

MENTAL HEALTH AND ADDICTION IN THE LEGAL PROFESSION

Lawyers Concerned for Lawyers

There is Help and There is Hope

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I. Introduction and Overview: Stress and the Legal Profession

What is STRESS? It's a series of physiological responses and adaptations to a real or imagined threat or demand. Stress occurs when the pressures experienced by the individual are perceived by them as exceeding their capacity to deal with them, in a situation where coping is perceived as important. It can be good or bad, healthy or unhealthy.

Eustress is beneficial to us. It charges us up and allows us to meet challenges head on and gives us the necessary energy to do so. Distress is the chronic feeling of being overwhelmed, oppressed and behind in tasks. There is a sense that life is controlling us and we see little hope for relief, all of which can have unhealthy results. Regardless of how beneficial our stress may be, our bodies react. Our heart beats faster, our pupils dilate, our digestive and immune systems shut down and the hormones adrenaline and cortisol are released. In the short term, this helps us, but over time, the chronic presence of these changes will hurt us with results like higher blood pressure, more frequent illnesses, and coping mechanisms that are reactions not solutions.

A. Sources of Stress for Lawyers

The legal profession presents many opportunities to take on someone else's problems, and it presents unique sources of stress. There are realities in the everyday practice of a lawyer, regardless of their area of practice and regardless of whether they litigate, are engaged in transactional work or perhaps even work in a non-traditional career.

1. Rules Based Morality. The way we help people; the way we make a difference for our clients, is to make their set of circumstances fit a set of rules. We apply the law to the facts. From that can come a tendency to see everything in terms of how we believe it should fit into the world as we see it. And we will use our finely tuned persuasive and argumentative skills to insist upon it.
2. Perfectionism. We are told from the beginning in law school that mistakes will cost us. From the humiliation of the Socratic method when we are not prepared (or even if we are) to cases where professional discipline occurs because of missing deadlines and important details, we learn that we must not fail. When we learn perfectionism it is not limited to our work life. Any possible failure becomes an opportunity for intense self scrutiny and every move we make can become defined by winning or losing.
3. Pessimism. We may be the only profession that succeeds because we can anticipate the worst that might happen. Yet, how else do we solve problems? The pessimist not only sees what can go wrong but is more likely to view bad things as permanent and unchangeable. Optimists see opportunity.
4. Vicarious Trauma. This may be our greatest risk. We are not the immediate first responders to the worst things that happen in our world, but we may spend more time with the details and people who experience the direct trauma than anyone else. Yet our need to be perfect (don't let them see you sweat) and pessimistic can make us even more vulnerable to the effects of this trauma. We don't show our weakness, we don't process and we hold it inside until we burnout. Yet studies have shown that simply talking about what one experienced, even and especially secondarily, can reduce the effects of the trauma.

B. How do you know that you are over-stressed?

1. Physical Signs

- Throbbing in Chest
- Indigestion
- Breathlessness
- Tiredness and Fatigue
- Aches and Pains
- Frequent Infections
- Headaches
- High blood pressure

2. Emotional Signs

- Mood Swings
- Lack of Enthusiasm
- Guilt
- Lack of Concentration
- Anxiety
- Lack of Confidence
- Loss of Self Esteem

3. Behavioral Signs

- Accident Proneness
- Increased smoking/drinking/drugging
- Appetite Changes
- Irritability
- Change in Sleeping Patterns
- Change in Working Patterns
- Chronic Lateness/Procrastination
- Poor Hygiene
- Clumsiness

C. Our Response to Stress

Many try to cope with stress by turning to tobacco, alcohol, caffeine, herbal remedies, legal or illegal drugs as well as diversions like gambling, internet shopping, games and porn or compulsive eating. These substances and processes may mask some of the symptoms of stress and provide temporary relief but they don't help in the development of effective stress-management techniques. They may harm your physical health, weakening resistance to stress even further and cause additional stressful complications in life.

II. Impact of Addiction and Dependency and the Practice of Law

A. Estimates of alcoholism and dependency among lawyers – Generally

1. The ABA estimates that 15 to 20 percent of U.S. lawyers suffer from alcoholism or chemical dependency. “Surveys reveal that as high as 18 percent of all lawyers—nearly one in five—

- will personally develop problems related to substance misuse. That figure does not include the number of partners, associates, family members, and colleagues who will be forced to deal with the effects of addiction as a result of an impaired attorney they know or work with.” John W. Clark, Jr., *We’re From the Bar and We’re here to Help You*,” G.P. Solo Magazine (A.B.A. Pub.; v.21, no. 7: October/November 2004).
2. “[M]ore than 20 percent of the male Washington lawyers are scoring above the cutoff for probable alcohol related problems for the current year.... This percentage is over twice the approximately 9% alcohol abuse and/or dependency prevalence rates estimated for adults in the United States.” “Approximately 70% of the lawyers in the sample are likely to develop alcohol problems in their lifetime.” Connie J.A. Beck, et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 *Jour. of Law & Health* 1, 50-51 (1995-96).
 3. A study in Arizona revealed that 26% of the practicing attorneys were concerned about their alcohol use. G. Andrew H. Benjamin, et al.; *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*; 13 *Intern’l. Jour. of Law and Psychiatry* 233, 240 (1990).
 4. Gender Differences – Women are less likely to have substance use problems in general and as attorneys. Most often, women don’t seek help until the disease is more advanced than for men, partly because of stigma attached to public intoxication for women.

B. Impact of alcoholism on discipline and malpractice claims

1. Alcohol misuse has been estimated to be a factor in at least 27 percent of the attorney discipline cases in the United States. G. Andrew, H. Benjamin, et al.; *supra* at 243.
2. “A study conducted in 1986, by the Oregon State Bar Professional Liability Fund (OSBPLF) showed the relationship of alcohol and drug problems with malpractice claims. OSBPLF reviewed the records of 100 consecutive lawyers who entered its lawyer's assistance program. Sixty percent of the lawyers had malpractice suits filed against them while suffering from substance abuse.” G. Andrew H. Benjamin, et al.; *supra* at 244.
3. Minnesota’s experience
 - a. The number of probationary cases where chemical dependency was a component of the agreement was 10.8% as of December 31, 2013. *Annual Report of the Lawyers Professional Responsibility Board and the Office of Lawyers Professional Responsibility* (July 2012). In recent years the numbers have varied between 16.4% (2007), 8.4% (2008) and 11% (2010).
 - b. The actual impact of chemical misuse is much higher. Mike Hoover, former Director of the Office of Lawyers Professional Responsibility (OLPR), stated that his staff expected to find chemical dependency in at least half the discipline cases they investigated. Amy Lindgren, *Counting the Costs: Substance Abuse in the Legal Profession*, *Bench and Bar of Minnesota*, Vo. 47, no 3, p. 22 (March 1990). Anecdotally, OLPR staff estimates the present rate at about one-third.

- c. The difference between these figures is partly caused by attorneys denying how their chemical use affects their practice. Many misconduct allegations involve behaviors closely related to the symptoms of chemical misuse and dependency. Marcia E. Femrite, “Addicted Attorneys in Disciplinary Proceedings”, *Michigan Bar Journal*, February 1991, p. 152. For example, over half of all OLPR open probationary files involved competence, diligence or non-communication. *Annual Report*, supra at 10.

III. Addiction and Dependency.

A. Addiction

1. Why do people take drugs?
2. What it is.
3. How it develops.
4. Risk factors. These include genetics, age at first use, chronic stress, physical or mental health, culture, history of abuse and unresolved emotions.

B. Definitions:

The disease of addiction

1. The American Medical Association (AMA) defines “alcoholism” as a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by continuous or periodic impaired control over drinking, preoccupation with the drug alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial. Robert M. Morse and Daniel K. Flavin, “The Definition of Alcoholism.” *Journal of the American Medical Association*, August 26, 1992, Vol. 268, No. 8, pp. 1012 – 1014.
 - a. Primary
 - b. Genetic
 - c. Psychosocial
 - d. Environmental
 - e. Often Progressive and Fatal
 - f. Impaired Control
 - g. Preoccupation
 - h. Denial
2. The American Society of Addiction Medicine (ASAM) defines “addiction” as a disease process characterized by the continued use of a specific psychoactive substance despite physical, psychological or social harm. *Principles of Addiction Medicine*, 2d ed., 1968.

3. The American Psychiatric Association's Diagnostic and Statistical Manual (DSM V) 2013, has combined the prior categories of "substance dependence" and "substance abuse" into the category of "Substance Use Disorder. Substance use disorders are patterns of symptoms resulting from use of a substance which the individual continues to take, despite experiencing problems as a result.

Substance use disorders span a wide variety of problems arising from substance use, and cover 11 different criteria. Assessors will base severity on the number of criteria found to exist within a 12 month period. 2–3 criteria indicate a mild disorder, 4–5 criteria indicate a moderate disorder and 6 or more indicate a severe disorder

1. The substance is taken in larger amounts or for longer than intended.
2. A desire or unsuccessful efforts to cut down, control or stop using the substance.
3. Spending significant time acquiring, using, or recovering from use of the substance.
4. Cravings or a strong desire to use the substance.
5. Failure to fulfill major obligations at work, home or school, because of recurrent substance use.
6. Continuing to use, despite the occurrence of persistent or recurrent problems in social or interpersonal relationships.
7. Reducing involvement in or giving up important social, occupational or recreational activities because of substance use.
8. Recurrent use even when it is physically hazardous.
9. Continued use despite knowing of a persistent or recurring physical or psychological problem that may have been caused or exacerbated by the substance.
10. Requiring more of the substance to achieve intoxication or the desired effect or a diminished effect with the same amount of use (tolerance).
11. Development of withdrawal symptoms that are characteristic of the substance or use of the substance to avoid withdrawal symptoms.

The DSM-V also lists substance-induced disorders which include intoxication, withdrawal, substance induced mental disorders, including substance induced psychosis, substance induced bipolar and related disorders, substance induced depressive disorders, substance induced anxiety disorders, substance induced obsessive-compulsive and related disorders, substance induced sleep disorders, substance induced sexual dysfunctions, substance induced delirium and substance induced neurocognitive disorders.

C. Stages of Dependency

1. Early Stage: includes relief use, loss of control over use, increasing frequency of use and amount, and blackouts or memory loss.
2. Middle Stage: includes employment, school or family problems; personality changes; behaviors not consistent with the person's value system; and work and financial difficulties.
3. Late Stage: includes increased tolerance of the substance, physical deterioration, free-floating fears and anxiety, institutionalization because of a decline in mental health, and death.

D. How Chemicals Affect the Brain

- Necessary neurotransmitters are blocked or released in abnormal ways
- The brain tries to return to normal but what if chemical use is perceived as normal?
- Then chemicals become necessary to return to normal and addiction has set in.
- Any mood-altering drug will now have this effect.

E. A basic checklist for signs of impairment in a legal professional.

Personal behavior

- Gradual deterioration of personal appearance [hygiene/health].
- Loses control at social gatherings, even where professional decorum is expected.
- Distorts the truth; is dishonest.
- Manages finances poorly; fails to make tax filings and payments on a timely basis.

Attendance

- Routinely arrives late and/or leaves early.
- Regularly returns late or fails to return from lunch.
- Fails to keep scheduled appointments.
- Has frequent sick days or unexplained absences.

Job performance

- Procrastinates; has a pattern of missed deadlines.
 - Neglects prompt processing of mail or timely return of calls.
 - Shows decline in productivity/number of hours worked each month.
 - Overreacts to criticism; shifts blame to others.
 - Is unable to get along with or withdraws from fellow lawyers and other staff.
 - Performance declines throughout the day.
 - Clients complain about performance/communication.
 - Co-mingles or borrows clients' trust funds.
 - Appears under the influence and/or smells of alcohol in the office or during court appearances.
- Waldhauser, Carol; "Identifying Addictions"; G.P. Solo Magazine (A.B.A. Pub.; v.18, no. 5: July/Aug 2001).

BUT, the lawyer must continue to work to support the addiction so she or he may function very well in a work setting. By the time work performance begins to suffer, significant destruction may have occurred in other aspects of his or her life.

The employer can do a number of things to encourage those who may be more quickly aware of problems to bring them to the attention of management, another employee or to call LCL for help:

- Educate support staff
- Provide non-threatening reporting options
- Give family members a contact
- Distribute LCL or other information with benefits materials

The Jellenik Curve

Dr. E. M. Jellinek . . . was originally trained in the application of the statistical method to biological research, and had an impressive ability to sort through complex data, and spot trends and sequences, and then mathematically prove their statistical validity. One legacy of his work was his development of the

Jellinek curve, as it is called, which he drew up by making statistical studies of personal life histories given to him by alcoholics involved in recovery in the Alcoholics Anonymous program. Dr. Jellinek demonstrated that there were clearly defined progressive changes in behavioral patterns as alcoholics continued to drink over months and years, which could be laid out in an easy-to-understand chart. The alcoholic's problems not only grew worse and worse, they did so in fairly predictable ways, in a sort of stepwise fashion. This Jellinek curve is still used worldwide in classrooms, treatment programs, and in public educational programs. William E. Swegan, *VICTORY OVER ALCOHOL Psychological Healing and the Twelve Steps*.

F. Reaching Out to Others. There are various places where a concerned person can reach out.

- Expression of concern from one lawyer to another
 - Drop off a brochure, e-mail or call LCL
- Visits and calls
- Intervention
- Crisis Response (immediate assistance needed)

G. Recovery

1. Types and Settings of Treatment
 - a. Types
 - i. Social and Behavioral
 - Cognitive – Behavioral
 - 12 Step Model (Minnesota Model)
 - Contingency Management
 - Motivational Interviewing
 - ii. Pharmacological
 - b. Settings
 - i. Inpatient (detox/stabilization, short term C.D. units)
 - ii. Residential (Therapeutic Communities)
 - iii. Outpatient
 - iv. Treatment via medication
2. Does treatment work?

Generally, statistics reflect that C.D. treatment is at least as successful as treatment for other chronic diseases.

Studies of outcomes for selected chronic diseases have shown:

- 40% to 60% of clients from C.D. treatment programs are continuously abstinent and an additional 15% to 30% have cut down on their use.

Of the other chronic diseases, the proportion of patients fully adhering to their medication schedule is:

- Type 2 diabetes (adults) – less than 60%
- Hypertension – Less than 40%
- Asthma – less than 40%

In addition to treatment adherence, relapse rates are very similar among all four of these chronic disorders:

- Chemical dependency relapse: 40% to 60%.

Of the other chronic diseases, the proportion of adult patients who require medical care to reestablish symptom remission in one year:

- Type 2 diabetes – 30% to 50%.
- Hypertension – 50% to 70%.
- Asthma – 50% to 70%.

McLellan, A.T.; Lewis D.C.; O'Brien, C.P. and Kieber, H.D. Drug Dependence, a Chronic Medical Illness: Implications for Treatment, Insurance, and Outcomes Evaluation, Journal of the American Medical Association, v.284, No. 13, p. 1689 (2000).

IV. Other Addictions and Compulsive Behaviors

Gambling

A. Definition: Problem gambling is gambling behavior which causes disruptions in any major area of life: psychological, physical, social or vocational. The term "Problem Gambling" includes, but is not limited to, the condition known as "Pathological", or "Compulsive" Gambling, a progressive addiction characterized by increasing preoccupation with gambling, a need to bet more money more frequently, restlessness or irritability when attempting to stop, "chasing" losses, and loss of control manifested by continuation of the gambling behavior in spite of mounting, serious, negative consequences. (National Council on Problem Gambling, www.ncpgambling.org)

B. Scope

Nationwide, over 75% of adults have gambled at least once in the past year. 2 million (1%) of U.S. adults are estimated to meet criteria for pathological gambling in a given year. Another 4-8 million (2-3%) would be considered problem gamblers; that is, they do not meet the full diagnostic criteria for pathological gambling, but meet one or more of the criteria and are experiencing problems due to their gambling behavior. The estimated social cost of problem gambling from bankruptcy, divorce, job loss & criminal justice costs was \$6.7 billion last year. Research also indicates that most adults who choose to gamble are able to do responsibly. (National Council on Problem Gambling, www.ncpgambling.org)

C. Diagnostic Criteria

In the DSM-V, pathological gambling has been moved from "Impulse Control Disorder Not Elsewhere Classified," to now be defined as a gambling disorder (and the only disorder) within the category of "Substance-Related and Addictive Disorders." Of the 10 criteria listed, 4-5 indicate mild severity, 6-7 moderate severity and 8-9, severe. The criteria are:

1. Preoccupation with gambling
2. Need to gamble with increasing amounts of money
3. Repeated unsuccessful efforts to control, cut back, or stop
4. Restless or irritable when attempting to cut down or stop
5. Gambling used as a way of escaping problems or distressed mood
6. "Chasing" losses
7. Lying to conceal the extent of involvement with gambling
8. Committed illegal acts to finance gambling

9. Jeopardized or lost a relationship or job
10. Relies on others to provide money to relieve a desperate financial situation (bail out).ⁱ

D. Stages

- a. In the *winning* stage, the gambler still has money and feels in control. Gambling enhances self-esteem and ego, and winning seems exciting and social. The gambler may shower family and friends with gifts or take expensive vacations.
- b. Eventually, the winning stage turns into the *losing* stage. As losses pile up, the gambler becomes preoccupied with gambling and makes larger and more frequent bets, “chasing” losses in the hopes of breaking even. At this point, the gambler will “max out” credit cards, cash in insurance policies, pawn or sell personal property, and dip into retirement or investment accounts. Lawyers with access to client funds frequently are tempted to shift these funds “temporarily,” a decision that ends up costing them their license to practice law. Lies, loan fraud, absenteeism, family disputes, and job changes are frequent danger signs.
- c. Gambling counselors note that compulsive gamblers frequently lose all having real value. It becomes like play money. One counselor reports, “They’ll talk about bets, and simply say, ‘I was down 500,’ but have to be forced to say the word, ‘dollars.’ They don’t view it as money anymore.” Compulsive gamblers may approach family or friends to ask for money, but loans or gifts do not solve the problem. They only provide the gambling addict with fuel for another gambling episode.
- d. Some problem gamblers will seek professional help at this stage, but many proceed to the next stage before getting help. At the *desperation* stage, the gamblers experience health problems such as panic or insomnia as debts pile up and relationships deteriorate. Having exhausted their financial resources, some gamblers turn to crime, and action gamblers begin gambling like escape gamblers to avoid their misery and feelings of hopelessness. Others simply run away from their family and debts, or attempt suicide. Melody Crawford Chadwick, “Bumps in the Road: Gambling.” G.P. Solo Magazine (A.B.A. Pub.; v.21, no. 7: October/November 2004).

E. Signs and Symptoms - 10 Questions to Ask About Gambling Behavior

1. You have often gambled longer than you had planned.
2. You have often gambled until your last dollar was gone.
3. Thoughts of gambling have caused you to lose sleep.
4. You have used your income or savings to gamble while letting bills go unpaid.
5. You have made repeated, unsuccessful attempts to stop gambling.
6. You have broken the law or considered breaking the law to finance your gambling.
7. You have borrowed money to finance your gambling.
8. You have felt depressed or suicidal because of your gambling losses.
9. You have been remorseful after gambling.
10. You have gambled to get money to meet your financial obligations.

F. Help for Problem Gamblers

- a. Northstar Problem Gambling Alliance – 1-800-333-hope,
www.northstarproblemgambling.org

- b. www.miph.org/gambling
- c. Gamblers Anonymous – www.gamblersanonymous.org
- d. Debtors Anonymous – www.debtorsanonymous.org

Sexual Compulsivity

- A. One definition: Recurrent and intense normophilic sexually arousing fantasies, sexual urges, or behaviors which cause clinically significant subjective distress in social, occupational, or other important areas of functioning. (Coleman, et al 2000)
- B. There is disagreement regarding whether compulsive sexual behavior is a psychosexual disorder, an addiction, a mood disorder, an impulse control disorder or an obsessive compulsive disorder.
- C. Assessment Questions include:
 - 1. Do you, or others who know you, find that you are overly preoccupied or obsessed with sexual activity?
 - 2. Do you find yourself compelled to engage in sexual activity in response to stress, anxiety, or depression?
 - 3. Have serious problems developed as a result of your sexual behavior (e.g., loss of a job or relationship, sexually transmitted diseases, injuries or illnesses, or sexual offenses)?
- D. Resources:
 - A. U of M Center for Sexual Health, 612-625-1500, www.phs.umn.edu
 - B. Sex Addicts Anonymous www.sexaa.org
 - C. COSA www.cosa-recovery.org
 - D. Society for the Advancement of Sexual Health www.sash.net

Eating Disorders

- A. Eating disorders are serious health conditions that can be both physically and emotionally destructive. Professional help is always recommended. If not identified or treated in their early stages, eating disorders can become chronic, debilitating, and even life-threatening.
- B. Resources:
 - a. www.nationaleatingdisorders.org
 - b. www.eatingdisordersanonymous.org

V. Discipline & Malpractice: Impact of Chemical Dependency on Lawyers

Specifically, treatment has been shown to have a tremendous impact on attorneys' malpractice liability and discipline. A recent study in Oregon analyzed a group of 55 recovering lawyers.

PERIOD	DISCIPLINARY COMPLAINTS	MALPRACTICE COMPLAINTS
five years before beginning sobriety	76	83
five years after beginning sobriety	20	21

GROUP	DISCIPLINARY RATE	MALPRACTICE RATE
five years after beginning sobriety	7%	8%
all lawyers in the state	9%	13.5%

VI. Mental Health Issues and the Practice of Law

Psychological Distress and Law School. “Although not present prior to law school, a variety of forms of psychological distress become evident at clinically significant levels within the first few months of law school attendance. These symptoms increased as the law students progressed through the three years of the program and did not significantly decrease during the first two years of practice.” Connie J.A. Beck, et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 Jour. of Law & Health 1, 44 (1995-96) citing G.A.H. Benjamin, et al, *The role of legal education in producing psychological distress among law students and lawyers*, American Bar Foundation Research Journal 225-252, (1986).

A. Surveys of mental health issues among lawyers.

1. “This sample of lawyers gives substantial indication of a profession operating at extremely high levels of psychological distress.” The study asked attorneys to self report on psychological distress symptoms. The results, with comparisons from other studies of the general population, were:

	Generalized Anxiety Disorder	Obsessive-Compulsiveness	Depression
Gen'l Pop. – Male	4%	2.1%	8.5%
Gen'l Pop – Female	4%	1.4%	14.1%
Male Lawyers	30%	20%	Almost 21%
Female Lawyers	Nearly 20%	15%	16%

Connie J.A. Beck, et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 Jour. of Law & Health 1, 49-50 (1995-96).

2. “Compared with the 3 to 9 percent of individuals in Western industrialized countries who suffer from depression, 19% of the Washington [state] lawyers suffered from statistically significant elevated levels of depression. Of these individuals, most were experiencing suicidal ideation. In addition, they typically isolated themselves, which greatly exacerbates their risk of their acting upon suicidal ideations.” G. Andrew H. Benjamin, et al.; *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*; 13 Intern'l. Jour. of Law and Psychiatry 233, 240 – 41 (1990).
3. A 1990 study by Johns Hopkins University found that of 28 professions, attorneys are the most likely to suffer from depression, at a rate 3.6 times the average for the adult population. W.W. Eaton, et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 Jour. of Occupational Medicine 1079 (1990).
4. Gender differences – The statistics show that female attorneys are far more likely to report mental health concerns than women in the general population, but at a lesser rate than male attorneys.

B. Impact of mental health issues on discipline and malpractice claims.

1. “[N]eglect cases tend to arise among lawyers who are procrastinating because they are clinically depressed. Finally, lawyers who go untreated tend to become defendants in malpractice claims.” Benjamin, *supra* at 244.
2. Minnesota’s experience
 - a. The number of disability related probationary cases due to mental health issues has been increasing substantially.

	12/31/99	12/31/08	12/31/13
Proportion of Probation Cases With Mental Health Disorder as a Factor To all Disciplinary Probation Cases	9/9%	23.3%	10.3%

Annual Report of the Lawyers Professional Responsibility Board and the Office of Lawyers Professional Responsibility, (June 2000, June 2009, July 2014)

- b. During the MSBA Depression Task Force discussion in 1999, OLPR Director Ed Cleary reported that the rate at which mental health is being reported as a factor in disciplinary cases is increasing, while the rate at which alcohol and drugs are being reported as a factor is decreasing.
- c. Many misconduct allegations involve behaviors closely related to the symptoms of mental health issues, primarily depression. For example, 50% of all OLPR open probationary files involved charges of neglect and non-communication; 23% involved non-cooperation with OLPR; and 36% involved conduct prejudicial to the administration of justice (primarily missed court appearances). *Annual Report*, (June 2002).

A significant number of attorney discipline cases involve impaired attorneys. Since the Supreme Court addressed the impact of alcoholism on discipline in *In re Johnson* in 1982, more than 100 suspension or disbarment cases have involved alcoholism or alcohol dependency. Since *In re Weyhrich*, when the court applied the mitigation test to mental illness, more than 50 public discipline decisions have included the requirement that the attorney prove psychological fitness before being reinstated to practice.

The very best way to prevent discipline of yourself or your colleagues is to get the attorney the help he or she needs by contacting LCL.

VII. Mood Disorders

- A. Common types of depression
 1. Major depression – manifested by a combination of symptoms (see below) that interferes with the ability to work, study, sleep, eat, and enjoy once pleasurable activities. An episode may occur only once, but more commonly returns several times in a lifetime.
 2. Dysthymia – involves long-term, chronic symptoms that do not disable, but keep one from functioning well or feeling good. An individual with dysthymia may also experience major depressive episodes.

3. Bipolar disorder – also called manic depression. Not nearly as frequent, is characterized by cycling mood changes from extreme elation (mania) to depression. Most often the mood change is gradual. Depressive condition is similar to major depression. A manic period is characterized by being over-talkative and overactive, and having excess energy. It affects thinking, judgment, and social behavior and may lead to grand romantic or business schemes that create serious problems and embarrassment. Untreated mania can lead to a psychotic state.

B. Characteristics of depression

1. It is defined as a mood disorder that also affects our body and thoughts.
2. Symptoms of major depression include:
 - a. Persistent sad, anxious or “empty” (absence of feelings) mood.
 - b. Feelings of hopelessness and pessimism.
 - c. Loss of interest or pleasure in activities we once enjoyed, e.g. sex.
 - d. Feelings of guilt, worthlessness, helplessness.
 - e. Decreased energy, fatigue, being “slowed down.”
 - f. Difficulty concentrating, remembering, making decisions.
 - g. Insomnia, early-morning awakening, or oversleeping.
 - h. Appetite and/or weight loss or overeating and weight gain.
 - i. Thoughts of death or suicide, suicide attempts.
 - j. Restlessness, irritability.
 - k. Persistent physical symptoms that do not respond to treatment, such as headaches, digestive disorders, and chronic pain.
3. These symptoms must persist over a period of time. Depression is not a blue mood that passes after a few hours or days.
4. Often, the symptoms occur in stages. For instance, feelings of sadness will precede the empty feeling which reflects an absence of feelings. This is followed by a feeling of helplessness or hopelessness, which is often followed by thoughts of death or suicide.
5. Depression from the Outside
Gloomy · Tearful · Pessimistic · Negative · Moody · Irritable · Complaining
Brooding · Anxious · Critical
6. Gender Differences
 - a. Women report depression twice as frequently as men and may be misdiagnosed.
 - b. Men are less likely to admit depression and doctors are less likely to suspect it. Men tend to cover up symptoms with alcohol, drugs, and work. Depression in men is more likely to show up as anger and irritability, rather than hope/helplessness.

(NIH Pub No. 00-3561, 2000; avail. At www.nimh.nih.gov/publicat/depression.cfm)

C. Anxiety

1. Generalized Anxiety Disorder (GAD), is an anxiety disorder characterized by chronic anxiety, exaggerated worry and tension, even when there is little or nothing to provoke it.

(www.nimh.nih.gov/healthinformation/gadmenu.cfm)

2. Obsessive Compulsive Disorder – people with OCD have persistent, upsetting thoughts (obsessions) and use rituals (compulsions) to control the anxiety these thoughts produce. Most of the time, the rituals end up controlling them.

(www.nimh.nih.gov/publicat/anxiety.cfm#anx3)

2. Post-traumatic stress disorder (PTSD) develops after a terrifying ordeal that involved physical harm or the threat of physical harm. The person who develops PTSD may have been the one who was harmed, the harm may have happened to a loved one, or the person may have witnessed a harmful event that happened to loved ones or strangers.

(www.nimh.nih.gov/publicat/anxiety.cfm#anx4)

D. ADHD

1. ADHD is a neurobiological condition that affects individuals across the lifespan.

2. Signs and symptoms include

- a. Distractibility
- b. Disorganization
- c. Low self esteem
- d. Fidgeting
- e. Incomplete projects
- f. Emergencies
- g. Procrastination
- h. Chronic lateness
- i. Boredom
- j. Interrupting others
- k. Losing things
- l. Perfectionism
- m. Hyperfocus
- n. Impulsivity

3. One of the biggest challenges is a shame based distortion that everyone else has it all together.

4. Resources:

- a. www.ldaminnnesota.org – click on Attention Deficit Support Services
- b. www.add.org
- c. www.help4adhd.org/
- d. www.chadd.org/

E. Unresolved Grief

1. Grief characterized by the extended duration of the symptoms, by interference of the grief symptoms with the normal functioning of the mourner, and/or by the intensity of the symptoms (for example, intense suicidal thoughts or acts)

2. Resources include hospital based and community survivor support as well as web links

F. Age Related Dementia (Alzheimer's Disease)

1. Alzheimer's Disease is the most common form of dementia. It destroys brain cells and causes problems with memory, thinking and behavior severe enough to affect work, lifelong hobbies or social life. It is progressive and fatal
2. There are ten warning signs (www.alz.org)
 - a. Memory loss
 - b. Difficulty performing familiar tasks
 - c. Problems with language
 - d. Disorientation to time and place
 - e. Poor or decreased judgment
 - f. Problems with abstract thinking
 - g. Misplacing things
 - h. Changes in mood or behavior
 - i. Changes in personality
 - j. Loss of initiative
3. Comparisons between Alzheimer's Disease and normal age related changes

Someone with Alzheimer's disease symptoms	Someone with normal age-related memory changes
Forgets entire experiences	Forgets part of an experience
Rarely remembers later	Often remembers later
Is gradually unable to follow written/spoken directions	Is usually able to follow written/spoken directions
Is gradually unable to use notes as reminders	Is usually able to use notes as reminders
Is gradually unable to care for self	Is usually able to care for self

4. Lawyers experiencing signs of dementia may deny the problem and yet can make mistakes or neglect matter resulting in harm to clients. Sensitive and respectful intervention is needed to help the lawyer retire with dignity. LCL can be a resource.

VIII. Suicide

Depression, untreated, is the #1 cause of suicide. Lawyers commit suicide at six times the rate of the general population. You may even know of some lawyers who have taken their own lives.

By offering help you can often (not always) prevent a suicide

Warning Signs of Suicide:

- Talking about ending one's life
- Statements about hopelessness, helplessness or worthlessness
- Preoccupation with death
- Suddenly happier, calmer
- Visiting or calling people one cares about, especially those one hasn't contacted recently
- Making arrangements, setting one's affairs in order

- Giving things away
- Significant symptoms of depression

QPR (Question Persuade Refer) is an approach to preventing suicide that has been proven to work. Over 250,000 people have been trained in QPR and suicide rates in setting where these people work have declined significantly. QPR teaches you how to ask someone if they are thinking about killing themselves, how to determine the seriousness of their situation, how to persuade them to accept help and how to connect them with appropriate resources. To become a QPR gatekeeper takes 2 hours or less. MN LCL offers this training free of charge. Your bar association or other legal group can schedule a training session for up to 25 people by calling LCL.

If you have not had the training, you can still make a difference by doing the following:

- Be aware of the signs of depression and the warning signs of suicide
- Be willing to get involved
- Ask the person you are concerned about if they are considering harming themselves
- Tell them you care about them and can assist them in getting help
- Help them access help by calling LCL, by going to a mental health clinic, by going to a hospital, etc.
- Do talk with their family or others if they are reluctant to accept help
- If the person is clearly planning on taking their life and refuses any offers of assistance, call local law enforcement. They are authorized to place the person on a 72-hour hold and take them to a hospital or other treatment facility. The person may be angry with you, but better mad than dead.

IX. The Interrelationship between Addiction and Mental Health.

A. Frequency of occurrence (using depression as an example).

Addiction and dependency disorders (both alcohol and other substances) frequently coexist with depression. Substance use disorders are present in 32 percent of individuals with depression disorders. They co-occur in 27 percent of those with major depression and 56 percent of those with bipolar disorder. National Institute of Mental Health, Fact Sheet, “Co-Occurrence of Depression with Medical, Psychiatric, and Substance Abuse Disorders.”

<http://www.nimh.nih.gov/publicat/abuse.cfm>

B. Diagnosis issues

Substance use must be discontinued in order to clarify the diagnoses and maximize the effectiveness of psychiatric interventions. Treatment for depression as a separate condition is necessary if the depression remains after the substance use problem is ended. Id.

X. Lawyers Concerned for Lawyers (LCL): Minnesota’s Lawyers Assistance Program (LAP)

A. History of LCL: LCL was founded over 30 years ago by lawyers to provide confidential assistance to other lawyers who were abusing alcohol. Primary importance was placed on two (2) factors.

1. Lawyers providing voluntary assistance to other lawyers.

2. Confidentiality.

- a.) For the attorney being helped
 - i.) The stigma of being chemically dependent, mentally ill, or otherwise needing help from others.
 - ii.) The potential for problems with the Office of Lawyers Professional Responsibility.
- b.) For the concerned person (coworker, colleague, family members, friend): fear that the attorney needing help will retaliate.
- c.) For an attorney providing help: duty to report misconduct under Rule 8.3, Minn. Rules of Professional Conduct.
 - i.) Historically, the Court had an informal arrangement with LCL. The Court agreed it would not uphold discipline imposed upon an LCL volunteer attorney for not reporting an attorney's misconduct learned while assisting that attorney with an alcohol use problem.
 - ii.) In April 2000, the Court amended Rule 8.3 and its Comment:

“Rule 8.3 Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate authority.

(b) A lawyer who knows that a judge has committed a violation of the applicable Code of Judicial Conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information that Rule 1.6 requires or allows a lawyer to keep confidential or information gained by a lawyer or judge while participating in a lawyer's assistance program or other program providing assistance, support, or counseling to lawyers who are chemically dependent or have mental disorders.”

Addition to the comment for this rule.

“Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in a bona fide lawyers assistance program or other program that provides assistance, support, or counseling to lawyers, including lawyers and judges who may be impaired due to chemical abuse or dependency, behavioral addictions, depression, or other mental disorders. In that circumstance, providing for the confidentiality of information obtained by a lawyer-participant encourages lawyers and judges to participate and seek treatment through such programs. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance, which may then result in additional harm to themselves, their clients, and the public. The rule, therefore, exempts lawyers participating in such programs from the reporting obligations of paragraphs (a) and (b) with respect to information they acquire while participating. A lawyer exempted from mandatory reporting under part (c) of the rule may nevertheless report misconduct in the lawyer's discretion, particularly if the impaired lawyer or judge indicates an intent to engage in future illegal activity, for example, the conversion of client funds. See Rule 1.6.”

- B. Services historically provided have included:
1. Intervention – formal and informal.
 2. Information, informal evaluation, and referral for substance misuse and assistance to concerned persons.
 3. Support
 - a. Individual – mentoring, sponsorship
 - b. Group – AA meetings, membership meetings
 4. Education and Outreach
- C. As a “full service” Lawyer Assistance Program (LAP), LCL also addresses mental health issues such as depression, bipolar, anxiety disorder, PTSD, and obsessive compulsive disorder. We also address compulsive behavior related to issues such as gambling, sex, and food. In addition, lawyers and their immediate family members may receive support around stress, financial, career, relationship and other issues. Our expanded services now also include:
1. Subcontracting with an EAP provider. DOR and Associates (DOR) provides confidential 24-hour crisis line, evaluation, referral, and up to four (4) counseling sessions per year for each issue(s) presented. Its staff includes master’s level counselors and licensed alcohol and drug counselors with many years of experience in the field.
 2. Additional support opportunities individually and in group settings.
 3. Increased Education, Outreach, and Public Awareness efforts, including presenting CLEs and improving our website by adding information and links to other sites.
- D. In 2013-14 LCL helped over 400 lawyers, judges, law students or their family members. Approximately 40% of those presented with a mental health problem. Over 200 referrals were made for professional assistance.

1/3 were seen for addiction, primarily alcohol but also involving other legal and illegal drugs, gambling, and other compulsive behaviors. A significant percentage of those seen for addiction are “dual diagnosis”. Some depression cases involve suicidal ideation.

Of those cases involving stress and depression, several clients cited “billable hours” as the primary cause of stress. Somewhat surprisingly, there were more “severe” psychiatric cases coming in – more than expected - involving long term psychiatric care.

XI. CONCLUSION

There is hope and there is help for impaired lawyers, judges, and law students, and it may start with you. Chemical dependency and many mental health disorders share a common symptom – the impaired person will begin to isolate him/herself from colleagues, friends, and family. The intervention process can be as simple as not mirroring that behavior. When you see a colleague begin to withdraw, reach out and try to keep communication lines open: talk about LCL’s expanded services and attorney support groups. Remember that you, too, may call LCL if you’d like help and support in your efforts. We’re here as a confidential and free resource for both the impaired person and the concerned person who wants to help.

Lawyers Concerned for Lawyers

SELECTED RESOURCES ON COMPASSION FATIGUE, TRAUMA, MENTAL HEALTH, SUBSTANCE MISUSE AND COMPULSIVE BEHAVIORS

Lawyers Concerned for Lawyers (Minnesota)

651-646-5590; 877-525-6466 (toll-free) www.mnlcl.org; help@mnlcl.org

Lawyers Concerned for Lawyers is the provider of Minnesota's Lawyers Assistance Program for lawyers, judges, law students and their immediate family members. We offer free, confidential help with addictions, mental health disorders, chronic stress and personal and career related issues. Our services include: 24-hour crisis response; professional clinical assessments and referrals; interventions; short term counseling; support groups facilitated by licensed counselors; peer mentoring and support and education.

Trauma and Compassion Fatigue Materials

American Bar Association

http://www.americanbar.org/groups/lawyer_assistance/resources/compassion_fatigue.html

provides general information and links to additional resources.

University of Minnesota School of Social Work

http://cascw.umn.edu/wp-content/uploads/2013/12/CW360_2012.pdf

This special issue on trauma in the child welfare arena includes an article by Judge Kathryn Quaintance on "The Judicial Perspective on Secondary Trauma in Child Welfare"

Oregon Lawyer Assistance Program article on compassion fatigue:

<http://www.oaap.org/data/documents/insight/TraumaTollJan2011.pdf>

Self-Test for Compassion Fatigue: http://www.proqol.org/ProQol_Test.html

Compassion Fatigue Awareness Project: <http://www.compassionfatigue.org>

Secondary Trauma and Burnout in Attorneys: Effects of Work with Clients Who are Victims of Domestic Violence and Abuse:

http://www.americanbar.org/newsletter/publications/cdv_enewsletter_home/expertLevin.html

Secondary Trauma and the Legal Process: <http://law.scu.edu/redress/>

(scroll down for the article)

Vicarious Trauma in Attorneys (Levin, Greisberg, 2003) was one of the earliest articles on this phenomenon and is cited in most other studies.

<http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1189&context=plr>

Stress, Burnout, Vicarious Trauma, and Other. Emotional Realities in the Lawyer/Client Relationship is a 2004 Touro Law Review article transcribing a panel discussion on the topic.

<http://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1063&context=scholarlyworks>

Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice is based on a 2002 study. <http://www.courts.state.md.us/fccip/docs/vicarioustraumainjudges.pdf>

Vicarious Trauma: The Silent Stressor discusses effects of trauma on court personnel.
<http://www.ncsc.org/~media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2012/Vicarious%20Trauma.ashx>

For Journalists: Ochberg Society for Trauma Journalism - The Ochberg Society is a network of journalists who advance the compassionate and ethical coverage of trauma, conflict and social injustice.
www.ochbergsociety.org

Other Issues

American Bar Association

http://www.americanbar.org/groups/lawyer_assistance.html for lawyer assistance resources and information across the country. National resources are listed at <http://apps.americanbar.org/legalservices/colap/laplinks.html> Numerous articles are linked at <http://apps.americanbar.org/legalservices/colap/resourcelib.html>.

Past issues of *GP Solo*, a publication of the ABA General Practice, Small Firm and Solo Division, include four theme issues "Bumps in the Road." Many topics related to addiction, mental illness, stress and others are available. Back issues may be viewed at http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index.html

Other Lawyers Assistance Programs

Lawyer Assistance Programs (LAPs) are available nationwide. Some are independent, some are under the auspices of the court and some are part of the bar association. They are listed at http://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state.html

www.lawlifeline.org

LawLifeline is designed for law students and offers valuable information that will also be helpful to lawyers. It is a project of the Dave Nee Foundation which offers suicide prevention training and resources to lawyers and law students nationwide. www.daveneefoundation.org. See also www.suicidepreventionlifeline.org

www.lawyerswithdepression.com

This comprehensive website, founded by a lawyer, offers support and resources. A discussion about work issues is at http://www.lawyerswithdepression.com/depression_as_disability.asp.

U. S. Department of Health and Human Services and Substance Abuse and Mental Health Services Administration (SAMHSA) clearinghouse for alcohol and drug information

<http://www.samhsa.gov> This organization has a great deal of information for individuals seeking help, professionals in the helping professions and researchers.

Mayo Clinic Stress Management Resources

Stress management articles at <http://www.mayoclinic.com/health/stress-management/MY00435>

American Psychological Association

www.apa.org

Numerous resources on many mental health and wellness topics. For specific information about depression visit, <http://www.apa.org/pi/aging/depression.html>

National Alliance on Mental Illness

www.nami.org

NAMI has information on a wide variety of mental illnesses including ADHD, Bipolar Disorder, Personality Disorders, Depression, Eating Disorders, OCD, PTSD and others. There are also national and local support resources. The Minnesota website is www.namihelps.org.

National Institute of Mental Health

<http://www.nimh.nih.gov/health/topics/index.shtml>

Information regarding various mental health issues, including anxiety disorders and depression.

Recovery Month

<http://www.recoverymonth.gov/>

This annual event is held every September. It features events and resources for those with substance use issues and those who care about them.

National Institute on Drug Abuse

<http://drugabuse.gov/nidahome.html>

This division of the National Institutes of Health provides information on the science of drug and alcohol addiction. There are links to a wide variety of substances. An excellent pamphlet, The Science of Addiction, is available by mail or as a PDF, in English or Spanish.

12 Step Support Meetings – the following sites will direct you to 12 step meetings and other resources.

<http://www.aaminneapolis.org> – includes links to St. Paul and greater Minnesota sites

<http://www.al-anon-alateen-msp.org/>

<http://www.naminnesota.org>

www.womenforsobriety.org – includes on-line chat

www.aaonline.net is one example of on-line AA meetings

<http://www.gamblersanonymous.org/>

<http://www overeaters.org/>; <http://www.eatingdisordersanonymous.org>

<http://www.minnesotarecovery.info/OtherMN12StepGroups.htm>

<http://www.sexaa.org/Meetings/UnitedStates/meeting.php?state=MN>

<http://www.allina.com/ahs/grief.nsf/>

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Do You Suffer From Decision Fatigue?

By JOHN TIERNEY

http://www.nytimes.com/2011/08/21/magazine/do-you-suffer-from-decision-fatigue.html?pagewanted=all&_r=0

Published: August 17, 2011

Three men doing time in Israeli prisons recently appeared before a parole board consisting of a judge, a criminologist and a social worker. The three prisoners had completed at least two-thirds of their sentences, but the parole board granted freedom to only one of them. Guess which one:

Case 1 (heard at 8:50 a.m.): An Arab Israeli serving a 30-month sentence for fraud.

Case 2 (heard at 3:10 p.m.): A Jewish Israeli serving a 16-month sentence for assault.

Case 3 (heard at 4:25 p.m.): An Arab Israeli serving a 30-month sentence for fraud.

There was a pattern to the parole board's decisions, but it wasn't related to the men's ethnic backgrounds, crimes or sentences. It was all about timing, as researchers discovered by analyzing more than 1,100 decisions over the course of a year. Judges, who would hear the prisoners' appeals and then get advice from the other members of the board, approved parole in about a third of the cases, but the probability of being paroled fluctuated wildly throughout the day. Prisoners who appeared early in the morning received parole about 70 percent of the time, while those who appeared late in the day were paroled less than 10 percent of the time.

The odds favored the prisoner who appeared at 8:50 a.m. — and he did in fact receive parole. But even though the other Arab Israeli prisoner was serving the same sentence for the same crime — fraud — the odds were against him when he appeared (on a different day) at 4:25 in the afternoon. He was denied parole, as was the Jewish Israeli prisoner at 3:10 p.m., whose sentence was shorter than that of the man who was released. They were just asking for parole at the wrong time of day.

There was nothing malicious or even unusual about the judges' behavior, which was reported earlier this year by Jonathan Levav of Stanford and Shai Danziger of Ben-Gurion University. The judges' erratic judgment was due to the occupational hazard of being, as George W. Bush once put it, "the decider." The mental work of ruling on case after case, whatever the individual merits, wore them down. This sort of decision fatigue can make quarterbacks prone to dubious choices late in the game and C.F.O.'s prone to disastrous dalliances late in the evening. It routinely warps the judgment of everyone, executive and nonexecutive, rich and poor — in fact, it can take a special toll on the poor. Yet few people are even aware of it, and researchers are only beginning to understand why it happens and how to counteract it.

Decision fatigue helps explain why ordinarily sensible people get angry at colleagues and families, splurge on clothes, buy junk food at the supermarket and can't resist the dealer's offer to rustproof their new car. No matter how rational and high-minded you try to be, you can't make decision after decision without paying a biological price. It's different from ordinary physical fatigue — you're not consciously aware of being tired — but you're low on mental energy. The more choices you make throughout the day, the harder each one becomes for your brain, and eventually it looks for shortcuts, usually in either of two very different ways. One shortcut is to become reckless: to act impulsively instead of expending the energy to first think through the consequences. (Sure, tweet that photo! What could go wrong?) The other shortcut is the ultimate energy saver: do nothing. Instead of agonizing over decisions, avoid any choice. Ducking a decision often creates bigger problems in the long run, but for the moment, it eases the mental strain. You start to resist any change, any potentially risky move — like releasing a prisoner who might commit a crime. So the fatigued judge on a parole board takes the easy way out, and the prisoner keeps doing time.

Decision fatigue is the newest discovery involving a phenomenon called ego depletion, a term coined by the social psychologist Roy F. Baumeister in homage to a Freudian hypothesis. Freud speculated that the self, or ego, depended on mental activities involving the transfer of energy. He was vague about the details, though, and quite wrong about some of them (like his idea that artists "sublimate" sexual energy into their work, which would imply that adultery should be especially rare at artists' colonies). Freud's energy model of the self was generally ignored until the end of the century,

when Baumeister began studying mental discipline in a series of experiments, first at Case Western and then at Florida State University.

These experiments demonstrated that there is a finite store of mental energy for exerting self-control. When people fended off the temptation to scarf down M&M's or freshly baked chocolate-chip cookies, they were then less able to resist other temptations. When they forced themselves to remain stoic during a tearjerker movie, afterward they gave up more quickly on lab tasks requiring self-discipline, like working on a geometry puzzle or squeezing a hand-grip exerciser. Willpower turned out to be more than a folk concept or a metaphor. It really was a form of mental energy that could be exhausted. The experiments confirmed the 19th-century notion of willpower being like a muscle that was fatigued with use, a force that could be conserved by avoiding temptation. To study the process of ego depletion, researchers concentrated initially on acts involving self-control — the kind of self-discipline popularly associated with willpower, like resisting a bowl of ice cream. They weren't concerned with routine decision-making, like choosing between chocolate and vanilla, a mental process that they assumed was quite distinct and much less strenuous. Intuitively, the chocolate-vanilla choice didn't appear to require willpower.

But then a postdoctoral fellow, Jean Twenge, started working at Baumeister's laboratory right after planning her wedding. As Twenge studied the results of the lab's ego-depletion experiments, she remembered how exhausted she felt the evening she and her fiancé went through the ritual of registering for gifts. Did they want plain white china or something with a pattern? Which brand of knives? How many towels? What kind of sheets? Precisely how many threads per square inch?

"By the end, you could have talked me into anything," Twenge told her new colleagues. The symptoms sounded familiar to them too, and gave them an idea. A nearby department store was holding a going-out-of-business sale, so researchers from the lab went off to fill their car trunks with simple products — not exactly wedding-quality gifts, but sufficiently appealing to interest college students. When they came to the lab, the students were told they would get to keep one item at the end of the experiment, but first they had to make a series of choices. Would they prefer a pen or a candle? A vanilla-scented candle or an almond-scented one? A candle or a T-shirt? A black T-shirt or a red T-shirt? A control group, meanwhile — let's call them the nondeciders — spent an equally long period contemplating all these same products without having to make any choices. They were asked just to give their opinion of each product and report how often they had used such a product in the last six months.

Afterward, all the participants were given one of the classic tests of self-control: holding your hand in ice water for as long as you can. The impulse is to pull your hand out, so self-discipline is needed to keep the hand underwater. The deciders gave up much faster; they lasted 28 seconds, less than half the 67-second average of the nondeciders. Making all those choices had apparently sapped their willpower, and it wasn't an isolated effect. It was confirmed in other experiments testing students after they went through exercises like choosing courses from the college catalog.

For a real-world test of their theory, the lab's researchers went into that great modern arena of decision making: the suburban mall. They interviewed shoppers about their experiences in the stores that day and then asked them to solve some simple arithmetic problems. The researchers politely asked them to do as many as possible but said they could quit at any time. Sure enough, the shoppers who had already made the most decisions in the stores gave up the quickest on the math problems. When you shop till you drop, your willpower drops, too.

Any decision, whether it's what pants to buy or whether to start a war, can be broken down into what psychologists call the Rubicon model of action phases, in honor of the river that separated Italy from the Roman province of Gaul. When Caesar reached it in 49 B.C., on his way home after conquering the Gauls, he knew that a general returning to Rome was forbidden to take his legions across the river with him, lest it be considered an invasion of Rome. Waiting on the Gaul side of the river, he was in the "predecisional phase" as he contemplated the risks and benefits of starting a civil war. Then he stopped calculating and crossed the Rubicon, reaching the "postdecisional phase," which Caesar defined much more felicitously: "The die is cast."

The whole process could deplete anyone's willpower, but which phase of the decision-making process was most fatiguing? To find out, Kathleen Vohs, a former colleague of Baumeister's now at the University of Minnesota, performed an experiment using the self-service Web site of Dell Computers. One group in the experiment carefully studied the advantages and disadvantages of various features available for a computer — the type of screen, the size of the hard drive, etc. — without actually making a final decision on which ones to choose. A second group was given a list of

predetermined specifications and told to configure a computer by going through the laborious, step-by-step process of locating the specified features among the arrays of options and then clicking on the right ones. The purpose of this was to duplicate everything that happens in the postdecisional phase, when the choice is implemented. The third group had to figure out for themselves which features they wanted on their computers and go through the process of choosing them; they didn't simply ponder options (like the first group) or implement others' choices (like the second group). They had to cast the die, and that turned out to be the most fatiguing task of all. When self-control was measured, they were the one who were most depleted, by far.

The experiment showed that crossing the Rubicon is more tiring than anything that happens on either bank — more mentally fatiguing than sitting on the Gaul side contemplating your options or marching on Rome once you've crossed. As a result, someone without Caesar's willpower is liable to stay put. To a fatigued judge, denying parole seems like the easier call not only because it preserves the status quo and eliminates the risk of a parolee going on a crime spree but also because it leaves more options open: the judge retains the option of paroling the prisoner at a future date without sacrificing the option of keeping him securely in prison right now. Part of the resistance against making decisions comes from our fear of giving up options. The word "decide" shares an etymological root with "homicide," the Latin word "caedere," meaning "to cut down" or "to kill," and that loss looms especially large when decision fatigue sets in.

Once you're mentally depleted, you become reluctant to make trade-offs, which involve a particularly advanced and taxing form of decision making. In the rest of the animal kingdom, there aren't a lot of protracted negotiations between predators and prey. To compromise is a complex human ability and therefore one of the first to decline when willpower is depleted. You become what researchers call a cognitive miser, hoarding your energy. If you're shopping, you're liable to look at only one dimension, like price: just give me the cheapest. Or you indulge yourself by looking at quality: I want the very best (an especially easy strategy if someone else is paying). Decision fatigue leaves you vulnerable to marketers who know how to time their sales, as Jonathan Levav, the Stanford professor, demonstrated in experiments involving tailored suits and new cars.

The idea for these experiments also happened to come in the preparations for a wedding, a ritual that seems to be the decision-fatigue equivalent of Hell Week. At his fiancée's suggestion, Levav visited a tailor to have a bespoke suit made and began going through the choices of fabric, type of lining and style of buttons, lapels, cuffs and so forth.

"By the time I got through the third pile of fabric swatches, I wanted to kill myself," Levav recalls. "I couldn't tell the choices apart anymore. After a while my only response to the tailor became 'What do you recommend?' I just couldn't take it."

Levav ended up not buying any kind of bespoke suit (the \$2,000 price made that decision easy enough), but he put the experience to use in a pair of experiments conducted with Mark Heitmann, then at Christian-Albrechts University in Germany; Andreas Herrmann, at the University of St. Gallen in Switzerland; and Sheena Iyengar, of Columbia. One involved asking M.B.A. students in Switzerland to choose a bespoke suit; the other was conducted at German car dealerships, where customers ordered options for their new sedans. The car buyers — and these were real customers spending their own money — had to choose, for instance, among 4 styles of gearshift knobs, 13 kinds of wheel rims, 25 configurations of the engine and gearbox and a palette of 56 colors for the interior.

As they started picking features, customers would carefully weigh the choices, but as decision fatigue set in, they would start settling for whatever the default option was. And the more tough choices they encountered early in the process — like going through those 56 colors to choose the precise shade of gray or brown — the quicker people became fatigued and settled for the path of least resistance by taking the default option. By manipulating the order of the car buyers' choices, the researchers found that the customers would end up settling for different kinds of options, and the average difference totaled more than 1,500 euros per car (about \$2,000 at the time). Whether the customers paid a little extra for fancy wheel rims or a lot extra for a more powerful engine depended on when the choice was offered and how much willpower was left in the customer.

Similar results were found in the experiment with custom-made suits: once decision fatigue set in, people tended to settle for the recommended option. When they were confronted early on with the toughest decisions — the ones with the most options, like the 100 fabrics for the suit — they became fatigued more quickly and also reported enjoying the shopping experience less.

Shopping can be especially tiring for the poor, who have to struggle continually with trade-offs. Most of us in America won't spend a lot of time agonizing over whether we can afford to buy soap, but it can be a depleting choice in rural India. Dean Spears, an economist at Princeton, offered people in 20 villages in Rajasthan in northwestern India the chance to buy a couple of bars of brand-name soap for the equivalent of less than 20 cents. It was a steep discount off the regular price, yet even that sum was a strain for the people in the 10 poorest villages. Whether or not they bought the soap, the act of making the decision left them with less willpower, as measured afterward in a test of how long they could squeeze a hand grip. In the slightly more affluent villages, people's willpower wasn't affected significantly. Because they had more money, they didn't have to spend as much effort weighing the merits of the soap versus, say, food or medicine.

Spears and other researchers argue that this sort of decision fatigue is a major — and hitherto ignored — factor in trapping people in poverty. Because their financial situation forces them to make so many trade-offs, they have less willpower to devote to school, work and other activities that might get them into the middle class. It's hard to know exactly how important this factor is, but there's no doubt that willpower is a special problem for poor people. Study after study has shown that low self-control correlates with low income as well as with a host of other problems, including poor achievement in school, divorce, crime, alcoholism and poor health. Lapses in self-control have led to the notion of the "undeserving poor" — epitomized by the image of the welfare mom using food stamps to buy junk food — but Spears urges sympathy for someone who makes decisions all day on a tight budget. In one study, he found that when the poor and the rich go shopping, the poor are much more likely to eat during the shopping trip. This might seem like confirmation of their weak character — after all, they could presumably save money and improve their nutrition by eating meals at home instead of buying ready-to-eat snacks like Cinnabons, which contribute to the higher rate of obesity among the poor. But if a trip to the supermarket induces more decision fatigue in the poor than in the rich — because each purchase requires more mental trade-offs — by the time they reach the cash register, they'll have less willpower left to resist the Mars bars and Skittles. Not for nothing are these items called impulse purchases.

And this isn't the only reason that sweet snacks are featured prominently at the cash register, just when shoppers are depleted after all their decisions in the aisles. With their willpower reduced, they're more likely to yield to any kind of temptation, but they're especially vulnerable to candy and soda and anything else offering a quick hit of sugar. While supermarkets figured this out a long time ago, only recently did researchers discover why.

The discovery was an accident resulting from a failed experiment at Baumeister's lab. The researchers set out to test something called the Mardi Gras theory — the notion that you could build up willpower by first indulging yourself in pleasure, the way Mardi Gras feasters do just before the rigors of Lent. In place of a Fat Tuesday breakfast, the chefs in the lab at Florida State whipped up lusciously thick milkshakes for a group of subjects who were resting in between two laboratory tasks requiring willpower. Sure enough, the delicious shakes seemed to strengthen willpower by helping people perform better than expected on the next task. So far, so good. But the experiment also included a control group of people who were fed a tasteless concoction of low-fat dairy glop. It provided them with no pleasure, yet it produced similar improvements in self-control. The Mardi Gras theory looked wrong. Besides tragically removing an excuse for romping down the streets of New Orleans, the result was embarrassing for the researchers. Matthew Gailliot, the graduate student who ran the study, stood looking down at his shoes as he told Baumeister about the fiasco.

Baumeister tried to be optimistic. Maybe the study wasn't a failure. Something had happened, after all. Even the tasteless glop had done the job, but how? If it wasn't the pleasure, could it be the calories? At first the idea seemed a bit daft. For decades, psychologists had been studying performance on mental tasks without worrying much about the results being affected by dairy-product consumption. They liked to envision the human mind as a computer, focusing on the way it processed information. In their eagerness to chart the human equivalent of the computer's chips and circuits, most psychologists neglected one mundane but essential part of the machine: the power supply. The brain, like the rest of the body, derived energy from glucose, the simple sugar manufactured from all kinds of foods. To establish cause and effect, researchers at Baumeister's lab tried refueling the brain in a series of experiments involving lemonade mixed either with sugar or with a diet sweetener. The sugary lemonade provided a burst of glucose, the effects of which could be observed right away in the lab; the sugarless variety tasted quite similar without providing the same burst of glucose. Again and again, the sugar restored willpower, but the artificial sweetener had no effect. The glucose would at least mitigate the ego depletion and sometimes completely reverse it. The restored willpower improved people's self-control as well as the quality of their decisions: they resisted irrational bias when making choices, and when asked to make financial decisions, they were more likely to choose the better long-term strategy instead of going for a quick payoff. The ego-depletion effect was even demonstrated with dogs in two studies by Holly Miller and Nathan DeWall at the University of Kentucky. After

obeying sit and stay commands for 10 minutes, the dogs performed worse on self-control tests and were also more likely to make the dangerous decision to challenge another dog's turf. But a dose of glucose restored their willpower.

Despite this series of findings, brain researchers still had some reservations about the glucose connection. Skeptics pointed out that the brain's overall use of energy remains about the same regardless of what a person is doing, which doesn't square easily with the notion of depleted energy affecting willpower. Among the skeptics was Todd Heatherton, who worked with Baumeister early in his career and eventually wound up at Dartmouth, where he became a pioneer of what is called social neuroscience: the study of links between brain processes and social behavior. He believed in ego depletion, but he didn't see how this neural process could be caused simply by variations in glucose levels. To observe the process — and to see if it could be reversed by glucose — he and his colleagues recruited 45 female dieters and recorded images of their brains as they reacted to pictures of food. Next the dieters watched a comedy video while forcing themselves to suppress their laughter — a standard if cruel way to drain mental energy and induce ego depletion. Then they were again shown pictures of food, and the new round of brain scans revealed the effects of ego depletion: more activity in the nucleus accumbens, the brain's reward center, and a corresponding decrease in the amygdala, which ordinarily helps control impulses. The food's appeal registered more strongly while impulse control weakened — not a good combination for anyone on a diet. But suppose people in this ego-depleted state got a quick dose of glucose? What would a scan of their brains reveal?

The results of the experiment were announced in January, during Heatherton's speech accepting the leadership of the Society for Personality and Social Psychology, the world's largest group of social psychologists. In his presidential address at the annual meeting in San Antonio, Heatherton reported that administering glucose completely reversed the brain changes wrought by depletion — a finding, he said, that thoroughly surprised him. Heatherton's results did much more than provide additional confirmation that glucose is a vital part of willpower; they helped solve the puzzle over how glucose could work without global changes in the brain's total energy use. Apparently ego depletion causes activity to rise in some parts of the brain and to decline in others. Your brain does not stop working when glucose is low. It stops doing some things and starts doing others. It responds more strongly to immediate rewards and pays less attention to long-term prospects.

The discoveries about glucose help explain why dieting is a uniquely difficult test of self-control — and why even people with phenomenally strong willpower in the rest of their lives can have such a hard time losing weight. They start out the day with virtuous intentions, resisting croissants at breakfast and dessert at lunch, but each act of resistance further lowers their willpower. As their willpower weakens late in the day, they need to replenish it. But to resupply that energy, they need to give the body glucose. They're trapped in a nutritional catch-22:

1. In order not to eat, a dieter needs willpower.
2. In order to have willpower, a dieter needs to eat.

As the body uses up glucose, it looks for a quick way to replenish the fuel, leading to a craving for sugar. After performing a lab task requiring self-control, people tend to eat more candy but not other kinds of snacks, like salty, fatty potato chips.

The mere expectation of having to exert self-control makes people hunger for sweets. A similar effect helps explain why many women yearn for chocolate and other sugary treats just before menstruation: their bodies are seeking a quick replacement as glucose levels fluctuate. A sugar-filled snack or drink will provide a quick improvement in self-control (that's why it's convenient to use in experiments), but it's just a temporary solution. The problem is that what we identify as sugar doesn't help as much over the course of the day as the steadier supply of glucose we would get from eating proteins and other more nutritious foods.

The benefits of glucose were unmistakable in the study of the Israeli parole board. In midmorning, usually a little before 10:30, the parole board would take a break, and the judges would be served a sandwich and a piece of fruit. The prisoners who appeared just before the break had only about a 20 percent chance of getting parole, but the ones appearing right after had around a 65 percent chance. The odds dropped again as the morning wore on, and prisoners really didn't want to appear just before lunch: the chance of getting parole at that time was only 10 percent. After lunch it soared up to 60 percent, but only briefly. Remember that Jewish Israeli prisoner who appeared at 3:10 p.m. and was denied parole from his sentence for assault? He had the misfortune of being the sixth case heard after lunch. But another

Jewish Israeli prisoner serving the same sentence for the same crime was lucky enough to appear at 1:27 p.m., the first case after lunch, and he was rewarded with parole. It must have seemed to him like a fine example of the justice system at work, but it probably had more to do with the judge's glucose levels.

It's simple enough to imagine reforms for the parole board in Israel — like, say, restricting each judge's shift to half a day, preferably in the morning, interspersed with frequent breaks for food and rest. But it's not so obvious what to do with the decision fatigue affecting the rest of society. Even if we could all afford to work half-days, we would still end up depleting our willpower all day long, as Baumeister and his colleagues found when they went into the field in Würzburg in central Germany. The psychologists gave preprogrammed BlackBerrys to more than 200 people going about their daily routines for a week. The phones went off at random intervals, prompting the people to report whether they were currently experiencing some sort of desire or had recently felt a desire. The painstaking study, led by Wilhelm Hofmann, then at the University of Würzburg, collected more than 10,000 momentary reports from morning until midnight.

Desire turned out to be the norm, not the exception. Half the people were feeling some desire when their phones went off — to snack, to goof off, to express their true feelings to their bosses — and another quarter said they had felt a desire in the past half-hour. Many of these desires were ones that the men and women were trying to resist, and the more willpower people expended, the more likely they became to yield to the next temptation that came along. When faced with a new desire that produced some I-want-to-but-I-really-shouldn't sort of inner conflict, they gave in more readily if they had already fended off earlier temptations, particularly if the new temptation came soon after a previously reported one.

The results suggested that people spend between three and four hours a day resisting desire. Put another way, if you tapped four or five people at any random moment of the day, one of them would be using willpower to resist a desire. The most commonly resisted desires in the phone study were the urges to eat and sleep, followed by the urge for leisure, like taking a break from work by doing a puzzle or playing a game instead of writing a memo. Sexual urges were next on the list of most-resisted desires, a little ahead of urges for other kinds of interactions, like checking Facebook. To ward off temptation, people reported using various strategies. The most popular was to look for a distraction or to undertake a new activity, although sometimes they tried suppressing it directly or simply toughing their way through it. Their success was decidedly mixed. They were pretty good at avoiding sleep, sex and the urge to spend money, but not so good at resisting the lure of television or the Web or the general temptation to relax instead of work.

We have no way of knowing how much our ancestors exercised self-control in the days before BlackBerrys and social psychologists, but it seems likely that many of them were under less ego-depleting strain. When there were fewer decisions, there was less decision fatigue. Today we feel overwhelmed because there are so many choices. Your body may have dutifully reported to work on time, but your mind can escape at any instant. A typical computer user looks at more than three dozen Web sites a day and gets fatigued by the continual decision making — whether to keep working on a project, check out TMZ, follow a link to YouTube or buy something on Amazon. You can do enough damage in a 10-minute online shopping spree to wreck your budget for the rest of the year.

The cumulative effect of these temptations and decisions isn't intuitively obvious. Virtually no one has a gut-level sense of just how tiring it is to decide. Big decisions, small decisions, they all add up. Choosing what to have for breakfast, where to go on vacation, whom to hire, how much to spend — these all deplete willpower, and there's no telltale symptom of when that willpower is low. It's not like getting winded or hitting the wall during a marathon. Ego depletion manifests itself not as one feeling but rather as a propensity to experience everything more intensely. When the brain's regulatory powers weaken, frustrations seem more irritating than usual. Impulses to eat, drink, spend and say stupid things feel more powerful (and alcohol causes self-control to decline further). Like those dogs in the experiment, ego-depleted humans become more likely to get into needless fights over turf. In making decisions, they take illogical shortcuts and tend to favor short-term gains and delayed costs. Like the depleted parole judges, they become inclined to take the safer, easier option even when that option hurts someone else.

"Good decision making is not a trait of the person, in the sense that it's always there," Baumeister says. "It's a state that fluctuates." His studies show that people with the best self-control are the ones who structure their lives so as to conserve willpower. They don't schedule endless back-to-back meetings. They avoid temptations like all-you-can-eat buffets, and they establish habits that eliminate the mental effort of making choices. Instead of deciding every morning whether or not to force themselves to exercise, they set up regular appointments to work out with a friend. Instead of counting on willpower to remain robust all day, they conserve it so that it's available for emergencies and important decisions.

“Even the wisest people won’t make good choices when they’re not rested and their glucose is low,” Baumeister points out. That’s why the truly wise don’t restructure the company at 4 p.m. They don’t make major commitments during the cocktail hour. And if a decision must be made late in the day, they know not to do it on an empty stomach. “The best decision makers,” Baumeister says, “are the ones who know when not to trust themselves.”

John Tierney (tierneylab@nytimes.com) is a science columnist for The Times. His essay is adapted from a book he wrote with Roy F. Baumeister, “Willpower: Rediscovering the Greatest Human Strength,” which comes out next month.

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A version of this article appeared in print on August 21, 2011, on page MM33 of the Sunday Magazine

The Toll of TRAUMA

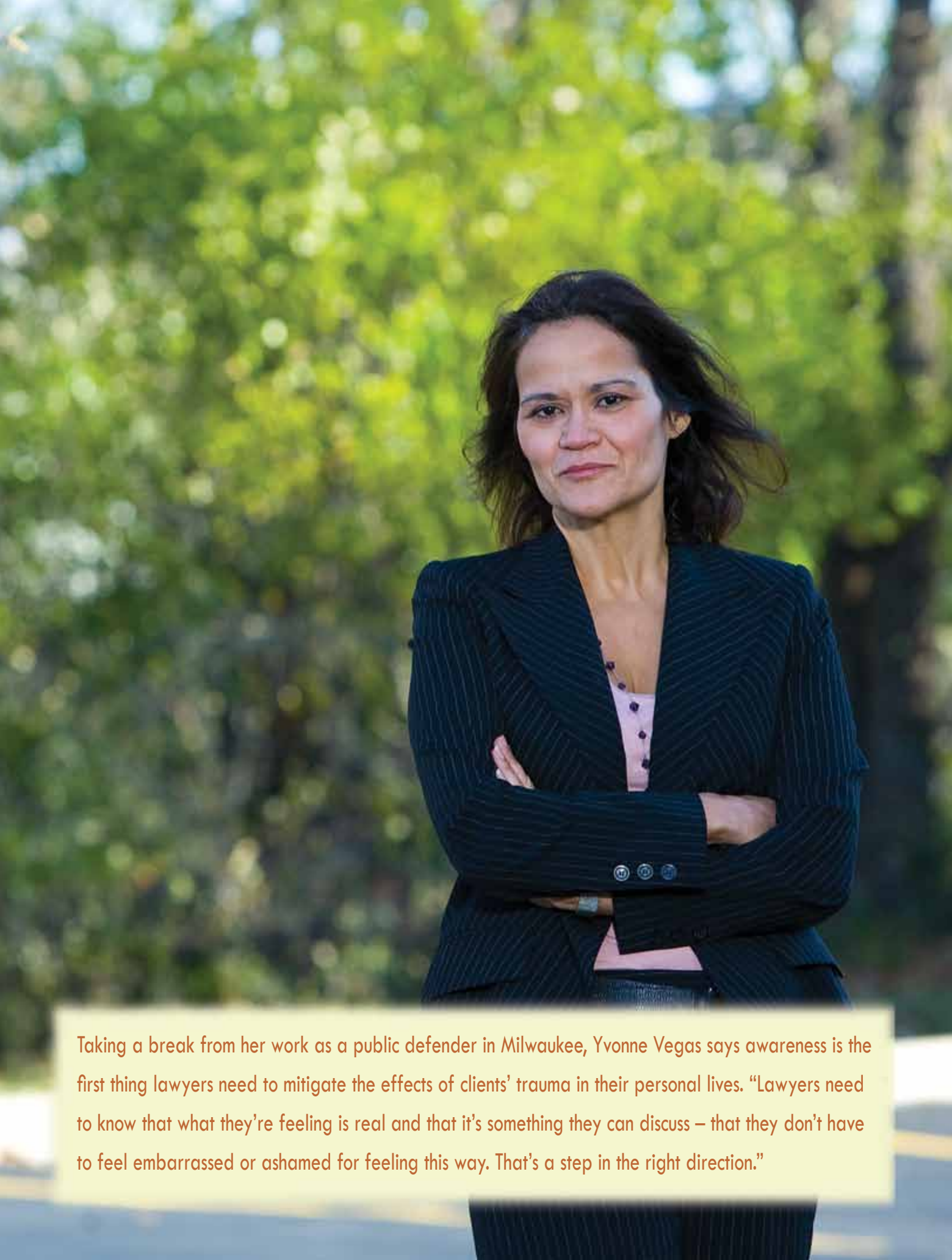
by Dianne Molvig

A groundbreaking study of Wisconsin State Public Defender attorneys examines the effects of “compassion fatigue” – the cumulative physical, emotional, and psychological effects resulting from continual exposure to others’ traumatic experiences. This article discusses factors contributing to the risk any lawyer may face of experiencing its symptoms, and what can be done to mitigate it.

Ben Goring spends his days representing 10 to 17 year olds who are in trouble with the law. After 15 years in the juvenile unit of the Wisconsin State Public Defender (SPD) Office in Madison, he says the best part of his job is getting to know his young clients well, so he can be an effective advocate for them in court. But gaining that knowledge also has a dark side.

“When you dig into these kids’ stories,” he says, “you realize what sort of life they’re living and the trauma they see every single day. On the one hand, you marvel at their ability to survive. On the other hand, it makes you so sad. You learn about a lot of bad stuff, and you have to try to process that every day. It’s hard. Really hard.”

Judy Schwaemle retired from the Dane



Taking a break from her work as a public defender in Milwaukee, Yvonne Vegas says awareness is the first thing lawyers need to mitigate the effects of clients' trauma in their personal lives. "Lawyers need to know that what they're feeling is real and that it's something they can discuss – that they don't have to feel embarrassed or ashamed for feeling this way. That's a step in the right direction."

Key Study Findings

The study found that SPD attorneys reported significantly higher levels of compassion fatigue than administrative support staff and the general population, when data for the latter were available for comparison. The study's findings break down by specific symptoms of compassion fatigue as follows.

"A major finding of our study," Dr. Andrew Levin reports, "is that the extent of caseload and lawyers' exposure to other people's trauma were clearly related to symptoms of compassion fatigue." Interestingly, factors such as years on the job, age, office size, gender, and personal history of trauma made no significant differences in compassion fatigue levels.

Depression

Depressed mood, loss of interest or pleasure, disturbed sleep, loss of appetite, low energy, poor concentration, feelings of guilt or low self-worth

- General population: 10 percent
- SPD administrative support staff: 19.3 percent
- SPD attorneys: 39.5 percent

Post-traumatic Stress Disorder

PTSD, triggered by a terrifying event; symptoms include flashbacks, nightmares, severe anxiety, uncontrollable thoughts

- General population: 7 percent
- SPD support staff: 1 percent
- SPD attorneys: 11 percent

Functional Impairment

The extent to which exposure to traumatic material interferes with functioning in work, social/leisure life, and family/home life

- SPD support staff: 27.5 percent
- SPD attorneys: 74.8 percent

Secondary Traumatic Stress

The "cost of caring" about another person who has experienced trauma; symptoms are similar to those of PTSD

- SPD support staff: 10.1 percent
- SPD attorneys: 34 percent

Burnout

Job-induced physical, emotional, or mental exhaustion combined with doubts about one's competence and the value of one's work

- SPD support staff: 8.3 percent
- SPD attorneys: 37.4 percent

Compassion Satisfaction

The study also measured "compassion satisfaction," or the pleasure derived from one's work. Reports of high levels of satisfaction were as follows:

- SPD support staff: 25.7 percent
- SPD attorneys: 19.3 percent

What the Numbers Mean

Are we to conclude from the key findings that SPD attorneys are impaired on the job? Absolutely not, says Dr. Andrew Levin, medical director at the Westchester Jewish Community Center in Hartsdale, N.Y., and cofacilitator of the study. Bear in mind, he emphasizes, these results come from self-reporting instruments, which indicate trends, not diagnoses of conditions.

Take, for instance, the depression statistic. "It shows that almost 40 percent of attorneys are over the threshold number on the depression inventory," Levin explains. "That does not mean they have a clinical diagnosis of depression. All it means is that they have a likelihood for being at risk for depression."

Likewise, the functional impairment measure doesn't mean SPD lawyers are failing to function well on the job. "It may mean, for example, that you had a tough day at work," Levin explains, "and when you got home you weren't able to pay as much attention to your family as you would have liked, or you were irritable. Your job is interfering with your home life."

If anything, the data show just how resilient the study participants are, Albert points out. "Despite the fact that they endure ongoing exposure to trauma and have these high caseloads, they continue to meet the requirements of their employment," she says. "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."



County District Attorney's Office last year after 27 years. Many times in her career, she saw horrifying evidence of what one human did to another. Those disturbing images often lingered and intruded into her thoughts away from work. Even now that she's retired, memories remain.

"To this day," she says, "when I go past a place where a homicide occurred that I prosecuted, I think about it, every time. I drive past and think, that's where Sarah was killed."

Experiences such as these can take a toll on lawyers. Recently, the State Bar of Wisconsin undertook a study to learn just how significant that toll is and what can be done to mitigate it.

The study examined the prevalence of what's known as "compassion fatigue" – that is, the cumulative physical, emotional, and psychological effects of continual exposure to traumatic stories or events when working in a helping capacity.

On a late fall day, State Public Defender lawyers Ben Gonring and Deb Smith talk about how the nature of their jobs may contribute to compassion fatigue. "When you dig into kids' stories, you realize what sort of life they're living and the trauma they see every single day. ... You learn about a lot of bad stuff, and you have to try to process that every day," says Gonring, who represents juveniles. "It's hard. Really hard."

Smith, SPD director of assigned counsel, agrees. "Many of us who have been around for a while know there can be a cost, emotionally and psychologically, to doing this kind of work. Even for lawyers who know how to maintain an appropriate professional demeanor and distance, this stuff seeps in. It changes your perspective on the world."



More from the authors ...

In this video, at www.wisbar.org/wl, WisLAP coordinator Linda Albert and Deb Smith, director of assigned counsel for the SPD, discuss the agency's involvement with the State Bar's compassion fatigue study, what it learned, and what it will do to help support its staff.

In psychological language, exposure to another person's trauma is referred to as secondary trauma. "There's research on the impact of secondary trauma on human beings, but it's never been looked at extensively with lawyers. We're on the forefront of this," says Linda Albert, coordinator of the State Bar's Wisconsin Lawyers Assistance Program (WisLAP) and cofacilitator of the compassion fatigue study.

Research exists on the effects of stress on attorneys, and some researchers have used some of the language related to compassion fatigue. "But no one has studied it systematically," says Dr. Andrew Levin, medical director at the Westchester Jewish Community Center in Hartsdale, N.Y., who facilitated the study with Albert. "So this was an effort to say, 'People have made these observations. They seem to have some validity. Can we establish that more rigorously?'"

Roots of the Study

As WisLAP coordinator, Albert has given presentations about compassion fatigue to many groups of legal professionals in recent years. She's seen the topic hit home again and again with various audiences.

"I've done this with bankruptcy lawyers, guardians ad litem, public defenders, prosecutors, judges, court commissioners. ... Every time it's resonated," she says.

Levin and Albert learned of their mutual interest in the topic of compassion fatigue and decided to do a formal study of its effects on Wisconsin attorneys. They decided to focus on one specific group: state public defenders.

"Compassion fatigue is an important issue," says Deb Smith, director of assigned counsel for the SPD and the agency's point person for the study. "Many of us who have been around for a while know there can be a cost, emotionally and psychologically, to doing this kind of work. We deal with a lot of unpleasantness. Even for lawyers who know how to maintain an appropriate professional demeanor and distance, this stuff seeps in. It changes your perspective on the world."

To learn more about such effects, study questionnaires went out to a total of 474 SPD attorneys and administrative support staff. Response rates for completed surveys were remarkable: 78 percent of attorneys and 65 percent of support staff.

While the study's target group was public defenders, Smith believes it will have value for the profession as a whole. "There's a large community of lawyers who deal with trauma-exposed clients and who need to be aware of compassion fatigue," she says. "These lawyers need to make sure they're taking care of themselves. This isn't just a public defender issue; it's a lawyer issue."

Count judges among those affected by compassion fatigue, as well. Neal Nielsen, an eight-year veteran on the circuit court bench in Vilas County, says judges' exposure to trauma differs from lawyers'. "Attorneys are much more closely related to the facts of the case for a much longer period of time than are judges," he notes.

Still, judges sit on the bench hearing, day in and day out, about a procession of incidents of trauma inflicted or endured by people in their courtrooms. "And I can sit here now and call up in my mind with great accuracy all the autopsy photos I've ever seen," Nielsen says.

In the Trenches

Dana Smetana sees a key message her fellow SPD attorneys ought to take away from the study results: There's nothing wrong with you. "I think sometimes lawyers think they're going crazy," says Smetana of the SPD Eau Claire office, where her duties include trying cases as well as being a regional supervisor. She's been with the SPD for 27 years. "If lawyers are feeling this

What you don't expect is that as you're trying to keep people safe – whether it's keeping an individual safe from an abuser or keeping society in general safe from a psychopath – you won't get the support you need to do your job.

– Robert Kaiser, Dane County assistant district attorney

To this day, when I go past a place where a homicide occurred that I prosecuted, I think about it, every time. I drive past and think, that's where Sarah was killed.

– Judy Schwaemle, Dane County assistant district attorney, retired

way, it's the symptoms of what's going on with this job. It's nothing negative about you as a person. Awareness of that is a huge factor."

As a supervisor, she knows young SPD lawyers must learn to put up protective boundaries, to keep their emotions in check. "The older attorneys get good at that," she observes, "but then when they go home, they have trouble lifting those boundaries" with families and friends.

Not letting the effects of exposure to trauma spill over into one's personal life is one of the most difficult aspects for lawyers, agrees Yvonne Vegas, a 22-year SPD veteran who's now in the Milwaukee office. "Our clients have a lot of trauma in their lives: poverty, lack of education, homelessness, joblessness, mental health issues, substance abuse issues," she says. "Their issues become ours. You absorb that on a day-to-day basis, and you take it home with you. It can make you irritable and short-fused with your family."

Like Smetana, Vegas believes awareness of these dynamics is critical for lawyers exposed to clients' trauma. "Lawyers need to know that what they're feeling is real," she says, "and that it's something they can discuss – that they don't have to feel embarrassed or ashamed for feeling this way. That's a step in the right direction."

Some observers, of course, might point out that public defenders and prosecutors know what they're in for when they decide to pursue this type

of law practice. True, says former district attorney Schwaemle. "You knew this would be coming," she says. "But there's knowing, and then there's *knowing*."

The effects can cut deeper than some might have imagined. Take, for instance, prosecuting a sexual assault case. "When you prepare for the trial," Schwaemle says, "you put

yourself in the place of the victim. You have to ask yourself why the victim behaved a certain way because you have to explain that to the jury. You relive the victim's experience and put yourself in her shoes."

Robert Kaiser also has seen "inexplicably, indescribably horrible evidence" in his 34 years as a district attorney, the last 24 of those in Dane

Coping with Compassion Fatigue

Exposure to clients' trauma isn't going to stop. But you can mitigate the effects this exposure has on you. Here are a few strategies:

- **Debrief.** Talk with another lawyer who understands what you're going through and can offer support. Debriefing can become a part of the office culture. Remember, this is a discussion about how the case is affecting you as a person, not a rehashing of legal strategies.
- **Take care of yourself.** Eat healthy foods. Exercise regularly. Get enough sleep. Learn relaxation techniques so you can let go of stress and disturbing, repetitive thoughts. Know what truly brings you joy in life and make time for it.
- **Strive for balance and interconnection.** Give up the urge to be all things to all people, including clients. Allow time to connect with friends and family to counter-balance the stresses you feel at work and put everything back in perspective.
- **Come up with a plan.** When compassion fatigue is weighing on you, it can be difficult to get off the treadmill and set a new course. Stop long enough to notice how you're feeling, reacting, and behaving at work and at home. Develop a plan of action for yourself. What needs to change? Where can you start?
- **Seek help.** If you think compassion fatigue is interfering with your work or personal life, reach out for help. A good place to start is WisLAP. Call the 24-hour helpline, at (800) 543-2625, or coordinator Linda Albert at (800) 444-9404, ext. 6172. All inquiries are confidential.

“We have to acknowledge what people in criminal justice, not just public defenders, go through. We need to recognize how difficult it is to see people in crisis every single day. And we have to be able to talk about it.”

— Kelli Thompson, State Public Defender

County and the remainder in Chicago. He never wanted to be anything but a district attorney, and he knew exposure to trauma would be part of the job.

“What you don’t expect,” Kaiser says, “is that as you’re trying to keep people safe – whether it’s keeping an individual safe from an abuser, or keeping society in general safe from a psychopath who will victimize anybody he can get his hands on – you won’t get the support you need to do your job.”

The combination of burgeoning caseloads and shrinking budgets makes it increasingly difficult for district attorneys to fulfill their duty to protect the public, Kaiser notes. In his eyes, lack of support sends a message that crime victims and the district attorneys’ work don’t matter.

“We’re saddened by our work,” he says. “We’re certainly affected by it. But when you live it and then people act as though what you do is not important, that’s trauma.”

Public defenders, too, are hurt by budget cuts. And they’re targets of public scorn for simply doing their job: defending people’s constitutional rights.

Thus, heavy caseload and exposure to trauma aren’t the only factors fueling compassion fatigue in attorneys. In the State Bar’s study, SPD participants wrote in comments about additional contributing factors. The top three were lack of respect, lack of control in one’s work life, and

lack of enough time to process issues and give or get support.

“When you have those factors,” observes WisLAP’s Albert, “on top of exposure to trauma and heavy caseloads, that’s where I see the perfect storm.”

Next Steps

The State Bar’s study puts compassion fatigue on the legal profession’s radar. “We have to acknowledge what people in criminal justice, not just public defenders, go through,” says State Public Defender Kelli Thompson. “We need to recognize how difficult it is to see people in crisis every single day. And we have to be able to talk about it.”

Going forward, she says, the SPD will provide more staff training to educate people about compassion fatigue and to learn coping skills. Open day-to-day communication in the office is also critical, she says. “Our lawyers

need to know it’s okay to take a breath,” she says. “You can’t live with a terrible case for a year, close it, and then just say, ‘On to the next one.’”

The results of the study, the first of its kind, appear in the December issue of the *Journal of Nervous and Mental Disease* and will draw wider attention to the topic of attorneys’ compassion fatigue. Albert already has spoken about it at a Canadian conference and for the national conference of the American Bar Association’s Commission on Lawyer Assistance Programs. In addition, Albert is working with the SPD to develop strategies that both individual attorneys and the agency can use to minimize work-related stress. She anticipates adapting these strategies for use by lawyers in other practice areas.

“I think these findings will be unsettling for the legal profession,” Albert says. “The implications of this study definitely will go way beyond Wisconsin.”

The State Bar is one of several bar associations participating in a second study that seeks information on factors, personal and professional, that contribute to life and career satisfaction or dissatisfaction. The study, to be conducted in May 2012, is headed by Dr. Kennon Sheldon, University of Missouri, Department of Psychology, and Prof. Lawrence Krieger, Florida State University College of Law. “WisLAP will use the data to develop ways to prevent and mitigate professionalism, ethics, and mental health and substance abuse problems within the profession,” Albert says. ☐

There’s research on the impact of secondary trauma on human beings, but it’s never been looked at extensively with lawyers. We’re on the forefront of this.

— Linda Albert, WisLAP coordinator

PROFESSIONAL LIFE STRESS SCALE

By David Fontana

Adapted from *Managing Stress*, The British Psychological Society and Routledge Ltd., 1989

The following stress scale must be treated as a useful guide rather than as a precise instrument. Complete it quickly, and don't think too hard before responding to each question. Your first response is often the most accurate one. As with any stress scale, it isn't difficult to spot what is the 'low stress' answer to each question. Don't be tempted to give this answer if it isn't the accurate one. Nothing is at stake. You are as stressed as you are. Your score on the scale doesn't change that, one way or the other. The purpose of the scale is simply to help you clarify some of your thinking about your own life.

The Professional Life Stress Test

1. Two people who know you well are discussing you. Which of the following statements would they be most likely to use?
 - a. 'X is very together. Nothing much seems to bother him/her.'
 - b. 'X is great. But you have to be careful what you say to him/her at times.'
 - c. 'Something always seems to be going wrong with X's life.'
 - d. 'I find X very moody and unpredictable.'
 - e. 'The less I see of X the better!'
2. Are any of the following common features of your life?
 - a. Feeling you can seldom do anything right
 - b. Feelings of being hounded, trapped, or cornered
 - c. Indigestion
 - d. Poor appetite
 - e. Difficulty in getting to sleep at night
 - f. Dizzy spells or palpitations
 - g. Sweating without exertion or high air temperature
 - h. Panic feelings when in crowds or in confined spaces
 - i. Tiredness and lack of energy
 - j. Feelings of hopelessness ('what's the use of anything?')
 - k. Faintness or nausea sensations without any physical cause
 - l. Extreme irritation over small things
 - m. Inability to unwind in the evenings
 - n. Waking regularly at night or early in the mornings
 - o. Difficulty in making decisions
 - p. Inability to stop thinking about problems or the day's events
 - q. Tearfulness
 - r. Convictions that you just can't cope
 - s. Lack of enthusiasm even for cherished interests
 - t. Reluctance to meet new people and attempt new experiences
 - u. Inability to say 'no' when asked to do something
 - v. Having more responsibility than you can handle
3. Are you *more* or *less* optimistic than you used to be (or about the same)?
 - a. more

- b. about the same
 - c. less
4. Do you enjoy *watching* sports?
 - a. yes
 - b. no
 5. Can you get up late on weekends if you want to without feeling guilty?
 - a. yes
 - b. no
 6. Within reasonable professional and personal limits, can you speak your mind to your boss?
 - a. yes
 - b. no
 7. Can you speak your mind to your colleagues?
 - a. yes
 - b. no
 8. Can you speak your mind to members of your family?
 - a. yes
 - b. no
 9. Who usually seems to be responsible for making the important decisions in your life?
 - a. yourself
 - b. someone else
 10. When criticized by superiors at work, are you usually:
 - a. very upset?
 - b. moderately upset?
 - c. mildly upset?
 11. Do you finish the working day feeling satisfied with what you have achieved?
 - a. often
 - b. sometimes
 - c. only occasionally
 12. Do you feel most of the time that you have unsettled conflicts with colleagues?
 - a. yes
 - b. no
 13. Does the amount of work you have to do exceed the amount of time available?
 - a. habitually
 - b. sometimes
 - c. only very occasionally
 14. Do you have a clear picture of what is expected of you professionally?
 - a. mostly
 - b. sometimes
 - c. hardly ever
 15. Would you say that generally you have enough time to spend on yourself?
 - a. yes
 - b. no
 16. If you want to discuss your problems with someone, can you usually find a sympathetic ear?
 - a. yes

- b. no
17. Are you reasonably on course towards achieving your major objectives in life?
- a. yes
b. no
18. Are you bored at work?
- a. often
b. sometimes
c. very rarely
19. Do you look forward to going into work?
- a. most days
b. some days
c. hardly ever
20. Do you feel adequately *valued* for your abilities and commitment at work?
- a. yes
b. no
21. Do you feel adequately *rewarded* in terms of status and promotion for your abilities and commitment at work?
- a. yes
b. no
22. Do you feel your superiors actively *hinder you* in your work? Or do they actively *help you* in your work?
- a. hinder
b. help
23. If ten years ago you had been able to see yourself professionally as you are now, how would you have seen yourself?
- a. exceeding your expectations
b. fulfilling your expectations
c. falling short of your expectations
24. If you had to rate how much you like yourself on a scale from 1 (least like) to 5 (most like), what would your rating be?
- a. 1
b. 2
c. 3
d. 4
e. 5

Key for the Professional Life Stress Test

For each question, score according to the directions that follow:

1. (a) 0, (b) 1, (c) 2, (d) 3, (e) 4
2. Score 1 for each 'yes' response
3. Score 0 for *a. more optimistic*, 1 for *b. about the same*, 2 for *c. less optimistic*
4. Score 0 for a. 'yes', 1 for b. 'no'
5. Score 0 for a. 'yes', 1 for b. 'no'

6. Score 0 for a. 'yes', 1 for b. 'no'
7. Score 0 for a. 'yes', 1 for b. 'no'
8. Score 0 for a. 'yes', 1 for b. 'no'
9. Score 0 for a. 'yourself', 1 for b. 'someone else'
10. Score 2 for a. 'very upset', 1 for b. 'moderately upset', 0 for c. 'mildly upset'
11. Score 0 for a. 'often', 1 for b. 'sometimes', 2 for c. 'only occasionally'
12. Score 0 for a. 'no', 1 for b. 'yes'
13. Score 2 for a. 'habitually', 1 for b. 'sometimes', 0 for c. 'only very occasionally'
14. Score 0 for a. 'mostly', 1 for b. 'sometimes', 2 for c. 'hardly ever'
15. Score 0 for a. 'yes', 1 for b. 'no'
16. Score 0 for a. 'yes', 1 for b. 'no'
17. Score 0 for a. 'yes', 1 for b. 'no'
18. Score 2 for a. 'often', 1 for b. 'sometimes', 0 for c. 'very rarely'
19. Score 0 for a. 'most days', 1 for b. 'some days', 2 for c. 'hardly ever'
20. Score 0 for a. 'yes', 1 for b. 'no'
21. Score 0 for a. 'yes', 1 for b. 'no'
22. Score 1 for a. 'hinder', 0 for b. 'help'
23. Score 0 for a. 'exceeding your expectations', 1 for b. 'fulfilling your expectations', 2 for c. 'falling short of your expectations'
24. Score 4 for a. '1', 3 for b. '2', 2 for c. '3', 1 for d. '4', and 0 for e. '5'

Interpreting Your Score

Keep in mind that scores on stress scales must be interpreted cautiously. There are so many variables which lie outside the scope of these scales but which influence the way in which we perceive and handle our stress, that two people with the same scores may experience themselves as under quite different levels of stress. Nevertheless, taken as no more than a guide, these scales can give us some useful information.

Score = 15. Stress isn't a problem in your life. This doesn't mean that you have insufficient stress to keep yourself occupied and fulfilled. The scale is only designed to assess undesirable responses to stress.

Score = 16-30. This is a moderate range of stress for a busy professional person. It's nevertheless well worth looking at how it can reasonably be reduced.

Score = 31-45. Stress is clearly a problem, and the need for remedial action is apparent. The longer you work under this level of stress, the harder it often is to do something about it. There is a strong case for looking carefully at your professional life.

Score = 45-60. At these levels, stress is a major problem, and something must be done without delay. You may be nearing the stage of exhaustion in the general adaptability syndrome. The pressure must be eased.

STRESS MANAGEMENT MATERIALS

LAWYERS CONCERNED FOR LAWYERS

Free • Confidential • 24/7/365

2550 University Avenue West, Suite 313N
St. Paul, MN 55114
651-646-5590
866-525-6466 (toll-free)
651-646-2364 (fax)
www.mnlcl.org
help@mnlcl.org

For immediate assistance, contact our counseling partner DOR & Associates at
612-332-4805 or 1-800-367-3271

To meet with a counselor, say you were referred by LCL

Web resources on a variety of issues may be found at www.doreap.com

Click on "Employees" and enter the password "lcl1" for access

Stress and the Stages of Change

To find out what stage you are in, pick the statement that most accurately describes you:

- I'm currently stressed, and I don't intend to find ways of coping within the next six months.
- I'm currently stressed, but I'm thinking about dealing with it in the next six months.
- I'm currently stressed, and may have, on and off, tried to gain some control over it. I've decided that I definitely need to do something.
- I have taken a first action step to reduce my stress.
- I have stress management techniques in place that are making a difference in the impact of my stress.

What the exercise tells us is that change is a process. We may not have achieved results, but if we are closer to taking steps, we have made progress.

*For assistance, contact Lawyers Concerned for Lawyers at
651-646-5590, 866-525-6466 or help@mncl.org.*

Lawyers Concerned for Lawyers

Balance Assessment

Important Areas of Your Life	Suggested Weekly Range	Actual Hours Spent	Plus or Minus Differential
<i>Health</i> Sleep Exercise Personal	45 – 56 1 – 10 7 - 14		
Families and friends	20 - 25		
Work	40 - 55		
Community Service	1-10		

- Based on actual time spent, list your “real” priorities. Be honest – this is not the time to be in denial about how you spend your time.
- How do your “real” priorities match up with your stated priorities?
- Where do you need to cut or add?

COPING WITH STRESS

20 Self-Help Suggestions

- **Take Responsibility**
 - Realize what you can control and what you cannot. Only focus on the things you can change
 - Realize you have many choices available; even choices about how you view the problem
- **Learn to Learn**
 - Concentrate efforts on learning new, positive skills to reduce stress
- **Hear What Your Body Is Telling You**
 - Physical symptoms such as headaches, backaches and irritation can be signs of over-stress
- **Learn How to Use Relaxation**
 - Meditation, imagery and muscle relaxation can help
 - Choose a technique that fits you and use it
- **Respect Your Feelings**
 - Feelings can help guide and motivate us to make changes
 - Feelings deserve attention
- **Benefit From Your Thoughts**
 - Thinking guides your behavior
 - The perspective we have of a given problem strongly guides how we handle it and the degree to which it 'stresses us out'
- **Practice Assertion**
 - Just be yourself
 - Express yourself in an open and straightforward manner which will increase the likelihood that others will understand you and that problems can be resolved
- **Confide In a Friend**
 - Let yourself be open with a trusted friend-share what is going on in your life and how you are handling it
 - This support is important and can generate new ideas or strategies
- **Come Face to Face With Your Problem**
 - As hard as it is, confronting the problem rather than avoiding it can provide opportunities for change and awareness
 - Try to view problems as challenges which will ultimately improve your life
- **Attempt to Solve the Problem**
 - Answers to life problems require consideration finding alternative solutions
 - There is seldom one simple, correct answer
 - Observe how others you trust solve their problems and learn from them
- **Act on Your Solution**
 - Decide what action you will take even if you are unsure of the results
 - Allow yourself to take risks and realize that taking risks is a normal part of life

- **Make Mistakes**
 - Attempt to learn from your mistakes
 - Realize that mistakes reflect BEHAVIORS not who you are as a person. Just because you make mistakes does not mean YOU are a failure
- **Develop and Use a Self-Help List**
 - Develop a list of things to do that will help you feel less disturbed or helpless
 - Consider things which have been helpful in similar situations such as exercising, talking with a friend, watching a movie etc.
 - Keep this list with you in case you need to refer to it
 - Upgrade the list when you discover new things that help
- **Concentrate on Yourself**
 - Know what your needs are and respect them
 - Allow yourself to be creative. Try new things that can be exciting
 - Make a point to indulge yourself on occasion. Even little things can make you feel better
- **Respect Others**
 - Recognize and pay attention to the needs of others
 - Kindness breeds kindness
 - Caring sometimes involves taking risks
- **Plan Goals for Your Future**
 - Know where you are going
 - Develop a list of objectives and create a general timeline for achievement
 - Imagine what your life will be like after the achievement
- **Recognize the Importance of Time Management**
 - Prioritize daily activities so the most important activities to improve your future are done first
 - Understand that people don't FIND time, they MAKE it!
 - Take time to make time
- **Have Fun**
 - Set aside time for open, spontaneous and imaginative fun
 - Engage in activities that are pleasurable and gratifying
- **Seek Help When Needed**
 - Getting help is a healthy choice if things go bad
 - Realize that we can't always do it alone – we all get help from others
- **Give Change a Chance**
 - Learn to express your real feelings
 - Allow yourself to experience some anxiety and fear – it's not necessarily a bad thing