

# I HATE SELF-CARE: A CRIMINAL DEFENSE LAWYER'S LAMENT

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## I. INTRODUCTION

Don't get me wrong—I think people should take care of themselves. They should eat well, exercise regularly, and get a good night's sleep. They should spend time with friends and family. They should have hobbies and interests. With any luck, they should find true love. But in the past decade or two, and especially since the COVID pandemic, there has been a disturbing turn inward. I'm talking about the “self-care” craze, which has become its own pandemic, or at least epidemic.<sup>1</sup>

The basic definition of self-care<sup>2</sup> is “taking the time to do things that help you live well and improve both your physical health and mental health.”<sup>3</sup> No reasonable person could be against living well or being health-conscious; this sounds a lot like my version of taking care of yourself. It is the imperative,<sup>4</sup> the individualistic obsession,<sup>5</sup> the cultural phenomenon<sup>6</sup>—and perhaps the generational one<sup>7</sup>—that troubles me.

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<sup>1</sup> See generally AMY LARocca, *HOW TO BE WELL: NAVIGATING OUR SELF-CARE EPIDEMIC ONE DUBIOUS CURE AT A TIME* (2025) (critically exploring the wellness movement and its gendered, class-based, racialized perceptions of self-care).

<sup>2</sup> See Charlotte Lieberman, *How Self-Care Became So Much Work*, HARV. BUS. REV. (Apr. 10, 2018), <https://hbr.org/2018/08/how-self-care-became-so-much-work> [<https://perma.cc/THK9-873M>] (noting that, in 1841, Ralph Waldo Emerson proclaimed that “[n]othing can bring you peace but yourself”).

<sup>3</sup> *Caring for Your Mental Health*, NAT'L INST. OF MENTAL HEALTH, <https://www.nimh.nih.gov/health/topics/caring-for-your-mental-health> [<https://perma.cc/UFT6-4U4R>] (last visited Dec. 22, 2025).

<sup>4</sup> See Jennifer Doran, *The Unspoken Truth About Self-Care*, 12 AM. PSYCH. ASS'N 48 (2014) (noting that, beyond being an aspirational goal, engaging in self-care has become an ethical imperative for psychologists and has been part of the American Psychological Association's Ethics Code since 2002).

<sup>5</sup> See Suzanne A. Kim, *On “Self” Care*, 57 CONN. L. REV. 317, 322–27 (2025) (noting that feminist legal theorists and other critical theorists have long critiqued the privatization and individualized framework of care in the United States).

<sup>6</sup> See LARocca, *supra* note 1, at 10 (“Many of the ideas we call wellness are not new, but their ascendance has been as enormous as it has been quick.”)

<sup>7</sup> See generally Keltie O'Connor, *Gen-Z & Millennial's Toxic Self-Care Obsession*

Of course, self-care can also include a range of meanings and practices across social, institutional, and political contexts.<sup>8</sup> Frankly, these other conceptualizations of self-care, which often look more like *community care*, are more interesting and defensible to me. However, these other forms of care are not the focus of this Essay. I am talking about more insular, inward-looking self-care—the kind that has become a multi-billion-dollar market,<sup>9</sup> driven more and more by technology.<sup>10</sup> This kind of self-care includes workplace wellness programs, consumer goods and services, and entrepreneurship.<sup>11</sup> It also seems to target women more than men, joining forces with the beauty and fashion industries to peddle the newest version of snake oil.<sup>12</sup>

There are other phrases and aspirations that accompany the current self-care “movement.”<sup>13</sup> These include “work-life balance,”

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(YOUTUBE Nov. 30, 2024), <https://www.youtube.com/watch?v=7YnHuoPIZpM> [<https://perma.cc/QN72-CV8G>] (discussing the self-care obsession among Millennials and Gen-Z).

<sup>8</sup> For example, the Black Panther Party embraced self-care as essential to combatting white supremacy. See Janan P. Wyatt & Gifty G. Ampadu, *Reclaiming Self-care: Self-care as a Social Justice Tool for Black Wellness*, 58 COMMUN. MENTAL HEALTH J. 213 (2021) (referring to the Black Panther Party’s initiatives promoting community health, such as the free breakfast program and community medical clinics); Mary T. Bassett, *Beyond Berets: The Black Panthers as Health Activists*, 106 AM. J. PUBLIC HEALTH 1741 (2006) (discussing the Black Panthers’ commitment to achieving health for all, which was at the center of their vision of a more just and equitable world, and its opening of 13 free health clinics across the country). “Radical self-care,” written about by Black feminists, like Bell Hooks and Audre Lorde, is rooted in principles of “self-determination, self-preservation, and self-restoration,” and urges self-care as a “much-needed practice among activists who sought to propel social justice efforts while preserving their wellbeing.” Wyatt & Ampadu, *supra*; see also AUDRE LORDE, A BURST OF LIGHT AND OTHER ESSAYS 130 (1988) (“Caring for myself is not self-indulgence, it is self-preservation, and that is an act of political warfare.”). For an example of a Black Panther Party member who embraced radical self-care, see MARY FRANCES PHILLIPS, BLACK PANTHER WOMAN: THE POLITICAL AND SPIRITUAL LIFE OF ERICKA HUGGINS (2025) (biography of Huggins revealing the paramount role of self-care and community care in her political journey, including spiritual wellness practices she developed during her incarceration).

<sup>9</sup> See Arianne E. Miller & Nellie Tran, *Your Self-Care Is Made of Capitalism: A Decolonial Approach to Self and Community Care*, in DECOLONIAL PSYCHOLOGY: TOWARD ANTICOLONIAL THEORIES, RESEARCH, TRAINING, AND PRACTICE 389 (Comas-Diaz, et al., eds., 2024) (critically interrogating self-care through the lens of decoloniality and proposing a more liberatory understanding of self-care).

<sup>10</sup> See generally Lieberman, *supra* note 2. As Lieberman observes, “Our focus is shifting away from the *actual* self—our bodies, minds, and spirits—and toward data *about* the self.” *Id.*

<sup>11</sup> See generally Kim, *supra* note 5 (discussing the economy and “infrastructure” of self-care as it intersects with work and workers).

<sup>12</sup> See LARocca, *supra* note 1, at 3–16 (discussing the vulnerability of women to the fads of self-care and wellness).

<sup>13</sup> Ronald Tyler, *The First Thing We Do, Let’s Heal All the Lawyers: Incorporating Self-*

“mindfulness” or “contemplative practice,” and “secondary (or vicarious or tertiary) trauma,” or “compassion fatigue.”<sup>14</sup> There are also workplace demands in the name of self-care: Working remotely a certain number of days per week, meeting with clients or colleagues by Zoom rather than in person, leaving the office at 5:00 p.m., and never working evenings or weekends.<sup>15</sup>

I have been a criminal defense lawyer for more than forty years and a clinical law professor for more than thirty. When I was a public defender, no one talked about any of this. No one thought, much less said out loud, that indigent defense was a nine-to-five job, the work could be done remotely, or the office had a responsibility to ensure that time spent defending clients be in perfect balance with our personal lives. We understood the work was challenging and important. We understood we would be working our asses off, especially at the beginning of our careers, to make sure our rookie status did not hurt our clients. We were motivated by commitment and, no matter how counter-cultural we thought we were, professionalism. We did everything we could to provide our indigent clients with *exemplary representation*—more than they would receive if they could afford to hire a private lawyer.

I say all this at my peril. I know I sound old and cranky.<sup>16</sup> Or overly nostalgic like Burt Lancaster in the movie “Atlantic City,” reminiscing about his youth: “The Atlantic Ocean was something then,” he said. “Yes, you should have seen the Atlantic Ocean in those days.”<sup>17</sup> Or maybe I sound like a typical, overly driven baby boomer at war with Millennials and Gen Z-ers. But I am a lawyer and a teacher of young people, who

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*Care into a Criminal Defense Clinic*, 21 BERKELEY J. CRIM. L. 1, 2–3 (2016) (referring to the “nascent movement to integrate self-care into legal education”).

<sup>14</sup> See generally CHARLES R. FIGLEY, *Compassion Fatigue as Secondary Traumatic Stress Disorder: An Overview*, in COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED 1 (Charles R. Figley ed., 1995) (noting that caring for others can have a cost); see also Lee Norton, Jennifer Johnson, & George Woods, *Burnout and Compassion Fatigue: What Lawyers Need to Know*, 84 UMKC L. REV. 987, 988 (2016) (“Compassion fatigue results from the cumulative emotional, psychological and physical effects of exposure to the pain, distress or injustice suffered by clients.”).

<sup>15</sup> Conversation with Marc Bookman, executive director of the Atlantic Center for Capital Representation, June 26, 2025 [notes on file with author]; conversation with Juval Scott, executive director of The Bronx Defenders, July 3, 2025 [notes on file with author].

<sup>16</sup> I am reminded of Andrew Sullivan’s self-conscious critique of the direction the gay rights movement has taken: “As I watched all this radical change, I wondered if I was just another old fart, shaking my fist at the sky, like every older generation known to man? Why not just accept that the next gay and lesbian generation has new ideas, has moved on, and old-timers like me should just move aside?” Andrew Sullivan, *Gay People Won. So Why Does It Feel As if We’re Losing?* N.Y. TIMES, June 29, 2025, at SR6.

<sup>17</sup> ATLANTIC CITY (Paramount Pictures 1980). I must give credit for this reference, which captures my concern perfectly, to Marc Bookman, Executive Director and co-founder of the Atlantic Center for Capital Representation.

sometimes teach me as much as I teach them. It is one of the best parts of the job: I learn new things, stay current, and get inspired all over again. Still, just as we should not reflexively dismiss the ways in which the next generation tests the generation that came before, neither are we required to uncritically embrace every new idea.

In this Essay, I share my concerns about what I regard to be an excessive focus on self-care in younger criminal defense circles and suggest a better way forward. First, I discuss the turn to self-care by the current generation of law students and young defenders and some of the literature urging it. Second, I examine the misuse and overuse of the term “trauma,” and whether it is helpful to clients or lawyers. Third, I acknowledge that not everyone is cut out to be a defender and those seeking “balance” might consider choosing work that is less demanding. Finally, for those inclined to become public defenders, I propose reframing the work as a *privilege*, not a burden—that is, the urgency of the work and the commitment required to do it well makes for a purpose-driven, meaningful life.

## II. THE TURN TO SELF-CARE BY LAW STUDENTS AND YOUNG DEFENDERS

### A. Anecdotal Evidence

I’m no sociologist, but I’m a pretty good observer. And I have seen some changes in law students and young lawyers who are interested in criminal defense. One of the chief concerns students have when enrolling in the criminal defense clinic I direct is whether they have what it takes to do indigent defense for the long haul, or whether they will “burn out.” They often raise this issue on the very first day of clinic orientation. I tease them that it is way too soon to worry about burnout; they haven’t even picked up a case yet! But I take the concern seriously enough to invite further conversation about it, conduct a class session with relevant reading on to how to sustain a career as a public defender, and invite a group of career defenders to speak to students.

Students are also worried about work-life balance, a phrase I have come to loathe, especially when uttered by someone just starting out in the legal profession. A few students have foolishly inquired about work-life balance when interviewing for a job at a public defender office. This does not advance them in the hiring process. The balance students are after is different from time management, which is an important skill, especially in high-volume poverty law practice (and is also helpful in life). Time management involves organizing one’s time so that it is spent productively and efficiently, focusing on the most urgent tasks and doing as little wheel-spinning as possible. Meanwhile, work-life balance seems to be the aspiration that work and life are in perfect equipoise. The goal is to keep work at bay, and, if the balance is off, recalibration is required so that life

wins out.

I asked my current research assistants about self-care—how their law school peers feel about it and how they feel. Both are headed for careers in public defense and have worked in public defender offices during law school. I tried not to steer them in one direction or the other, but they both knew my thinking on the subject.

One says there is no question that we talk a lot more about mental health now than ever before—in the mainstream culture and in law school. He thinks self-care and mental health are sometimes used interchangeably. He does not hate the notion of self-care in the abstract, only how it has become commodified, one more product to purchase.

He strongly resists the “binary” of work-life balance—the idea that work and life could be so easily separated. For him, life doesn’t stop when he is working. In many ways, life is enriched by work he loves; work is a version of life. The forces and principles that motivate him to use the law to serve the poor accused are also life motivators. He says, “These motivations don’t feel at all separable from the things that animate me on a daily basis no matter where I am.”<sup>18</sup>

Yet he acknowledges that some of his law school friends feel differently. He appreciates the ones who are honest about it: They would never do a job like public defense, not because they do not believe in it, but because they prefer work without such weighty consequences. He says these peers treat law school like a game to be mastered. The aim is to get lucrative offers from law firms that will continue to pay them handsomely for decades, work them to the bone, and never put another person’s life or liberty, or anything comparable, in their hands.<sup>19</sup> He says *these* are the law students and lawyers that might need balance and self-care because the demands on their time are extreme and, on some level, their work is utterly meaningless.<sup>20</sup> He notes that when he talks to law school friends heading to work at Big Law about their urgent need for self-care, he can’t help thinking something is missing from the work if they are *so* parched for presence, peace, fulfillment, “or whatever it is self-care is supposed to get us.”<sup>21</sup>

My other research assistant agrees that self-care has become a commodity—that it has become “a symptom of the consumerism and self-centeredness that Americans already struggle with.” She feels that popular culture has become “obsessed with the *self*, and this is particularly apparent in the legal profession.”<sup>22</sup> Most of the research she conducted on self-care reinforced this underlying self-obsession. She found a similar

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<sup>18</sup> Memo on Self-Care by Jonah Frere-Holmes, July 7, 2025 [on file with author].

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Memo on Self-Care by Hanna Lykke, July 7, 2025 [on file with author].

chorus: “*You work so hard! You deserve a break! You can’t give if you don’t take!*”<sup>23</sup>

This student doesn’t like what self-care has to offer, with its essential oil diffusers, gratitude journals, massages, meditation, and “Western-appropriated Eastern spirituality.”<sup>24</sup> She is afraid her generation is “numbing out” on consuming things to make them feel better.<sup>25</sup> She thinks it would be better to focus on a sense of community, rather than on oneself “so that we can show up for others and contribute meaningfully to the collective ‘us’ . . . [rather than] commodifying, pathologizing, and therapy-speaking everything.”<sup>26</sup>

She acknowledges that the work of indigent criminal defense is hard but says it *should be*. The criminal legal system “does not give an inch without a good fight,” she says. “And it’s a fight that’s unrelenting because the system is unrelenting.”<sup>27</sup> She appreciates that choosing to be a public defender is a “lifestyle decision—one that should not be taken lightly . . . [because] the stakes are high” and what defenders do or fail to do can have a profound impact on another person’s life.<sup>28</sup> But, she observes, when things go awry, it is the client who suffers, not the lawyer: “I can hop in my Tiguan, take the 405 to Capistrano Beach, and melt away the stress *I* feel . . . I will not be visiting my family behind plexiglass. I will not be told when to get up and go to bed and what to eat and when I can go outside and when I can take a shower and what mail I can receive. I will not have to live in a cage.”<sup>29</sup>

### B. Literature

The concern about the stress and vicarious trauma<sup>30</sup> of criminal defense has been written about by legal scholars and others,<sup>31</sup> and has

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Vicarious trauma occurs when one is exposed to trauma experienced directly by others. See Dep’t of Justice, Office for Victims of Crime, *The Vicarious Trauma Toolkit*, DEP’T OF JUST., <https://ovc.ojp.gov/program/vtt/what-is-vicarious-trauma> [<https://perma.cc/V6XG-SJMH>] (last visited July 3, 2025); see also COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED 7 (Charles R. Figley, ed., 1995) (describing secondary trauma as “the natural consequent behaviors and emotions resulting from knowing about a traumatizing event experienced by a significant other—the stress resulting from helping or wanting to help a traumatized or suffering person”).

<sup>31</sup> See, e.g., Elizabeth Dotson, David C. Brody, & Ruibin Lu, *An Exploratory Study of Occupational and Secondary Traumatic Stress Among a Mid-sized Public Defender’s Office*, 4 J. CRIM. JUST. & L 22 (2020) (finding that indigent defense attorneys suffer from

seeped into law student vernacular. This is especially so for students in law clinics, who increasingly come to the work with a “trauma vocabulary,” worried about how they will manage client distress and their own.<sup>32</sup> Sometimes it is tough for students fixated on what is happening to them, rather than to their clients, to tell the difference between bearing witness to trauma or tragedy and actually experiencing it.

I do not dispute that some poor people accused or convicted of crime suffer from trauma. If they had not already experienced trauma—from violence,<sup>33</sup> drug dependency or abuse,<sup>34</sup> or a mental health crisis,<sup>35</sup>—their arrest and prosecution may have been traumatic for them. I have no problem incorporating aspects of “trauma-informed lawyering” into my

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occupational and trauma-related stressors); Andrew P. Levin, Linda Albert, Avi Besser, Deborah Smith, Alex Zelenski, Stacey Rosenkranz, & Yuval Neria, *Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working with Trauma-Exposed Clients*, 199 J. NERVOUS & MENTAL DISEASE 946 (2011) (exploring secondary trauma among attorneys and support staff in the Wisconsin State Public Defender Office); Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245 (2003) (discussing a study about secondary trauma in lawyers representing criminal defendants and victims of domestic violence); Mark Rabil, *Secondary Trauma in Lawyering: An Introduction*, 56 WAKE FOREST L. REV. 719 (2021) (discussing secondary trauma in the context of a wrongful conviction and capital defense); Megan Zwishon, Wayne Handley, Danielle Winters, & Alyssa Reiter, *Vicarious Trauma in Public Service Lawyering: How Chronic Exposure to Trauma Affects the Brain and Body*, 22 RICHMOND PUB. INT. L. REV. 269 (2019) (discussing the physical symptoms of vicarious trauma with a focus on graphic sex crime evidence).

<sup>32</sup> See generally Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLIN. L. REV. 359 (2016) (arguing that trauma-informed practice in law school clinics—which includes putting client trauma at the forefront of the lawyer-client relationship, while being mindful of vicarious trauma—further the goals of clinical teaching and helps prepare students for practice).

<sup>33</sup> See generally Abenaa A. Jones, Travis Gerke, Catherine W. Striley, Vicki Osborne, Nicole Whitehead, & Linda B. Cottler, *A Longitudinal Analysis of the Substance Abuse, Violence, and HIV/AIDS (SAVA) Syndemic Among Women in the Criminal Justice System*, 51 J. PSYCHOACTIVE DRUGS 58 (2019).

<sup>34</sup> See generally Abenaa A. Jones, Meredith S. Duncan, Amaya Perez-Brumer, Christian M. Connell, William B. Burrows, & Carrie B. Oser, *Impacts of Intergenerational Substance Use and Trauma among Black Women Involved in the Criminal Justice System: A Longitudinal Analysis*, 153 J. SUBSTANCE USE ADDICT TREATMENT 208952 (2023).

<sup>35</sup> See generally KATHRYN COLLINS, KAY CONNORS, SARA DAVIS, APRIL DONOHUE, SARAH GARDNER, ERICA GOLDBLATT, ANNA HAYWARD, LAUREL KISER, FRED STRIEDER, & ELIZABETH THOMPSON, UNDERSTANDING THE IMPACT OF TRAUMA AND URBAN POVERTY ON FAMILY SYSTEMS: RISKS, RESILIENCE, AND INTERVENTIONS (2010) (discussing the particular impact trauma and poverty have on inner-city families); see also Emily K. Lenart, Tiffany K. Bee, Catherine P. Seger, Richard H. Lewis Jr., Dina M. Filiberto, Dih-Dih Huang, Peter E. Fischer, Martin A. Croce, Timothy C. Fabian, & Louis J. Magnotti, *Youth, poverty, and interpersonal violence: a recipe for PTSD*, 6 TRAUMA SURG ACUTE CARE OPEN (2021), <https://tsaco.bmj.com/content/6/1/e000710> [<https://perma.cc/RJ6S-DW9X>] (identifying younger age, lower income, and penetrating physical injury as independent predictors of the development of PTSD post-trauma).

teaching and lawyering;<sup>36</sup> it is one more useful tool.

However, I stop short of the second prong of trauma-informed lawyering—the focus on the effect of a client’s trauma on the practitioner and describing it as another form of trauma.<sup>37</sup> This does not mean that I neglect to teach about the importance of setting appropriate professional boundaries between lawyer and client.<sup>38</sup> To the contrary, I spend a good deal of time talking about boundaries in the lawyer-client relationship. But I do this because it is essential to good lawyering, not because I am worried about student trauma.

What I do not and will not do is what my friend and fellow criminal defense clinic director Ron Tyler does. Professor Tyler “integrate[s] cutting-edge education on self-care” into the Stanford Criminal Defense Clinic to address the “secondary or vicarious trauma” students suffer due to “expos[ure] to clients’ traumatic experiences.”<sup>39</sup>

Professor Tyler has good reason for incorporating self-care into his clinic: Other helping professions, such as medicine and social work, have

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<sup>36</sup> See Katz & Haldar, *supra* note 32 at 361:

“‘Trauma-informed practice’ is an increasingly prevalent approach in the delivery of therapeutic services, social and human services, and now legal practice. Put simply, the hallmarks of trauma-informed practice are when the practitioner, here a law student, puts the realities of the clients’ trauma experiences at the forefront in engaging with clients and adjusts the practice approach informed by the individual client’s trauma experience.”

<sup>37</sup> See *id.* (“Trauma-informed practice also encompasses the practitioner employing modes of self-care to counterbalance the effect the client’s trauma experience may have on the practitioner.”). Katz and Haldar, two influential scholars on trauma-informed lawyering, call “the awareness of vicarious trauma and the need to take preventive measures against its effects ... the most crucial aspect of the pedagogy of teaching trauma-informed lawyering in law clinics, and certainly the aspect students have the greatest need to carry forward with them in their legal practice.” They note that one “very effective way to teach students about preventing vicarious trauma is to encourage good self-care and model good self-care.” *Id.* at 390–91.

<sup>38</sup> See *id.* at 292 (“Self-care, in the sense of setting appropriate boundaries between the advocate and the client, is recognized to be a protective factor against vicarious trauma.”).

<sup>39</sup> Tyler, *supra* note 13, at 3–4. Tyler is not the only law scholar who has written about or incorporates self-care into their teaching. See, e.g., Deborah Callaway, *Using Mindfulness Practice to Work with Emotions*, 10 NEV. L. J. 338 (2010); Kim, *supra* note 5; Rhonda V. Magee, *Educating Lawyers to Meditate?* 79 UMKC L. Rev. 1 (2010); Lynette M. Parker, *Increasing Law Students’ Effectiveness When Representing Traumatized Clients: A Case Study of the Katharine & George Alexander Community Law Center*, 21 GEO. IMMIGR. L.J. 163 (2007); Jean Koh Peters, *The Lawyer-As-Context II: Fulfilling the Ethical Duty to Address Occupational Hazards That Imperil Client Service: Stress, Burnout, Vicarious Traumatization*, in REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 421, 427 (3d ed. 2007); Charity Scott, *Mindfulness in Law: A Path to Well-Being and Balance for Lawyers and Law Students*, 60 ARIZ. L. REV. 635 (2018). See also Symposium, *Mindfulness in the Law and ADR*, 7 HARV. NEGOT. L. REV. 1 (2002), Symposium, *Mindfulness, Emotions, and Ethics in Law and Dispute Resolution*, 10 NEV. L. J. 289 (2010).

long incorporated self-care into the clinical components of the curricula.<sup>40</sup> Although he acknowledges that law students experience stress and trauma to a “lesser degree” than practicing public defenders,<sup>41</sup> he nonetheless urges the incorporation of self-care into criminal defense clinics to address vicarious trauma, general law student unhappiness,<sup>42</sup> and lawyer longevity.<sup>43</sup> Professor Tyler is a leading proponent of this practice.

I suppose it is a matter of degree. Maybe self-care in its most commodified form is not at the center of Professor Tyler’s teachings. But the self-care curriculum he describes is far-reaching, including an intensive eight-week workshop.<sup>44</sup> Additionally, every subject addressed—no matter how familiar to most criminal defense clinics<sup>45</sup>—is presented “within a mindfulness context.”<sup>46</sup> This consists of first, a period of personal reflection though “guided meditation,” second, a supportive, paired sharing of insights gained from the personal reflection, and, third, a group discussion of the insights gained from the personal and paired experiences.<sup>47</sup> Self-care, with a heavy dose of mindfulness and meditation, is central to Professor Tyler’s clinic.

I must confess that, like some of his students, this would not have worked for me as a student or young defender, and it would not work for me now. Meditation is not for everyone.<sup>48</sup> It is too *silent* for some of us. Notwithstanding my belief in “the examined life,”<sup>49</sup> all that self-reflection

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<sup>40</sup> See Tyler, *supra* note 13, at 4. Tyler cites a former clinical law student who is also a social worker, who notes that “the importance of our own emotional health and well-being was instilled . . . in almost every [social work] course and in every context of social work practice.” Christine E. Doucet, *Law Student, Heal Thyself: The Role and Responsibility of Clinical Education Programs in Promoting Self-Care*, 23 J. L. & SOC. POL’Y 136, 142–43 (2014).

<sup>41</sup> See generally Tyler, *supra* note 13.

<sup>42</sup> *Id.* at 9–14 (discussing the role of law schools in law students’ wellbeing).

<sup>43</sup> *Id.* at 5–9 (discussing burnout and secondary trauma). Tyler notes that, in designing workshops on self-care for clinic students, he was “striving for both immediate and long-term benefits” for his students. In the short-term, his “goal was to reduce . . . students’ stress and enhance their empathy for their clients.” In the long-term, he hoped to provide students with “self-care tools that would be useful throughout their careers.” *Id.* at 18. Overall, his goal was to “supply students with tools that would make them more resilient and less susceptible to the slings and arrows of a high-stress criminal defense practice.” *Id.*

<sup>44</sup> *Id.* at 19.

<sup>45</sup> Subjects included implicit bias, setting boundaries, and breaking bad news, standard fare in most criminal clinics.

<sup>46</sup> Tyler, *supra* note 13, at 19 (subjects include implicit bias, setting boundaries, and breaking bad news, standard fare in most criminal clinics).

<sup>47</sup> *Id.* at 20–23.

<sup>48</sup> See *id.* at 22 “[S]ome students disliked meditation. Some felt that the self-care sessions could be improved by acknowledging that mediation may not be everybody’s idea of self-care. . . .”).

<sup>49</sup> As Socrates is credited for saying, “The unexamined life is not worth living.”

might kill me. As one of his students put it, “[T]aking more time to exercise, eat, or sleep would be better. . . . than meditation.”<sup>50</sup>

Professor Tyler is not alone in incorporating self-care and secondary trauma into the clinical curriculum and urging others to do so.<sup>51</sup> Many of my colleagues at Georgetown, including those who teach in criminal or juvenile defense clinics, teach about vicarious trauma. Others have urged public defender offices to incorporate self-care into training programs and continuing legal education.<sup>52</sup>

Is this a west coast cultural phenomenon or a generational one? Holding aside my research assistants and the students drawn to my clinic—who seem more in synch with my approach to the work, or are keeping quiet about their secret self-care practices to avoid my ire—is Professor Tyler more in touch with this generation of law students than I am? Maybe. But this is not necessarily a good thing.

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<sup>50</sup> Tyler, *supra* note 13, at 22 (citing anonymous student comments collected by the author).

<sup>51</sup> See, e.g., Jennifer Brobst, *The Impact of Secondary Traumatic Stress Among Family Attorneys Working with Trauma-Exposed Clients: Implications for Practice and Professional Responsibility*, 10 HEALTH & BIOMEDICAL L. 1 (2014) (examining secondary trauma among family lawyers); Jenny E. Carroll, *If Only I had Known: The Challenges of Representation*, 98 FORDHAM L. REV. 2447 (2021) (former public defender urging greater focus on the “trauma of representation”); Rabil, *Secondary Trauma in Lawyering*, *supra* note 31 (urging awareness of secondary trauma in legal education—that “‘thinking like a lawyer’ must encompass self-care”); Sandra Simkins, *Public Interest Burnout: Seven Factors That Increase The Risk*, 17 DEPAUL J. FOR SOC. JUST. 1 (2023) (co-founder of the Children’s Justice Clinic at Rutgers Law School acknowledging vicarious trauma as a factor in burnout but rejecting individual self-care as the answer).

<sup>52</sup> See Jenny P. Andrews, *Sustaining Well-Being in Public Defense*, BE SUSTAINED (June 13, 2021), <https://besustained.org/wp-content/uploads/2021/06/sustaining-well-being-in-public-defense-by-jenny-andrews.pdf> [<https://perma.cc/CU53-HADU>] (California public defender urging various forms of self-care); Dotson et al., *supra* note at 31 (arguing that medium and large public defender offices should provide “periodic workshops covering the inherent emotional dangers in working with traumatized clients and their families . . . geared toward the issues particular to attorneys working in indigent defense” and that state and national indigent defense associations should do the same); Katherine Mason, *Compassion, Client-Centeredness, and the Imperative for Self-Care*, NATIONAL ASSOCIATION FOR PUBLIC DEFENSE, (October 25, 2017), <https://publicdefenders.us/blogs/compassion-clientminuscenteredness-and-the-imperative-for-self-care/> [<https://perma.cc/S4YH-2F2S>] (urging public defender systems to incorporate self-care); Seema Tahir Saifee, *Sustaining Lawyers*, 56 WAKE FOREST L. REV. 907, 930–42 (2021) (urging a culture of “self-preservation,” in which health and wellness are built into legal organizational structures); see generally Zwishon et al., *supra* note 31 (arguing that public service lawyering literally changes the brain and offering as examples child pornography, rape, and murder cases).

### III. THE OVERUSE AND MISUSE OF TRAUMA AND THE SLIPPERY SLOPE TO SELF-CENTEREDNESS

I worry about the overuse and misuse of the word “trauma.” It has become trendy and meaningless. If every single poor client—or more broadly, every single public interest client<sup>53</sup>—suffers from *trauma*, what does this mean? Are our clients, merely by virtue of their station in life, traumatized and impaired? Worse still, if we come to believe that every single student or lawyer working with poor or disadvantaged clients suffers from their own (once removed) trauma. What an unhappy lot!

But it is not just the imprecision that is troubling. It is dangerous to assume that all poor people, no matter their circumstances, can be lumped together as traumatized, requiring special intervention. It is a terrible stereotype, these “psychologically damaged” poor people. We already criminalize poverty—prosecuting the homeless for trespass, the penniless for panhandling, and the alcohol and drug-addicted for any number of petty offences. Must we pathologize poverty, too? More importantly, the broad overuse of trauma denies the resilience of poor people, who have been tested more than most of us and still manage to get on.<sup>54</sup>

Trauma is a psychological term. Psychological trauma is emotional distress caused by an event (or events) or experience that overwhelms the capacity to emotionally digest it.<sup>55</sup> The American Psychological Association defines trauma as:

Any disturbing experience that results in significant fear, helplessness, dissociation, confusion, or other disruptive feelings intense enough to have a long-lasting negative

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<sup>53</sup> See Simkins, *supra* note 51, at 7–11 (describing the risk of vicarious trauma for public interest lawyers because of the “victimization” of their clients).

<sup>54</sup> I am reminded of the sturdy persistence of mother and son in the classic young adult novel *Sounder*. Notwithstanding the dire poverty of this sharecropper family in Depression era South and the father’s imprisonment for allegedly stealing a ham, the mother finds a way to feed her children, the boy learns to read and ultimately pursues an education, and even the family dog manages to survive being shot. WILLIAM H. ARMSTRONG, *SOUNDER* (1969). The movie *Sounder*, brilliantly directed by Martin Ritt, featuring memorable performances by Cicely Tyson and Paul Winfield, and with music by the incomparable Taj Mahal, captures that family’s struggles, dignity, and resilience. *SOUNDER* (20th Century Fox 1972). I thank Tucker Carrington, who cites *Sounder* as one of the things that inspired him to become a public defender, for prompting me to revisit the book and movie.

<sup>55</sup> See generally *Trauma*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <http://www.apa.org/topics/trauma/> [<https://perma.cc/N7RA-U97B>] (last visited Dec. 22, 2025); See also Richard R. Kluft, Sandra L. Bloom, & J. David Kinzie, *Treating the Traumatized Patient and Victims of Violence*, in 86 *NEW DIRECTIONS IN MENTAL HEALTH SERVS.* 79 (2000) (citing B.A. Van der Kolk, *The Compulsion to Repeat the Trauma: Re-enactment, Re-victimization, and Masochism*, 12 *PSYCHIATRIC CLINICS OF N. AM.* 2 (1989)).

effect on a person's attitudes, behavior, and other aspects of functioning.

Traumatic events include those caused by human behavior (e.g., rape, war, industrial accidents) as well as by nature (e.g., earthquakes) and often challenge an individual's view of the world as a just, safe, and predictable place.<sup>56</sup>

The Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR) defines trauma as exposure to an event involving actual or threatened death, serious injury, or sexual violence. This exposure can be through direct experience, witnessing the event, learning about it happening to a close other, or repeated exposure to its aversive details.<sup>57</sup> The DSM-5 emphasizes that *these events must be outside the range of usual human experience*.<sup>58</sup>

Specific symptoms accompany trauma, including recurrent, involuntary, and intrusive distressing memories of the traumatic event(s); recurrent distressing dreams relating to the traumatic event(s); dissociative reactions (especially flashbacks) in which the individual feels or acts as if the traumatic event(s) were recurring; intense or prolonged psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event(s); marked physiological reactions to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).<sup>59</sup>

Specific behaviors also accompany trauma, including persistent avoidance of stimuli associated with the traumatic event(s). Individuals who have experienced trauma will engage in efforts to avoid distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s), and will try to avoid external reminders (people, places, conversations, activities, objects, situations) that arouse distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s).<sup>60</sup>

Additionally, there are negative changes in cognition and mood associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred, as evidenced by at least two of the following:

- Inability to remember an important aspect of the traumatic

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<sup>56</sup> *Trauma*, *supra* note 55.

<sup>57</sup> AMERICAN PSYCHOLOGICAL ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, Exhibit 1.3-4 (2022).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* (emphasis added). See also SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., DEP'T HEALTH AND HUM. SERVS., TREATMENT IMPROVEMENT PROTOCOL (TIP) SERIES No. 57: TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES (2014) (recommending specific protocols to address trauma).

event(s) (typically due to dissociative amnesia, and not to other factors such as head injury, alcohol, or drugs);

- Persistent and exaggerated negative beliefs or expectations about oneself, others, or the world;
- Persistent, distorted cognitions about the cause or consequences of the traumatic event(s) that lead the individual to blame himself/herself or others;
- Persistent negative emotional state (e.g., fear, horror, anger, guilt, or shame);
- Markedly diminished interest or participation in significant activities;
- Feelings of detachment or estrangement from others;
- Persistent inability to experience positive emotions (e.g., inability to experience happiness, satisfaction, or loving feelings).

There are also marked changes in arousal and reactivity associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred, as evidenced by at least two of the following:

- Irritable behavior and angry outbursts (with little or no provocation), typically expressed as verbal or physical aggression toward people or objects;
- Reckless or self-destructive behavior;
- Hypervigilance;
- Exaggerated startle response;
- Problems with concentration;
- Sleep disturbance (e.g., difficulty falling or staying asleep or restless sleep).<sup>61</sup>

Psychological trauma causes “*clinically significant distress or impairment*” in social, occupational, or other important areas of functioning.<sup>62</sup> It is more than the fact of a traumatic event. There are discernable symptoms that go beyond “ordinary” distress or impairment.

It is not true, at least in my experience, that all poor people accused or convicted of crime are traumatized. Individuals do not all react in the same way to stressors—whether the stressor is a dysfunctional family, a community beset by violence, a life of deprivation, police brutality, or even sexual abuse. Individuals react to stressors differently due to a variety of factors, including past experiences, personality, support systems, and coping mechanisms.<sup>63</sup> I am not suggesting that poverty isn’t stressful; it is

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<sup>61</sup> See *SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN.*, *supra* note 60, at 78.

<sup>62</sup> *Id.* at 83 (emphasis added).

<sup>63</sup> See *id.* at 59:

Trauma, including one-time, multiple, or long-lasting repetitive events, affects everyone differently. Some individuals may clearly display

stressful, and there are consequences to mind and body.<sup>64</sup> I am not suggesting that racism isn't stressful.<sup>65</sup> But not all stress is trauma.

Moreover, not all poor people are traumatized by the things that might upset law students. Clients who have been arrested many times may no longer be as traumatized by the physical violence of an arrest and detention as they once were. It is not a pleasant experience to be sure, but it has become part of their lives, something they've come to expect if they get caught committing a crime. My civil poverty lawyer colleagues would say the same thing about evictions. Some clients have been evicted so many times it is how they live their lives—staying in a place as long as they can until they can't pay the rent. Again, it is not a pleasant experience—and there is a disproportionate impact on black and brown women and their families<sup>66</sup>—but not every evicted person is traumatized.

It is important to have a little humility here. I am an indigent criminal

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criteria associated with posttraumatic stress disorder (PTSD), but many more individuals will exhibit resilient responses or brief subclinical symptoms or consequences that fall outside of diagnostic criteria. The impact of trauma can be subtle, insidious, or outright destructive. How an event affects an individual depends on many factors, including characteristics of the individual, the type and characteristics of the event(s), developmental processes, the meaning of the trauma, and sociocultural factors.

*See also* Bridget Blach, *Why do people respond to stress and trauma so differently? The emerging field of neuroresilience may have answers*, ASSOC. OF AM. MED. COLLEGES NEWS (Aug. 8, 2024), <https://www.aamc.org/news/why-do-people-respond-stress-and-trauma-so-differently-emerging-field-neuroresilience-may-have> [<https://perma.cc/S76N-FJFN>] (describing the emerging field of neuroresilience).

<sup>64</sup> *See generally* MICHAEL BRIETENBACH, ELISABETH KAPFERER, & CLEMENS SEDMAK, *STRESS AND POVERTY: A CROSS-DISCIPLINARY INVESTIGATION OF STRESS IN CELLS, INDIVIDUALS, AND SOCIETY* (2021) (examination of stress, its causes and consequences, and its relationship to poverty); COLLINS ET AL., *supra* note 35; *see also* Dave Davies, *Fresh Air, How poverty and racism 'weather' the body, accelerating age and disease*, NAT'L PUB. RADIO: FRESH AIR (Mar. 28, 2023), <https://www.npr.org/sections/health-shots/2023/03/28/1166404485/weathering-arline-geronimus-poverty-racism-stress-health> [<https://perma.cc/3NM9-PVTY>] (interview with University of Michigan professor, Arline Geronimus, who finds that marginalized people suffer nearly constant stress, which leads to increasingly serious health problems over time).

<sup>65</sup> *See* Jude Mary Cénat, *Complex Racial Trauma: Evidence, Theory, Assessment, and Treatment*, 18 PERSPECT. PSYCHOL. SCI. 675 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10186562/> [<https://perma.cc/AL8D-KG8D>] (presenting a new theoretical framework for racial trauma based on interpersonal, institutional, and systemic racism on a repetitive, constant, inevitable, and cumulative basis).

<sup>66</sup> *See* Abdullahi Tunde Aborode, *Threats of eviction in the USA: A public health concern*, ANN. MED. SURG. (Sep. 15, 2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9486371/> [<https://perma.cc/BX79-XRBB>] (reporting that 2.8 million families are at risk of eviction in the US, a disproportionate number of which are Black and Hispanic families headed by women and describing the mental and physical health problems that result from housing insecurity).

defense lawyer, not a mental health professional. Although I am familiar with the DSM-5, I am not capable of diagnosing post-traumatic stress disorder (PTSD) or any other mental disorder. Neither are most lawyers. Lawyers with additional training or expertise in mental health may have a step up. But they seldom conduct the rigorous evaluations their mental health colleagues would. It is one thing to be informed about trauma—which, again, I acknowledge is a good thing—and another to claim expertise.

There is no question that trauma-informed lawyering is essential for certain kinds of representation. If you are representing someone who has been sexually assaulted and are uninformed about trauma, you can do real harm to your client. If you are representing someone on death row, in detention at Guantanamo, or who has been in solitary confinement, you can do harm to the client and undermine any chance for a trusting lawyer-client relationship. The same is true for representing children who have been taken from their families, and clients who have fled state violence, torture, or civil war to come to this country.

As for vicarious trauma, I have many more concerns. Are those of us who bear witness to the trauma of others in the course of our work truly suffering from psychological trauma? Just as feeling sad is not the same thing as suffering from depression, and feeling nervous is not the same as having an anxiety disorder, having a close professional relationship with someone who is suffering, and feeling for them, is not trauma. I find the term “compassion fatigue,” which is used interchangeably with vicarious and secondary trauma, offensive. It pathologizes empathy,<sup>67</sup> which is essential in lawyering and, frankly, in all relationships.<sup>68</sup>

Of course, those of us who are teachers or supervisors should also be aware that some students and young lawyers come to us having experienced psychological trauma. We should at least have the vocabulary for this. Trauma-informed *teaching*—which does not mean assuming that every student is traumatized but recognizes that some may be<sup>69</sup>—is a fine thing.

My fear is that the misuse and overuse of the concepts of trauma and vicarious trauma put the focus too much on the law student or lawyer—projecting what they might have found upsetting upon the client and then claiming trauma themselves. It is too self-centered. No matter the awful

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<sup>67</sup> See, e.g., CHARLES FIGLEY, TREATING COMPASSION FATIGUE 2 (2002) (asserting that there is a “cost of caring.”) (citation omitted). I find this statement disturbing. For a discussion of contested views of “empathy” in our current political and cultural context, see Jennifer Szalai, ‘Empathy’ Becomes Debatable, N.Y. TIMES, July 24, 2025, at C1.

<sup>68</sup> I have been critical of empathy as a central motivation in indigent criminal defense, see generally Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathic, Heroic Public Defender*, 37 U.C. DAVIS L. REV. 1203 (2004) [hereinafter *Too Much Heart*], but I am not against empathy in general!

<sup>69</sup> Law school is sometimes unpleasant but not traumatizing.

details of a case, the dreadful childhood of a client, the brutal conditions of confinement, or the truly traumatized state of a client, these things are not happening to the lawyer. This is about the client; it is *not about you*. As my research assistant noted, we get to hop in our cars and drive away.

Moreover, how is this focus on our own distress at all helpful to the client? It is not. When we focus inward, we look away from the person we are supposed to be looking after. We lose perspective and judgment. We lose the ability to distinguish our client's needs—which we are professionally obligated to pursue—from our own. We fail to engage in client-centered representation.<sup>70</sup>

Trauma, whether experienced directly or “vicariously,” is not an everyday experience. If everything is traumatic then nothing is traumatic. Trauma becomes the baseline. Especially in work as challenging as indigent defense, we must be able to distinguish the annoying from the enraging, the unfortunate from the tragic, the disheartening from the truly unjust. We simply cannot be traumatized by every horror and heartbreak. These things come with criminal defense.

#### IV. MAYBE DON'T BE A DEFENDER

Criminal defense is not for everyone. Not everyone has the temperament, attitude, or stamina for the work.<sup>71</sup> Every job has its own set of requirements. If they decide to practice law, law students have a variety of work to choose from, including many public interest/social justice-orientated alternatives. By the time law students become lawyers they have the privilege to decide how to live their lives. If they are not suited for criminal defense, they should go in a different direction, not try to reshape the work to suit their individual sensibilities.<sup>72</sup>

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<sup>70</sup> See generally DAVID A. BINDER, PAUL B. BERGMAN, PAUL R. TREMBLAY, & IAN S. WEINSTEIN, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (4th ed. 2019); MONROE H. FREEDMAN & ABBE SMITH, *UNDERSTANDING LAWYERS' ETHICS* (6th ed. 2023).

<sup>71</sup> See Barbara Allen Babcock, *Defending the Guilty*, 32 CLEVE. ST. L. REV. 175, 175 (1983) (“How can you defend a person you know is guilty? I have answered that question hundreds of times, never to my inquirer's satisfaction, and therefore never to my own. In recent years, I have more or less given up, abandoning the high-flown explanations of my youth, and resorting to a rather peevish: ‘Well, it's not for everybody. Criminal defense work takes a peculiar mind-set, heart-set, soul-set.’”).

<sup>72</sup> The same applies to many types of work, as one commentator remarked about the masks Immigration and Customs Enforcement officers have taken to wearing when they seize people deemed to be “illegal” on the streets, in their homes, and at their workplaces:

In cities across the country, masked men and women are snatching people off the streets, forcing them into unmarked cars to be detained, without offering them a chance to contact family members or a lawyer . . . . As federal agents, ICE officers are public servants whose ultimate responsibility lies with the people. And the people have the right to know who is operating in their government. If ICE officers don't want

There is no shame in trying on indigent defense during law school to see if it is for you. That is what school is for; law students are allowed to be dilettantes. Exposure to and immersion in interesting, complicated, and meaningful work—no matter what a student does afterward—is a good thing. Enrolling in a criminal defense clinic gives students a deeper understanding of many things: poverty; inequality; the randomness of justice and pervasiveness of injustice; the enormous power and insatiability of the criminal legal system; and systemic racism. The experience can be formative, even life changing.

But students should know themselves<sup>73</sup> and be honest about their wants, needs, and values. If they want a nine to five job, they shouldn't become a public defender. If they want every weekend off, they shouldn't be a public defender. If they must be “fully themselves at all times”—their identity, politics, and feelings front and center no matter the context, client, or courtroom<sup>74</sup>—they shouldn't be a public defender. If they are worried about the consequences of public defense on their mental health, it's probably not a good fit.

It is not that there is never any downtime in indigent defense, but it is unpredictable. Cases fall apart or are dismissed. Trials are continued. Many defenders enjoy this sudden “found time” (even though they may be dying to deliver their thwarted opening statement to someone, anyone). Vacations are part of the job and should be taken; everyone needs a break. Some offices offer sabbaticals after a certain number of years of service. These should be taken.<sup>75</sup>

Like anyone else who works hard and undertakes responsibility for others, criminal defense lawyers can sometimes use a break. This is all

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to risk identification—if they do not want the public they serve to hold them accountable for their actions—then they can choose another line of work.

Jamelle Bouie, *ICE Has No Right to Anonymity*, N.Y. TIMES, June 29, 2025, at SR3.

<sup>73</sup> See Spencer Bailey, *Episode 58: Reginald Dwayne Betts on How Freedom Can Begin With a Book*, TIME SENSITIVE (Jan. 18, 2022), <https://timesensitive.fm/episode/reginald-dwayne-betts-on-how-freedom-can-begin-with-a-book/> [<https://perma.cc/6SM2-LZRD>] (formerly incarcerated Yale-educated lawyer and poet Reginald Dwayne Betts saying, “I thought I was going to be a public defender. Then I decided I didn't want to be a public defender because it's really hard to watch somebody go to prison.”).

<sup>74</sup> This scenario has increasingly come up in defender offices and law clinics. A (slightly fictionalized) recent example involves a public defender who was in court representing a client in custody. She had several large pins on her blazer with provocative political slogans. When the judge directed her to either remove or cover the pins, the defender refused to do so, citing her right to free speech. The judge said the case would not move forward until the defender took off or covered the pins. The defender again refused. In addition to her free speech rights, she needed to be “fully herself” in court. I serve on the board of several indigent defense agencies. Another career defender and I shared a good laugh about the idea that we are ever *fully ourselves* when we stand up for an accused.

<sup>75</sup> Sabbaticals for public defenders makes more sense to me than academic sabbaticals for no longer productive academics!

well and good, but it doesn't have to be called *self-care*.

Representing people accused or convicted of crime will inevitably be in tension with a defender's politics or values or personal feelings.<sup>76</sup> After all, defenders represent alleged rapists, racists, and child abusers, the toughest categories of crime for many of us. But that is part of the job. The moral complexity is one of the things that makes it interesting. Again, if it is not a good fit, don't do it.

## V. THE PRIVILEGE OF A PURPOSE-DRIVEN PROFESSIONAL LIFE

I believe in a life of commitment, purpose, and service, and that it is an honor and privilege to be of service to a person in need. I believe that professional expertise is something of value and those who possess it can make a difference in people's lives. I believe that lawyers have power in the very best sense—the power to *help*.<sup>77</sup>

I also believe there are skills, values, and ways of thinking that help young, committed defenders do the work and persist. I have written about these before.<sup>78</sup> In the most recent iteration, I have settled on five things: (1) respect for client; (2) dedication to professional craft; (3) a sense of outrage; (4) an ability to let go; and (5) humility (especially about what you can change and what you cannot).<sup>79</sup> These are all things that can be modeled, taught, and learned.

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<sup>76</sup> Cf. Ruth Marcus, *Why a Devoted Justice Department Lawyer Became a Whistle-Blower*, THE NEW YORKER (July 10, 2025), <https://www.newyorker.com/news/the-lede/why-a-devoted-justice-department-lawyer-became-a-whistle-blower> [<https://perma.cc/4PNG-JRDZ>] (describing the sometimes personally difficult job of Justice Department lawyer Erev Reuveni, who was fired by Attorney General Pamela Bondi for telling the truth in federal district court). As Marcus points out:

The immigration unit in which Reuveni worked is skewed in a conservative direction: most of its workload involves defending immigration judges' determinations that a noncitizen should be deported, and the rest, more often than not, entails supporting the executive branch's actions against challenges by immigrant-rights advocates. These jobs are not for everyone. Government lawyers have to be willing to suppress their personal views, and—to a certain extent—to toe the line of the party in power.

*Id.*

<sup>77</sup> See Monroe H. Freedman, *Ethical Ends and Ethical Means*, 41 J. LEGAL EDUC. 55, 55–56 (1991) (“I identify the client not as ‘this other person, over whom I have power’ but as ‘this other person whom I have the power to help.’ . . . My view of lawyers’ ethics is, therefore, client-centered, emphasizing the lawyer’s role in enhancing the client’s autonomy as a free person in a free society.”).

<sup>78</sup> See generally Abbe Smith, *Martyrdom and Criminal Defense*, 28 BERKELEY J. CRIM. L. 169 (2023) (arguing that one does not have to be a martyr, living a life of suffering and sacrifice, to be a public defender.); Smith, *Too Much Heart*, *supra* note 68 (critically discussing heroism and empathy as sustaining motivations in criminal defense and offering another approach).

<sup>79</sup> Smith, *Martyrdom and Criminal Defense*, *supra* note 78, at 195–203.

This life of commitment is not the same thing as a life of martyrdom.<sup>80</sup> As I often say, I am a very happy criminal defense lawyer.<sup>81</sup> I do not regard my work as a burden—a constant, hopeless Sisyphian boulder I can barely budge.<sup>82</sup> I am not weighed down by traumatized people traumatizing others. I do not see my life as hopelessly out of balance: all work and no play. I do not think my friends or family see my life that way either, though maybe I am drawn to people who make similar life choices.

I want to propose a re-framing. Instead of worrying about stress, burnout, and trauma, how about thinking of public defense as a privilege? How about feeling *lucky* to have work that is purpose-driven and part of a fabulous community of defenders?<sup>83</sup> How about feeling lucky to be among the happiest and most fulfilled lawyers?<sup>84</sup> Indeed, according to the data, notwithstanding the stressful nature of the job indigent criminal defense provides high rates of job satisfaction.<sup>85</sup>

I will never forget my delight when, after graduating from law school, I received a job offer from the Defender Association of Philadelphia. My

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<sup>80</sup> See generally Smith, *Martyrdom and Criminal Defense*, *supra* note 78.

<sup>81</sup> *Id.* at 173.

<sup>82</sup> See Jonathan Rapping, *Redefining Success as a Public Defender: A Rallying Cry for Those Most Committed to Gideon's Promise*, THE CHAMPION: PERSPECTIVES ON GIDEON, June 2012, at 30.

<sup>83</sup> See *id.* at 31 (describing the importance of public defender community). Rapping talks about being “surrounded” by a “community of committed, inspiring lawyers”:

They supported me. They helped me understand that [a disappointing result in a case] would have been the same if this young man had any other lawyer, and that this young man benefitted from having a lawyer who cared, treated him as a person, and fought for him. They helped me understand that we cannot underestimate the importance of giving clients respect and a sense of their own deep humanity during the most trying time of their lives. This was my first lesson in the importance of having a community if one is to sustain himself as a public defender.

*Id.*

<sup>84</sup> In view of how unhappy most lawyers are, this might damn defenders with faint praise! See Douglas Quenqua, *Lawyers With Lowest Pay Report More Happiness*, N.Y. TIMES (May 12, 2015, at 14:42 ET), <https://archive.nytimes.com/well.blogs.nytimes.com/2015/05/12/lawyers-with-lowest-pay-report-more-happiness/> [<https://perma.cc/J4GY-RXKE>] (reporting a study that found public defenders and legal aid lawyers are the happiest among lawyers, especially when compared to Big Law lawyers). For a discussion of the data underlying the Quenqua piece, which concludes that a broad swath of public interest/public service lawyers are generally happier than their private, commercial law counterparts, see generally Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554 (2015).

<sup>85</sup> See Dotson et al., *supra* note 31 at 17–18. Dotson and her colleagues report being confused about this finding: “This speaks to the complexity of the relationship between satisfaction and stress in the public defender work environment and points to the need for additional research to clarify these findings.” *Id.* at 18. I don’t think it’s that complex. Stress and satisfaction are not mutually exclusive.

delight never waned. Being a trial attorney at the Defender Association was the best job I've ever had.<sup>86</sup> The mission was clear. We were all in it together. My former colleagues remain among my closest friends.

I never minded the volume. I liked giving a thousand percent and then letting go and moving on to the next case; it helped me maintain professional boundaries.<sup>87</sup> I liked the pace and urgency of the work—whether I was counseling a recalcitrant client or a compliant one, trying an impossible case or a winnable one. I liked showing a judge at sentencing that the person I represented was a *person*. What I was doing mattered.

I propose shifting the focus from the distress and suffering of lawyer and client to outrage at the broader systems and institutions that either produce or fail to redress client trauma.<sup>88</sup> As former defender Professor Sandra Simkins observes:

The self-care model . . . lets oppressive systems off the hook. Decades of harmful policies, institutional racism, enormous caseloads, and barriers preventing access to counsel define the careers of many public interest lawyers who struggle valiantly against impossible odds. Despite these realities, the self-care doctrine makes it the *lawyer's* ethical responsibility to manage these stressors. . . . Do we really expect an individual criminal lawyer to successfully combat the systemic stress of mass incarceration which is racist and dysfunctional by design?<sup>89</sup>

We need to focus on why some clients are traumatized and incorporate this into our advocacy on their behalf. We need to reckon with the circumstances that give rise to client deprivation and distress. Some of the causes and circumstances run deep. I am reminded of a favorite baby

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<sup>86</sup> I never planned to be a law professor; I meant to be a public defender for life. I took my first law teaching job not because I was burned out, but because it was an opportunity to share my passion for my life's work with law students. The rest was serendipity. I maintain that I am still a public defender, just in fancier digs.

<sup>87</sup> See Smith, *Martyrdom and Criminal Defense*, *supra* note 78, at 201:

To last in criminal defense, defenders must learn to let go of the disappointment and dismay that are an inevitable part of the work. They must learn to get over their own errors and less than perfect judgments. They must figure out how to let some things roll off them. They must learn to attach, give it their all, and then move on. Defenders must learn to *forget*.

<sup>88</sup> See *id.* at 199–200 (discussing outrage in criminal defense); Smith, *Too Much Heart*, *supra* note 68, at 1259–64 (same); see also TA-NEHISI COATES, *THE MESSAGE* 169–70 (2024) (“A system of supremacy justifies itself through illusion, so that those moments when the illusion can no longer hold always come as a great shock.”).

<sup>89</sup> Simkins, *supra* note 51, at 42–43.

gift—a onesie with “Zs” all over it and the punchline: “Exhausted by capitalism.”<sup>90</sup>

Wallowing in despair is surely not the way forward. As Michelle Obama urged during the 2024 presidential campaign:

We cannot get a Goldilocks complex about whether everything is just right. And we cannot indulge our anxieties. . . . ‘Don’t just sit around and complain, you need to do something.’ . . . If we start feeling tired, if we start feeling that dread creeping back in, we gotta pick ourselves up, throw water on our face and. . . . [do something.] . . . We cannot afford for anyone. . . . to sit on their hands. . . . There is simply no time for that kind of foolishness.<sup>91</sup>

## VI. CONCLUSION

A confession: I exercise daily, sleep at least eight hours a night, eat healthily, have many good friends, have plenty of interests and hobbies, and have a son and daughter-in-law I adore. I also have a not very well-behaved Welsh Terrier named Habeas, who is at his best on a road trip. I am still looking for true love.

I admit to enjoying the occasional massage, though I regard it as a luxury not a necessity. I admit that I might achieve something close to a meditative state when I am playing really good tennis. I also admit to feeling that way when Habeas and I are standing in the ocean at the end of a Massachusetts summer day. (But mediation is not my *métier*.)

I do not regard any of the above as self-care. It is how I live my life. I also work hard—at both lawyering and teaching. When I am in trial, I am entirely immersed: the lead-up to trial and the days and evenings during it are packed, and the rest of the world recedes (at least somewhat—I did

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<sup>90</sup> See “Exhausted by Capitalism” Onesies, AKPRESS, <https://www.akpress.org/exhausted-by-capitalism-onesie.html> [<https://perma.cc/6ATZ-JNPM>] (last visited Dec. 22, 2025).

<sup>91</sup> PBS NEWSHOUR, *WATCH: Michelle Obama speaks at 2024 Democratic National Convention | 2024 DNC Night 2*, at 15:38, 17:34 (YOUTUBE Aug. 20, 2024), <https://www.youtube.com/watch?v=YgJFBwRXvc> [<https://perma.cc/MAB4-Y5GT>]; see also John Fritze, *Justice Sotomayor describes crying after some Supreme Court decisions*, CNN (May 24, 2024, at 23:07 ET), <https://www.cnn.com/2024/05/24/politics/sotomayor-crying-supreme-court-decisions> [<https://perma.cc/Y5NA-X8SN>] (quoting Supreme Court Justice Sonya Sotomayor: “[E]very loss truly traumatizes me in my stomach and in my heart. . . . But I have to get up the next morning and keep on fighting. . . . There are moments when I’m deeply, deeply sad. . . . And there are moments when . . . I feel desperation. . . . But you have to own it. You have to accept it. You have to shed the tears, and then you have to wipe them and get up and fight some more.”).

raise a child, after all). When I am engaged in written advocacy—writing a petition for parole or juvenile resentencing or compassionate release—I am equally absorbed. Every word matters. When I counsel a client, I am a hundred percent engaged. Likewise, I am all in as a teacher—although I admit it doesn’t have quite the urgency of criminal defense.

It takes a certain amount of discipline and efficiency to live the life I have chosen, but it takes a certain amount of discipline and efficiency to live any life.<sup>92</sup> There are periods of sloth, to be sure. I enjoy these periods. But they must be timed so as not to interfere with core responsibilities.

Indigent criminal defense is not the sort of work that can be “balanced” with the rigid rituals of commodified self-care. It is too unpredictable and demanding. But it is also interesting, satisfying, meaningful, and sometimes gloriously fun.

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<sup>92</sup> It seems to me that women, who still do the bulk of child rearing even as we approach the middle of the 21st century, must be more efficient than men. This may be why there are relatively few mothers who are senior trial lawyers in public defender offices—a fact that has remained throughout my career.

## CODA:

As I was putting this Essay to bed, I received an email from one of the state bars to which I belong. The email said I was randomly selected to participate in a national survey on lawyer mental health and well-being. The survey was mostly focused on alcohol abuse, depression, anxiety, and stress, from which lawyers disproportionately suffer.<sup>93</sup> Ironically, the survey also included questions relating to work-life balance, mindfulness/meditation, and self-care!

I take the concerns about alcohol (and drug) abuse and mental health challenges seriously. I have had students who, unbeknownst to me, had serious alcohol abuse, substance abuse and/or mental health problems during law school that later caused real damage to their lives and careers. As a result, I regularly invite volunteers from the DC Bar's Lawyer Assistance Project to talk to my students. The volunteer speakers are wonderful. They are usually accomplished lawyers who had crashed and burned—the beginning of their problems surfacing in law school—and who are willing to talk about what happened to them and why. I will continue to invite them.

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<sup>93</sup> See Patricia Henson, *Addiction and Substance Abuse in Lawyers*, AM. ADDICTION CTRS. (Jan. 28, 2025), <https://americanaddictioncenters.org/workforce-addiction/white-collar/lawyers> [<https://perma.cc/6FB4-NSZF>] (noting that 45 percent of lawyers experience depression during their legal careers, and 21 percent of lawyers and other legal professionals are problem drinkers—a figure that jumps to 36 percent when more specific questions are asked); see also Patrick R. Krill, Ryan Johnson, & Linda Albert, *The Prevalence of Substance Abuse and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICT. MED. ADDICTION 46, 52 (2016), <https://pmc.ncbi.nlm.nih.gov/articles/PMC4736291/> [<https://perma.cc/U8TS-VKJS>] (finding disproportionate levels of addiction and mental health problems among lawyers as compared to other professionals and the general population).