain is known as the amygdala. *Id.*

79. Zwisohn et al., *supra* note 21, at 106.

80. *Id.*

81. *Id.*

82. Sophia Thompson, *Effects of Stress on Memory and the Hippocampus*, SANESCO (Apr. 26, 2017), <https://sanescohealth.com/blog/effects-of-stress-on-memory-and-hippocampus/>.

83. Alison Caldwell, *The Neuroscience of Stress*, BRAINFACETS.ORG (June 19, 2018), https://www.brainfacts.org/thinking-sensing-and-behaving/emotions-stress-and-anxiety/2018/the-neuroscience-of-stress-061918?gclid=CjwKCAjwiaX8BRBZEiwAQQxGxz--xJ9RpDm70QrV6G5JitHr2w7Wa7LTZrN7b2RIUnfOOPEF_0MLQxoCJIIQAvD_BwE.

84. *Id.*

85. *The Amygdala and Its Allies*, BRAIN FROM TOP TO BOTTOM, https://thebrain.mcgill.ca/flash/d/d_04/d_04_cr/d_04_cr_peu/d_04_cr_peu.html (last visited May 12, 2021).

86. Caldwell, *supra* note 83.

87. *Id.*

glucose levels, increasing the heart rate, and escalating blood flow to the muscles, this stress reaction permits humans to respond to a threat.⁸⁸ Once the peril has abated, the system returns the hormone levels to normal.⁸⁹

When stress becomes persistent, this “fight-or-flight” response is in a perpetual heightened state of alert, and the increased hormones can cause digestive issues, difficulty sleeping, and a compromised immune system.⁹⁰ This causes an individual to become more vulnerable to viruses like the flu and long-term health problems.⁹¹ Stress itself does not necessarily cause trauma, nor does a traumatic episode automatically result in post-traumatic stress.⁹² When it comes to a psychological diagnosis, there are stimuli, such as an acute stress disorder, that qualify as temporary trauma.⁹³ However, the brain does not need prolonged exposure to trauma to be physiologically influenced by traumatic stress.⁹⁴

D. Chemical Changes in the Brain

Chronic stress can also alter the delicate balance of chemicals in the brain which control cognition and mood, such as serotonin.⁹⁵ This is an important chemical messenger that controls mood, feelings of well-being, and happiness.⁹⁶ This hormone influences the entire body and permits the brain cells and other nervous system cells to talk to each other.⁹⁷ In fact, selective serotonin reuptake inhibitors (SSRIs) are given to reestablish serotonin’s functional brain action in those with depression.⁹⁸

Sleep and circadian cadence disturbances are a common characteristic in various psychiatric maladies, such as depression and anxiety.⁹⁹ Stress hormones play an important modulatory function in sleep.¹⁰⁰ As noted previously, cortisol is the body’s built-in alarm system and chief stress hormone.¹⁰¹ It works with specific elements of the brain to regulate mood,

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. Zwisohn et al., *supra* note 21, at 104.

93. *Id.*

94. *Id.*

95. Barbara Jacquelyn Sahakian, Christelle Langley & Muzaffer Kaser, *How Chronic Stress Changes the Brain – And What You Can Do to Reverse the Damage*, CONVERSATION (Mar. 11, 2020), <https://theconversation.com/how-chronic-stress-changes-the-brain-and-what-you-can-do-to-reverse-the-damage-133194>.

96. *Id.*

97. *What Is Serotonin?*, HORMONE, <https://www.hormone.org/your-health-and-hormones/glands-and-hormones-a-to-z/hormones/serotonin> (last visited May 12, 2021).

98. Sahakian et al., *supra* note 95.

99. *Id.*

100. *Id.*

101. *See What Is Cortisol?*, WEBMD, <https://www.webmd.com/a-to-z-guides/what-is-cortisol#1> (last visited May 12, 2021).

motivation, and fear.¹⁰² Raised cortisol levels can consequently interrupt sleep.¹⁰³ The reinstatement of a regular sleep cycle and circadian rhythms may afford a treatment option for these conditions.¹⁰⁴

It is notable to remember that when the brain processes the difference between acute trauma and chronic stress exposure, it does not distinguish between these insults.¹⁰⁵ Rather, it obtains the external source stimuli and metabolizes the information in the same way for each experience.¹⁰⁶ The body will either remain in balance with normal function, or it will engage in the fight-or-flight response, thereby rapidly releasing cortisol and other hormones in what the body perceives as a life-threatening situation.¹⁰⁷

IV. VICARIOUS TRAUMA AND THE LEGAL PROFESSION

Attorneys, judges, jurors, and court personnel are subject to vivid, disturbing, and shocking testimony, images, and graphics during a legal proceeding. The vicarious trauma caused by this exposure may be long-lasting and cause a physical and emotional tumult.¹⁰⁸

A. Lawyers

Attorneys are at the top of the list of professionals who suffer from depression, alcoholism, substance abuse, and career dissatisfaction. These indicators demonstrate a service industry severely plagued by known and preventable occupational hazards, such as stress, burnout, and vicarious trauma.¹⁰⁹ This form of secondary trauma in attorneys has been theorized “as being exacerbated by, and perhaps even rooted in, the open engagement of empathy, or the connection with the client” that is innate in serving relationships.¹¹⁰ Attorneys have been slow in recognizing the influence of vicarious trauma on the profession.¹¹¹ Other trained specialists, such as doctors, law enforcement agents, psychologists, child protective service caseworkers, and ambulance operators, enjoy the advantage of focused research on how they cope emotionally while working closely with those

102. *Id.*

103. *Id.*

104. Sahakian et al., *supra* note 95.

105. Zwisohn et al., *supra* note 21, at 108–09.

106. *Id.*

107. *Id.*

108. Hon. Marcine Anderson, King Cty. Dist. Ct., Wash., How Can I Ever Forget? Secondary Trauma from the Courtroom, Discussion Panel, Nov. 8, 2019 (transcript available from the National Voice of the Asian Pacific American Legal Community), https://cdn.ymaws.com/www.napaba.org/resource/resmgr/2019_napaba_con/cle/cle_205.pdf.

109. Brittany Stringfellow Otey, *Buffering Burnout: Preparing the Online Generation for the Occupational Hazards of the Legal Profession*, 24 S. CAL. INTERDISC. L.J. 147, 150 (2014).

110. Fines & Madsen, *supra* note 10, at 990.

111. Brobst, *supra* note 2, at 16.

suffering from traumatic events.¹¹² Much less studied are lawyers, who are dramatically influenced by predictable and preventable work-related risks, such as tension, burnout, and vicarious trauma.¹¹³ But that is changing. About ten years ago, a psychiatrist discovered that attorneys show meaningfully increased levels of PTSD symptoms, vicarious trauma, burnout, and functional deficiencies as compared to their administrative support staff.¹¹⁴

In the most severe cases, lawyers may be diagnosed with PTSD—especially those who have been victims of trauma before joining the legal profession. For example, think of a matrimonial lawyer with a background of family conflict or violence who chooses this specialty to give back and share their understanding of the client’s plight by advocating on their behalf.¹¹⁵ Most attorneys who have litigated cases have memories of trial outcomes that may have made a susceptible client even more vulnerable and project those feelings in handling future cases. Based upon counsel’s psychological makeup, especially in matters involving violence and other traumatic events, the lawyer may feel overwhelmed and suffer vicarious trauma.¹¹⁶

Stress has a continuous and seemingly inescapable existence in the practice of law.¹¹⁷ The term was coined in 1936 and is defined as “the non-specific response of the body to any demand for change.”¹¹⁸ Legal professionals most susceptible to the effects of stress are those working in prosecution, defense, legal aid, immigration, family law, elder law, and children’s law because of the “cumulative physical, emotional, and psychological [effect] of continual exposure to traumatic stories or events when working in a helping capacity.”¹¹⁹ Female attorneys employed in these fields are even more susceptible to developing traumatic stress.¹²⁰ It has also been found that the innocent way of connecting with the client may be detrimental to the attorney.¹²¹ Those who show compassion or empathy ultimately pay the price for caring.¹²²

Factors making attorneys more susceptible to secondary trauma have been identified as having a high caseload, being overworked, overextending oneself with clients such as after-hours contact, and helping them with nonlegal matters, including finding employment or housing.¹²³ Other risks

112. *Id.*

113. Otey, *supra* note 109, at 150.

114. Brobst, *supra* note 2, at 18.

115. *Id.* at 2.

116. *Id.*

117. Otey, *supra* note 109, at 161.

118. *Id.* at 159.

119. *Id.* at 169 (alteration in original).

120. Kiley Tilby & James Holbrook, *Secondary Traumatic Stress Among Lawyers and Judges*, 32 UTAH BAR J. 20, 21 (2019).

121. *Id.*

122. Otey, *supra* note 109, at 169.

123. Tilby & Holbrook, *supra* note 120, at 21.

include being too compassionate, or the victim of personal trauma, and having a history of mental health problems.¹²⁴

Those suffering from secondary trauma exhibit a variety of symptoms, such as interrupted sleep, nightmares, headaches, gastrointestinal issues, intrusive thoughts and memories, avoidance of people, places, or things that trigger the trauma, irritability, emotional outbursts, not being able to focus, and being easily surprised.¹²⁵ Left unchecked, traumatic stress can cause an attorney to question their competence or value; it may lead to diminished decision-making abilities and cause a lawyer to turn to drugs or alcohol.¹²⁶ The condition may also produce dangerous imbalances in the autonomic nervous system, whereby one can become trapped in a neurochemical torrent of a fight, flight, freeze, or shutdown physiology.¹²⁷ Some nervous system manifestations mimic PTSD, such as exhibiting a feeling of anxiety, being emotionally overwhelmed, depressed, unable to sleep, memory problems, feeling numb, agitated, prone to anger, and seeing the world as inherently dangerous.¹²⁸

B. Judges

Judges are held in high regard by members of society. Dispensing justice is considered the capstone of their legal career. The position, however, can take a toll on health and well-being.¹²⁹ Courtrooms can be nerve-racking environments with participants and courtroom visitors being subject to random acts of violence, gruesome trial evidence, and various low-level stressors.¹³⁰ It is no wonder that 63% of the judiciary have reported symptoms of work-related vicarious trauma.¹³¹ The specific percentage of jurists who are traumatized could be even higher, according to one expert in the field.¹³² After all, they see people regularly at their lowest points.¹³³ Many times, those appearing in court seek help out of desperation, and their

124. *Id.*

125. *Id.* at 22.

126. *Id.*

127. Hallie Newman Love, *Lawyers Are at Risk for Secondary Traumatic Stress*, 66 R.I. BAR J. 25, 25 (2017).

128. *Id.*

129. *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, NAT'L TASK FORCE ON LAWYER WELL-BEING at *22 (Aug. 14, 2017) [hereinafter *The Path to Lawyer Well-Being*], <https://judicialstudies.duke.edu/wp-content/uploads/2019/02/Panel-4-National-Task-Force-on-Lawyer-Well-Being-Report-Recs.-for-Judges.pdf>.

130. Monica K. Miller, David M. Flowers & Ashley N. Dolezilek, *Addressing the Problem of Courtroom Stress*, 91 JUDICATURE 60, 64 (2007).

131. Love, *supra* note 127.

132. *Nearly Half of All Judges Have Suffered from This Condition*, NAT'L JUD. COLL. (Oct. 20, 2017), <https://www.judges.org/news-and-info/nearly-half-judges-suffered-condition/>.

133. Edward Spillane, *Judicial Wellness: Even Judges Aren't Immune to the Effects of Stress and Work-Related Vicarious Trauma*, 82 TEX. BAR J. 222, 222 (2019).

behavior may be triggered by substance dependency, depression, and mental illness.¹³⁴ The judiciary must often preside over adversarial, personal, and rancorous proceedings. They must also issue rulings in family matters that result in major changes involving the children and marital unit.¹³⁵ It is not surprising that in *In re J.K.*, the court noted “that judges are not immune from the emotional effects of the cases they hear.”¹³⁶

Violence aimed at judges and their families is a growing phenomenon, and some members of the court are carrying concealed weapons for protection.¹³⁷ The United States Marshals Service reports that almost 4,500 documented threats and “inappropriate communication” were lodged against federal judiciary members in 2019.¹³⁸ The most tragic of these incidents occurred on July 20, 2020, when the son of a New Jersey federal judge was murdered and her husband wounded at their home by a disgruntled and deranged attorney.¹³⁹

Even the mundane aspects of running a courtroom and the responsibilities of trial management can cause stress. This constant pressure can influence judges’ decision-making and has the possibility of negatively affecting the justice system.¹⁴⁰ Judges are also not immune from worry, addictions, or mental illness, and those issues that produce stress have impaired some of the most capable, skilled, humane, and scholarly jurists.¹⁴¹

Lawyers and members of the public often do not realize or care about the pressures judges endure. Society is entitled to decent, honest jurists without fretting how a judge’s difficulties will influence their judicial conduct and actions.¹⁴² The pressures attorneys feel, including obtaining and retaining clients, are alien to judges. But members of the judiciary are exposed to factors unlike what lawyers undergo. An attorney frequently works in consultation with clients and other legal professionals. However, trial judges are each marooned on their own islands and must deal with intensified oversight—their opinions are subject to review, second guessing, public pressure, and motions for reconsideration.¹⁴³ While lawyers can

134. *Id.*

135. *The Path to Lawyer Well-Being*, *supra* note 129.

136. *In re J.K.*, 30 N.E.3d 695, 701 (Ind. 2015).

137. Miller et al., *supra* note 130, at 60.

138. Ben Kessler, *N.J. Federal Judge Whose Son Was Killed and Husband Shot Speaks Out, Calls for Better Protections*, NBC NEWS (Aug. 3, 2020), <https://www.nbcnews.com/news/us-news/nj-judge-whose-son-husband-were-shot-speaks-out-calls-n1235620>.

139. Brian Thompson, Jonathan Dienst & Joe Valiquette, *Son of Federal Judge Killed, Husband Shot at Their New Jersey Home; Motive Unclear*, NBC NEW YORK (July 20, 2020), <https://www.nbcnewyork.com/news/local/crime-and-courts/son-of-federal-judge-shot-at-their-new-jersey-home/2521283/>.

140. Miller et al., *supra* note 130, at 61.

141. Gerald Lebovits, *Judicial Wellness: The Ups and Downs of Sitting New York Judges*, 89 N.Y. ST. BAR J. 10, 11 (2017).

142. *Id.* at 12.

143. *Id.*

complain to their clients and fellow attorneys, to whom can members of the bench talk about their problems? Most often, the response is no one.¹⁴⁴

A story by the Honorable Michael A. Snyder is reflective of the problem.¹⁴⁵ Judge Snyder noted that

[E]ach judge knows the stress of deadlines, but I think that what truly leaves judges with deep memories that can't be forgotten are the individual stories of people who have experienced some of the worst traumas of their own life, and of how they have attempted to live with them, or of how those traumas have destroyed them.¹⁴⁶

He went on to comment:

Personally, the one experience that I had that will live with me forever . . . is the following: I was on the bench hearing a young woman testify about her injuries. As she spoke, it became apparent that she was experiencing some sort of difficulty, whether physical or emotional. I ordered a brief recess to allow the woman a chance to take a break from the stress of the proceeding. Her husband, who was a police officer, took her out of the courtroom. I remained seated on the bench, thinking that they would return in a few moments and we would continue with the hearing. Suddenly, I heard the officer call out, "Call 911!" I immediately went out into the waiting area, and saw the woman on the ground, her husband bending over her. It was apparent that the witness was unconscious. The EMT's arrived very quickly and as they worked on her, it soon became apparent that the woman was not regaining consciousness. . . . The EMT's left with their patient and I learned later that day that the young woman had died. I could not stop thinking of the fact that this woman left her children in the morning, kissed them good-bye as they were going off to school . . . and that she never had the opportunity to tell them how much she loved them. I thought of the pain of this young police officer, who had to explain to his children that they would never see their mother again. As I tried to cope, over the weeks following this event, with all of these feelings, I thought that one way to avoid such a trauma for others who came before me, was to advocate for the placement of Automatic External Defibrillators (AED's) in the courtrooms. Ultimately, we secured the placement of these devices. Fortunately, I never had to use the device. I have, however, never forgotten that day.¹⁴⁷

144. *Id.*

145. Email from Hon. Michael A. Snyder, C., Phila. Bar Ass'n to Author (Oct. 20, 2020). The Honorable Michael A. Snyder is a former Worker's Compensation Judge and is currently the past Chancellor of the Philadelphia Bar Association. *Id.* His comments were provided in an email exchange with the Authors on October 20, 2020. *Id.*

146. *Id.*

147. *Id.*

The Honorable Sandra Moss, a former supervising trial judge in Philadelphia, shared a case in which her ruling not only was roundly criticized by the press, but also by her children.¹⁴⁸ As Judge Moss commented:

There certainly was stress when trying and/or supervising high profile cases. I can remember agonizing over whether to issue a gag order on a jury verdict for two weeks until the verdict on a companion case came in to avoid publicity on one case affecting a verdict in the other matter. I issued my ruling, and not only was the press outraged, but my journalist kids did not speak to me for two weeks until I lifted it. Complex jury trials where every ruling could be an appellate issue down the pike and where you have only seconds to rule, hoping for the best each time, certainly gave my colleagues and me our share of sleepless nights.¹⁴⁹

C. Juries

Serving as a member of a jury is considered being a good citizen and an honor. It is hard to gauge how many people sit on a jury annually, but the National Center for State Courts has estimated that about 15% of Americans receive a jury summons each year, and about 5% of those who are summoned end up on a jury.¹⁵⁰

One would think that jurors would not be affected by the matters they hear because their exposure is generally limited to one trial. That is not the case. Jurors are exposed to a volume of information during a proceeding, including instructions by judges, arguments of counsel, and witness testimony.¹⁵¹ The impact of stress on jurors has been the subject of many articles and at least one television program.¹⁵² There is general acknowledgment that sex offenses and violent crimes may cause lasting emotional issues for juries exposed to these cases.¹⁵³ It is traumatic to hear rape, murder, assault, and kidnapping matters, especially if the jurors are exposed to gruesome evidence or upsetting testimony, and one must wonder

148. Email from Hon. Sandra Mazer Moss, Med., Disp. Resol. Inst. to Author. The Honorable Sandra Mazer Moss was a team leader of judges in the Philadelphia Court of Common Pleas, Civil Trial Division for many years. *Id.* She currently serves as a mediator and neutral arbitrator for the Dispute Resolution Institute. *Id.*

149. *Id.*

150. John Gramlich, *Jury Duty Is Rare, But Most Americans See It as Part of Good Citizenship*, PEW RSCH. CTR. (Aug. 24, 2017), <https://www.pewresearch.org/fact-tank/2017/08/24/jury-duty-is-rare-but-most-americans-see-it-as-part-of-good-citizenship/>.

151. McQuiston et al., *supra* note 6.

152. Noelle Robertson, Graham Davies & Alice Nettleingham, *Vicarious Traumatization as a Consequence of Jury Service*, 48 HOWARD J. OF CRIM. JUST. 1, 2 (2009).

153. Major Evan Seamone, *Sex Crimes Litigation as Hazardous Duty: Practical Tools for Trauma-Exposed Prosecutors, Defense Counsel, and Paralegals*, 11 OHIO ST. J. CRIM. L. 487, 512 (2014).

if their verdicts are based upon emotions rather than logic.¹⁵⁴ This experience may even impact their lives well beyond the trial.¹⁵⁵

For most jurors, the experience is novel and may be overwhelming. Intense compassion may develop during the course of the case, and life-altering decisions are made about another's life, sometimes including whether a person will be sentenced to die.¹⁵⁶ There are reports of jurors vomiting, crying, and collapsing while in the jury box.¹⁵⁷ It is little wonder that these citizens may experience the negative effects of psychological trauma particularly because of the testimony's graphic and upsetting nature.¹⁵⁸ These symptoms can become worse following the trial and may continue for weeks and months after that. It is documented that some jurors during this period suffer from sleep difficulties, intrusive thoughts, fear of retribution, weight gain, headaches, and fatigue.¹⁵⁹

In one study of juries, researchers received questionnaires from 152 citizens who had served on Dallas juries.¹⁶⁰ Those who answered were requested to note if they had served on what was dubbed "traumatic" trials, such as murder, kidnapping, aggravated sexual assault cases, and "non-traumatic" trials, including burglary, credit card fraud, and drug possession.¹⁶¹ The jurors rated their stress levels as a result of that jury service.¹⁶² They also provided background information about the trial and their background, discussing such things as any pre-existing medical conditions to ascertain their levels of pre-trial stress.¹⁶³ Participants who were jurors in cases categorized as traumatic expressed about three times as many PTSD-related indicators as those in non-traumatic matters, and women noted many more symptoms than did their male counterparts.¹⁶⁴ Interestingly, the symptoms lasted longer among men.¹⁶⁵

In the most detailed report on stress in American jurors, performed by the National Center for State Courts (NCSC), judges were surveyed as well as the views of hundreds of jurors who sat on varied matters spanning six jurisdictions.¹⁶⁶ The findings revealed that jurors who participated in all types of cases described meaningful levels of stress.¹⁶⁷ The greatest number of those who answered reported stress in cases concerning crimes against the

154. *Id.*

155. *Id.*

156. *See id.*

157. *See* Robertson et al., *supra* note 152.

158. McQuiston et al., *supra* note 6, at 32.

159. *Id.* at 33.

160. Robertson et al., *supra* note 152, at 4.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

person, with murder trials involving a choice on the death penalty yielding the greatest degree of stress levels (86%).¹⁶⁸ The stress levels intensified with the length of a trial, peaking at 92% for proceedings, which continued over eleven days.¹⁶⁹ Not surprisingly, jury deliberations were rated the most distressing part of the experience—more so than hearing the disturbing evidence and testimony presented.¹⁷⁰

D. Courtroom Personnel

Courtroom personnel or court officers include those who are present in the courtroom during proceedings and are subject to the facts of traumatic incidents such as rape, human trafficking, and abuse, sometimes of children. These individuals include bailiffs, court reporters, or any other courtroom staff. In her dissertation titled *Stress Among Court Officers Who Preside in Criminal and Family Court*, Amanda Gibbs Wagner reported that when compared to colleagues in law enforcement who see trauma firsthand, court officers who worked in a family or criminal court in New York displayed stress levels equal in severity even though their exposure was secondhand.¹⁷¹ Court reporters are, by some accounts, stressed for many reasons, including low pay and a difficult, fast-paced work environment.¹⁷² However, the nature of the cases they hear is cited as well: “They frequently spend their days overwhelmed with one account after another of depraved human behavior and are occasionally only a few feet from violent, even murderous, courtroom outbursts.”¹⁷³

V. TRAUMA-INFORMED TRAINING

The concept of trauma-informed training addresses the role of trauma in criminal behavior, taking into consideration an offender’s exposure—often in childhood—and its effect on the neurochemistry of the brain, “sometimes compromising self-regulation and executive functioning into adulthood.”¹⁷⁴ The goal of trauma-informed training is to consider the neurobiological, social, and psychological effects of trauma and institute correctional treatment to optimize interventions’ success and ultimately enhance public

168. *Id.*

169. *Id.*

170. *Id.*

171. Amanda Gibbs Wagner, *Stress Among Court Officers Who Preside in Criminal and Family Court* (2015) (Ph.D. dissertation, Capella University) (ProQuest Dissertations Publishing).

172. See *Court Reporting Frustrations That Lead to Career Resentment*, CASAMO & ASSOCS., casamo.com/court-reporting-frustrations-that-lead-to-career-resentment/ (last visited May 12, 2021).

173. Jan Glidewell, *Life of Court Reporters: High Stress, Meager Pay*, TAMPA BAY TIMES (Sept. 9, 2005), <https://tampabay.com/archive/2001/06104/life-of-court-reporters-high-stress-meager-pay/>.

174. Jill S. Levenson & Gwenda M. Willis, *Implementing Trauma-Informed Care in Correctional Treatment and Supervision*, 28 J. OF AGGRESSION, MALTREATMENT & TRAUMA 481–501 (2019).

safety.¹⁷⁵ The National Child Traumatic Stress Network defines a trauma-informed system as “one in which all parties involved recognize and respond to the impact of traumatic stress on those who have contact with the system.”¹⁷⁶

The Honorable Lori Dumas, a judge on the Philadelphia Court of Common Pleas-Juvenile Division, created the W.R.A.P. Courtroom—Working to Restore Adolescents’ Power—to improve outcomes for victims of human trafficking who found themselves in court facing criminal charges of a variety of types.¹⁷⁷ Judge Dumas suggests that through training, those who interact with victims of trauma can learn to empathize better, to understand their mindset at the time at which the crime in question was committed, and how the trauma they experienced as victims of human trafficking may have colored their decisions and their actions.¹⁷⁸ In effect, Judge Dumas sought to help those members of the legal community working with these trauma victim offenders to see the world from the victim’s vantage point and use that perspective to address retribution and rehabilitation.¹⁷⁹ Through training, attorneys, judges, court officers, or anyone coming into contact with traumatized individuals can learn not to trigger or exacerbate the situation, thereby making interventions less likely to work.¹⁸⁰ As an example, for the juvenile population with whom Judge Dumas works, being addressed sternly by an authority figure could be a trigger to recall a relationship with a trafficker who treated them in the same way.¹⁸¹ In one strategy to address this problem, Judge Dumas stopped wearing her official judge’s robe when working with the children.¹⁸²

But a trauma-informed approach does not just benefit the offender; self-care is an essential component. Through training, those working with victims of trauma can also gain tools to address their vicarious trauma, and in so doing, mitigate the effects, avoid burnout and be more effective in their role, potentially improving outcomes in the criminal justice system.¹⁸³ Some proposed mechanisms include:

- support for time off or “mental health” days;

175. *Id.*

176. *Creating Trauma Informed Systems*, NAT’L CHILD TRAUMATIC STRESS NETWORK, <https://www.nctsn.org/trauma-informed-care/creating-trauma-informed-systems> (last visited May 12, 2021).

177. Paul Jablow, *Juvenile Court Judges Waking Up to Trauma’s Effect on Kids*, PBS, <https://why.org/articles/juvenile-court-judges-waking-up-to-traumas-effect-on-kids/> (last visited on May 12, 2021).

178. Interview with Lori Dumas, Juvenile Court Judge of the Philadelphia Court of Common Pleas (Oct. 28, 2020).

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. Shely Polak, Rebecca Bailey & Elizabeth Bailey, *Secondary Traumatic Stress in the Courtroom: Suggestions for Preventing Vicarious Trauma Resulting from Child Sexual Abuse Imagery*, 70(2) JUV. & FAM. CT. J. 69, 74 (2019).

- availability of counseling;
- training specific to the type of traumatization that is relevant, such as child sex abuse imagery;
- training specifically about vicarious trauma; and
- coping strategies and the creation of informal networks of support, particularly for judges.¹⁸⁴

Addressing vicarious traumatization should not be confused with seeking to eradicate or avoid it, as that would be futile.¹⁸⁵ Focus instead, should be placed on developing a proactive strategy to prevent the accumulation of adverse effects of stress and vicarious traumatization.¹⁸⁶ Experts suggest an “A, B, C” approach to vicarious traumatization and its impact: Awareness, Balance, Connection—to identify and manage vicarious traumatization “so that it does not impair your personal or professional functioning.”¹⁸⁷ Looking for replenishing activities plays a role; some examples are meditation, prayer, physical exercise, journaling, hiking, enjoying nature, listening to music, writing poetry, or bonding with a pet.¹⁸⁸ Worthy of note is that there is a growing movement toward incorporating trauma-informed training into the legal system for judges, attorneys, courtroom personnel, and others who may benefit from it.¹⁸⁹

VI. COURT CASES

Few reported cases focus solely on vicarious trauma, and even fewer examine that condition in the legal profession.¹⁹⁰ A Westlaw search reveals ten cases that mention vicarious trauma in the opinion.¹⁹¹

The recent Massachusetts case of *Morse v. Contributory Retirement Appeals Board* is perhaps the most relevant.¹⁹² In that matter, a court reporter requested accidental disability retirement benefits alleging she had suffered permanent mental disability due to vicarious trauma from exposure to the details of violent crimes.¹⁹³ Both the lower court and the appeals court found that the plaintiff did not meet the burden of proving that an identifiable

184. *Id.*

185. Jean Koh Peters, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions* (2000 Cum. Supp., Ch. 9).

186. *Id.*

187. Joan Meier & Sasha Drobnick, *Vicarious Trauma: The Personal and Professional Impact of Working with Clients with Trauma, and What You Can Do About It* (on file with Author).

188. *Id.*

189. See Polak et al., *supra* note 183.

190. Kelsey Sheronas, Paper submitted to Professor Hodge on October 12, 2020 as part of a written assignment on the topic.

191. This is based upon a Westlaw search conducted by the Authors on October 19, 2020.

192. *Morse v. Contributory Ret. Appeal Bd.*, 98 Mass. App. Ct. 1114, 139 N.E.3d 788 (2019).

193. *Id.* at *1.

condition caused her permanent mental disability “not common and necessary to all or a great many [jobs].”¹⁹⁴

If vicarious trauma can fall under the umbrella of psychiatric injury, a plaintiff in a case like our fictional Isaac Graham would have to demonstrate that the injury happened at work and was not a response to normal working conditions.¹⁹⁵ Vicarious trauma is not included in the current Diagnostic and Statistical Manual of Mental Disorders (the authoritative handbook guide for diagnosing mental disorders),¹⁹⁶ but indirect exposure to the condition is listed in the PTSD diagnosis.¹⁹⁷ Several cases detail the burden of proof on a claimant in a matter of psychiatric injury and PTSD specifically.¹⁹⁸ Corroboration by a physician is required, and both sides may obtain evaluations.¹⁹⁹ Critically, “the burden of proof faced by a claimant to recover workmen’s compensation benefits for a psychiatric injury is . . . twofold: he must prove by objective evidence that he has suffered a psychiatric injury and he must demonstrate that such injury is other than a subjective reaction to normal working conditions.”²⁰⁰ To qualify for worker’s compensation, the injury must be identifiable; it cannot be a reaction to normal working conditions over time.²⁰¹

One relevant case involved a Vietnam War veteran who alleged his combat-induced PTSD was exacerbated when his employer forced him to work rotating shifts despite knowing that his PTSD caused an inability to sleep at night, so he preferred to work only during the day.²⁰² In this matter, the court found that the employee “satisfied his burden to prove that he was subjected to abnormal working conditions and that his injuries [were] therefore compensable.”²⁰³ The employer knew of the employee’s pre-existing condition, established via physicians’ notes, and his request to work only the night shift, and still forced him to work rotating shifts.²⁰⁴

In a case in which a police officer was denied benefits after claiming that several traumatic events over the years caused a psychic injury, the court found that “[e]ven if a claimant shows actual . . . employment events that

194. *Id.* at *2 (quoting Zerofski’s Case, 433 N.E.2d 869, 872 (Mass. 1982) (alteration in the original)).

195. *See, e.g., id.* at *1.

196. *DSM-5: Frequently Asked Questions*, AM. PSYCHIATRIC ASS’N, <https://www.psychiatry.org/psychiatrists/practice/dsm/feedback-and-questions/frequently-asked-questions> (last visited May 12, 2021).

197. *DSM-5 Overview of DSM-4 Changes*, BARCHARTS, INC. (2014), <https://ebookcentral.proquest.com/lib/templeuniv-ebooks/detail.action?docID=4876992>.

198. *See infra* notes 202–14 (discussing cases upholding abnormal working conditions).

199. PA. CONS. STAT. § 511.3(6), <https://www.dli.pa.gov/Documents/Regulations/wc/wcact.pdf> (“Upon request of the insurer, the employe [sic] shall submit to an independent medical examination in accordance with the provisions of section 314 to determine the status of impairment: Provided, however, [t]hat for purposes of this clause, the employee shall not be required to submit to more than two independent medical examinations under this clause during a twelve-month period.”).

200. *Andracki v. Workmen’s Comp. Appeal Bd.*, 508 A.2d 624, 626 (Pa. Commw. Ct. 1986).

201. *Thomas v. Workmen’s Comp. Appeal Bd.*, 423 A.2d 784, 787–88 (Pa. Commw. Ct. 1980).

202. *Zink v. Worker’s Comp. Appeal Bd.*, 828 A.2d 456 (Pa. Commw. Ct. 2003).

203. *Id.* at 459.

204. *Id.*

have precipitated psychic injury, the claimant must still prove the events to be abnormal in order to recover. Abandoning the distinction between normal and abnormal working conditions . . . would eliminate the element of causation.”²⁰⁵ In denying benefits, the Worker’s Compensation Board appropriately found that “[w]hile his job did contain stress, that stress was normal for a police officer.”²⁰⁶

In 2020, a Pennsylvania court upheld a lower court’s decision that PTSD resulting from an abnormal work event that “aggravated a preexisting panic disorder and latent trauma” was compensable.²⁰⁷ Just what constitutes an abnormal event was considered by the Pennsylvania Supreme Court in 2013.²⁰⁸ The case involved a state trooper who sought compensation for PTSD allegedly caused by an incident in which a woman threw herself in front of his car on a highway and subsequently died.²⁰⁹ The court made the point that the establishment of abnormal working conditions is subject to “a highly fact-sensitive inquiry that required Appellant to establish that he was subject to conditions to which an employee in his position is not normally subject.”²¹⁰ The court concluded that “the type of incident in this case was not one to which state troopers are normally exposed.”²¹¹

VII. CONCLUSION

Isaac Graham’s case is fictitious, but the presence and effects of vicarious trauma within the legal profession are demonstrably real. Specific activities within the legal profession are more prone to it, such as those working with domestic violence victims, targets of human trafficking or child sex crimes, victims of violent crimes, or even those involved in gruesome accidents.²¹² Attorneys “working with traumatized clients . . . experience significant symptoms of secondary trauma or burnout.”²¹³ Moreover, when compared to mental health providers and social service workers, lawyers “demonstrated significantly higher levels of secondary traumatic stress and burnout, and this difference appeared related to the attorneys’ higher caseloads and lack of supervision around trauma and its effects.”²¹⁴ That’s where trauma-informed training comes in. It can help the lawyer better deal

205. *Davis v. Workmen’s Comp.* Appeal Bd., 751 A.2d 168, 174 (Pa. 2000).

206. *Id.* at 173.

207. *City of Lower Burrell v. Workers’ Comp.* Appeal Bd., No. 120 C.D. 2019, 2020 WL 1190603 at *1 (Pa. Commw. Ct. Mar. 12, 2020).

208. *Payes v. Workers’ Comp.* Appeal Bd., 79 A.2d 543 (Pa. Commw. Ct. 2013).

209. *Id.*

210. *Id.* at 556.

211. *Id.*

212. *See supra* Part IV (discussing exposure to vicarious trauma subgroups experience).

213. Barry Goldstein & Elizabeth Liu, *Representing the Domestic Violence Survivor: Critical Legal Issues Effective Safety Strategies 22-5* (Civic Research Institute, 2013).

214. *Id.*

with the effects of vicarious trauma, but this training can also benefit clients, offenders, and the system as a whole when a traumatized person is approached in a manner less likely to trigger emotional reactions related to past trauma. Other members of the legal community, from judges to courtroom personnel, are similarly affected and can benefit from training as well, both for themselves and for the trauma victims with whom they interact.

Vicarious trauma is a genuine and overlooked problem that has real-life implications. By providing members of the legal community with the appropriate training and tools to better deal with secondary trauma, there may be less opportunity for claims such as Isaac's, and more importantly, the justice system may work better for all involved.