

# BUFFERING BURNOUT: PREPARING THE ONLINE GENERATION FOR THE OCCUPATIONAL HAZARDS OF THE LEGAL PROFESSION

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## I. INTRODUCTION

When it comes to legal education, attorney mental health and well-being are the “elephants in the classroom.” Studies show that lawyers lead other professionals in depression,<sup>1</sup> alcoholism,<sup>2</sup> substance abuse,<sup>3</sup> and career dissatisfaction.<sup>4</sup> These statistics suggest a profession severely afflicted by predictable and preventable occupational hazards, including stress, burnout, and vicarious trauma. To the detriment of the profession, legal education has yet to find a comprehensive and effective way to educate and prepare young lawyers to mitigate or even prevent these professional impairments. In order to effectively address this gap, law schools must educate students about the stress and psychological challenges associated with the profession and prepare them for practice by providing effective tools for successfully managing such challenges. Further, a student’s three years of law school must become a training ground to practice effective maintenance and coping strategies.

The need for intervention is intensified by converging trends of the current technological era and the “digital native” Millennial students filling today’s law school classrooms.<sup>5</sup> For example, previous generations enjoyed a “break” between their personal and professional realms as they packed up a briefcase, said “goodbye” to their support staff, left the four walls of an office equipped with a desktop typewriter or computer, and headed home.

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1. Debra Cassens Weiss, *Perfectionism, ‘Psychic Battering’ Among Reasons for Lawyer Depression*, A.B.A. J. (Feb. 18, 2009, 3:40 PM), [http://www.abajournal.com/news/article/perfectionism\\_psychic\\_battering\\_among\\_reasons\\_for\\_lawyer\\_depression/](http://www.abajournal.com/news/article/perfectionism_psychic_battering_among_reasons_for_lawyer_depression/) (“[T]he likelihood of depression is 3.6 times higher for lawyers than other employed people.”). “The reasons include the pressures of the job and characteristics that make lawyers good at their jobs.” *Id.* See also Rosa Flores & Rose Marie Arce, *Why are Lawyers Killing Themselves?*, CNN (Jan. 20, 2014, 7:42 PM), <http://edition.cnn.com/2014/01/19/us/lawyer-suicides/index.html>.

2. J.E. Stockwell, *Lawyers Assistance: Identifying Alcoholism*, 60 LA. B.J. 57, 57 (2012) (citing alcoholism and substance abuse numbers as doubled within the legal community).

3. *Id.*

4. NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* (2010) (citing a study in which seven out of ten attorneys stated that they would choose another career if they could go back and choose again). This statistic is the result of a 1992 poll of California attorneys and is affirmed by other polls possessing similar results. For instance, a 1998 survey of Michigan attorneys showed that 60 percent of them would choose another career if they could. Only 55 percent of respondents to a survey by the ABA were happy with their jobs. The authors also question the veracity of a University of Virginia study that showed 81 percent of their law graduates were satisfied with their decision to seek a career in the law. *Id.* at 4–5.

5. NEIL HOWE & REENA NADLER, *MILLENNIALS IN THE WORKPLACE* 154–55 (2010) (describing the Millennial Generation as those born between 1982 and the mid-2000s). Millennials are called “digital natives,” as they have interacted with digital media since birth. *See id.*

No such break is afforded by today's technology. With the progression of technology from cell phones and laptop computers, to smartphones and tablets, the four walls of the office have become nonexistent.

Stress management skills become all the more important considering the uniqueness of the current student population—the “Millennials.”<sup>6</sup> Millennial students have not experienced a world without technology and the conveniences associated therewith.<sup>7</sup> Accordingly, more than any other previous generation, they use technology to maintain fluidity between their personal and professional lives.<sup>8</sup> Their work and their clients are now everywhere—in their homes, on vacations, and in the midst of leisure activities. Soon, the natural “break” from their work may cease to exist altogether. Given that experts suggest the balance between work and personal life is one of the central components to combating stress, it will become increasingly important to teach tomorrow's lawyers how to draw a line between the two, however virtual that line may be.

Part II of this Article will review common traits of Millennial students such as their fluent use of technology, importance placed on work-life flexibility, propensity toward public service, and social-connectedness. Millennials are poised to experience and respond to professional impairments in ways that differ significantly from their predecessors. Therefore, this part will also explore the ways in which Millennial traits might benefit this generation as well as increase its vulnerability in terms of stress, burnout, and vicarious trauma prevention.

Part III of this Article will examine current studies and literature concerning the toll that legal practice takes on attorneys, namely general stress and burnout, as well as vicarious trauma among those who are exposed to client trauma. This includes findings from multiple fields prone to these professional impairments including law, medicine, psychology, and social work. This Part will examine the causes and effects of such stressors on client representation and attorney well-being.

Part IV of this Article will explore attorney well-being in light of professional responsibility; specifically that attorneys ignoring their well-being minimize productivity, diminish access to justice, and tarnish

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6. *Id.* at 154–55 (describing the Millennial Generation as those born between 1982 and the mid-2000s).

7. Millennials are called “digital natives,” as they have interacted with digital media since birth. *See id.*

8. Stephen J. Stine, *Managing the Millennials*, 20 VA. EMP. L. LETTER 1 (2008).

professional reputation. An attorney's response to professional impairment affects not only the attorney, but the client and the profession as a whole. Considering these effects, the legal profession must deliver a thoughtful response.

Part V will propose best practices and strategies to educate and empower Millennial students to manage and engage their own well-being, as it is central to the development of their professional identity. This section sets forth an educational model for law schools adapted from social work, which includes psychoeducation, preparation, and practice. This model will train young attorneys to foresee occupational hazards and utilize preventative and coping techniques to increase attorney well-being.

## II. MILLENNIAL LAW STUDENTS: UNIQUE CHALLENGES AND STRENGTHS

### A. WHO ARE THE MILLENNIALS?

In their seminal book on generational identity, researchers Neil Howe and William Strauss described the Millennial generation as those born between 1982 and the mid-2000s.<sup>9</sup> Featuring fundamental characteristics often diametrically opposed to those who came before them,<sup>10</sup> this young generation is described as “confident, sociable, and ambitious.”<sup>11</sup> Their numerosity, about seventy-seven million, is equivalent to the Baby Boomer generation, though more racially diverse.<sup>12</sup> This generation brings with them a significant shift in perspective and worldview, resulting in tangible changes in the way it approaches both its education and careers. Consequently, this unique population will require a new approach to teaching and management.<sup>13</sup> Relevant to this discussion are several

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9. NEIL HOWE & WILLIAM STRAUSS, *MILLENNIALS RISING: THE NEXT GREAT GENERATION* 10–12 (2000). The Baby Boomer generation is described as those born between 1943–1960, and Generation X as those born between 1961–1981. *Id.* at 45.

10. HOWE & NADLER, *supra* note 5, at 17. For instance, older generations would be remiss to ask their employers for help, whereas Millennials seek this help and guidance from their bosses. They also enjoy the micromanaging by employers that their forebears found obtrusive. *Id.*

11. HOWE & NADLER, *supra* note 5, at 35.

12. *The Millennial Count*, PEW RESEARCH CTR. (Mar. 22, 2010), <http://www.pewresearch.org/daily-number/the-millennial-count/>.

13. See Brittany Stringfellow-Otey, *Millennials, Technology, and Professional Responsibility: Training a New Generation in Technological Professionalism*, 37 J. LEGAL PROF. 199, 213–14 (2013), for further discussion regarding motivations for addressing the Millennial shift in education. Author cites factors such as the number of Millennials entering the workforce, the significance of their shift in perspective, rising tensions between generations, and the need for intentional teaching methods in

Millennial traits: Millennials are “digital natives,” socially connected and collaborative, civic-minded, seek work-life flexibility, and expect their education to include relevant, real-life application. In order to best prepare Millennial students to thrive in legal practice, these attributes must inform legal education and the development of professional identity.

*I. Millennials Are “Digital Natives”*

Although attorneys as a group widely embrace technology, there is still a notable gap in its use among different generations.<sup>14</sup> In the “Technology Gap Survey” conducted by LexisNexis, the findings indicated that while only 23 percent of Baby Boomers said that using laptops or personal digital assistants (“PDAs”) during in-person meetings is efficient, nearly 50 percent of Millennials said it was efficient:<sup>15</sup> “[T]echnology fueled [Millennials] live their lives in the Information Age. No generation has ever been so plugged into the rapidly evolving Internet technology and other communication media.”<sup>16</sup> Further, “Millennials have surpassed previous generations in their ability to seamlessly assimilate technology into their personal lives. Not surprisingly, they aim to adapt their technological savvy into workplace assets.”<sup>17</sup>

As “digital natives,” this generation of young people has grown up surrounded by and connected to electronic devices that facilitate communication.<sup>18</sup> No longer are they cut off from family and friends during working hours.<sup>19</sup> Now, Millennials expect to be using smart devices and

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response to these changes. *Id.* “It is not insignificant ‘how public schools, colleges and the military are beginning to interact with youth in entirely new ways. . . .’” *Id.* at 214 (citing HOWE & NADLER, *supra* note 5, at 25); *See also, e.g., Big Demands and High Expectations: What Generation Y Wants from Business, Government, and the Future Workplace*, DELOITTE (Jan. 22, 2014), [http://www.deloitte.com/view/en\\_SG/sg/press-room/sg-pressreleases-en/32b4e350d08b3410VgnVCM2000003356f70aRCRD.htm](http://www.deloitte.com/view/en_SG/sg/press-room/sg-pressreleases-en/32b4e350d08b3410VgnVCM2000003356f70aRCRD.htm). [hereinafter *Big Demands*].

14. Meg Martin, *Managing the Millennial Associate*, 32 WYO. L. Rev. 58 (2009).

15. *Id.*

16. Stine, *supra* note 8, at 1.

17. *Id.*

18. HOWE & NADLER, *supra* note 5, at 154–55. Millennials have embraced “all things digital,” according to the Pew Research Center, outpacing all other generations in social networking, cell phone and wireless internet use, and in sharing of online videos of themselves. *Millennials: Confident. Connected. Open to Change*, PEW RESEARCH CTR. 25 (Feb. 2010), <http://pewsocialtrends.org/files/2010/10/millennials-confident-connected-open-to-change.pdf>. [hereinafter *Millennials: Confident. Connected. Open to Change.*].

19. HOWE & NADLER, *supra* note 5, at 189.

social networking applications throughout the workday.<sup>20</sup> Consequently, they not only use technology to connect with their social community while they work, but they can also use technology to stay in touch with work while among their friends and family. In addition, Millennial workers use laptops and smartphones for work purposes at a higher rate than their older counterparts, who make more use of desktop computers.<sup>21</sup> Millennials desire to feel like they are part of a work community, even when at home.<sup>22</sup> Their desire for a work-life blend results in the disappearance of the traditional boundaries of the home and office dichotomy.<sup>23</sup> Therefore, while their older counterparts or supervisors would be more apt to keep work at work, Millennials do not experience this division between worlds.

## 2. *Millennial Students Seek Flexibility Afforded by Technology*

Millennials expect their technological aptitude to translate into flexibility.<sup>24</sup> They value flexible hours, flexible working conditions, and flexible benefits.<sup>25</sup> This outlook, which is different than older generations', becomes most apparent in the workplace as "Millennials put a premium on work and life flexibility."<sup>26</sup> Millennials believe that "face time," or simply putting in time at the office, is not the preferred measure of doing a good

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20. *Id.* This is much to the chagrin of employers who see this as an "unproductive distraction" due to integration of the personal into the professional. *Id.* Millennials, on the other hand, see this integration of the personal into the professional as a method for getting support from family and friends during work hours. *Id.*

21. *The State of Workplace Productivity Report*, CORNERSTONE ON DEMAND (Aug. 2012), <http://www.cornerstoneondemand.com/sites/default/files/research/csod-rs-state-of-workplace-productivity-report.pdf>.

22. HOWE & NADLER, *supra* note 5, at 190.

23. HOWE & NADLER, *supra* note 5, at 189–90. Some employers, such as Google, have embraced this trait of Millennials. For example, "campuses" that resemble college campuses have been created, which contain on-site arcades, coffee shops, and other amenities, in order to make Millennials feel at home. *Id.*

24. HOWE & NADLER, *supra* note 5, at 188–89 (explaining Millennials' priorities regarding work and life blend). Work and personal life are no longer at odds for a Millennial; rather, they are meant to intermingle throughout the day. *Id.*

25. *Myths About Millennials Examined*, 30 EMP. ALERT 11 (2013).

26. *Id.* This has not been met with positivity by managers, who "largely view [M]illennials as having a poor work ethic (47 percent), being easily distracted (46 percent), and having unrealistic salary expectations (51 percent)." Miranda Green, *Millennial Workers Want Flexibility and Mentorship From Skeptical Managers*, DAILY BEAST (Sept. 3, 2013), <http://www.thedailybeast.com/articles/2013/09/03/millennial-workers-want-flexibility-and-mentorship-from-skeptical-managers.html>.



job.<sup>27</sup> Rather, Millennials want their goals and expectations clearly laid out, and they will consequently work hard to accomplish them whether in or out of the office.<sup>28</sup> This is in contrast to the generations before them who put value in working at the office beyond the usual forty-hour workweek, which created a work-life balance that was skewed toward the physical workspace.<sup>29</sup>

For Millennials, life satisfaction is not derived solely from professional advancement. Rather, “how they spend their time is more important than how much money they make.”<sup>30</sup> Millennials are “intent on ensuring their careers do not dominate their lives—a major philosophical shift from their older counterparts.”<sup>31</sup> Further, Millennials have found their own way to reconcile the intersection of life and work.<sup>32</sup> Where Boomers tended toward overworking and Generation X favored a strong separation between work and personal life, Millennials have developed their own work-life blend.<sup>33</sup> Specifically, due to their “comfortable, committed, and mutually trusting relationship with the institutions that employ them,” Millennials are open to blending their work lives and personal lives together with fewer boundaries to separate them.<sup>34</sup>

### 3. *Millennials Are Socially Connected and Collaborative*

Millennials prefer the social aspects of work more than their generational predecessors.<sup>35</sup> One study found that 77 percent of Millennial employees rated social aspects as “very important” in their overall satisfaction with their employment.<sup>36</sup> From their youth, Millennials have been trained to work together, from group projects at school to community

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27. Lauren Stiller Rikleen, *How the “Millennial” Generation Works*, A.B.A. (May 2008), [http://www.americanbar.org/publications/young\\_lawyer\\_home/young\\_lawyer\\_archive/yld\\_tyl\\_may08\\_rikleen.html](http://www.americanbar.org/publications/young_lawyer_home/young_lawyer_archive/yld_tyl_may08_rikleen.html).

28. *Id.*

29. HOWE & NADLER, *supra* note 5, at 188. The realities of the workplace, however, may not be amenable to the work and life balance desired by Millennials. Melody Finnemore, *Meet the Millennials*, OR. ST. B. BULLETIN (Nov. 2005), <http://www.osbar.org/publications/bulletin/05nov/millennials.html>.

30. HOWE & NADLER, *supra* note 5, at 188.

31. Finnemore, *supra* note 29.

32. HOWE & NADLER, *supra* note 5, at 154–55 (stating that “a Boomer would ‘describe their work as a ‘calling’ or themselves as [a] ‘workaholic.’” Generation X, on the other hand, wanted to “[e]xtract the maximum advantages from work (pay, bonuses, free time) with the minimum cost to . . . personal life”). *Id.*

33. *Id.* at 188–89.

34. *Id.*

35. *Id.* at 163.

36. *Id.*

involvement.<sup>37</sup> An Assistant Dean at Northwestern School of Law points out that this generation has “grown up in a structured, collaborative learning environment and has a team-building mentality.”<sup>38</sup> This notion is even more apparent given the penchant for Millennials to use social networking and social media to stay connected with friends and family.<sup>39</sup>

According to Neil Howe, Millennials “expect constant communication and collaboration with their bosses and colleagues, both virtually and face-to-face.”<sup>40</sup> Dramatic changes, he says, are in store for the traditionally individualistic legal field if employers wish to attract Millennial employees.<sup>41</sup> Law firms will no longer consist of “a few workaholic superstars surrounded by minions,” but rather a team-based approach with groups of paralegals working to fill the role traditionally held by a single attorney.<sup>42</sup>

#### 4. *Millennials Are Civic-Minded and Socially Conscious*

In contrast to previous generations of attorneys who clamored for jobs at large firms, “many Millennials are loaded with debt and see working for a large firm as a stepping stone that allows them to pay off student loans and gain experience to increase their marketability. They hope to eventually move on to smaller and mid-sized firms, nonprofit organizations, or government agencies.”<sup>43</sup> A recent survey of Millennials found them “eager to make a difference” and believing that “the success of a business should be measured in terms of more than just financial performance, with a focus on improving society among the most important things it should seek to achieve.”<sup>44</sup> This may be explained by the fact that Millennials tend to be

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37. *Id.*

38. *See* Finnemore, *supra* note 29.

39. *Millennials: Confident. Connected. Open to Change*, *supra* note 18. Millennials are more likely to have created a social networking profile, specifically 75 percent, as opposed to Generation X, the next highest group at 50 percent, and posted a video of themselves online, specifically 20 percent contrasted with 6 percent for Generation X). *Id.* at 28. Additionally, more Millennials believe that new technologies bring them closer to friends and family, though the gap is not as large as in statistics previously gathered. *Id.* at 126. *But see* Taylor Casti, *5 Reasons Millennials are Quitting Facebook*, MASHABLE (Dec. 16, 2013), <http://mashable.com/2013/12/16/quitting-facebook/> (stating that Millennials are moving away from Facebook due to the need for “real socializing” rather than the mass socializing that Facebook offers).

40. HOWE & NADLER, *supra* note 5, at 163.

41. *Id.*

42. *Id.* at 170.

43. Finnemore, *supra* note 29.

44. *Big Demands*, *supra* note 13.

more cause-oriented than those who came before them.<sup>45</sup> For example, according to a survey by the Corporation for National and Community Service, “Millennials volunteer more than twice as often as Generation X-ers did at the same age.”<sup>46</sup> In fact, Millennials are more inclined toward volunteerism than any generation since the 1930s and 40s.<sup>47</sup> This inclination may be leading Millennials to engage more often in “helping” professions such as those in government or non-profits.<sup>48</sup> If more and more Millennials enter the public interest sector, it follows that more and more of them will be faced with the overwhelming issues disrupting personal and professional well-being that have plagued public interest lawyers for generations.<sup>49</sup>

### 5. *Millennials Seek Real-Life Application in Their Education*

Millennials seek real-life application in their learning and work.<sup>50</sup> Students expect their courses to be relevant and connected to all that is

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45. See Paula Santonocito, *Positions and Prestige*, 25 EMP. ALERT 3 (2008).

46. *Id.*

47. Andrea Stone, 'Civic Generation' Rolls up Sleeves in Record Numbers, USA TODAY (Apr. 19, 2009, 6:14 PM), [http://usatoday30.usatoday.com/news/sharing/2009-04-13-millennial\\_N.htm](http://usatoday30.usatoday.com/news/sharing/2009-04-13-millennial_N.htm) (stating that “[Millennials] are the most civic-minded since the generation of the 1930s and 1940s.”); See also *Millennials Civic Health Index*, NCOC, <http://www.ncoc.net/index.php?download=114kcf11573> (last visited Feb. 17, 2014) (stating that rates for Millennial volunteerism and community service are higher than those of their parents in the 1970s–80s); *Big Demands*, *supra* note 13 (“Millennials are also charitable and keen to participate in ‘public life:’ 63 percent of Millennials gave to charities, 43 percent actively volunteered or were a member of a community organization and 52 percent signed petitions.”); *Id.*

48. HOWE & NADLER, *supra* note 5, at 163 (stating that “[f]ully 79 percent of 13 to 25 year-olds say they want to work for a company that cares about how it affects or contributes to society.”); See also Santonocito, *supra* note 45, at 3. Walt Bachman gives examples of the various ways in which an attorney can get the feeling of a “helping” profession outside of volunteer or government work, stating that he “could see [his] efforts had made a real difference in many of their lives, guiding them through difficult times of emotional and physical pain” when referring to his divorce and personal injury clients. WALT BACHMAN, *LAW V. LIFE: WHAT LAWYERS ARE AFRAID TO SAY ABOUT THE LEGAL PROFESSION* 31 (1995).

49. COMMISSION ON LAWYER ASSISTANCE PROGRAMS, *Compassion Fatigue*, ABA (July 9, 2014), [http://www.americanbar.org/groups/lawyer\\_assistance/resources/compassion\\_fatigue.html](http://www.americanbar.org/groups/lawyer_assistance/resources/compassion_fatigue.html) (“Lawyers in certain practice areas, such as criminal, family or juvenile law may be especially susceptible to compassion fatigue, as they are regularly exposed to human-induced trauma, and are called on to empathetically listen to victims’ stories, read reports and descriptions of traumatic events, view crime or accident scenes, and view graphic evidence of traumatic victimization. Those with high caseloads and those with a high capacity for empathy are also at risk for experiencing compassion fatigue.”)

50. Emily A. Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 CLINICAL L. REV. 1, 301, 314 (2013) (stating that “[M]illennial students require variety and engaging experiences that develop transferable skills. They

happening outside the classroom.<sup>51</sup> Entrepreneurial in nature, Millennials prefer a hands-on education that they can apply immediately and “strongly prefer learning by doing.”<sup>52</sup> They learn best when educators prepare them for the real world by “integrating contextual (‘real world’) applications into their academic curriculum . . . .”<sup>53</sup> They consider the traditional lecture format outdated and irrelevant.<sup>54</sup> For Millennials, simple lectures and demonstrations are no longer sufficient.<sup>55</sup> “[G]ames, case studies, hands-on experiences, and simulations” facilitate education and engage the Millennial student.<sup>56</sup>

### III. OCCUPATIONAL HAZARDS OF THE LEGAL PROFESSION: STRESS, BURNOUT, AND VICARIOUS TRAUMA

Today’s Millennial law student enters a profession riddled with pitfalls. Difficulties caused by the stress of being a lawyer have been recognized as significant by the American Bar Association, with every state having some form of a Lawyer Assistance Program in order to address these issues on the professional end.<sup>57</sup> These types of programs provide information regarding the naturally occurring occupational hazards of lawyering: stress, burnout, and vicarious trauma.<sup>58</sup> They also provide referrals for counseling and treatment programs, and their services are most often sought when a member of the bar is facing discipline.<sup>59</sup> Unfortunately, by this time the damage may have already been done to the lawyer’s health, personal life, career, and clients. In many ways, these programs are too

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are motivated by knowing how their work fits into the larger goal, making it important for clinical teachers to provide context, a rationale for the work asked of students and the value it adds. If invested in the work, millennial students will dedicate the time and effort required to succeed.”)

51. Amy Novotney, *Engaging the Millennial Learner*, 41 AM. PSYCHOL. ASS’N 60 (2010), available at <http://www.apa.org/monitor/2010/03/undergraduates.aspx>.

52. Richard T. Sweeney, *Millennial Behaviors & Demographics* UNBTLS 3 (2006), <http://unbtls.ca/teachingtips/pdfs/sew/Millennial-Behaviors.pdf>.

53. HOWE & NADLER, *supra* note 5, at 154–55.

54. Sweeney, *supra* note 52, at 3.

55. Aliza B. Kaplan & Kathleen Darvil, *Think [and Practice] Like a Lawyer: Legal Research for the New Millennials*, 8 LEGAL COMM. & RHETORIC: JALWD 153, 177 (2011).

56. Sweeney, *supra* note 52, at 3.

57. See *Directory of Lawyer Assistance Programs*, A.B.A., [http://www.americanbar.org/groups/lawyer\\_assistance/resources/lap\\_programs\\_by\\_state.html](http://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state.html) (last visited Feb. 17, 2014) (providing a list of lawyers assistance programs).

58. See, e.g., Dianne Molvig, *The Toll of Trauma*, 84 WIS. LAW. 4 (2011), available at <http://www.wisbar.org/newspublications/wisconsinlawyer/pages/article.aspx?volume=84&issue=12&articleid=2356>.

59. See Daniel T. Eismann, *What Is the Lap?*, 49 ADVOC. 24 (2006).

little, too late. In order to preserve one's well-being, one must understand these occupational hazards, learn to identify and predict them, and learn ways to mitigate the professional impairments caused by effects of stress, burnout, and vicarious trauma. The Millennial characteristics that were previously discussed in Part II will inform the ways that these occupational hazards affect these students.

#### A. OCCUPATIONAL HAZARD: STRESS

The initial and most common occupational hazard in the legal profession is stress. According to the American Institute of Stress, the term "stress," was coined by Hans Selye in 1936.<sup>60</sup> Selye defined stress as "the non-specific response of the body to any demand for change."<sup>61</sup> Stress is ever-present in the lives of humans and animals, from the pre-natal period until old age.<sup>62</sup> It is a natural part of existence, and though often thought of as something negative, stress is not, in and of itself, undesirable.<sup>63</sup> Up to a certain point, human beings actually experience an increase in productivity due to stress.<sup>64</sup> Past that point, however, stress limits productivity as it leads to fatigue, exhaustion, and ill health.<sup>65</sup> Repeated and prolonged stress can affect the brain, accelerating the rapid decline already in effect due to aging.<sup>66</sup> Stressors manifests themselves in many different forms, both externally and internally: External stressors include "deadlines, speaking in public, conflict with others, or other job performance demands."<sup>67</sup> Examples of internal stressors include worries about the future,

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60. *What is Stress?*, AM. INST. STRESS, <http://www.stress.org/what-is-stress> (last visited Feb. 17, 2014).

61. *Id.* In other words, "stress is the pressure that living beings feel in response to change." Martha D. Burkett, *Stress Management for Lawyers: An Ounce of Prevention*, 89 MICH. B. J. 50 (Mar. 2010), <http://www.michbar.org/journal/pdf/pdf4article1667.pdf>.

62. Sonia J. Lupien et al., *Effects of Stress Throughout the Lifespan on the Brain, Behavior and Cognition*, 10 NAT'L REV. NEUROSCIENCE 434, 440–41 (2009).

63. *Id.* at 442.

64. *What is Stress?*, *supra* note 60.

65. *Id.*

66. Lupien et al., *supra* note 62, at 440–41. One study found that while there are certainly ill effects that come from the prolonged exposure to stress, there could also be positive effects related to "resilience in the face of adversity." *Id.* at 442. "Stress is a physiological response that is necessary for the survival of the species. The stress response that today can have negative consequences for brain development and mental health may have conferred the necessary tools to our ancestors in prehistorical times for surviving in the presence of predators." *Id.*

67. Coe Swobe, *Career Killers: Stress and Stress Management*, 10 NEV. L.J. 38, 38 (2002).

expectations of the actions of others, guilt, and intolerance of one's own failures and mistakes.<sup>68</sup>

1. *Stress Is Inherent to the in the Legal Profession*

Stress has a constant and seemingly inevitable presence in the practice of law. As stated by Martha Burkett, administrator of the State Bar of Michigan's Lawyers and Judges Assistance Program, "[t]he reality is that we are bombarded with stressors, situations, and circumstances that elicit a stress response, all day, every day."<sup>69</sup> In fact, the very traits which make one a successful lawyer, such as perfectionism and need for control, may actually increase stress. If not kept in check, however, both perfectionism and the need for control work together to cause stress.<sup>70</sup> Without the proper balance of stress and relief established in the life of an attorney, many negative side effects can develop, including loss of sleep, loss of time with one's family, illness, distorted self-perception, and depression.<sup>71</sup>

2. *Technology Increases Stress for Millennial Lawyers*

Though technology affords flexibility, it also increases the Millennial lawyer's vulnerability to stress. "Given the opportunity, 64% of Millennials would like to occasionally work from home."<sup>72</sup> Increased connectivity to their "virtual office" can provide the option for Millennials to do additional work outside of the office, which would enable them to achieve their desired work-life flexibility. Though the ability to access work at any time may sound like a productivity boost, the lack of "away" time may be overwhelming Millennials. Fifty-eight percent of Millennial respondents to one survey stated that they felt "overloaded" at the workplace, with 40 percent responding that they experienced information and technology overload.<sup>73</sup> Contrasted with the Boomer generation, who experienced work, information, and technology overload, at a lower rate, Millennials' persistent connection to work may be more detrimental than helpful.<sup>74</sup>

Additionally, "technology can strain the balance Millennials crave because it prevents lawyers from having any real downtime or escape because they are on call twenty-four hours per day, seven days per week via

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68. *Id.*

69. Burkett, *supra* note 61, at 50.

70. *Id.* at 51–52.

71. *Id.* at 52.

72. *Myths About Millennials Examined*, *supra* note 25, at 11.

73. *The State of Workplace Productivity Report*, *supra* note 21, at 1.

74. *Id.*

their [smart phones].”<sup>75</sup> Practically speaking, this means that the office is never closed. Due to technology, the office is available, whether the lawyer is at home with family, at the gym, or enjoying a recreational activity. Conversely, the technology user is available to the office or client in all of those places as well, which alters the way that attorneys practice law and heightens the expectations of their clients.<sup>76</sup> When this constant connectivity is layered on top of an already stressful and overwhelming workplace, it follows that the Millennial generation will face a serious problem because the break afforded by the more traditional physical separation between the office and home no longer exists. In order to possibly retrieve that balance, young professionals must intentionally seek it out and create barriers, fictional or otherwise, between their work life and personal life.

#### B. OCCUPATIONAL HAZARD: BURNOUT

Burnout is a common consequence of prolonged stress. Official study of the phenomena began in the 1970s among the human service industries<sup>77</sup> and by the end of the 1980s had expanded into other blue and white-collar professions.<sup>78</sup> The concept of “burnout” is characterized by University of California Berkeley professors Christina Maslach and Susan E. Jackson as a “syndrome of emotional exhaustion and cynicism that occurs frequently among individuals who do ‘people-work’ of some kind.”<sup>79</sup>

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75. Leslie Larkin Cooney, *Walking the Legal Tightrope: Solutions for Achieving a Balanced Life in Law*, 47 SAN DIEGO L. REV. 421, 452 (2010). Though this quotation originally referenced “Blackberries,” a technology now out of date just two years later, the ubiquity of smartphone use consisting of Android, iPhone, and other platforms, is staggering in Millennials. See generally ACHIEVE & JOHNSON, GROSSNICKLE AND ASSOCIATES, THE MILLENNIAL IMPACT REPORT 2012, THE MILLENNIAL IMPACT (2012), <http://cdn.trustedpartner.com/docs/library/AchieveMCON2013/TheMillennialImpactReport2012.pdf>. One recent report found that 77 percent of Millennials have smartphones, with 7 percent more set to get one within the next year. See *id.* at 9.

76. *Staying Connected to Friends and Family, Not Necessarily Your PDA, Helps Keep Stress at Bay*, ABA (Sept. 2011), <http://www.americanbar.org/newsletter/publications/youraba/201109article02.html> [hereinafter *Staying Connected*]

77. Wilmar B. Schaufeli, Michael P. Leiter & Christina Maslach, *Burnout: 35 Years of Research and Practice*, 14 CAREER DEV. INT’L 204, 204 (2009).

78. *Id.* at 206.

79. Christina Maslach & Susan E. Jackson, *The Measurement of Experienced Burnout*, 2 J. OCCUPATIONAL BEHAV. 99, 99 (1981).

According to Maslach, burnout has three main components.<sup>80</sup> First, it involves depletion of a person's emotional resources to the point where they feel that "they are no longer able to give of themselves at a psychological level."<sup>81</sup> Second, burnout can manifest itself as negative feelings toward the person's clients, sometimes leading the person to believe that the client deserves their troubles.<sup>82</sup> Third, the person with burnout may begin to see themselves in a negative light, from their work with clients to their accomplishments on the job.<sup>83</sup>

Maslach points out that, though the "conventional wisdom about burnout is that the problem lies within the person," research on the subject draws the exact opposite conclusion.<sup>84</sup> High demands on the individual from the workplace coupled with few resources are consistently found in those places where employees are experiencing burnout.<sup>85</sup> The high demands of a job increase the exhaustion associated with burnout,<sup>86</sup> and low resources are correlated with the disengagement of the burnt out employee.<sup>87</sup> This effect is seen, for instance, in the nursing field, where scant resources and large workloads are correlated with high rates of nurse burnout and low levels of long-term retention.<sup>88</sup> The existence of conflict in the workplace is another factor that drives burnout rates.<sup>89</sup>

The consequences of burnout are wide reaching and potentially devastating. Physical symptoms include chronic fatigue, frequent headaches, and the inability to recover from illness.<sup>90</sup> Psychological

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80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* These three aspects make up the major factors in the Maslach Burnout Inventory, the most popular tool for assessing burnout in individuals. *Id.* The assessment considers the level of Emotional Exhaustion, Personal Accomplishment and Depersonalization, in the subject. *Id.* This assessment tool was developed through numerous interviews with subjects in various service fields facing burnout. *Id.* at 102–03. It has since been adapted for assessing those in all types of workplaces and in various languages. See Christina Maslach, *Job Burnout: New Directions in Research and Intervention*, 12 CURRENT DIRECTIONS PSYCHOL. SCI. 189, 190 (2003).

84. *Id.* at 191.

85. *Id.*

86. Evangelia Demerouti et al., *The Job Demands-Resource Model of Burnout*, 86 J. APPLIED PSYCHOL. 499, 508 (2001).

87. *Id.*

88. Doris C. Vahey et al., *Nurse Burnout and Patient Satisfaction*, NCBI (Feb. 2004), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2904602/pdf/nihms-214594.pdf>.

89. Maslach & Jackson, *supra* note 79, at 191.

90. HARRY LEVINSON, HARRY LEVINSON ON THE PSYCHOLOGY OF LEADERSHIP 24 (Sarah Cliffe ed., 2006).



symptoms can be deeper, with sufferers showing increased negativity, cynicism, quickness to anger, and increased self-criticism.<sup>91</sup> Unhealthy coping strategies such as the use of drugs and alcohol are common, and withdrawal from and anger toward loved ones frequently accompanies burnout.<sup>92</sup> It goes without saying that these symptoms have obvious wide-ranging detrimental effects on one's personal and professional life.

1. *Burnout Is Commonplace in the Legal Profession*

It is no surprise that those in the legal profession are very susceptible to burnout. Whether in the public or private sector, attorneys share the familiar burden of long work hours, stressful billing expectations, the uphill road to justice, and significant client need. In fact, the legal profession is full of expectations, both spoken and silent, of one being able to work extended hours, meet surmounting deadlines, and maintain the appearance of continually being able to perform at a high level.

The causes of burnout may be separated into two distinct categories: those related to the work environment and those related to the individual.<sup>93</sup> Causes related to the work environment include the competition within the legal system, the feeling of high pressure and limited autonomy amongst new associates, as well as the pessimistic nature of legal analysis, which centers on anticipating future problems.<sup>94</sup> There are also many causes of burnout related directly to the nature of the individual: young, idealistic professionals, empathic individuals, and people who do not cope well with stress, are particularly susceptible to burnout.<sup>95</sup> Moreover, employee attitudes such as over-dedication, perfectionism, and being a "control freak," create an increased risk of burnout.<sup>96</sup>

Personality-driven internal conflicts coupled with the external stressors of law firm culture can combine to foster high amounts of burnout. Only 44 percent of attorneys who work in large law firms report satisfaction with their jobs.<sup>97</sup> The drivers of this dissatisfaction<sup>98</sup> include

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91. *Id.* at 25.

92. *Id.*

93. David M. Bateson & Tim Hart, *Combating Attorney Burnout*, 64 BENCH & B. MINN. 22, 22–23 (2007).

94. Martin E P Seligman, Paul R Verkuil & Terry H Kang, *Why Lawyers Are Unhappy*, 23 CARDOZO L. REV. 33, 34 (2001).

95. Bateson & Hart, *supra* note 93, at 22–23.

96. *Id.*

97. LEVIT & LINDER, *supra* note 4, at 9.

long hours, billable hour requirements, unrealistic client expectations, strict deadlines, and the risks of failure to both the client and the attorney.<sup>99</sup> Stress would seem to increase when the business aspects of law firm life overshadow the professional side.<sup>100</sup> Thus, focus on profitability and the “bottom line” can turn attorneys into quantifiable units, not unlike the number of billable hours or amount of fees they are required to produce.<sup>101</sup> One attorney calls billable hours the “litmus test of the worth and financial success of a lawyer or law firm.”<sup>102</sup>

## 2. *Millennial Lawyers are More Susceptible to Burnout*

Millennials are particularly susceptible to burnout, and they are burning out at a higher rate than their predecessors.<sup>103</sup> One cause is that the current economy creates an environment in which stress and burnout may flourish as it presents fewer job opportunities for law school graduates.<sup>104</sup> New attorneys feel a lack of control over their careers, given that they may not work in the area they prefer, may have to change geographical locations to find work, or simply find themselves working long hours.<sup>105</sup> This stands in direct contrast to their well-rounded resumes and extracurricular involvements prior to graduate school, and it may be that the day-to-day monotony is not what they expected.<sup>106</sup> Those fortunate enough to find employment in an established firm face an environment of “increased

98. *Id.* at 54. It is no surprise, then, that turnover rates for new associates are so high. *Id.* at 57. 80 percent of associates will have changed jobs within the first five years of practice. *Id.*

99. One attorney author equates his experience living with this burden to that of a laboratory monkey being taunted by sadistic scientists in an experiment. He contends the stress is worse for the attorney than the client, stating that “the burden of responsibility for preventing something bad from happening, especially to others, is often worse than the painful occurrence itself.” This effect is somewhat mitigated by the settlement process. BACHMAN, *supra* note 48, at 17–19.

100. LEVIT & LINDER, *supra* note 4, at 56–57.

101. *Id.* at 58.

102. BACHMAN, *supra* note 48, at 102. Bachman says failure to increase or maintain the amount of billable hours a lawyer charges annually could mean more than a decrease in salary, but could cost the lawyer their job or the firm its existence. *Id.*

103. Gabrielle Karol, *Why Women are Burning Out at Work Before 30*, LEARNVEST, (June 5, 2012), <http://www.learnvest.com/2012/06/why-women-are-burning-out-at-work-before-30/> (suggesting that the pressure for balance between work and family also contributes to burnout).

104. Mary Beth Marklein, *Law Schools Pressed to Tell the Truth on Job Placement, Debt*, USA TODAY (Oct. 25, 2011, 1:37 PM), <http://usatoday30.usatoday.com/news/education/story/2011-10-24/ABA-law-schools-student-debt/50898362/1>.

105. Meloney C. Crawford & Douglas S. Querin, *Burnout: Avoidable, Not Inevitable*, 38 L. PRAC. MAG. 29, 29–30 (2012), available at [http://www.americanbar.org/publications/law\\_practice\\_magazine/2012/may\\_june/burnout-avoidable-not-inevitable.html](http://www.americanbar.org/publications/law_practice_magazine/2012/may_june/burnout-avoidable-not-inevitable.html).

106. Karol, *supra* note 103.

competition (both local and global), downsizing, and the subordination of personal values to economic values in the job setting . . . .”<sup>107</sup> The lack of firm job openings<sup>108</sup> also causes many recent graduates to enter directly into solo practice, where lack of clientele or difficult and demanding clients can easily become overwhelming.<sup>109</sup>

Millennials are also showing more interest in working in the public sectors, where burnout is virtually commonplace. Idealism, activism, and enthusiasm, may be quenched by lack of resources, overwhelming caseload, and insufficient supervision. In “Beyond Justifications: Seeking Motivations to Sustain Public Defenders,” Charles Ogletree examined the effect that burnout has on public defense work.<sup>110</sup> Ogletree explains that many young, idealistic law students enter the field to embark “on a mission to fight injustice and to help underprivileged citizens who have been charged with crimes.”<sup>111</sup> In time, the idealistic young attorneys discover the constraints of public service: “staggering caseloads, tremendous time pressure, limited resources, inadequate training,” and doubts about the sanctity of their mission to help the underprivileged citizens charged with criminal offenses.<sup>112</sup> As a result, the young attorneys become disillusioned and cynical, and they ultimately pursue or settle for alternate careers, or “settle for a routine existence of administering plea-bargained justice,” with little zeal for their clients or the cases.<sup>113</sup> The burnout caused by the rigors and pressures of public defense effectively burdens the attorney-client relationship, thereby demonstrating the need for action to prevent the burnout cycle from occurring.

The burnout phenomenon has been the subject of several studies. One study, entitled “Shaping the Future of Justice: Effective Recruitment and Retention of Civil Legal Aid Attorneys,” prepared for the Legal Aid Association of California, documented the prevalence of burnout and its

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107. Bateson & Hart, *supra* note 93, at 22–23.

108. NALP, *Class of 2011 Has Lowest Employment Rate Since Class of 1994*, NALP (July 2012), <http://www.nalp.org/0712research>.

109. Crawford & Querin, *supra* note 105, at 29–30.

110. Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1240 (1993).

111. *Id.*

112. *Id.* Author Walt Bachman also points out that public defenders’ struggle to defend clients is highly stressful and leads to early career burnout. BACHMAN, *supra* note 48, at 22.

113. Ogletree, *supra* note 110, at 1240–41.

negative impact.<sup>114</sup> Surveying a segment of the profession known for high caseloads, intense cases, and low budgets, the study provides a poignant view of attorney retention and client satisfaction.<sup>115</sup> According to the survey, one-third of attorneys found their job to be “very emotionally draining.”<sup>116</sup> Additionally, half of the attorneys responded that they planned to leave within three years,<sup>117</sup> a high percentage of whom included staff attorneys and women.<sup>118</sup> When asked why they thought they would leave their position, burnout was cited as one of the top five reasons.<sup>119</sup> The “emotional demands of the clients and the overwhelming workloads” were identified as key factors contributing to burnout.<sup>120</sup>

A similar study conducted in Florida also revealed that burnout was among the top five reasons attorneys thought they would leave their positions in the next five years.<sup>121</sup> A study in Illinois revealed that 42 percent of legal aid attorneys in the state planned to leave within three years.<sup>122</sup> The Illinois study also found a correlation between demanding clients and attorney retention rate.<sup>123</sup> “Sixty percent (60%) of attorneys experiencing frequent, demanding client interactions plan on leaving their positions within the next three years.”<sup>124</sup> Thus, Millennials, with their greater

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114. Carmody and Associates, SHAPING THE FUTURE OF JUSTICE: EFFECTIVE RECRUITMENT AND RETENTION OF CIVIL LEGAL AID ATTORNEYS IN CALIFORNIA (2010), [www.calegaladvocates.org/library/attachment.171458](http://www.calegaladvocates.org/library/attachment.171458).

115. *See id.*

116. *Id.* at 38. One surveyed person stated that “[b]urnout is also a huge issue. There is no institutional support or recognition of the emotional toll this work takes on people . . . . Advocates should not feel pressured to take more cases than they can handle because then the quality of representation by necessity falls and leads to burnout and potential malpractice issues. There should be clear policies in place for equitable case distribution and what to do when people are overloaded. We are confronted with a lot of traumatized clients and very emotionally trying situations, and there need to be support groups and institutionalized mechanisms in place so people can have an emotional outlet and feel supported . . . .” *Id.*

117. *Id.* at 15.

118. *Id.* at 16.

119. *Id.* at 17. The top five reasons were “financial pressure due to low salary, financial pressure due to extraordinary expense, personal reason, burnout, financial pressure due to student loans.” *Id.* at 2.

120. *Id.* at 38.

121. Carmody and Associates, THE QUEST FOR THE BEST: ATTORNEY RECRUITMENT AND RETENTION CHALLENGES FOR FLORIDA CIVIL LEGAL AID 96 (2007), <http://www.flabarfoundn.org/downloads/pdf/recruitment.pdf>.

122. Megan Connolly & Dina R. Merrell, *Investing in Justice: A Framework for Effective Recruitment and Retention of Illinois Legal Aid Attorneys* 26 (November 2006), <http://chicagobarfoundation.org/wpcontent/uploads/2014/01/recruitment-retention-study.pdf>.

123. *Id.*

124. *Id.*

dedication to public service, are more susceptible to the detriments of burnout than previous generations.

### C. OCCUPATIONAL HAZARD: VICARIOUS TRAUMA

#### 1. *Vicarious Trauma Defined*

In the early 1990s, psychologist Charles Figley identified compassion fatigue as a “disorder that affects those who do their work well,” specifically encompassing the burnout and vicarious trauma associated with those in the helping professions and who encounter clients who have undergone trauma.<sup>125</sup> This issue affects many professions, including attorneys,<sup>126</sup> judges,<sup>127</sup> nurses,<sup>128</sup> psychotherapists,<sup>129</sup> teachers,<sup>130</sup> social workers,<sup>131</sup> and other mental health workers.<sup>132</sup> Each of these careers contains its own set of traumatic experiences relayed by clients, which in turn can create a secondary trauma in the listener with similarly damaging results.<sup>133</sup>

While burnout describes the exhaustion that comes from prolonged exposure to “emotionally demanding situations,” compassion fatigue and vicarious trauma are differentiated by their link to “the specific exposure to the trauma and suffering of a specific client.”<sup>134</sup> Vicarious trauma arises

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125. Françoise Mathieu, *Transforming Compassion Fatigue into Compassion Satisfaction: Top 12 Self-Care Tips for Helpers*, COMPASSION FATIGUE SOLUTIONS & PROF. DEV. 1 (Mar. 2007), <http://www.compassionfatigue.org/pages/Top12SelfCareTips.pdf>. The American Bar Association defines compassion fatigue as “the cumulative physical, emotional and psychological effect of exposure to traumatic stories or events when working in a helping capacity, combined with the strain and stress of everyday life.” COMMISSION ON LAWYER ASSISTANCE PROGRAMS, *Compassion Fatigue*, ABA (July 9, 2014), [http://www.americanbar.org/groups/lawyer\\_assistance/resources/compassion\\_fatigue.html](http://www.americanbar.org/groups/lawyer_assistance/resources/compassion_fatigue.html).

126. Molvig, *supra* note 58.

127. See Joy D. Osofsky, Frank W. Putnam & Cindy S. Lederman, *How to Maintain Emotional Health When Working with Trauma*, 59 JUV. & FAM. CT. J. 91 (2008).

128. See Siedine Knobloch Coetzee & Hester C. Klopper, *Compassion Fatigue Within Nursing Practice: A Concept Analysis*, 12 NURSING & HEALTH SCI. 235 (2010).

129. See Charles R. Figley, *Compassion Fatigue: Psychotherapists' Chronic Lack of Self Care*, 58 JCLP/IN SESSION: PSYCHOTHERAPY PRACTICE 1433 (2002).

130. See Robert W. Motta, *Secondary Trauma in Children and School Personnel*, 28 J. APPLIED SCH. PSYCHOL. 256 (2012).

131. See Brian E. Bride, *Prevalence of Secondary Traumatic Stress Among Social Workers*, 52 SOC. WORK 63 (2007).

132. See Priscilla Dass-Brailsford & Rebecca Thomley, *An Investigation of Secondary Trauma Among Mental Health Volunteers After Hurricane Katrina*, 31 J. SYSTEMATIC THERAPIES 36 (2012).

133. Osofsky, Putnam & Judge Lederman, *supra* note 127, at 93.

134. See Figley, *supra* note 129, at 1435. Compassion Fatigue is used interchangeably with “vicarious trauma” and Secondary Traumatic Stress Disorder. Secondary Traumatic Stress Disorder (STSD) “is a syndrome with symptoms nearly identical to [Post-Traumatic Stress Disorder]” with the

when one attempts to view the world from the perspective of one who is traumatized.<sup>135</sup> “Human beings have mirror neurons which innately identify with the pain of others (empathy) and our brains maintain the information and respond through several paths; hearing the story, seeing the images and identifying with the emotions.”<sup>136</sup> Although the listener does not directly experience the trauma, experiencing it secondhand through a client’s story results in “negative changes in their assumptions about life, other people, and issues of safety.”<sup>137</sup> If the practitioner fails to adequately address these changes, they “wear on the mind and the body and correlate with higher levels of depression, burnout, secondary traumatic stress, and an overall decrease in well-being.”<sup>138</sup> Research has found connections between vicarious trauma and diminished capacity in emotional, cognitive, physical, behavioral, and spiritual functions within the individual.<sup>139</sup> Simply put, by bearing the suffering of another, one’s capacity to do so is weakened as a result.<sup>140</sup>

One survey of trauma professionals found that more than 60 percent of them experienced some negative effects from their line of work.<sup>141</sup> The study suggests that, though some professionals emerged from these challenging experiences feeling fulfilled, those who were less confident in their abilities were prone to “destructive” challenges to their development as professionals.<sup>142</sup> A majority of those surveyed indicated feeling that there is “no justice in the world” and that “the world is a dangerous place.”<sup>143</sup>

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difference being PTSD’s direct exposure to the trauma versus STSD’s exposure to knowledge about the traumatic event. *Id.* Vicarious trauma is also known as “secondary trauma.” The terms may be used interchangeably. *See* Osofsky, Putnam & Lederman, *supra* note 127, at 91.

135. Figley, *supra* note 129, at 1434.

136. Linda Albert, *Keeping Legal Minds Intact: Mitigating Compassion Fatigue Among Legal Professionals*, HIGHLIGHTS A.B.A. COMMISSION ON LAW ASSISTANCE PROGRAMS, (A.B.A. Comm’n on Lawyer Assistance Programs), Fall 2011, at 8, available at [http://www.americanbar.org/content/dam/aba/publishing/highlights\\_newsletter/lis\\_colap\\_highlights\\_fall1.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/highlights_newsletter/lis_colap_highlights_fall1.authcheckdam.pdf).

137. *Id.*

138. *Id.*

139. Dass-Brailsford & Thomley, *supra* note 132, at 40. The sufferer of vicarious trauma can see their “core beliefs about the world,” faith in humanity, and idealism affected by listening to the traumatic stories of clients. *Id.*

140. Figley, *supra* note 129, at 1434.

141. Noreen Tehrani, *The Cost of Caring – The Impact of Secondary Trauma on Assumptions, Values and Beliefs*, 20 COUNSELING PSYCHOL. Q. 325, 337 (2007). The types of professions surveyed included psychologists, therapists, attorneys, nurses, criminal investigators, police officers, religious leaders, teachers, human resources personnel, and doctors. *Id.* at 330.

142. *Id.* at 337–38.

143. *Id.* at 332.

## 2. *Two Contributors to Vicarious Trauma in the Legal Profession*

Prosecution, defense, legal aid, immigration, family law, elder law, and children's attorneys are susceptible to the "cumulative physical, emotional, and psychological [effect] of continual exposure to traumatic stories or events when working in a helping capacity."<sup>144</sup> In many ways, the seemingly positive action of connecting with the client can actually be a detriment to the attorney.<sup>145</sup> Attorneys who have compassion or empathy for the individuals whom they are counseling or treating ultimately pay this "cost of caring."<sup>146</sup>

When it comes to preventing and responding to vicarious trauma, attorneys experience a great disadvantage.<sup>147</sup> For example, one study found that "compared to mental health providers and social service workers, attorneys surveyed had significantly higher levels of secondary traumatic stress and burnout."<sup>148</sup> This can be attributed to the natural characteristics usually found in attorneys as well as a lack of training, as shown next.

### a. *Analytical Mindset*

Empirical studies of attorneys' typical characteristics have shown that lawyers are generally "more logical, unemotional, rational, and objective in making decisions and perhaps less interpersonally oriented than the general population . . ."<sup>149</sup> This research shows that attorneys, both through a natural preference for the law and law school training, prefer an analytical and unemotional approach to problem solving in significantly higher proportions than the general population.<sup>150</sup> An additional study found that attorneys "overwhelmingly prefer thinking to feeling," looking to logical and impersonal reasoning to solve problems.<sup>151</sup> This, Professor Susan Swaim Daicoff points out, meshes well with the usual activity that lawyers

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144. Molvig, *supra* note 58.

145. See discussion *supra* Part III.C.

146. Figley, *supra* note 129, at 1433–34.

147. See Albert, *supra* note 136.

148. *Id.* at 8.

149. Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1394 (1997).

150. See SUSAN DAICOFF, *LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES* 32-36 (2004).

151. *Id.* at 33. This notion is based on a Myers-Briggs psychological type test, which also found that lawyers are more likely to prefer introversion, judging, and intuiting to extroversion, sensing, and feeling. *Id.* at 34.

engage in professionally.<sup>152</sup> While some attorneys are involved in extroverted activities during trial and other interpersonal meetings, these activities do not make up the bulk of an attorney's work.<sup>153</sup> In a practical way, this preference for the analytical leads to a distance between the attorney and their lay client.<sup>154</sup> Specifically, the typical client, Daicoff says, is interested in "talk[ing] things out" and focusing on the facts rather than the law.<sup>155</sup>

*b. Inadequate Training*

In disciplines such as psychology and social work, students are educated not only in the methods they will employ in therapy or in assisting clients, but also in how their work will affect them personally.<sup>156</sup> In fact, it is not uncommon for students to be expected to undergo the same kinds of treatment or therapy that they provide to their clients.<sup>157</sup> Students are educated in and exposed to the occupational hazards of their work and taught how to prepare for them and respond to them.<sup>158</sup>

This is not the case in legal education: while law students are thoroughly prepared for the bar exam, they are not as prepared for the attorney/client dynamics that await them in practice. Required courses in law school generally do not cover these "soft skills." For the most part, students are not given tools to deal with the considerable stresses of legal work, nor are they prepared for the impact that work may have on them psychologically. Whether through clerkships, firm jobs, or clinical work during law school, more and more young students are confronting these issues with inadequate training. Though this topic is becoming increasingly

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152. *Id.* at 34–35. Most of the work that lawyers are responsible for involves "reading, writing, researching and analyzing cases, reviewing and drafting legal documents, and thinking through fact situations and strategies." Activities involving feelings are not nearly as common for attorneys. *Id.*

153. *Id.* at 35.

154. *Id.*

155. *Id.*

156. *See, e.g.*, Lisa D. Butler, Elaine S. Rinfrette & Shirley Reiser, *Self-Care Starter Kit*, U. BUFF. SCH. SOC. WORK, (last visited Sep. 5, 2014, 1:32 PM), <http://www.socialwork.buffalo.edu/resources/self-care-starter-kit.html> (providing numerous resources from the field of social work, including self-care plans and assessment tools).

157. *Id.*

158. *Id.*



popular in legal education, particularly amongst clinicians,<sup>159</sup> it is far from becoming mainstream.

For example, one very positive trend in legal education is that of “more emotional lawyering.”<sup>160</sup> This movement, known as “integrative law,” is gaining traction with the viewpoint that law is a profession that should be focused on holistic healing of the client.<sup>161</sup> The methodologies that generally comprise the integrative law movement include therapeutic lawyering, client-centered lawyering, and lawyering with empathy.<sup>162</sup> Therapeutic lawyering aims to use multiple disciplines to explore both legal and extralegal issues during counseling.<sup>163</sup> It uses a client-centered approach, with a focus on the client’s well-being.<sup>164</sup> Client-centered lawyering focuses on client autonomy and decision-making, rather than leaving the decision-making power in the attorney’s hands.<sup>165</sup> This model, according to Professor Robert Dinerstein, has had “extraordinary influence” on legal clinics.<sup>166</sup>

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159. See *Becoming a Better Clinician*, AALS (2013), <http://aals.org/clinical2014/2014ClinicalRFP.pdf>.

160. Ingrid Loreen, *Therapeutic Jurisprudence and the Law School Asylum Clinic*, 17 ST. THOMAS L. REV. 835, 845 (2005).

161. E.g., Hollee Schwartz Temple, *Is the Integrative Law Movement the Next “Huge Wave” for the Legal Profession?*, A.B.A. J. (Aug. 1, 2013, 7:30 AM), [http://www.abajournal.com/magazine/article/integrative\\_law\\_puts\\_passion\\_into\\_the\\_profession/](http://www.abajournal.com/magazine/article/integrative_law_puts_passion_into_the_profession/) (stating “This way of looking at the law has ‘become more widely known in recent years, according to Integrative Law Institute director Pauline Tesler.”). See *The Integrative Law Movement: An Introduction*, CUTTING EDGE LAW, <http://cuttingedgelaw.com/page/integrative-law-movement-introduction> (last visited Sep. 5, 2014) for a thorough summary of the movement, along with related resources.

162. Loreen, *supra* note 160, at 845.

163. *Id.* Its proponents claim that therapeutic lawyering has “given lawyering a more human face” and explores the client’s psychological issues outside of their legal problems. In this respect, therapeutic lawyers would be expected to recognize the limitations of legal solutions, and seek other disciplines to solve the client’s problems. See *id.* at 845–46.

164. *Id.* at 846.

165. Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 504 (1990). The goal is not only to provide opportunities for clients to make decisions themselves, but also to enhance the chance that the decisions are truly the client’s and not the lawyer’s. “The traditional view of legal counseling...maintains that the client should make the critical decisions concerning the overall goals of the representation, with the lawyer exercising a great deal of influence over how such decisions are made...The client-centered or participatory model of counseling...is a response to this traditional model.” *Id.*

166. *Id.* The popularity of this model began with a 1977 book by David Binder and Susan Price, titled *Legal Interviewing and Counseling: A Client-Centered Approach*. By 1987, ninety-four schools had adopted the text and its approach. *Id.* at 604 n.15.

While this therapeutic approach may very well lead to a better counseling experience for both the attorney and client, there are natural consequences to becoming emotionally involved in the client's extralegal issues.<sup>167</sup> Attorney-turned-psychologist Lynda L. Murdoch describes these consequences, which include increased psychological mindedness,<sup>168</sup> difficulty in remaining neutral,<sup>169</sup> and difficulty avoiding over-involvement.<sup>170</sup> These, she points out, are "basic concepts of therapy" that client-centered attorneys can learn from.<sup>171</sup> Transference reactions are also a possible consequence of a therapeutic approach to counseling.<sup>172</sup> Transference takes place when a client relives earlier feelings and experiences and displaces them onto the counselor in the current situation.<sup>173</sup> This is intertwined with "counter-transference," which occurs when the attorney displaces feelings onto the client.<sup>174</sup> These feelings can manifest positively as love or admiration or negatively as anger or hostility.<sup>175</sup> These reactions are dangerous for the attorney-client relationship, since they can lead to a distorted reality, potentially affecting the quality of the counseling.<sup>176</sup> Additionally, counter-transference "may

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167. Loreen, *supra* note 160, at 849. As Margaret Drew points out, "[d]omestic violence and other forms of abuse are all about failure to maintain appropriate boundaries. Isn't it ironic that often those of us who represent survivors are unwilling to draw boundaries with others or with ourselves?" Margaret Drew, *Healing Ourselves*, 9 ABA COMM'N ON DOMESTIC VIOLENCE, ENEWSL. (A.B.A.), Winter 2008, at 2, available at [https://www.americanbar.org/newsletter/publications/cdv\\_enevletter\\_home/expertDrew.html](https://www.americanbar.org/newsletter/publications/cdv_enevletter_home/expertDrew.html).

168. Lynda L. Murdoch, *Psychological Consequences of Adopting a Therapeutic Lawyering Approach: Pitfalls and Protective Strategies*, 24 SEATTLE U. L. REV. 483, 486 (2000). Psychological-mindedness is "a state of heightened awareness of mental processes and develops as one learns to be aware of unconscious processes, motivations, and problems." *Id.* "[A] necessary extension of becoming more psychologically-minded is an increased tendency to be aware of one's own problems and conflicts. This can lead to overidentification, wherein the service provider experiences an exaggerated sense of similarity between self and client interaction may be threatened." *Id.*

169. *Id.* at 489. "The professional must develop a detached style of interaction in order to prevent blurring of identity boundaries and maintain nonjudgmental objectivity." *Id.*

170. *Id.* at 489-90. "As lawyers begin to establish more personal relationships with their clients, they may also find it harder to resist client demands. It is more difficult to end a meeting or telephone call when the material being discussed is intimate in nature or where a personal relationship has been established. Lawyers may find themselves working longer and longer hours in order to accommodate the additional contact, placing themselves at increased risk for burnout." *Id.*

171. *Id.* at 485.

172. *Id.* at 491.

173. *Id.* at 491-92.

174. *Id.* at 492.

175. *Id.*

176. *Id.*

cause depression and distress in the service provider” without proper self-care and management.<sup>177</sup>

Essentially, these methods have brought lawyering more in line with social work, increasing the attorney’s vulnerability to those occupational hazards associated with the helping professions.<sup>178</sup> Any attorney who encounters traumatized clients or gruesome crime scene photos is susceptible to vicarious trauma.<sup>179</sup> However, it seems that those who practice a more client-centered and therapeutic approach to their counseling have a much broader potential for the affliction due to their holistic style. Due to this shift, their clients’ personal details will come to the forefront.<sup>180</sup> These details, when unpleasant, can lead to instances of vicarious trauma.<sup>181</sup> This can affect the well-being of the attorney and disrupt the attorney’s ability to properly represent the client.<sup>182</sup>

### 3. *Recent Studies Have Identified Vicarious Trauma in the Legal Profession*

While the main body of research regarding vicarious trauma involves professions other than the legal profession, some studies have recently begun to investigate how working with trauma can affect attorneys.<sup>183</sup> One early survey of Canadian prosecutors looked, in part, at the effect of a growing number of “sensitive” and other emotionally charged cases on attorney retention.<sup>184</sup> The results showed that these cases required more time, effort, and “emotional fortitude,” than non-traumatic cases.<sup>185</sup> These requirements influenced the attorneys in their decisions to take temporary leave or to leave the job entirely.<sup>186</sup> In 2006, a second study involving 105 judges was undertaken to investigate the effects of exposure to trauma

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177. *Id.*

178. *Id.* at 493.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* at 493–94.

183. Andrew P. Levin, *Secondary Trauma and Burnout in Attorneys: Effects of Work with Clients Who are Victims of Domestic Violence and Abuse*, 9 A.B.A. COMM’N ON DOMESTIC VIOLENCE, ENEWSL. (A.B.A.), Winter 2008, at 2, available at [https://www.americanbar.org/newsletter/publications/cdv\\_enewsletter\\_home/expertLevin.html](https://www.americanbar.org/newsletter/publications/cdv_enewsletter_home/expertLevin.html).

184. See Ian M. Gomme & Mary P. Hall, *Prosecutors at Work: Role Overload and Strain*, 23 J. CRIM. JUST. 191 (1995).

185. *Id.* at 198.

186. *Id.* at 197.

victims.<sup>187</sup> This study found that victims of trauma that judges came in contact with affected the judges “unequivocally.”<sup>188</sup>

Recently, another study provided valuable insight into the role of trauma in the career of public defenders.<sup>189</sup> In 2011, the State Bar of Wisconsin undertook a study looking specifically at vicarious trauma in public defenders.<sup>190</sup> The research entailed sending surveys to 474 attorneys in the State Public Defender office.<sup>191</sup> Linda Albert, one of the facilitators of the study, presented the issue in her capacity as the Bar’s Lawyer Assistance Program (LAP) coordinator to great interest.<sup>192</sup> However, she was concerned that the affliction had never been extensively studied in attorneys.<sup>193</sup> The surveys revealed a strong correlation between the attorneys’ heavy caseloads, exposure to trauma, and symptoms of vicarious trauma.<sup>194</sup>

Each of the three studies found similarities between the stressors present in the legal profession and the resulting symptoms of vicarious trauma: one notable and common stressor was exposure to clients or litigants that had undergone a traumatic experience.<sup>195</sup> Large case volume also proved to be a common stressor in each of the studies.<sup>196</sup> The symptoms that resulted from this consistent exposure to trauma were also common between the three studies. These include feelings of anxiety, decreased quality of social and familial interactions, and exhaustion or loss

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187. See Peter G. Jaffe et al., *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 45 *JUDGES J.*, no. 4, 2006, at 12, 16.

188. *Id.* A recent Israeli study on judges’ rulings found a connection between parole rulings and judges’ blood sugar levels, with more favorable rulings coming after meals. *The Science of Justice: I Think It’s Time We Broke for Lunch*, *ECONOMIST* (Apr. 14, 2011), <http://www.economist.com/node/18557594>. If whether the judge has had lunch has such an effect, one can only imagine the effect that other professional impairments can have. *Id.*

189. See Molvig, *supra* note 58.

190. *Id.*

191. *Id.* at 8. The survey had a “remarkable” completion rate of 78 percent, according to the article. *Id.*

192. *Id.*

193. *Id.*

194. *Id.* at 10.

195. See Gomme & Hall, *supra* note 184, at 195; Jaffe et al., *supra* note 187, at 16; Molvig, *supra* note 58, at 4. Additionally, participants in the Wisconsin study noted that “lack of respect, lack of control in one’s life, and lack of enough time to process issues and give or get support” were top contributing factors. See *id.* at 29.

196. See Gomme & Hall, *supra* note 184, at 196; Jaffe et al., *supra* note 187, at 16; Molvig, *supra* note 58, at 27.

of sleep.<sup>197</sup> The study of judges and the Wisconsin study found similarities in the loss of sleep and appetite, as well as in symptoms consistent with depression.<sup>198</sup> What seems clear is that the particular circumstances of attorneys who deal with this potent mix of high caseloads and traumatized clients more often than not lead to the symptoms of vicarious trauma.

#### 4. *Millennial Lawyers Will Have Increased Vulnerability to Vicarious Trauma*

Given Millennials' propensity toward public service and civic duty, preparing them for the occupational hazards of this kind of work is imperative. Legal education must follow the lead of the mental health community and acknowledge the increased vulnerability to vicarious trauma and burnout.<sup>199</sup> For example, in one study, attorneys who took on a high caseload involving traumatized clients exhibited more symptoms of secondary trauma and burnout than other helping professionals who did not work as frequently with traumatized victims.<sup>200</sup> As more and more students seek to work in helping professions, it makes sense to focus on preparing these students for personal and professional success.

The literature on vicarious trauma, however, does contain some positive news for Millennials. The attributes that comprise "Public Service

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197. See Gomme & Hall, *supra* note 184, at 196 (citing demoralization, anxiety, helplessness, ill health, exhaustion, and a deterioration in the quality of social interaction with family and friends); see Jaffe et al., *supra* note 187, at 16 (reporting irritability and intolerance of others, loss of sleep, loss of appetite, anxiety, depression, fear, hypervigilance); see Molvig, *supra* note 58, at 4 (reporting that PTSD flashbacks, nightmares, severe anxiety, uncontrollable thoughts, depressed mood, loss of interest or pleasure, disturbed sleep, loss of appetite, low energy, poor concentration, feelings of guilt or low self-worth, decreased functioning in social and family life).

198. Jaffe et al., *supra* note 187, at 125; see Molvig, *supra* note 58, at 4. One aspect in which the studies differ, however, is in the contribution of other situational factors in the incidence of vicarious trauma. In the study of judges, it was found that gender and experience made a difference in the reporting of vicarious trauma symptoms. Female judges were, according to the survey, much more susceptible to the symptoms of vicarious trauma, with reports of symptoms in 73 percent of surveyed females versus 54 percent of males. Also, more experience correlated with more symptoms of fatigue showing in judges. According to the researchers, these, along with age, were important predictors for vicarious trauma. See Jaffe et al., *supra* note 187, at 15–16. In contrast, the researchers who led the Wisconsin study noted that "such factors as years on the job, age, office size, gender, and personal history of trauma made no significant differences in vicarious trauma levels." Molvig, *supra* note 58, at 4. The study of Canadian prosecutors did not appear to look at these factors. It is not clear whether this is a differentiation between the two distinct professions, or a function of study methodology. See Gomme & Hall, *supra* note 184.

199. Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245, 245 (2003).

200. *Id.* at 250.

Motivation” (PSM), which is the predisposition of one to “respond to motives grounded primarily . . . in public institutions,” seem to correlate well with the attributes of Millennials.<sup>201</sup> One study found that those attorneys with high PSM tended to eventually obtain employment in the public sector more often than their lower PSM counterparts.<sup>202</sup> It is in those types of jobs that those with high PSM find career fulfillment: attorneys who worked with victims of Hurricane Katrina, for example, experienced “compassion satisfaction” which helped to offset and outweigh any vicarious trauma experiences.<sup>203</sup> It is important to note, however, that these volunteers also made self-care an important part of their daily lives.<sup>204</sup>

The study of vicarious trauma in judges highlights the ways in which the legal professional culture can be detrimental, as well as the ways that Millennials’ strengths may serve them well in helping professions. The researchers found a disconnect between the “ideal coping and prevention strategies” and the realities of the profession.<sup>205</sup> In an ideal world, judges would have the necessary social support and opportunities to “debrief” in order to avoid the symptoms of vicarious trauma.<sup>206</sup> However, the reality of the judicial profession is that judges must “work in isolation,” keeping any information about the cases over which they preside to themselves.<sup>207</sup> The nature of judging requires judges to maintain confidentiality, even when faced with “horrific crimes.”<sup>208</sup> One judge quoted in the study decried the isolation that comes with the job, noting that friends and family cannot help

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201. Roger P. Rose, *Preferences for Careers in Public Work: Examining the Government–Nonprofit Divide Among Undergraduates Through Public Service Motivation*, 43 AM. REV. PUB. ADMIN. 416, 417–18 (2013). The dimensions of PSM, the author says, are “commitment to public interest, compassion, and self-sacrifice.” *Id.* at 417. The author finds, however, that PSM correlates more with aspirations toward non-profit work than with government work in millennials. *Id.* at 427.

202. Bradley E. Wright & Robert K. Christensen, *Public Service Motivation: A Test of the Job Attraction-Selection-Attrition Model*, 13 INT’L PUB. MGMT. J. 155, 168 (2010).

203. Dass-Brailsford & Thomley, *supra* note 132, at 46–47. Compassion satisfaction is defined as “the pleasure derived from one’s work.” Molvig, *supra* note 58, at 10.

204. Dass-Brailsford & Thomley, *supra* note 132, at 46. According to the article, “[m]any volunteers reported spending their evenings in the French Quarter, a vibrant part of New Orleans that attracts many visitors to the city. These social activities likely played an important role in decreasing their level of stress.” *Id.* Additionally, the short time and immersion in their mission to help the victims, the authors say, may have skewed the results. *Id.* See *supra* Part V, for a discussion of self-care techniques to combat professional impairments.

205. Jaffe et al., *supra* note 187, at 16.

206. See *id.*

207. Jaffe et al., *supra* note 187, at 16.

208. *Id.*

in preventing the isolation from taking over.<sup>209</sup> The study also shows that the overwhelming workload and cultural push to dispose of cases quickly is at odds with the need for balance and boundaries between work life and home life.<sup>210</sup>

This Millennial propensity toward social connectedness is likely to help them cope with the stresses of the job and fight off symptoms of burnout and vicarious trauma. Studies often advise professionals who face stress, burnout, and vicarious trauma, to look to others and strengthen social bonds in order to cope.<sup>211</sup> Millennials are more socially connected than ever before. Social media, blogs, and a variety of smart-enabled devices, have permeated the childhood of Millennials, and they are the generation most likely to constantly use these devices.

From a positive perspective, this technology allows for instantaneous debriefing and peer support, potentially creating a web of connection and support. However, this connectedness also opens the door to breaches of confidentiality and other forms of unprofessionalism, as one may vent in an inappropriate venue or in an inappropriate way. There is a real danger of oversharing when social media and professional responsibility collide: there is no shortage of stories where attorneys' and other professionals' misuse of social media to vent about their work has landed them in serious trouble.<sup>212</sup>

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209. *Id.*

210. *Id.* at 17.

211. See, e.g., Maureen Minehan, *Burned Out? Five Strategies for Recovery*, HR WIRE, Nov. 6, 2007, ("Find the help and encouragement of someone you trust."); *Staying Connected*, *supra* note 76 ("Friends and family . . . help complete who we are as people."); Tish Vincent, *Stress Management: Healthy vs. Unhealthy*, 91 MICH. B. J. 54 (2012), available at <http://www.michbar.org/journal/pdf/pdf4article2051.pdf> (recommending that practitioners seek a "social connection that protects against the detrimental effects of stress"); Amy E. Clark Kleinpeter, *Balancing Life and Work*, (A.B.A. Young Law. Div. 101 Prac. Series ed. 2007), available at [http://www.americanbar.org/groups/young\\_lawyers/publications/the\\_101\\_201\\_practice\\_series/balance4.html](http://www.americanbar.org/groups/young_lawyers/publications/the_101_201_practice_series/balance4.html) ("These people will prevent you from forgetting that your job is not the world.").

212. See, e.g., Martha Neil, *'Trial From Hell': Prosecutor Posts on Facebook; Jurors Text; Bailiff Chats in Deliberations*, A.B.A. J. (Apr. 22, 2010 12:49 PM), [http://www.abajournal.com/news/article/trial\\_from\\_hell\\_prosecutor\\_posts\\_on\\_facebook\\_jurors\\_text\\_bailiff\\_chats\\_in\\_d/](http://www.abajournal.com/news/article/trial_from_hell_prosecutor_posts_on_facebook_jurors_text_bailiff_chats_in_d/) ("[A]fter the deliberations were over, a prosecutor in the case posted a ditty on Facebook about what his co-counsel described as the "trial from hell." It can be sung to the tune of the theme song from *Gilligan's Island* . . ."); John Schwartz, *A Legal Battle: Online Attitude vs. Rules of the Bar*, N.Y. TIMES, Sept. 13, 2009, at A1, available at <http://www.nytimes.com/2009/09/13/us/13lawyers.html> (Attorney reprimanded and fined for blog post calling a Fort Lauderdale judge an "Evil, Unfair Witch"); Amar Toor, *Nursing Student Expelled Over Facebook Photo, Promptly Files Lawsuit*, SWITCHED (Jan. 5, 2011, 7:30 AM), <http://www.switched.com/2011/01/05/doyle-bynes-facebook-placenta-photo-lawsuit/> (explaining that a

#### IV. PROFESSIONAL IMPAIRMENT AND ITS EFFECT ON LAWYERS

The effect of an impaired lawyer also goes far beyond decreased personal satisfaction and well-being. Professional impairment can affect employee engagement and productivity, client representation, and access to justice, as well as the reputation of the legal profession. Individually, and most certainly collectively, these effects warrant a closer look at preventative strategies.

##### A. PROFESSIONAL IMPAIRMENT RESULTS IN DECREASED PRODUCTIVITY

The effects of stress, burnout, and vicarious trauma, can have significant ramifications in the workplace. Stressed attorneys are prone to make more mistakes and are ultimately likely to have reduced work capacity. Burnout may also result in “absenteeism, job turnover, low productivity, decreased job satisfaction, and reduced commitment to the job.”<sup>213</sup> Ultimately, the attorney will leave the work environment and seek employment at another firm or quit the practice altogether, which causes the firm to have to find a replacement and provide job training.<sup>214</sup> Even more dangerous than the economic effect it may cause, burnout may spread like an epidemic throughout the firm.<sup>215</sup> Burned out attorneys often complain and demoralize colleagues with their cynical view of clients and fellow attorneys, creating a stressful and disheartening legal environment.<sup>216</sup> Researchers have found that vicarious trauma results in “increased absenteeism, high staff turnover, lower productivity, impaired judgment, and low motivation.”<sup>217</sup> The end result of each of these scenarios is low quality work, work that remains incomplete, and quite possibly, work that is done incorrectly. Each of these not only impacts the productivity of lawyers, but also their morale, and potentially, the fate of their clients.

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nursing student was expelled for posting a photo of a placenta on Facebook that potentially violated patient confidentiality); *see generally* Jamie K. Durrett, *Ethical Implications of Social Media for Attorneys*, DRI, (Oct. 4, 2013), <http://dritoday.org/feature.aspx?id=620>; Helen W. Gunnarsson, *Friending Your Enemies, Tweeting Your Trials: Using Social Media Ethically*, 99 ILL. B. J. 500 (2011), available at <http://www.isba.org/ibj/2011/10/friendingyourenemiestweetingyourtri>.

213. Bateson & Hart, *supra* note 93, at 22–23.

214. *Id.*

215. *Id.*

216. *Id.*

217. Albert, *supra* note 136, at 8.



B. PROFESSIONAL IMPAIRMENT RESULTS IN DIMINISHED ACCESS TO JUSTICE

The legal profession has made significant efforts to remedy the issue of indigent clients' access to justice. Unbundled legal services,<sup>218</sup> pro bono and legal aid programs,<sup>219</sup> and public defenders provided by the government,<sup>220</sup> make up just some of these noble efforts. However, it is

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218. Symposium, *Access to Justice for Unrepresented Litigants: A Comparative Perspective*, 42 LOY. L.A. L. REV. 979, 986–87 (2009). Unbundling can help lower costs for clients:

Limited-scope representation, or unbundling, occurs when a client hires an attorney for help with only specific portions of a legal problem, such as legal advice, document review, or limited appearance. The client then represents himself or herself in all other regards. Unbundling is seen as an attractive alternative for clients who may not have the means to pay for complete representation, especially when the legal issue is relatively uncomplicated. For example, the California Rules of Court specifically allow an attorney to prepare documents for a client without disclosing his or her identity in the documents or appearing in court on behalf of the client.

*Id.*

219. Law professor Deborah Rhode, when discussing the profession's notion that it is more charitable with its time and money than any other, contends that "[s]uch claims suggest more about the profession's capacity for self-delusion than self-sacrifice." Deborah Rhode, symposium, *Access to Justice*, 69 FORDHAM L. REV. 1785, 1809 (2001). "Pro bono programs involving the profession's most affluent members reflect a particularly dispiriting distance between the bar's idealized image and actual practices." *Id.* at 1810. "Over the past decade, the average revenues of the most successful firms increased by over 50%, while the average pro bono hours declined by a third." *Id.* at 1811. The prevailing view is that "[i]t does not seem reasonable to expect a lawyer to reduce his billable time or his leisure time [in order to do unpaid work]." *Id.* Additionally, "[t]he federal government, which provides about two-thirds of the funding for civil legal aid, now spends only about \$300 million for such assistance—this is 'roughly \$8 per year for those officially classified poor and less than 1% of the nation's total expenditures on lawyers.'" *Id.* at 1788. Many litigants "suffer long delays and inadequate assistance because court-appointments are a financial loss for lawyers." *Id.* at 1789. Many in the profession are unwilling to undertake pro bono work, which is rooted in the ways American culture views the poor. Michelle S. Jacobs, *Pro Bono Work and Access to Justice for the Poor: Real Change or Imagined Change?*, 48 FLA. L. REV. 509, 515 (1996). There is a distinction between the deserving poor and the underdeserving poor, which is entrenched in entitlement programs. *Id.* at 516. Even those who agree to step forward often do not actually accept cases from the target client population. *See id.*

220. Rhode, *supra* note 219, at 1809 (reminding us that public defenders have high caseloads, often juggling "up to 500 felony matters at a given time, which precludes significant preparation for the vast majority of clients"). *Id.* After a few months or years, "the idealist discovers . . . that even the noblest of efforts falls short in the face of those constraints endemic to most public defender services: staggering caseloads, tremendous time pressure, limited resources, and inadequate training." Ogletree, *supra* note 110, at 1240. Public defenders are also unable to adequately communicate with their clients:

[I]t is impossible for defenders with excessive caseloads to allow sufficient time to provide a reassuring 'bedside manner' for all of their clients. And it is often difficult to find time to keep the client informed of even the bare minimum of information necessary to effective representation. This lack of attention—unreturned phone calls, lack of visits in the jail,

well worth considering how the mental health of the advocate might also contribute to the lack of access to justice. While the above efforts seek to improve the client's "access," the effects of stress, burnout, and vicarious trauma, particularly in clinics and other underfunded legal offerings, may undermine the quality of the services provided. Unless attention is paid to attorney mental health, the promise of justice may actually be inadvertently impeded by those who have fought so hard to preserve client access to it.

When attorneys themselves are affected by these stress-induced professional impairments, they cannot provide their best service, to which the clients are entitled. This is an issue particularly for those working in public interest. As Professor Jean Koh Peters describes,

As we work harder and harder, fueled by concern for our clients, our universe will start to shrink, almost imperceptibly, but remarkably swiftly, to our work. We learn all of the intricacies of those things that we fight against. For instance, the death penalty opponent knows all the methods of death by lethal injection and the electric chair. Child protection advocates know about the different ways that caretakers can maltreat children. Human rights advocates deal daily in the details of torture and know each form by their indigenous names. We can too easily forget that the world is larger than our crusade and that, despite all odds, beauty and hope still flourish in the world.<sup>221</sup>

If the symptoms of burnout and vicarious trauma are not identified and dealt with, burnout can have harsh effects on the attorney, clients, the firm, and the legal profession in general. For example, a burned out attorney will work at a pace and efficiency that is below his or her capabilities.<sup>222</sup> As a result, burned out attorneys are incapable of providing excellent client service and are not marketable; therefore, their burnout affects the client and the firm.<sup>223</sup> Attorney turnover also has a cost to the client as evidenced by a 2006 Chicago bar study.<sup>224</sup> Losing qualified attorneys due to burnout or vicarious trauma leaves a legal aid organization no choice but to furnish

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unavailability in the office—makes clients understandably fearful or hostile about their attorney and the kind of representation they are receiving.

Suzanne E. Mounts, *Public Defender Programs, Professional Responsibility, and Competent Representation*, 1982 WIS. L. REV. 473, 486 (1982).

221. Jean Koh Peters, *Habit, Story, Delight: Essential Tools for the Public Service Advocate*, 7 WASH. U. J.L. & POL'Y 17, 26 (2001).

222. Bateson & Hart, *supra* note 93, at 22–23.

223. *Id.*

224. Connolly & Merrell, *supra* note 122, at 8.

a newer and less experienced attorney<sup>225</sup> or to leave a gap in services in some cases.<sup>226</sup> The study also cited a financial cost to the legal aid organizations in Illinois, finding that over one million dollars in replacement costs were endured in 2005.<sup>227</sup> If extrapolated across all fifty states, this is a large amount of financial waste. This amount of money can be a significant detractor to the quality of service received by indigent clients in the cash starved world of public interest law.

C. PROFESSIONAL IMPAIRMENT RESULTS IN TARNISHED  
PROFESSIONAL REPUTATION

Overwork and burnout are root causes of many malpractice claims.<sup>228</sup> Lawyers are more susceptible to burnout, depression, and alcohol problems, than the general population.<sup>229</sup> These three issues are interrelated: “[O]ne usually leads to another with devastating consequences not only to the individual but also to the firm and to the client. The individual will often have to deal with health problems, financial problems, family disharmony, a questioned professional reputation, along with a malpractice claim and related disciplinary complaint.”<sup>230</sup> Further, burnout “can adversely affect the attorney’s performance. For example, in one Idaho study, 60% of the lawyers who accessed a program for alcoholism and chemical dependency problems had malpractice claims prior to accessing the program. After two years of sobriety, the rate of malpractice was 2-3%.”<sup>231</sup>

The legal profession itself is now recognizing the effects of stress, burnout, and vicarious trauma on its attorneys. The Supreme Court of Oklahoma, for instance, recognized the seriousness of burnout in a

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225. Connolly & Merrell, *supra* note 122, at 15. The study found that nearly half of legal aid attorneys in Illinois had been law students immediately prior to their employment in legal aid. *Id.*

226. Connolly & Merrell, *supra* note 122, at 19. One legal aid director illustrates this loss with a real-world example from their family law program. When the sole family law attorney left the organization, the program did not accept new clients for over six months while interviewing and getting the new attorney “up to speed.” This resulted in about one third as many clients serviced in the year following the original attorney’s departure. *Id.*

227. Connolly & Merrell, *supra* note 122, at 18.

228. Karen Erger, *Taking (Back) Your Vacation: Overwork and Burnout Are Root Causes of Many Malpractice Claims. When Was the Last Time You Left the Blackberry at Home and Took A Real Vacation?*, 95 ILL. B.J. 322 (2007).

229. Maureen Hynd, *A Friend in Need May Be A Malpractice Claim Waiting to Happen*, 2004 W. VA. L. REV. 26, 26 (2004).

230. *Id.*

231. Daniel T. Eismann, *What Is the Lap?*, 49 ADVOC. 24 (2006).

malpractice case against an attorney when it held that burnout qualifies as a mitigating factor that decreases potential sanctions.<sup>232</sup> In recognizing that burnout is a valid factor in mitigating sanctions, the court recognized the existence of burnout in the legal profession and the harmful effects it can have on the attorney and client.

Burnout has been affirmatively raised as a defense in court, and it has also been found to be a mitigating factor in attorney discipline suits.<sup>233</sup> In the case *In re Conduct of Loew*, the Supreme Court of Oregon was faced with a situation in which an attorney would not return his client's phone calls and would not comply with his client's requests to return the case file and terminate the relationship.<sup>234</sup> The attorney was concerned with how he handled his client's case and sought psychiatric help.<sup>235</sup> A psychiatrist testified at trial that he suffered from professional burnout.<sup>236</sup> The court held that professional burnout was a mitigating factor in the suit and it suspended the attorney for thirty days.<sup>237</sup>

#### V. BEST PRACTICES: PSYCHOEDUCATION, PREPAREDNESS, AND PRACTICE

Millennials' mastery of and reliance on technology brings both benefits and vulnerabilities. Millennial students will not be adequately prepared to handle the stresses that accompany a career as an attorney without an intentional focus on identifying and preventing professional impairments.<sup>238</sup> The occupational hazards of practicing law are not necessarily intuitive, nor has their prevention been a predominant focus of

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232. State ex rel. Okla. Bar Ass'n v. Schraeder, 51 P.3d 570, 579–82 (Okla. 2002). The court suspended the attorney for thirty days as punishment for lack of client communication and obstruction of a bar investigation. *Id.*

233. See *In re Conduct of Loew*, 642 P.2d 1171, 1172 (Or. 1982.); State ex rel. Okla. Bar Ass'n v. Wolfe, 919 P.2d 427, 436–37 (Okla. 1996).

234. *In re Conduct of Loew*, 642 P.2d. at 1172.

235. *Id.* at 1173.

236. *Id.* at 1174.

237. *Id.*; *In re Ontell*, 593 A.2d 1038, 1042 (D.C. Cir. 1991) (holding that a lawyer who mishandled two clients would be suspended for thirty days despite the court's recognition of burnout as a mitigating factor).

238. Jennifer Jolly-Ryan, *Promoting Mental Health in Law School: What Law Schools Can Do for Law Students to Help Them Become Happy, Mentally Healthy Lawyers*, 48 U. LOUISVILLE L. REV. 95, 98 (2009) (“An increase in bad habits, dysfunctional behaviors, stress, anxiety, depression, and other mental illnesses characterizes many law students' metamorphosis from law student to lawyer.”).

the legal education narrative.<sup>239</sup> Further, legal educators are often not equipped with the practical knowledge of how to navigate the stressors inherit within the long-term practice of law, as they often have not experienced them firsthand.<sup>240</sup> In many cases, law school faculty members left their law firms, public interest agencies, or individual practices, in order to join academia.<sup>241</sup> While academia has its own stresses and challenges, directly comparing it to working in a law firm is a difficult argument to make.<sup>242</sup> It then makes sense to look outside the law school for best practices in order to increase our effectiveness in preparing Millennial law students for a flourishing career.

To incorporate these strategies into the legal curriculum and best prepare Millennial law students to thrive amidst occupational hazards, a three-pronged approach adapted from the social work context is suggested: psychoeducation, preparedness, and practice.<sup>243</sup>

#### A. PSYCHOEDUCATION

Psychoeducation is protective.<sup>244</sup> This education, comprised of an understanding of the psychological dynamics at play in the lawyer-client relationship, the effects of stress and trauma on the individual's psyche, and the expected physiological reaction, is a fundamental component to thriving.<sup>245</sup> In the context of legal education, this includes an understanding of the way that stress and burnout affect one's well-being and practice. For

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239. *Id.* at 99 (citing Stephen M. Siptroth, Note, *Forming the Human Person- Can the Seminary Model Save the Legal Profession?*, 2007 BYU EDUC. & L.J. 181, 181 (2007)) (“[I]n order to fight dysfunction more effectively, the problem needs to be addressed at the point of inception: law schools.”).

240. See Emily Zimmerman, *Should Law Professors Have a Continuing Practice Experience (CPE) Requirement?*, 6 N.E. U. L.J. 131, 136 n.16 (2013).

241. *Id.*

242. At least from the perspective of the professor; the student experience in law school remains a microcosm of their future life in practice. See , Peter Kutalakis, *Stress and Competence: From Law Student to Professional*, 21 CAP. U. L. REV. 835, 841–42 (1992); Nancy J. Soonpaa, *Stress in Law Students: A Comparative Study of First-Year, Second-Year, and Third-Year Students*, 36 CONN. L. REV. 353, 372–74 (2004); Ben Gibson, symposium, *How Law Students Can Cope: A Student's View*, 60 J. LEGAL EDUC. 140, 141–43 (2010).

243. Catherall, *Preventing Institutional Secondary Traumatic Stress Disorder*, in COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED 233 (Charles R. Figley ed.,1995) (suggesting a multi-pronged approach including psychoeducation, preparedness, and planning).

244. *Id.* at 243 (asserting that one important goal of psychoeducation is to strengthen groups in order to make them “expressive and accepting,” and “facilitate the processing of traumatic stress”).

245. *Id.* at 233 (stating that educating oneself is the first step in recognizing and projecting how likely it is that professional impairments will be experienced).

students who will engage clients who have experienced trauma, this education includes trauma informed counseling, understanding vicarious trauma and secondary traumatic stress, transference and counter-transference, and the lawyer's subsequent vulnerability.<sup>246</sup> Additionally, this includes an understanding of the connection between the rules of professionalism and attorney well-being.

*1. Legal Education Must Provide an Understanding of the Psychological Aspects of Lawyering*

Psychoeducation becomes all the more important as legal education continues to move toward increased experiential learning.<sup>247</sup> No longer does legal education merely prepare students for working with future clients. Instead, students are interacting with clients and their cases as student lawyers. This change increases the duty of legal educators to inform students of the many layers of practice as a part of their supervisory role. This includes preparing them to understand and respond to professional impairments.<sup>248</sup>

Compared to psychology and social work students who are “trained to expect transference and countertransference reactions in their relations with their clients,” law students are far less prepared for the psychosocial aspects of their profession.<sup>249</sup> Lawyers, by contrast, receive only minimal training in the mechanics of client counseling and often enter the legal profession with the notion that the only things relevant to the attorney-client relationship is “how well they know the law and how well they can read and apply it.”<sup>250</sup> Legal education must anticipate these and other pitfalls and encourage students to understand and anticipate the expected occupational hazards of the career for which they are preparing. Students must also understand how stress affects their body and mind, as well as the effect that their role as lawyers has on them personally. They must

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246. See discussion *supra* Part II.

247. Mark Hansen, *US Law Schools Expanding Clinical, Professionalism Offerings, Survey Shows*, A.B.A. J. (Jul. 5, 2012, 4:20 AM), <http://www.abajournal.com/news/article/us-law-schools-expanding-clinical-professionalism-offering-s-survey-shows> (citing a survey that shows an increase in clinical other educational opportunities, outside of “traditional advocacy”).

248. See discussion *supra* Part II.

249. Majorie A. Silver, Sanford Portnoy & Jean Koh Peters, symposium, *Stress, Burnout, Vicarious Trauma, and Other Emotional Realities in the Lawyer/Client Relationship: A Panel Discussion*, 19 *TOURO L. REV.* 847, 849, 872–73 (2004).

250. *Id.*

understand the relationship between these impairments and the students' professional responsibilities.<sup>251</sup>

2. *Legal Education Must Help Students View Professional Impairment as a Matter of Professional Responsibility*

Professional impairments caused by stress, burnout, and vicarious trauma associated with lawyering are matters of competence to practice law. Vicarious trauma “disrupts an individual’s ability to ‘think clearly, to modulate emotions, to feel effective, or to maintain hope,’ and consequently affects the way an individual responds to work.”<sup>252</sup> Impairment can cause shifts in cognitive schemas that “can result in excessive self-criticism, mistrust of clinical, and professional instincts, and a decreased sense of one’s utility within the profession.”<sup>253</sup> If attorneys do not take care of themselves, they will eventually have nothing to give clients and “no resources through which to render service.”<sup>254</sup>

Additionally, “[r]ecognizing and addressing vicarious traumatization has serious implications for the ethical representation of clients” because attorneys have a duty to attend to any trauma or vicarious trauma that affects them.<sup>255</sup> For example, although the Rules of Professional Conduct do not specifically “address self-care, it is an implicit part of the basic notion of fitness to practice law. Addressing competence, Rule 1.1 speaks only of ‘knowledge, skill, thoroughness and preparation,’ yet implicit in the very notion of competence is the older rubric of ‘fitness to practice law.’”<sup>256</sup>

In addition to the ethical duty of competence, this training falls squarely within the Carnegie Foundation’s admonishment to develop law students’ professional identity and purpose.<sup>257</sup> Known as the “Carnegie Report,” the study builds upon the ABA’s essential characteristics of a professional lawyer, which include “‘ethical conduct’ and ‘dedication to justice and the public good,’ as well as knowledge of the law, skill in

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251. See discussion *supra* Part V.

252. Barbara Glesner Fines & Cathy Madsen, symposium, *Caring Too Little, Caring Too Much: Competence and the Family Law Attorney*, 75 UMKC L. REV. 965, 988 (2007).

253. *Id.* at 990.

254. *Id.* at 992.

255. *Id.*

256. *Id.* at 984.

257. WILLIAM M. SULLIVAN ET. AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 125 (John Wiley & Sons, Inc. 2007). The Carnegie Foundation for the Advancement of Teaching produced a comparative study examining professional education and duty to the communities served by those professions. This is often referred to as the “Carnegie Report.”

applying it, ‘thoroughness of preparation,’ and ‘practical and prudential wisdom.’”<sup>258</sup> The Report suggests that these “ethical-social values” include issues concerning “ethical conduct in relation to one’s immediate clients, opposing counsel, and the court,”<sup>259</sup> and “are as simple and straightforward as basic honesty and trustworthiness” and “respect and consideration for one’s clients.”<sup>260</sup> These fall within the “ethical-social apprenticeship to foster these human qualities, which fall within the scope of professionalism, if not legal ethics per se.”<sup>261</sup>

Stress, burnout, and vicarious trauma, are a matter of professional responsibility because they affect an attorney’s ability to engage with clients, dull one’s professional judgment, and may lessen an attorney’s effectiveness. These impairments affect one’s productivity and ability to seek justice on behalf of one’s client. Collectively, these impairments dull the profession’s dedication to justice and the public good. Consequently, they are far more than a personal matter, but rather are a matter of professional concern. It is imperative that legal education assist Millennial students in making these connections.

### 3. *Legal Education Must Identify the “Hidden Curriculum”*

In addition to traditional education and curriculum, attention must be paid to the “hidden curriculum” of the law school environment and culture as “students learn from both what is said and what is left unsaid.”<sup>262</sup> “Students are learning not only from the courses they take but also from the moral culture or atmospheres of their classrooms and the law school campus more broadly.”<sup>263</sup> A wide variety of sources inform their moral and ethical formation, including their relationships with students and faculty, “their perceptions of faculty interests and priorities, their experiences in clinics, their pro bono work, externships, summer jobs, and other extracurricular activities.”<sup>264</sup> The Carnegie Report challenges law schools

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258. *Id.* at 126.

259. *Id.* at 129.

260. *Id.* at 130.

261. *Id.* at 130–31 (“[Training in h]ow to establish and maintain trust in the relationship with one’s patients” is included as one of six “core competencies” in medical education. Further, deficiencies in these core issues of professionalism are “better predictors of later disciplinary action from licensing boards than were either test scores or grades.” “[P]rofessionalism, although its measurement remains controversial, has a far from insignificant effect on both the welfare of patients and the careers of physicians.”).

262. *Id.* at 140.

263. *Id.*

264. *Id.*



to “take a systematic look at the many experiences that can contribute to the students’ moral learning,” including those outside of the formal classroom.<sup>265</sup> These include “the curriculum, legal clinics, clubs, and other extra-curricular activities, summer jobs and internships, and the moral culture or climate of the institution.”<sup>266</sup>

A foundational piece of this type of education is addressing the counterproductive values and coping techniques that are common to law students: the Carnegie Report encourages looking at the “way in which the hidden curriculum shapes, or misshapes, professional education,” and offers that “[t]he only remedy for this problem is greater awareness on the part of the faculty and academic leaders.”<sup>267</sup> The law school’s hidden curriculum includes ignoring stress and its consequences, focusing on studies to the exclusion of all else in a student’s life, utilizing substance abuse for escape, and failing to pay attention to mental health.<sup>268</sup>

These techniques may have worked for Millennial students in their undergraduate education and may very well be “successful” in the short term, but they are unsustainable in the long term. For example, many students double down on hard work, thus leaving law school burnt out and without the passion and purpose that they had upon entering.<sup>269</sup> Most law students who were high performers at the high school and undergraduate level are now faced with an entire student body of similarly high performers.<sup>270</sup> Legal educators must be cognizant that this upping of the ante, coupled with the inherent pressures of learning at the law school level, can lead to incredible stresses and bad wellness choices on the part of students.<sup>271</sup> As one attorney summarized,

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265. *Id.*

266. *Id.*

267. *Id.* at 31–32 (“[T]he ubiquitous practice of grading on the curve ensures that no one, no matter how talented or hard-working the students are, only a predetermined number will receive A’s. Such a context is unlikely to suggest solidarity with one’s fellow students or straying from single-minded focus on competitive achievement.”).

268. Jolly-Ryan, *supra* note 238, at 97–99 (explaining that studies show that law school students are more stressed than other graduate and professional school students, including medical students, and that the journey from first to third year in law school often sees a ramping up of these “maladaptive” coping mechanisms).

269. *See* Gibson, *supra* note 242, at 141–42 (asking and answering why “so many law students come to law school filled with excitement, passion, and purpose, and then leave, three years later, bored, apathetic, and cynical?”).

270. *See* 2009 Raw Data Law School Rankings, INTERNET LEGAL RESEARCH GROUP, <http://www.ilrg.com/rankings/law/index.php/1/desc/GPALow/2009>.

271. Jolly-Ryan, *supra* note 238, at 98–100.

It is time for all of us to wake up and realize that sanity and happiness are reasonable choices, that “How busy are you?” is not a reasonable substitution for “How are you doing?” and that all-nighters are more appropriate for 19 year old college students than 35 year old attorneys.<sup>272</sup>

It is not uncommon for a law student’s mental health to deteriorate during law school.<sup>273</sup> Law school is also a haven of substance abuse,<sup>274</sup> due in part to the stresses that come from this new environment and the new way of life in legal education.<sup>275</sup> For instance, consider the 4 percent of law students who use alcohol daily or the 3.3 percent who feel that they need help to control their substance abuse problems, and when extrapolated nationwide, “there may be as many as 4,900 law students in the country who are using alcohol on a daily basis.”<sup>276</sup>

#### 4. *Application: Integrating Psychoeducation into Legal Education*

It is important for law students to see how well-being in law school relates to career well-being and longevity: by acknowledging the world outside the four walls of the law school and acknowledging research and best practices from varying disciplines such as psychology and social work, psychoeducation provides an opportunity for the real-time and relevant education that Millennials crave.<sup>277</sup> Psychoeducation should connect the

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272. Kleinpeter, *supra* note 211, at 14.

273. Meghan Vivo, *Addicted Lawyers Start as Addicted Law Students*, AMERICAN BAR ASSOCIATION, [http://www.americanbar.org/content/dam/aba/administrative/law\\_students/article-addicted.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/law_students/article-addicted.authcheckdam.pdf) (explaining that the issues that exist in practice often take hold in law school. “On the first day of law school, studies show that the average law student is ‘normal’ in terms of their happiness, mental health and wellness. Within the first six months, early signs of psychiatric problems, such as depression, anxiety, hostility and paranoia, can be detected.”).

274. ORGENA LEWIS SINGLETON, ALFRED BAKER & ELIZABETH ESCOBAR, A.B.A., *SUBSTANCE ABUSE IN LAW SCHOOLS: A TOOL KIT FOR LAW SCHOOL ADMINISTRATORS 5* (2005), available at [http://www.texasbar.com/AM/Template.cfm?Section=Law\\_Students1&Template=/CM/ContentDisplay.cfm&ContentID=15124](http://www.texasbar.com/AM/Template.cfm?Section=Law_Students1&Template=/CM/ContentDisplay.cfm&ContentID=15124) (“The seeds of substance abuse by lawyers may be sown during their law school years.”). In one survey, when asked if they had used any substance in the past thirty days, 81.7 percent of students said they had used alcohol, 8.2 percent used marijuana and 8.8 percent used some other type of “illicit” drug. Four percent of students were using alcohol daily, and the results indicate an uptake of alcohol and other substance use in law school versus high school and undergraduate schooling. Popular answers to the question of “why use alcohol” included “to relax and relieve tension” and to “get away from problems.” These answers, the A.B.A. surmises, suggest problems down the road for these young law students. *Id.* at 6–7.

275. See Gibson, *supra* note 242, at 141–43.

276. SINGLETON, BAKER & ESCOBAR, *supra* note 274, at 5–6.

277. Benfer & Shanahan, *supra* note 50, at 301 (“[M]illennial students require variety and engaging experiences that develop transferable skills. They are motivated by knowing how their work fits into the larger goal, making it important for clinical teachers to provide context, a rationale for the

Millennial law students' academic experience to professional practice by utilizing resources from national and local bar associations, as well as input from various interdisciplinary sources and speakers. The ABA has several resources for attorneys dealing with stress, burnout or vicarious trauma.<sup>278</sup> Additionally, every state has a Lawyer Assistance Program, providing further assistance for attorneys who struggle.<sup>279</sup> These resources should be included in the Millennial law students' education as they tie legal education to the practice of law in relevant ways.

The Carnegie Report reminds that "students are apprenticing to the whole law school experience, not just those elements that are intentionally designed to train and socialize them."<sup>280</sup> Everyday stressors, such as case briefing, class preparation, participation, and exams, provide an opportunity to discuss the occupational hazards of the profession. These then become opportunities to acknowledge and study how the individual student responds to stress. Experiential learning in simulations, clinics, and externships, provides further opportunity for exploration. Issues of burnout and vicarious trauma may arise in these contexts, providing further opportunity for education.<sup>281</sup> Additionally, discussion of these topics must be integrated into doctrinal courses by, for example, discussing the effect of client or witness testimony on the attorney, judge, or jury.

The effects of technology must also be included in any psychoeducational effort. For the Millennial, technology is as natural as breathing, but it also has the potential to suffocate. Just as ethics education must address the confidentiality and competence issues related to new

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work asked of students and the value it adds. If invested in the work, millennial students will dedicate the time and effort required to succeed.").

278. See *Mental Health Initiative*, AMERICANBAR.ORG, [https://www.americanbar.org/groups/law\\_students/initiatives\\_awards/lshhealth.html](https://www.americanbar.org/groups/law_students/initiatives_awards/lshhealth.html) (last visited Sept. 10, 2014) (explaining the A.B.A. Law Student Division has a Mental Health Initiative devoted to providing resources related to maintaining happy and healthy law students.); See also MENTAL HEALTH INITIATIVE: TOOL KIT FOR STUDENT BAR ASSOCIATIONS AND ADMINISTRATORS, A.B.A. (2012), available at [http://www.americanbar.org/content/dam/aba/administrative/law\\_students/mhw-handbk.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/law_students/mhw-handbk.authcheckdam.pdf).

279. See *Directory of Lawyer Assistance Programs*, *supra* note 57.

280. SULLIVAN ET AL., *supra* note 257, at 139.

281. See, Dass-Brailsford & Thomley, *supra* note 132, at 36; Jacqueline St. Joan & Stacy Salomonsen-Sautel, *The Clinic as Laboratory: Lessons from the First Year Conducting Social Research in an Interdisciplinary Domestic Violence Clinic*, 47 LOY. L. REV. 317, 353–55 (2001); Lynette M. Parker, *Increasing Law Students' Effectiveness When Representing Traumatized Clients: A Case Study of the Katharine and George Alexander Community Law Center*, 21 GEO. IMMIGR. L.J. 163, 174–75 (2007).

technologies, psychoeducation must address the difficulties associated with them.<sup>282</sup> Technology has broken down the walls between work and personal life, which, while affording more flexibility, also blurs the lines and expectations between client and attorney: Technology “has drastically altered the way lawyers practice and their clients’ expectations. By tethering attorneys to their jobs 24/7, technology can compound work stress.”<sup>283</sup> The result is that an attorney utilizing technology in order to afford more efficiency and flexibility between personal and professional realms is likely to end up tending to professional matters around the clock and missing out on the relief afforded by technology’s flexibility.<sup>284</sup>

For attorneys who are vulnerable to vicarious trauma due to their work with traumatized clients, technology may create a greater hazard than simply increasing stress. It also blurs the lines between work and personal time, where an attorney has the greatest opportunity for self-care, and can increase exposure to the trauma: if the attorney interrupts quality time with friends and family, for example, to check email, it is likely that the traumatizing material will flood into the attorney’s sacred space.<sup>285</sup>

In addition to acknowledging the negative aspects of the legal profession, students must be prepared with appropriate coping skills to implement throughout their education and into their careers. Fortunately, experts in psychology and social work have fully developed skills and protocol that can be implemented across disciplines.<sup>286</sup> These tools are

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282. See Stringfellow-Otey, *supra* note 13, at 19.

283. *Staying Connected*, *supra* note 76.

284. *Overwhelmed by Workplace Stress? You’re Not Alone*, APA, <http://www.apa.org/helpcenter/work-stress.aspx> (last visited Feb. 24, 2014) (cautioning that “information overload can add to the stress levels of an already overworked nation and lead to using unhealthy behaviors to cope with that stress.”).

285. This is where the concept of creating and respecting boundaries comes in and is most important. Mary E. O’Connell & J. Herbie DiFonzo, *The Family Law Education Reform Project Final Report*, 44 FAM. CT. REV. 524, 543 (2006) (stating that therapy patients should not be allowed to phone a therapist at home, and that a failure to enforce this important boundary can result in substantial suffering for the professional); See Drew, *supra* note 167; Minehan, *supra* note 211 (stating that “[w]hile it may not be possible to completely avoid 24/7 e-mails, voice mails, and other stressors, try to carve out some time immune from all distractions. One executive in the IT sector, for example, decided to stop making or receiving calls on his cell phone during his commute. Doing so reduced his stress by giving him more time to transition between his office and home and vice versa.”); *Staying Connected*, *supra* note 76 (“You need to watch the role of technology in your life....”).

286. Butler, Rinfrette & Reiser, *supra* note 156 (providing numerous resources from the field of social work, including self-care plans and assessment tools).

applicable and helpful in addressing stress and burnout as well as the deeper issue of vicarious trauma.<sup>287</sup>

## B. PREPAREDNESS

If a robust discussion regarding attorney well-being is absent in law school activities, the message becomes clear: well-being does not matter in legal education nor does it matter in the legal profession. In order to integrate a wellness focus into the law school experience, the law school must first acknowledge that both legal education and the legal profession foster an unhealthy culture. The realities of stress in law school and practice are not going away. In fact, stress can often be a good thing because “it helps us focus, do a better job, and generally avoid ennui.”<sup>288</sup> However, as students develop into legal professionals, they must be prepared to handle excessive stress in productive ways. It is important to acknowledge that law school is not an end in itself, but rather a bridge to a profession; students can easily over-identify with law school and neglect to think about themselves in terms of longevity and well-being.<sup>289</sup> As legal education assists students in developing their professional identity, it is important to identify the endemic risks of professional impairments to them as well as equip them with tools to respond to those risks.<sup>290</sup>

### 1. *Millennial Students Must Be Taught Appropriate Coping Techniques*

Central to preparing law students for practice is the introduction of appropriate and healthy coping skills. Providing students with helpful tools to deal with the occupational hazards of the profession is not ancillary, but instead should be at the core of professional education.<sup>291</sup> Much can be

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287. *Id.* See *Introduction to Our Self-Care Program*, U. BUFF. SCH. SOC. WORK, <http://www.socialwork.buffalo.edu/students/self-care/introduction.asp> (last visited Feb. 24, 2014).

288. Joe Kashi, *Stress Testing*, ABA (May 2006), <http://apps.americanbar.org/lpm/lpt/articles/mgt05062.shtml> (stating that “[t]he problem is excessive stress that results in becoming overtaxed physically, intellectually and psychologically. Each individual’s overstress level and psychological exhaustion level are different. Even if we are reluctant to admit it, we all know when we have reached that point - back off a little before you hit the wall at 200 mph.”).

289. In some cases, letting law school become one’s identity leads students to “define their own personal value and worth as a human being” based on their success in school. Ben Gibson, *How Law Students Can Cope: A Student’s View*, 60 J. Legal. Educ. 140, 143 (2010).

290. *Secondary Trauma and the Child Welfare Workforce*, CW360° 12 (Spring 2010), [http://cascw.umn.edu/wp-content/uploads/2013/12/CW360\\_2012.pdf](http://cascw.umn.edu/wp-content/uploads/2013/12/CW360_2012.pdf).

291. The road to professional impairment often begins at the law school level. Vivo, *supra* note 273; David Jaffe, *Seeking Help for Substance Use Before the Bar Becomes a Bar*, ABA (2011),

learned about preparing individuals for stressful careers from other helping professions, including social work, psychology, and medicine. These disciplines possess robust literature and research on the psychological aspects of their professions in a way that the legal profession has not yet engaged, and they typically focus on three common preventative measures for stress, burnout, and vicarious trauma: social support, self-care, and organizational support.<sup>292</sup>

## 2. *Application: Social Support*

The use of a social support system helps those who lead stressful lives keep a buffer between themselves and the stress.<sup>293</sup> A variety of positive tools for coping with the negative aspects of the legal profession will prove helpful to Millennial students. Participation in professional organizations, clubs, and extra-curricular activities are viewed as more than networking. They become an integral step toward building social supports and promote well-being. In addition to these traditional avenues, preparedness measures should make use of technology in order to be accessible and relevant to Millennial students.<sup>294</sup> Capitalizing on Millennial propensity toward connectedness and collaboration, this aspect of well-being will come naturally for Millennial students. Technology provides great potential for support systems by utilizing social media and online resources to promote

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[http://www.americanbar.org/content/dam/aba/administrative/law\\_students/article-subabuse.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/law_students/article-subabuse.authcheckdam.pdf).

292. Joseph A. Boscarino, Richard E. Adams & Charles R. Figley, *Secondary Trauma Issues for Psychiatrists*, 27 PSYCHIATRIC TIMES 24 (2010); Deborah A. Boyle, *Countering Compassion Fatigue: A Requisite Nursing Agenda*, ONLINE J. ISSUES NURSING (Jan. 31, 2011), <http://www.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Vol-16-2011/No1-Jan-2011/Countering-Compassion-Fatigue.html>; J.S. Felton, *Burnout as a Clinical Entity — Its Importance in Health Care Workers*, 48 OCCUPATIONAL MED. 237 (1998); Brian E. Perron & Barbara S. Hiltz, *Burnout and Secondary Trauma Among Forensic Interviewers of Abused Children*, 23 CHILD & ADOLESCENT SOC. WORK J. 216 (2006); *Secondary Trauma and the Child Welfare Workforce*, *supra* note 290; Margaret Severson & Carrie Pettus-Davis, *Parole Officers' Experiences of the Symptoms of Secondary Trauma in the Supervision of Sex Offenders*, 57 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 5 (2013); Risdon N. Slate, W. Wesley Johnson & Terry L. Wells, *Probation Officer Stress: Is There an Organizational Solution?*, 64 FED. PROBATION 56 (2000); See Shiloh A. Catanese, *Traumatized by Association: The Risk of Working Sex Crimes*, 74 FED. PROBATION 36 (2010).

293. State bar associations have followed suit. See Susan Swaim Daicoff, *Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795, 837 (2012).

294. See *supra* Part III, for information about Millennials' proclivity toward social media, and reasons for teaching its proper use. Additionally, see Stringfellow-Otey, *supra* note 13, at 199, for further discussion on training Millennial students to navigate social media and technology in an ethical way.

well-being. Additionally, a private social network setup may provide a helpful opportunity for social support, particularly among those students exposed to vicarious trauma.<sup>295</sup>

This implementation will also require ethics education. While Millennials use social media with great ease, they are also known for blurring boundaries when it comes to sharing personal thoughts and experiences on social media and blogs.<sup>296</sup> Millennials' connected nature may serve them well as creating a supportive network is essential to self-care, but their careless use of social media may lead to their detriment. As social media has developed, there have been countless stories of employees losing their jobs or undergoing discipline after "venting" on social media.<sup>297</sup> Unfortunately, Millennials may find that their online community may be an inappropriate venue for much needed social support. This is a particular danger for new Millennial attorneys. Thus, proper training and supportive emotional outlets are imperative.

### 3. *Application: Self-Care*

Many experts urge those who help clients with "seeking balance in their lives" to do the same for themselves through a commitment to self-care.<sup>298</sup> If a self-care plan is not properly implemented, risks of secondary

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295. There are a number of private social networks that can be set up for use in a clinical or classroom setting: EVERYME, <https://www.everyme.com>; YAMMER, <https://www.yammer.com> (last visited Oct. 4, 2014); PATH, <https://www.path.com> (last visited Oct. 4, 2014); EDMODO, <http://www.edmodo.com> (last visited Oct. 4, 2014) (specifically for educational use). Additional services can add calendars, task management and other features, if desired. BITRIX24, <https://www.bitrix24.com> (last visited Oct. 4, 2014).

296. HOWE & NADLER, *supra* note 5, at 189; *see* Neil, *supra* note 212, at 202 ("[A]fter the deliberations were over, a prosecutor in the case posted a ditty on Facebook about what his co-counsel described as the "trial from hell." It can be sung to the tune of the theme song from *Gilligan's Island*..."); Schwartz, *supra* note 212; Toor, *supra* note 212 (explaining that a nursing student was expelled for posting a photo of a placenta on Facebook and potentially violating patient confidentiality); *see generally* Durrett, *supra* note 212; Gunnarsson, *supra* note 212. This use of social media can have serious ethical implications if misused. Merri A. Baldwin, *Ethical and Liability Risks Posed by Lawyers' Use of Social Media*, ABA (July 28, 2011), <http://apps.americanbar.org/litigation/committees/professional/articles/summer2011-liability-social-media.html>. *But see* Amanda Hess, *Millennials Aren't Oversharing on Social Media. (So What Are They Hiding?)*, SLATE (Oct. 18, 2013, 8:41 AM), [http://www.slate.com/blogs/xx\\_factor/2013/10/18/millennials\\_on\\_social\\_media\\_young\\_people\\_are\\_incredibly\\_savvy\\_about\\_internet.html](http://www.slate.com/blogs/xx_factor/2013/10/18/millennials_on_social_media_young_people_are_incredibly_savvy_about_internet.html) (citing a survey that shows Millennials valuing privacy more than ever on social networks.).

297. *See supra* note 296 and accompanying text.

298. *See* Portnoy & Peters, *supra* note 249, at 856–57 ("Many of the things that people recovering from or trying to manage vicarious trauma are asked to do is to start with the very basic parts

trauma from a professional's entire life being permeated by work are very real.<sup>299</sup> A self-care plan should address all aspects of a person's self-care needs: interpersonal (psychological), physical, spiritual, and emotional.<sup>300</sup> Self-care is both a preventative and restorative response to stress, burnout, and vicarious trauma.<sup>301</sup> In order to be effective, psychologists suggest assessing and implementing self-care in each of four domains.<sup>302</sup>

Physical exercise has long been associated with stress relief and is likely to be an assumed response to avoid burnout: included in this quadrant are "[a] healthy diet, adequate sleep, physical activity, health care, and vacations."<sup>303</sup> Psychological self-care strategies include "self-monitoring, focusing on positive aspects of work, journaling, talking with a trusted person, and decreasing personal stressors."<sup>304</sup> Emotional practices include "monitoring and regulating emotions, laughing and crying, purging of trauma-related thoughts, feelings and reactions, affirmations, spending time with loved ones, seeking out pleasurable activities, participating in prevention activities, social action, and/or community outreach/education."<sup>305</sup> Finally, the spiritual dimension must also be addressed by "striving for inspiration, optimism, and hope, spending time in nature, finding spiritual connection or community, reading inspirational literature, and contributing to social causes of personal importance."<sup>306</sup>

These activities can be practiced both in one's personal time as well as in the workplace. Beneficial workplace activities include, for example:

[T]aking breaks during the day, practicing creative ways to engage in physical activity, taking time to connect with colleagues, engaging in mutual support, setting boundaries with clients and coworkers, seeking out

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of your daily life; food, sleep, exercise, water, breathing. These are the things that many helping professionals don't attend to in themselves, as sensitive as they are to those needs in their clients.").

299. Debra A. Neumann & Sarah J. Gamble, *Issues in the Professional Development of Psychotherapists: Countertransference and Vicarious Traumatization in the New Trauma Therapist*, 32 *PSYCHOTHERAPY* 341, 346 (1995) (stating that "[d]ecompression rituals such as listening to relaxing music on the way home, spending time alone reading, repeating affirmations, changing clothes, and exercising can all mark the transition from work to nonwork."); J.C. Norcross, *Psychotherapist Self-Care: Practitioner-Tested, Research-Informed Strategies*, 31 *PROF. PSYCHOL.* 710, 710-13 (2000).

300. Neuman & Gamble, *supra* note 299, at 346. (stressing the importance of maintenance in all four self-care quadrants).

301. *Introduction to Our Self-Care Program*, *supra* note 287.

302. *Id.*

303. *Secondary Trauma and the Child Welfare Workforce*, *supra* note 290.

304. *Id.*

305. *Id.*

306. *Id.*



new projects or areas of professional interest, getting regular supervision/consultation, balancing daily caseload/workload, [and] implementing transition rituals between work and home.<sup>307</sup>

These can easily be incorporated into one's educational life as well. Though this kind of training may be most applicable in an experiential learning environment, it is important that it is integrated throughout the curriculum, including doctrinal courses. This will allow for further exploration in how well-being contributes to "being a lawyer."

For most people, self-care across all four quadrants does not happen naturally and experts thus suggest creating a self-care plan, addressing each area of one's life.<sup>308</sup> This must be done after identifying the areas in which one is most vulnerable through self-examination.<sup>309</sup> Individuals may utilize one of several self-assessments, in addition to clinical assessment, to measure level of stress or vicarious trauma including the Holmes-Rahe Life Stress Inventory and the Professional Quality of Life Scale (ProQol).<sup>310</sup> There are several helpful resources for putting together a self-care plan, and it is advised that each law student prepare both a maintenance plan as well as a crisis plan for when stress or trauma have reached a high point.<sup>311</sup>

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307. *Id.* Law Professor Margaret Drew recommends using "quick fixes" to assist in separating oneself from work, as well as more substantive regular practices for effective self-care. For instance, "[a] trip to the gym or the nail salon, or a ten minute walk at lunchtime regardless of the weather, truly can be quick and effective ways to separate ourselves from our work. Any solution [that quickly takes someone's] mind from heaviness to happiness is worthy of habitual practice." Drew, *supra* note 167, at 1.

308. *See*, Fines & Madsen, *supra* note 252, at 993 ("Among the most important recommendations are maintaining a balanced caseload, accessing peer support and self-evaluation, setting appropriate professional boundaries with clients, and developing a program of self-care and replenishment."); *Can Self-Care Work for Mental Health?*, 96 COMPENSATION & BENEFITS L. OFF. 5, 101 (1996); Angelea Panos, *Understanding and Preventing Compassion Fatigue*, 26 CHILD L. PRAC. 126, 127 (2007) ("Keeping your life in balance or getting it back in balance, by taking some time off work, or enhancing your self-care are critical techniques.").

309. This self-assessment is crucial in developing a proper plan for both maintenance and crisis modes. Additionally, understanding personal and professional boundaries can be very important. Margaret Drew recommends reflecting on what these boundaries are, why they are not being respected, and finding professional advice and changing behavior to enforce the boundaries. This can include either reading about the subject or seeking mental health counseling. Drew, *supra* note 167, at 2.

310. *See Professional Quality of Life Elements Theory and Measurement*, PROQOL, <http://www.proqol.org/> (last visited Feb. 24, 2014), for the ProQol assessment. *See Self-Care Self-Assessment Checklists and Measures*, U. BUFF. SCH. SOC. WORK, <http://www.socialwork.buffalo.edu/students/self-care/measures.asp> (last visited Feb. 24, 2014), for the Holmes-Rahe Life Stress Inventory and other assessment tools. While no test is intended to take the place of a clinical assessment, they can prove useful in identifying one's personal need for self-care.

311. *See* Butler, Rinfrette & Reiser, *supra* note 156, The University of Buffalo School of Social Work website features a "Self-Care Starter Kit", prepared by Dr. Lisa Butler. *Id.* The site includes

In order to prepare in the area of self-care, students should assess their current self-care levels and create their own self-care plan. As Millennial students engage in preparedness and develop their own self-care plans, technology may also prove quite helpful to Millennial professionals. Several smartphone and tablet applications have been developed to encourage positive habits and self-care.<sup>312</sup> Reminders to care for one's physical, emotional, mental, and spiritual needs, may be as easy as a notification on one's smartphone, making recovery from stress and trauma literally at one's fingertips.

#### 4. *Application: Organizational Support*

Organizational measures may be outside of the Millennial student and young attorney's influence, but they are of great importance. As conditions worsen due to deficient budgets and other resource limitations, legal organizations have an increasing need to recognize and prevent professional impairments.<sup>313</sup> There are many methods that can help relieve the potential for stress and burnout within an organization:

[R]educe caseloads; educate legal professionals about what compassion fatigue is, how a person may be impacted while working with traumatic stories and events, and mitigating principles; create a supportive atmosphere where staff can openly discuss how they are impacted by the work they do and are encouraged to engage in self-care on a regular basis.<sup>314</sup>

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several tools and worksheets for preparing one's self-care plan. *Id.* For more examples of self-care for attorneys, see Drew, *supra* note 167 at 1.

312. For example, "MoodKit helps you to engage in mood-enhancing activities, identify and change unhealthy thinking, rate and chart mood across time, and create journal entries using custom templates designed to promote well-being." THRIVEPORT, <http://www.thriveport.com/products/moodkit> (last visited Oct. 4, 2014); see also BEWELL, [www.runkeeper.com](http://www.runkeeper.com) (last visited Oct. 4, 2014); see also MY FITNESS PAL, [www.myfitnesspal.com](http://www.myfitnesspal.com) (last visited Oct. 4, 2014); see also FITBIT, [www.fitbit.com](http://www.fitbit.com) (last visited Oct. 4, 2014); see also NIKE FUELBAND, [www.nike.com/us/en\\_us/c/nikeplus-fuelband](http://www.nike.com/us/en_us/c/nikeplus-fuelband) (last visited Oct. 4, 2014). Many of these apps use the concept of gamification to encourage their use. For info on gamification and how it is being used in business and other organizations, see generally Prithvi Shergill, *Winning the Talent Game: How Gamification Is Impacting Business and HR*, WIRED (Jan. 29, 2014), <http://www.wired.com/insights/2014/01/winning-talent-game-gamification-impacting-business-hr/>.

313. Albert, *supra* note 136, at 8.

314. *Id.* While some institutional entities may scoff at the idea that caseloads should or can be reduced, it may be equally helpful to simply mix up the types of cases and the emotional trauma contained in the cases in order to help alleviate professional impairments at an organizational level: "[a]ll institutions that are exposed to [secondary traumatic stress] will find that it exacts a toll on the functioning of the staff, unless deliberate steps are taken to prevent, or at least limit, its pernicious effects." Catherall, *supra* 243, at 233. In addition, some institutions may feel underequipped due to a lack of training in "group therapy" sessions, which is not necessary because "leaders simply have to

*a. An Example: Periodization in Business*

Because productivity is closely aligned with employee engagement and health, businesses across the United States are beginning to pay closer attention to the overall health and well-being of their employees.<sup>315</sup> Applying principles taken from athletics and psychology, one approach likens the development of the corporate employee to the development of a human muscle. Analogizing the stress an athlete places on his or her muscles, studies are being done to ascertain the best use of stress and rest to increase productivity in business.<sup>316</sup>

One example of this approach is the Human Performance Institute, which consults with world-class athletes as well as Fortune 100 companies to improve engagement of athletes and “corporate athletes” because according to co-founder, Jack Groppe, three crossover findings apply to both sports and business: “multidimensionality, recovery, and periodization.”<sup>317</sup> Multidimensionality affirms the need for self-care in the physical, emotional, mental, and spiritual dimensions.<sup>318</sup> Recovery “suggests that in each dimension, people need recovery mechanisms.”<sup>319</sup> Groppe applies this need for recovery both to athletes in training, as well as to employees who need to recover “from assignments, projects, or other energy-draining work.”<sup>320</sup> Finally, periodization refers to the long and

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indicate the need for the discussion and their assumption that it is a group problem.” *Id.* at 240. Albert, *supra* note 136, at 8.

315. James D. Lecheminant & Ray M. Merrill, *Improved Health Behaviors Persist Over Two Years for Employees in a Worksite Wellness Program*, 15 *POPULATION HEALTH MGMT.* 261 (2012).

316. Jack Groppe, *Train Using Sports Science*, *LEADERSHIP EXCELLENCE* 19 (Oct. 2012), [https://www.hpoinstitute.com/sites/default/files/articles/Leadership%20Excellence\\_Dr%20JackGroppe\\_0.pdf](https://www.hpoinstitute.com/sites/default/files/articles/Leadership%20Excellence_Dr%20JackGroppe_0.pdf). For further reading on this topic, see also Jim Loehr & Jack Groppe, *The Corporate Athlete Advantage: The Science of Deepening Engagement* (2008); Jim Loehr & Tony Schwartz, *The Power of Full Engagement* (2003).

317. Groppe, *supra* note 316.

318. *Id.* (suggesting the following practical solutions: “Serve low-glycemic snacks. Support those suffering from sleep problems through health coaching. Offer meditation or yoga classes. Let people take a few hours off before undertaking new assignments. Help employees gain emotional resilience by accessing opportunistic emotions such as optimism, sense of challenge, and mastery. When they get an emotional hit in the face, they can learn to go into a positive solution mode. Support periodization by encouraging employees to plan for and incorporate periods of rest and recovery, before the next meeting or project. Get up and move periodically. This energizes people, and improves focus. Ensure that your teams are aligned to the organization’s mission, and their own mission, to be Corporate Athletes. To increase revenues, lower costs and improve performance, leaders need to seamlessly link individual biology with the biology of teams and organizations.”).

319. *Id.*

320. *Id.*

short-term work and rest ratio, which allows athletes to endure grueling training schedules and helps employees endure peak workload periods and challenging assignments.<sup>321</sup> “For example, stress is the stimulus, and recovery is when growth occurs. If there is no recovery, there’s no growth.”<sup>322</sup>

The law school calendar, complete with academic, social, and personal responsibilities, provides ample opportunity for law students to practice and refine their stress management skills. As pointed out by the Carnegie Report,

[T]he law school years constitute a powerful moral apprenticeship, whether or not this is intentional. Law schools play an important role in shaping their students’ values, habits of mind, perceptions, and interpretations of the legal world, as well as their understanding of their roles and responsibilities as lawyers and the criteria by which they define and evaluate professional success.<sup>323</sup>

Accordingly, the law school environment holds several opportunities for students, faculty, and administration, to actively engage this apprenticeship and collaborate to create healthy, helpful rhythms that will serve the student well into their career. In particular, the concept of periodization is easily applicable to the law school calendar, which contains similar “periods” of ups and downs, such as midterm exams, final exams, and research and writing assignments.

### C. PRACTICE

#### 1. *Millennial Students Must be Expected to Practice Strategies for Well-being*

“In effect, students are apprenticing the whole law school experience, not just those elements that are intentionally designed to train and socialize them.”<sup>324</sup> The practice component provides opportunities for students to engage in the practice of wellness. As a matter of professionalism, it should be expected that students perfect these skills in the same way they must learn to analyze, debate, or brief a case, while in law school. The student should be able to identify stress or burnout or, in extreme cases, vicarious

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321. *Id.*

322. *Id.*

323. SULLIVAN ET AL., *supra* note 257, at 139.

324. *Id.*

trauma.<sup>325</sup> Further, the student should be able to devise and implement a “maintenance” self-care plan, demonstrate a supportive structure, and implement a “crisis” self-care plan.<sup>326</sup>

## 2. *Application: Law School as a Training Opportunity*

As law schools strive to prepare competent practitioners and “to equip them with the reflective capacity and motivation to pursue genuine expertise . . . the overall educational context must be a formative one that can encourage students toward entering and understanding the meaning and purposes of their particular professional community.”<sup>327</sup> Opportunities for such demonstration should be interwoven into the law school calendar and curriculum. Ideally, this would begin with orientation and wind its way through the student’s entire law school education.

There are many opportunities for creative collaboration, as deans, professors, student associations and individual students, may take part in this conversation. Several activities demonstrate a commitment to this kind of professional formation. For example, one technique that is beginning to gain ground in law schools across the country is a Dean’s Challenge in which students compete in a wellness competition organized by or under the Dean’s authority.<sup>328</sup> This challenge allows students to earn points and prizes for performing wellness-related activities.<sup>329</sup> Additionally, peer-mentoring programs should include a mental health component and student groups would benefit greatly from integrating wellness into their

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325. The assessment resources on the University of Buffalo School of Social Work website are a valuable tool for this identification process. Butler, Rinfrette & Reiser, *supra* note 156.

326. MENTAL HEALTH INITIATIVE: TOOL KIT FOR STUDENT BAR ASSOCIATIONS AND ADMINISTRATORS, *supra* note 278.

327. SULLIVAN ET AL., *supra* note 257, at 160.

328. See, e.g., *Student Life Challenge*, PEPP. UNIV. SCH. L., <http://law.pepperdine.edu/student-life/challenge/> (last visited Oct. 4, 2014).

329. See, e.g., *Student Life Challenge*, *supra* note 328. Activities that gain a student points include running a 5K/10K, spin class, light workout, eating healthy meals and attending educational clinics. *Id.* In 2013, Pepperdine Law’s inaugural challenge had fifty students and faculty participate officially from across all years, though more may have participated without filing reports. Email from Al Sturgeon, Assistant Dean for Student Life, Pepperdine University School of Law, to author (Nov. 27, 2013, 23:41 PST) (on file with author). Eight students achieved nearly “perfect” scores in the challenge, which Dean Sturgeon attributes to the competitive nature of law students. One student expressed appreciation for the holistic approach of the Challenge, addressing physical, emotional and spiritual health. As a result of the challenge, he lost weight, played intramural sports, got involved at his church, biked 1100 miles and reduced his coffee intake. *Id.* Encouragingly, in 2014, participation increased by over one-third. Email from Danny DeWalt, Assistant Director, Parris Institute for Professional Formation, Pepperdine University School of Law, to author (Nov. 24, 2013, 11:22 PST) (on file with author).

objectives.<sup>330</sup> Students should be informed of their access to counseling services as well as substance abuse resources.<sup>331</sup> Opportunities for development of social support should be abundant, focusing not only on stress management, but also on development of professional identity.<sup>332</sup>

As students begin to provide direct client counsel or representation, support systems and groups become essential in order to demonstrate appropriate processing of client trauma.<sup>333</sup> This meets the need for strong social support networks and provides an outlet for Millennials' strength of social connection. This may best take place within clinical or externship courses, but it may also be beneficial to encourage these kinds of groups to be more mainstream. The topic should be covered in professionalism, doctrinal, and skills courses, as a matter of developing professional identity. The benefits of technology may also be explored in order to create confidential and appropriate spaces for students to connect online and discuss these issues.<sup>334</sup> Closed intranets may be created for clinical debriefing, for example, in order to avoid student venting on social media or blog sites.<sup>335</sup>

More subtly, the practice aspect will weave itself through the calendar and curriculum. Capitalizing on Millennials' strong collaboration skills, law school administration, and student groups can work together to encourage the concept of periodization, opportunities for rest, recovery, and even

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330. The ABA's Law Student Division has launched a "Mental Health Initiative," featuring a toolkit that accompanies their Mental Health Day awareness program. See MENTAL HEALTH INITIATIVE: TOOL KIT FOR STUDENT BAR ASSOCIATIONS AND ADMINISTRATORS, *supra* note 278. Mentors can use the tool kit to introduce their mentees to the various mental health issues facing law students and practicing attorneys.

331. It should be noted that it is not enough to merely "mention" these services to students, unless it is also communicated that use of these services is encouraged. See Parker, *supra* note 281, at 163 (describing incorporating counseling into her clinical course).

332. We are seeking to avoid some of the common pitfalls that law students fall into, such as dashed hopes and dreams from prior to law school, lack of balance in their lives, and allowing students to judge their self-worth based on their success in law school. See MENTAL HEALTH INITIATIVE: TOOL KIT FOR STUDENT BAR ASSOCIATIONS AND ADMINISTRATORS, *supra* note 278.

333. Silver, Portnoy & Peters et al., *supra* note 249, at 872 (urging practitioners to "seek support and connection. Especially for those of you who are solo practitioners, the isolation of this very difficult work may be one of your biggest enemies. Developing the support of other people in your situation, of bar associations, or people you might meet at events like these, and making sure that your own personal community is a supportive, healthy one is a high priority for your clients. Your clients need you to do this for them and for you.").

334. See *supra* note 295 and accompanying text.

335. See *supra* note 295 and accompanying text.

celebration after grueling seasons such as midterms or final exams.<sup>336</sup> This modeling of healthy rhythms is invaluable to the student as they develop or redirect their coping mechanisms.

As the idea of well-being develops within the law school conversation, students, and professors can engage in meaningful conversations about what it looks like to practice law in a healthful and balanced way. These conversations will arise most obviously in experiential courses, but are not limited to those courses. Doctrinal courses also provide excellent contexts for this kind of discussion, as professors and students begin to ask what effect a criminal or a torts case might have on the attorney or client. Ideally, these insightful discussions will be interwoven throughout the student's law school career.

## VI. CONCLUSION

Finding a better way to prepare individual lawyers for the perils of the legal profession is essential for the development of the individual lawyer, legal education, and legal profession itself. In order to preserve and prepare law students for the stresses that accompany law practice and thus avoid the many pitfalls of the profession, it is important for legal education to not only teach the basics of "thinking like a lawyer." It must also provide the skills and tools necessary for "being a lawyer."

Law schools must address the "elephants in the classroom" and treat stress management and psychological well-being as important and integrated matters of professionalism. Legal education can no longer be perceived as an insulated three-year experience. Rather, law schools must train students to be intellectually and emotionally competent professionals so that this next generation of law students will become healthy, thriving, and effective attorneys within the legal community.

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336. HOWE & NADLER, *supra* note 5, at 98–99.

