

## Navigating Impacts of Trauma and Moral Injury

*78% of public defenders reported moderate or higher levels of secondary traumatic stress<sup>1</sup>*

*“In the fields where I work, there is historically a widely held belief that if you’re tough enough and cool enough and committed to your cause enough, you’ll keep on keeping on, you’ll suck it up.”<sup>2</sup>*

*In the same way that oils splatter on the painter’s shirt or dirt gets under the gardener’s nails, trauma work has an impact. –Jon. R. Conte, PhD<sup>3</sup>*

## The Challenges of Navigating Trauma and Occupational Stress

Challenges of public defense that have the potential to expose public defenders to high levels of occupational stress and secondary traumatic stress include:<sup>4</sup>

- Excessive amount of work, high caseloads, demands to complete cases expeditiously.
- Expectation of working long hours, an imbalance of life between work and home.
- Frequently discussing traumatic events and reviewing depictions of physical and emotional injury.
- Stakes are high.
- Under resourcing, low wages, outmatched by government.
- Numerous jury trials, the unpredictability of trials occurring, the absence of a viable defense at trial, the lack of a realistic option to take cases to trial due to draconian sentences.
- Underappreciation, insignificant recognition of the importance of the work, lack of support from the public, disrespect by adversaries, judges, and society.
- Obstacles to building client trust, dissatisfaction of client.
- Frustration with the criminal legal system.
- The need to satisfy conflicting parties, frequent conflict with prosecuting attorneys and judges.

## Defining Trauma

Trauma results from exposure to an incident or series of events that are emotionally disturbing or life-threatening with lasting adverse effects on the individual’s functioning and mental, physical, social, emotional, and/or spiritual well-being.<sup>5</sup> “Trauma is not just an event that took place sometime in the

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<sup>1</sup> Dotson, E., Brody, D. C., & Lu, R. (2020). [An exploratory study of occupational and secondary traumatic stress among a mid-sized public defenders’ office](#). Journal of Criminal Justice and Law, 4(1), 22-39.

<sup>2</sup> [Trauma Stewardship](#), by [Laura van Dernoot Lipsky](#) and Connie Burk, at p. 3.

<sup>3</sup> Lipsky, Laura van Dernoot and Connie Burk, [Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others](#), at p. xii.

<sup>4</sup> Dotson, E., Brody, D. C., & Lu, R. (2020). [An exploratory study of occupational and secondary traumatic stress among a mid-sized public defenders’ office](#). Journal of Criminal Justice and Law, 4(1), 22-39.

<sup>5</sup> [Trauma-Informed Care Implementation Resource Center](#). And [Substance Abuse and Mental Health Services Administration](#).

past; it is also the imprint left by that experience on mind, brain, and body. Trauma results in a fundamental reorganization of the way the mind and brain manage perceptions.”<sup>6</sup>

Although some people who experience a traumatic event will go on with their lives without lasting negative effects, others will have difficulties and experience traumatic stress reactions. How someone responds to a traumatic experience is personal. If there is a strong support system in place, little or no prior traumatic experiences, and if the individual has many resilient qualities, it may not affect his or her mental health. Research has shown that traumatic experiences are associated with: behavioral health and chronic physical health conditions, substance use, mental health conditions, challenges in relationships, careers, and other aspects of life.<sup>7</sup>

In addition to firsthand experiences of traumatic events (sometimes also labeled direct or primary trauma), there is emotional duress that results when an individual hears about the firsthand trauma experiences of another person.<sup>8</sup> These trauma responses are sometimes discussed within the topics of vicarious trauma, secondary traumatic stress, compassion fatigue, countertransference, traumatic countertransference, posttraumatic stress disorder, emotional contagion, and shared trauma.

### **Our Work Exposes Us to Trauma**

Legal teams have an ethical obligation to overcome the challenges and obstacles of this work, and to zealously and effectively represent criminal defendants. The nature of our work, being immersed in evaluation of evidence of injury and serving a population that have experienced significant trauma, expose us to trauma.

- In caseloads where 60% or more of clients have survived a significant trauma, providers are at an increased risk of secondary trauma.<sup>9</sup>
- 40-85% of “helping professionals” develop vicarious trauma, compassion fatigue, or high rates of traumatic symptoms.<sup>10</sup>
- 78% of public defenders reported moderate or higher levels of secondary traumatic stress<sup>11</sup>
- Increase hours worked corresponds with increase in trauma-related impairment.<sup>12</sup>

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<sup>6</sup> Bessel van der Kolk, M.D, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*.

<sup>7</sup> [Substance Abuse and Mental Health Services Administration](#).

<sup>8</sup> Figley, C.R. (Ed.) (1995). [Compassion Fatigue: Secondary Traumatic Stress Disorders from Treating the Traumatized](#). New York: Brunner/Mazel, p.7

<sup>9</sup> [A Trauma Informed Care Audit Report to the Capital Defense Community and Advocacy Movement](#) 2023, citing Mathieu, F. (2012). *The compassion fatigue workbook: Creative tools for transforming compassion fatigue and vicarious traumatization*. Routledge/Taylor & Francis Group, and VISTAS (2016). *Vicarious trauma and its influence on self-efficacy*.

<sup>10</sup> [A Trauma Informed Care Audit Report to the Capital Defense Community and Advocacy Movement](#) 2023, citing Mathieu, F. (2012). *The compassion fatigue workbook: Creative tools for transforming compassion fatigue and vicarious traumatization*. Routledge/Taylor & Francis Group, and VISTAS (2016). *Vicarious trauma and its influence on self-efficacy*.

<sup>11</sup> Dotson, E., Brody, D. C., & Lu, R. (2020). [An exploratory study of occupational and secondary traumatic stress among a mid-sized public defenders’ office](#). *Journal of Criminal Justice and Law*, 4(1), 22-39.

<sup>12</sup> Peters, Charise, [Traumatized defendants, troubled attorneys: The impact of vicarious trauma on the defense attorney-client relationship](#), Student thesis to CUNY John Jay College of Criminal Justice.

- Direct exposure to traumatic material, such as in cases of sexual assault, homicide, and child abuse, increases impact.<sup>13</sup>
- Impacts can be cumulative, with risk of developing PTSD increasing with more time worked with trauma-exposed clients.<sup>14</sup>
- Secondary traumatic stress can affect individuals who have close contact with a trauma survivor after hearing only one incident/isolated account of a traumatic experience.<sup>15</sup>
- Cases with more trauma-related content or higher stakes are more emotionally exhausting.<sup>16</sup>
- Attorneys are continuously exposed to not only preexisting client trauma but also their client facing traumatization from the unfairness of the system.<sup>17</sup>

Mitigating the impacts of trauma must be an ongoing part of public defense work. We continually take in trauma, and we need to process it in ways that don't become stuck and debilitating. The concept of *trauma stewardship* includes trauma exposure response in a larger conversation about "how we come to do this work, how we are affected by it, and how we make sense of and learn from our experiences."<sup>18</sup> This framework emphasizes the honor and responsibility of being entrusted with other people's stories and lives, and the need to develop and maintain long term strategies to remain whole and helpful.

### The Toll of Trauma

"[P]ublic defenders feel the impact of trauma on a daily basis. Overwhelming emotions, injustice, despair, rage, self-harm, are other self-destructive behaviors are exposed and reenacted in intricate detail in the hallowed halls of justice."<sup>19</sup> Those who conducted a Wisconsin study of public defender saw what we see every day: that public defenders are dedicated and determined, but impacted by the work. They observed: "It's amazing that they do. They are handling the demands of the job, but not easily and not without it having an impact on their lives."<sup>20</sup>

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<sup>13</sup> Peters, Charise, [Traumatized defendants, troubled attorneys: The impact of vicarious trauma on the defense attorney-client relationship](#), Student thesis to CUNY John Jay College of Criminal Justice.

<sup>14</sup> Peters, Charise, [Traumatized defendants, troubled attorneys: The impact of vicarious trauma on the defense attorney-client relationship](#), Student thesis to CUNY John Jay College of Criminal Justice.

<sup>15</sup> Focus Groups and Findings: A Trauma Informed Care Audit Report to the Capital Defense Community and Advocacy Movement above, citing Bell, C. H., & Robinson, E. H. (2013). Shared trauma: Information and implications for counselors. *Journal of Mental Health Counseling*, 35(4), 310–323, Bride, B. E., Radey, M., & Figley, C. R. (2007). Measuring compassion fatigue. *Clinical Social Work Journal*, 35, 155–163

<sup>16</sup> Peters, Charise, [Traumatized defendants, troubled attorneys: The impact of vicarious trauma on the defense attorney-client relationship](#), Student thesis to CUNY John Jay College of Criminal Justice

<sup>17</sup> Peters, Charise, [Traumatized defendants, troubled attorneys: The impact of vicarious trauma on the defense attorney-client relationship](#), Student thesis to CUNY John Jay College of Criminal Justice

<sup>18</sup> *Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others*, by Laura van Dernoot Lipsky and Connie Burk, at p. 6.

<sup>19</sup> Murray, D. C., & Royer, J. M. (2004). Vicarious traumatization: The corrosive consequences of law practice for criminal justice and family law practitioners. Legal Profession Assistance Conference. Dalhousie University, Halifax, Nova Scotia, Canada.

<sup>20</sup> Dianne Molvig, [The Toll of Trauma](#), Wisconsin Lawyer, December 2011.

Linda Albert's groundbreaking study of Wisconsin State Public Defenders<sup>21</sup> found significantly higher levels among public defenders than the general population of depression and post-traumatic stress disorder. 74.8 percent of attorneys described experiencing functional impairment, defined in the study as "the extent to which exposure to traumatic material interferes with functioning in work, social/leisure life and family/home life." 34.7 percent of attorneys reported experiencing burnout, defined in the study as "job-induced physical, emotional or mental exhaustion combined with doubts about one's competence and the value of one's work."

For a 2016 ABA Study, surveys were completed by 12,825 licensed, employed attorneys, assessing alcohol use, drug use, and symptoms of depression, anxiety, and stress. Compared to other helping professions and the general population, attorneys have higher rates of mental health issues such as depression and unhealthy substance use.<sup>22</sup>

The most frequent symptoms experienced by public defenders:<sup>23</sup>

*"I thought about my work with clients when I didn't intend to."*

*"I had trouble sleeping."*

*"I was easily annoyed."*

*"I had trouble concentrating."*

*"I was less active than usual."*

Signs of trauma response <sup>24</sup>			
Physical illness. Change in breathing or heart rate, chest pain. Stomachaches. Headaches. Difficulty sleeping. Nightmares. Chronic exhaustion. Addiction.	Detachment. Emotional exhaustion. Fear, shame, anger, guilt, cynicism, sadness. Intrusive thoughts. Strained relationships. Hypervigilance. Disrupted sense of safety, trust, esteem, intimacy, and control. Feeling helpless and hopeless.	A sense that one can never do enough. Inability to listen, deliberate avoidance. Inability to empathize, numbing. Second guessing. Sense of persecution. Grandiosity.	Absenteeism. Inability to embrace complexity. Diminished creativity. Poor concentration. Inhibited ability to think clearly, modulate emotions, and provide effective representation. Diminished overall work performance. Apathy or cynicism toward clients.

<sup>21</sup> Dianne Molvig, [The Toll of Trauma](#), Wisconsin Lawyer, December 2011.

<sup>22</sup> Patrick Krill, Ryan Johnson and Linda Albert, [The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys](#), Journal of Addiction Medicine, January/February 2016.

<sup>23</sup> Dotson, E., Brody, D. C., & Lu, R. (2020). [An exploratory study of occupational and secondary traumatic stress among a mid-sized public defenders' office](#). Journal of Criminal Justice and Law, 4(1), 22-39.

<sup>24</sup> Dotson, E., Brody, D. C., & Lu, R. (2020). [An exploratory study of occupational and secondary traumatic stress among a mid-sized public defenders' office](#). Journal of Criminal Justice and Law, 4(1), 22-39; Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others, by Laura van Dernoot Lipsky and Connie Burk; [Compassion Fatigue: Coping With Secondary Traumatic Stress Disorder In Those Who Treat The Traumatized](#) (Psychosocial Stress Series) 1st Edition, by Charles R. Figley (1995).

## Navigating Trauma

Three useful steps to managing the impacts of trauma are Managing exposure, Metabolizing Exposure, and continually Assessing Impacts.

### 1. Anticipate and Manage Exposure

- Plan for review of recordings and images of depictions of injury.
- Divide the task across the team with specified objectives.
- Limit the time duration of review.
- Plan a transition activity after the review.
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### 2. “Metabolize” Exposure and Build Resilience

Metabolizing exposure: Metabolism is made up of (1) breaking down accrued physical and emotional impact of exposure that erodes us; and (2) building muscles of capacity to strengthen us.<sup>25</sup>

- Debrief: find a way to debrief distressing material, especially through connection/community.
- Therapy: Seek supportive tools.
- Seek out social support from friends, family, or colleagues.
- Mind-body connection and body focused practices like yoga and meditation.
- Practices of writing and journaling.

### 3. Assess Impacts and Increase Awareness

Self-awareness is a powerful activator of well-being. Becoming familiar with the potential symptoms of trauma response and then regularly engaging in reflection and self-assessment is an important part of managing the impacts of trauma. This could include periodic completion of an assessment tool, such as the [Professional Quality of Life Measure](#) (ProQOL) or the [Secondary Traumatic Stress Scale](#), or a less formal self check-in, or even a check in with loved ones to see if they have observed changes.

Regular examination of how we’re doing allows us to shift and respond and improve. It keeps us focused on our goals and aspiration, and the concrete incremental steps that we can take toward those goals. A cycle of assessment and goal setting keeps us from getting stuck. If done well, it helps us see and acknowledge our own growth and skill development over time, rather than only seeing the (forever) steep learning curve ahead of us.

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<sup>25</sup> Laura van Dernoot Lipsky, *The Age of Overwhelm*, at p. 54. Also see *Keeping Legal Minds Intact: Mitigating Compassion Fatigue Among Legal Professionals*, ABA 2014

### **Individual Strategies for Managing Trauma Exposure and Response:** <sup>26</sup>

- Work on self-awareness every day.
- Take an inventory of how balanced your life is--be intentional about balancing it out.
- Recognize the risks for yourself.
- Evaluate your tension reducing behaviors.
- Seek and plan supportive tools for yourself (physical activity, mental health care).
- Be intentional about protecting yourself.
- Build compassion and community.
- Engage in systemic change.
- Engage with life outside of work.
- Develop a centering practice.
- Seek out social support from friends, family, or colleagues.
- Mind-body connection and body focused practices like yoga and meditation.
- practices of writing and journaling.

### **Organizational Strategies for Managing Trauma Exposure and Response** <sup>27</sup>

- Include education on traumatic impacts and tools to mitigate, recover and heal from trauma in onboarding and ongoing training programs.
- Include assessment and trauma screening for staff, and annual wellness surveys.
- Post and distribute education on individual strategies—such as the [Tiny Survival Guide](#).
- Increase access to counseling and therapy and other mental health support, such as assistance programs and a 24/7 support hotline.
- Increase peer support opportunities.
- Implement debriefing and other processing spaces.
- Provide training and coaching for managers and supervisors to improve organizational support.
- Cap workloads and address excessive workloads and hours.
- Provide training and coaching for managers to speak to funders in budget advocacy about the need for trauma informed programs and practices.
- Provide flexibility and opportunity to participate in movement practices that help many people process trauma.
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### **Trauma Informed Public Defense**

Trauma informed legal practice involved using increased understanding of the impacts of trauma to improve the practices, policies and culture within our organizations and legal representation. Deeper understanding of the impact of trauma should guide public defense trainers and leaders, and shape the culture we build. For example trauma-informed leaders will be more mindful of the ways traumatic impacts can look like behavioral problems, such as absenteeism or reactivity to colleagues.

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<sup>26</sup> [Keeping Legal Minds Intact](#): Mitigating Compassion Fatigue Among Legal Professionals, ABA 2014, [Trauma Stewardship](#): An Everyday Guide to Caring for Self While Caring for Others, by Laura van Dernoon Lipsky. Bessel van der Kolk, M.D. [The Body Keeps the Score](#): Brain, Mind, and Body in the Healing of Trauma.

<sup>27</sup> [Keeping Legal Minds Intact](#): Mitigating Compassion Fatigue Among Legal Professionals, ABA 2014; [A Trauma Informed Care Audit Report to the Capital Defense Community and Advocacy Movement](#).

Responding with corrective action plans may address some issues, while access to mental health support and care is a better response for others. Similarly, trauma-informed trainers will be better able to present and facilitate effective training programs, because they will be more informed and prepared for potential participant responses.

What is Trauma Informed Public Defense? <sup>28</sup>
<b>Awareness</b> of the widespread impact of trauma in the lives of our clients, colleagues and communities, and paths for recovery.
<b>Recognition</b> of the signs and symptoms of traumatic impact, informed responses, and the tools to “metabolize exposure.”
<b>Engagement:</b> integrate this knowledge into practices, support, training, supervision, mentorship, and the policies and procedures of the agency.
<b>Seek</b> to actively resist re-traumatization.

### Cumulative and Disproportionate Impacts of Trauma and Oppressive Systems

“Rooting our concept of trauma stewardship in a larger framework of systematic oppression and liberation theory is extremely important. Oppression plays a leading role in creating and maintaining systems that perpetuate suffering and trauma for all sentient beings, as well as the planet we share. The more we can understand this relationship, the better our insights into the ways that trauma affects us individually and collectively around the globe.”<sup>29</sup>

People cannot perform well at work if they feel physically or psychologically unsafe. When workers feel psychologically safe, they speak up without the risk of being punished, retaliated against or humiliated, and without fear of these risks.<sup>30</sup> Protecting colleagues from harm means “confronting structural racism, microaggressions, ableism, and implicit bias. In inclusive workplace cultures, all workers, including those with disabilities and from diverse racial and socioeconomic backgrounds, feel safe to be authentic and express their feelings because they trust that their coworkers welcome and value their unique perspectives. When diversity is celebrated as a source of strength, workers experience less stress and anxiety as bias and prejudice is not tolerated.”<sup>31</sup>

Practices like mindfulness can support the work of dismantling oppressive systems. “Racism is a form of trauma. To begin to unravel the harm of racism—the historical trauma, the microaggressions, the white

<sup>28</sup> Framework from The Substance Abuse and Mental Health Administration (SAMHSA), quoted in Focus Groups and Findings: A Trauma Informed Care Audit Report to the Capital Defense Community and Advocacy Movement above, citing SAMHSA (2014). SAMHSA’s concept of trauma and guidance for a trauma-informed approach. Retrieved January 2021 from: [https://ncsacw.samhsa.gov/userfiles/files/SAMHSA\\_Trauma.pdf](https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf)

<sup>29</sup> Trauma Stewardship, by Laura van Dernoot Lipsky and Connie Burk, at p. 28.

<sup>30</sup> The U.S. Surgeon General’s Framework for Workplace Mental Health & Well-Being, at p. 13.

<sup>31</sup> The U.S. Surgeon General’s Framework for Workplace Mental Health & Well-Being, p. 15.

fragility that often is a barrier to conversation—people need to have a level of self-awareness, to be able to sit, without judgment, with what is uncomfortable, to be present and aware, and to hold this inquiry with curiosity and kindness. My hope is that in becoming a mindful organization we will have greater focus, emotional balance, and the tools for the difficult conversations that need to happen. Being mindful—knowing and being in touch with what is going on with you—is essential to undoing racism.”<sup>32</sup>

Moving the discussion from self-care to “community care” can also be one component addressing structural oppression. "Self-care does not address the systemic issue that people who face compounded discrimination have to deal with," says Toronto based community organizer Nakita Valerio.<sup>33</sup>

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<sup>32</sup> Jenee Johnson, in [Encouraging Meaningful Conversations about Race and Trauma](#)

<sup>33</sup> [Self-care isn't enough. We need community care to thrive](#), by Heather Dockray, Mashable, May 24, 2019.



## Moral Injury

The language of moral injury provides a useful way of conceptualizing the toll of public defense work. It recognizes that we are highly resilient people, and that we entered this work with the goal of providing high quality representation, but we face systemic obstacles to providing the level of representation that we want to provide and believe people are entitled to receive. This forced ineffectiveness takes an enormous toll on us, and can be internalized as feelings of personal failure.

The lens of moral injury stops placing responsibility for solutions on the individual resilience (*do yoga! be more mindful!*) and recognizes that systemic obstacles are the causes of much of the injury that we are experiencing. While we need to maintain our own health, and can mitigate some traumatic impacts with self-care practices, systemic solutions are needed to address systemic causes.

Surgeon Simon Talbot and psychiatrist Wendy Dean wrote their first article on the application of the term moral injury to physicians in 2018.<sup>34</sup> Talbot and Dean argued that “without understanding the critical difference between burnout and moral injury, the wounds will never heal and physicians and patients alike will continue to suffer the consequences.” They asserted that the concept of burnout “suggests a failure of resourcefulness and resilience, traits that most physicians have finely honed during decades of intense training and demanding work.” They wrote, “The moral injury of health care is not the offense of killing another human in the context of war. It is being unable to provide high-quality care and healing in the context of health care.”

The term moral injury was first used to describe soldiers’ responses to their actions in war. Doctor and clinical psychiatrist Jonathan Shay describes moral injury as perpetrating, failing to prevent, bearing witness to, or learning about acts that transgress deeply held moral beliefs and expectations.<sup>35</sup> Journalist Diane Silver describes it as “a deep soul wound that pierces a person’s identity, sense of morality, and relationship to society.”<sup>36</sup>

Shay’s definition of moral injury is: (1) A betrayal of what’s right (2) by someone who holds legitimate authority (or by one’s self) (3) in a high stakes situation.<sup>37</sup>

Public defense is filled with betrayals of what is right by people with authority in high stakes situations. **Deep soul wound** is a perfect description of the impact of a criminal punishment bureaucracy that processes people—disproportionately people of color-- into cages. Deep soul wounds result from a system in which women are handcuffed to metal beds during childbirth in custody, money bail and mandatory minimums extort pleas for daylight, and fines, fees and forfeiture are used to line pockets and destroy communities.

If you substitute public defender wherever Talbot and Dean reference physicians, it’s a perfect fit. *The concept of burnout...suggests a failure of resourcefulness and resilience, traits that most [public defenders] have finely honed during decades of intense training and demanding work. The moral injury... is being unable to provide high-quality representation in the context of [public defense].*

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<sup>34</sup> Simon G. Talbot and Wendy Dean, [Physicians aren’t ‘burning out.’ They’re suffering from moral injury](#), STAT News, July 26, 2018.

<sup>35</sup> Jonathan Shay, [Doctor Moral Injury](#), Psychoanalytic Psychology, 2014, Vol. 31, No. 2, 182-191.

<sup>36</sup> Diane Silver, [Beyond PTSD: Soldiers Have Injured Souls](#), Pacific Standard, Jan. 22, 2015.

<sup>37</sup> Jonathan Shay, [Doctor Moral Injury](#), Psychoanalytic Psychology, 2014, Vol. 31, No. 2, 182-191.

Talbot and Dean described a career progression of physicians that suffer from moral injury: following a calling rather than a career path; desire to help people; almost religious zeal, enduring lost sleep, lost years of young adulthood, family strain, financial instability, disregard for personal health; each hurdle offers a lesson in endurance in the service of one's goal; failing to consistently meet needs of clients has a profound impact on wellbeing. Many public defenders recognize ourselves in this same career progression.

Public defense leaders who have spoken publicly about impact of systemic obstacles like underfunding echo the language of moral injury. "I've had people come to my office and need immediate mental health leave, some considering self-harm. We come here with a goal to help people no one else is helping. When we can't do it, it's crushing."<sup>38</sup> Public defense offices are filled with determined and dedicated people. Unfortunately, many offices are struggling to retain people.<sup>39</sup>

### **Individual Strategies to Reduce Moral Injury**

- Learn about moral injury.
- Name systemic obstacles that force ineffectiveness and their impact on outcomes; continually remind yourself that many outcomes are determined by these system obstacles and not "individual strength or weakness."
- Be intentional about not internalizing feelings of individual failure in response to systemic obstacles to success.

### **Organizational Strategies to Reduce Moral Injury**

Jonathan Shay outlined a definition of moral injury that suggests a solution from those in leadership. Moral injury deteriorates trust, ideals and ambitions; it creates an expectation of harm, exploitation and humiliation from others. He writes that the solution is within our control, and is "the need for leadership to be expert, ethical, and properly supported."<sup>40</sup>

"Public defenders are an integral part of the criminal justice system, yet their needs and responsibilities are often overlooked through systemwide emphasis on efficiency over effectiveness. These discrepancies between goals and ability can lead to increased incidence of job-related stress among public defenders. These stresses, coupled with consistent and continued exposure to the traumatic experiences of clients and victims, create a situation that is ripe for high rates of secondary traumatic stress and the resulting symptomatology."<sup>41</sup>

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<sup>38</sup> District Public Defender To Jackson County Judge: [My Attorneys Are Ticking Time Bombs](#), Kansas City Star May 31, 2019.

<sup>39</sup> Just a few of the many examples are [Thin Ranks, High Risks](#) (describing Kentucky) and [One In Four Kansas Public Defenders Quit Last Year](#), Leaving Agency 'In Crisis.' Apr 8, 2019.

<sup>40</sup> Jonathan Shay, [Doctor Moral Injury](#), Psychoanalytic Psychology, 2014, Vol. 31, No. 2, 182-191.

<sup>41</sup> Dotson, E., Brody, D. C., & Lu, R. (2020). [An exploratory study of occupational and secondary traumatic stress among a mid-sized public defenders' office.](#)

Moral injury looks at systemic obstacles, abuses and transgressions, and suggests systemic solutions—such as reduced caseloads, supportive leadership, sufficient training, and mentorship support. Many of the strategies discussed for the medical field are applicable in public defense.<sup>42</sup>

- Be intentional about separating individual development and systemic obstacles that force ineffectiveness.
- Training spaces, supervision, performance review and development plans can specifically track individual growth and development of skills and not only focus on the learning curve ahead.
- Develop a learning organization, where the stated expectation is that everyone will make mistakes and those mistakes offer opportunities for learning. Create continuous learning and a growing sense of mastery.
- Coaching can use appreciative inquiry of “close the gap” models. For the Gideon’s Promise training programs, Jonathan Rapping created a “close the gap” exercise to keep from internalizing feelings of failure caused by the gap that exists between aspiration and reality.<sup>43</sup> In the exercise, we talk specifically about how the ideal representation would look and how the reality is failing to provide it. Then, we brainstorm the steps that would be required to move toward the aspiration and possible strategies around the obstacles to taking those steps. This leads to analysis of what steps can realistically be taken and how to best advise clients about the options that are available. This step-by-step process is useful to making incremental progress toward the goal, and for seeing system obstacles as outside our control rather than a personal failure.
- Provide opportunities for involvement in system change, such as policy and legislative advocacy and strategic litigation.

The lens of moral injury invites these questions of public defense leaders: Is this action that is being taken making it easier or harder to do right by the people we represent? Is it increasing or decreasing obstacles to achieving the goal or providing high quality and client centered representation?

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<sup>42</sup> [Fixmoralinjury.org](https://fixmoralinjury.org) from doctors Wendy Dean and Simon Talbot

<sup>43</sup> Jonathan Rapping, [Gideon’s Promise: A Public Defender Movement to Transform Criminal Justice](#), Beacon Press, 2020, at p. 156-157.

## Resources

[A Trauma Informed Care Audit Report to the Capital Defense Community and Advocacy Movement](#)

Albert, Linda and Deb Smith, [VIDEO: The Toll of Trauma](#), discussing the 2011 WI study (4 min video)

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Prepared by Jenny Andrews, BeSustained.org. A child of counterculture, raised off the grid by back-to-the-land hippies on the Lost Coast in Northern California, Jenny Andrews is a graduate of Cornell University and Harvard Law School. She started her career as a public defender in Oakland, California in 1996, but left after seven years, after experiencing burnout and moral injury, and didn't practice law for three years. She returned to public defense work in 2007, and continued working as a public defender in Sonoma County and Santa Barbara County until 2022, in a wide variety of positions, including: Forensic Resource Counsel, Felony Team Leader, Director of Training and Senior Deputy. For 23 years, she worked on the front lines of criminal trial courts and has consistently litigated cases, including misdemeanor, felony, juvenile, civil commitment (mentally disordered offender and sexually violent predator), mental competency, homicide, and multi-jurisdiction (and multi-jury) trials. She has carried specialized caseloads of complex, forensic and capital litigation. In 2022, she became the Director of Training at the Indigent Defense Improvement Division of the Office of the State Public Defender, a new statewide effort to support and train indigent defenders in California. She teaches on the faculty of Gideon's Promise, the National Association for Public Defense, the National Legal Aid and Defender Association, the National Criminal Defense College, the Trial Advocacy Workshop at Harvard Law School, and the California Public Defenders Association. She has taught in public defense training programs in Alabama, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Jersey, New York, Oregon, South Carolina, Tennessee, and in public defense offices throughout California. In 2018, she launched [BeSustained.org](https://BeSustained.org), a training and resource hub to support the well-being of public defenders. She has been interviewed about PD well-being on the [Public Defenseless Podcast](#) and for [Slate Magazine](#).