

Sustaining and Supporting Well-Being in Public Defense

Section 1: The Value of Sustaining Well-Being



ACCESS TO JUSTICE

Public defender well-being is an access to justice issue. If public defenders (and the systems they operate in) are not taking care of attorney and staff well-being, they are not giving their clients the full access to justice they deserve. --Meryl Carver-Almond



Welcome!

Public defense work is exciting and meaningful, and its connection to an important mission can make it deeply satisfying for many years. At the same time, it can be challenging to balance work and non-work life, and to navigate occupational stress and exposure to repeated accounts of violence, harm and systemic injustice.

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.

For many of us, sustaining well-being 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.

Who is wellness for?

Public defenders includes everyone working in defense of the indigent accused. Sustaining well-being is essential 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.

This curriculum advances these objectives:

- ☐ 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.

This curriculum asks these questions:

- 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 more helpful and less harmful?

Notes and Reflections:

Section 1 Introduction:

In this section, we'll open a discussion of why sustaining well-being in public defense is important. This will include the principle that well-being is foundational to competence and access to justice. In introducing a way to approach these materials and topics, this section includes an introduction of growth mindset, an invitation to explore experiential practices, and optional mindfulness practices.

Learning Objectives for Section 1



Reflect on personal reasons to prioritize well-being.



Understand that prioritizing well-being is foundational to competence: our strength and resilience is what enables us to provide high quality representation and access to justice.



Identify and activate growth mindset.



Optional experiential learning: Explore a mindfulness practice.

Why is sustaining well-being important to you?

Leaving and Returning to Public Defense: Why is Sustaining Well-Being a Priority for Me? by Jenny Andrews

[If you'd prefer to watch the video version of this section, it is available here: [I QUIT! \(aka Why is Sustaining Well-Being a Priority for Me?\) \(7 min video\)](#).]

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.

There was a flood of determination 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 enjoyed--and thought I was thriving from--the high intensity and total immersion of the work.

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 thirty-three 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 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.

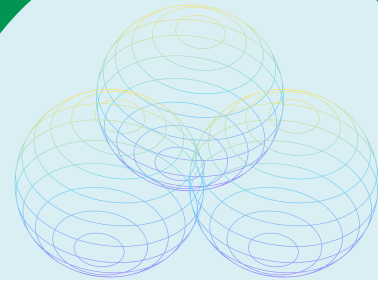
At first, I kept this exploration to myself, and thought it embarrassing to mention, in a profession where *tough it out, don't complain, don't show weakness* culture still prevails. When I occasionally whispered to colleagues, *I actually burned out and left for several years*, the response was not 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?*

Of all the things you could be doing right now, you have chosen to focus some time and energy on sustaining your well-being, and supporting others, while working in public defense.

Why is focusing some of your energy on sustaining well-being a priority for you at this time? (use the space below to make some notes as you reflect on this question)

WELL-BEING IS THE FOUNDATION OF COMPETENCE AND EXCELLENCE



What is well-being?

Well-being is best defined broadly. The ABA uses the same six dimensions that have deep roots in well-being organizations (such as the National Wellness Institute): emotional, occupational, intellectual, spiritual, physical and social thriving. Well-being is a continuous process toward thriving across all life dimensions. 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.

Six Dimensions of Well-Being

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.

These six dimensions mirror the same six dimensions of wellness promoted by the Wellness Alliance (formerly 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 Six Dimensions Tools](#) go further in depth on each of the six dimensions

In each of the six dimensions of wellbeing, we can see a clear connection with performance in public defense. For example, increased emotional well-being will translate to better emotional regulation to navigate emotionally charged communications, such as meeting with people in crisis situations, and discussing painful events with people who have viewed or experienced them. Decreased intellectual health will impact our ability to formulate arguments and advocate strongly. In the extreme, deficient performance due to unwellness may become incompetence or even result in disciplinary or malpractice claims.

Maintaining well-being across all six dimensions of well-being is foundational to competence.

ABA Definitions 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.

What does well-being have to do with client advocacy?

Maintaining our well-being is foundational to being able to do this work—minimally with competence, but hopefully with excellence.

Professional rules require us to provide competence and diligence 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.

Well-being is indispensable to the duty of competence and is included in the pertinent rules for attorneys, paralegals, social workers, and likely other job roles (send me the pertinent citations for other job roles if you have them).

[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.

ABA Model Rule of Professional Conduct 1.3: A lawyer shall act with reasonable diligence and promptness in representing a client.

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.

The [National Association of Social Workers Code of Ethics](#) includes:

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

[California Rule of Professional Conduct for Attorneys](#) 1.1: Competence

(a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.

(b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably necessary for the performance of such service.

[California Rule of Professional Conduct for Attorneys](#) 5.3: Responsibilities Regarding Nonlawyer Assistants

(b) a lawyer having direct supervisory authority over the nonlawyer...shall make reasonable* efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer

Comment: Lawyers often utilize nonlawyer personnel, including secretaries, investigators, law student interns, and paraprofessionals. [...] A lawyer must give such assistants appropriate instruction and supervision concerning all ethical aspects of their employment.

ABA Includes Wellness in Duty of Competence

Lawyer health is not solely by absence of illness, but by a positive state of wellness.



We define lawyer well-being as a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others. Lawyer well-being is part of a lawyer's ethical duty of competence. 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.

Well-being is a continuous process toward thriving across all life dimensions.

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

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.

Wellness Dimension	Areas Impacted	How unwellness can impact competence and performance
Occupational	● Growth and development ● Financial stability	☐ Tardiness/absence from work ☐ Boredom, disconnection ☐ Reduced quality, errors, poorly executed work ☐ Irritability, impatience, conflict ☐ Faulty judgement
Intellectual	● Intellectual 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
Spiritual	● Meaning and purpose	☐ Pervasive hopelessness ☐ Loss of feelings of guidance, security and anchoring Questioning meaning and purpose.
Physical	● 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
Social	● Feeling support and connection ● Offering support and connection	☐ Feeling withdrawn, isolated, intolerant, lonely ☐ Feeling distrustful, over-protective ☐ Projecting anger or blame ☐ Conflict with loved ones, clients, colleagues ☐ Decreased ability to compassionately listen to others ☐ Decreased ability to be supportive in relationships inside/outside of work
Emotional	● 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 workload ☐ Less ability to offer support to colleagues, clients and community

Is it selfish, or a disservice to clients, to focus on your own wellness?

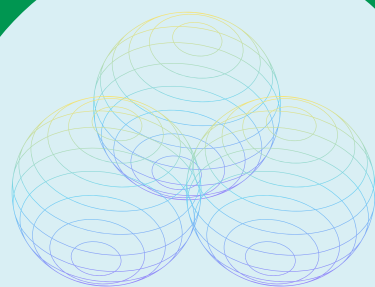
Public defender health and client centered representation are not in conflict. Time spent doing things like being with our families, exercising, and shopping for nutritious meals enables us to show up strong, focused and ready for the challenging work of public defense.

It can be counterproductive to think of work/life balance as a struggle to balance two separate parts of life that compete for our time. Don't we want to show up as a whole, complete people in all parts of our lives? Taking care of ourselves strengthens all aspects of life, including excellence at in public defense work.

Excellence at this important work can increase our well-being through connections to mission and purpose. Tending to our well-being during and outside of our work times is the foundation of the access to justice we can provide through our work.

Does it feel useful to include well-being in your duty of competence?
Thoughts and reflections:

Three Spheres of Well-Being in Public Defense

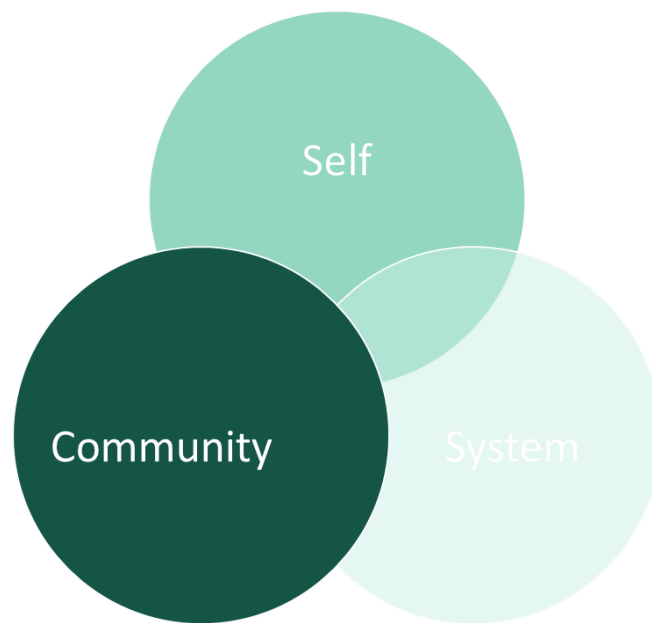


Sustaining well-being occurs at the individual, organizational and societal levels.

As individual defenders, 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.

Taking care of ourselves isn't a responsibility that falls only to individuals. Public defense offices should recognize that supporting well-being enables us to show up strong for the people we represent. Working within an office and public defense culture that supports well-being is foundational to us providing access to justice through strong representation. We need to work collectively to transform systems that are causing harm.

SPHERE ONE	SPHERE TWO	SPHERE THREE
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.	The Community Sphere contains the work to be done within our indigent defense community. 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 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.	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 criminal legal system can force public defenders to be ineffective, and to feel complicity with larger systems that perpetuate oppression and cause harm. 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 ineffective, and unfair, to shift the responsibility to the individual to fix everything with self-care. Organizational and 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 a bulletin board. Individual resilience may help us survive for a while, but it doesn't address culture and system impacts with real solutions.

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 may vary in different offices or assignments, or with more experience.

The value of growth mindset.

Experimentation and comfort with both feedback and failure can support growth and development throughout a public defense career.

Be willing to try new things. Expect to fail, and lean.

For more on this concept, watch this video on Growth Mindset v. Fixed Mindset a [2 min video](#) that includes *John Spencer's summary of Carol Dweck framework of growth and fixed mindsets*.

Experiential practices

These materials will include invitations to explore different practices like mindfulness, breathing exercises, journal prompts, and gratitude practices.

These are always optional and are included to introduce you to practices that may be beneficial to you in managing stress, mitigating traumatic impacts and building resilience while working in public defense.

The practices shared are intended to be research-based, time efficient, and low cost.

These practices are always optional and, most importantly, are not intended to add to your “to do” list and sense of obligation or overwhelm—try things when you have the time and inclination.

Mindfulness in Public Defense



“Mindful practices allow defense professionals to sustain clarity, compassion, and effectiveness while protecting their own well-being.”—Constance Sheehan, PhD, LCSW

Mindfulness is a powerful tool for cross-examination, and any courtroom advocacy. It develops situational awareness and the ability to respond rather than react.

Think about the Montgomery bus boycott and how people walked for nearly a year, gathering each night at churches to sing and pray, so they could walk the next day. That’s mindfulness. Think about the young people who integrated the lunch counters and trained themselves to maintain their composure. They sat at the counters while people poured food and drinks over them and they maintained their equanimity. –Jenee Johnson, in [Encouraging Meaningful Conversations about Race and Trauma](#)

Mindfulness practices have these general principles and aspirations:



- Being in the present moment, rather than lost in thoughts about past and future.
- Observing your experience with curiosity and without judgement.
- Seeing thinking as it arises and choosing whether and how to respond.
- Using the 5 senses as a gateway to observe and experience the present moment.
- Being open to the present experience and sensation, even if it is unpleasant.

Benefits of Mindfulness Practices

- Improved Attention
- Greater Compassion
- Letting go of unproductive, unhelpful thoughts
- Understanding and managing our energy
- Reduced stress
- Reduced anxiety
- Reduced burnout
- Reduced perseveration
- Reduced reactivity
- Increased self-regulation, self-knowledge, and self-awareness

A Few Mindfulness Practices

Grounding With the Senses 5-4-3-2-1	Ground yourself by bringing your attention to your senses and identifying: 5 things you can see 4 things you can touch 3 things you can hear 2 things you can smell, and 1 thing you can taste.
Body Scan	A body scan is a mindfulness exercise that involves mentally scanning your body from head to toe. As you move your attention through your body, notice any areas of tightness and invite those places to ease and relax.
5x5x5	Inhale slowly as you count to 5. Exhale slowly as you count to 5. Repeat 5 times.
Guided Mindfulness	Follow a guided practice to reduce stress and re-center. MeditOcean: Monterey Aquarium Guided Mindfulness
Mindfulness Neighborhood Walk	At some point this week, take a short or long walk around your neighborhood. Take time to look upward or in directions/angles you might not normally notice. Snap a photo of a view or plant or newly noticed thing. For the month of April 2020, I paid particular attention to the plants in my neighborhood during my morning and afternoon dog walks. I took photos during these walks to remind myself of moments of noticing and feeling gratitude for the natural world, and created this 3 minute slideshow: Mindful Gratitude Pandemic Walks April 2020

Some Mindfulness Resources

- [Why Mindfulness is a Superpower](#), Dan Harris (3 min video).
- [All it takes is 10 mindful minutes](#), TED talk by Andy Puddicombe
- [Andy Puddicombe Guides Jimmy Through a Two-Minute Headspace Meditation](#)
- [The Inner Work of Racial Justice: Healing Ourselves and Transforming Our Communities Through Mindfulness](#), by Rhonda V. Magee

Some Mindfulness Practices

- [Calm](#) online app for sleep and meditation. Subscription with free trial.
- [Gaia](#) online app with meditation and other content. Subscription with free trial.
- [Headspace](#) online guided meditation app. Subscription with free trial.
- [Insight Timer](#) free meditation app, with wide selection of practices and styles.
- [The Safe Place](#) a mental health app geared towards the Black community.
- [Ten Percent Happier](#) guided meditations app. Subscription with free trial.

Section 1 Reflections and Prompts for Further Discussion:

Success Criteria	Notes
☐ Is it useful to you to think of well-being as part of your duty of competence?	
☐ How can we create growth mindset in ourselves and our public defense spaces?	
☐ How do you feel about trying new things? What is something new that you tried in the last year that was enjoyable and felt like it was rejuvenating to your well-being? What is something new that you look forward to trying?	
☐ Did you try a mindfulness practice? How was that experience?	

