

**Sustaining Well-Being in Public Defense  
by Jenny P. Andrews**

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## Notes About This Resource

This is an exploration, not a destination—it is not meant to “have all the answers.” This is an ongoing work in progress that will be continually updated and improved. Humbling as it is to put evolving work out into the world, it feels more important to get information to public defenders if it might help us stay well and stay in this work. To the extent that opinions are expressed, they are mine and not those of any employer. These resources have been written and compiled during off hours from multiple jobs for multiple employers. Please send feedback, corrections, additions, wisecracks, links that have gone dead, and creative improvement ideas to [besustained@gmail.com](mailto:besustained@gmail.com). This compilation of ideas related to sustaining well-being in public defense has two parts: a chapter on Sustaining Well-Being in Public Defense and an A-Z Resource Guide for Sustaining Well-Being in Public Defense. Some topics are more fully developed than others, and the project will progress irregularly. Updates will be posted to [besustained.org](http://besustained.org). The A-Z categories are a bit idiosyncratic. There are questions and worksheets that invite introspection and reflection; be sensitive to your own triggers, concerns and comfort in everything you choose to do and not to do. I’m not a doctor or mental health provider, and you should consult one with any questions you have about breathing exercises or yoga practice--or taking up trapeze, ax throwing, or parachuting as your third thing-- or anything at all, and let your own judgement guide anything you do to support your well-being. I just want you to take care of yourself and be a kick ass public defender.

**Jenny Andrews:** 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, and for

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organizations including the ACLU and the Innocence Project. She has designed and presented training for public defenders working at all levels, from intern to leadership and from basic trial skills to capital litigation, as well as in specialized areas such as challenging forensic evidence and sustaining well-being. She has conceptualized and launched a Felony Team Unit, a Pre-Arrestment Unit, and Be Well Wednesday, a weekly wellness meet-up with experiential practices for public defenders. In 2018, she launched BeSustained.org, a training and resource hub to support the well-being of public defenders. She has been a certified yoga teacher since 2004 and is a longtime student of yoga and mindfulness practices. She believes in advocating for systemic support of public defenders, building spaces for public defenders to support each other, and prioritizing personal practices that support our well-being. Her personal wellness practices include sailing, hiking, yoga, and tending a rural apple farm. Her systemic wellness practices include Be Well Wednesdays, creating and teaching the online course Sustaining and Supporting Well-Being in Public Defense, and speaking, engaging, and writing often on the topic of supporting well-being for public defenders.

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## I. Introduction

### A. About this Resource

When I say “public defenders,” I mean everyone working in defense of the indigent accused. I don’t just mean lawyers. These thoughts on sustaining well-being are intended for public defense attorneys, investigators, paralegals, holistic advocates, law office professionals, interns, volunteers, mitigation specialists, appointed contract defenders, and everyone working to represent, advocate for and assist poor people accused of crimes.

Public defense work is exciting and meaningful, and its connection to an important mission can make it deeply satisfying for many years. It can also be challenging to balance work and non-work life, and to navigate exposure to trauma and occupational stress. Working in public defense has very real impacts on our well-being. Though we must maintain our physical and mental health in order to provide high quality and client-centered representation to the people we represent, we face constant obstacles of working within under-resourced agencies, being exposed to trauma, and working within defense culture that may not support our well-being. The goal of these materials is to encourage informed and supportive conversations about sustaining our well-being while doing public defense work.

This resource is intended to assist you in these objectives:

- Recognize challenges and obstacles to sustaining well-being in public defense.
- Explore resilience building practices to increase experiential understanding.
- Utilize assessment and goal setting tools to develop goals and plans for individual and community well-being.
- Increase understanding that well-being is foundational to competence and access to justice.
- Increase understanding that diversity, equity and inclusion are foundational to well-being.
- Increase evidence-based strategies, by reviewing relevant studies and research.
- Become conversant in terminology of trauma exposure and trauma stewardship.
- Acquire tools and strategies to build a culture of wellbeing within public defense offices.
- Acquire tools and strategies to advocate for systemic change to support well-being.
- Normalize open discussion of vulnerability, trauma, and painful aspects of public defense.
- Increase practices of appreciation, gratitude, recognition, and celebration in public defense.
- Develop skill of pairing the appropriate individual, community or public strategy with the specific challenge or obstacle impacting well-being.

For most of us, sustaining and supporting well-being isn’t something we figure out once and have mastered. It’s an ongoing process. It looks different at different stages of our lives and careers, in different agencies and different assignments. We benefit from making this an ongoing conversation for defenders at all levels.

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## B. Leaving and Returning to Public Defense: Why is Sustaining Well-Being a Priority for Me?

In 1991, I had a summer filled with *aha*, *light-bulb*, *found-my-calling* moments when I worked as a student investigator at the Public Defender Service in Washington, DC. The first time I watched young men being led into a courtroom in custody and my summer supervisor, Tamar Meekins, fighting for their freedom, I connected with a sense of purpose. Even though I was deeply anxious about public speaking (still am), and had made fun of friends planning to attend law school up to that moment, I had the crazy idea that maybe I could do something impactful by working in public defense.



I went to law school to be a public defender; no other type of law interested me and I've never working in another legal field. I was incredibly fortunate to be mentored during law school by people like Charles Ogltree, Stephen Bright, and Abbe Smith. They instilled in me a deep belief in the importance of providing high quality representation to poor people accused of crime. They also instilled in me a level of dedication and devotion that was all-consuming. I graduated with a monumentally large chip on my shoulder, eager to prove I could do this essential job, and do it well.

I was filled with pride and anticipation when I joined the Alameda County Public Defender in Oakland, California. My explorations and journeys had brought me full circle, to an office a few miles away from the Berkeley house I was born in.

This photo, from one of my first misdemeanor trials, shows me holding the eagle picture we posed with after an acquittal—the eagle is swooping down toward a mouse on the ground; the mouse is flipping off the eagle. Just looking at the photo brings back a flood of the pride and determination I felt in that first trial rotation—when the cases just kept coming and there were never enough hours in the day to do everything that should have been done for each person fighting an accusation.

I couldn't get enough, I worked ~~a lot~~ All. The. Time.

I missed weddings, reunions, and funerals for trials. I drifted away from my family and from friends outside public defense. My colleagues became my social circle. We stayed out late at bars, napped under our desks in the afternoon, and worked nonstop the rest of the time.

Seven years later, I slid into my cubicle desk, opened a document, and watched words appear on the screen, typed by hands that seemed disconnected from the rest of me. I was surprised and confused to see my own resignation letter appear in front of me.

I was 33 years old, seven years into a public defender career I thought I would stay in. I had no job lined up, no idea how I'd pay the bills. It didn't feel like a decision. It felt like I couldn't stay there for five more

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minutes, like there was no oxygen in the room. I fled to escape the relentless injustice and blur of prosecutors withholding discovery, midnight laundry, clients dying, vending machine lunches. *Burnout.*



I didn't practice law for three years. I had this idea that doing "happy things" would make me happy, so I taught yoga, wrote for magazines, and rode a motorcycle around the Oakland hills in the afternoons. When I wasn't sufficiently brimming with happiness, I danced on rooftops in Cuba, and ran a marathon, and spent hours in my darkroom. The happiness quest made me somewhat happier until it didn't. I felt separated from my own sense of purpose. After three years, I went back to being a public defender. With a lot of trepidation.

Since returning to public defense in 2007, I've explored how to do it differently. I think a lot about how to stay, how to develop tools and strategies to re-charge my batteries to return to work for another day.

This is not something I have "figured out," this takes continual investment of energy and ongoing re-examination.

At first, I kept this exploration to myself, and thought it embarrassing to mention, in a profession where *tough it out, don't complain, don't show weakness* culture still prevails. When I occasionally whispered to colleagues, *I actually burned out and left for several years*, the response was not what I expected (awkward sidelong glances and lawyers skittering away from me). It was an outpouring of similar stories. A comment became a conversation became a talk became a well-being workshop became a series of workshops and scribbling of materials that can't begin to keep up with the demand.

There seem to be many, many public defenders who are eager to have this discussion. *How do we stay? We don't want to leave but we are struggling. How do we sustain this work? How do we make our organizations more supportive? How do we transform the systems we work in, to make them less oppressive?*

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### C. Well-Being as Competence and Access to Justice

Maintaining our well-being is foundational to being able to do this work. We all know that professional rules require us to provide competence<sup>1</sup> and diligence<sup>2</sup> in client representation. While these duties unquestionably require keeping up with legal developments, litigation skills and client communication, these skills will be wasted if we are too tired, hungover, or emotionally drained to effectively utilize them.

The American Bar Association [ABA] includes well-being as an indispensable part of a lawyer's ethical duty of competence.<sup>3</sup> Within its 2017 ABA Lawyer Well Being Report of Recommendations, the ABA defines lawyer health not solely by absence of illness, but by a positive state of wellness. It includes lawyers' ability to make healthy, positive work/life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients.<sup>4</sup>

The National Association of Legal Assistants includes Canon 6 for paralegals: A paralegal must strive to maintain integrity and a high degree of competency through education and training with respect to professional responsibility, local rules and practice, and through continuing education in substantive areas of law to better assist the legal profession in fulfilling its duty to provide legal service.<sup>5</sup>

The National Association of Social Workers Code of Ethics sets forth these standards regarding impairment:<sup>6</sup>

#### 4.05 Impairment

(a) Social workers should not allow their own personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties to interfere with their professional judgment and performance or to jeopardize the best interests of people for whom they have a professional responsibility.

(b) Social workers whose personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties interfere with their professional judgment and performance should immediately seek consultation and take appropriate remedial action by seeking professional help,

---

<sup>1</sup> [ABA Model Rule of Professional Conduct 1.1](#): A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

<sup>2</sup> [ABA Model Rule of Professional Conduct 1.3](#): A lawyer shall act with reasonable diligence and promptness in representing a client.

<sup>3</sup> The [Path to Lawyer Well-Being: Practical Recommendations for Positive Change](#), from the National Task Force on Lawyer Well-Being of the American Bar Association, August 14, 2017 [hereinafter "2017 ABA Well-Being Report"].

<sup>4</sup> [2017 ABA Well-Being Report](#) at p. 9

<sup>5</sup> [National Association of Legal Assistants, Inc.](#) "Each NALA member agrees to follow the canons of the NALA Code of Ethics and Professional Responsibility. Violations of the Code may result in cancellation of membership. First adopted by the NALA membership in May of 1975, the Code of Ethics and Professional Responsibility is the foundation of ethical practices of paralegals in the legal community."

<sup>6</sup> [National Association of Social Workers Code of Ethics](#).

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making adjustments in workload, terminating practice, or taking any other steps necessary to protect clients and others.

AND

## 2.08 Impairment of Colleagues

(a) Social workers who have direct knowledge of a social work colleague's impairment that is due to personal problems, psychosocial distress, substance abuse, or mental health difficulties and that interferes with practice effectiveness should consult with that colleague when feasible and assist the colleague in taking remedial action.

(b) Social workers who believe that a social work colleague's impairment interferes with practice effectiveness and that the colleague has not taken adequate steps to address the impairment should take action through appropriate channels established by employers, agencies, NASW, licensing and regulatory bodies, and other professional organizations.

## 1. A Broad Definition of Well-Being



*Graphic from ABA Well Being Task Force*

Within its 2017 ABA Lawyer Well Being Report of Recommendations, the ABA includes a wonderfully broad definition of well-being that encompasses six dimensions: emotional, occupational, intellectual, spiritual, physical and social thriving.<sup>7</sup>

These six dimensions mirror the same six dimensions of wellness promoted by the [National Wellness Institute](#), which explains that by applying the Six Dimensional Model, a person becomes aware of the interconnectedness of each dimension and how they contribute to healthy living. The [downloadable NWI's Six Dimensions Tool](#) goes further in depth on each of the six dimensions.

<sup>7</sup> [2017 ABA Well-Being Report](#) at p. 9

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The [National Wellness Institute](#) explains:

By applying the Six Dimensional Model, a person becomes aware of the interconnectedness of each dimension and how they contribute to healthy living. This holistic model explains:

- How a person contributes to their environment and community, and how to build better living spaces and social networks
- The enrichment of life through work, and its interconnectedness to living and playing
- The development of belief systems, values, and creating a world-view
- The benefits of regular physical activity, healthy eating habits, strength and vitality as well as personal responsibility, self-care and when to seek medical attention
- Self-esteem, self-control, and determination as a sense of direction
- Creative and stimulating mental activities, and sharing your gifts with others

I love these broad definitions of well-being as a continuous process toward thriving across all life dimensions.<sup>8</sup> This is a useful reminder that we can strive for multi-dimensional wellness, we need not be satisfied with making it in the door of the office without too many sick days, and without troubling anyone for case coverage. A holistic model of wellness goes far beyond that.

ABA Definition of Well-Being	
ABA Well-Being Dimension	ABA Description of Each Well-Being Dimension
Occupational	Cultivating personal satisfaction, growth and enrichment at work; financial stability.
Intellectual	Engaging in continuous learning and the pursuit of creative or intellectually challenging activities that foster ongoing development; monitoring cognitive wellness.
Spiritual	Developing a sense of meaningfulness and purpose in all aspects of life.
Physical	Striving for regular physical activity, proper diet and nutrition, sufficient sleep, and recovery; minimizing the use of addictive substances. Seeking help for physical health when needed.
Social	Developing a sense of connection, belonging, and a well-developed support network while also contributing to our groups and communities.
Emotional	Recognizing the importance of emotions. Developing the ability to identify and manage our own emotions to support mental health, achieve goals, and inform decision making. Seeking help for mental health when needed.

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<sup>8</sup> [2017 ABA Well-Being Report](#) at p. 9.

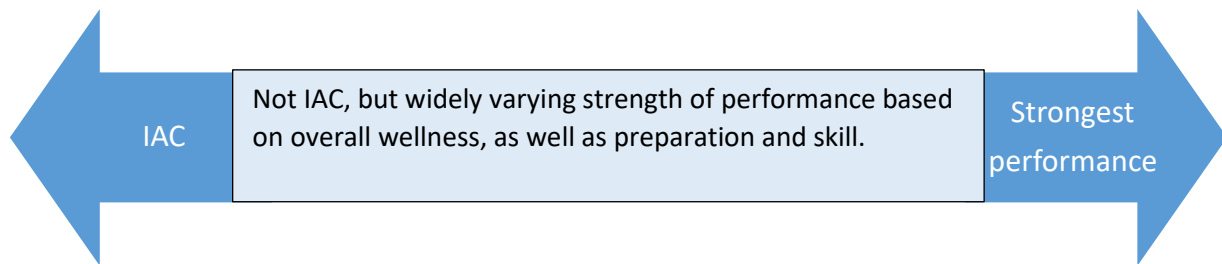
One of my ongoing frustrations in conversations about well-being of public defenders is when public defender health is framed as conflicting with client centered representation. These two things should always be on the same side. Time spent at work isn't in competition with time doing things like being with our families, exercising, and shopping for nutritious meals. It's useful to me to remember that the time I take to do yoga or go hiking isn't just for me. It helps me show up strong and focused and ready for the challenging work of public defense.

This perspective leads me to reject the term work/life balance. I don't want to think it terms of struggle to balance two separate parts of life that compete for my time. I want to show up as a whole, complete person in all aspects of my life. I understand that taking care of myself strengthens all aspects of my life. Taking care of my well-being is foundational to being able to do public defense work.

And taking care of myself isn't a responsibility that falls only to me. My public defense office should also recognize that supporting my well-being enables me to show up strong for the people we represent. Creating a culture where we can thrive should be an integral part of public defense management and training. Working within an office and public defense culture that supports well-being is foundational to us providing access to justice through strong representation.

## 2. Spectrum of Well-Being and Competence

There is a wide spectrum of competence and performance in public defense. We all know that the standard of ineffective assistance is low. If we are completely absent from the proceedings or passed out drunk at the table, perhaps a reviewing court may find ineffectiveness. At the other end of the spectrum of competence is that rare time at our absolute best: prepared, rested, focused, articulate, and in our full power.



In between the two extremes is a wide range of performance based on many different factors, such as preparation, skill, *and wellness*. If we repeatedly skip exercise, or accept routines without enough sleep, or stop participating in spiritual activities that sustain us, our performance is sliding to the left. While not legally ineffective, do we want to accept showing up unwell? This is unavoidable sometimes, or for some stretches of time. Babies may keep us up all night, injuries may interfere with our exercise routines. But it's worth checking in across these six well-being dimensions to see if there are areas in which it would benefit us to re-engage and re-energize, both to feel better and to perform better. The offices and

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systems we work within should also recognize that supporting each of these dimensions of well-being enables us to deliver stronger representation for the people we represent.

### **3. Unwellness and Incompetence**

In each of the six dimensions of wellbeing, we can see a clear connection with competence and performance in public defense. For example, increased emotional well-being will translate to better emotional regulation to navigate emotionally charged communications, and decreased emotional well-being will have the opposite impact. Public defense work requires navigating frequent emotionally charged communications, such as meeting with people in crisis situations, and discussing painful events with people who viewed or experienced them.

This connection between wellness and quality of representation is apparent in each of the six wellness dimensions. Decreased intellectual health will impact our ability to formulate arguments and advocate strongly. The chart below illustrates all six dimensions. In the extreme, deficient performance due to unwellness may become incompetence or even result in disciplinary or malpractice claims.<sup>9</sup>

<b>Wellness Dimension</b>	<b>Areas Impacted</b>	<b>How unwellness can impact competence and performance</b>
<b>Occupational</b>	Growth and development Financial stability	Tardiness/absence from work Boredom, disconnection Reduced quality, errors, poorly executed work Irritability, impatience, conflict Faulty judgement
<b>Intellectual</b>	Intellectual stimulation and development Cognitive wellness: concentration, clarity, problem solving, memory, planning, organization, creativity/flexibility	Reduced engagement to learn new skills Poorly formulated or articulated arguments Reduced memory of evidence to execute clear questioning Less creative, effective storytelling
<b>Spiritual</b>	Meaning and purpose	Pervasive hopelessness Loss of feelings of guidance, security and anchoring Questioning meaning and purpose.
<b>Physical</b>	Physical health-exercise, nutrition, sleep Moderate and mindful use of substances	Health related absence and tardiness Less commanding court presence Decreased stamina for demanding days
<b>Social</b>	Feeling support and connection Offering support and connection	Feeling withdrawn, isolated, intolerant, lonely Feeling distrustful, over-protective Projecting anger or blame

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<sup>9</sup> Marjorie A. Silver, [Substance Abuse, Stress, Mental Health and The Legal Profession](#), New York State Lawyers Assistance (2004)[40 to 70 percent of disciplinary proceedings and malpractice claims against lawyers include substance use or depression, and often both].

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		Conflict with loved ones, clients, colleagues Decreased ability to compassionately listen to others Decreased ability to be supportive in relationships inside/outside of work
<b>Emotional</b>	Emotional regulation Decision making Mental health	Feeling sad, depleted, hypersensitive, overwhelmed, powerless, guilty, numb Decreased emotional regulation Less ability to navigate emotionally charged interviews, evidence, testimony or argument Difficulty meeting demands of rapidly changing schedule and heavy workload Less ability to offer support to colleagues, clients and community

#### D. Self Worth Management

Let me pre-emptively and unequivocally say that the ability to provide high quality representation to the people we represent is important, but it is not primary reason we should care for ourselves. Taking time to rest and build resilience and engage in activities that sustain and support us is something we should do and celebrate. Without shame, or guilt, or feeling we need to justify ourselves by doing it for someone else.

**“Caring for myself is not self-indulgence, it is self-preservation, and that is an act of political warfare.” –Audre Lorde**

[Anana Harris Parris](#) writes of “self worth management” in her book, [Self Care Matters: A Revolutionary’s Approach](#), and she offers this definition: “Self-worth management is about being aware of how worthy you do or don’t feel at a given time.”<sup>10</sup>

“Self-worth management is about understanding which category(ies) of care make you feel vulnerable, exposed, and embarrassed, then spending time building a healthier perspective of yourself while you address that category of care.”<sup>11</sup>

“Constructing a Self Care Plan is revolutionary. It challenges your current comforts and forces you to create a new normal rooted ins satisfying your critical spiritual, emotional, artistic, physical, economic, educational and social needs.”<sup>12</sup>

While it is unfair to shift the entire burden and responsibility of wellness to individual self-care, we also cannot abdicate responsibility for understanding and communicating our own needs. We need to take an active role in developing practices to build our own resilience, and in communicating the ways that our needs are not being met and what is required to meet them.

<sup>10</sup> Anana Harris Parris, [Self Care Matters: A Revolutionary’s Approach](#), at p. 89.

<sup>11</sup> Anana Harris Parris, [Self Care Matters: A Revolutionary’s Approach](#), at p. 91.

<sup>12</sup> Anana Harris Parris, [Self Care Matters: A Revolutionary’s Approach](#), at p. 17.

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## E. Impacts of Oppressive Systems

In many cases, our interlocking identities and histories that make us vulnerable to harm or discrimination are compounded by the structural barriers we face both professionally and in our personal lives. When these identities and barriers overlap, finding a healthy balance can feel impossible.

For example, for those of us experiencing systemic racism, homophobia, or transphobia, everyday microaggressions can create compounding harm even in environments where the work is otherwise rewarding. And for those of us with neurodiversities, a lack of adequate professional accommodations and an even greater lack of understanding from our employers and colleagues can make basic functionality feel impossible. For each identity or history we carry, these challenges increase. In these situations, avoiding burnout requires acute self-awareness.

-- Jay T. Conrad, Ashley OConnor McCready, & Audrey Daye, Seattle U Law Class of 2023

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“Today ‘self-care’ exists as a largely white, largely ableist, largely classist, largely superficial form of sanctioned self-indulgence, where an ‘After All, Why Shouldn’t I?’ mentality pervades and the practice consists largely of various overpriced beauty services, bottomless mimosas, and a general refusal to engage in meaningful self-evaluation.”<sup>14</sup>

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<sup>13</sup> Self-Preservation is an Act of Political Warfare: Navigating Burnout as a Marginalized Movement Lawyer, by Jay T. Conrad, Ashley OConnor McCready, & Audrey Daye, Seattle U Law Class of 2023. (contact: [audidaye@seattleu.edu](mailto:audidaye@seattleu.edu))

<sup>14</sup> Self-Preservation is an Act of Political Warfare: Navigating Burnout as a Marginalized Movement Lawyer, by Jay T. Conrad, Ashley OConnor McCready, & Audrey Daye, Seattle U Law Class of 2023. (contact: [audidaye@seattleu.edu](mailto:audidaye@seattleu.edu)) at p. 18.

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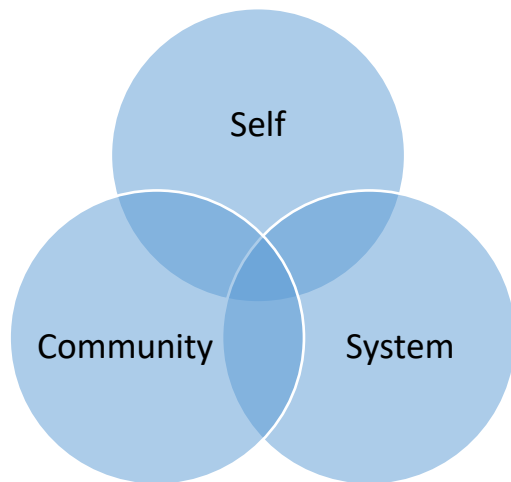
## F. 3 Spheres of Public Defense Well-Being: A Framework for Understanding Impacts and Obstacles, and for Responding with Appropriate Tools and Strategies

My friend [Stacy Sims](#), through her work at [the Well](#) introduced me to approaching well-being work in three interconnected areas, which she described as: (1) Personal work: taking time each day to reflect, restore and replenish; (2) Relational work: learning to sit together, listen, connect, play and learn; (3) Public work: building capacity for community reconciliation and equitably distributed wellness

Laura van Dernoot Lipsky also talks about trauma stewardship as occurring at the individual, organizational and societal levels.<sup>15</sup>

This framework translates helpfully to many areas of wellness work, including public defense. There are three spheres relevant to our well-being in public defense work: self, community, and system. These three spheres provide a useful framework for understanding impacts, obstacles and challenges to sustaining well-being, and also guide us in

responding with appropriate tools and strategies.



**SPHERE ONE: the Self Sphere** refers to the personal experiences we bring to this work and the personal self-care practices we rely on to sustain ourselves. This sphere also includes the ways we approach our work, like struggles with boundaries, overworking, or use of substances. It includes the ways we individually manage stress and mitigate trauma, and the ways we care for our own

mental and physical health.

**SPHERE TWO: The Community Sphere** contains the work to be done within our indigent defense community. Public defense work has undeniable traumatic impacts that we must mitigate and process in order to stay in this work. Strategies in this sphere include the ways all participants in public defense culture—leaders, trainers, individuals—can build a culture that is supportive of well-being, and can

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<sup>15</sup> [Trauma Stewardship](#), by [Laura van Dernoot Lipsky](#), at p. 19.





reduce obstacles that wear us down when they get in the way of us providing the high quality and client centered representation that motivated us to do this work in the first place.

**SPHERE THREE: The System Sphere** contains the public work that can be done to transform systems, from media campaigns to budget advocacy to caseload/workload advocacy. The reality is that the criminal legal system frequently forces public defenders to be ineffective, and to feel complicity with larger systems that perpetuate oppression and cause harm, and this reality takes a toll on us. System obstacles are things like high caseloads, racist systems, under resourced offices, and hostility toward the defense function from other system actors. Systemic strategies to support well-being are efforts to transform these systems.

What public defenders need to sustain well-being are strategies in all three spheres:

- (1) Individual strategies and practices to promote wellness and to mitigate inevitable impacts of trauma.
- (2) Community and organizational strategies to build a culture that supports well-being.
- (3) Public strategies to transform unjust systems.

It is essential to match the appropriate response and strategy to the obstacle or impact. It is common to shift the responsibility to the individual to fix everything with self-care. But systemic obstacles need systemic responses. People are understandably frustrated if their caseloads balloon and they're expected to "tough it out" and withstand whatever is thrown at them because there's a yoga flyer on the bulletin board. No amount of yoga is going to fix the problem of unsupportive management, or high caseloads that wear people down until they leave public defense. Individual resilience may help us survive for a while, but it doesn't address culture and system obstacles.

<b>Self</b>	<b>Community</b>	<b>System</b>
Individual Well Being Tools/Strategies	Public Defense Culture Tools/Strategies	Criminal Legal System Tools/Strategies
Maintain sleep, nutrition, exercise Engage in self-assessment Engage in goal setting or self-care planning Set and maintain boundaries Manage stress Engage in beneficial practices Connect to community Moderation of substance use Access mental health care Access physical health care	Unify around purpose of client centered representation Engage in organizational assessments Engage in strategic planning Increase trauma informed practice Provide supportive training, sufficient to feel equipped and supported to complete assigned work Reduce moral injury by reducing obstacles to high quality and client centered representation Manage caseload and workload	Advocacy for sufficient resources to reduce caseload, workload Dismantle and transform oppressive and unjust systems Effective media advocacy about the role and importance of public defense Unite with community power through collaboration, media, participatory defense, and outreach

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	<ul style="list-style-type: none"><li>Provide sufficient and effective coverage to support time off</li><li>Support autonomy</li><li>Provide and support mental health care access</li><li>Provide and support substance use treatment</li><li>Create spaces to process pain, trauma, difficulty</li><li>Support and model boundaries</li><li>Reduce 24/7 work expectations and actively encourage reset time and vacation</li><li>Support caregiving and meeting responsibilities outside work</li><li>Create practices of celebration, appreciation, gratitude and recognition</li></ul>	
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It has been useful to me to approach these three spheres from the inside outward, by starting with my own well-being and gradually expanding my work to my office/organizations, and then to broader systems.

The three spheres of public defense well-being also correspond with spheres of control. As we move out from the self, we tend to have less control and influence. Our impact on other spheres is likely to vary in different offices or assignments, or with more experience. This is not intended to suggest people in all positions don't have power to impact the well-being of themselves and others. For example, an applicant asking in a job interview "What are you doing to support staff well-being?" can have an impact on leadership decisions before even joining an office.

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## II. THE SELF SPHERE: Individual Obstacles and Strategies

Self-care includes all the things we do individually to support and sustain our own health. One definition of self-care is deliberately taking care of your well-being through restorative activities.<sup>16</sup> Despite countless efforts to sell us things, it isn't all lavender scented shiatsu at fancy spas. More often it is chopping celery sticks and prepping meals for the week, or doing a weekly check in on budgeting and financial goals, or leaving the party early to get enough sleep. While we may all want to escape to things like streaming and scrolling at times, true self-care is creating a life that we don't need to escape.<sup>17</sup>

Self
Individual Well Being Tools/Strategies
Maintain sleep, nutrition, exercise Engage in self-assessment Engage in goal setting or self-care planning Set and maintain boundaries Manage stress Engage in beneficial practices Connect to community Moderation of substance use Access mental health care Access physical health care

Self-care is only one part of sustaining public defense well-being, and it's entirely inappropriate to shift the entire responsibility of sustaining and supporting well-being to individuals without also trying to create systems that support them. (I'll keep repeating this, like when people ask me to present on "self-care" and I say I'm happy to-- as long as I can also include community care and system transformation.)

However, there are crucial aspects of well-being that need to be healed and sustained individually.

Discerning what is yours to hold and what is the collective's is an essential life skill and fundamental to organizational work, collaboration, and meaningful engagement of others. Organizations generally do not have the specialized skills to provide emotional or spiritual healing. Workplaces can provide a salary, benefits, paid time off, and other resources to help individuals access the support and care they require. Workplaces can also promote a culture of care and encourage individuals to care for themselves.

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<sup>16</sup> [Self Care: What it Really Is](#), TED talk by Susannah Winders.

<sup>17</sup> From presentation of Elizabeth Vartkessian and Katherine Atkins: Part 1: Addressing Trauma, Loss, and Resilience in Criminal Defense – Focus on You, on Jan. 20, 2021, at Be Well Wednesday, recorded and available to members at the [NAPD website](#).

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Workplaces and colleagues cannot replace medical professionals, spiritual supports, or other devoted spaces of care.—Maurice Mitchell, [Building Resilient Organizations](#).

## **A. Purpose Driven Public Defense: Client Centered Representation**

One of the driving forces of public defense is that it is purposeful. I came back after I left because I felt separated from a sense of purpose that I deeply missed. Feeling guided by purpose and intention in this work gives us drive, determination and satisfaction.

“[H]aving a purpose in life is associated with all kinds of benefits. Research suggests that purpose is tied to having better health, longevity, and even economic success. It feels good to have a sense of purpose, knowing that you are using your skills to help others in a way that matters to you.”<sup>18</sup>

What is that purpose? For me, the answer is providing high quality, client-centered representation.

Client-centered representation sees the role of the public defender as taking the time to learn clients’ desires and, after advising them of all of the ramifications of their actions, working to fulfill those desires. It requires that lawyers use their education, experience and talent to arm clients with the advice necessary for those clients to control the representation consistent with the clients’ desires. In this way, it empowers a client to receive the same quality of representation as would a person who has more choice based on education and income.

Client-centered representation values the dignity of the client. It ultimately prioritizes the client’s right to make important decision that can impact all aspects of the person’s life.<sup>19</sup>

The goals of client centered representation include: to promote respect, dignity and humanity for the people we represent; to accurately and authentically tell each client’s individual story; and advocate for the goals, priorities and outcome that are most important to the client. Practical steps we take to pursue these goals include: giving the client all available information; explaining to the client what we know and what we don’t yet know; explaining the lawyer’s assessment of areas for exploration of defenses and all the things the client is entitled to have the lawyer do (discovery, investigation, motions, etc.); giving whatever advice the lawyer can that the client feels they need to make decisions.

There are other models of representation, such as lawyer-centered representation. In this model, the lawyer paternalistically decides the right course and imposes it on the client. The lawyer likely speaks of “client control” and sees the relationship as a hierarchy in which the lawyer is in control. There is judge-

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<sup>18</sup> Jill Suttie, [Seven Ways to Find Your Purpose in Life](#), Greater Good Magazine, Aug. 6, 2020.

<sup>19</sup> Jonathan Rapping, [Gideon’s Promise: A Public Defender Movement to Transform Criminal Justice](#), Beacon Press, 2020, at p. 26-27.

centered representation, in which the lawyer prioritizes keeping the favor of the judge, often by resolving cases as efficiently and agreeably as possible. Not only are these models unethical and ineffective, they decrease trust and increase conflict between the defender and the client.

Client-centered representation is the true north of public defense. It reliably guides each decision and action. “Defense attorneys are tasked with challenging anything happening in the courtroom that falls short of what their clients deserve. They are to serve as the system’s consciences, reminding judges and prosecutors when they are not doing their jobs. When defense counsel fails to live up to this obligation, the system is allowed to cut corners. Without the defender, there is no protection for the person abused by the system.”<sup>20</sup>

The people we represent are reasonably watching us all the time, to see if we are on their side. Do we adopt and voice the arguments of the prosecutor before there’s even been a hearing? Do we adopt the dehumanizing language used by prosecutors, like *inmate* or *defendant*? Do we laugh at jokes made by judges who demean our clients?

When people are arrested, they are abruptly kidnapped from their lives into cages. They are appointed public defenders they did not choose and when we first meet them, they have urgent concerns about their children, housing, pets, cars, property, medication, and much more. The first question many ask is: can I get out today? We convey a lot in how we answer this question. We could say: *there’s no way you’re getting released, your charges are too serious and this pretrial report shows too many failures to appear in prior cases.* Or we can say *let’s talk about the arguments the prosecutor is going to make about your case, and the questions the judge will have, so we can have a well-prepared response and the strongest possible argument for release.* When we abandon our client-centered purpose and take on the language and perspective of prosecutors or judge, the people we represent legitimately distrust us. When we maintain our purpose, over time that builds trust, which creates a better relationship throughout the case and better outcomes at every stage.

Client-centered representation provides clarifying guidance for every decision we make. Pressures from judges or prosecutors, or even at times our own supervisors, can often be evaluated easily if we ask *what best advances the goals and priorities of this person next to me?* This simple question is remarkably effective at revealing pressures and rationalizations from others that seek to guide us away from doing right by our clients.

Continually re-connecting to this client-centered purpose increases our connection with the people we represent, makes us more effective, and drives our dedication to sustain this work. Specific steps to connect to this purpose include: meeting with clients early and often so the representation is guided by their goals and input; connecting with client-centered colleagues, mentors, and public defense communities; attending training that aligns with client-centered values; defining success and achieving

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<sup>20</sup> Jonathan Rapping, [Gideon’s Promise: A Public Defender Movement to Transform Criminal Justice](#), Beacon Press, 2020, at p. 15.

client goals and priorities; seeking out, advocating for, and becoming public defense leaders who advance client-centered purposeful defense practice.

### **B. Motivation: The Public Defender Motivational Triad**

Close to purpose is motivation. Something has sparked each of us to want to do this work. What makes us choose this work, and choose to stay despite the challenges?

Jeff Sherr<sup>21</sup> offers a triad of public defense motivations, including warrior, counselor, and reformer (or movement builder).



*Jeff Sherr's Motivational Triangle.*

The warrior is motivated to fight for the underdog, against bullies who misuse their power. The counselor is motivated to build the relationship with and meet the needs of the individual client. The reformer (or “movement lawyer”) is motivated to achieve systemic change.

While each person may have a primary motivation that brings them to this work, the motivation may change or evolve over time. Jeff argues that a key to sustaining this work is to develop the ability to draw from each of the three motivations. For example, this enables the warrior, who is eager for trial and potentially frustrated by assisting clients in waiving the right to a trial, to feel successful by pursuing a treatment program for a person who wants that outcome.

Jeff Sherr’s motivational triangle is a valuable framework. He explains that each motivation can be taken too far, to an extreme that is no longer client centered. The warrior can become the war monger, fighting anything and everything, even against the client’s goals and wishes. The counselor can become paternalistic, substituting their own judgement about what’s best for the client, such as pushing a

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<sup>21</sup> NAPD Training Director, former director of training for Kentucky’s statewide public defense system.

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person to attend a treatment program they truly have no interest in attending. The reformer can become the zealot, abandoning individual client needs for a movement, such as to crash the system by refusing to join in any plea bargaining and setting every case for trial without client consultation or agreement.

Each motivation can suffer in the face of obstacles to providing high quality representation, and the way the obstacles can lead us to feel we've failed the people we represent. The counselor, who is energized by empathic connection with the client, can withdraw into depersonalization and withholding empathy after repeatedly experiencing the feeling of caring for clients who experience painfully disappointing outcomes. The warrior, motivated to fight for the underdog against bullies, can develop a kind of *why even bother* learned helplessness after experiencing fighting hard again and again, and losing many trials and many motions. The thinking may go: *if you can work hard to lose, or work less hard to lose, why work so hard?* The reformer, driven to change the system, can develop a cynical view that they have instead become part of an abusive and unfair system, perhaps even making the system worse because the presence of public defenders offers a pretense of due process, while in reality this basic fairness is absent.

Each motivation can also be explored, re-energized and supported-- by individuals, and by mentors, trainers and leaders and leaders. *What motivates you to be a public defender?* is a useful question to ask an applicant, yourself, your mentee, and so on. The counselor can be reminded that empathic connection and communication is deeply meaningful to the people we represent. Warriors can be reminded of the value of the fight. Reformers can benefit from seeing the incremental changes that have occurred and moved in the direction of desired change, even if there is further to go.

Jeff credits Charles Ogletree and Abbe Smith with providing the models he developed into his conceptualization of the motivational triangle. Both Smith and Ogletree published influential articles about what motivates people to become public defenders, and to stay in this work. In 1993, Professor Charles J. Ogletree offered the first scholarly attempt to explore what sustains indigent criminal defenders. He offered a model of "empathy" and "heroism" to sustain motivation for public defense work,<sup>22</sup> defining empathy as a deep lawyer-client identification and connection and defining heroism as the act of fighting to win at trial. Ten years later, Abbe Smith offered a new model of respect, craft and outrage.<sup>23</sup> I can recall long discussions of these ideas, with a group of aspiring public defenders, in an attic room in Austin Hall, in 1995-1996, when I was in Ogletree's criminal defense clinical course and Abbe Smith was my court supervisor. Tree, as we called him, envisioned an all-consuming version of public defense, with strategy sessions at lunch and late into the night, and taking client calls at every

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<sup>22</sup> Charles J. Ogletree, Jr., [Beyond Justifications](#): Seeking Motivations to Sustain Public Defenders, 106 HARV. L. REV. 1239,1271-94 (1993).

<sup>23</sup> Abbe Smith, [Too Much Heart and Not Enough Heat](#): The Short Life and Fractured Ego of the Empathic, Heroic Public Defender, 37 U.C. Davis L. Rev. 1203-1265 (2004). She's written more on this topic in [What Motivates a lawyer to defend a Tsarnaev, a Castro or a Zimmerman?](#), by Abbe Smith, The Washington Post, July 25, 2013, and co-edited the collection [How Can You Represent Those People?](#) by A. Smith (Editor) and M. Freedman (Editor).

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hour. By the time Abbe's article, a decade later, pointed out the lack of boundaries in his model, I'd left public defense and was dancing on a rooftop somewhere in Cuba.

### **C. Put Your Body on the Gears: Body, Mind and Heart**

On December 2, 1964, Mario Savio gave his famous "Bodies on the Gears" speech on the steps of Sproul Hall at UC Berkeley. It was during the Free Speech Movement. In protest of the university's ban on political activity, Savio spoke these words:

There's a time when the operation of the machine becomes so odious, makes you so sick at heart, that you can't take part! You can't even passively take part! And you've got to put your bodies upon the gears and upon the wheels...upon the levers, upon all the apparatus, and you've got to make it stop! And you've got to indicate to the people who run it, to the people who own it, that unless you're free, the machine will be prevented from working at all!

I've always loved this speech. A weathered and coffee-stained clipping of these lines has been pinned to the bulletin boards of dozens of assigned cubicles and offices where I have worked as a public defender. The counterculture community that raised me, on the remote Lost Coast of Northern California, grew out of the participation of my parents and their peers in this 60s political activism in Berkeley.

Put your body on the gears resonates with how I view public defense. Free human beings will not be pushed around by the machine, will not be the raw materials for the prison-industrial complex, will not be abused by the criminal punishment bureaucracy. Jonathan Rapping writes of the machine that we are up against:

Criminal Justice in America is a long, vast conveyor belt. Vulnerable people are dumped onto it at the beginning. By the time they reach the other end, their lives are shattered beyond recognition. The general public is taught that there are rules that govern how a person proceeds through the process. These rules are designed to slow the conveyor belt down. They create opportunities for people to get off the conveyor belt. They ensure that no one reaches the other end of the conveyor belt who did not belong on it in the first place.

In reality, the rules are ignored. Rather than presuming innocence, we assume everyone on the conveyor belt deserves to be there. We resent having to use any more resources that are absolutely necessary to get them to the other end. The goal is to do so as quickly as possible, and the rules get in the way. So we figure out how to get around them. If this gets the accused through the conveyor belt more quickly, the ends justify the means.<sup>24</sup>

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<sup>24</sup> Jonathan Rapping, [Gideon's Promise: A Public Defender Movement to Transform Criminal Justice](#), Beacon Press, 2020, at p. 8.



In public defense, we put our bodies on the gears of this machine. We think to ourselves, *you've got to go through me to cage this human, to convict this person, to sentence this community member*. Often we do it at the expense of our own well-being. We sacrifice our sleep and family time to long hours, incredible stress, and the impacts of trauma and moral injury. In the best of circumstances, sustaining well-being is a challenge in public defense. Between under resourcing and other systemic obstacles, we rarely work in the best of circumstances.

#### **D. Basic Maintenance: Sleep, Nutrition, Exercise**

Putting our bodies on the gears requires maintenance of our bodies. We don't use a microscope, or drive a tractor, or fly an airplane to do our jobs. The tool we use every day in this work is us-- our hearts, minds and voices. Showing up strong and energized is one of the most important things we can do for the people we represent.

I didn't always see it this way. In the first few years, when I showed up every Friday with a pile of misdemeanor cases on for trial-- and tried a boatload of them-- I also had a not insignificant number of late nights in the bars with my colleagues and afternoon naps on the therma-rest under my desk. It wasn't unusual, in the large room in which a dozen of us had our desks in Oakland in the late 1990s, to see feet sticking out from under several desks during the lunch hour. I recall that one part of my excitement about rotating to the felony trial staff office a few years later was office proximity to a great dive bar in the basement. We'd work until late, head downstairs around midnight for disco night at the Ruby Room with DJ Kitty, and then sleep it off and be back in court at eight in the morning.

My body doesn't tolerate that sort of schedule anymore, just like it doesn't tolerate trials fueled by vending machine lunches of picante corn nuts combined with peanut M&Ms (even though that's a completely delicious and satisfying lunch, at least in the moment).

The "basic maintenance" of sleep, nutrition and exercise is indisputably foundational to well-being. In the same way that athletes and stage performers have to care for their bodies, we need to care for this tool we use to do this work.

This basic maintenance also includes keeping up with medical and dental care, appointments that are all too easy to delay and skip in the juggle of oppressive court schedules.

#### **E. Create a Cycle of Self-Assessment and Goal Setting**

When I returned to public defense in 2007, after 3 years of not practicing law, I had a lot of reservations. My daughter was 1, I worried about how I would balance my time and attention.

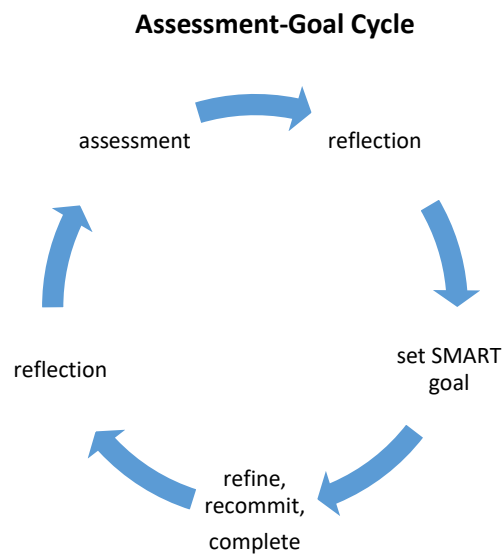
So I tried to talk with colleagues about whether they were happy as public defenders. This usually went like this: *I'd ask how are you?* They'd say **fine**. I'd ask *how are you really? Are you happy with your life and how you're spending your time, and whether your life is living up to your goals and dreams?* And

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they would look at me like I was crazy and sometimes say out loud: *you can't ask yourself those questions. If you do, you'll leave.*

I disagree. We need to have those conversations and ask ourselves those questions. 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.



Building in a process, with repeated assessment, helps us see patterns over time. Using intentional reflection can help us break out of habits of self-criticism. The point is not to see yourself as something not good enough, that needs constant improvement, but to see yourself as a capable person who is continually improving by taking strategic steps forward toward larger goals. Breaking down larger goals into incremental achievable steps is empowering and energizing. It is the opposite of that feeling of being overwhelmed or stuck when the goal seems too large or unapproachable.

For those of us who may slide too easily into self-criticism, we can intentionally create a practice of seeing and acknowledging our skills and accomplishments. Mindfulness and gratitude practices can help us develop the skill of approaching the assessment/goal process with curiosity more than judgment. In addition to recognizing places to continue to grow and improve, we need to recognize ways that we want to continue to invest our time and energy into practices and patterns that are working for us.

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The assessment-goal cycle is a tool for reassessment and forward progress. If it feels discouraging, start again and focus on small, achievable, action steps forward.

## **1. Self-Assessments**

Regular self-assessment has benefits that include clarifying intentions, increasing growth mindset, building problem solving skills and strategies, and increasing self-awareness.

The ABA includes, in its research-based suggestions for increasing life satisfaction and mitigating compassion fatigue: work on self-awareness every day and take an inventory of how balanced your life is--be intentional about balancing it out.<sup>25</sup> The ABA recommends regular assessment of well-being, including a regular practice established to assess work engagement, burnout, job satisfaction, turnover intentions, psychological well-being, or other indicators of well-being and to take action on the results.<sup>26</sup>

Several self-assessment tools are included in the companion A-Z Resource Guide.

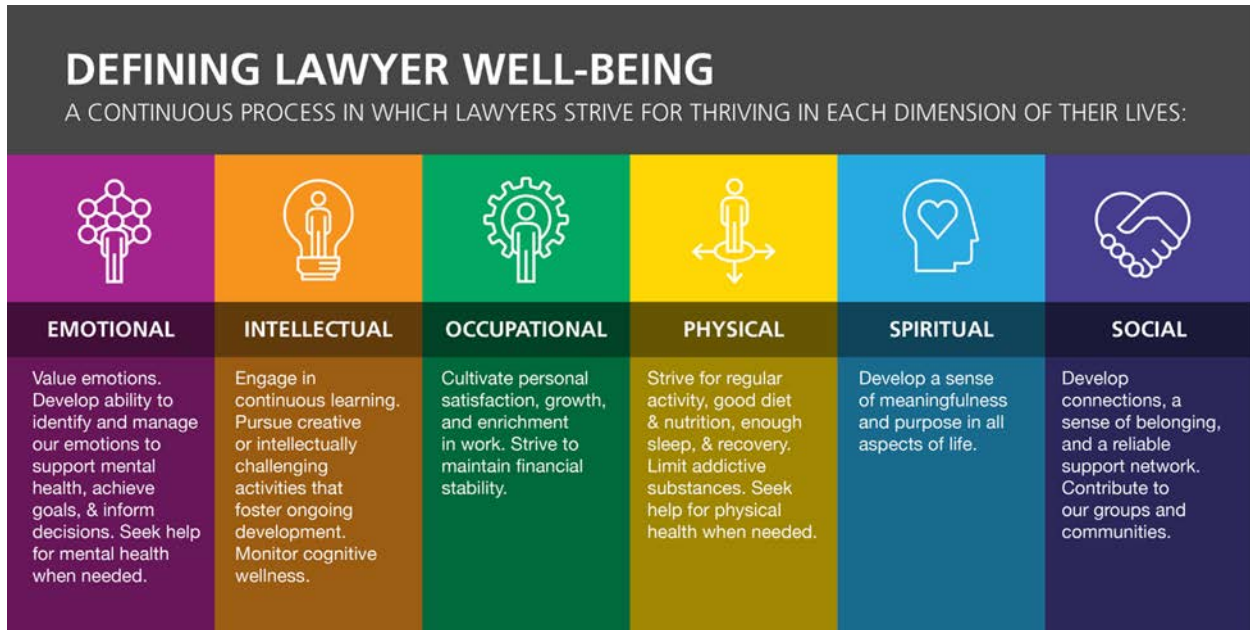
## **2. Goals, Microgoals, and SMART Goals**

If you complete a self-assessment, gather some information, and spend a little time reflecting, you may feel a tug to put a bit of energy into making a shift in one area or another. Reviewing and reflecting on the six well-being dimensions can be helpful for identifying relevant objectives.

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<sup>25</sup> [Keeping Legal Minds Intact](#): Mitigating Compassion Fatigue Among Legal Professionals, ABA 2014

<sup>26</sup> Anne Brafford, [Well Being Toolkit](#) for Lawyers and Legal Employers, ABA 2017 [hereinafter 2017 ABA Well-Being Toolkit].



Graphic from ABA Well Being Task Force.

### 3. Goal Setting

But how can you set a goal that propels you forward and doesn't just become another thing on the list, that you're not going to do and then feel bad about not doing?

The SMART goal framework can be a great tool to setting goals that are specific, measurable, attainable, relevant, time bound. There is a worksheet for setting well-being SMART goals in the companion A-Z Resource Guide.

[The Management Center](#) offers the terrific [SMARTIE goal](#) setting framework (and lots of tools to implement it) that stands for: Strategic, Measurable, Ambitious, Realistic, Time-bound, Inclusive, and Equitable, with the purpose that "incorporating an equity and inclusion component to your SMART goals, you can make sure your organization's commitment to racial equity and inclusion is anchored by tangible and actionable steps."

SMART Goals
<b>Specific:</b> make the action specific and narrowly defined. <b>Measurable:</b> what evidence of progress will be collected? Include specific actions to build in accountability. <b>Attainable:</b> goal can be accomplished in the defined timeframe. <b>Relevant:</b> aligns with identified objective/value/mission.

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**Time bound:** has a defined and realistic start date, frequency, and end date. The start is soon or immediate, and not contingent on a distant or uncertain event.

**Examples of wonderful SMART goals from defenders in my online course:**

- For social wellness, I will call 2 people each week, for 4 weeks. I've made a list of 8 people with whom I've fallen out of touch and would like to be in touch. I've put a weekly reminder in my calendar.
- For emotional and mental health, I will keep a "daily wins" list for 30 days, adding at least one positive accomplishment at work each day. I've created the document and a daily reminder, and printed out a hard copy to also keep in my calendar to add on the fly.

When setting a well-being goal, beware of being overly ambitious. I wake up every Jan 1st ready to set 100 resolutions—run a marathon, write a book, do it all today. I ran a marathon in 2005—I know it takes hours and hours of training each week especially at my pace. I know I don't have that time available right now—but I can do couch to 5k three times a week for half an hour. Spend some time on attainable—think of the time you have available and set a goal that can be accomplished. Better to start small and add then to stop after one attempt.

Microgoals are very specific mini-goals. They can be a wonderful ways to try out something new or jump start a new practice, such as a goal of 1 minute simple breathing meditation every day. I know that the goal of doing 1 sun salute every morning for a week can jump start my yoga practice when I've been in trial and lapsed.

When the goal is too large, it can be overwhelming and paralyzing. We need to move out of feeling stuck and get in motion toward something achievable. Keep breaking the big goal down into smaller and smaller action steps. Smaller, smaller, even smaller. Until it feels very doable. Do that step. Get yourself unstuck and back in motion with an accomplishment, then look to the next step.

#### 4. Get in the Groove: Building Supportive Habits

A source of optimism for me is the knowledge that I can always re-examine which of my habits are serving me and which are not. Then I can make a shift. It doesn't need to be big or dramatic. Actually, I'll accept it more and retain it longer if the new habit is something small but persistent.

Yoga has a useful term, [\*samskara\*](#), that describes a pattern or habit as a groove. I picture this like a little creek that can form a massive canyon over time. The water can flow easily, it's the repetition that forms the groove.

The actions and thoughts we repeat, over and over, form grooves of habits. As the grooves deepen with repetition, they become the defaults that we easily slide into, and it becomes more difficult to veer onto a different path.

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Engaging in a cycle of self-assessment and goal-setting can be useful to well-being. This process can get us out of feeling stuck and into forward movement toward increased well-being. It can also help us recognize ways that we are already skilled and resilient. This assessment-goal cycle can also be used in mentorship, training and development plans to provide broader support for well-being.

## **F. Setting and Maintaining Boundaries to Reduce Overworking**

Working long hours is literally killing people: research found that working 55 hours or more a week was associated with a 35% higher risk of stroke and a 17% higher risk of dying from heart disease, compared with a working week of 35 to 40 hours.<sup>27</sup> There are two ways longer working hours leads to poor health outcomes: (a) direct physiological responses to stress, and (2) longer hours meant workers were more likely to adopt health-harming behaviors such as tobacco and alcohol use, less sleep and exercise, and an unhealthy diet.<sup>28</sup>

The ABA's Well-Being Toolkit<sup>29</sup> includes in its definition of a healthy workplace that tasks and responsibilities can be accomplished successfully within the time available. In most public defense assignments, this is laughable. We are continually triaging essential tasks like communicating with the people we represent, completing investigation and legal research for their cases, consulting with experts on everything from complex DNA analysis to immigration consequences of a charge or conviction, coordinating with advocates and other county agencies to address housing, mental health and substance use treatment needs. We work long hours into the evening and weekends and still don't complete important tasks. There is never enough time.

Public defenders do not have "spare time." When a task is added, something else must give. Two frequent responses are: (1) sacrifice non-work hours in the evening and weekend, instead of spending that time with loved ones and/or engaging in activities of rest, recreation and resilience building; or (2) displace other tasks, which then fill lists to be completed later or not completed at all— such as client communications, motions and investigation. This is a major source of stress, anxiety and feeling inadequate at work. It causes many public defenders to work long hours without sufficient rest, regular time off (like weekends) or vacation.

One essential tool for staying in this work is developing boundaries so that you can limit the intrusion of this work into your time and energy and thoughts. This has been a real problem in every office and every assignment I've had since first worked in public defense as undergraduate student in 1991.

The weight of the consequences, plus the volume of cases, can create a constant sense of feeling overwhelmed and inadequate. The culture of public defense can reward and reinforce the idea that working around the clock is heroic, necessary and a demonstration of dedication. This can lead to public defense taking over your life. If you care about this work and the people impacted by it, it can infiltrate

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<sup>27</sup> [Long working hours killing 745,000 people a year, study finds](#), BBC, 5/16/21.

<sup>28</sup> [Long working hours killing 745,000 people a year, study finds](#), BBC, 5/16/21.

<sup>29</sup> 2017 [ABA Well-Being Toolkit](#) at p. 9.

every second or every day and preoccupy your thoughts all the time.

## 1. Identity and Boundaries

Healthy boundaries start with the way we define our identities as public defenders. Is it something we do, or is it **who we are**? I am drawn to slogans and t-shirts that champion public defense as *who I am*, but I also recognize that it is dangerous and potentially damaging to me to define myself entirely by my work as a public defender. Where does that leave other parts of my life, the other people in my life? What happens when I take a break from or stop being a public defender?

To be clear, I think the notion that work and life can be compartmentalized is crazy and untrue. The goal is to support your whole self and show up as your whole self in all the parts of your life. But it is important to put some parameters around the work part when you have work that can be very intrusive.

## 2. Time Boundaries While Working

We could work around the clock without stopping for weekend or vacations, barely stopping to eat, and we still wouldn't get all the work done. Trust me, I've tried it.

No matter how much we work, tasks will remain incomplete. The work is ceaseless. We can run ourselves ragged and not get it all done. We can leave early and blow off tasks we could have completed. Both feel crappy. We each need to find for ourselves how much is enough to feel that we've done all that we reasonably can, without sacrificing our own welfare. It's in not without difficulty, but I believe that in most public defense jobs and assignments, we can find a schedule of work time and rest time that represents as much as we can reasonably do and sustain.



Glennon Doyle

3d · 🌐

A journalist once asked me, "With the onslaught of bad news and endless needs — how do you not quit?"  
I said: "Oh, I do quit! Quitting is my favorite. Every day I quit. Every single day."

I wake up and I care the most amount. And then — at some point — I put it all away and melt into my people and my couch and food and nothingness. And I care not at all. I forget it all. Then I go to sleep and wake up and begin again.  
Begin and quit every day! Only way to survive.

Embrace quitting as a spiritual practice, loves.

G

#GetUntamed

In addition to the pressure of working long hours to complete tasks, many of us suffer from work addiction. "Research reflects that about a quarter of lawyers are workaholics, which is more than double that of the 10 percent rate estimated for U.S. adults generally. Numerous health and relationship problems, including depression, anger, anxiety, sleep problems, weight gain, high blood pressure, low self-esteem, low life satisfaction, work burnout, and family conflict can develop from work addiction."<sup>30</sup>

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<sup>30</sup> 2018 [ABA Well-Being Toolkit](#) at p. 31.



A boundary is a line that marks the limits of an area.<sup>31</sup> We need to create them in order to keep this work from filling every hour. We need to create boundaries within the work week so that we can eat well and exercise and spend time with loved ones. And rest. We need to develop work week habits that include rest throughout each work week. For many of us, this requires setting firm time boundaries, such as leaving by 7 pm, or not working for a designated, regular part of the weekend. It takes regular time and effort to maintain these boundaries, and to re-set them if a particularly demanding trial or other work event causes us to modify (or abandon) them for a period of time.

Useful boundary setting practices for the work day and work week include:

1. **Commit to off hours.** Set a start time and end time for the work day and try to manage your time to stay within it. Set parameters around weekend work time (ex: 9-12 on Saturday) rather than letting the work expand to fill all the time that isn't specifically scheduled for other things.
2. **Set work goals around time not task.** Set a goal to leave at a designated time—such at 6 pm--not to complete the entire to do list before leaving. It will never be completed. You will build habits of working more efficiently and being realistic in estimating turnaround time for tasks.
3. **Set routines and rituals to end the work day.** Clear your desk, update your prioritized task list and leave.
4. **Set transition markers.** Create a transition marker along the way home—an intersection you drive though or train/bus station you pass—to transition from work thoughts to home thoughts. How was my partner's day? My child's day at school?
5. **Give honest timeframes.** To managers for projects, to clients for motions. Be honest about your available time and what you are capable of completing, while maintaining your rest time. You can work around the clock for a project or a trial, but not for decades.
6. **Accept structural limitations as structural.** One of the hardest parts of public defense is the stress of feeling you're not doing enough and knowing that the reality is that some things are not getting done, and that most of us will never reach end of the task list—and the "task list" is filled with urgent needs of people who are suffering. This can be very demoralizing. Recognize that this is structural under resourcing of public defense, not a personal defect or shortcoming.

### 3. Boundaries of Time Off

Taking vacations is one of the single best predictors of overall well-being. "In their study of 6,000 practicing lawyers, law professor Larry Krieger and psychology professor Kennon Sheldon found that the number of vacation days taken was a significant predictor of lawyer wellbeing--and was stronger even than income level in predicting well-being."<sup>32</sup>

Many public defenders don't take vacations, and we need to take them. We need to overcome our own hero complexes and work addiction, plan stridently to protect our time away, advocate for office culture and practices to support time off, and happily cover for our colleagues by offering high quality and compassionate representation to the people we represent to cover the absence of others. As discussed

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<sup>31</sup> Definition from a wonderful presentation on setting boundaries by Marilena David-Martin, Deputy Director of the State Appellate Defender Office in Detroit, Michigan.

<sup>32</sup> 2018 [ABA Well-Being Toolkit](#) at p. 12.



below, taking vacation requires office support and adequate coverage systems. In the unfortunate (and too common) absence of effective coverage systems, we still need to plan time away and often need to improvise our own coverage systems with colleagues.

I have come to the staunch belief that, on any given day, I should be able to look up from my desk to the wall calendar and see an upcoming vacation announced in the cheery brightly colored writing V-A-C-A-T-I-O-N across some of the days.

#### **4. Communication Boundaries**

A while ago, my work (at that time) gave me a mobile phone, and said, as if it were great news, “now we can reach you anytime.”

*No. Nope. Thank you, noooooo.* I am working hard at minimizing that expectation of myself and others.

The increasing connectivity of phones and computers has upsides for public defense, like increasing our ability to work remotely, and to organize and access bulky files without carrying them around in boxes and binders. But this connectivity is not all positive.

The expansion of work into a 24/7 expectation of availability is not good for us. [Research at Lehigh](#), on the personal impact of 24/7 availability expectations, found that email communications and expectation of response contributes to emotional exhaustion, poor work-life balance, anxiety and a strain on personal relationships. Even employees who didn't respond to off-hours emails were negatively impacted by receiving them. These researchers suggest setting clear expectations of when employees are expected to monitor communications and limit use of electronic communications outside those windows.

In [24/6: The Power of Unplugging One Day a Week](#), Tiffany Shlain reminds us of the important ways that religious traditions, secular organizations, and labor groups have fought for non-work time. The very makers of the devices that monetize our attention with dopamine-fueled screen dependence limit or prohibit those habits within their own families. She jokes of rewriting the beginning of Allen Ginsberg's “Howl” as: “I saw the best minds of our generation distracted by texting, tweeting, emailing.” She is unquestionably right in advising us that down time is “a force field of protection that gives us strength, resilience, perspective and energy.”

As a person who has spent time with one foot in the role of being a courtroom line defender and one foot in the leadership role of being a training director, I have felt responsibility to reduce this 24/7 expectation on both sides. It requires constant attention to unplug and turn off from work, by doing things like putting that work phone in a drawer for the weekend, and trying to communicate to colleagues when I do and don't make myself available to review and respond to work communications.

Useful communications of boundary setting include:

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1. Commit to off hours. Don't remain available 24/7. Don't check messages during your off hours. Create an emergency notification for true emergencies only.
2. Only sending email, text or other communications to colleagues during non-work hours in urgent situations, in which immediate notification to or action of the recipient is required.
3. Communicate your preferred platforms to others (phone, text, email).
4. Communicate your available hours and expected response time to other.



## G. Workload Management: Efficiencies

It is difficult to maintain effective boundaries unless you develop systems to be organized and manage your work during the hours you are working, and set up strategies to stop working each day. Being able to establish boundaries and take time for rest and rejuvenation requires systems to organize and prioritize work, and to maximize efficiency during your work time. There needs to be an overall system to prioritize and track work, to filter in new cases and tasks, to adjust due dates as tasks are re-triaged, and to locate status updates quickly (for calls from investigators, clients the client family members, etc). There needs to be a workflow with predictable turnaround times, in order to give honest and realistic estimations when asked: how long until you'll get that motion filed? There needs to be a way to tuck in all the tasks at the end of the day so they don't poke you incessantly at 3 a.m. and keep you awake.

We need systems that allow us to prioritize tasks and focus on the one we're doing. Choose some sort of overarching system to track your case and manage your calendar and workflow. Include a system for stopping work at the end of the day and re-prioritizing unfinished tasks, so that you can get out the door and stop working.

There is a table of Efficiency strategies in the A-Z Resource Guide for Sustaining Well-Being in Public Defense.

## H. Managing Stress: Stress Response, Chronic Stress, Completing the Stress Cycle

Our work exposes us to constant stress and this often has both short and long term health impacts.

Public defense work includes a steady stream of events that can trigger a physiological stress response. "A stressful situation — whether something environmental, such as a looming work deadline, or psychological, such as persistent worry about losing a job — can trigger a cascade of stress hormones

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that produce well-orchestrated physiological changes. A stressful incident can make the heart pound and breathing quicken. Muscles tense and beads of sweat appear.”<sup>33</sup>

Part of our wellness work needs to be acquiring skills to move through these stress responses and complete the cycle so that our bodies don’t stay in a chronically activated stress response. “Over time, repeated activation of the stress response takes a toll on the body. Research suggests that chronic stress contributes to high blood pressure, promotes the formation of artery-clogging deposits, and causes brain changes that may contribute to anxiety, depression, and addiction. More preliminary research suggests that chronic stress may also contribute to obesity, both through direct mechanisms (causing people to eat more) or indirectly (decreasing sleep and exercise).”<sup>34</sup>

Management of stress is essential to survival of work in public defense. In their book *Burnout*,<sup>35</sup> sisters Emily and Amelia Nagoski explore the benefit of completing the biological stress cycle in order to return your body to a state of relaxation. Useful strategies can include: learning about the stress and relaxation responses as physiological processes, breathing and mindfulness practices, regular exercise, and movement practices such as yoga.

Intentionally activating the relaxation response can be a useful counter to the stress response. The relaxation response can be activated by deep abdominal breathing, yoga, tai chi, prayer, qi gong, and visualization practices.<sup>36</sup>

## **I. Care for Mental Health and Substance Use**

It is undeniable that our profession is struggling with mental health and substance use.

“High rates of substance abuse and addiction among lawyers are the symptoms of deeper problems, precipitated by long hours, tight deadlines, and devastating consequences for failure. The statistics on substance abuse by lawyers are grim.”<sup>37</sup>

### **1. Mental Health Care**

A disproportionately high number of us working in public defense are struggling with anxiety, depression, substance use and alcohol use. Like many people navigating trauma and chronic stress, and coping with substance use, many of us are suffering.

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<sup>33</sup> [Understanding the stress response](#), 5/1/18, Harvard Medical School. This article has a very understandable overview of the physiology of stress response and relaxation response. It’s useful to read to understand the effectiveness of mindfulness breathing practices to reduce stress response and activate relaxation response.

<sup>34</sup> [Understanding the stress response](#), 5/1/18, Harvard Medical School.

<sup>35</sup> [Burnout: The Secret to Unlocking the Stress Cycle](#), by Emily Nagoski PhD and Amelia Nagoski DMA.

<sup>36</sup> [Understanding the stress response](#), 5/1/18, Harvard Medical School.

<sup>37</sup> [Addiction in the Legal Profession](#), by H Scott Leviant, Dec. 28, 2014

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ABA graphic of 2016 study by Patrick Krill, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*

Many public defenders have spoken to me about how they have benefited from therapy, medication and/or leave for mental health care. Far too many have shared the anguish of losing a colleague to suicide. We have got to hear this wakeup call as loud and urgent. We need to advocate for our own care, support our colleagues, make care and leave available and easily accessible.

## 2. Substance Use Care

Many others have shared how alcohol and substance use have impaired their work, and how it has been challenging to navigate alcohol-centered work events while in recovery.

The challenges to moderating alcohol and substance use in public defense include:

- People who work more than 50 hours per week are three times more likely to abuse alcohol.<sup>38</sup>
- Legal associations have a reputation for hosting alcohol-fueled events in a “work-hard, play-hard” culture.<sup>39</sup>
- 70% of addicted lawyers think they can manage their problem on their own (the ultimate “Type A” personality at work),<sup>40</sup> and have the skill to remain high functioning and hide their addictions.
- Our work requires communication, together with persuasion, creativity and consistency; we learn to exhibit a professional demeanor and to hide our own alarm, fear, disgust, abhorrence, as we conduct our professional lives. We develop a tough exterior and we repress our own weaknesses.<sup>41</sup>

<sup>38</sup> [Addiction in the Legal Profession](#), by H Scott Leviant, Dec. 28, 2014.

<sup>39</sup> [Combatting Substance Abuse in the Legal Profession, Part One](#), by Alex Cook, Thompson Reuters.

<sup>40</sup> [Addiction in the Legal Profession](#), by H Scott Leviant, Dec. 28, 2014.

<sup>41</sup> [Drug and Alcohol Abuse & Addiction in the Legal Profession](#), Legal Profession Assistance Conference

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- 40% of lawyers fear that seeking treatment for an abuse problem would hurt their reputation in the legal profession.<sup>42</sup>
- Celebration of successes, regardless of cost to mental health and well-being, can perpetuate the illusion there is no problem.<sup>43</sup>

We need to be mindful in our own use of alcohol and substances, and de-center alcohol in our social community. This is often met with intense resistance, because alcohol has been centered in public defense events, training, and office culture for a very long time. Many of us have positive associations with blowing off steam and bonding with colleagues over drinks. I'm not saying eliminate, but certainly re-evaluate.

## J. Increase Rejuvenating Activities

Rest and rejuvenation are two separate things, and we need both. We all need activities that re-charge our batteries. Things like mindfulness, yoga, and gratitude practices are easy to recommend because they are widely available at little or no cost and can have a benefit in just a few minutes each day.

Our work requires us to spend time here	We need to create time spent here
Active Mind Still Body	Still Mind Active Body

### 1. Increase Rejuvenating Activities: Yoga, Movement and Recreation

"Physical activity—literally any movement of your body—is your first line of attack in the battle against burnout."<sup>44</sup>

In public defense work, yoga can be a valuable practice for stress management, physical health, meditation and relaxation.

Yoga is also one of the movement practices used [as a somatic therapy for healing trauma](#). "The most cutting-edge trauma therapies have finally recognized that trauma lives in the body, not the mind. Until we can recalibrate the nervous system and move out of 'fight-or-flight' or 'shutdown' mode into a regulated state, talking about our trauma has limited effect.



Jessica Valenti ✓  
@JessicaValenti

I regret to inform you that  
exercise makes you feel better

8:42 AM · 6/11/21 · Twitter Web App

748 Retweets 170 Quote Tweets

13.3K Likes

<sup>42</sup> [Addiction in the Legal Profession](#), by H Scott Leviant, Dec. 28, 2014.

<sup>43</sup> [Combatting Substance Abuse in the Legal Profession, Part One](#), by Alex Cook, Thompson Reuters.

<sup>44</sup> Emily Nagoski, PhD and Amelia Nagoski, DMA, [Burnout: The Secret to Unlocking the Stress Cycle](#), at p. 15.

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Yoga is one of the best tools for reconnecting to our sensations and releasing the energy associated with traumatic events and circumstances.”<sup>45</sup>

Other movement practices, such as Tai Chi and qi gong, offer similar benefit. Other physical recreation can be similarly beneficial, like walking, running, swimming, etc.

## **2. Increase Rejuvenating Activities: Get Outside**

Most of our public defense work is indoors, in offices and courtrooms. Getting outside unquestionably benefits us. “Hundreds of studies have linked spending time outside to better health outcomes like decreases in incidences of diabetes and cardio-vascular mortality, lower blood pressure and heart rate, and better immune system function. In fact, these positive effects that are so well-documented that more and more doctors are issuing ‘nature prescriptions’ to help treat a range of conditions from heart disease, hypertension, high cholesterol, and diabetes, to chronic stress, depression and anxiety, insomnia and even PTSD.”<sup>46</sup> Several studies suggest spending time outdoors also provides an added sense of well-being specifically for women.<sup>47</sup>

Everything from a morning run to a weekend hike to a walking meeting will benefit us just by the fresh air and getting outside. I have found coffee walks and outside lunch meetings to be great energy-boosting ways to get outside during the work day.

## **3. Increase Rejuvenating Activities: Get Inside: Meditation, Mindfulness and Gratitude**

We have these weird jobs in public defense, in which we focus our attention on future consequences for past events. We think and think and think about stories and narratives. We may not spend much time focused on sensations of the current moment. There’s a lot of very useful information there. Meditation and mindfulness practices can help us build our skills to observe these sensations and to become more intentional in our responses. In [this video](#), Dan Harris offers a wonderful 3 minute description of Why Mindfulness is a Superpower.<sup>48</sup>

Our jobs also focus our attention on worse case scenarios, worse days in people’s lives, worst potentially devastating outcomes. Research shows that people are inclined to focus on the negative,<sup>49</sup> and we in public defense are actually required to build habits of seeing and evaluating negative outcomes. Part of our jobs is to continually communicate worst case scenarios to people evaluating plea offers and potential outcomes. We may not remember to notice the full range of our experiences, including

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<sup>45</sup> Hala Khouri, Foreword to [Embodied Resilience Through Yoga](#): 30 Mindful Essays About Finding Empowerment After Addiction, Trauma, Grief and Loss, by Kat Heagberg, Melanie C Klein, Kathryn Ashworth and Toni Willis, at p. xx.

<sup>46</sup> [Why Going Outside Is Good For Your Health](#), Especially Right Now, by Cassidy Randall. Forbes, April 9, 2020.

<sup>47</sup> [2017 National Study on Women in the Outdoors](#) by REI.

<sup>48</sup> [Why Mindfulness is a Superpower](#), Dan Harris narration from Happify (3 min video).

<sup>49</sup> [Why We Focus on the Negative](#), by Roy Baumeister (2 min video)

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appreciation and celebration of positive moments and events. Gratitude practices can help us develop tools to notice and appreciate those things.

Mindfulness practice has the benefits of improved attention, great compassion, reduced stress, reduced anxiety, reduced perseveration, reduced reactivity, and increased self-regulation and self-awareness.

Gratitude practices have the benefits of increased sleep, happiness, productivity, generosity, connection and trust. I resisted gratitude practices for a long time because I misunderstood them as putting an inauthentic gloss over everything, a kind of toxic positivity that has been rightfully criticized. What I have learned is the value of creating habits of appreciation, and taking the time to express appreciation to others. Even while acknowledging struggle and inequity, there is value in appreciating the effort and actions and energy of ourselves and others.

#### **4. Increase Rejuvenating Activities: Have a Third Thing**

Most of us in public defense spend time on our work, and we spend time with family and friends. Some of us try to develop or sustain spending time on a recharging and recreational third thing. Jeff Sherr introduced me to this term and he has [a terrific video here](#) on the importance of having a third thing.

Jeff traces this concept back to his mom's advice, when he was young, to pursue multiple extracurricular activities in addition to school and family. Not only does a third thing expand our learning, but it helps us diversify experiences in a useful way. To put it bluntly, with three things going, they probably won't all suck at once.

[Renate Lunn has written](#) about the importance of having a third thing: "Having a Third Thing makes you a healthier, happier human, and a better attorney. Healthy, happy people tend to have the energy to do the work and the emotional energy to listen to clients, and remain calm in the face of judges and prosecutors. Outside hobbies give us new perspectives, introduce us on new people."

Many public defenders I know and love inspire me by carving out time for third things, including circus trapeze, bodybuilding, horseback riding, improvisation, playing music, running marathons, DJing, rock climbing, gardening, crafting, knitting, hiking, and yoga.

#### **5. Increase Rejuvenating Activities: Creative Arts**

"There's a direct line between art, imagination, and justice," says Ava Duvernay.<sup>50</sup>

Creating visual arts can benefit our well-being. One researcher believes her findings suggest that people should incorporate more creativity into their week—perhaps learn to knit, take up cooking, sing in a group, paint, or play music. She also suggests tapping into creativity at work, by trying to come up with novel solutions to problems or writing creatively. "We can add

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<sup>50</sup> [Video Ava Duvernay's](#) inspiring speech at the 2019 Glamour Women of the Year 11/12/19.

creativity to the list of ‘actionable things’ people can do to take charge of their well-being,” she says.<sup>51</sup>

I know a chief public defender who knits non-stop, including in meetings. I know a brilliant appellate defender who makes gorgeous and witty crafts for all occasions. A group of defenders who build brilliant art cars and camps for Burning Man. Several painters and photographers.

Art can spark us to see things in new ways. I once texted the other lawyer on a capital case team, from the intermission bathroom line at the San Francisco Ballet, to say *we need the team to discuss this production of Frankenstein. It’s the most powerful mitigation story I’ve ever seen*. Another time I overcame writer’s block, while trying to write an argument for a case involving a young mother’s suicide, by putting the case aside and reading Sylvia Plath for a few hours in the middle of the night. Creative arts fire different synapses in ways that can be incredibly useful to us.

Visual art can communicate ideas powerfully. I am inspired by the way [Civil Rights Corps includes artists in residence](#): “Our criminal system’s ability to accomplish mass human caging to an extent never before seen in the recorded history of the modern world depends on ignoring and erasing the stories of the human beings on whom we inflict unspeakable suffering. The Poet and Artist will produce urgent and vivid works that communicate the humanity of our clients and others like them and that sheds light on the toll that the unjust practices in the criminal system takes on the bodies and minds of the people directly impacted by it and on our communities more broadly. The language used in police reports, court arguments, and prison budgets enables large-scale indifference; poetry and art make us understand, make us care, and make us act.”

## **6. Increase Rejuvenating Activities: Journaling and Writing**

Journaling is any regular practice of recording occurrences, experiences or observations. “Journaling requires the application of the analytical, rational left side of the brain; while your left hemisphere is occupied, your right hemisphere (the creative, touchy-feely side) is given the freedom to wander and play! Allowing your creativity to flourish and expand can be cathartic and make a big difference in your daily well-being.”<sup>52</sup>

Keeping up a regular practice or journaling (or other writing practice) can help process trauma. It can help clarify ideas, feelings and events. It can be part of a morning gratitude practice, or an evening bedtime routine (that may help with insomnia).

I have found that blending my own writing practices with some online writing has created connected with others in the larger public defense community. Be mindful that public writing about public defense

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<sup>51</sup> Doing Something Creative Can Boost Your Well-Being, by Jill Suttie. Greater Good Science Center, March 21, 2017.

<sup>52</sup> Courtney Ackerman, MSc, [83 Benefits of Journaling for Depression, Anxiety, and Stressed](#) (internal citation omitted).

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requires proceeding in an ethical and client-centered manner. The [Social Media Toolkit](#) from Justice Exchange and Defender Impact Initiative provides invaluable guidance.

## **K. Connection to Public Defense Community**

Connection to public defenders who share client-centered values is essential to sustaining this work.

The defense attorney is the advocate who is supposed to zealously fight for the accused. The person facing a loss of liberty should be their only concern. The defender must ferret out violations of the process and correct them. They must challenge abusive prosecutors and judges. They are the last line of defense for the individual who is facing the power of the state. They are the force that is expected to ensure the conveyor belt encounters friction. And plenty of it.

However, this is a vision of the defender that the currently legal system finds pesky and does not tolerate. Defense lawyers face tremendous pressure to go along with the status quo. They are expected to help with the processing of cases. The system encourages them to join forces with prosecutors and judges in the effort to grease the wheels of the machine. They are under-resourced and overwhelmed. Early in their careers, even the most passionate defenders will get beaten down. It is not possible for a person to withstand an entire culture by themselves.<sup>53</sup>

Connecting with the broader public defense community has looked different for me at different times and in different places. In law school, doing prison hearings and socializing with other aspiring public defenders was what kept me from abandoning an education that seemed overly corporate and soulless. In the early years of public defense, I relied on the close bond with my hiring class, a group of eight of us who started together, had our group trainings together, and progressed through our first hearings and trials together. Later, when I worked in an office in which I did not feel valued or supported by the office leaders, I was fortunate to have the support of a larger community of defenders through state and national training programs.

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<sup>53</sup> Jonathan Rapping, [Gideon's Promise: A Public Defender Movement to Transform Criminal Justice](#), Beacon Press, 2020, at p. 13.

In 2012, I thought I might leave public defense for the second time. I'd left after the first seven years and was reaching year seven for the second time, working in a community with pressure to go along and get along with judges and prosecutors. My work life felt like one continuous threat of contempt for litigating too aggressively. I attended a dinner honoring Stephen Bright for a collection of reasons—to honor his amazing work and impact on me, to take a trip to DC to see friends and family, and, if I'm being honest, to see if I could develop connections to potentially explore other work opportunities. I was seated at a table with William Montross, a law school friend, who immediately started telling me I should check out a new training program for southern public defenders. I went to the next trainer development session of Gideon's Promise, and that became the community that has done more than any other to support and sustain me.

We humans thrive on connection. It may look different to introverts and extroverts, or at different phases of life, but we need to tend to our connections to community support. "Confidants, friends, acquaintances, co-workers, relatives, spouses, and companions all provide a life-enhancing social net — and may increase longevity. It's not clear why, but the buffering theory holds that people who enjoy close relationships with family and friends receive emotional support that indirectly helps to sustain them at times of chronic stress and crisis."<sup>54</sup>



florida (law wo)man  
@floridalawwoman

I had to do a really hard thing at work that I didn't wanna do, and I think the only thing that got me through was looking down at my phone at the work group chat and seeing my co-workers live text me their support.

Find yourself a public defender office like this.

8:27 AM · 2/10/21 · [Twitter for Android](#)

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<sup>54</sup> [Understanding the stress response](#), 5/1/18, Harvard Medical School.

### III. SPHERE TWO: Community Care and Public Defense Culture to Support Well-Being

The Community sphere contains community and organizational strategies to build support for well-being. Organizations must become more trauma informed, more inclusive, and genuinely appreciative of the contributions of every team member. Sphere two includes the policies, practices and traditions that create the culture of public defense. The practices within public defense sometimes unintentionally create obstacles to providing high quality representation. Strategies in this sphere include the ways all participants in public defense—leaders, trainers, mentors, individuals—can build practices that are supportive of well-being and reduce obstacles to providing high quality and client centered defense.

Community
Community Care and Building Supportive Public Defense Culture
Unify around purpose of client centered representation Engage in organizational assessments Engage in strategic planning Increase trauma informed practice Provide training sufficient to feel equipped and supported to complete assigned work Reduce moral injury by reducing obstacles to high quality and client centered representation Manage caseload and workload Provide sufficient and effective coverage to support time off Support autonomy Provide and support mental health care access Provide and support substance use treatment Create spaces to process pain, trauma, difficulty Support and model boundaries Reduce 24/7 work expectations and actively encourage reset time and vacation Support caregiving and meeting responsibilities outside work Create practices of celebration, appreciation, gratitude and recognition

#### A. Moving Beyond Self-Care to Community Care

It once seemed like tremendous progress to be talking about self-care in public defense spaces. There was movement from *tough it out* culture to *this is difficult* culture, and that has been a positive shift. However, many of us are now becoming understandably frustrated about the possibility of the conversation becoming stuck on the strategy of self-care, without examining the ways that defense offices and culture impact well-being and the actions that can be taken to be more supportive.

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“Self-care alone can't solve systemic issues. For that, you need community care.”<sup>55</sup>

Toronto based community organizer Nakita Valerio defines community care as "People committed to leveraging their privilege to be there for one another in various ways."<sup>56</sup>

In the context of public defense, community care can in many forms of building practices and rituals to support each other. Part of this may be incorporating practices like debriefings or regular check-ins for everyone.

Shouting “self-care” at people who actually need “community care” is how we fail people.

--Nakita Valerio

But true support is very individual. More individualized approaches could include: reflecting on the question of what we individually need/prefer to feel supported at work generally or after a significant event; communicating to others the support we need; and offering people the support that they communicate is useful and valuable to them. Leaders and experienced staff members can build cohesion within an office by modeling vulnerability and communicating to people how they can be emotionally supported.

## B. Supporting Competence and High Performance

Just as our individual practices impact our wellbeing and competence across all dimensions of our work in public defense, the organizations we work in impact our well-being and competence. Healthy, strong, supported public defenders will provide better representation to the people we serve.

“Well-being is a team sport. For example, research reflects that, much more than individual employee traits and qualities, situational factors like workload, a sense of control and autonomy, adequate rewards, a sense of community, fairness, and alignment of values with our organizations influence whether people experience burnout or work engagement.”<sup>57</sup>

### Supporting Well-Being to Support Competence and High Performance

#### The ABA Well-Being Toolkit List of Essentials for Leaders to Provide:<sup>58</sup>

Reasonable workload  
Autonomy  
Reward

<sup>55</sup> [Self-care isn't enough. We need community care to thrive](#), by Heather Dockray, Mashable, May 24, 2019.

<sup>56</sup> [Self-care isn't enough. We need community care to thrive](#), by Heather Dockray, Mashable, May 24, 2019.

<sup>57</sup> 2018 [ABA Well-Being Toolkit](#) at p 4, citing [Positive Professionals](#): Creating High-Performing Profitable Firms Through the Science of Engagement, by Anne M Brafford.

<sup>58</sup> 2018 [ABA Well-Being Toolkit](#) at p. 4.

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Community  
Fairness  
Alignment of Values

**The ABA Well-Being Toolkit List of Components of a Healthy Workplace:**<sup>59</sup>

1. Organizational Culture: A culture characterized by trust, honesty, and fairness.
2. Psychological Support: Supervisors and coworkers are supportive of organizational members' psychological and mental health concerns, and respond appropriately.
3. Clear Leadership & Expectations: There is effective leadership and support that helps organizational members know what they need to do, how their work contributes to the organization, and whether there are impending changes.
4. Civility & Respect: Employees are respectful and considerate in their interactions with one another, as well as with clients and the public.
5. Psychological Competencies & Requirements: There is a good fit between employees' interpersonal and emotional competencies and the requirements of the position they hold.
6. Growth & Development: Employees receive encouragement and support in the development of their interpersonal, emotional, and job skills.
7. Recognition & Reward: There is appropriate acknowledgment and appreciation of organizational members' efforts in a fair and timely manner.
8. Involvement & Influence: Organizational members are included in discussions about how their work is done and how important decisions are made.
9. Workload Management: Tasks and responsibilities can be accomplished successfully within the time available.
10. Engagement: Organizational members feel connected to their work and are motivated to do their job well.
11. Balance: There is recognition of the need for balance between the demands of work, family, and personal life.
12. Psychological Protection: Organizational members' psychological safety is ensured.
13. Protection of Physical Safety: Management takes appropriate action to protect the physical safety of organizational members.

The [National Wellness Institute](#) devised three questions that can help persons and organizations assess the degree to which wellness is incorporated into a particular approach or program:

- Does this help people achieve their full potential?
- Does this recognize and address the whole person (multi-dimensional approach)?
- Does this affirm and mobilize peoples' positive qualities and strengths

<sup>59</sup> 2018 [ABA Well-Being Toolkit](#) at p. 8-9.

Public defense leaders and managers share the goal of providing high quality representation. This requires supporting well-being. And that support must go beyond focusing on individual self-care and resilience practices. “When our cultures support our well-being, we are better able to make good choices that allow us to thrive and be our best for our clients, colleagues, and organizations.”<sup>60</sup>

### **C. Assessment and Strategic Planning for Well-Being**

The benefits of self-assessment are discussed above. Public defense organizations can encourage the use of self-assessment in regular check-ins and development plans.

Just as individuals can benefit from self-assessment, public defense offices can utilize surveys and assessments to identify needs, design programs, and measure whether those programs are meeting their objectives.<sup>61</sup> As with individual self-assessments, it is useful to establish a cycle of assessment, goal-setting, and re-assessment. Initiatives to create well-being committees or policies can benefit from assessments before creating action plans.

I can recall many times organizations said “we’re going to need more from all of you” and few times they asked “how are you really doing?” In trying to learn how to support well-being, organizations can learn a lot by asking *how can we best support you?*

There are sample survey, check-in and development plan questions in the A-Z Resource Guide.

For organizational goal setting, [The Management Center](#) offers the terrific [SMARTIE goal](#) setting framework (and lots of tools to implement it) that stands for: Strategic, Measurable, Ambitious, Realistic, Time-bound, Inclusive, and Equitable, with the purpose that “incorporating an equity and inclusion component to your SMART goals, you can make sure your organization’s commitment to racial equity and inclusion is anchored by tangible and actionable steps.”

### **D. The Unique Challenges of Public Defense to Sustaining Well-Being**

“Our work is not natural. No one should be in the position of fighting to prevent the intentional death or ruin of another being.”<sup>62</sup>

--Denny LeBoeuf<sup>63</sup>

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<sup>60</sup> 2018 [ABA Well-Being Toolkit](#) at p 4.

<sup>61</sup> 2018 [ABA Well-Being Toolkit](#) at p. 10-12.

<sup>62</sup> Gratitude to Elizabeth Vartkessian and Katherine Atkins for sharing this quote as part Addressing Trauma, Loss, and Resilience in Criminal Defense, at Be Well Wednesday on Jan. 20, 2021 and Jan. 27, 2021, both of which were recorded and are available at the NAPD website.

<sup>63</sup> Full bio at [ACLU site here](#): Denny LeBoeuf is the director of the ACLU’s John Adams Project, assisting in the defense of the capitally charged Guantánamo detainees. Previously, she served as the director of the ACLU Capital Punishment Project, which works toward the end of the death penalty by supporting repeal and reform with public education, advocacy and targeted litigation. She has been a capital defender for over 20 years.

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A 2020 study by researchers at Rutgers University and Drexel University, of public defenders across the United States,<sup>64</sup> identified three “major stressors” of injustice that affected the emotional health of those practicing indigent defense: penal excess, economic divestment and the criminalization of mental illness. We know from experience that these and other factors are uniquely challenging to our profession.

Unique Challenges of Public Defense to Sustaining Well-Being <sup>65</sup>	
(1)	Stakes are high: weight of harsh sentences, collateral consequences
(2)	The criminalization of mental illness.
(3)	Economic Divestment: Limited resources and chronic underfunding
(4)	Resources outmatched by government
(5)	Misunderstood, reviled clients
(6)	Ceaseless
(7)	Traumatic impacts are unavoidable and must be continually managed
(8)	Cannot compartmentalize trauma, must be in proximity
(9)	Chronic stress
(10)	Expectation of working long hours
(11)	Misunderstood, mistreated by other professionals

### **E. Studies of Public Defense: The Undeniable Traumatic Impacts of This Work**

Is Working in Public Defense Good for You? *Um, no. Obviously not.*

I’m not trying to be a downer, but the research on traumatic impacts of this work on public defenders is not uplifting. In 2011, Linda Albert’s groundbreaking study of Wisconsin State Public Defenders<sup>66</sup> examined “the effects of compassion fatigue—the cumulative physical, emotional, and psychological effects resulting from continual exposure to others’ traumatic experiences.” The study 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.”

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<sup>64</sup> Baćak, Valerio and Lageson, Sarah and Powell, Kathleen, [The Stress of Injustice: Public Defenders and the Frontline of American Inequality](#) (December 12, 2020). Available at SSRN: <https://ssrn.com/abstract=3765714> or <http://dx.doi.org/10.2139/ssrn.3765714>

<sup>65</sup> Many of these were include on a list included in, and crowdsourced during, the Be Well Wednesday presentation “Elizabeth Vartkessian and Katherine Atkins: Part 1: Addressing Trauma, Loss, and Resilience in Criminal Defense – Focus on You” on Jan. 20, 2021, which was recorded and is available at the NAPD website.

<sup>66</sup> Dianne Molvig, [The Toll of Trauma](#), Wisconsin Lawyer, December 2011.

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Those who conducted the Wisconsin study also saw what we see every day, that public defenders are dedicated and determined. 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>67</sup>

This job takes a toll on us. By *us* I mean everyone who works in public defense—attorneys, investigators, social workers, paralegals, law office professionals.

When I first became aware of these studies and statistics, I found them both daunting and reassuring. The daunting part is obvious. But right along with that was *what a relief to know I’m not the only one*. The belief that this job takes a toll on me isn’t just in my head.

## **1. Studies of Lawyers, Social Workers, Legal Professionals**

The American Bar Association has issued a series of reports focused on lawyer well-being, including: Keeping Legal Minds Intact: Mitigating Compassion Fatigue Among Legal Professionals<sup>68</sup> in 2014, The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys<sup>69</sup> in 2016 , The Path to Lawyer Well-Being: Practical Recommendations for Positive Change. Report from the National Task Force on Lawyer Well-Being<sup>70</sup> in 2017, and the Well-Being Toolkit For Lawyers and Legal Employers<sup>71</sup> In 2018.

To put it bluntly, the legal profession is struggling with mental health and substance use.

For the 2016 ABA Study, surveys were completed by 12,825 licensed, employed attorneys, assessing alcohol use, drug use, and symptoms of depression, anxiety, and stress. The statistics revealed by the 2016 ABA Study are concerning:

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<sup>67</sup> Dianne Molvig, [The Toll of Trauma](#), Wisconsin Lawyer, December 2011.

<sup>68</sup> [Keeping Legal Minds Intact: Mitigating Compassion Fatigue Among Legal Professionals](#), American Bar Association, 2014.

<sup>69</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. [hereinafter 2016 ABA Study]

<sup>70</sup> The [Path to Lawyer Well-Being: Practical Recommendations for Positive Change](#), from the National Task Force on Lawyer Well-Being of the American Bar Association, August 14, 2017.

<sup>71</sup> [Well-Being Toolkit For Lawyers and Legal Employers](#), by Anne Brafford for the American Bar Association, August 2018.

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The ABA 2016 Study describes a “parade of difficulties” that includes suicide, social alienation, work addiction, sleep deprivation, job dissatisfaction, and complaints of work-life conflict.

Why do I think we need to have a conversation about well-being early and often? According to the ABA 2016 Study, younger lawyers in the first ten years of practice experience the highest rates of problem drinking and depression.

## 2. Trauma Exposure Response: Primary Trauma, Secondary Trauma, Vicarious Trauma, and Compassion Fatigue

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>72</sup>

Public defense work has undeniable traumatic impacts that we must mitigate and process. This exposure to trauma is part of this work and will remain even if changes occur in caseload, supportive management and defense culture. Part of creating supportive offices and culture is providing ongoing education and support for the impacts of trauma.

When I first heard a public defender use the term *Sunday Scaries*, I didn’t need any further explanation. That feeling of bracing yourself for the next work week. That feeling of motions I’d hoped to have finished, but have not. That feeling of wishing I had better news to give clients about negotiations or investigations. The mountain of recordings that just came in and need reviewed. The echoes of photos that were difficult to view, recordings that were difficult to hear.

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<sup>72</sup> Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others, by Laura van Dernoot Lipsky and Connie Burk, at p. xii.

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When I have discussions with public defenders about what the Sunday Scaries actually feel like, we describe anxiety, sleeplessness, sadness, second guessing, emotional exhaustion, dreading work.

This work is just so very intrusive. It's there all the time, imprinted on your mind and body, reminders around every turn.

There's a certain intersection I avoid, because driving through it, and past the flower memorial that has been continually refreshed there for a decade, causes my mind to revisit photos of a crash scene and child's autopsy.

Every public defender I know has similar stories, but many of us fail to view these experiences through the lens of continually experiencing trauma at work. Sometimes we are surrounded by a culture of cockiness, in which talk of traumatic impacts isn't welcome. "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>73</sup>

Many of us learn about the impacts of trauma in an analytical way, through the preparation of our cases. We learn the importance of working with experts in PTSD or Adverse Childhood Experiences to understand and present the stories of the people we represent. We fail to turn this same insightful lens on ourselves, sometimes voicing the view that to do so would be unacceptably vulnerable, or even disloyal by taking our focus away from the traumatic experiences in the lives of the people we represent. Trauma impacts us, too, in ways we need to acknowledge and process if we are going to stay in this work. Sometimes reclaiming control in areas of past trauma is part of what brings people into helping professions.<sup>74</sup>

There's a case I think of often, and each time there is a dull ache in my hands and forearms. During the trial, as I questioned a child, I gripped the table behind me so tightly that eventually a weird, numb weight took over my hands and forearms. I loosened my grip and felt pins and needles in my hands. Jurors audibly cried as the questions continued, about the night this child's mother died on the other side of her bedroom wall. After a while, I felt the heavy, numb forearms again and realized that I was white knuckling the edge of the table again. Years later, every time I think of this day my hands and forearms ache.

In his book, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*,<sup>75</sup> Bessel van der Kolk explains that trauma results in a fundamental reorganization of the way the mind and body manage perceptions. Trauma is not just an event that took place sometime in the past; it is also *the imprint left by that experience on mind, brain, and body*.

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<sup>73</sup> [Trauma Stewardship](#), by [Laura van Dernoot Lipsky](#) and Connie Burk, at p. 3.

<sup>74</sup> See discussion of trauma mastery in [Trauma Stewardship](#), by [Laura van Dernoot Lipsky](#) and Connie Burk, at pp. 156-159.

<sup>75</sup> Bessel van der Kolk, MD, [The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma](#), 2015.

In addition to primary or direct experiences of traumatic events, we in public defense also experience secondary traumatic stress, which is the emotional duress that results when an individual hears about the firsthand trauma experiences of another person.<sup>76</sup> Everyone who works with and/or assists traumatized or distressed children, adults or families is at risk for secondary traumatic stress—including therapists, nurses, teachers, hospice workers, social workers, journalists, firefighters, physicians, *and public defenders*. Secondary traumatic stress is sometimes also called Compassion Fatigue, and we know from Linda Albert’s study of Wisconsin Public Defenders<sup>77</sup> that public defenders are impacted.

A colleague had a case that we discussed constantly as he prepared for trial. At one point I listened to the recording of the wailing cries of the mother whose child had just drowned in the bathtub. Those sounds went into my mind and stayed there, where they still replay sometimes.

There are constant opportunities to experience primary and secondary trauma in public defense work, including: seeing a person you represent being taken into custody; seeing a person you represent being sentenced; seeing the pain and struggle of the family and community of the person you represent; watching your colleagues struggle and face abusive treatment by judges, prosecutors and others; viewing injury, autopsy and scene photos; scene visits; reviewing records of trauma; hearing stories of trauma; hearing testimony of violent events; dealing with prejudice and abuse within the criminal sentencing bureaucracy; seeing the reality of the jail conditions experienced by people caged by the machinery of mass incarceration in this county.

The symptoms of secondary traumatic stress include: anxiety, hypervigilance, intrusive thoughts, chronic fatigue, sleeplessness, sadness, anger/irritability/impatience, poor concentration, second guessing, detachment, emotional exhaustion, fearfulness, shame, physical illness, lateness, absenteeism, difficulty sleeping, nightmares, stomachaches, headaches, strained relationships, disconnection from purpose, dreading work. Many of us experience some combination of these symptoms so frequently that we incorporate them into what we expect working in public defense to feel like.

A public defender approached me after I gave a talk on well-being and described a particularly challenging afternoon spent reviewing photos of injuries to a child. They described suddenly being on the couch at home, playing video games, with no recollection of leaving the office or driving home in the middle of the afternoon. Another public defender described their assignment on a homicide team as including a dozen homicide cases, half of which included violent deaths that were captured on video and had to be watched repeatedly during preparation of the cases.

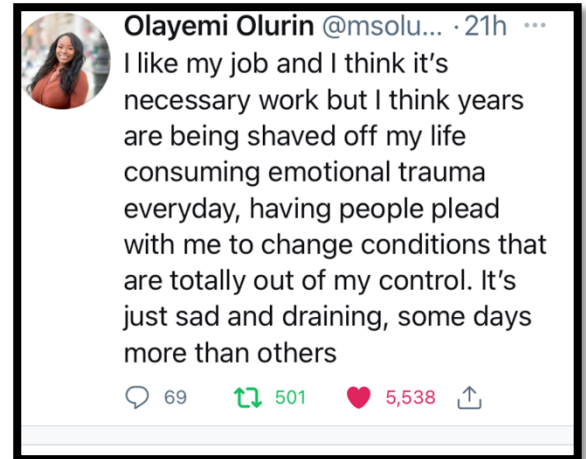
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<sup>76</sup> Figley, C.R. (Ed.) (1995). [Compassion Fatigue: Secondary Traumatic Stress Disorders from Treating the Traumatized](#). New York: Brunner/Mazel, p.7

<sup>77</sup>Dianne Molvig, [The Toll of Trauma](#), Wisconsin Lawyer, December 2011

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 book *Trauma Stewardship*<sup>78</sup> provides incredibly useful guidance for recognizing a trauma exposure response, and strategies to develop trauma stewardship. 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>79</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.<sup>80</sup>



<b>Trauma Exposure Response</b> <i>This list is from Trauma Stewardship<sup>81</sup>, which I cannot recommend strongly enough for explaining these concepts.</i>	<b>Strategies for Trauma Stewardship</b> <i>This list is also from Trauma Stewardship, and is a dramatic oversimplification of concepts explained beautifully in the book.</i>
A sense that one can never do enough Hypervigilance Diminished creativity Inability to embrace complexity Minimizing Chronic exhaustion/physical ailments Inability to listen/deliberate avoidance Dissociative moments Sense of persecution Guilt Fear Anger and Cynicism Inability to empathize/numbing Addiction	Open the inquiry Practice self-care Be patient Come into the present moment Build compassion and community Engage in systemic change Engage with life outside of work Develop a centering practice

<sup>78</sup> *Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others*, by Laura van Dernoot Lipsky and Connie Burk.

<sup>79</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>80</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>81</sup> *Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others*, by Laura van Dernoot Lipsky and Connie Burk.

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Grandiosity: an inflated sense of the importance related ones' work Feeling helpless and hopeless	
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Some strategies, discussed above, are individual strategies of self-care. Bessel Van der Kolk talks about recovery from trauma through mind-body connection and body focused practices like yoga and meditation, as well as practices of writing and journaling.

Public defense offices and culture can also build trauma informed and knowledgeable support for traumatic impacts, including: debriefing sessions, making mental health care widely and easily available, and providing flexibility and opportunity to participate in movement practices that help many people process trauma.

### 3. Trauma Informed Public Defense

Working in public defense requires us to learn about trauma and become trauma informed-- for ourselves, for our colleagues, and for the people we represent.

What is Trauma Informed Public Defense? <sup>82</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.

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. 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

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<sup>82</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)

to present and facilitate effective training programs, because they will be more informed and prepared for potential participant responses.

**Examples of Steps Toward Trauma Informed Public Defense:**

- Include education on traumatic impacts and tools to mitigate, recover and heal from trauma in onboarding and ongoing training programs.
- Post and distribute education on individual strategies—such as the [Tiny Survival Guide](#) cards from TraumaStewardship.org.
- Increase access to counseling and therapy.
- Increase peer support opportunities.
- Provide training and coaching for managers and supervisors to improve organizational support.
- Provide training and coaching for managers to speak to funders in budget advocacy about the need for trauma informed programs and practices.

#### **4. 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.

Oppression can be defined as the negative outcome experienced by people who are targeting by the cruel exercise of power; the term is generally used to describe how a certain group is being kept down by unjust use of authority, force, or societal norms. When a society institutionalizes oppression formally or informally, the result is called systematic oppression. Around the globe, liberation movements promote the undoing of negative outcomes and the elimination of the causes of individual and systematic oppression.” [Trauma Stewardship](#), by [Laura van Dernoot Lipsky](#) and Connie Burk, at p. 28.

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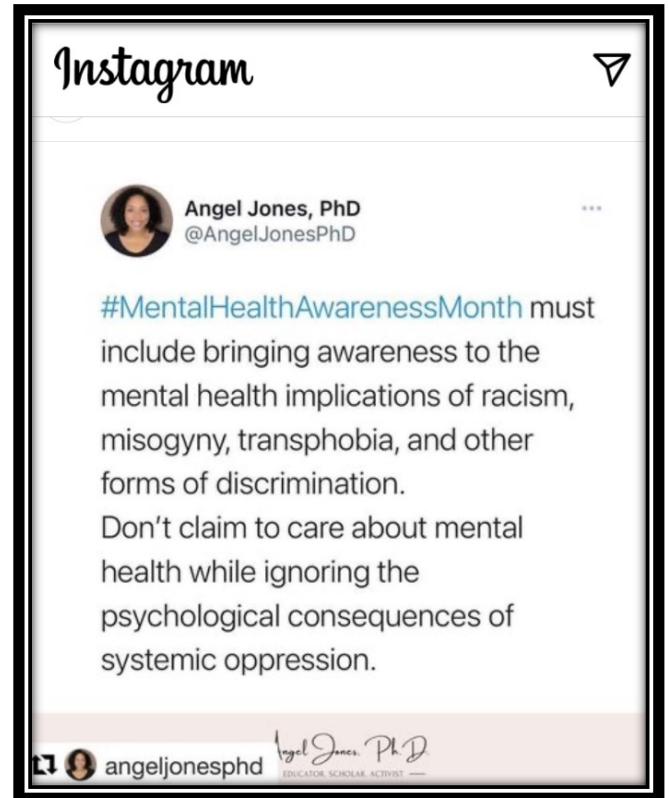
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While we are all exposed to primary and secondary trauma by working in public defense, some are disproportionately impacted. BIPOC, LGBTQIA+, disabled, neurodivergent, and other marginalized colleagues, face disproportionate trauma, as well as bias and exclusion, and cumulative impacts of systemic oppression.

Keeda Hayes offered this Twitter thread on race on March 9, 2021: “Being a Black public defender/criminal defense attorney is one of the hardest jobs IMO. We don’t have the luxury to pick up and put down the issues we see everyday in the courtroom like so many of our other coworkers do. Fighting for your clients & our communities also comes with the realization that no matter how hard you fight or how great you are at the end of the day you are still a system actor, who unwittingly contributes to mass incarceration b/c the system is so screwed up. Do you walk away or do you keep fighting is a daily question. The trauma of working in oppressive system is real & the residual trauma of what we witness & are a part of is also very real. Let’s start having those conversations & support our Black PDs & criminal defense attorney. I’ve walked this road & I see you & I support you!”



We need to work to dismantle oppression of LGBTQIA+ colleagues. “As of 2020, 4% of surveyed U.S. lawyers are LGBTQ+ and out. An estimated 1-2% are either queer-identified in their private lives or almost entirely closeted but maintain queer relationships that remain undisclosed among their colleagues.”<sup>83</sup> “Just because YOU accept you doesn't mean that everyone else will. Although more of a systemic barrier, it's undeniable that your gender identity will impact the way people interact with you. This can be a major hurdle, especially when dealing with judges, clients, and other legal professionals that just don't get it (even when they think they do!).”<sup>84</sup> We need to rigorously audit our practices for inclusion—from the language in our template motions, to the scenarios in our training exercises and the faculty teaching them, to the language on our bathroom doors.

<sup>83</sup> Self-Preservation is an Act of Political Warfare: Navigating Burnout as a Marginalized Movement Lawyer, by Jay T. Conrad, Ashley OConnor McCready, & Audrey Daye, Seattle U Law Class of 2023, (contact: audidaye@seattleu.edu), at p. 11.

<sup>84</sup> Self-Preservation is an Act of Political Warfare: Navigating Burnout as a Marginalized Movement Lawyer, by Jay T. Conrad, Ashley OConnor McCready, & Audrey Daye, Seattle U Law Class of 2023, (contact: audidaye@seattleu.edu), at p. 12.

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Further, we need to dismantle oppression of our community members who are disabled, deaf, neurodivergent or navigating mental health conditions. “Lawyers with disabilities must ask themselves if they can put themselves and their needs second at times....” John F. Standon, U.S. Department of Justice Office of Immigration, deaf from age four. “I sometimes worry that my anxiety disorder is exploited by the profession, since my compulsions can lead me to overwork, which is often rewarded by the law.”<sup>85</sup>

Laura van Dernoot Lipsky’s words rang in my ears for a long time when she argued, at a 2021 NAPD conference, that we cannot hold ourselves out as advocates who are dismantling systems of oppression and exploitation if we are replicating them and perpetuating them within our own offices.

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>86</sup>

We need to include, in our discussions of wellness, steps and strategies to recognize these disproportionate impacts and work toward what my friend Stacy Sims calls “equitably distributed wellness.”

“Structural barriers might be policies practices, norms or expectations that disadvantage groups that are typically marginalized in society. These barriers are typically rooted in white-cis-hero-patriarchal-ableist capitalism and as such, disproportionately impact or make unreasonable demands of groups that don’t fit neatly into that category.”<sup>87</sup> “These structural barriers keep beautiful lawyers with important lived experiences from being able to give their all to the field. It’s our job to come together to stand against these barriers and dismantle them (and the white supremacist culture they are built from), for our own health, for others, and for the good of our clients.”<sup>88</sup>

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<sup>85</sup> Self-Preservation is an Act of Political Warfare: Navigating Burnout as a Marginalized Movement Lawyer, by Jay T. Conrad, Ashley OConnor McCready, & Audrey Daye, Seattle U Law Class of 2023, (contact: [audidaye@seattleu.edu](mailto:audidaye@seattleu.edu)), at p. 16.

<sup>86</sup> The U.S. Surgeon General’s Framework for Workplace Mental Health & Well-Being, at p. 13.

<sup>87</sup> Self-Preservation is an Act of Political Warfare: Navigating Burnout as a Marginalized Movement Lawyer, by Jay T. Conrad, Ashley OConnor McCready, & Audrey Daye, Seattle U Law Class of 2023, (contact: [audidaye@seattleu.edu](mailto:audidaye@seattleu.edu)), at p. 5.

<sup>88</sup> Self-Preservation is an Act of Political Warfare: Navigating Burnout as a Marginalized Movement Lawyer, by Jay T. Conrad, Ashley OConnor McCready, & Audrey Daye, Seattle U Law Class of 2023, (contact: [audidaye@seattleu.edu](mailto:audidaye@seattleu.edu)), at p. 5.

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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>89</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 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>90</sup>

“Systemic racism is a machine that runs whether we pull the levers or not, and by just letting it be, we are responsible for what it produces.”

--Ijeoma Oluo

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>91</sup>

Within our agencies and public defense community, what are we doing to address microaggressions and other harms perpetrated by us? Can we create community accountability processes?<sup>92</sup>

As a cisgender, straight, female, attorney, who has benefited from white privilege, I am continually working to educate myself and to create spaces that are anti-bias and inclusive. Conversations with colleagues and class participants continually open my eyes to impacts that have too long lingered in my blind spots. I am committed to do the ongoing work that it is my responsibility to do to dismantle oppressive systems. I welcome your feedback as part of my ongoing accountability, learning, and acting.

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<sup>89</sup> The U.S. Surgeon General’s Framework for Workplace Mental Health & Well-Being, p. 15.

<sup>90</sup> Jenee Johnson, in [Encouraging Meaningful Conversations about Race and Trauma](#)

<sup>91</sup> [Self-care isn't enough. We need community care to thrive](#), by Heather Dockray, Mashable, May 24, 2019.

<sup>92</sup> See useful discussions in the Creative Interventions Toolkit and Fumbling Towards Repair: A Workbook for Community Accountability Facilitators, by Mariame Kaba and Shira Hasson, 2019.

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## F. Should We Stop Saying Burnout and Start Saying Moral Injury?

What is the best term for the cumulative impact of all this trauma and chronic job stress?

For many years, we called this burnout. I called my experience of leaving public defense work after the first seven years *burnout* for years. My experience followed the three classic symptoms of burnout<sup>93</sup>:

**1. Physical, emotional, and mental exhaustion.** *I went from energized by the work to barely dragging myself through each day. Some weekends I would sleep 14 hours straight and still feel exhausted, like I just could not recharge.*

**2. Depersonalization (no empathy or compassion left to give). Also feelings of self-doubt, loss of personal confidence.** *I started to wonder if I had what it took to actually be effective, not just in new and complex challenges (like learning about DNA), but in things I'd done many times (like writing and arguing search motions) that began to feel pointless.*

**3. Lack of sense of accomplishment, feelings of futility, doubt for the value of one's work.** *I felt like a cog in the machine of processing people through courtrooms to prison as efficiently as possible. At times it seemed like my presence even helped this machine run, by pretending the grossly unfair process complied with minimum constitutional requirements by having a lawyer present.*

In May of 2019, the [World Health Organization added burnout](#) as an occupational phenomenon. My first reaction was to appreciate that [more people might have access to leave from work](#) or quality care for chronic workplace stress. My second reaction was irritation at the WHO's definition of burnout: "a syndrome conceptualized as resulting from chronic workplace stress that has not been successfully managed." This definition places all the responsibility on the individual and frames the questions in terms of individual strength or weakness.

In 2018, my longtime friend and public defense colleague Dave Klaus showed me a video of Dr. Zubin Damania<sup>94</sup> arguing that the term *burnout* and should be replaced with the term *moral injury*. The video was based on an article written by Simon Talbot and Wendy Dean about the concept and framework of moral injury. I've since spent a good deal of time talking with Wendy Dean and others about the applicability of the moral injury framework to medicine, public defense and other fields.

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 true causes of much of the injury that we

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<sup>93</sup> Freudenberger, Herbert, "[Staff Burn-Out](#)," Journal of Social Issues, 1974.

<sup>94</sup> "It's Not Burnout, It's Moral Injury, [YouTube video of Dr. Zubin Damania](#), March 8, 2019.

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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>95</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>96</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>97</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>98</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].*

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

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<sup>95</sup> Simon G. Talbot and Wendy Dean, [Physicians aren’t ‘burning out.’ They’re suffering from moral injury](#), STAT News, July 26, 2018.

<sup>96</sup> Jonathan Shay, [Doctor Moral Injury](#), Psychoanalytic Psychology, 2014, Vol. 31, No. 2, 182-191.

<sup>97</sup> Diane Silver, [Beyond PTSD: Soldiers Have Injured Souls](#), Pacific Standard, Jan. 22, 2015.

<sup>98</sup> Jonathan Shay, [Doctor Moral Injury](#), Psychoanalytic Psychology, 2014, Vol. 31, No. 2, 182-191.

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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>99</sup> Public defense offices are filled with determined and dedicated people. Unfortunately, many offices are struggling to retain people.<sup>100</sup>

## **1. Strategies to Reduce Moral Injury**

The value of shifting to the framework of moral injury is in the discussion of causes and the solutions. Burnout focuses on individual inability to manage stress and suggests individual responsibility to develop skills and strength to handle chronic stress—self-care practices like yoga, meditation, and therapy. 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>101</sup>

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<sup>99</sup> District Public Defender To Jackson County Judge: [My Attorneys Are Ticking Time Bombs](#), Kansas City Star May 31, 2019.

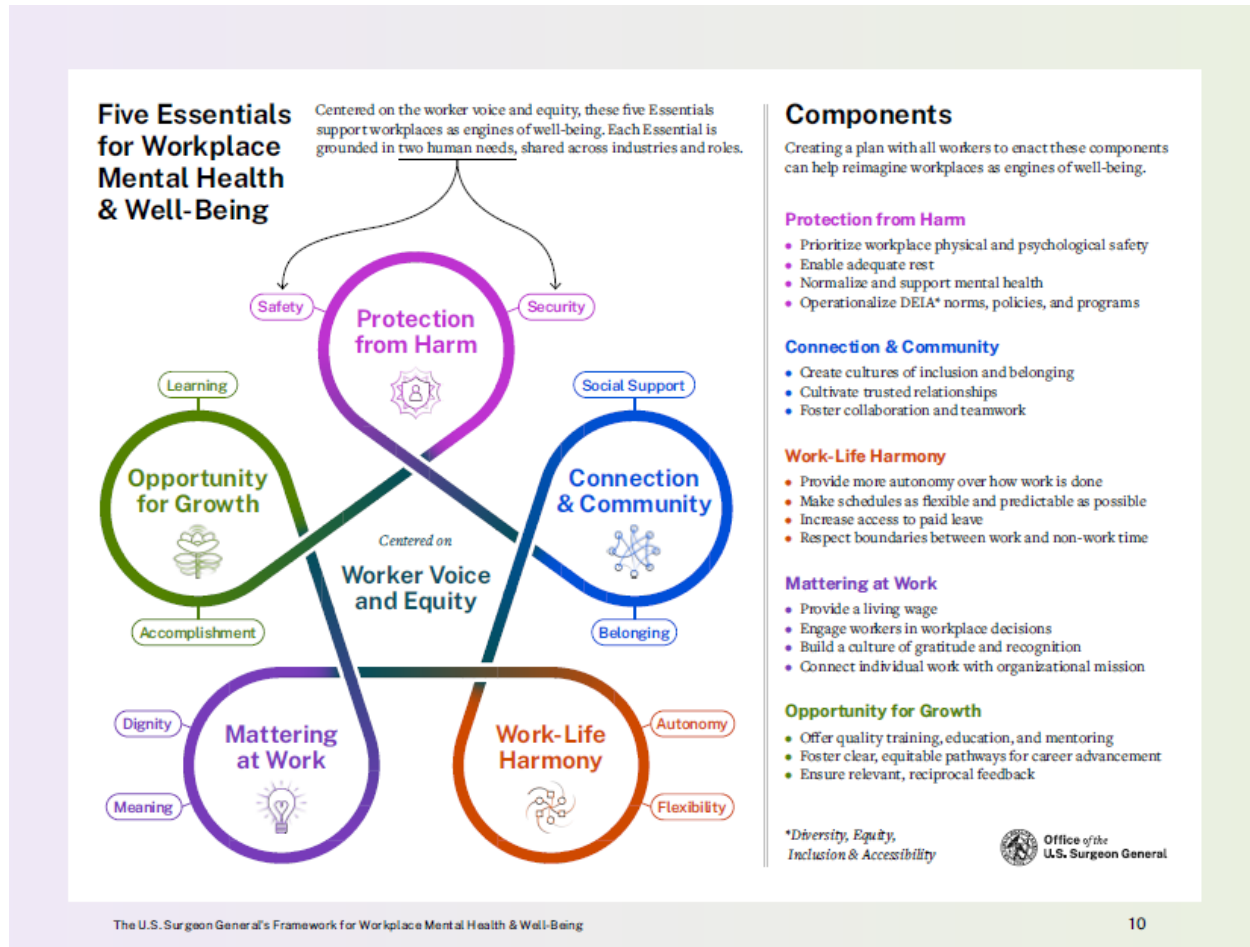
<sup>100</sup> Just a few of the many examples are [Thin Ranks, High Risks](#) (describing Kentucky) and [One In Four Kansas Public Defenders Quit Last Year](#), Leaving Agency 'In Crisis.' Apr 8, 2019.

<sup>101</sup> [Fixmoralinjury.org from doctors Wendy Dean and Simon Talbot](#)

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## G. Culture of Public Defense

We all suffer when our profession sees acknowledging the emotional toll of this work as weakness.

Lizzy McLellan wrote about lawyers having a sense of loneliness, isolation, and sadness that comes from feeling “I’m the only one who can’t handle it.”<sup>102</sup> She wrote that loneliness and isolation are reasons “people are turning to all these coping mechanisms and ending their lives and having anxiety and depression.”

We need to re-examine the ways that we have built a public defense culture that glorifies strength and communicates that vulnerability is weakness that should be hidden, numbed and escaped.

<sup>102</sup> Lizzy McClellan, [Battling an Epidemic Work of Loneliness Among Lawyers](#), Law.com, May 28, 2019.

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We need to think about who we glorify in our stories and symbols. Do we really want to keep portraying ourselves as Sisyphus and Atlas, forever rolling the boulder up the hill or carrying the weight of the heavens, alone and without support for an eternity, as punishment?

Aren't there better symbols and heroes we can use to represent supportive and collaborative work that is progressing toward a goal, even if we haven't yet reach the goal? Are we an army of resisters putting our bodies on the gears of the criminal injustice conveyor belt? A league of superheroes who change into our suits at the last possible second, and each add our own superpower to the group? Are we offering a deep and non-judgmental listening similar to spiritual advisors? Are our capital defenders engaging in a task as challenging as the most lifesaving, complex surgery, and one that last years, all while other people in the operating room try tirelessly to kill the patient?

We need to continually remind each other not to internalize feelings of failure when the failure is systemic.

We need to re-examine how we define “wins” and “success” and what we praise and recognize. Is it the person who works tirelessly through a long trial and then shows up for work the next day without needing a break? Is it only the trial acquittals?

Just as our individual definition of identity shapes our practices of self-care, our collective definitions of our identity and heroism within public defense culture shapes our culture of support (or lack of support) for well-being.

### 1. Redefine Success

We are each continually reassessing whether our goals in public defense feel attainable, and whether the motivation and purpose that brought us to public defense feels achievable.

Many people who leave describe not just feelings of failure, but feeling that success has become impossible. How can it possibly feel worth it to stay if everything feels like failure? Staying

“means deciding that the effort, the discomfort, the frustration, the unanticipated obstacles, and even the repeated failure have value—not just because they are steps toward a worthwhile goal, but because you re-frame difficulties as opportunities for growth and learning.”<sup>103</sup>

If we are to stay in this work, we must translate our vision of high quality client-centered representation into achievable actions. It is unlikely that our attainable version of success will be winning all the



**Prya Murad**  
@defendermurad

...

I know caseloads are ballooning right now especially for our newest attorneys in misdemeanors or low level felonies. I want you to know something. You are not a bad lawyer and you are not a failure. You have been set up to not be able to do the quality of work you're capable of.

4:50 PM · 5/31/21 · [Twitter for iPhone](#)

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<sup>103</sup> Emily Nagoski, PhD and Amelia Nagoski, DMA, [Burnout: The Secret to Unlocking the Stress Cycle](#), at p. 33-34.



motions and trials, excluding all the unconstitutionally obtained evidence, winning release for everyone, and getting dismissals of all the cases we believe should be dismissed.

Our attainable definitions of success might include listening deeply to the people we represent and telling their stories accurately and authentically; and ensuring that the people we represent see, feel and understand that we are fighting for them to the best of our abilities. Success in some cases is staying beside and supporting a person facing an overwhelming process and sometimes horrific outcomes, so that they do not feel alone. Sometimes success is knowing that you are losing a legal argument, and losing skillfully enough to win later on appeal-- in a way that may bring an individual person relief, or sanction a misbehaving judge or prosecutor, or even create a legal rule that helps many other people.

What would it be like to define success as achieving the goal of the person we represent?

## **2. Building Culture Supportive of Well-Being**

It's not a feeling, it's true. If I don't do it, it's not going to get done, and if it doesn't get done, people die. I can never do enough.

*—Attorney for inmates sentenced to capital punishment*<sup>104</sup>

## **3. Modeling and Respecting Boundaries**

The 2018 ABA Well-Being Toolkit recognizes that “[t]he stress of chronic work-life conflict can damage well-being and performance. Evidence indicates that it is a strong predictor of burnout and significantly increases the risk of poor physical health.”<sup>105</sup>

## **4. Reducing 24/7 Availability Work Expectations**

Supervisors and leaders have the responsibility of creating culture that reduces 24/7 availability expectations. If you are in one of these roles, ask yourself if you're prioritizing time for the people you supervise to rejuvenate. “Do practices allow lawyers time for sufficient rejuvenation? Are response-time expectations clearly articulated and reasonable? Is there an effort to protect time for lawyers to recover from work demands by discouraging work-related calls and emails during evenings, weekends, and vacations?”<sup>106</sup>

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<sup>104</sup> Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others, by Laura van Dernoot Lipsky and Connie Burk at p. 59.

<sup>105</sup> 2018 [ABA Well-Being Toolkit](#) at p 22.

<sup>106</sup> 2018 [ABA Well-Being Toolkit](#) at p 12.

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For example, one of my favorite discoveries was the use of the delay delivery feature in Outlook. Even if I am catching up on work in off-hours, I can delay delivery of any email I send so that it is received during the next work day rather than interrupting the non-work time of my colleagues. This feels like a little gift we can give each other at work, the gift of uninterrupted down time. Increasingly, this is becoming a gift I value greatly.

**Almost everything will work again if you unplug it for a few minutes, including you.**

**--Anne Lamott**

Providing high quality representation to poor people accused of crimes is a high stress endeavor that regularly consumes early morning, late evening, and weekend hours. But there are aspects of public defense culture that increase, rather than decrease, the notion that public defenders should be available and working 24/7 each week. We can all look for ways to recognize and support true down time and off hours for rejuvenation.

I hope this email doesn't find you. I hope you've escaped, that you're free.

## 5. Supporting and Encouraging Time Away

Taking vacations is one of the single best predictors of overall well-being. “In their study of 6,000 practicing lawyers, law professor Larry Krieger and psychology professor Kennon Sheldon found that the number of vacation days taken was a significant predictor of lawyer wellbeing--and was stronger even than income level in predicting well-being.”<sup>107</sup>

Many public defenders don’t take vacations. I know many who are losing vacation accrual because they’ve exceeded the maximum number of unused vacation days. Some take vacation days to have uninterrupted prep time before trials or big hearings, because their court schedules include no prep time. Many describe taking vacation as too punishing to even bother, due to crushing caseload and lack of effective coverage.

These same obstacles can cause defenders to come to work sick rather than calling in for coverage. I’ve heard too many stories of colleagues rushing from a family crises or car collision to get to court on time.

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<sup>107</sup> 2018 [ABA Well-Being Toolkit](#) at p 12.

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We, and our office cultures and policies, create these expectations of ourselves. We need to uncreate them and create a new model.

## **6. Providing Sufficient Coverage for Restful Time Away**

Taking a restful vacation (or other time away) requires adequate coverage. It is extraordinarily, unreasonably and unnecessary stressful to worry that clients are standing alone in court with no one standing next to them, or to return to angry and frustrated clients who had motions dropped or cases continued unexpectedly with no explanation.

What is the gold standard of coverage, so that people can have restful and undisturbed time away from work, to which we would all aspire? I tried to crowdsource this question on social media in January 2021, and most of the replies I received were something like *what is this time off of which you speak?*

For a small office, having a court partner or a small team can provide built in coverage for brief absences. This requires a culture of clear communication and cohesion, in which people volunteer and cover for each other with the knowledge that the same coverage will be extended to them. However, for a lengthy vacation or trial, it's not reasonable to ask a court partner to do double work for a period of weeks or months.

The "knock on doors and find coverage" method might occasionally work, but can result in people perpetually overloading less senior staff who feel disempowered and unable to say no.

The "just clear your cases" method might work for short absences, but should never require a defender to choose between taking time off and pursuing an action most beneficial to the client. For example, if a client is clearly better off doing a motion hearing during the attorney's planned absence, adequate coverage should be provided to seek to accomplish this. The attorney should never be required to convince a client to waive a speedy trial right or delay a motion in order to take a vacation. This is not reasonable.

I have worked in large offices that have a person assigned to the coverage/miscellaneous assignment, who spends the day darting from courtroom to courtroom covering cases for absent colleagues. This can work very well.

Whatever the set-up, adequate coverage has the following components:

- The person who will be absent is expected to leave sufficient notes/memo/coverage information for another person to provide high quality advocacy.
- The person who will be absent is expected to avoid setting cases while away as long as no interest of a client is harmed (but clients are not asked to waive or give up rights for staff vacations; staff are not required to choose between time off and pressuring clients to agree to continue proceedings that are not in their interest to continue).

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- There is a clear procedure for the person who will be absent to seek coverage and provide the coverage instructions, and a person assigned to cover tasks and cases, with sufficient time to prepare (ideally this is done by a supervisor, and not by going door to door begging for help).
- The person covering the cases is expected to provide meaningful advocacy (communicate with the clients, argue motions or resolve cases to the extent possible, not just continue everything).
- Both the person who is absent and the person who is covering provide clear and timely communication about the coverage.
- A supervisor/manager is responsible for ensuring timely coverage assignments and is available to provide the coverage when needed.

A second obstacle to taking meaningful time off is the failure to pause new assignments during an absence. Many defenders describe returning from time away to a towering pile of tasks or cases that were assigned during the absence. This amounts to an expectation of working—during evenings or weekends—the hours that were taken as leave time. Not only is this an unreasonable work expectation, but it means returning to work feeling behind and facing people who are reasonably frustrated that no one has met with them or been working on their cases. Defenders describe this as so punishing and demoralizing that they don't take vacation at all.

## **7. Support to Meet Outside Responsibilities: Caregiving**

But there is always another client to defend, story to write or struggling student who just can't wait. Here are things I have missed: my daughter's seventh birthday, my son's 10th birthday party, two family vacations, three Halloweens, every school camping trip. I have never chaperoned, coached or organized a school event.

Sometimes my choices make me sad. My daughter's seventh birthday was the worst. She cried, and I did everything I could not to. I felt sick to my stomach. But I had a trial starting the next day, six hours away.

I had picked the date, not the judge, because I knew that the other side wasn't ready. Delaying even a few days would have meant losing a crucial advantage. I wasn't going to risk it knowing what was on the line for my client.

--Lara Bazelon<sup>108</sup>

One of the times a judge threatened to hold me in contempt, it was for leaving in time to pick up my daughter at daycare. My husband had been carrying the responsibility of home parenting since I returned to a full-time trial assignment when our daughter was one. Each time she increased her daycare hours, he increased his work hours and we'd have a long negotiation, during which I'd promise to be more helpful and flexible. After one such time, a judge proposed a hearing date on my daycare pick-up day. When I said I'd need to leave by 4:30, the judge said it was no problem. However, during the hearing there were more contested issues than the judge had anticipated. When it became clear we wouldn't finish in one day, I began asking to schedule a second day so we could end at 4:30. The judge

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<sup>108</sup> [I've Picked My Job Over My Kids](#), by Lara Bazelon, NY Times, June 29, 2019

refused. When I reminded her that I needed to leave for daycare pick-up, she pressed me to end my cross-examination without further questioning. I continued my cross as I packed my bags, and stood in the doorway, repeatedly asking to stop for the day. At some point long after the late pickup deadline, I left as the judge screamed after me *just get out then!* The judge later commented that I'd set back parents everywhere with unprofessionalism. Being unable to walk out of the courtroom sooner made me feel like a terrible, failing parent, as I feared my child might be left alongside the street when her daycare closed (exceedingly unlikely but possible, and also deeply unfair to the people at daycare). Being unable to stay made me feel like a terrible, failing defender. This gutting feeling of failure extends to much of my time as a public defender and a parent.

Then there was the time my dad told our family, as I was in the middle of a lengthy murder trial, that he had cancer—and my very first thought was *I don't have time for this right now*. There was the time I rushed to court directly from being rear-ended outside; I can no longer remember what it was I felt I couldn't miss. There was the time I emailed a court clerk that I'd need to delay a trial start by two days to attend the funeral of a family member, and she replied that my request was denied because the courtroom calendar was too pressing.

Public Defense offices need to support people in meeting their caregiving (and other) obligations outside of work. When people ask to rotate into a flexible or lower litigation assignment when their children are small, or their parents are ill, don't tell them they are "trial dogs" and you just can't do without them being in trial all the time. It stuns me to speak with public defenders and leaders who reject part time assignments, sabbatical, flexible hours and job shares as impossible. I've seen all these options work beautifully in public defense offices.

## **8. Facilitate Help-Seeking Behaviors for Mental Health and Substance Use**

Public defense culture has long included the practice of work hard, play hard. And it has often praised strength in the form of bravado, and whispered of fragility or weakness as unacceptable. This has to change.

We must make mental health care accessible and destigmatized. "Research has identified multiple factors that can hinder seeking help for mental health conditions: (1) failure to recognize symptoms; (2) not knowing how to identify or access appropriate treatment or believing it to be a hassle to do so; (3) a culture's negative attitude about such conditions; (4) fear of adverse reactions by others whose opinions are important; (5) feeling ashamed; (6) viewing help-seeking as a sign of weakness, having a strong preference for self-reliance, and/or having a tendency toward perfectionism; (7) fear of career repercussions; (8) concerns about confidentiality; (9) uncertainty about the quality of organizationally-provided therapists or otherwise doubting that treatment will be effective; and (10) lack of time in busy schedules."<sup>109</sup>

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<sup>109</sup> [2017 ABA Well-Being Report](#) at p. 13.

Similarly, we must make substance use treatment available and confidential. “The two most common barriers to seeking treatment for a substance use disorder that lawyers reported were not wanting others to find out they needed help and concerns regarding privacy or confidentiality.”<sup>110</sup>

Part of changing the way our culture has created alcohol misuse is decentering alcohol in our events. We need to ask ourselves: do attendees feel expected to drink alcohol at organizational events?<sup>111</sup> “Workplace cultures or social climates that support alcohol consumption are among the most consistent predictors of employee drinking. When employees drink together to unwind from stress and for social bonding, social norms can reinforce tendencies toward problem drinking and stigmatize seeking help.”<sup>112</sup>

We need to provide education about recognizing substance use and mental health struggles. We must make resources available and make treatment accessible, confidential and destigmatized. We must model healthy behaviors and provide empathetic responses when people are struggling.

## **9. Holding Space: Empathy, Forgiveness, Shame, Grief, Vulnerability**

The unfortunate and long history of public defense culture includes too much *toughen up*, and *I had it even harder, maybe you’re not cut out for this*, and *whatever you do, don’t cry at work*.

We need to intentionally create spaces for people to process the difficulty of this work. This could occur in spaces such as debriefings, mentorship, and team check-ins.

During a presentation on Addressing Trauma, Loss and Resilience in Criminal Defense, capital mitigation specialists Elizabeth Vartkessian and Katherine Atkins<sup>113</sup> spoke of the incredible loss of the execution of their client, Wes Purkey, on July 16, 2020.<sup>114</sup> They offered a series of questions useful for all public defense losses:<sup>115</sup>

*How will your office support one another through a loss?*

*Do you have norms and rituals around emotional well-being?*

*How do you succeed at losing? What do you need to put in place to be okay after a significant loss?*

Leaders, managers, and colleagues can offer valuable acknowledgement of the impact of this work. During the series of executions carried out in 2020 and January 2021, I have been moved by the expressions of appreciation and support to those capital teams.

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<sup>110</sup> [2017 ABA Well-Being Report](#) at p. 13.

<sup>111</sup> [2017 ABA Well-Being Report](#) at p. 31.

<sup>112</sup> [2017 ABA Well-Being Report](#) at p. 18.

<sup>113</sup> See biographical and organization information at [Advancing Real Change](#).

<sup>114</sup> See also [Federal execution ‘spree’ a callous exercise of power](#), by Elizabeth Vartkessian, Baltimore Sun, Dec. 31, 2020.

<sup>115</sup> Be Well Wednesday presentation “Elizabeth Vartkessian and Katherine Atkins: Part 2: Addressing Trauma, Loss, and Resilience in Criminal Defense – Focus on Your Office” on Jan. 27, 2021, which was recorded and is available at the NAPD website.

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## 10. Celebration, Appreciation, Recognition

In addition to creating spaces to process the difficulty of this work, we need to create spaces of celebration and gratitude.

Simply starting or ending meetings by asking people to name things they appreciate can change the social dynamic in a positive way. Additional events can include milestone recognition events, weekly email shutouts of appreciation, and intentional inclusion of appreciation during performance evaluation and training events and development plans.

### H. Leading to Support Well-Being

One component of effective public defense leadership is leading with the intention to support well-being. Seek out training and information to understand how leadership impacts well-being and how well-being impacts effectiveness and access to justice for the people we represent.

Public defense agency managers and leaders set the tone with the behaviors they model and the culture they create. “Leader behavior has a substantial impact on followers’ well-being. Additionally, people monitor leaders closely for indicators of cultural norms. If leaders don’t walk the talk of lawyer well-being, followers are not likely to either—and are likely to become cynical.”<sup>116</sup>

Many public defense leaders rose through the ranks as trial attorneys and were made supervisors or managers with no management or leadership training. If they were tough talking litigators who worked long hours and bulldozed those who disagreed with them, they may bring that approach into supervision. They may attend county sponsored management programs for new agency leaders, focused on collegiality and getting along with the other departments. Leadership training specific to the unique cat herding of public defense is invaluable—and offered by organizations like NAPD and NLADA. Becoming and empathetic and communicative leader takes practice, and uses skills that can be taught.

Leaders serve as a model for what the office claims to value. Is it self-sacrificing long hours and weekend work, emails and text messages at all hours, never taking a vacation? Leaders can embed well-being into meetings as an ongoing topic or through the structure (like walking meetings), or gratitude activities (like shout outs). Leaders convey information about whether they support well-being through the language they use, the goals they prioritize, the way they communicate with staff and people outside the agency, with policies about assignments and coverage, and with advocacy for sufficient resources.

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<sup>116</sup> 2018 [ABA Well-Being Toolkit](#) at p 14.



## 1. Unity of Purpose: Client Centered is Staff Centered

Alignment of values is essential for a health workplace and effective leadership.<sup>117</sup> In public defense, everyone must align with the value of client-centered representation.

Line defenders with the most proximity to the people we represent—courtroom attorneys, investigators, mitigation specialists, social workers, advocates—are continually reminded of the importance of maintaining, communicating and demonstrating unity of purpose with the people we represent. Clients are reasonably watching us to see if we are on their side. When we maintain our purpose, over time that builds trust, which creates a better relationship throughout the case and better outcomes at every stage.

Public defense leaders and managers have similar choices that have similar consequences of increasing or decreasing trust of staff. Clients are looking to line defenders to learn *are you fighting for me?* Line defenders are looking to leaders to learn, *are you supporting me as I fight for our mutual client? Do we share this purpose? Do you have my back?*

## 2. Communicating Alignment of Values

When leaders and managers speak within offices and to those outside, people notice if they are maintaining the clear purpose of providing high quality representation and doing right by the people we represent. When leaders use terms like *inmate*, client and staff hear abandonment of purpose. When leaders speak of court efficiency as a priority—without mentioning the time needed for defense team



<sup>117</sup> 2018 [ABA Well-Being Toolkit](#) at p. 4.

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communication, preparation and litigation—defenders hear abandonment of purpose. Adopting the goals and purposes of other system actors may be viewed as a betrayal of our basic purpose.

I once stood in a room, during horrific and deadly fires, with public defenders eager for courts to re-open to fight for the people we represent. As a group, we were exhausted and emotionally drained from continual evacuations. Many were temporarily sheltered in other people's homes and dressed in borrowed, mismatched sweats and other people's slippers. We'd driven through National Guard checkpoints into an evacuated area to answer voicemails from family members desperate to know if the jail had burned down with their loved ones inside. Tensions were high as we discussed how to press speedy trial rights during court closures. As we proposed possible motions for release and dismissal, one senior person said, *We shouldn't do that. We won't put rapists and murderers back on the street for technicalities because of a disaster. That's not who we are.* There was a long silence and eyes darting around the room. Then people responded: *this is exactly who we are, and that is what we do. But we see them as people, presumed innocent and not convicted of anything. And we don't think of the court processes designed to protect fairness and accuracy as technicalities.*



It is difficult to recover defender trust after public abandonment of purpose by a leader. Such a leader may be embraced by the courts and prosecutors for the assistance in accomplishing their goal of efficiently processing and sentencing the accused, but the people we represent are abandoned. The forced failure of staff will crush morale and well-being. “In smaller counties, public defenders dealt with the same judges and prosecutors day in and day out, compounding the pressures to get along. They did not appreciate how ‘going along to get along’ reinforced a low standard of justice system-wide.”<sup>118</sup>

A positive example of a strong and unifying statement of purpose and values, in collaboration with the community, was the [All of Us or None rally](#) on June 29, 2017, at which Alameda County Public Defender Brendon Woods joined

with the ACLU of Northern California, SV DeBug, Ella Baker Center, East Bay Community Law Center, Essie Justice Group, & others on the steps of the Oakland Courthouse to call to keep arraignments local.

Maintaining and clearly communicating unity of purpose is foundational to well-being.

### 3. Supportive Over-Communication

<sup>118</sup> Jonathan Rapping, [Gideon's Promise: A Public Defender Movement to Transform Criminal Justice](#), Beacon Press, 2020, at p. 21.

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Supportive and communicative leadership and office culture is essential to well-being. It shocks me how often I speak with line defenders who say *I have no idea what's going on in my own office*, and then I speak with leaders in the very same office who say *we're totally transparent, everyone knows exactly what's going on*. Or the leaders say *I have an open door policy, anyone who wants can ask me questions*.

Many defenders describe stress caused by lack of clear communication about assignments and expectations and office decision-making. Jonathan Shay outlined a definition of moral injury that comes with a solution. 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.” Jennifer Moss listed to top five negative impacts on well-being as: Unfair treatment at work, Unmanageable workload, Lack of role clarity, Lack of communication and support from their manager, and Unreasonable time pressure.<sup>119</sup>

Justine Olderman, Executive Director of the Bronx Defenders, spoke at NAPD’s 2020 Executive Leadership Institute about how much communication is needed to effectively communication of what is happening within a public defense agency. Every topic requires constant narration: here’s what we plan to do and why, here’s the action we’re now taking and why, here’s what we did and what’s coming next.

A crucial piece of this “over-communication” is the connection to our purpose. As defense staff, we need to constantly hear how actions taken are (1) connected to the purpose of high quality representation, and (2) implemented in a way that reduces obstacles to high quality representation and does not increase obstacles.

#### **4. Advocate for Resources, Acknowledge Impact on Well-Being**

##### **Components of a Healthy Workplace:<sup>120</sup>**

9. Workload Management: Tasks and responsibilities can be accomplished successfully within the time available.

Public defense offices often fail to provide the fundamental healthy workplace requirement that tasks and responsibilities can be accomplished successfully within the time available. We can’t ever become complacent or accepting of this reality, because it is devastating to well-being.

One of the most consistent challenges for public defense is that it is under resourced. Jonathan Rapping observed a consistent problem facing public defense in America: “Public defenders were routinely forced to take on far more cases than they could competently handle. They were deprived of the

<sup>119</sup> Jennifer Moss, [Burnout Is About Your Workplace, Not Your People](#), Harvard Business Review, Dec. 11, 2019.

<sup>120</sup> 2018 [ABA Well-Being Toolkit](#) at p. 8-9.

resources needed to adequately represent their clients. They were paid meager salaries, and many of them carried crushing educational debt from law school, making it very hard to make ends meet.”<sup>121</sup>

The under resourcing of public defense has a huge impact on well-being. Leaders need to continually advocate for sufficient resources.

## 5. Management of Caseload and Workload



Brendon Woods  
@BrendonWoodsPD

Some aren't going to want to hear this - but every celebrity, famous athlete, philanthropist, and politician that does not commit to properly funding public defense is contributing to mass-incarceration. [#CareNotCages](#) [#EndMassIncarceration](#) [#FundPublicDefense](#)

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While continually advocating for sufficient resources, leaders and managers must always remember that their communications about tasks and workflow are being received by a workforce that is generally walking around feeling like the next thing is going to be the last straw.

The concept of moral injury reinforces client centered representation as a guiding principle for everything we do in public defense, from line courtroom work to leaders and managers. Each action considered by a leader or agency can be easily evaluated by asking: is this action making it easier or harder to do right by

the people we represent? Is it creating an obstacle, or removing an obstacle, to providing high quality and client centered representation?

Leaders communicate a great deal about how they view staff well-being in the way they manage priorities, tasks and workflow. The best leaders are always mindful that lack of resources is causing staff to be over-extended. No matter how exciting and promising, new additional tasks will often be received as obstacles to providing high representation.

For example, I've been thinking about moral injury and data entry. Public defense offices are embracing data collection and championing it as a tool to secure additional resources, demonstrate inequities at all phases of cases, and quantify arguments that have previously been anecdotal. These are all goals worth pursuing and collecting empirical data may be a powerful tool in those efforts. Leaders offer data as a tool to improve representation. However, in the day-to-day life of public defense staff doing the data entry, it is often experienced as an obstacle.

Onerous data collection tasks are often added to a workload with no discussion of how the time is to be re-allocated or re-prioritized. Directives to collect data sometimes roll out in emails worded something like this: *you are all now directed to collect the following 941 data points for each case, using the 443*

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<sup>121</sup> Jonathan Rapping, [Gideon's Promise: A Public Defender Movement to Transform Criminal Justice](#), Beacon Press, 2020, at p. 17.

*drop down menus described in the accompanying 231 page technical guide, and to log this information into the case management system by the close of business on the day of the court appearance.*

This is experienced as an obstacle to well-being, both by forcing work into non-work time and by de-prioritizing direct client service in favor of the broader reform goal of data collection. This obstacle to the goal of providing direct client service --at a high level and in a client centered way-- is experienced as moral injury, the betrayal of our motivating purpose for becoming and remaining public defenders.

If time consuming task are suddenly added, there has to be discussion of how this impacts other task priorities, work time expectations, and overall well-being.

## **6. Supporting Autonomy**

I've worked in (too many) public defense assignments in which supervising managers are terrible in one extreme or the other-- either absent or too controlling. Of these two extremes, controlling is worse. The absentee managers rely on leaving the office on autopilot, with staff left to develop their own systems for everything from coverage to training new people who rotate in. This is frustrating, but we're creative and capable people who can often create workable systems that meet our own needs. The controlling managers rely on rigid directives, performance corrections, and hierarchical assertions of power. This is devastating because it undermines autonomy.

Both well-being and high performance come from autonomy. Effective public defenders require autonomy to manage our own caseloads and schedules.

Autonomy is a need "driven by a basic human desire to be 'self-creating' and under self-rule. It's about feeling authentic and like the author and architect of our own behavior— that our behavior aligns with our interests and values and is within our responsibility and control. It is the opposite of feeling controlled, bossed around, or guilted into things."<sup>122</sup> Autonomy makes us feel respected and valued, whereas controlling directives, threats, and reliance on power differentials lead to depression and burnout.

Autonomy is essential for high performance. It gives us the necessary flexibility to respond to the constantly changing situations and priorities. We are continually interrupted with urgent communications about things like people being taken into custody and requiring immediate assistance. Countless types of preparation (motion writing, legal research, investigation requests) and communication (with clients, families, experts, colleagues, treatment providers) must flow around urgent interruptions. We become masters of re-prioritizing workflow.

Public defense leaders must recognize that the worst combination is high stakes and low autonomy. "A high level of responsibility with little control is a toxic combination that can destroy health and

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<sup>122</sup> 2018 [ABA Well-Being Toolkit](#) at p. 84.

performance.”<sup>123</sup> We in public defense have high stakes and high responsibility, it must come with autonomy.

We need to dedicate sustained time and energy into examining our hiring, development and promotion. Who are we holding out as examples of great writers and advocates? Who is being supported and mentored.

*I am always doing that which I cannot do,  
in order that I may learn how to do it.*  
**PABLO PICASSO**

## **I. Training for Well Being**

One of the biggest stressors in public defense is feeling overwhelmed and like you don’t know what you’re doing. Whether in a new office or new assignment, adequate training is what makes us feel prepared and capable rather than overwhelmed and unsure.

Training Directors and everyone engaged in public defense training have unique opportunities to support well-being. From the first introduction to our offices, we can support well-being.

“Are orientation practices established to set new lawyers up for success, engagement, and well-being?”<sup>124</sup> From the first onboarding/orientation, people should be told simple things like how to call in sick or take a vacation. And they should be re-assured that they can and should call in sick and take vacation, and told specifically how cases and assignments will be adequately covered in those and other absences. Right alongside training on how to access the case management system should be information about the impacts of trauma, and how to access mental health care and substance use treatment.

### **1. Antiracist Training**

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<sup>123</sup> 2018 [ABA Well-Being Toolkit](#) at worksheet 15.

<sup>124</sup> 2018 [ABA Well-Being Toolkit](#) at p 11.

Our training programs need to be antiracist. Education scholars recommend that adult educators hoping to confront racism take steps to acknowledge racism, engage in self-reflection, commit to addressing it in the learning environment, and reflect cultures and histories of nonwhite groups in the pedagogy.<sup>125</sup>

We should examine how perfectionism, one right way, paternalism and objectivity<sup>126</sup> show up in our training programs, so that we can implement antidotes such as:

- develop a culture of appreciation; take time to make sure that everyone's work and efforts are appreciated;
- develop a learning community or organization, where the stated expectation is that everyone will make mistakes and those mistakes offer opportunities for learning;
- create a culture of inquiry about what constitutes the "right way" and what defines a "mistake";
- separate the person from the mistake; when offering feedback, always speak to what went well before offering critical feedback; when a mistake is jointly or collectively acknowledged, ask for specific suggestions about what the person or group has learned and how we would do things differently moving forward;
- realize that being your own worst critic does not actually improve the work, often contributes to low morale among the group, and does not help you or the group realize the benefit of learning from mistakes; if you are constantly criticizing yourself in your relationships with others, you focus the attention on you, on support for you, rather than on the issue at hand;
- work on developing the ability to notice when you become defensive and/or insistent about doing something your way and do everything you can to take a breath; allow yourself room to consider how a different path or paths might improve your approach and/or offer you something you really need;
- look for the tendency for a group or a person to keep pushing the same point over and over out of a belief that there is only one right way and then name it;
- when working with communities from a different culture than yours or your organization, be clear that you have some learning to do about the communities' ways of doing; assume that you or your organization can't possibly know what's best for a community in isolation from meaningful relationships with that community;<sup>127</sup>

## **2. Prioritize Training**

Defense organizations should move toward providing high quality training, during work hours, at no cost to defenders. The knowledge and skill that we need to continually acquire to do our jobs well should not be provided only if we pay out of our own pockets, attend only if "all your assigned work is already done," or attend during evening or weekend hours. Training should not be a privilege or reward offered only to some people. Attendees should not be expected to work Monday through Friday, travel and attend training on the weekend, and then go straight back into work again Monday without time for rest or recreation or outside obligations. Training should be recognized as necessary to performing the job and provided within work hours.

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<sup>125</sup>Collin III & Preciphs, 1991; Ross-Gordon, 2010.

<sup>126</sup> [White Supremacy Culture—Still Here](#), at p. 8.

<sup>127</sup> [White Supremacy Culture—Still Here](#), at p. 11.

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### 3. Well-Being Content in Training Programs

Training programs should be offered that include well-being content, such as education on secondary trauma, recognizing mental health and substance use disorders, and navigating the work of public defense in healthy manner. Offices can offer experiential practices, such as mindfulness or yoga.

Training on other topics can be structured in ways that support well-being, such as incorporating time outside or stretch breaks. Longer trainings, such as trial skills weeks, can offer time and access to physical recreation.

Providing high quality training in all areas needed for public defense excellence is, in and of itself, good for well-being. “Our fundamental needs also include feeling confident in our ability to master new skills and to have an impact on our environment. Continuous learning and a growing sense of mastery in activities that are significant to us are keys to this source of well-being.”<sup>128</sup> One of the worst feeling in public defense is suddenly being dropped into an assignment or situation and feeling you aren’t prepared, don’t have the necessary skill or training, and are letting down clients who deserve more.

The A-Z Guide includes some sample training session content examples.

### 4. Cultivating Curiosity and Growth Mindset

Trainers can establish spaces that cultivate curiosity and growth mindset, and that encourage experimentation and innovation. These spaces can normalize conversation about imperfection, mistakes and vulnerability.

### 5. Assessment and Goal Development

Training spaces can offer supportive feedback about strengths and areas to continue to develop, suggested resources and steps to develop. These may take the form of assessment and goal setting sessions or individual development plans. They can assist people in seeing their own growth and development, and not only seeing the steep learning curve ahead.

The Growth and Skills assessment in the A-Z Resources for Sustaining Well-Being in Public Defense is one tool that can be incorporated.

**When people feel safe  
enough to raise their hands  
and say, “I made a mistake”  
or “I need some help.” The  
leader has created an  
environment where people  
feel safe to be themselves.**

Leadership First

<sup>128</sup> 2018 [ABA Well-Being Toolkit](#) at p. 84.



## 6. Connection to Purpose

Training sessions are great spaces to include exercises on purpose and client-centered motivations. These can be combined with performance and storytelling exercises to build community within the group and re-energize individual connection to purpose.

## 7. Training to Close the Gap

As public defense trainers, we aspire to train to a gold standard, by demonstrating, practicing and instilling the level of representation that accused people are entitled to receive. We also see that systemic obstacles stand in the way of delivering it. This forced ineffectiveness can be deeply discouraging. People speaking of quitting public defense often speak of feeling they have failed their clients.

“If you’re trying to do something where you will inevitably fail and be rejected repeatedly before you achieve your goal [...], then you will need a nonstandard relationship with winning, focused on incremental goals.”<sup>129</sup>

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>130</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.

“Struggle can increase creativity and learning, strengthen your capacity to cope with greater difficulties in the future, and empower you to continue working toward goals that matter to you.”<sup>131</sup>

## J. Mentorship

As Jonathan Rapping advises, “It is critical that public defender’s office employ mentoring to ensure that the values taught are further developed and reinforced.”<sup>132</sup>

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<sup>129</sup> Emily Nagoski, PhD and Amelia Nagoski, DMA, [Burnout: The Secret to Unlocking the Stress Cycle](#), at p. 37.

<sup>130</sup> Jonathan Rapping, [Gideon’s Promise: A Public Defender Movement to Transform Criminal Justice](#), Beacon Press, 2020, at p. 156-157.

<sup>131</sup> Emily Nagoski, PhD and Amelia Nagoski, DMA, [Burnout: The Secret to Unlocking the Stress Cycle](#), at p. 36.

<sup>132</sup> Jonathan Rapping, You Can’t Build on Shaky Ground: Laying the Foundation for Indigent Defense Reform through Values-Based Recruitment, Training, and Mentoring,” 3 Harvard Law and Policy Review 161 (2009), p. 179.

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Mentoring is an informal transmission of knowledge and personal support that is relevant to work, career, or professional development. Mentoring includes informal communication, usually face-to-face and during a sustained period of time.

There is a dramatic difference between unstructured mentor/mentee pairings and a structured program with clear expectation and training. With minimal time to establish a structure and provide mentor training, a mentorship program can be created or dramatically improved. This can also help avoid some of the common pitfalls (ghosting by mentee or mentor, lack of time boundaries for questions/support, lack of substance beyond becoming drinking buddies).

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## IV. THE SYSTEM SPHERE: Systemic Obstacles and Strategies

*The norms and notions of what just is, isn't always justice.*

--Amanda Gorman, 2021 Inauguration

The System Sphere contains the public work that can be done to transform systems, from media campaigns to budget advocacy to caseload/workload advocacy. The reality is that the criminal legal system frequently forces public defenders to be ineffective, and to feel complicity with larger systems that perpetuate oppression and cause harm, and this reality takes a toll on us. System obstacles are things like high caseloads, racist systems, under resourced offices, and hostility toward the defense function from other system actors. Systemic strategies to support well-being are efforts to transform these systems.

The reality is that public defense has been under-resourced, dis-empowered and vilified. All of these must change, and these systemic obstacles to our basic goals and purpose must be reduced, if we are to successfully provide access to justice to the people we represent.

System
Criminal Legal System Tools/Strategies
Advocacy for sufficient resources to reduce caseload, workload Dismantle and transform oppressive and unjust systems Effective media advocacy about the role and importance of public defense Legislative advocacy Unite with community power through collaboration, media, participatory defense, and outreach Creative reimagining of systems

A 2020 study of public defenders in the United States concludes that the concept of stress of injustice, as a form of structural stress, most accurately describes “the nature of occupational stress for workers laboring at the frontlines of uniquely American social inequality. At the heart of this inequality is the powerful and punishing presence of police, courts, and prisons.”<sup>133</sup>

### A. The Deep Soul Wounds of Moral Injury

The framework of moral injury guides us to look for the places where people with power and authority are betraying what is right in high stakes situations. These are the deep soul wounds of moral injury.

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<sup>133</sup> Baćak, Valerio and Lageson, Sarah and Powell, Kathleen, [The Stress of Injustice: Public Defenders and the Frontline of American Inequality](https://ssrn.com/abstract=3765714) (December 12, 2020), at p. 2-3. Available at SSRN: <https://ssrn.com/abstract=3765714> or <http://dx.doi.org/10.2139/ssrn.3765714>

In the criminal legal system, we're surrounded by constant transgressions of deeply held moral beliefs and expectations. These are the places in which the criminal legal system is not delivering on its promises and isn't earning the title criminal *justice* system.

The Deep Soul Wounds Of Systemic Moral Injury in Public Defense
The criminal legal system claims that justice is not <b>dependent on wealth</b> , but we have a system of justice that treats you better if you're rich and guilty than if you're poor and innocent. <sup>134</sup> We see this in the under resourcing of public defense and the use of cash bail to cage people.
The criminal legal system <b>claims to presume the accused innocent</b> and guarantee the rights to fair process and trials. In reality, poor people are presumed to be dangerous and guilty, fair process is compromised by cutting corners for the sake of efficiency, and trials have been almost entirely replaced with a system of extorting pleas with the leverage of pretrial caging and threats of lengthy incarceration for those who demand trials.
The criminal legal system claims to provide an unbiased evaluation of <b>credibility</b> , in the search for truth, but "American police are trained to lie, and the law-enforcement community itself has <b>embraced deceit</b> as a legitimate investigative tool." <sup>135</sup>
The criminal legal system claims to scrutinize <b>reliability</b> of evidence, but we know, from the statistics collected by the Innocence Project and the National Registry of Exonerations, that misapplication and/or <b>misleading</b> use of forensic science has contributed to 24-45% of wrongful convictions nationally.
The criminal legal system aspires to offer <b>equality</b> , but the evidence of <b>racial bias</b> in our criminal justice system is overwhelming: <sup>136</sup> Black students are more likely to be suspended than white students. Black people are more likely to be pulled over in traffic stops and searched after a stop, even though police were more likely to find drugs, weapons or other contraband among whites. Black motorists and pedestrians are more likely to be the subject of pretext stops and investigatory stops, and more likely to receive tickets and be arrested. People who reported more police contact reported more trauma and anxiety symptoms, and the burden falls predominantly on young Black and Latino males. Officers speak with less respect toward black versus white community members. Citizen complaints of white citizens are more likely to be sustained than those of black citizens. Black and Latino drivers were more likely to be jailed for inability to pay petty fines for moving violations. Despite equal rates of drug use and sales, Black people are arrested, charged and convicted of drug crimes including possession, distribution and conspiracy at far higher rates than white people. Black and Hispanic residents are over-represented as targets of narcotic search warrants. Paramilitary police tactics are disproportionately used against Black and Latino people, having little effect on public safety but eroding public trust in police. Black people are five times more likely to go to prison for drug possession than white people, and 12 times more likely to be wrongly convicted of drug crimes. Black defendants are more likely than white defendants to be detained pretrial when charged with similar crimes, and more likely to be required to pay money bail, and to have a higher bail set.

<sup>134</sup> Bryan Stevenson, Just Mercy: A Story of Justice and Redemption.

<sup>135</sup> [Our Police Embrace Deceit. Is It Any Wonder We Don't Trust Them](#) [Cato at Liberty Blog.pdf](#)

<sup>136</sup> Research detailed by Radley Balko in [There's Racial Bias in Our Police Systems. Here's Overwhelming Proof](#), The Washington Post, June 10, 2020.

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Prosecutors systematically exclude Black people from juries. Jurors were more likely to evaluate ambiguous, race-neutral evidence against a dark-skinned suspect as incriminating and more likely to find a dark-skinned suspect guilty. Death sentences are disproportionately imposed on Black defendants convicted of killing white people. In a system in which 80-95% of cases resolve through plea bargaining, which is widely abused and does little to serve the interests of justice, black defendants are less likely than white defendants to have charges dismissed or reduced, and more likely to receive jail time, sentencing enhancements, and longer sentences (for similar crimes). Black prisoners are more likely to be held in solitary confinement than white prisoners. To summarize, “the darker the skin of a black person, the greater the disparity in arrests, charges, conviction rates and sentencing.” After release, Black people are more likely to have their probation revoked, and more likely to be re-incarcerated for technical violations of parole. Mass incarceration combined with felon disenfranchisement laws have led to severe underrepresentation of black Americans in the voting electorate.

The criminal legal system claims to offer a constitutional right to trial, but overcharging, mandatory minimums, pretrial detention, and the trial penalty force the vast majority of cases to resolve through **plea bargaining**. The purpose of plea bargains is to facilitate the efficient conviction of the accused regardless of guilt or evidence.

While these deep soul wounds may seem abstract, or closer to policy work than public defense work, these are the systemic obstacles that force use to be ineffective. These are the barriers that keep us from providing the level of representation that motivated us to become public defenders. This is one source of forced ineffectiveness, feelings of complicity and moral injury. Advocating for system transformation addresses these impacts.

## B. Continually Advocate for Sufficient Resources

The single biggest challenge in public defense is workload. We live with the knowledge that it won’t all get done, and something that didn’t get done might be THE THING that was going to dramatically change the outcome of a case.

In 1963, US Supreme Court Justice Hugo Black wrote “There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.” After Clarence Earl Gideon was charged with breaking into a pool hall, tried without a lawyer, and convicted, the case *Gideon v. Wainwright* guaranteed poor defendants the right to counsel in criminal cases.<sup>137</sup> Over fifty years later, the public defender system remains under resourced and overloaded. Each year in the United States, over 12 million people are arrested. Eighty percent of the individuals that make their way through the criminal justice system are represented by one of only 15,000 public defenders.<sup>138</sup>

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<sup>137</sup> The case is retold in the [film Defending Gideon](#).

<sup>138</sup> [Gideon at 50](#) materials, from 2013.

Public defense leaders can never be complacent about this, can never accept this status quo of forced ineffectiveness. Leaders and national organizations are continually developing strategies and resources to advocate for funding and resources. Advocating for sufficient resources must always be a top priority.

### **C. Unity of Purpose**

Whether we speak in courtrooms, community meaning or political meetings, it must always be clear that our purpose is high quality, client-centered representation.

Unlike medicine, in which everyone would be expected to agree that the goal is high quality healthcare of the patient, the legal system includes many participants with different goals. Not only are the goals distinct and different, they are adversarial. Public defenders must provide high quality and client centered representation in courtrooms in which that goal is not shared by judge, prosecutors, bailiffs or court staff. Public defense leaders must advocate for resources and policies at political meetings at which others have very different goals.

There are few things more painful or damaging than seeing public defense leaders abandon our purpose, and adopt language or positions adverse to our clients. This is true of the language used, the positions taken, and the voices amplified in our presentations.

These other system actors have terms and language that advances their goals that are often adversarial to ours. Courts speak of “processing cases” and “moving files” in ways that don’t even acknowledge the human associated with the case file. Prosecutors, police, probation and jailers use dehumanizing language like inmate, body, and defendant. Adopting language like *felon* or *inmate* is a clear signal of aligning position with other actors and adopting their intentionally dehumanizing language.<sup>139</sup>

Similarly, adopting priorities like “efficiency” often come at the expense of the people we represent. Judges and court administrators, looking at the volume of cases, often prioritize efficiency. This leads to proposals like early resolution courts, which strive to hit benchmarks of percentages of cases pled and resolved on the first or second court date. Pursuing efficiency often comes at the expense of time spent obtaining discovery, completing investigation and communicating with clients and their families. Prosecutors, law enforcement agencies, probation agencies, and jailers often advocate for pretrial incarceration and lengthy sentences in the name of public safety.

I once attended a “criminal justice partners” meeting about the formation of an early resolution court, at which the presiding judge asked the leaders of the various agencies to endorse the model in pursuit of efficiency. Leaders of various agencies, including a public defense leader, immediately accepted this goal and moved on to implementation steps—until line defenders (both public and private) erupted in protest of the damage that would be caused by forcing plea bargains without sufficient discovery, investigation, or communication. That leader lost the trust of private and public line defenders.

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<sup>139</sup> Morgan Godvin and Charlotte West, [The words journalists use often reduce humans to the crimes they commit. But that’s changing](#), Poynter, December 15, 2020.

#### D. Center the Voices of Impacted People

“As public defenders, we are in a unique position to observe the many ways in which the criminal system inflicts pain on the people we represent, their families, and their communities. Our job is to advocate for our clients, to tell their stories, and to humanize them in a system that constantly seeks to strip them of their humanity. This is a system that criminalizes our clients by turning family squabbles, relationship issues, poverty, mental health issues, and social ills into criminal matters.”<sup>140</sup>

“Whether you want criminal reform, abolition, or to reimagine the system some other way, there is no meaningful discourse or effort to change or abolish the criminal system that doesn’t include and center the people most impacted by it. They are the premier authority, not our charity. They are who we should look to when we critique this system and as we brainstorm ways to change it.”<sup>141</sup>

#### E. Take Back the Power: Unify with Community

As public defenders, we put our bodies on the machine that seeks to process people into cages as efficiently as possible. The systems that benefit from that machine may propose small modifications and reforms in service of maintaining the larger system of mass incarceration. We see every day that something more transformational is needed.

A lot of people are talking about “criminal justice reform.” Much of that talk is dangerous. The conventional wisdom is that there is an emerging consensus that the criminal legal system is “broken.” But the system is “broken” only to the extent that one believes its purpose is to promote the well-being of all members of our society. If the function of the modern punishment system is to preserve racial and economic hierarchy through brutality and control, then its bureaucracy is performing well.—Alec Karakatsanis<sup>142</sup>

Jonathan Rapping describes the struggle to fulfill the promise of equal justice as a cultural dilemma that will not be solved with policy fixes. Instead, we must “recognize the power of a public defender movement, in alliance with impacted communities, to drive this cultural transformation.”<sup>143</sup>

If we are to solve the most fundamental problem of public defense, if we are to remove the largest obstacles to providing high quality representation, we need transformation of the criminal legal system. We are starved for resources and disempowered because we represent people who are systematically

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<sup>140</sup> Olayemi Olurin, [Why We Need to Center the People Directly Impacted by the Criminal System](#), Medium, 5/19/21.

<sup>141</sup> Olayemi Olurin, [Why We Need to Center the People Directly Impacted by the Criminal System](#), Medium, 5/19/21.

<sup>142</sup> Alec Karakatsanis, [The Punishment Bureaucracy: How to Think About “Criminal Justice Reform”](#), Yale Law Journal, March 28, 2019.

<sup>143</sup> Jonathan Rapping, [Gideon’s Promise: A Public Defender Movement to Transform Criminal Justice](#), Beacon Press, 2020, at p. 5.

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disempowered. The system forces us to be ineffective because its goals of caging poor people of color would not be accomplished if we were fully resourced and empowered.

We will not correct this by convincing the county budget designers to give us a little more money to operate within the existing structures. We need to align ourselves with people working in communities to fundamentally change distributions of power. We can learn from innovators like Raj Jayadev, creator of [Silicon Valley De-Bug's](#) model of “participatory defense” – a community organizing model for people facing charges, their families, and communities to impact the outcome of cases and transform the landscape of power in the court system. Alec Karakatsanis offers a list of organizers with whom to collaborate that includes: worker owned cooperatives empowering formerly incarcerated people, campaigns to stop funding new jails and prison, restorative justice models, reinvestment into community based projects led by directly impacted people.”<sup>144</sup>

## **F. Media Advocacy**

We can utilize our unique position within court systems to amplify the voices of impacted communities. We often have access to journalists and politicians who can amplify voices. The media and movement building training of [Zealous](#) is leading in this area. Instead of saying “no comment” in all situations, and watching others fill the media with narratives of the need to be tough on crime by caging people of color, we are learning when and how to use advocacy outside the courtroom to raise awareness of injustice, disrupt the status quo and propel policy.<sup>145</sup>

hey buddy I think that was a privileged convo that you probably shouldn't be tweeting about

6:42 AM · 1/10/23 · [Twitter for iPhone](#)

The [Social Media Toolkit](#) from Justice Exchange and Defender Impact Initiative provides invaluable guidance on effective media advocacy that is also ethical and client centered.

## **G. Creative Reimagining of New Systems**

“Our most difficult and urgent challenge to date is that of creatively exploring new terrains of justice where the prison no longer serves as our major anchor.” – Angela Davis, 2003

Alec Karakatsanis writes of the “[h]undreds of poetry, theater, and art programs for children and adults who are survivors of human caging have grown organically around the country to involve thousands of people. These programs build community, solidarity, connection, creativity, compassion, and healing,

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<sup>144</sup> [The Punishment Bureaucracy: How to Think About “Criminal Justice Reform”](#) by Alec Karakatsanis. Yale Law Journal, March 28, 2019.

<sup>145</sup> The [Social Media Toolkit](#) For Organizing and Advocacy to End Mass Criminalization and Incarceration also gives useful guidance.

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and they help foster empathy and relationships between people impacted by the punishment system and segments of society that have long been indifferent to their stories.”<sup>146</sup>

If you are not already reading [We Do This 'Til We Free Us: Abolitionist Organizing and Transforming Justice](#), by Mariame Kaba, that would be a wonderful place to start clarifying and energizing your thinking about abolition and transformation.

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<sup>146</sup> Alec Karakatsanis, [The Punishment Bureaucracy: How to Think About “Criminal Justice Reform](#), Yale Law Journal, March 28, 2019.

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## V. Transformative power of public defense.

I believe it is possible to thrive in public defense. Sitting here writing this at year 25 (when this section was written), taking on new roles in training and handling cases as challenging and complex as I've ever seen, I feel as positive and energized as I ever have about public defense. This work can be incredibly difficult, and it can also be energizing and even transformative.

While I still study and acquire new skills, my goal is much less about technical skill and much more about slowing down to see and hear the people I represent. I am learning how to really listen. Listening dissolves a lot of anger and frustration and judgment. In place of all of those, listening sneaks in empathy and compassion—for the trauma and the resilience we see and experience. Strong, steady compassion is a revolutionary gift to extend to people, when you can. Including yourself.

Despite all the challenges, I believe it is possible to sustain well-being in this work. Not just to limp along, but to welcome how it deepens our compassion and propels us to pursue justice. I believe this transformational experience of public defense work is fueled and supported by open conversation about our own well-being—how we struggle and how we can be supported. This work is painful in ways that change us; that can be a good thing.

No one says it better than Bryan Stevenson: “There is a strength, a power even, in understanding brokenness, because embracing our brokenness creates a need and desire for mercy, and perhaps a corresponding need to show mercy. When you experience mercy, you learn things that are hard to learn otherwise. You see things you can't otherwise see; you hear things you can't otherwise hear. You begin to recognize the humanity that resides in each of us.”<sup>147</sup>

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<sup>147</sup> Bryan Stevenson (2014). Just Mercy: A Story of Justice and Redemption, Spiegel & Grau, at p.290.