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## Public Interest Burnout: Seven Factors That Increase The Risk

Sandra Simkins

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**PUBLIC INTEREST BURNOUT:  
SEVEN FACTORS THAT INCREASE THE RISK**

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ABSTRACT

*This article creates a new framework that allows public interest lawyers to predict and prevent burnout. By understanding personal and professional risk factors, lawyers will be empowered to preserve and prolong their career.*

*The framework identifies seven factors based on empirical evidence related to vicarious trauma and burnout. There are three personal factors: 1) gender, 2) race, and 3) prior history of trauma. There are four professional factors: 1) volume of case load, 2) solo practitioner, 3) unfair office, and 4) high stress/high touch practice area. I also discuss time, or “years of public interest practice” as a potential risk factor.*

Personal Factors	Professional Factors
<p style="text-align: center;"><b>Gender</b> <b>Prior History of Trauma</b> <b>Race</b></p>	<p style="text-align: center;"><b>High Stress/High Touch Practice Area</b> <b>High Volume Case Load</b> <b>Unfair Office Environment</b> <b>Solo Practitioner</b></p>

*Risk of burnout rises with the number of risk factors. The more personal and professional risk factors identified, the greater the risk of burnout. The more personal and professional risk factors identified, the greater the risk of burnout. This concept of varying risk factors creating higher or lower risk is demonstrated in several examples for both individuals and organizations.*

*This article also challenges the current message that self-care is an effective solution to public interest burnout. While lawyers are encouraged to engage in various forms of self-care, the one-size fits all approach is too vague to be effective. In addition, self-care emphasizes personal responsibility over systemic causes, which exacerbates the stigmatization of public interest burnout, and fails to recognize that public interest organizations are ill-equipped to support self-care due to resource limitations and a culture of self-sacrifice. Finally, this section highlights the fact that there is very little evidence that self-care effectively prevents burnout.*

*Awareness of these factors could benefit individual public interest lawyers by empowering them to make strategic decisions to protect*



*themselves and their careers. These factors could also be a catalyst for organizations to make changes to better support and protect attorneys.*

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## INTRODUCTION

I thought I was immune to burnout. I saw myself as a career defender and believed my commitment to the work (and my yoga practice) would protect me; I was wrong. As I let go of my beloved clinic,<sup>1</sup> I realized that public interest<sup>2</sup> lawyers need better tools to protect their careers.

Wanting to understand why self-care failed, I dove into the research on burnout and vicarious trauma. Reviewing the literature, it was clear that there are specific personal and professional factors that increase risk. Personal factors include gender, while a high-volume caseload can be indicative of a present environmental factor. The value of understanding these factors was immediately apparent. Public interest is a very broad practice area<sup>3</sup> and different public interest careers carry different risks.

Reviewing available empirical evidence, this article creates a new

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<sup>1</sup> I co-founded the Children’s Justice Clinic at Rutgers Law School in 2007 and ran the direct representation juvenile justice clinic until 2021. Prior to co-founding the clinic, I worked as a public defender in a large urban office for 15 years. In total, my career involved three decades of direct service representation, specializing in representing children with conditions of confinement issues in juvenile facilities. Because of my extraordinary privilege as a law professor, I was able to leave the clinic and teach other courses.

<sup>2</sup> For the purposes of this article, I am using the Equal Justice Works definition of public interest. Equal Justice Works defines public interest law as “activities designed to improve access to justice for vulnerable and disadvantaged members of our society” and includes legal work with the U.S. Department of Justice and all government agencies in addition to legal services organizations and non-profits such as the ACLU. *Crash Course: What is Public Interest Law?*, EQUAL JUSTICE WORKS (Aug. 20, 2019), <https://www.equaljusticeworks.org/conference-and-career-fair/for-attendees/law-students-graduates/>.

<sup>3</sup> *Id.*

framework that allows lawyers to gauge their individual risk based on seven factors. Each of the seven factors has been shown to increase the risk of either vicarious trauma, secondary traumatic stress, PTSD, or burnout. This factor-based framework is a critical supplement to self-care strategies which, as described below, have significant limitations.

Understanding risk factors provides important information that is particularly relevant to marginalized groups (such as women and lawyers of color) who are more likely to choose public interest law careers.<sup>4</sup> Once a public interest lawyer is aware of factors that increase the risk of burnout, they can make strategic career decisions to prolong and advance their careers. **Part I** frames the problem by discussing the serious consequences of vicarious trauma and burnout. This section details how the profession has known for decades that public interest attorneys have significant occupational hazards but has been slow to act and has failed to collect data. This section also describes the importance of understanding risk factors, how awareness is a critical part of prevention, and notes that when it comes to preventing the consequences of vicarious trauma, the legal profession lags behind other professions.

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<sup>4</sup> *Disparate Outcomes: Another Look at NALP's Employment and Salary Data*, Free Member Webinar, NALP (Oct. 12, 2022).



**PART II** goes on to identify the seven risk factors and describe the research behind each. The seven factors are as follows:

Personal Factors	Professional Factors
<p style="text-align: center;"><b>Gender</b> <b>Prior History of Trauma</b> <b>Race</b></p>	<p style="text-align: center;"><b>High Stress/High Touch Practice Area</b> <b>High Volume Case Load</b> <b>Unfair Office Environment</b> <b>Solo Practitioner</b></p>

In addition to the seven research-based factors, I will briefly discuss “time” or “years of public interest practice” as a potential professional factor. Although empirical evidence is inconsistent regarding the relationship between “years of practice” and burnout, anecdotally there are many examples that point to a connection. By noting time as a potential factor, this section challenges the public interest community to consider the cumulative impact of public interest work on lawyer’s careers.

**Part III** explains the relationship between risk factors and burnout: The more personal and professional risk factors an attorney has, the higher their risk of burnout. This framework, modeled after the Adverse Child Experiences research, provides important individualized information, and empowers lawyers to make strategic career decisions. This section also provides examples of the theory as applied to individuals and organizations.

**PART IV** explains why self-care’s one size fits’ all approach is too

vague to be effective and is therefore an ineffective remedy to burnout. This section also details three specific limitations to “self-care” including: 1) Self-Care Emphasizes Personal Responsibility, Ignoring Systemic Causes of Burnout 2) Public Interest Organizations are Ill-Equipped to Support Self-Care because of resource limitations and a culture that values “toughness,” and 3) There is little evidence of the effectiveness of self-care strategies.

Finally, **in the Conclusion** I suggest further areas of research and discuss how awareness of risk factors can reduce the stigma of burnout and be a catalyst for change throughout the legal profession.

PART I: OVERVIEW OF PUBLIC INTEREST BURNOUT AND THE NEED FOR  
BETTER TOOLS

*“It is vitally important that [.....] helping professionals providing services to vulnerable populations understand the risk factors and symptoms associated with professional burnout, vicarious traumatization, secondary traumatic stress, and compassion fatigue.”<sup>5</sup>*

The legal profession is aware that public interest attorneys are at risk of vicarious trauma<sup>6</sup> and burnout for decades.<sup>7</sup> Vicarious trauma, or work-related trauma exposure, is a constant feature in many public interest careers. Vicarious trauma can occur from “listening to individual clients recount their victimization; reviewing case files; hearing about or responding

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<sup>5</sup>Jason M. Newell & Gordon A. MacNeil, *Professional Burnout, Vicarious Trauma, Secondary Traumatic Stress, and Compassion Fatigue: A Review of Theoretical Terms, Risk Factors, and Preventive Methods for Clinicians and Researchers*, 6 BEST PRACS. MENTAL HEALTH 57, 58 (2010).

<sup>6</sup> For purposes of this article, I am defining Vicarious Trauma as work related trauma exposure from working with individuals who have been victims of trauma or violence. Vicarious trauma can occur from such experiences as listening to individual clients recount their victimization; reviewing case files; hearing about or responding to the aftermath of violence and other traumatic events day after day. See, *The Vicarious Trauma Toolkit: What is Vicarious Trauma?*, OFFICE FOR VICTIMS OF CRIME, (May 15, 2023), <https://ovc.ojp.gov/program/vtt/what-is-vicarious-trauma#what-is-vicarious-trauma>.

<sup>7</sup> Christina Maslach & Michael Leiter, *Understanding the Burnout Experience: Recent Research and Its Implications for Psychiatry*, 15 WORLD PSYCHIATRY 103 (2016) (According to Maslach, “Burnout is a psychological syndrome emerging as a prolonged response to chronic interpersonal stressors on the job.”) (Maslach describes three dimensions of burnout: 1) overwhelming exhaustion (wearing out, loss of energy, depletion, debilitation, and fatigue), 2) feelings of cynicism and detachment from the job (depersonalization, negative or inappropriate attitudes towards clients, irritability, and withdrawal) and 3) a sense of ineffectiveness and lack of accomplishment.[...](reduced productivity or capability, low morale, and an inability to cope). See also, Ronald Tyler, *The First Thing We Do, Let’s Heal All the Law Students: Incorporating Self-Care into a Criminal Defense Clinic*, 21 BERKLEY J. CRIM. L. 1, 5–9 (2016); Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245, 248 (2003) (citing Barry A. Farber & Louis J. Heifetz, *The Process and Dimensions of Burnout in Psychotherapists*, 13 PRO. PSYCH 293, 298 (1982) (providing a more in-depth discussion of studies of mental health and well-being among other professions)) (Since the 1980’s there has been an understanding that burnout develops “gradually due to the accumulation of stress and the erosion of idealism resulting from intensive contact with clients.).

to the aftermath of violence and other traumatic events day after day.”<sup>8</sup>

The consequences of vicarious trauma are serious. As a result of vicarious trauma, lawyers can develop PTSD, anxiety, depression, substance abuse issues, and cognitive impairment.<sup>9</sup> If unaddressed, vicarious trauma can lead to burnout, which has serious consequences. Burnout, which develops “gradually due to the accumulation of stress and the erosion of idealism resulting from intensive contact with clients,”<sup>10</sup> can cause harm to clients or cause lawyers to leave the profession altogether.<sup>11</sup> Unfortunately, unlike other helping professions, such as social workers, attorneys are “uniquely at risk” because “[u]nlike some other helping professions, attorneys often do not receive any training in the dynamics of trauma, nor any training or support in preventing vicarious trauma as part of their legal education.”<sup>12</sup>

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<sup>8</sup> *The Vicarious Trauma Toolkit: What is Vicarious Trauma?*, *supra* note 6.

<sup>9</sup> *See Id.* for a no-exclusive list of reactions to vicarious trauma.

<sup>10</sup> Levin & Greisberg, *supra* note 7, at 248 (citing Farber & Heifetz, *supra* note 7).

<sup>11</sup> Lindsay M. Harris & Hillary Mellinger, *Asylum Attorney Burnout & Secondary Trauma*, 56 WAKE FORREST L. REV. 733, 736 n.3 (2021) (“Seventeen attorneys shared that they had already quit working with asylum seekers or taking on certain types of cases (i.e., removal defense or detained cases) or were planning to retire or end their practice of law because of their self-described burnout and mental health effects of the work.” As quoted from one of the survey participants, “I have decided to quit law altogether. It’s impossible to deal with the financial crush of serving a low-income population AND cope with the secondary trauma. I’ve lost my appetite for the law altogether after this shit show area of law. I have no faith in justice or the law anymore.”). *See also*, Justin Anker & Patrick R. Krill, *Stress, Drink, Leave: An Examination of Gender-Specific Risk Factors for Mental Health Problems and Attrition Among Licensed Attorneys*, PLOS ONE, May 2021, at 1–3 (Anker’s research focused on the predictors of leaving the legal profession due to mental health or burnout and found that women had higher rates of attrition.).

<sup>12</sup> Sarah Katz, *We Need to talk about trauma: Integrating trauma-informed practice into the family law classroom*, 60 FAM. CT. REV. 757, 765 (2022).

Beginning with the study of legal aid attorneys in the 1980's, scholars have repeatedly confirmed the serious consequences of burnout and vicarious trauma for lawyers who work in public interest.<sup>13</sup> In the early 2000's, empirical studies emerged linking vicarious trauma and burnout with family law judges, domestic violence attorneys, and defense attorneys.<sup>14</sup> A few years later, Jean Koh Peter's groundbreaking work provided a detailed framework for attorneys working with children and stated that "[for] the diligent humane lawyer for children, stress and vicarious traumatization are unavoidable occupational hazards."<sup>15</sup>

This idea, that vicarious trauma is unavoidable, has become widely accepted. In a 2022 publication designed for law students interested in becoming public interest lawyers, Nicole Hallett states, "deciding to be a public interest lawyer means accepting the risk that your work will at some point become harmful to your mental health."<sup>16</sup>

However, despite awareness of the risks, little has been done to predict and prevent burnout among public interest lawyers. To date, the ABA has focused on attorney wellness generally,<sup>17</sup> but has failed to collect

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<sup>13</sup> Tyler, *supra* note 7, at 6.

<sup>14</sup> Peter G. Jaffe et al., *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 54 JUV. & FAM. CT. J. 1, 4 (2003).

<sup>15</sup> JEAN KOH PETER, CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 451 (3d ed. 2007).

<sup>16</sup> NICOLE HALLET, BECOMING A PUBLIC INTEREST LAWYER 104 (1<sup>st</sup> ed. 2022).

<sup>17</sup> See, e.g., Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. Legal Educ. 116, 123–24 (2016) (analyzing survey responses from over

data regarding public interest lawyers. In contrast to the dozens of reports discussing the challenges lawyers face in law firms, there is not one report on the challenges faced by public interest lawyers. As stated by Jennifer Brobst in her scholarship regarding secondary trauma and family law, “[the] legal profession has been slow to acknowledge the personal risks associated with working closely with high conflict cases, remaining stoic or perhaps in denial that attorneys are no more immune to personal and professional harm than any other profession.”<sup>18</sup>

Ignorance of risk factors comes at a very high cost and legal scholars have called for change. Jennifer Brobst argues,

“new attorneys should not have to enter the field entirely blind to their personal and professional risks of developing secondary traumatic stress or other mental health conditions. It is time for the legal profession to more specifically attend to the needs of legal practitioners in high-risk practice areas.”<sup>19</sup>

Unfortunately, rather than focusing on personal and professional risk factors, lawyers have been encouraged to engage in various kinds of self-care to combat the risk of

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3,000 law students in fifteen law schools); *see also* Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 47 (2016) (releasing the results of their survey in 2016, which surveyed 12,825 lawyers in nineteen states).

<sup>18</sup> Jennifer Brobst, *The Impact of Secondary Traumatic Stress among Family Attorneys Working with Trauma-Exposed Clients: Implications for Practice and Professional Responsibility*, 10 J. HEALTH & BIOMEDICAL L. 1, 16 (2014) (“Other licensed and trained professionals, like physicians, police officers, psychologists, social workers, child protective service workers, and ambulance personnel already have the benefit of research focused on how they manage emotionally while working closely with those exposed to traumatic events.”).

<sup>19</sup> *Id.* at 53.

burnout and vicarious trauma.<sup>20</sup> But as detailed in Part IV of this article, the self-care mandate is problematic and has significant limitations as a remedy; Public interest lawyers deserve better.

Understanding risk factors is a critical part of prevention and prediction, as well as an important step toward decreasing the risk of burnout and vicarious trauma. When we are aware of our own personal risk factors, we are empowered to make better choices; lack of awareness makes us more vulnerable.<sup>21</sup> Given the current legal landscape where understanding trauma has become increasingly important and lawyers are developing “trauma informed practices,”<sup>22</sup> public interest lawyers need additional tools, such as this risk factor framework, to protect their careers and themselves.

## PART II SEVEN FACTORS THAT INCREASE RISK OF PUBLIC INTEREST BURNOUT

Although the ABA has neglected to provide data for public interest lawyers,<sup>23</sup> researchers in the fields of psychology and law have noted the correlation between public interest law and negative mental health outcomes.<sup>24</sup> However, research has been inconsistent, both in the types of

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<sup>20</sup> See PETERS, *supra* note 15, at Ch. 9.

<sup>21</sup> *Understanding Health Risks: Improve Your Chances for Good Health*, NIH: NEWS IN HEALTH (OCT. 2016), <https://newsinhealth.nih.gov/2016/10/understanding-health-risks>.

<sup>22</sup> See generally, Katz, *supra* note 12.

<sup>23</sup> Sandra Simkins, *The "Pink Ghettos" of Public Interest Law: An Open Secret*, 68 BUFF. L. REV. 857, 863 (2020).

<sup>24</sup> See e.g., Brobst, *supra* note 18, at 16. (a study of family lawyers identifying risk factors for secondary traumatic stress); Harris & Mellinger, *supra* note 11, at 734 (“explor[ing] the inherently traumatic nature of asylum seeking and asylum lawyering”); Andrew P. Levin, et al., *Secondary Traumatic Stress in Attorneys and their Administrative Support Staff*, 199 J. NERVOUS AND MENTAL DISEASE 946, 953 (2011).

Mental health issues researched, as well as the groups of lawyers studied. For example, the research related to vicarious trauma and its impact on mental health focuses on a wide range of outcomes, including secondary traumatic stress (STS), Post-Traumatic Stress Disorder (PTSD), burnout, depression, cognitive impairment, anxiety, and substance abuse. Likewise, research related to lawyers groups lawyers by (1) **practice area** (i.e., criminal law<sup>25</sup>, family law<sup>26</sup>, asylum lawyers,<sup>27</sup>); (2) **type of position** (i.e., judges,<sup>28</sup> public defenders,<sup>29</sup> law school clinic students<sup>30</sup>); **and (3) location** (attorneys in California<sup>31</sup>, attorneys in Canada<sup>32</sup>). Despite the scattered foci,

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<sup>25</sup> See Lila Petar Vrklevski & John Franklin, *Vicarious Trauma: The Impact on Solicitors of Exposure to Traumatic Material*, 14 TRAUMATOLOGY 106 (2008); Marie-Eve Leclerc et al., *The unseen cost of justice: post-traumatic stress symptoms in Canadian lawyers*, 26 PSYCH. CRIME & L. 1 (2020).

<sup>26</sup> Brobst, *supra* note 18, at 19–20.

<sup>27</sup> Harris & Mellinger, *supra* note 11, at 733.

<sup>28</sup> Jaffe et al., *supra* note 14, at 1. One study determined that 63% of judges experienced at least one symptom of PTSD Jaffe et al.'s research with 105 judges involved in a range of criminal, civil, and juvenile court adjudication, found that 63 per cent suffered one or more symptoms associated with vicarious trauma, including anxiety, fatigue, flashbacks, Zimmerman, having conducted interviews with 56 Canadian judges, outlined what he described as the 'torment' experienced in dealing with cases of sexual abuse, child maltreatment, domestic violence.. Zimmerman, 'Trauma and Judges', Canadian Bar Association Annual Meeting, August 2002.

<sup>29</sup> Andrew Levin et al., *The Effect of Attorneys' Work with Trauma-Expose Clients on PTSD Symptoms, Depression, and Functional Impairment: A Cross-Lagged Longitudinal Study*, 36 LAW & HUM. BEHAV. 538 (2012).

<sup>30</sup> Tyler, *supra* note 7. See also PETERS, *supra* note 15.

<sup>31</sup> Anker & Krill, *supra* note 11, at 2.

<sup>32</sup> Leclerc et al., *supra* note 25.



findings from the research are remarkably consistent: 1) public interest lawyers are at high risk of vicarious trauma and burnout, and 2) certain factors increase risk.

*A. How Factors Were Determined*

To develop the factors, I did a literature review of available empirical research measuring stress, vicarious trauma, PTSD, STS and burnout. I focused on factors that seemed particularly relevant to public interest lawyers. I developed the following standard; to qualify as a factor the following criteria must be met:

The factor must be based on multiple empirical research studies **or** well-established as a risk factor for PTSD, Vicarious Trauma, STS or Burnout.

In addition to multiple empirical research studies, every factor except “Race” also has direct empirical research on lawyers’ risk of vicarious trauma and/or burnout. Based on this analysis, there are three personal factors that meet the criteria (gender, race, and prior history of personal trauma) and four professional factors that meet the criteria (high stress/high touch practice area, high caseloads, an unfair office environment, or being a solo practitioner). The greater the number of risk factors an individual has, the higher the risk.

I recognize that this may not be a comprehensive list. Given the absence of data related to public interest law there are likely other factors that

impact the risk of burnout that have not yet been researched. Also, while I recognize that some factors may have more of an impact than others, I have made no attempt to “weigh” the factors. My goal at this stage is simply to identify each empirically based factor.

### *B. Personal Factors*

#### 1. Gender: Women are at Greater Risk

Research confirms that women practicing in public interest law are at higher risk of burnout, vicarious trauma, and other mental health issues than men. It is unsurprising that women are at higher risk given the well-documented gender bias in the legal profession,<sup>33</sup> and the expectation that women will do additional emotional labor in the office.<sup>34</sup> However, this factor is particularly important because historically women have been over-represented in public interest law,<sup>35</sup> and some areas of public interest law are overwhelmingly female.<sup>36</sup> The most recent NALP data indicates that women choose public interest law twice as often as men.<sup>37</sup>

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<sup>33</sup> See e.g., Liane Jackson, *Race and Gender Bias Is Rampant in Law, Says New Report that Also Offers Tools to Fight It*, ABAJ. (Sept. 6, 2018, 8:26 AM), [https://www.abajournal.com/news/article/race\\_and\\_gender\\_is\\_bias\\_rampant\\_in\\_law\\_says\\_new\\_report\\_that\\_also\\_offers\\_too/](https://www.abajournal.com/news/article/race_and_gender_is_bias_rampant_in_law_says_new_report_that_also_offers_too/); MEERA DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* (2019).

<sup>34</sup> Simkins, *supra* note 23, 857.

<sup>35</sup> RICHARD L. ABEL, *AMERICAN LAWYERS* 10 (1989) (“[w]omen are overrepresented in the public sector, a position that pays lower salaries and confer less status”).

<sup>36</sup> Simkins, *supra* note 23, at 862 (focusing on juvenile and child welfare); Jennifer, *supra* note 18 (discussing lawyers practicing family law); Harris & Mellinger, *supra* note 11 at 774. (2021) (noting the high percentage of women in immigration law, including public interest immigration work).

<sup>37</sup> NALP, *supra* note 4. See also Katie Dilks, *Why Is Nobody Talking about Gender Diversity in Public Interest Law?* NALP BULLETIN, (2010), [https://www.nalp.org/uploads/0610\\_Gender\\_Diversity\\_in\\_Public\\_Interest\\_Law.pdf](https://www.nalp.org/uploads/0610_Gender_Diversity_in_Public_Interest_Law.pdf).

The first research connecting risk of vicarious trauma was the work of Jaffe, whose 2003 article *'Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice'* found that female judges were at greater risk.<sup>38</sup> Jaffe's research, which involved 105 judges working in criminal, civil, and juvenile court adjudication, found that 63% suffered one or more symptoms associated with vicarious trauma, including anxiety, fatigue, and flashbacks. Jaffe also found that women who had been on the bench for over six years experienced <sup>39</sup> There was a second study on judges done by Stuart Lustig in 2008 who focused on 96 immigration judges. His study also found "female-identifying judges reported higher levels of burnout than male-identifying judges."<sup>40</sup>

More recently, several large studies of lawyers have correlated gender with higher risks of burnout and vicarious trauma. Lindsay M Harris and Hillary Mellinger's 2020 survey focused on 718 asylum attorneys, and measured burnout and secondary trauma.<sup>41</sup> This study, the largest to date, found that women had more symptoms of burnout and secondary trauma than

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<sup>38</sup> Jaffe et al., *supra* note 14, at 4 ("Female judges reported more symptoms, as did judges with seven or more years of experience.").

<sup>39</sup> *Id.* at 4.

<sup>40</sup> Harris & Mellinger, *supra* note 11, at 777 (citing Stuart L. Lustig et al., *Burnout and Stress Among United States Immigration Judges*, 13 BENDER'S IMMIGR. BULL. 22, 26 (2008)).

<sup>41</sup> *Id.* at 735.

men. Harris and Mellinger’s conclusion is consistent with the research of Marie-Eve Leclerc. Leclerc used a cross section of 476 Canadian lawyers and found that women met the probable PTSD diagnosis more often than male lawyers. The study also showed that women had more severe PTSD symptomatology relative to men.<sup>42</sup> In Leclerc’s 2020 article she noted that her work confirmed the findings of three other studies, which also noted higher risks in women.<sup>43</sup> Finally, Anker et.al surveyed 2863 California lawyers in an attempt to examine gender-specific risk factors for mental health problems and attrition among licensed attorneys.<sup>44</sup> Anker found that the ‘predictors of leaving the profession due to mental health or burnout differed between men and women,’ and that women had higher rates of attrition, stress, depression and anxiety.<sup>45</sup>

## 2. Prior History of Trauma

A history of prior personal trauma is a well-known risk factor for  
 mental health issues and PTSD.<sup>46</sup> Though this correlation has been

<sup>42</sup> Leclerc et al., *supra* note 25, at 5-6.

<sup>43</sup> *Id.* at 16.

<sup>44</sup> Anker & Krill, *supra* note 11.

<sup>45</sup> *Id.* at 1.

<sup>46</sup> Emily J. Ozer et al., *Predictors of Posttraumatic Stress Disorder and Symptoms in Adults: A Meta-Analysis*, 129 PSYCH. BULL. 52, 57-64 (2003) [hereinafter Ozer, *Predictors of PTSD and Symptoms in Adults*] (identifying history of prior trauma, prior psychiatric problems, family history of psychopathology, perceived life threat, perceived lower levels of social support, intensely negative emotional responses, and peritraumatic disassociation as being correlated with higher levels of PTSD); Sarah Knuckey et al., *Trauma, Depression, and Burnout in the Human Rights Field: Identifying Barriers and Pathways to Resilient Advocacy*, 49 COLUM. HUM. RTS. L. REV. 267 (2018); Valerie J. Edwards et al., *Relationship Between Multiple Forms of Childhood Maltreatment and Adult*

documented for decades,<sup>47</sup> researchers have only recently begun studying the impact of prior personal trauma on lawyers and their experience of vicarious trauma and PTSD.

Lila Petar Vrklevski and John Franklin's 2008 article described a research study conducted on 100 criminal and non-criminal lawyers who were randomly sampled. The study focused on the question of whether a history of personal trauma increases one's vulnerability to the effects of vicarious trauma. Vrklevski and Franklin found that "participants in both groups with a multiple trauma history displayed greater vicarious trauma."<sup>48</sup>

Marie-Eve Leclerc, who studied 476 Canadian lawyers stated that, "[c]ongruent with previous research [omitted cites] participants with a history of prior trauma in their personal life also scored higher on the PTSD measure. This supports the notion that prior trauma represents a significant distal factor of psychopathology among trauma-exposed lawyers."<sup>49</sup>

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*Mental Health in Community Respondents: Results From the Adverse Childhood Experiences Study*, 160 AM. J. PSYCHIATRY 1453, 1458 (2003); See Brewin et al., *supra* note 55, at 755-56 (studying the effect of factors such as childhood abuse and adversity on different populations and noting that childhood abuse and early trauma could have effects on later PTSD). See generally, *Complex Trauma*, NATIONAL CHILD TRAUMATIC STRESS NETWORK, <http://nctsn.org/trauma-types/complex-trauma> (last visited Apr. 19, 2014) (addressing long term traumatic stress symptoms from compounding exposure to trauma from early childhood to adulthood).

<sup>47</sup> See *supra* note 46 and accompanying text. See also, Vrklevski & Franklin, *supra* note 25 (for a brief history of studies on personal trauma).

<sup>48</sup> Vrklevski & Franklin, *supra* note 25, 109-12.

<sup>49</sup> Leclerc et al., *supra* note 25, at 15-16; *But see* Levin et al., *supra* note 29, at 538 (Levin's research did not find a correlation.).

For some lawyers, it is precisely *because* of prior personal trauma that they are drawn to public interest work. Anecdotally, I know this from working with clinical students. For example, Nayomi is a southeast Asian woman who witnessed physical violence and verbal abuse throughout her childhood. This experience made her want to become a public interest lawyer so that she could help others in her community. Julio's father's incarceration ignited a desire to fight mass incarceration and become a public defender.

A history of prior trauma simultaneously draws lawyers toward public interest *and* makes them more vulnerable. According to Jennifer Brobst:

[f]amily attorneys with personal histories of family conflict or violence may be drawn to the field to give back and share their understanding through advocating for clients with similar histories. Such attorneys may be less able to recognize their own cognitive biases, particularly if their personal motivations are protected by professional responsibility tenets of zealous and client loyalty. These attorneys may feel justified in what others might deem overzealousness, due to their own family history and resulting sense of moral imperative.<sup>50</sup>

It is critical that public interest lawyers be made aware that prior personal trauma may increase their risk of vicarious trauma and burnout. If they are aware, they will be less vulnerable, and empowered to make strategic adjustments to decrease their risk factors. For example, since prior personal trauma increases risk, the attorney could plan to decrease other professional risk factors to avoid burnout.

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<sup>50</sup> Brobst, *supra* note 18, at 3.

decisions to protect their career.

### 3. Race: Lawyers of Color are at Greater Risk

The legal profession was built on exclusionary principals designed to keep the profession white and male. This design has been incredibly effective; individuals at the top of the legal profession in 1920 were still at the top in 2020.<sup>51</sup> The legal profession is one of the least diverse professions in the country. Despite efforts to increase the ranks of lawyers of color, over the past ten years the number of African American lawyers has decreased.<sup>52</sup> Although it is unclear what impact these original exclusionary principals have on lawyers today, data from the National Association of Legal Professionals reveals that lawyers of color are more likely to choose and remain in public interest law than their white colleagues.<sup>53</sup>

Public interest lawyers of color are at a higher risk of burnout because they are likely to experience racism and discrimination by virtue of living in the United States.<sup>54</sup> For decades empirical evidence has linked individuals

<sup>51</sup> See Simkins, *supra* note 23, at 8. Comm'n on Women in the Profession, AM. BAR ASS'N, *You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession* 8 (2018); Comm'n on Women in the Profession, AM. BAR ASS'N, *A Current Glance at Women in the Law* 2 (2019), [https://www.americanbar.org/content/dam/aba/administrative/women/current\\_glance\\_2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf); Roberta D. Liebenberg & Stephanie A. Scharf, AM. BAR ASS'N, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice* (2019).

<sup>52</sup> Sybil Dunlop & Jenny Gassman-Pines, *Why the Legal Profession Is the Nation's Least Diverse (and How to Fix it)*, 47 MITCHELL HAMLINE L. REV. 130, 130–132.

<sup>53</sup> In 2021 NALP graduating law data reveals that marginalized groups disproportionately occupy public interest law jobs: women, non-binary, disabled individuals, Latinx, African American/Black, LGBTQ. (i.e., although LGBTQ lawyers are 5% of graduates, 18% choose public interest law, African American lawyers are 6% of graduates and 11% choose public interest law, non-binary lawyers are 1% of graduates and 29% choose public interest law). NALP, *supra* note 4.

<sup>54</sup> ROBERT T. CARTER & ALEX L. PIETERSE, *INTRODUCTION, MEASURING THE EFFECTS OF RACISM: GUIDELINES FOR THE ASSESSMENT AND TREATMENT OF RACE-BASED TRAUMATIC STRESS INJURY* (2020) (conceptualizes Race Based Traumatic Stress injury as Racial Trauma and links emotional reactions to a specific encounter with racism or racial discrimination, showing the ways in which different dimensions of racism may generate

who experience racial discrimination with “adverse health outcomes such as depression, anxiety, and hypertension.<sup>55</sup> In addition, the experience of racism can cause PTSD,<sup>56</sup> racial trauma,<sup>57</sup> and Race Based Traumatic Stress (RBTS).<sup>58</sup> PTSD, racial trauma and RBTS can all be precursors to burnout.

According to the National Child Traumatic Stress Network, which provides guidance for professionals working with children:

People of color and those who hold marginalized identities may have additional vulnerabilities to STS (secondary traumatic stress) due to: exposure to the same oppression and institutional racism as client populations, identification with clients of a similar background or with similar experiences, lack of safety or support in their agency, higher caseloads and being asked to take on additional responsibilities, such as translation or contributing expertise about race and marginalized identities.<sup>59</sup>

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different kinds of stress responses, including traumatic reactions.) (This book reviews what we know about racism and health by addressing the use of common terms and concepts, including race, mental health, people of color, culture and racism). *See also*. RICHARD ROTHSTEIN, *THE COLOR OF LAW* (2017); NIKOLE HANNAH-JONES, *THE 1619 PROJECT: A NEW ORIGIN STORY* (2019).

<sup>55</sup> CARTER & PIETERSE, *supra* note 54, at 7; Elizabeth A. Pascoe & Laura Smart Richman, *Perceived Discrimination and Health: a Meta-Analytic Review*, PSYCH. BULL. (2009).

<sup>56</sup> CARTER & PIETERSE, *supra* note 54, at 47.

<sup>57</sup> Lillian Comas-Diaz & Gordan Nagayama Hall, *Racial Trauma: Theory, Research, and Healing: Introduction to Special Issue*, 74 AM. PSYCH. ASSOC. 1 (2019) (Racial trauma “refers to the events of danger related to real or perceived experience of racial discrimination. These include threats or harm and injury, humiliating and shaming events and witnessing harm to other POCI due to real or perceived racism”).

<sup>58</sup> Racial trauma can lead to Race Based Traumatic Stress. *See generally* CARTER & PIETERSE, *supra* note 54, at 8 (Robert T. Carter’s conceptualization of RBTS injury as racial trauma links emotional reactions to a specific encounter with racism or racial discrimination, showing the ways in which different dimensions of racism may generate different kinds of stress responses, including traumatic reactions.)

<sup>59</sup> *Secondary Traumatic Stress Core Competencies for Trauma-Informed Support and Supervision: Cross-Disciplinary Version*, NATIONAL CHILD TRAUMATIC STRESS NETWORK (May 31, 2023), <https://www.nctsn.org/sites/default/files/resources/fact-sheet/secondary-traumatic-stress-core-competencies-for-trauma-informed-support-and-supervision-cross-disciplinary-version.pdf>



Although there are only two small studies on lawyers of color, burnout, and PTSD,<sup>60</sup> it is well-documented that lawyers of color face additional challenges in the legal profession.<sup>61</sup> For example, a 2020 ABA report concluded that women of color in private law firms feel “invisible and unsupported.”<sup>62</sup>

### C. Professional Factors

There are four professional factors that meet the criteria indicated above:

<sup>60</sup> See Harris & Mellinger, *supra* note 11, at 779. (the authors note that “Although these findings are conspicuous, we should note that they result from a very small number of Survey respondents. While the regression findings are an accurate representation of what these Survey respondents disclosed, they cannot be extrapolated or generalized to the entire population of immigration attorneys who identify as these races/ethnicities. This is particularly important to note given the low representation in our Survey from these races/ethnicities compared to White/Caucasian respondents.”) Nnamdi Pole et al., *Why are Hispanics at Greater Risk for PTSD?* 11 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCH. 144 (2005) (attributing risk factors related to lower social support, and greater self-blame, dissociation, and perceived racism to higher PTSD risks among Hispanics than among Caucasians and African-Americans).

<sup>61</sup> For example, Meera Deo has documented additional challenges women of color face in the legal profession, including being asked to do more service, do “caretaking” of students of color, DEO, *supra* note 33, at 87. See also Comm’n on Women in the Profession, *You Can’t Change What You Can’t See: Interrupting Racial and Gender Bias in the Legal Profession*, AM. BAR ASS’N 8 (2019); Comm’n on Women in the Profession, *A Current Glance at Women in the Law*, AM. BAR ASS’N 2 (2019); Roberta D. Liebenberg & Stephanie A. Scharf, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice*, AM. BAR ASS’N (2019). See Tsedale M. Melaku, *Why Women and People of Color in Law Still Hear “You Don’t Look Like a Lawyer,”* HARV. BUS. REV. (2019), <https://hbr.org/2019/08/why-women-and-people-of-color-in-law-still-hear-you-dont-look-like-a-lawyer>; Kimberly Jade Norwood, *Gender Bias as the Norm in the Legal Profession: It’s Still a [White] Man’s Game*, 62 WASH. U. J. L. & POL’Y 25, 31 (2020).

<sup>62</sup> See DESTINY PEERY ET AL., LEFT OUT AND LEFT BEHIND: THE HURDLES, HASSLES, AND HEARTACHES OF ACHIEVING LONG-TERM LEGAL CAREERS FOR WOMEN OF COLOR (2020).

1) high stress/high touch practice area, 2) high volume caseloads, 3) being a solo practitioner, and 4) working in an “unfair” office. In this section I am also including the potential risk factor of “time/years of practice,” which has limited and inconsistent research but is intricately related to the topic of public interest burnout.

#### 1. High Stress/High Touch Practice Areas

Ronald Tyler coined the term “high stress/high touch” practice area.<sup>63</sup> Tyler, who spent twenty years as a public defender, understood the connection between direct representation work and vicarious trauma and drew on his defender experience when he sought to develop a self-care curriculum for law students working in a direct service clinic. Tyler combined the term “high stress” legal practice area, with “high touch,” thus acknowledging the cost of direct contact human service work. According to Tyler, “[l]awyers in certain high stress, high touch practice areas are consistently exposed to clients' traumatic experiences and, as a result, are at risk of developing symptoms of secondary or vicarious trauma.”<sup>64</sup>

One cannot talk about “high stress” in public interest law without acknowledging the high stress in the legal profession generally. Bar Associations have focused increasingly on attorney mental health because data reveals lawyers in the United States suffer from high levels of

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<sup>63</sup> Tyler, *supra* note 7, at 3.

<sup>64</sup> *Id.*

depression, mental health challenges, and substance abuse.<sup>65</sup> While it is obviously true that a mergers and acquisitions lawyer in a large law firm deals with stress, the mergers and acquisitions lawyer is not simultaneously absorbing vicarious trauma from her clients. Public interest lawyers often carry an additional burden beyond the stress of the profession.<sup>66</sup>

Below I will describe each term separately, however for the purposes of this article, it is the combination of high stress with high touch that creates a risk factor.

a. High Touch Practice (Direct Representation)

A “high touch” practice area involves significant levels of direct contact with individuals who have experienced trauma. “High touch” is synonymous with direct client, direct representation, and direct service work. This impact of “direct client” work is so widely acknowledged it is actually built into various definitions of self-care<sup>67</sup> and vicarious trauma.<sup>68</sup> Direct services or “high touch” practices increase lawyers’ risk of burnout.

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<sup>65</sup> Harris & Mellinger, *supra* note 11, at 736.

<sup>66</sup> See generally Nat’l Task Force On Lawyer Well-Being, *The Path To Lawyer Well-Being: Practical Recommendations For Positive Change*, 7, 11–47 (2017), <https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf> (discussing recommendations and the need to increase education on mental health in the legal profession).

<sup>67</sup> Harris & Mellinger, *supra* note 11, at 800 (“We will adopt the definition of self-care as the practices providers use to (a) effectively address trauma exposure responses and thereby (b) enhance the sustainability of their direct client work.”) (internal quotation and citation omitted).

<sup>68</sup> Vicarious trauma is the exposure to traumatized clients, the closer the proximity, the greater the risk. Harris & Mellinger, *supra* note 11, at 746 (VT is “a transformation in [ones] inner experience [resulting from] empathetic engagement with client’s traumatic material.”) (internal quotation and citation omitted).

[t]he single largest risk factor for developing professional burnout is human service work in general. The emotional expectations involved with human service work, such as requirements to either repress or display emotions routinely, as well as the chronic use of empathy, are strongly associated with the experience of professional burnout.<sup>69</sup>

Levin's study of Public Defenders in Wisconsin supports Tyler's assertion that "high stress/high touch" practice increases the risk of burnout.

Levin's research found that,

"[A]lthough both attorneys and administrative support staff were exposed to trauma-exposed clients, the attorneys' longer work hours and greater direct contact with these clients associated with their vulnerability to PTSD symptoms, depression, functional impairment, secondary traumatic stress, and burnout compared with the administrative support staff's indirect exposure to these trauma-exposed clients."<sup>70</sup>

The risk of "high stress/high touch" work is not limited to attorneys who represent clients. Judges who have direct contact are also at risk. Two studies on judges reveal high rates of vicarious trauma and burnout. The first study focused on 105 judges in a range of practice areas including civil, criminal, and juvenile that revealed sixty-three percent suffered one of more symptoms associated with vicarious trauma including

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<sup>69</sup> Newell & MacNeil, *supra* note 5, at 59 (citing Christina Maslach et al., *Job Burnout*, 52 ANN. REV. OF PSYCH. 397 (2001)). The impact of vicarious trauma on other helping professions has previously been explored with nurses, social workers and police officers with similar findings. See Harris & Mellinger, *supra* note 11, at 738.

<sup>70</sup> Levin et al., *supra* note 24, at 95.

anxiety, fatigue, and flashbacks.<sup>71</sup> The second study focused on immigration judges who also reported high levels of burnout.<sup>72</sup>

From personal experience, I know that direct client representation is emotionally costly. Public interest lawyers routinely sit across from scared, imprisoned clients, witnessing the fear and anger of terrified family members. A direct service attorney absorbs the full weight of the client's emotions as she encounters dysfunctional and unfair systems. Anything that creates distance, such as supervision, policy work, or appellate work, can be less emotionally taxing. As stated in Part II.C.5, it is no surprise that public interest lawyers, in an attempt at self-preservation, often find ways to minimize direct client contact.<sup>73</sup>

b. High Stress

A synonym for “high stress” practice could be “lawyers practicing in trauma-exposed legal domains.”<sup>74</sup> When Maslach and her colleagues set out to measure burnout in the early 1980's, one of the first groups studied was legal aid lawyers.<sup>75</sup> Since then, vicarious trauma, secondary traumatic stress, PTSD, depression, anxiety, and burnout have been correlated with the

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<sup>71</sup> Jaffe et al., *supra* note 14.

<sup>72</sup> Lustig et al., *supra* note 40, at 26.

<sup>73</sup> This statement is based on three decades of public interest experience and personal observation.

<sup>74</sup> Leclerc, *supra* note 25, at 4.

<sup>75</sup> Tyler, *supra* note 7, at 6.

following types of lawyers: family law judges,<sup>76</sup> immigration judges,<sup>77</sup> public defenders,<sup>78</sup> criminal lawyers,<sup>79</sup> human rights lawyers,<sup>80</sup> asylum/immigration lawyers,<sup>81</sup> family law lawyers practicing domestic violence,<sup>82</sup> and lawyers working in the child welfare system.<sup>83</sup> Each of these areas can be

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<sup>76</sup> Jaffe et al., *supra* note 14, at 4 (One study determined that 63% of judges experienced at least one symptom of PTSD. The study of 105 judges involved in a range of criminal, civil, and juvenile court adjudication, found that 63% suffered one or more symptoms associated with vicarious trauma, including anxiety, fatigue, flashbacks).

<sup>77</sup> Kate Aschenbrenner, *In Pursuit of Calmer Waters: Managing the Impact of Trauma Exposure on Immigration Adjudicators*, 24 KAN. J.L. & PUB. POL'Y 401, 403 (2015); Stuart L. Lustig et al., *Inside the Judges' Chambers: Narrative Responses from the National Association of Immigration Judges Stress and Burnout Survey*, 23 GEO. IMMIGR. L.J. 57, 57 (2008).

<sup>78</sup> Levin et al., *supra* note 24, 947 (a study of 238 attorneys and 109 administrative staff surveyed from the Wisconsin State Public Defender's Office).

<sup>79</sup> Vrkleviski & Franklin, *supra* note 25, 114 (finding that criminal attorneys reported more depressive symptoms, subjective stress, and changes in feelings of safety and intimacy than civil attorneys). *Id.* (finding that criminal lawyers had higher levels of vicarious trauma than lawyers who did not work with trauma survivors. Leclerc et al., *supra* note 25, 5–6; Amy F. Kimpel, *Violent Videos: Criminal Defense in a Digital Age*, 37 GA. STATE. L. REV. 305, 327–52 (2021) (sharing the results of a survey indicating that exposure to disturbing video content exacerbates burnout in criminal defense attorneys).

<sup>80</sup> Knuckey et al., *supra* note 46, at 303–07 (sharing the results of a study of 346 individuals working in the human rights field, focused on measuring trauma exposure, anxiety, PTSD, burnout, and depression, as well as factors to contribute to positive or negative mental health).

<sup>81</sup> Harris & Mellinger, *supra* note 11, at 733 (Survey from 2020 of 718 US immigration lawyers. Findings: High rates of burnout and secondary traumatic stress for asylum attorneys (largest study to date of any attorney population measuring levels of burnout, trauma or stress.)).

<sup>82</sup> Leclerc et al., *supra* note 25, at 4 (referencing family law as trauma informed legal domain); Harris & Mellinger, *supra* note 11, at 739. *See* Levin et al., *supra* note 29, at 538–46; *see also* Brobst, *supra* note 18, 19–20.

<sup>83</sup> *See generally* Michàl E. Mor Barak et al., *Antecedents to Retention and Turnover among Child Welfare, Social Work, and Other Human Service Employees: What Can We Learn from Past Research? A Review and Metanalysis*, 75 SOC. SERV. REV. 625 (2001).

categorized as “high stress” a.k.a. “trauma exposed.” This list is not exhaustive. Undoubtedly, other practice areas also likely qualify as “high stress” and “trauma exposed.” (i.e., working with veterans, individuals experiencing homelessness).

## 2. Volume (High Caseloads)

Decades of research confirm that volume, or high caseloads, is an organizational factor that contributes to burnout<sup>84</sup> and secondary traumatic stress.<sup>85</sup> For example, in Harris’ 2020 study of over 700 asylum attorneys, “higher caseloads were associated with more symptoms of burnout and stress than lower caseloads.”<sup>86</sup> The study found burnout scores increased when lawyers moved from “less than 5 cases” to “5-10 cases” to “11-20 cases.”<sup>87</sup> This makes intuitive sense as a higher caseload results in a greater

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<sup>84</sup> Newell & MacNeil, *supra* note 5, at 59 (“Organizational factors shown to contribute to professional burnout include excessively high caseloads, lack of control or influence over agency policies and procedures, unfairness in organization structure and discipline, low peer and supervisory support, and poor agency and on-the-job training”) (internal citations omitted). Brobst, *supra* note 18, at 15 (quoting Levin & Greisberg, *supra* note 9, at 245 (“A study of secondary trauma found: ‘Compared with mental health providers and social services workers, attorneys surveyed demonstrated significantly higher levels of secondary traumatic stress and burnout. This difference appeared related to the attorneys’ higher caseloads and lack of supervision around trauma and its effects’”).

<sup>85</sup> Grace Maguire & Mitchell K. Byrne, *The Law Is Not as Blind as It Seems: Relative Rates of Vicarious Trauma Among Lawyers and Mental Health Professionals*, 24 PSYCHIATRY, PSYCH. & L. 233, 234 (2017); *See also* Levin et al., *supra* note 29, 539 (listing numerous studies that suggest a relationship between exposure to trauma and attorney symptoms).

<sup>86</sup> Harris & Mellinger, *supra* note 11, at 784.

<sup>87</sup> *Id.* at 785 & 808 n.331.

exposure to vicarious trauma.<sup>88</sup> (Note, for purposes of this article I will not distinguish between high volume generally and high volume of cases for trauma-exposed clients.)

Because high caseloads is a well-known factor, scholars frequently recommend reducing or diversifying caseloads to protect lawyers from vicarious trauma and burnout.<sup>89</sup> Although some organizations have taken a proactive approach on this issue,<sup>90</sup> given the unfortunate financial constraints of public interest organizations, reducing attorney caseloads may not be feasible, and public interest lawyers themselves are often powerless to adjust their own caseloads.<sup>91</sup>

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<sup>88</sup> *Id.* at 811. (“Of course higher case numbers will logically result in increased work hours. [The Harris survey] shows that higher work hours are associated with increased levels of STS and burnout.”). *See also* Levin et al., *supra* note 29, at 538 (discussing the inability to decrease caseloads).

<sup>89</sup> *See* Katz, *supra* note 12; Brobst, *supra* note 18, at 42; and Harris & Mellinger, *supra* note 11, at 810 (concluding that “reducing and diversifying caseloads” is essential).

<sup>90</sup> Brobst, *supra* note 18, at 52. (“The Wisconsin State Bar Lawyers Assistance Program (hereinafter “LAP”) has taken a more assertive approach, suggesting practical and proactive strategies in working with legal professionals at a higher risk of developing secondary traumatic stress symptoms, specifically criminal and family law attorneys. For example, the LAP Coordinator suggests regular debriefing of cases by law office managers, deliberate reduction of caseloads among attorneys with high rates of trauma-related cases, and regular distribution of surveys and checklists.”).

<sup>91</sup> Levin et al., *supra* note 29, 545. For example, in Levin’s 2012 article he stated: “[discussing the option of decreasing high attorney caseloads of public defenders: “at the same time, they did not (or were unable to) decrease their caseloads of trauma-exposed cases. In this regard, a number of participants of the study stated (sometimes quite emphatically) in a comments field at the end of the survey that they felt “powerless” to manage their caseloads.



### 3. Unfair Office

Two decades of research indicate that the office environment can impact burnout.<sup>92</sup> The impact can be positive, for example, support from colleagues and supervisors can mitigate the impact of burnout.<sup>93</sup> Or, negative, as burnout can also be contagious<sup>94</sup> and an unfair office environment can increase vulnerability to burnout.<sup>95</sup>

“Fairness” has been identified as one of seven organizational risk factors of burnout.<sup>96</sup>

The area of fairness emerges from the literature on equity and social justice. Fairness is the extent to which decisions at work are perceived as being fair and equitable. People use the quality of the procedures, and their own treatment during the decision-making process, as an index of their place in the community. Cynicism, anger and hostility are likely to arise when people feel they are not being treated with the appropriate respect.<sup>97</sup>

...Unfairness is most evident during the evaluation and promotion process.... Lack of fairness is also evident when there is inequity of workload or pay, or when people bend the rules or cheat in order to get ahead. And if the procedures for grievance or dispute resolution don't allow both parties

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<sup>92</sup> Maslach & Leiter, *supra* note 7, at 105; Harris & Mellinger, *supra* note 11, at 808 n.331.

<sup>93</sup> Newell & MacNeil, *supra* note 5, at 62. (“There is substantial evidence suggesting that support from professional colleagues and supervisors may also serve to decrease the effects of professional burnout (Brian Lakey & Sheldon Cohen eds., 2000; Elieen Berlin Ray & Katherine I. Miller eds., 1994; T.K. Whitaker ed., 1983; Jacques Winnubst ed., 1993). Social support from professional colleagues can include concrete support, such as assisting with excess clerical work or taking on a particularly difficult client, or emotional support, such as comfort, insight, comparative feedback, personal feedback, and humor (Maslach, 2003 ; Shinn, Rosario, Morch, & Chestnut, 1984).”).

<sup>94</sup> Maslach & Leiter, *supra* note 7, at 106.

<sup>95</sup> Knuckey et al., *supra* note 46, at 82; Newell & MacNeil, *supra* note 5, at 9.

<sup>96</sup> Maslach & Leiter, *supra* note 7, at 105.

<sup>97</sup> *Id.* at 105.

to have a voice, the procedures will be judged unfair.<sup>98</sup>

Findings also suggest that burnout should be considered a characteristic of “workgroups” rather than simply an individual syndrome<sup>99</sup> noting the “critical importance of social relationships.”<sup>100</sup> Additionally, whether an organization acknowledges the existence of vicarious trauma and burnout can increase or decrease risk.<sup>101</sup>

For example, whether an agency culture acknowledges the existence of VT, STS, and CF as normal reactions to client traumas may significantly contribute to the coping ability of individuals experiencing these conditions. An accepting organizational culture helps to alleviate stigmas trauma workers may have about experiencing these reactions, such as feeling inadequate or incapable of completing work responsibilities effectively.<sup>102</sup>

In public interest organizations, this factor could play out in a number of ways. For instance, consider the environment of a large public defender's office. The perception that the office is “unfair” could occur if some trial attorneys are valued more highly than others. For example, if those who represent adults are valued and respected more than those attorneys who represent youth. If only some categories lawyers in the office are valued, it can breed resentment among the rest of the office.<sup>103</sup>

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<sup>98</sup> Maslach & Leiter, *supra* note 7, at 15.

<sup>99</sup> *Id.* at 106.

<sup>100</sup> *Id.*

<sup>101</sup> Newell & MacNeil, *supra* note 5, at 62.

<sup>102</sup> *Id.*

<sup>103</sup> This can also be seen in academic environments where there is a sense of “unfairness” because professors who teach contracts or constitutional law are typically valued higher than those who teach clinics or legal writing. *See* Simkins, *supra* note 23, at 857.

Likewise, if a public interest organization is not transparent about its compensation protocols, or if there is no formal structure to address concerns timely, complaints may fester and lead to an infected workplace.

In order to prevent burnout and mitigate the perception of unfairness, public interest organizations should, 1) make efforts to appreciate and recognize *everyone*; 2) ensure transparency in promotion protocols and pay structure; 3) ensure that there are structures in place that allow concerns/complaints to be voiced and addressed; and 4) acknowledge the impact of vicarious trauma and create a culture that openly discusses the challenges of the work.<sup>104</sup>

#### 4. Solo Practitioner

Being a solo practitioner also increases the risk of burnout. According to Brobst, “[t]he [c]atch-22 interplay between the impact of social isolation and exposure to secondary traumatic stress is formidable.”<sup>105</sup> The Harris study, which specifically evaluated the connection between work environment and the impact on lawyer burnout, found that compared to all other types of work environments, solo practitioners experienced more symptoms of burnout<sup>106</sup> and secondary traumatic stress.<sup>107</sup>

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<sup>104</sup> See also Part IV B., self-care section about public interest culture.

<sup>105</sup> Brobst, *supra* note 18, at 22.

<sup>106</sup> Harris & Mellinger, *supra* note 11, at 781.

<sup>107</sup> *Id.*

Malasch identified “community” (or the lack thereof) as one of the six key organizational factors that impact burnout.<sup>108</sup> This is consistent with the growing body of work linking social support with better psychological and physical wellbeing.<sup>109</sup> Prior research has also correlated lower levels of social support with PTSD.<sup>110</sup>

5. Time/Years of Practice (Potential Professional Factor)-- the relationship between years of practice and public interest burnout

As stated previously, it is known that public interest lawyers are at high risk of vicarious trauma and burnout. According to Jean Koh Peters, vicarious trauma is “unavoidable” in some areas of public interest practice such as representing children.<sup>111</sup> Additionally, the concept of time is often embedded into the definition of burnout. For example, Maslach noted, “[t]he process of “burning out is best described as a progressive state

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<sup>108</sup> Maslach & Leiter, *supra* note 7, at 105. (“The area of community has to do with the ongoing relationships that employees have with other people on the job. When these relationships are characterized by a lack of support and trust, and by unresolved conflict, then there is a greater risk of burnout. On the contrary, when these job-related relationships are working well, there is a great deal of social support, employees have effective means of working out disagreements, and they are more likely to experience job engagement.”).

<sup>109</sup> See, e.g., Fatih Ozbay et al., *Social Support and Resilience to Stress Across the Life Span: A Neurobiologic Framework*, 10 CURRENT PSYCHIATRY REPS. 304, 305-08 (2008) (reviewing literature indicating the positive correlation between social support and beneficial health outcomes at different life stages including pregnancy and adulthood). Brobst, *supra* note 18, at 22 (citing Lousie C. Hawkey & John T. Cacioppo, *Loneliness Matters: A Theoretical and Empirical Review of Consequences and Mechanisms*, 40 ANNALS OF BEHAV. MED. 218, 220–223 (2010) (The “physiological aspects of social isolation diminish the functioning of the immune system and interfere with sleep patterns.”)).

<sup>110</sup> Jack Tsai et al., *The Role of Coping, Resilience, and Social Support in Mediating the Relation Between PTSD and Social Functioning in Veterans Returning from Iraq and Afghanistan*, 75 PSYCHIATRY 135, 143 (2012).

<sup>111</sup> PETERS, *supra* notes 15, at 451.

occurring cumulatively over time with contributing factors related to both the individual, the populations served, and the organization”.<sup>112</sup> Others have defined burnout as a “long-term condition”<sup>113</sup> resulting from “prolonged work”<sup>114</sup> or “chronic exposure”.<sup>115</sup>

Given that vicarious trauma is an occupational hazard for many public interest lawyers, how does this manifest over time? What are the long-term outcomes for public interest lawyers? Is it possible to have a public interest law career *without* the cumulative damage that puts one at risk of burnout?

The research on this issue is sparse and inconsistent. Jaffe’s 2003 study on judges found that judges with over seven years of experience had higher symptoms of vicarious trauma and burnout.<sup>116</sup> Hasnain’s small study found that criminal lawyers with over ten years of experience reported higher

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<sup>112</sup> Newell & MacNeil, *supra* note 5 at 59.

<sup>113</sup> Tyler, *supra* note 7, at 5 (citing Christina Maslach & Julie Goldberg, *Prevention of Burnout: New Perspectives*, 7 *APPLIED & PREVENTATIVE PSYCHOL.* 63, 64 (1998).

<sup>114</sup> Vrklevksi & Franklin, *supra* note 25, at 106.

<sup>115</sup> World Health Organization defines burnout as “a syndrome conceptualized as resulting from chronic workplace stress that has not been successfully managed. It is characterized by three dimensions: feelings of energy depletion or exhaustion; increased mental distance from one’s job, or feelings of negativism or cynicism related to one’s job; and reduced professional efficacy. Burn-out refers specifically to phenomena in the occupational context and should not be applied to describe experiences in other areas of life.” *Burn-out an “occupational phenomenon”: International Classification of Diseases*, WORLD HEALTH ORG. (May 28, 2019), <https://www.who.int/news/item/28-05-2019-burn-out-an-occupational-phenomenon-international-classification-of-diseases>. See also Tyler, *supra* note 7, at 5 (“Burnout refers to a long-term condition that results from chronic exposure to stressful work situations. The prototypical definition from Christina Maslach is: ‘a type of prolonged response to chronic emotional and interpersonal stressors job on the. More specifically, burnout is defined as a psychological syndrome of emotional exhaustion, depersonalization, and reduced personal accomplishment’”) (internal citation omitted).

<sup>116</sup> Jaffe et al., *supra* note 14, at 2003.

levels of stress.<sup>117</sup> In contrast, Levin's study of public defenders found that years of practice did *not* predict secondary traumatic stress, which supports the theory that greater experience is a protective factor.<sup>118</sup>

Anecdotally, we know that years of practice affects burnout by watching public interest lawyers navigate their careers over time. There are numerous ways public interest lawyers try to mitigate the most difficult aspects of the job (i.e., lower the stakes by moving into less stressful court assignments, assume supervisory roles with decreased caseloads, move into academia, or find ways to do work in a niche area with less emotional cost). In my experience, cumulative damage occurred as result of being a public interest lawyer, despite diligent self-care. My self-care regime included regular exercise, connection to fabulous colleagues, vacations to Disney (where no kids get arrested), a loving family, and an on-call shrink. Still, burnout happened to me. Perhaps it was not my lack of self-care, but rather the nature of the job.

The legal profession is silent on this issue. As mentioned above, the

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<sup>117</sup> Levin et al., *supra* note 29, at 539. (citing N. Hasnain et al., *Stress and Stress and well-being of lawyers*, 36 J. OF INDIAN ACADEMY OF APPLIED PSYCH. 165, 168 (2010)). (“In another study comparing criminal and attorneys, [the authors] found that criminal attorneys reported higher levels of stress than civil attorneys. This difference was seen among attorneys with more than 10 years’ experience but not observed in attorneys in training.”)

<sup>118</sup> Levin et al., *supra* note 24, at 953. (internal citations omitted).

ABA has failed to collect data about the career experiences of public interest lawyers. It also seems clear that the public interest community has an interest in downplaying any connection between burnout and years of practice. It is difficult enough for public interest organizations to attract and retain good lawyers, why highlight the likelihood of cumulative vicarious trauma damage?

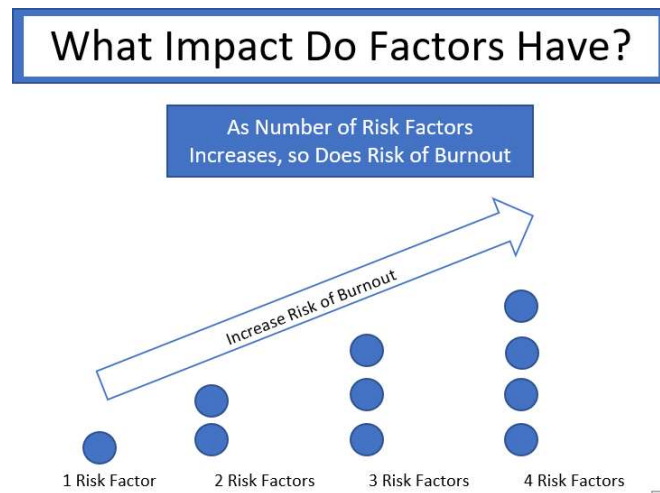
Unfortunately, the lack of data and silence harms the brave lawyers doing the difficult work. In particular, the lack of data and silence harms the first-generation lawyers and marginalized groups who are most likely to choose public interest.<sup>119</sup> Sadly, lawyers who have been historically excluded from the legal profession, who are more likely to choose public interest as a career path, are also more likely to be impacted by burnout.

PART III: MORE FACTORS = HIGHER RISK: A NEW FRAMEWORK FOR  
PUBLIC INTEREST LAWYERS

The risk of burnout increases with the number of risk factors. If an individual attorney has a high number of risk factors, she is at a greater risk than an attorney who has a low number of risk factors. Put simply: more factors = higher risk, as captured in the below infographic:

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<sup>119</sup> NALP, *supra* note 4.



This framework is modeled on the research related to Adverse Childhood Experiences (“ACE’s”),<sup>120</sup> and can be demonstrated through the following examples. (Note, this chart is for demonstration purposes only; it is not my position that there is a direct 1:1 ratio of risk increase; more research needs to be done to evaluate the relative weight of these factors).

#### A. Individual Attorney Examples

*Example 1:* Imagine three lawyers who all work in the same public defender’s office. Lawyer A is a white woman, who was assaulted years ago while in college. She currently works at a large urban public defender’s office doing direct

<sup>120</sup> Adverse childhood experiences (ACEs) describe three types of adverse experiences -- abuse, neglect and household dysfunction) and correlate with negative health outcomes. Empirical evidence has validated that as the number of ACEs increases, the risk of negative health outcomes increases. For information about Adverse childhood experiences see generally *Adverse Childhood Experiences (ACEs)*, CENTER FOR DISEASE CONTROL, <https://www.cdc.gov/violenceprevention/aces/index.html>. (Last visited June 9, 2023). See also Vincent J. Felitti, et. al, *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults*, 14 AM. J. PREV. MED. 245 (1998) (“Trauma is linked to high levels of adverse physical health consequences and morbidity, and trauma is considered ‘a widespread, harmful and costly public health problem.’”) (internal citation omitted).



representation carrying a high case load. Lawyer B is an African American male, with no history of personal trauma, and is also doing direct representation carrying a high case load. Lawyer C is a white male who does exclusively appellate work and has very limited client contact.

In this example, Lawyer A has four (4) risk factors (female, prior history of trauma, high stress/high touch practice area, and volume). Lawyer B has three (3) risk factors (race, high stress/high touch practice area, and volume). In this example, Lawyer C works in criminal law, which is a “high stress” practice area, but since he rarely engages with clients and he does not have a “high touch” practice, he has zero (0) risk factors and is at low risk of burnout.

On the individual level, risk factors enable strategic decision-making and can protect and prolong public interest law careers. If burnout is expected, it can be planned for. Using Lawyer A in the above example, if she was aware that she had four factors increasing her risk of burnout, she could adjust accordingly. Perhaps she reduces her risk factors by choosing to move from direct representation to supervision, or policy work. If she were able to decrease the direct representation (which is a high stress/high touch practice) and eliminate the high volume, she could decrease her risk factors from four to two. By being aware of the risk factors and making strategic decisions, to change her practice area, workload or environment, Lawyer A is protecting herself and her career.

*B. Institutional Example*

*Example 2:* Imagine two separate public interest organizations. Organization X is a direct service organization that is underfunded and struggles to retain attorneys. Organization X does its best to represent its clients but is constantly in a triage state. Communication within Organization X is sporadic, without any structure to regularly address staff issues, and it seems that a few lucky lawyers carry fewer cases and have easier assignments.

In Organization Y, although underfunded, they have transparent protocols, monthly staff meetings, and a functioning committee structure that allows issues to be raised and resolved. In addition, the organization has integrated vicarious trauma training and prevention into office structures. Within the confines of a limited budget, Organization Y works hard to evenly spread the assignments, keep volume as low as possible to create a system where everyone can benefit from breaks or “lighter/easier” assignments.

In Organization X the risk of burnout is much higher because the office will be perceived as “unfair.” This chaotic organizational structure will impose additional burdens on every lawyer because it is perceived as unfair. In Organization Y, the office structure decreases the risk of burnout because it is more equitable. Organization Y will be perceived as more “equitable” because of its transparent protocols, committee structure to resolve issues, and an equal distribution of work assignments.

#### PART IV: THE LIMITATIONS OF SELF-CARE

Public interest is a very broad practice area. Working for the Securities and Exchange Commission and working for a large public defender's office are both considered public interest.<sup>121</sup> However, as the factors articulated above illustrate, different kinds of public interest careers carry different risks. Unfortunately, lawyers have received the message that self-care can combat the risk of burnout and vicarious trauma,<sup>122</sup> but self-care's one-size-fits-all strategy is currently too vague to be effective, and the following limitations make it an ineffective remedy to combating burnout.

*A. Limitation #1: By emphasizing personal responsibility over systemic causes, the self-care mandate exacerbates the stigmatization of public interest burnout.*

The self-care model places the responsibility of preventing burnout and vicarious trauma on the individual lawyer. Since it is the individual's responsibility to care for oneself, it follows that if a public interest lawyer is struggling with vicarious trauma or burnout, she must have failed to care for herself. Unfortunately, despite recent efforts to increase awareness of attorney wellness,<sup>123</sup> the personal failure inherent in the self-care approach

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<sup>121</sup> Equal Justice Works defines public interest law as “activities designed to improve access to justice for vulnerable and disadvantaged members of our society” and includes legal work with the U.S. Department of Justice and all government agencies in addition to legal services organizations and non-profits such as the ACLU. *Crash Course: What is Public Interest Law?*, EQUAL JUSTICE WORKS (Aug. 20, 2019). <https://www.equaljusticeworks.org/conference-and-career-fair/for-attendees/law-students-graduates/>.

<sup>122</sup> Sarah Katz & Deeya Halder, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 371 (2016).

<sup>123</sup> See, e.g., Organ et al., *supra* note 17, at 123–24 (analyzing survey responses from over 3,000 law students in fifteen law schools). See also Krill et al., *supra* note 17, at 47 (releasing the results of their survey in 2016, which surveyed 12,825 lawyers in nineteen states).

discourages lawyers from asking for help, thereby reinforcing the stigmatization of burnout.

The self-care model also lets oppressive systems<sup>124</sup> 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<sup>125</sup> to manage these stressors, rather than focus on the ethical responsibilities of the court system, the profession, or the office to ensure that the lawyers have a humane work environment. Do we really expect an individual criminal lawyer to successfully combat the systemic stress of mass incarceration which is racist and dysfunctional by design?

Other scholars have called for more institutional investment to support public interest lawyers. According to Harris, “[i]t is well past time to move beyond encouraging individuals to practice personal self-care, seek counseling, increase exercise and leisure time, and build their own resilience. Instead, institutional intervention and institutionally supported self-care must become a reality.”<sup>126</sup> In contrast to self-care, focusing on personal and

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<sup>124</sup> See generally Michelle Alexander, *The New Jim Crow* (2010) (discussing the racism of mass incarceration).

<sup>125</sup> Katz & Halder, *supra* note 122, at 359.

<sup>126</sup> Harris & Mellinger, *supra* note 11, at 808.

professional risk factors provides awareness of the organizational and systemic factors beyond the lawyer's control.

*B. Limitation #2: Public Interest Organizations are ill equipped to support self-care due to resource limitations and a culture of self-sacrifice or "martyrdom"*

It is common knowledge that public interest organizations lack sufficient resources<sup>127</sup> and often struggle to retain qualified lawyers while maintaining ethical obligations to clients.<sup>128</sup> Lack of financial resources diminishes the organization's ability to support activities related to self-care.<sup>129</sup> Self-care recommendations often include "taking time off" or

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<sup>127</sup> Rhonda McMillion, *Harsh Reality: As More Americans Qualify for Free Civil Legal Services, the ABA Steps Up Calls for Increased LSC Funding*, ABA J., (May 1, 2014) ("Despite the Legal Services Corp.'s efforts, however, limited resources force local offices to turn away more than half of all eligible applicants seeking help, while the number of Americans who qualify for federally funded legal assistance continues to grow. In federal fiscal year 2015[...]the number is expected to reach 67 million individuals, or roughly 21 percent of the U.S. population."); Irene Oritseweyinmi Joe, *Systematizing Public Defender Rationing*, 93 DENVER L. REV. 389, 391 (2016) ("The public defender function, made up of the institutions and the public defenders themselves, was created to ensure fairness in the criminal justice system. Insufficient resourcing, however, has created a defender system that is commonly described as unfair, struggling, and even broken. Public defender stakeholders wage a constant battle for resources and often find their cries unheard by state legislators."). See also, Sonia Weiser, *Lawyers By Day, Uber Drivers and Bartenders at Night*, N.Y. TIMES, June 3, 2019, <https://www.nytimes.com/2019/06/03/nyregion/legal-aid-lawyers-salary-ny.html>.

<sup>128</sup> Jonathan D. Glater, *High Tuition Debts and Low Pay Drain Public Interest Law*, N.Y. TIMES, Sept. 12, 2003. *But see* Christa McGill, *Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear*, 31 L. & SOC. INQUIRY 677 (2006) (concluding that debt did not contribute to students moving away from public interest work). See also Aliza B. Kaplan, *How to Build a Public Interest Lawyer (And Help All Law Students Along the Way)*, 15 LOYOLA J. PUB. INT. L. 153, 156 (2013) ("[M]ost law students who go on to practice public interest law are ill prepared for the heavy toll the work will take on them emotionally and spiritually. Low pay, enormous school debt, and the poignant life situations of their clients, and their inability to effect change in ways that they had hoped all contribute to that heavy toll.").

<sup>129</sup> Pamela Metzger & Andrew Guthrie Ferguson, *Defending Data*, 88 S. CAL. L. REV. 1057, 1066-7 (2015) ("This information deficit means that public defenders have no empirical evidence to guide them in prioritizing effective practices and avoiding common errors. With rare exceptions, even the most passionate and diligent public defender must make hard

decreasing attorney caseloads, yet each of these suggestions has a financial impact that the organization may not be able to accommodate. Public interest organizations, already stretched thin, often do not have surplus staff to cover lawyer sabbaticals or decreased caseloads, rendering these self-care solutions implausible.

Limited funds force public interest organizations to make choices, and these choices are likely to prioritize the needs of the clients over the needs of the lawyers. Public interest lawyers are fully aware of the resource limitations of their offices and the enormous unmet legal needs of the clients they serve. This awareness can create a tension between requests for self-care accommodations and the needs of the office/clients. If knowing that requesting self-care accommodations will put additional strain on the remaining office staff,<sup>130</sup> or may negatively impact clients, public interest lawyers may feel compelled to forgo self-care for the “good of the cause.”

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choices about how to deploy her limited time and scarce resources. Should she file a bond review motion for today's client or an evidentiary motion for tomorrow's trial? Should she draft a sentencing motion for a case she just lost or prepare a witness for a case she might win? Public defender offices as a whole face the same hard choices. Should they spend more money training their attorneys or hiring additional supervisors? Should they prioritize pretrial motions practice over sentencing litigation? Lacking systemic data, defenders cannot distinguish between those practices that produce adverse client outcomes and those that produce optimal client outcomes. Without this data, public defender offices lack empirical mechanisms to identify how to optimize attorney performance, improve client outcomes, and maximize scarce defender resources. In short, defenders do not know what they do not know; all they know for certain is that the system is failing poor people accused of crime.”)

<sup>130</sup> Hannah C. Cartwright et al., *Self-Care in an Interprofessional Setting Providing Services to Detained Immigrants with Serious Mental Health Conditions*, 65 SOC. WORK 82, 83 (2020) (“We also have a culture that overvalues a ‘head down and keep fighting’ mentality, as opposed to honoring how painful this work can be[...] Another referenced the difficulty of setting workload boundaries when all staff members are overburdened: ‘You feel bad because, if you say ‘no,’ you know it falls on someone else that is also overworked, that you care about.’) (internal quotations and citations omitted).

Self-care also conflicts with public interest culture of self-sacrifice, heroism, and martyrdom. In addition, those who choose to dedicate their career to public interest are often altruistic and selfless, characteristics which inhibit self-care. As noted above, pervasive lack of resources and representing indigent clients in dire circumstances can create a tension between client advocacy and the self-advocacy necessary to support self-care. This tension is compounded by a public interest culture which encourages lawyers to be exclusively client-focused<sup>131</sup> and to prioritize the clients' needs above all else. Lawyers may feel "morally obliged to work to the point of exhaustion"<sup>132</sup> to be "tough," "selfless," and to "keep fighting."<sup>133</sup> This type of workplace culture can also prevent lawyers from talking about burnout or going to their supervisor for help because it can be seen as weakness, failure, or "un-lawyerlike."<sup>134</sup>

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<sup>131</sup> Simkins, *supra* note 23, at 882.

<sup>132</sup> Knuckey et al., *supra* note 46, at 274. ("Some qualitative research has been conducted into the potential dynamics behind burnout among human rights advocates, highlighting factors such as a "martyr" culture and lack of attention to self-care. A pioneering resource for advocates is *What's the Point of Revolution If We Can't Dance?*, written by Barry and Djordjevic in 2008. (This book, based on qualitative research among human rights advocates and feminist activists, examines advocates' perceptions that they are expected to sacrifice their own time and wellbeing, and to prioritize the needs of the movement and the human rights cause above themselves. Another qualitative study by Rodgers, based on interviews with Amnesty International researchers, noted similar institutional or cultural factors at work, finding that researchers were expected to be 'selfless,' denied 'their own needs in light of the gravity of human rights abuse,' and felt 'morally obliged to work to the point of physical and emotional exhaustion.) (internal citations omitted).

<sup>133</sup> *Id.*; Cartwright et al., *supra* note 130, at 82.

<sup>134</sup> Helen Baillot et al., *Second-Hand Emotion? Exploring the Contagion and Impact of Trauma and Distress in the Asylum Law Context*, 40 J.L. & SOC'Y 509, 539 (2013) ("In a study of criminal lawyers only half of survey respondents had even considered discussing work related distress with a supervisor and far fewer had considered or sought other forms of professional assistance. The implication underpinning many of the responses of our participants in this regard was that seeking support for the emotional aspects of their role

## PART V: CONCLUSION

Very little evidence exists regarding the effectiveness of self-care strategies in preventing burnout.<sup>135</sup> Meditation, exercise, therapy, developing a strong social support system--all of these efforts can improve health generally<sup>136</sup> and are undoubtably helpful in managing a public interest law career as well. However, the lack of effectiveness data should give us pause. Even if these efforts appear effective in the short-term, understanding factors are crucial for lawyers hoping to sustain a long-term public interest career.

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would be viewed as admitting a weakness or failure, or inability to perform one's work effectively, and that, as such, would not be something comfortably brought to the attention of senior managers. This reinforces an approach within which, as Bandes puts it 'acknowledging the role of emotion may brand one as not merely weak but downright unlawyerlike ") (internal citations omitted).

<sup>135</sup> Maslach & Leiter, *supra* note 7, at 109. ("The most common recommendations have included: a) changing work patterns (e.g., working less, taking more breaks, avoiding overtime work, balancing work with the rest of one's life); b) developing coping skills (e.g., cognitive restructuring, conflict resolution, time management); c) obtaining social support (both from colleagues and family); d) utilizing relaxation strategies; e) promoting good health and fitness; and f) developing a better self-understanding (via various self-analytic techniques, counseling, or therapy)." [And, logistics of funding are a problem][...] "Unfortunately, there is very little research that has evaluated the efficacy of any of these approaches in reducing the risk of burnout."). Levin et al., *supra* note 24, at 953 ("The current trend is to encourage professionals with secondary traumatic stress and burnout to seek peer and supervisory support, increase leisure and physical activity, seek counseling and psychiatric treatment as needed, and develop a variety of resiliency skills (e.g., Gentry et al., 2002). However, Bober and Regher (2006) found that these individual approaches did not reduce traumatic stress scores. Instead, they recommended institutional interventions. Our findings reinforce this more nuanced picture and suggest that emphasis must be placed on reducing long work hours as well as on the extent of client exposure such as the rotation of attorneys between different types of services.") (internal citations omitted).

<sup>136</sup> *Meditation: A simple, fast way to reduce stress Print*, MAYO CLINIC (Last visited June 9, 2023), <https://www.mayoclinic.org/tests-procedures/meditation/in-depth/meditation/art-20045858>.



More research is needed. As stated above, this list is not exhaustive, likely excluding other, unexplored factors that increase a lawyer's risk of burnout. More research is needed to evaluate the relative weight of the factors. (For example, does a prior history of trauma carry a higher risk than working as a solo practitioner?) More research is needed to determine if volume alone is a factor or if it is only volume of trauma cases that increases the risk of burnout. The impact of compounding factors and the cumulative impact of these factors over time also needs additional research.

However, by naming these seven factors, all players in the legal profession can begin to draw implications and think about how to incorporate the awareness of the factors into practice. Awareness of the factors could be a catalyst for change and could empower public interest organizations to think about their office structure and how they might better support lawyers. Organizations can consider ways to add more resources and monitor the impact of vicarious trauma more closely. Perhaps organizations could restructure to allow for more evenly distributed caseloads and downtime among staff. Organizations could also find ways to be more transparent about policies and be more aware of how an unfair workplace can impact individuals.

Factor awareness could easily be incorporated into law school clinicals and pro bono programs. A simple handout of the seven factors could have a significant impact in educating future lawyers about how to prevent burnout.

On the individual level, acknowledging risk factors enables strategic decision-making, thereby protecting and prolonging public interest law careers. If burnout is expected, it can be planned for. Once an individual understands the risk factors, she will be empowered to protect herself and preserve her career. For example, if a female lawyer interested in pursuing domestic violence understands that her prior history of trauma and gender increase her risk of burnout, she will be more motivated and empowered to set limits and create strategies to minimize the impact of vicarious trauma.

Perhaps most important, awareness of objective risk factors depersonalizes burnout and gives context and validation to lawyers struggling with burnout. As noted above, the current culture makes it difficult to talk about burnout or ask for help. However, the knowledge of professional and personal factors beyond individual control can serve to decrease the self-blame and stigma<sup>137</sup> often associated with burnout in the legal profession.

This article creates an important and new framework. The serious consequences of burnout and vicarious trauma coupled with the limitations of self-care require a new approach. This framework, which articulates personal and professional risk factors, gives public interest lawyers an additional tool to protect their careers and themselves. Each of the seven

factors can be used by individuals, law schools, and organizations to better prepare the next generation.

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