

Vicarious Trauma and the Legal profession- Speech to Queensland Law Society 10 October 2018¹

Introduction

- [1] Every Monday in the District Court of Queensland in Brisbane, and indeed across the state from Southport to North Queensland, a number of criminal jury trials commence. Almost invariably they involve allegations of a sexual nature involving children or adults alleged to be committed by fellow human beings.
- [2] The allegations are mostly horrific – rape of children, maintaining unlawful sexual relationships and indecent treatment. Over and beyond this there are child exploitation cases with graphic material. There are child procuring cases (mostly involving the internet). There are also of course cases involving violence – grievous bodily harm, assault, choking etc. Then of course you have the Supreme Court. Horrific murder, manslaughter, attempted murder cases are dealt with there. Many of these cases involve photographs of the deceased people and of injuries to victims. As if what I've said is not enough – what about doing these cases for years? What effect does this have on lawyers? Judges? And other people involved in law enforcement?
- [3] Vicarious trauma can be experienced by lawyers across a broad range of practice areas. Although criminal law is an obvious example, those who practice in family law, child protection, immigration and personal injuries are all susceptible to experiencing vicarious trauma. That is to say, VT does not distinguish between different areas of the law. Indeed, it can affect all lawyers within our profession.
- [4] As was noted by Murray and Royer² it would be erroneous to assume that professional detachment protects lawyers from being at risk of developing vicarious trauma.

¹ Judge P.E. Smith, Judge Administrator, District Court Queensland.

² Murray, D. & Royer, J., "Vicarious Traumatization: The Corrosive Consequences of Law Practice for Criminal Justice and Family Law Practitioners" (2003) *Legal Profession Assistance Conference*, Halifax, Canada.

- [5] The impact of hearing sex cases has had a tragic effect in recent times. Victorian Magistrate Stephen Myall committed suicide on 14 March 2018. This death followed the suicide of a retired Magistrate Jacinta Dwyer in October 2017. In national newspapers³ it was noted that there are a myriad of stressors for those on the bench including growing caseloads involving children. Judge Pullen of the County Court of Victoria noted that sex offences are really stressful:

“Not only for complainants but for the judges who hear them. ...the complainants are naturally very distressed, children are very distressed. It’s an extremely delicate environment. It’s very easy to take this stuff home, very difficult to just tune off at the end of the day.”

- [6] In Australia, Justice Michael Kirby in 1995 wrote his article “Judicial Stress”.⁴ In this address Justice Kirby noted that the time had come to break the silence on the issue of judicial stress. In his paper he noted that the United States had been leading the field in this area. It was noted that a 1986 study in the USA⁵ examined the role of legal education in producing psychological distress amongst law students and new lawyers. Excessive workload, time management problems, overcrowding, impersonal lectures and concentrated attention on analytical skills without equal regard to interpersonal development, produced very high levels of distress.
- [7] In 1997 Justice Kirby raised the topic of judicial stress once again.⁶ He noted that his lecture had been republished and he hoped it was the recognition of a “deeper malaise which we see in our institutions.”
- [8] However, Justice Kirby’s views were not without some controversy. In “judicial stress – a reply”⁷ he noted that a Queensland Supreme Court judge

³ Wilmoth, P. (2018, August 4). Retrieved from The Sydney Morning Herald: <https://www.smh.com.au/national/loneliness-panic-attacks-insomnia-life-for-some-on-the-judicial-bench-20180731-p4zukq.html>

⁴ The Hon Justice Michael Kirby AC, CMG “Judicial Stress” address to the judicial orientation program AJA 3 October 1994 published in (1995) 13 *Australian Bar Review* 101.

⁵ Andrew and Benjamin “The role of legal education in producing psychological distress among law students and lawyers” No. 2 *American Bar Foundation Research Journal* 225 (1986).

⁶ The Hon Justice Michael Kirby AC, CMG “Judicial stress – an update” (1997) 71 *Australian Law Journal* 774.

⁷ The Hon Justice Michael Kirby AC, CMG “Judicial stress – a reply” (1997) 71 *Australian Law Journal* 791.

was “inclined to deny stress in judicial life”, Justice Kirby rebutted that proposition in his article.

[9] But things have moved on from this debate.

Pre-disposition to depression

[10] In the United States a number of studies into depression rates in lawyers have been conducted. I have already referred to the 1986 study referred to by Justice Kirby.

[11] In 1990, Benjamin conducted a further study into 1200 attorneys in Washington State⁸. This study disclosed:

- 18% were problem drinkers.
- This was almost twice the prevalence of problem drinking amongst American Adults.
- 19% suffered from statistically significant elevated levels of depression compared with 3-9% in individuals in Western industrialised countries.

[12] It was not until the late 1990s that the issue was more closely examined in Australia.

[13] In January 2009, the Brain and Mind Research Institute of Australia in conjunction with the Tristan Jepson Memorial Foundation published a report “Courting the blues; attitudes towards depression in Australian law students and legal practitioners”⁹.

[14] Tristan Jepson, a law student, diagnosed with clinical depression had committed suicide in 1998 at the age of 26. The Tristan Jepson Memorial Fund¹⁰ was established with the aim of decreasing work related psychological ill health in the legal community and to promote workplace health and safety.

⁸ Benjamin, G. A., Darling, E. J., & Sales, B. “The prevalence of depression, alcohol abuse and cocaine abuse among US Lawyers” (1990) 13(3) *International Journal of Law and Psychiatry* 233-46

⁹ You will find many of these resources on the QLS Website http://www.qls.com.au/For_the_profession/Resilience_and_wellbeing/Your_resources

¹⁰ www.tjmf.org.au

- [15] The “Courting the Blues” report noted in 2007 Beaton Consulting and Beyond Blue had released the findings of the national depression initiatives. This survey had found that incidences of depressive symptoms amongst lawyers and law students had reached alarming levels, and compared to other professions, lawyers have the highest instances of depressive symptoms.
- [16] The study for the “Courting the Blues” report involved the participation of 741 final year law students, 924 solicitors and 756 barristers. The study revealed:
1. High levels of psychological distress and the risk of depression in the law students and lawyers when compared with Australian community norms and other tertiary student groups.
 2. There was a general reluctance for lawyers to seek help for mental health issues.
 3. 35 per cent of law students suffer high to very high levels of psychological distress.
 4. 40 per cent reported to stress severe enough to require medical or clinical intervention.
 5. Law students showed higher levels of distress than medical students.
 6. The high levels of stress do not abate as practicing lawyers show higher levels of distress long past the early stages of their law careers and significantly higher levels than people in other professions and in the general population.
 7. Young female law students and lawyers report higher levels of psychological distress than their male counterparts.
 8. There were barriers to law students and lawyers recognising their psychological distress and seeking help for it. A large number of participants said they would not seek help and had negative views of the effectiveness of medical help for depression.
- [17] What are the causes of this depression? The Courting the Blues report noted:
- A culture of competitiveness- a fear of failure
 - Pessimism
 - Learned helplessness: lawyers must follow the client’s instructions even if they contrast with the lawyer’s better judgment

- Disillusionment: many lawyers feel compromised by ethical dilemmas in the their work
- Perfectionism: lawyers tend to be perfectionists which is related to obsession and anxiety both fertile grounds for depression.

Vicarious trauma

[18] Vicarious trauma (“VT”) has been specifically noted as a contributor to depression in an already depressed community. VT is defined as referring to the experience of a helping professional personally developing and reporting their own trauma symptoms as a result of responding to victims of trauma¹¹. The phenomenon is most often related to the experience of being exposed to stories of cruel and inhumane acts perpetrated towards people in our society.¹² The symptoms of VT parallel those of post-traumatic stress disorder (“PTSD”) and can be similarly clustered into the areas of re-experiencing, avoidance and numbing, and persistent arousal.¹³ The fundamental difference however, between VT and PTSD relates to the nature of the stressor. Empathy so critical to working with traumatised people also increases the likelihood of VT. VT has been identified as a potential occupational hazard for numerous professionals who confront trauma, violence and personal injury. Although most of the research and literature has been geared towards police, therapists and emergency relief workers, recent efforts have expanded the concept to recognise the risk of VT in other roles,¹⁴ foster parents, prison staff, judges and lawyers are on this list.

¹¹ Pearlman, L. A., & Saakvitne, K. W. (1995). *Trauma and the Therapist: Countertransference and Vicarious Traumatization in Psychotherapy with Incest Survivors*. London: W. W. Norton & Company.

¹² Richardson, J. I. (2001). *Guidebook on vicarious trauma: recommended solutions for anti-violence workers*. Ottawa: Public Health Agency of Canada, National Clearinghouse on Family Violence.

¹³ Figley, C. R. (1995). Compassion fatigue as secondary traumatic stress disorder: An overview. *Brunner/Mazel psychological stress series, No. 23. Compassion fatigue: Coping with secondary traumatic stress disorder in those who treat the traumatized*, 1-20 .

¹⁴ Pearlman, L. A., & Saakvitne, K. W. (1995). *Trauma and the Therapist: Countertransference and Vicarious Traumatization in Psychotherapy with Incest Survivors*. London: W. W. Norton & Company.

[19] In Canada in 2003, a study was conducted into VT symptoms experienced by judges.¹⁵ 105 judges (54.3 per cent male and 45.7 per cent female) were involved in the study. Judges were asked to complete a survey on stress, burnout and VT.

[20] The results showed:

1. 63 per cent of judges reported experiencing one or more short or long-term VT symptoms.
2. Female judges were significantly more likely than male judges to report such symptoms (73 per cent v 53 per cent).
3. Judges with greater than six years' experience were more likely to report these symptoms.
4. Internal symptoms included sleep difficulties, loss of appetite, anxiety, depression, stress, overeating, sadness, feelings of helplessness, feelings of hopelessness and fatigue. External symptoms included anger, intolerance for others, irritability, frustration and cynicism.
5. Female judges scored more highly on internal symptoms than males.
6. There was no difference between the sexes on external symptoms.
7. Judges with seven or more years' experience scored significantly higher on the externalising/hostility factor.

[21] On the issue of coping strategies¹⁶ it was noted:

1. There were no differences between the sexes.
2. 73 per cent provided at least on preventative strategy.
3. Strategies included achieving a balance between work and home life, developing healthy philosophies and maintaining a sense of humour.

[22] Other symptoms of VT included:

1. Lack of concentration.
2. Anger/anxiety.
3. Fatigue/loss of appetite.

¹⁵ Jaffe, P. G., Crooks, C. V., Dunford-Jackson, B. L., & Town, M. (2003). Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice. *Juvenile and Family Court Journal*, 1-9.

¹⁶ Noted as physical activity, rest and recreation, relaxation, social contacts, attending workshops, peer support, reading educational materials, public speaking on the role of the courts, coordination of courts and community services and court reform to facilitate the administration of justice.

4. Loss of faith in God/humanity.
5. Lack of empathy/isolation from others.

[23] The study also showed that one particular problem is that some judges work in isolation and make weighty decisions but have to keep “their mouths shut”.

[24] In New South Wales in 2008, a study was conducted into vicarious trauma in the legal profession¹⁷. The study compared solicitors working with traumatised clients (criminal lawyers) compared with conveyancing lawyers and academics. 100 members of the profession were participants (50 on each side of the equation). The criminal lawyers included individuals from the ODPP, Legal Aid and the Women’s Legal Service.

[25] It was found:

- There were significant effects between the two groups in VT effects i.e. depression and stress scales, self-safety and intimacy. Criminal lawyers were higher.
- The criminal law group reported higher levels of avoidance, intrusion and hyperarousal.
- Interestingly, criminal lawyers were more likely to seek peer support.
- The criminal lawyers sought professional assistance in greater numbers.
- The most frequently reported strategies were reading, seeking peer support, listening to music, sport or exercise.
- The use of alcohol occurred at about the same rate between the two groups. This of course may reflect the general view that lawyers are more stressed than other professions.

[26] In “The resilient lawyer a manual for staying well at work”¹⁸ it is specifically noted that for lawyers working in criminal law, child protection, immigration law or family law, VT is an additional element to deal with. Bradey notes that

¹⁷ Vrkleviski, L. P., & Franklin, J. (2008, March). Vicarious Trauma: The Impact on Solicitors of Exposure to Traumatic Material. *Traumatology*, 14(1), 106-118.

¹⁸ Bradey, R. (2014). *The Resilient Lawyer: A Manual for Staying Well @ Work*. Brisbane: Queensland Law Society.

we are pack animals, and therefore we are vulnerable to the pain and suffering of others. The physiology is of the trauma of a distressed person activates our mirror neurons which are read by the brain as a threat. This in turn activates a stress response. The more empathy you have, the higher the risk and the longer you work like this – the greater the risk. It is common for people to reach for drugs, alcohol, sex and/or gambling to deal with these problems, but of course, these only compound them. Bradey notes that a U.S study found 21 per cent to 36 per cent of 13,000 practicing lawyers qualified as problem drinkers. 28 per cent, 19 per cent and 23 per cent suffered with levels of depression, anxiety and stress respectively.¹⁹

[27] Robyn Bradey at a 2017 seminar at the NSW Bar Association²⁰ noted symptoms of VT can be:

- Avoiding certain matters or clients.
- Engaging in risk-taking behaviour.
- Insomnia.
- Feeling helpless about work tasks.
- Withdrawing from colleagues, friends and family.

What can be done about vicarious trauma/depression in the legal profession?

[28] It is great news that Australian legal professional organisations are doing something about these issues.

Western Australia

[29] In 2011, the Law Society of Western Australia prepared a “report on psychological distress and depression in the legal profession”²¹ an ad hoc

¹⁹ Krill, P. R., Johnson, R., & Albert, L. (2016, January / February). The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys. *Journal of Addiction Medicine*, 46-52.

²⁰ Nomcong S. C., K. (2017). Vicarious Trauma in the Legal Profession. *The Journal of the NSW Bar Association*, 35-36.

²¹ Dr Kendall, C. (2011). Report on Psychological Distress and Depression in the Legal Profession. Perth : The Council of the Law Society of Western Australia.

committee was established and charged with reviewing the WA Law Society's existing strategies for dealing with psychological distress and depression amongst lawyers in Western Australia. A number of recommendations were made including:

- that the ad hoc committee be given permanence;
- the society appoint PPC Worldwide International to provide an integrated member/employer assistance service model comprising both awareness raising/preventative initiatives and counselling/crisis treatment
- the society was to prioritise the development and delivery of educational and information strategies aimed at addressing mental health and wellbeing issues in the profession.

Victoria

[30] In 2014 a report was presented to the Law Institute of Victoria entitled "Mental Health and the Legal Profession: A Preventative Strategy".²² This report referred to both the Courting the Blues Report and the 2009 Brain and Mind Study.

[31] It recommended:

1. The Victorian Legal Community Health and Wellbeing Strategy sought to promote mental health and wellbeing and manage depression, anxiety within the legal community.
2. The wellbeing in the law program should operate across the legal community working with law students and law schools, legal practitioners, legal support staff, employers, legal academics and judges which should include undertaking research, encouraging legal employers to adopt preventative strategies, implement policies and practices to prevent and manage mental illness arising in the workplace and undertake awareness raising and education activities.

United States

²² Helm, L. (2014). *Mental Health and the Legal Profession: A Preventative Strategy*. Melbourne: Law Institute Victoria .

[32] In the United States in 2017 the National Task Force on lawyer wellbeing prepared a report called “The Path to Lawyer Wellbeing, Practical Recommendations for Positive Change”²³. With respect to lawyers it was recommended that:

1. There be an acknowledgment of the problems and a taking of responsibility.
2. There be a profession wide action plan.
3. Leaders in the courts, regulators’ offices, legal employers, law schools and bar associations should demonstrate a personal commitment to wellbeing.
4. All stakeholders needed to take steps to minimise the stigma of mental health and substance use disorders.
5. Relationships with lawyer wellbeing experts needed to be built.
6. Collegiality and respectful engagement throughout the profession needed to be fostered.
7. There needs to be an enhancement of the lawyers’ sense of control.
8. There needed to be high quality educational programs about lawyer distress and wellbeing.
9. Older lawyers needed to be guided and needed to support the transition.
10. Alcohol should be de-emphasised at social events.
11. There should be monitoring to support recovery from substance use disorders.
12. There should be a dialogue about suicide prevention.
13. There should be a lawyers’ wellbeing index to measure the profession’s progress.

[33] With respect to judges it was recommended that:

1. There should be communication that wellbeing is a priority.
2. There should be policies developed for impaired judges.
3. There should be a reduction of the stigma of mental health and substance use disorders.
4. Judicial wellbeing surveys should be conducted.

²³ Buchanan, B., & Coyle, J. C. (2017). *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*. American Bar Association.

5. Wellbeing programs should be provided for judges and staff.
6. There should be a monitoring of impaired lawyers and a partnership with lawyer assistance programs.

Queensland

- [34] Turning then to Queensland. The Queensland Law Society offers education programs on resilience, wellbeing and depression²⁴. The QLS hosts events such as this one in order to raise awareness of VT, better understand its implications in the legal profession, and equip practitioners with the knowledge, skills tools and techniques to tackle the issue.
- [35] It also provides treatment via LawCare which is a short term counselling service provided by “Assure Programs” to assist QLS members, their support staff and the immediate family of QLS members. The QLS Law Care Service is widely recognised as comprehensive and successful at identifying those at risk and ensuring services are available to assist them.
- [36] The Bar Association of Queensland members have access to Bar Care which is similar to Law Care.²⁵ It is only the first consultation which is free of charge.
- [37] The Queensland Courts and government employees have access to counselling with Benestar.
- [38] More work though needs to be done in the area of vicarious trauma.

Strategies to deal with VT

- [39] The importance though of debriefing and consultation has been identified as a priority for minimising VT.²⁶

²⁴ Queensland Law Society. Resilience and wellbeing resources for the legal profession.

Retrieved from: http://www.qls.com.au/For_the_profession/Resilience_and_wellbeing

²⁵ Bar Association of Queensland. Services. Retried from: <https://www.qldbar.asn.au/member-services>

²⁶ Richardson, J. I. (2001). *Guidebook on vicarious trauma: recommended solutions for anti-violence workers*. Ottawa: Public Health Agency of Canada, National Clearinghouse on Family Violence; Pearlman, L. A., & Saakvitne, K. W. (1995). *Trauma and the Therapist: Countertransference and Vicarious Traumatization in Psychotherapy with Incest Survivors*. London: W. W. Norton & Company.

[40] Robyn Bradey in a 2017 seminar at the NSW Bar Association²⁷ noted that there are several preliminary methods to deal with VT:

- Marking files with a warning.
- Restricting access to the file.
- Taking scheduled breaks from working.
- Not taking traumatic files home.
- Designing a specific room to work on these files.

[41] Aside from this:

- Mentoring is crucial
- Wellbeing checks should be conducted.
- Workloads should be managed.

[42] In “The Resilient Lawyer, A Manual for Staying Well at Work”²⁸ Bradey notes that the following assists:

1. Finding ways to keep connected to the “bigger picture”. Things like pro bono work, teaching, law reform, meeting with others and hearing what others are doing are good anecdotes.
2. Supportive relationships are crucial. If someone works alone they should find peers to meet with regularly. A mentor or coach would be helpful. Mentoring programs and firms, government departments and in-house should be put in place.
3. Supervisors should be on the lookout for signs of VT and putting in place plans to deal with it. Training needs to be regular and relevant.
4. Employee assistance programs and counselling have a big role to play. A break from certain kinds of matters can help people to recharge and come back afresh.

²⁷ Nomcong S. C., K. (2017). Vicarious Trauma in the Legal Profession. The Journal of the NSW Bar Association.

²⁸ Bradey, R. (2014). The Resilient Lawyer: A Manual for Staying Well @ Work. Brisbane: Queensland Law Society.

[43] The report notes that the Tristan Jepson Memorial Foundation has recently issued aspirational guidelines for safe legal workplaces.²⁹ Research has told us about how to keep fit and well which includes the broader categories of body, mind, relationship skills and rest. As to the body wellbeing is founded on sleep. Exercise is a crucial aspect of wellbeing. Diet is also crucial. Mindfulness techniques are also useful as well. Successful relationships are of great assistance not only personal but relationships with mentors, coaches and professional supervisors. It is stressed that at least four weeks holiday should be taken every year; a sense of humour should be kept as should an exit plan.

[44] In the UK Bar Association publication “Mental Health and Wellbeing at the Bar Vicarious Trauma”³⁰ the following is noted:

“How can you support/recover?”

- Refer for professional support.
- Manage workloads.
- Provide safe and professional debriefing and opportunities for peer and professional support.
- Be creative and active outside of your work and maintain social support networks to reconnect with your own environment.
- Spend quality time with family and friends.
- Ensure you feel a sense of pride in yourself for the important work that you are doing.”

[45] Dealing with vicarious trauma.

- Raise awareness and give training to those potentially exposed.
- Recognise and validate the condition.
- Provide supervision, mentoring and counselling.

²⁹ Queensland Law Society. TJMF Psychological Wellbeing: Best Practice Guidelines for the Legal Profession. Retrieved from: http://www.qls.com.au/For_the_profession/Resilience_and_wellbeing/TJMF_Best_Practice_Guidelines

³⁰ Wellbeing at the Bar. Retrieved from <https://www.wellbeingatthebar.org.uk/>

- Remember that you do not have to continue working in this area if you feel it is having a negative impact upon you and your health.
- Feel proud of what you are doing rather than guilt.
- Seek to increase your resilience skills.

[46] The UK paper has other useful tips for safeguarding your working practice; further safeguarding and how to support/mentor pupils and colleagues.

[47] It is a useful paper to obtain.

Conclusion

[48] I would encourage you to consider implementing the Tristan Jepson Foundation psychological well-being best practice guidelines in your organisation.

[49] In conclusion, I hope that I have enlightened you on the state of the legal profession insofar as Vicarious Trauma is concerned.

[50] I also hope that you are cognisant of the effects of VT and put in place strategies at the workplace to deal with it.