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## The First Thing We Do, Let's Heal All the Law Students: Incorporating Self-Care into a Criminal Defense Clinic

Ronald Tyler

*Stanford Law School*, [rtyler@law.stanford.edu](mailto:rtyler@law.stanford.edu)

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# The First Thing We Do, Let's Heal All the Law Students: Incorporating Self-Care into a Criminal Defense Clinic

Ronald Tyler\*

*Law students in direct services clinics represent clients in crisis and therefore experience stress and vicarious trauma similar to some practicing attorneys. Yet legal education and scholarship rarely recognize those harms or offer strategies to increase student resiliency in clinics and in the practice years that follow. Seeking to fill those critical gaps, this Article describes an innovative self-care curriculum in the Stanford Criminal Defense Clinic that encourages mindful self-reflection, teaches coping skills, and increases resilience.*

*Inspired by mindfulness-based stress reduction programs from medical education, the self-care curriculum alerts students to sources of stress in their attorney/client relationships and provides strategies to address those stressors. The curriculum is closely aligned with theories from the humanizing legal education movement. Each self-care session includes: the introduction of resiliency tools, mindful reflection on and sharing of personal successes, and the creation of supportive group norms.*

*Qualitative student feedback demonstrates that the self-care workshops significantly enhance wellbeing. Many students value the workshops as a space to mindfully analyze both positive and troubling*

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\* Associate Professor of Law and Director, Mills Legal Clinic, Criminal Defense Clinic, Stanford Law School. I am indebted to my wife Suzanne Frick; to Suzanne Luban, my clinical co-teacher; to the students of the Criminal Defense Clinic from 2012-2015; to research assistants Camden Vilkin, Vina Seelam and Abbee Cox; to Galia Amram; to my colleagues, Professors Joseph Bankman, Juliet Brodie, Dan Ho, Larry Marshall, Shirin Sinnar, and Jayashri Srikantiah; to Professors Larry Krieger and Christina Maslach and to the participants in the Berkeley–Stanford 2014 Clinicians Writing Workshop and the Clinical Law Review 2015 Writers' Workshop.

*clinic experiences, to reflect on the process of lawyering and to acquire coping mechanisms.*

*Over the course of four years teaching the self-care curriculum at Stanford's Criminal Defense Clinic, I have made several key adjustments: (1) I have integrated self-care concepts into every day clinical coursework and practice. (2) I have kept mindfulness at the core of the workshops, while also encouraging a broad array of other tools that enhance resiliency. (3) I have begun exploring the incorporation of trained professionals, such as mental health experts, into certain self-care sessions. Participation in these groundbreaking self-care workshops will allow students to thrive in law school clinics. When they enter the legal profession, these students can join a growing vanguard of effective attorneys who care for their clients and care equally for themselves.*

I. Introduction .....	3
II. Burnout and Secondary Trauma .....	5
A. A Working Definition of Burnout and Secondary Trauma .....	5
B. Burnout and Secondary Trauma Affect Lawyers and Clinical Students.....	7
C. Recognition of the Role of Law Schools in Student Wellbeing .....	9
III. Designing and Delivering Self-Care Tools in the Stanford Criminal Defense Clinic .....	14
A. The Structure of the Clinic .....	14
B. The Theoretical Basis for the Self-Care Workshops .....	15
C. Description of the Criminal Defense Clinic Self-Care Workshops.....	18
1. Overall Workshop Design .....	18
2. Detailed Workshop Descriptions.....	23
a. Introduction and Attorney/Client Relationship Formation Sessions.....	23
b. Sessions on Emotional Challenges and Opportunities for Attorney and Client.....	27
c. Closing Sessions.....	30
3. Student Feedback for Workshop Improvements .....	31
IV. Looking Forward .....	32
A. Future Criminal Defense Clinic Self-Care Workshops .....	32
1. Integration of Self-Care Concepts into General Clinic Experience.....	33

2016	<i>THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS</i>	3
	2. Future Collaboration with Subject Matter Experts.....	33
	3. A Future Quantitative Study of the Efficacy of the Self-Care Workshops .....	33
	B. Future Self-Care Workshops for Public Defenders .....	34
	V. Conclusion .....	35

## I. INTRODUCTION

Recently, two students in my clinic represented a man accused of striking his wife in front of the couple's young son. From the outset, the case presented emotional difficulties for the students, starting with their clear discomfort with a case alleging domestic violence. As the case unfolded, distressing family tensions were revealed. With the prospect of divorce looming, the man quickly began to view the student team as his sole source of support. One Saturday, he repeatedly called them in a panic: his wife was planning to take their son and leave the country. The students called me at home, mirroring his panic in their own actions. We brainstormed a plan of action.

Although the immediate crisis was averted, some days later, the students appeared in my office seeking an urgent supervision session. In strained tones they laid out the latest developments. Their client had emailed them relentlessly in the middle of the night in desperate fear over his possible imprisonment, the end of his marriage and separation from his son. How were they to respond? What could they say to soothe him? As I looked at their faces, lined with stress, I realized that I needed to do more than provide advice on how they might address the client's needs. I needed to resolve the growing emotional impact, the secondary trauma emerging in my students from their representation in the case.

Law school clinics offer students an intense introduction to the actual practice of law. Along with the potential rewards of that introduction, students encounter potential risks to their emotional wellbeing, similar to those they may encounter in later practice. Lawyers in certain high stress, high touch practice areas are consistently exposed to clients' traumatic experiences and, as a result, are at risk of developing symptoms of secondary or vicarious trauma. Law students working in clinics focused on those practice areas are exposed to those same risks. This article describes my innovative efforts in the Stanford Criminal Defense Clinic to ameliorate those risks by training students in self-care.

The initial motivation for creating self-care workshops for my

students was born during my prior experience as a federal public defender. For over twenty years, I observed the acute and long-term impacts of secondary trauma in the lives of my colleagues and myself. At no point during my earlier law school training or in later continuing legal education seminars were those impacts addressed in any systematic fashion. My experience of secondary trauma as a public defender was not unusual. In a recent study of secondary trauma in attorneys and their administrative support staff in the Wisconsin State Public Defender, attorneys demonstrated significant levels of post-traumatic stress disorder, depression, secondary traumatic stress, burnout, and functional impairment.<sup>1</sup> These symptoms were correlated with the attorneys' long working hours and high levels of exposure to clients with a history of trauma. The study's authors noted that professionals working intensely with trauma-exposed clients might experience "fatigue, poor sleep, headaches, anxiety, irritability, depression, hopelessness, aggression, cynicism, and substance abuse."<sup>2</sup>

Law students in a clinical setting experience stress and vicarious trauma similar in kind, although of a lesser degree, to that of practicing attorneys. In traditional helping professions, such as medicine and social work, self-care is integrated into the clinical components of professional education.<sup>3</sup> Although scattered instances of integrated self-care exist within clinical legal education, they are far from standard.

This article describes my efforts to integrate cutting-edge education on self-care into my criminal defense clinic. In developing a self-care curriculum within the clinical setting, I intend to contribute to the nascent movement to integrate self-care into legal education. My longer-term goal is to address this deficit of education in self-care

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<sup>1</sup> Andrew P. Levin et al., *Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working With Trauma-Exposed Clients*, 199 J. NERVOUS & MENTAL DISEASE 946, 946 (2011).

<sup>2</sup> *Id.*

<sup>3</sup> Christine Doucet, a recent clinical law student graduate writing about self-care, describes how self-care was incorporated into her own prior training in social work: "In many traditional 'helping' professions, such as social work, strategies such as prevention, intervention, and coping are built in to the organizational structure and policies to address potential occupational hazards and to support practitioners in maintaining emotional health and well-being. . . . Although the concept of self-care was not specifically taught, it informed and was discussed in almost every course and in every context of social work practice. The importance of our own emotional health and well-being was instilled in us." Christine E. Doucet, *Law Student, Heal Thyself: The Role and Responsibility of Clinical Education Programs in Promoting Self-Care*, 23 J. L. & SOC. POL'Y 136, 142-43 (2014).

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      5

through continuing legal education for practicing attorneys as well. I propose that those tools will not only reduce stress and vicarious trauma in law school clinical settings, but also in public defender offices and other high-stress, high-touch practice settings.

Part One of this article describes the dual phenomena of burnout and vicarious traumatization as experienced by lawyers in high-stress practice areas, and to a lesser extent, by clinical law students. Any effort to reduce clinical law student stress must be mindful of the broader environmental stresses students bring into the clinic. Hence, Part One also acknowledges the general stresses law students experience and the role that law schools play in affecting student wellbeing.

Part Two opens with a description of the Criminal Defense Clinic at Stanford Law School that I direct. Part Two then explains the self-care workshop I designed to protect my students from burnout and traumatization and extracts the lessons from that effort.

Part Three points the way forward for future work on addressing burnout and trauma in the law school clinic setting and potentially within a practicing lawyer population.

## II. BURNOUT AND SECONDARY TRAUMA

### A. A Working Definition of Burnout and Secondary Trauma

Since the 1970s, psychology researchers have identified the phenomenon of burnout particularly among those in the helping professions.<sup>4</sup> Burnout refers to a long-term condition that results from chronic exposure to stressful work situations. The prototypical definition from Christina Maslach is: “a type of prolonged response to chronic emotional and interpersonal stressors on the job . . . More specifically, burnout is defined as a psychological syndrome of emotional exhaustion, depersonalization, and reduced personal accomplishment.”<sup>5</sup>

When Maslach set out to define and measure burnout, she and her colleagues utilized a population of individuals in various helping

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<sup>4</sup> See Christina Maslach & Susan E. Jackson, *The Measurement of Experienced Burnout*, 2 J. OCCUPATIONAL BEHAV. 99, 99-100 (1981).

<sup>5</sup> Christina Maslach & Julie Goldberg, *Prevention of Burnout: New Perspectives*, 7 APPLIED & PREVENTIVE PSYCHOL. 63, 64 (1998) (“*Emotional exhaustion* refers to feelings of being emotionally overextended and depleted of one’s emotional resources. . . . *Depersonalization* refers to a negative, callous, or excessively detached response to other people, which often includes a loss of idealism. . . . *Reduced personal accomplishment* refers to a decline in feelings of competence and productivity at work.”).

professions that included legal aid lawyers.<sup>6</sup> Paradoxically, in spite of lawyers' involvement as subjects of study in the pioneering days of burnout theory, comparatively little has been accomplished to assess and remedy burnout among lawyers in the ensuing decades. Numerous commentators have recognized the problem among lawyers and even called for action to address it, though much more remains to be done.<sup>7</sup>

For present purposes, the terms burnout and compassion fatigue are treated as different labels for the same phenomenon, to wit, a prolonged response to chronic emotional and interpersonal stressors, as defined by Maslach, above. On the other hand, in this article, secondary trauma is considered to be an acute condition, the time-limited younger sibling of burnout.<sup>8</sup>

In considering acute secondary trauma and chronic vicarious traumatization (or burnout) in the legal setting, Jean Koh Peters has differentiated between the concepts as follows:

A client lives in the center of a raging river. His lawyer stands at the edge of the river as a huge boulder is dropped just in front of the river dweller. The client is knocked down by the immediate towering wave that the boulder creates. . . . The lawyer standing at the periphery of the river is struck by lesser waves and ripples . . . The lawyer also stands at the intersection of many such rivers.<sup>9</sup>

Peters interprets the raging river analogy as follows: The boulder in the river is the client's trauma. The initial wave is the client's reaction. The lesser waves and ripples are the lawyer's secondary trauma. Yet the lawyer has many clients and many rivers.<sup>10</sup> The cumulative effect of standing on the periphery of many rivers is vicarious traumatization, the effect on the lawyer of her experiences in many rivers. Vicarious traumatization, if unaddressed leads to burnout.

In the years since burnout became ascendant in the popular

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<sup>6</sup> Maslach & Jackson, *supra* note 4, at 101.

<sup>7</sup> See, e.g., Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245 (2003); Levin et al., *supra* note 1.

<sup>8</sup> See generally Charles R. Figley, *Compassion Fatigue as Secondary Traumatic Stress Disorder: An Overview*, in COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED 1 (Charles R. Figley ed., 1995).

<sup>9</sup> Jean Koh Peters, *The Lawyer-As-Context II: Fulfilling the Ethical Duty to Address Occupational Hazards That Imperil Client Service: Stress, Burnout, Vicarious Traumatization*, in REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 421, 427 (3d ed. 2007).

<sup>10</sup> *Id.*

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      7

lexicon, it has also achieved broad recognition among academics and practicing lawyers.<sup>11</sup> Various bar journals have lamented burnout and provided tips for addressing it.<sup>12</sup> In a larger sense, commentators have presented possible solutions to the general dissatisfaction among lawyers for years. The groundbreaking work of Steven Keeva stands out as an example of the now well-established lawyer wellness movement.<sup>13</sup>

The burgeoning emphasis on lawyer wellness in general is reflected in the design of the self-care workshop described in this article. However, distinct from recognition of lawyer unhappiness and general attempts at addressing it, researchers and commentators have paid less attention specifically to the study of burnout and related phenomena affecting lawyers and attempts to address those phenomena.<sup>14</sup>

### **B. Burnout and Secondary Trauma Affect Lawyers and Clinical Students**

Burnout and secondary trauma occur commonly among legal practitioners and clinic students helping clients in various high stress practice areas, such as child and family law, immigration, poverty law and veteran's rights.<sup>15</sup> My own professional focus has always been in the specific high stress world of indigent defense. This article is firmly located within that context and on addressing burnout and secondary trauma among law students in an indigent criminal defense clinic.

Public defenders and clinic students in indigent defense clinics are on the front lines of America's approach to crime and punishment.

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<sup>11</sup> See, e.g., Levin & Greisberg, *supra* note 7; Levin et al., *supra* note 1.

<sup>12</sup> See, e.g., Amiram Elwork, *A Lawyer's Guide to Dealing with Burnout*, PA. LAW., 2002, at 25.

<sup>13</sup> See generally Steven Keeva, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* (1st ed. 1999).

<sup>14</sup> See Levin & Greisberg, *supra* note 7, at 247-48 (noting this trend). *But see also* Laura Van Dernoot Lipsky, *TRAUMA STEWARDSHIP: AN EVERYDAY GUIDE TO CARING FOR SELF WHILE CARING FOR OTHERS* (2009). Although not focused solely on lawyers, this book is a significant contribution to the effort to address burnout and secondary trauma among people in the helping professions.

<sup>15</sup> For examples of secondary trauma experienced by lawyers and clinical law students in high stress practice areas, see Jean Koh Peters, *REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS* 447-87 (3d ed. 2007) (addressing secondary trauma in the representation of children in dependency proceedings); Lynette M. Parker, *Increasing Law Students' Effectiveness When Representing Traumatized Clients: A Case Study of the Katharine & George Alexander Community Law Center*, 21 *GEO. IMMIGR. L.J.* 163 (2007) (describing the vicarious trauma training provided to the students in her immigration clinic).

They are the emergency room doctors of the criminal defense system. Clients are rushed into their care with little warning. The clients are often in dire need of assistance. Because of the enormity of need, the urgency of the situation and the limited resources, solutions often must be arrived at in fairly short order—not in the mere minutes available to emergency room doctors—but often in a very short time frame as compared to the more measured pace for consideration and resolution of legal problems in other arenas. That emergency room level of stress causes secondary trauma.

Secondary trauma and burnout can lead to negative professional and personal consequences, and can cause cognitive bias and consequential professional harm.<sup>16</sup> (Cognitive bias is a psychological term defined as the misperception of the extent of possible danger from trauma.)<sup>17</sup> Individuals acting out of cognitive bias in some stressful circumstances might underestimate their personal coping skills and the relative safety of a situation. Lawyers so affected may behave in an extreme fashion that undermines their professional efficacy and negatively impacts case outcomes.<sup>18</sup> Lawyers affected by secondary trauma may even engage in misconduct leading to discipline.<sup>19</sup>

Personal consequences from secondary trauma and burnout may also arise, such as those experienced in the following vignettes:

An arraignment calendar for in-custody criminal defendants: The man sat, handcuffed in the courtroom in abject misery. He moaned. He pleaded with his attorney. He appeared to be detoxing from some central nervous system stimulant, perhaps methamphetamine. “I can’t stay in jail for another three days. I’ll die,” he wailed. No one seemed to pay any attention to him. No

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<sup>16</sup> Jennifer Brobst, *The Impact of Secondary Traumatic Stress Among Family Attorneys Working With Trauma-Exposed Clients: Implications for Practice and Professional Responsibility*, 10 J. HEALTH & BIOMEDICAL L. 1, 19-20 (2014).

<sup>17</sup> *Id.*

<sup>18</sup> Brobst gives the example of such attorneys “engaging in unwarranted derisive comments or angry outbursts in court or during deposition” and hence “undermin[ing] their legal outcomes and relationships with their clients.” *Id.* at 19-20.

<sup>19</sup> For example, Brobst describes a family law practitioner who advised a client to flee the jurisdiction with her children and then refused to divulge her whereabouts. The attorney was later disbarred. Brobst observed: “The attorney’s misconduct begs the question whether she, as an attorney practicing for a number of years in the area of high conflict divorce, custody, and domestic violence, had failed to exercise proper professional judgment as a result of cognitive bias or dissonance due to a personal attachment to the parties and facts in the case.” *Id.* at 32-33.

one comforted him, including the defense attorney responsible for his case.

An exercise in a self-care workshop at a continuing legal education conference: Participants paired up to share a time when they had felt gratitude for an interaction between themselves and a client. A veteran criminal defense lawyer balked at the invitation. "I don't feel grateful," he said, with dark humor. "I hate my clients and they hate me."

A discussion among public defenders about challenges in their personal relationships with a common refrain: they spent so much time and energy on their clients that very little remained for their loved ones.

Each of the above vignettes encompasses the sad consequences of the cost of caring.<sup>20</sup>

My own professional experiences motivated me to work to help prevent these consequences by presenting continuing legal education self-care workshops around the country. Meanwhile, the same stresses that led to long-term issues for public defenders were popping up in my clinical students. Law students serving as counsel for clients, even under supervision by experienced faculty, can suffer the same secondary trauma as seasoned members of the bar. The crisis described in this article's introduction is a good example of such trauma. However, even before entering a clinic, law students are subject to significant stress from law school itself, as discussed below.

### **C. Recognition of the Role of Law Schools in Student Wellbeing**

In thinking about the potential harms caused by law school clinical education, it is important to tease apart the broader issue of the harm caused by law school, generally. A student in a criminal defense clinic can be seen as at the center of three concentric circles, each representing a domain that causes unique, but cascading, stress: law school, clinical education, and indigent defense. Students arrive at the clinic already impacted by their law school education.

The distressing state of law student mental health and the contributing role of law schools have been topics of scholarship for the past thirty years. In the early 1980s, Stephen Shanfield and Andrew Benjamin studied a group of students from all three years of law school and found that they were more distressed than both the general

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<sup>20</sup> See generally Christina Maslach, BURNOUT: THE COST OF CARING (1982).

population and a group of medical students from the same university.<sup>21</sup> Using a well-validated self-report survey of psychiatric distress, the Brief Symptom Inventory, the researchers measured psychiatric distress in nine areas: somatization, obsessive compulsivity, interpersonal sensitivity, depression, anxiety, hostility, phobic-anxiety, paranoid ideation and psychoticism.<sup>22</sup> They found that the law students were significantly more distressed than the normal population, scoring “considerably higher than expected on all of the subscales.”<sup>23</sup>

In a subsequent study at the same university, Shanfield, Benjamin and others concluded that law student distress was tied explicitly to the educational enterprise.<sup>24</sup> They reached this conclusion by measuring the psychiatric distress of students before, during and after law school. This approach allowed the researchers to explore whether entering law students were simply more distressed than the general population, or if law school education was causing their condition. The researchers found that levels of psychiatric distress in pre-law students were similar to the normal population.<sup>25</sup> However, within a few months of entering law school, 1L students developed symptoms of psychiatric

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<sup>21</sup> The study subjects all attended the University of Arizona. See Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65, 66 (1985).

<sup>22</sup> Shanfield and Benjamin used other survey instruments, as well, but the Brief Symptom Inventory was the most comprehensive. Shanfield and Benjamin describe the nine symptomatic areas as follows: “Somatization reflects distress arising from such bodily complaints as feeling faint, nauseated, weak, numb, and short of breath. Obsessive compulsive indicates difficulties with cognitive performance which are of an unwanted nature, such as trouble remembering and concentrating, feeling blocked, and having difficulty making decisions. Interpersonal sensitivity centers on feelings of personal inadequacy and inferiority, particularly in relations to others. Depression relates to feeling blue, suicidal thoughts, loss of interest, and feelings of hopelessness and worthlessness. Anxiety reflects symptoms and signs of manifest clinical anxiety such as fearful and tense feelings, restlessness, and spells of terror and panic. Hostility indicates feelings of anger, irritability, rage, and resentment. Phobic-anxiety reflects nervousness when alone, self-consciousness with others, and avoidance of certain places. Paranoid ideation can reveal a style of thinking involving suspiciousness, fear of loss of autonomy, and projection. . . . Psychoticism can reflect psychotic thought processes, but also social alienation, since the score mirrors positive responses to questions concerning external control, isolation, punishment for sins, and a sense of problems with thinking.” *Id.* at 67.

<sup>23</sup> *Id.* at 68.

<sup>24</sup> G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 247.

<sup>25</sup> *Id.* at 246.

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      11

distress. Six months into law school, after the results of their first exams, 1L students reported significant levels of distress across *every* symptom category.<sup>26</sup> The researchers considered this to be “among the most striking” of their findings.<sup>27</sup> Moreover, they found that student psychiatric distress levels increased steadily throughout law school, with no signs of diminution in the two years after graduation.<sup>28</sup>

Shanfield and Benjamin’s work provides strong evidence for the conclusion that students arrive at my Criminal Defense Clinic already enduring broad insults to their psychiatric wellbeing from law school. The self-care measures taught in the clinic are meant to begin soothing that harm as well as easing any stress that the clinic experience otherwise adds.

Earlier commentators have argued that adopting such measures is not merely a nice thing to do; rather, it is an educator’s obligation. In a 1991 article, *Fear and Loathing in the Law Schools*, Barbara Glesner Fines argued that law schools have a professional responsibility to address student stress, based upon “the power of our positions as teachers, which implies a moral duty to exercise our influence reflectively and competently.”<sup>29</sup> She suggested three strategies for intervention: (1) “[G]iving students greater information, control, and feedback in their education” (2) “[P]roviding coping skills that students can take with them into practice” and (3) “[Improving] our personal and institutional support system for students and their families.”<sup>30</sup> By design, the self-care workshops offered to my students provide coping skills and an enhanced support system, consonant with two of Glesner Fines’ three strategies.

As law schools entered the new millennium, the negative role they played in student wellbeing was a continuing source of concern. Lawrence Krieger produced new empirical data confirming the shift in entering law students from healthy novitiates to psychiatrically

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<sup>26</sup> “[F]irst-year law students’ average scores on *all* symptom indices changed from initial values within the normal range [before entering law school] to scores two standard deviations above normal expectation [six months later].” *Id.* at 240. Symptoms included “obsessive-compulsive behavior, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism (social alienation and isolation).” *Id.* at 246.

<sup>27</sup> *Id.* at 240.

<sup>28</sup> *Id.* at 246.

<sup>29</sup> B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 641 (1991).

<sup>30</sup> *Id.* at 646.

compromised apprentices later in the first year and continuing into the second year of their education.<sup>31</sup> In the face of decades of clear evidence of law student distress, Krieger challenged faculty to consider what steps could be taken in amelioration:

What might we do to promote the regular experience of authenticity, relatedness, competence, self-esteem, and security in our students? How can we support intrinsic motivation in law students – inherently enjoyable or personally meaningful work – while we teach the fundamentals of legal analysis and professional technique? How can we promote optimal human values in students (toward personal growth, intimacy, community enhancement, altruism) rather than the desire for money, power, status and image?<sup>32</sup>

The Criminal Defense Clinic self-care workshops respond directly to Krieger's challenge. The introductory self-care session focuses explicitly on the value of authenticity. The design of each session aims for heightened relatedness among the participants and enhanced self-esteem. The clinic's vision statement speaks of fostering in its participants a professional sense of identity and purpose that places at the forefront the pursuit of personally meaningful work. The self-reflection and vulnerability that arise in the self-care sessions demonstrate to the students the Value of intimacy and are designed to lead to personal growth.

In the last decade, a full-fledged movement has blossomed within the academy aimed at humanizing legal education. There is an emerging consensus that law schools must adopt measures to lessen the harm that the law school environment imposes on law students.<sup>33</sup> In 2007, a group of academics committed to humanizing the law school experience formed the Balance in Legal Education Section within the

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<sup>31</sup> See Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 114 (2002); see also Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 280 (2004).

<sup>32</sup> Krieger, *supra* note 31, at 126.

<sup>33</sup> See generally Barbara Glesner Fines, *Fundamental Principles and Challenges of Humanizing Legal Education*, 47 WASHBURN L.J. 313 (2008); see also Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y, L., & ETHICS 357, 361-63 (2009).

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      13

American Association of Law Schools.<sup>34</sup> The Balance Section aims “to investigate, discover and inspire those practices that support the wellbeing of law students, lawyers and judges. The Section encourages research into the conditions that allow students and practitioners to thrive, both personally and professionally, and informs the membership of the Association of American Law Schools about the results of that research.”<sup>35</sup>

A number of approaches to improving law student wellbeing have been proposed in recent years. Although this article focuses on ameliorating the harms caused specifically in the clinical setting by students' exposure to real-world trauma, these fresh insights on improving the overall law school experience are also relevant here. For example, the pioneering commentator Barbara Glesner Fines has recently proposed three central humanizing principles that are readily addressed through clinical education: (1) law schools must reduce or eliminate negative stressors and support students in handling the stressors that remain,<sup>36</sup> (2) law schools must engage in student-centered teaching that aims to understand each student in order to guide their evolution into “confident, caring, reflective professionals, discerning their own values and purposes, and knowing how to work with others collaboratively and to understand diverse perspectives,”<sup>37</sup> and (3) law schools must rekindle values of peacemaking and service.

The Criminal Defense Clinic self-care workshops are responsive to Glesner Fines' new proposals. The workshops introduce students to strategies for reducing stressors; they are reflective by design; and the workshops are necessarily service-oriented, since they are situated within a direct services clinic.

While the majority of the scholarship of law student wellbeing is centered within the traditional classroom setting, some commentators

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<sup>34</sup> Marjorie A. Silver, *Symposium Introduction: Humanism Goes to Law School*, 28 *TOURO L. REV.* 1141, 1144 (2012).

<sup>35</sup> *Section on Balance in Legal Education*, ASS'N AM. L. SCH., <http://www.aals.org/services/sections> (follow “Balance in Legal Education” hyperlink) (last visited May 8, 2016). The Section's Purpose Statement continues: “Among other things, Section activities explore the importance of health, compassion, integrity, and ethics to the effective study and practice of law. The Section promotes continual re-examination of pedagogical practices, program content, and institutional priorities to promote the long-term best interests of law students and the constituencies they will serve.”

<sup>36</sup> Fines, *supra* note 33, at 314.

<sup>37</sup> *Id.* at 320.

have focused specifically on clinical education. Lawrence Krieger and Lynette Parker are examples of clinicians writing in this area. Krieger, one of the signal contributors to the law student wellness movement, has now moved beyond highlighting the law school's role in student depression to suggesting concrete solutions. His "write your own eulogy" classroom exercise is designed to demonstrate to students that the things that matter most to them are basic human values. His "control" exercise aims to help relieve student stress over aspects of clinical work that they cannot control.<sup>38</sup> Parker has written a comprehensive article about teaching clinical law students how to handle traumatized clients, using her community law clinic as a case study.<sup>39</sup> As clinical education continues to expand in light of experiential educational requirements, these contributions are important responses to incidents of secondary trauma and other harms either caused by clinical education or ameliorable through clinical education. I now turn directly to my own efforts in that regard.

### III. DESIGNING AND DELIVERING SELF-CARE TOOLS IN THE STANFORD CRIMINAL DEFENSE CLINIC

#### A. The Structure of the Clinic

The Stanford Criminal Defense Clinic is a state misdemeanor criminal practice clinic offered to a small number of law students on a quarterly basis. The Clinic is one of the eleven clinics constituting the Mills Legal Clinic at Stanford. The students have no other coursework during their clinical quarter, affording them the opportunity for a fully immersive experience as defense attorneys. Criminal Defense Clinic students operate in teams of two, and have responsibility for their own caseload, supervised by a faculty member.

Each team is assigned indigent clients with cases arising from the counties adjacent to the law school. The charged conduct in the cases runs the gamut of misdemeanor practice: battery, domestic violence, drug use and possession, driving under the influence of alcohol or controlled substances, resisting arrest, and minor theft offenses. Pursuant

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<sup>38</sup> Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity, and Happiness*, 11 CLINICAL L. REV. 425, 435-39 (2005).

<sup>39</sup> Lynette M. Parker, *Increasing Law Students' Effectiveness When Representing Traumatized Clients: A Case Study of the Katharine & George Alexander Community Law Center*, 21 GEO. IMMIGR. L.J. 163 (2007).

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      15

to California court practice rules, the student teams take on primary responsibility for their three cases, under the close supervision of either the clinic director or the clinical supervising attorney.<sup>40</sup> Consistent with time constraints, student representation begins at the pretrial conference stage and continues through plea, trial, sentencing or dismissal. The mix of cases, the impoverished and often disordered lives of the clients, and the level of responsibility that students undertake all contribute to the level of stress that they experience.

Over the course of the quarter, the student teams receive an intensive grounding in the true experience of indigent defense. The clinic is not a simulation or a mock trial course. By the third week of the quarter, students are making appearances on behalf of their clients in court. By the mid-point of the quarter, they are conducting evidentiary hearings. Some students defend their clients in full jury trials by the end of the quarter, or as advanced students in the following quarter. Hence, the students experience the common pressures of an active criminal defense practice, albeit in miniature. Feedback with students during supervision sessions and in mid-quarter evaluations amply demonstrated the importance of addressing the stress they were experiencing. In earlier clinical quarters, a one-hour mid-quarter workshop was dedicated to self-care. The workshop was well received, though of limited usefulness, given its one-time presentation.

Implementation of the self-care workshop with sessions throughout the quarter served two important purposes: On the one hand, it addressed the needs of clinical students for self-care, even though their case-based stressors were not long-term. It also served the purpose of laying the foundation for future work in the broader population of public defenders.

### **B. The Theoretical Basis for the Self-Care Workshops**

I proposed to deliver self-care tools to my clinical students through a carefully structured curriculum. I was also interested in exploring the possibility of measuring whether the tools had any effect, albeit without a sample size that would yield empirically reproducible results. My primary goal was to increase awareness of potential burnout and secondary trauma and to provide remedies.

Maslach has observed that burnout prevention efforts should be keyed to the known components of the phenomenon. Key observations

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<sup>40</sup> CAL. CT. R. 9.42.

by Maslach regarding the efficacy of prevention efforts were a lodestar for my course design. As she explains:

[I]nterventions should be planned and designed explicitly in terms of the three components of burnout. That is, how will a particular strategy reduce the likelihood of emotional exhaustion, or prevent the tendency to depersonalize, or enhance one's sense of accomplishment?<sup>41</sup>

I will demonstrate below how that theory as implemented in the self-care course.

I also found ongoing changes in the definitional approach to burnout phenomenon to be useful in my course design. At the turn of the century, rather than focusing solely on burnout and its negative connotations, Maslach and others began to consider its positive opposite. In that new paradigm, job burnout is one pole on a continuum, and job engagement is the other:

Engagement is defined in terms of the same three dimensions as burnout, but the positive end of those dimensions rather than the negative. Thus, engagement consists of a state of high *energy* (rather than exhaustion), strong *involvement* (rather than depersonalization), and a sense of *efficacy* (rather than a reduced sense of accomplishment).<sup>42</sup>

My course design took into account this broader understanding of the burnout/engagement continuum. Course strategies were positive-focused, recognizing Maslach and Goldberg's dictum:

The implication of the burnout-engagement continuum is that strategies to promote engagement may be just as important for burnout prevention as strategies to reduce the risk of burnout. A work setting that is designed to support the positive development of the three core qualities of energy, involvement, and effectiveness should be successful in promoting the well-being and productivity of its employees.<sup>43</sup>

The emergency room doctor analogy provided me with a direction in terms of designing my self-care course: were there similar courses for emergency room doctors, or for physicians in general? Indeed, several programs to address physician burnout have been created in recent years. The programs had certain commonalities. Generally, each included experiential components involving mindfulness techniques and group discussion. Most utilized validated survey

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<sup>41</sup> Maslach & Goldberg, *supra* note 5, at 65.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 66.

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      17

instruments to measure stress and burnout levels at various points before, during or after the program. Each program owed a debt to the pioneering work of Jon Kabat-Zinn and his mindfulness based stress reduction program at Massachusetts General Hospital in Boston.<sup>44</sup> In fact, Kabat-Zinn also pioneered the use of those same techniques in the field of law when he conducted a mindfulness based stress reduction program for judges in 1989.<sup>45</sup>

My own workshop design incorporated concepts from the following three studies: (1) a University of Rochester School of Medicine “Mindful Communication Workshop,”<sup>46</sup> (2) a mindfulness-based stress reduction program conducted by researchers from Santa Clara University, California Pacific Medical Center, the University of Toronto and the Palo Alto Veteran Affairs Health Care System;<sup>47</sup> and (3) a stress management workshop carried out by researchers from Tufts University School of Medicine and the Baystate Medical Center.<sup>48</sup>

The influence of medical school practices on my work is reminiscent of the early work of Harvard and Yale clinicians. Harvard’s Hale and Dorr Legal Services Center was influenced by medical education in its use of rounds presentations.<sup>49</sup> Moreover, in the 1980s the Center collaborated with a Boston hospital in the provision of legal and medical services, and Center faculty co-taught a course for law students and medical students with Harvard Medical School faculty.<sup>50</sup> Yale also formed its clinics in the mold of medical education.<sup>51</sup>

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<sup>44</sup> See Jon Kabat-Zinn, *An Outpatient Program in Behavioral Medicine for Chronic Pain Patients Based on the Practice of Mindfulness Meditation: Theoretical Considerations and Preliminary Results*, 4 GEN. HOSP. PSYCHIATRY 33 (1982).

<sup>45</sup> See Jon Kabat-Zinn, *FULL CATASTROPHE LIVING: USING THE WISDOM OF YOUR BODY AND MIND TO FACE STRESS, PAIN, AND ILLNESS* 125-26 (1st ed. 1990).

<sup>46</sup> Michael S. Krasner et al., *Association of an Educational Program in Mindful Communication with Burnout, Empathy, and Attitudes Among Primary Care Physicians*, 302 J. AM. MED. ASS’N 1284 (2009).

<sup>47</sup> Shauna L. Shapiro et al., *Mindfulness-Based Stress Reduction for Health Care Professionals: Results From a Randomized Trial*, 12 INT’L J. STRESS MGMT. 164 (2005).

<sup>48</sup> Jack D. McCue & Carol L. Sachs, *A Stress Management Workshop Improves Residents’ Coping Skills*, 151 J. AM. MED. ASS’N INTERNAL MED. 2273 (1991).

<sup>49</sup> Jeanne Charn, *Service and Learning: Reflections on Three Decades of The Lawyering Process at Harvard Law School*, 10 CLINICAL L. REV. 75, 103 (2003).

<sup>50</sup> *Id.* at 100.

<sup>51</sup> Stephen Wizner & Dennis Curtis, *“Here’s What We Do”: Some Notes About Clinical Legal Education*, 29 CLEV. ST. L. REV. 673, 677 (1980).

In designing and executing my workshops, I was striving for both immediate and long-term benefits for my students. In the short-term, my goal was to reduce my students' stress and enhance their empathy for their clients. In the long-term, I hoped to provide them with self-care tools that would be useful throughout their careers.

I also hoped to lay the groundwork for further self-care work with populations of practicing criminal defense lawyers. That longer-term goal is in line with foundational premises of law school clinics as laboratories to develop practical tools for active lawyers. In the early days of modern clinical education, Gary Bellow, Bea Moulton, Jeanne Charn and other educators at Harvard's Hale and Dorr Legal Services Center, as well as Stephen Wizner and Dennis Curtis at Yale, championed this notion of the role of clinics.<sup>52</sup>

### C. Description of the Criminal Defense Clinic Self-Care Workshops

#### 1. Overall Workshop Design

The overarching goal of my self-care workshops was to supply students with tools that would make them more resilient and less susceptible to the slings and arrows of a high-stress criminal defense practice. To accomplish this, I wanted students to be armed with knowledge about experiences in their attorney/client representations that could become sources of stress. Further, I wanted the students to gain specific strategies to address those stressors. Moreover, I expected that this knowledge would lead to greater effectiveness – one of the core qualities at the positive end of the burnout/engagement continuum. I was hopeful that the twin amulets of knowledge-based coping strategies and mindfulness practices would protect the students from traumatization.

In designing the self-care workshop, I sought to incorporate various lessons learned from the above healthcare professional studies:

- (1) Mindfulness-Based. The workshop was a mindfulness-based program featuring didactic material tied directly to the sources of trauma arising in a public defender setting. Each session had distinct instructional material but contained common modules of meditation, paired sharing, and group discussion.<sup>53</sup>

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<sup>52</sup> See generally Charn, *supra* note 49; Wizner & Curtis, *supra* note 51. The Harvard clinic is now called the WilmerHale Legal Services Center.

<sup>53</sup> This structure was inspired by the University of Rochester study. See Krasner et al., *supra* note 46.

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      19

- (2) Long-Term (Eight Weeks). The entire workshop was of significant duration. Sessions were held for eight weeks over the course of an eleven-week academic quarter. This length was similar to the Rochester and Santa Clara studies. That design choice was strengthened by the lessons learned in the prior academic year when I conducted a single, brief self-care workshop.<sup>54</sup>
- (3) Adaptable to Other Legal Settings. The workshop was designed for clinical students but could be adapted to audiences of practicing lawyers. The provision of self-care tools to experienced criminal defense practitioners is an important longer-term goal.

The CDC workshop was tailored in certain ways to our specific setting. For example, given the extremely small caseload for clinical students and other controls over their environment compared to public defenders, some of the more pernicious problems that are present in the external world would not need to be addressed in the clinical context. Additionally, resource scarcity confronted by practicing attorneys in terms of time, money, and personnel are present only to a minor degree in a clinical setting. On the other hand, certain client-based factors that are common in public defender offices are also prominent in the clinic setting. Intensity of exposure, less experience on the job, and intensely personal relationships are all risk factors that I planned to address.

The topics chosen for the workshops were:

- An introductory overview
- Implicit Bias
- Setting Boundaries
- Being with Suffering
- Breaking Bad News
- Vulnerability
- Self-Care Options
- Meaning in the Law

Some clinical professors surveying the list of topics might recognize various workshops as common clinic seminar offerings, not specifically tied to self-care. The difference is a matter of context. As

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<sup>54</sup> The prior year's workshop was ninety minutes in duration and merely introduced the concepts of burnout and trauma and suggested self-care tools, such as meditation and physical exercise. I concluded that there was less of a likelihood of lasting benefit with such summary treatment.

mentioned at the beginning of this section, I presented each topic within a mindfulness context. Moreover, I selected each topic due to its direct ties to either sources of trauma or sources of renewal. A common characteristic of each workshop was grounding in the realm of emotion and human connection. Given that two of the three principal features of burnout consist of damage in those areas, that focus seemed to be a fitting, ameliorative response.<sup>55</sup> This design approach lent a coherency to the self-care workshops that would have been absent had they been presented untethered to their unifying themes.

In considering format design for each workshop session, it was important to take into account principles of teaching adult learners.<sup>56</sup> I wanted to engage the participants in a manner that would elevate the workshops above the experience of a lecture-based format.

Ultimately, a consistent structure for each of the eight workshops emerged: Each session began with a brief lecture to provide the conceptual framework for the day, to introduce the self-care tool to be adopted. The particular concept was explained with illustrative examples drawn from either my previous practice or from experiences of past or present clinical students. After introducing the concept, each session included the following three common modules:<sup>57</sup>

- (1) A period of personal reflection, through guided meditation how each student had successfully encountered the concept in their budding legal practice.
- (2) A supportive, paired sharing of the personal insights gained from the personal reflection. I based the paired sharing on the model of “appreciative inquiry,” which posits that sharing of personal

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<sup>55</sup> The MBI’s three subscales are: emotional exhaustion (feelings of being emotionally overextended and exhausted by one’s work); depersonalization (an unfeeling and impersonal response towards recipients of one’s care or service); and personal accomplishment (feelings of competence and successful achievement in one’s work with people). Maslach & Jackson, *supra* note 4.

<sup>56</sup> The workshop design is faithful to the most common principles of adult learning theory: respect, relevance and immediacy. The workshops demonstrate respect for the students by creating an environment where their individual contributions enrich the entire class; the instructional topics are relevant to the students’ future career options; and instruction is timed so that students can apply lessons shortly afterwards. Linda S. Anderson, *Incorporating Adult Learning Theory into Law School Classrooms: Small Steps Leading to Large Results*, 5 APPALACHIAN J.L. 127, 138-45 (2006).

<sup>57</sup> These modules were inspired directly by the Rochester study. *See* Krasner et al., *supra* note 46, at 1285-86.

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      21

success in this manner is more likely to lead to positive change than exploring failures.<sup>58</sup>

- (3) A group discussion surfacing the insights gained from the personal and paired experiences.

These three common modules were designed with an additional benefit in mind: each module could be viewed as an object lesson for developing habits to deploy in upcoming years, during practice. At the end of the quarter, students were told that the modules could be viewed thusly: the period of personal reflection could become a mindfulness practice with all of the benefits that flow therefrom; the paired narrative appreciative inquiry could become a model for interaction in their primary relationship; and the group discussion could become a model for their creation of a community of support for themselves in their adult lives.<sup>59</sup>

The workshop structure also aligns with the self-efficacy theory of law school education championed by Ruth McKinney. McKinney has proposed that law student anxiety, depression and stress can be effectively reduced by teaching methods grounded in a student's existing belief in her own competence.<sup>60</sup> She urges the use of teaching methods that enhance the four engines of self-efficacy: personal experience, vicarious experience, social feedback, and physiological and emotional reactions.<sup>61</sup> The self-care workshop design of recalling personal successes, learning of peer successes and experiencing supportive group discussion closely matches McKinney's suggestions.

In providing feedback on the common workshop modules,

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<sup>58</sup> Appreciative inquiry is a management science process that was also used in the Rochester study. *See id.* at 1286.

<sup>59</sup> The importance of two of the three self-care workshop modules—self-reflection and community support—as remedies for the psychological damage arising in criminal defense practice is also highlighted by Susan Bandes in *Repression and Denial in Criminal Lawyering*, 9 *BUFF. CRIM. L. REV.* 339 (2006).

<sup>60</sup> Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?*, 8 *LEGAL WRITING* 229, 233-34 (2002). McKinney adopts self-efficacy theory from the psychologist Albert Bandura, who coined the term. Empirical studies have shown that a person's perception of their own competence in a certain area of endeavor materially affects their ability to successfully meet challenges in that area.

<sup>61</sup> Self-efficacy is acquired in four ways: "through personal or imagined experience; . . . through vicarious experiences (modeling); . . . from feedback from their social environment; (and) from physiological and/or emotional reactions to an event." *Id.* at 237-40 (citing Albert Bandura, *SELF-EFFICACY: THE EXERCISE OF CONTROL* 79-115 (1997)).

several students were grateful for the meditative and reflective aspect of the self-care sessions:

I thought the meditation and sharing parts of self-care were the most valuable . . . just having the space to communicate and share with peers who are going through the same stuff.<sup>62</sup>

The self-care workshops helped to reduce my stress because they provided a space in which I could begin to process my experiences rather than just going from one thing to the next without reflection. I also found that through regular participation in the workshops, I became more mindful outside of our sessions.<sup>63</sup>

I enjoyed having the opportunity to come together once in a while and pause the work we were doing to simply reflect on the process of lawyering and the impact it has on one's emotions. It does keep me more mindful, on the whole, about my mental health while working.<sup>64</sup>

On the other hand, some students disliked meditation. Some felt that the self-care sessions could be improved by acknowledging that meditation may not be everybody's idea of self-care — an acknowledgment I made more explicitly in later quarters. An example of the pertinent negative feedback:

For me personally I think that taking more time to exercise, eat, or sleep would be better for helping me relax than meditation.<sup>65</sup>

Apart from the meditative module, some students praised the bonding that came from the paired and group discussions:

Having an opportunity for one-on-one discussions with my partner and structured group discussions provided a useful catharsis that helped both to dispel frustrations and hone in on clients' gratitude and/or positive experiences in representing clients.<sup>66</sup>

I found the self-care workshops to be helpful not only in reducing stress, but also in helping me to identify both potential stressors and outlets. It was also helpful to hear from fellow students—both in recognizing common sources of stress and in hearing how different people coped.<sup>67</sup>

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<sup>62</sup> Anonymous student comments collected in August-September 2014 (on file with author).

<sup>63</sup> *Id.*

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

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      23

From my own observations, I noticed bonding benefits that arose from the paired and group discussions. The self-care workshops seemed to create a safe space that enhanced the closeness of students and boosted team building. The heightened sense of community increased everyone's jubilation over positive case outcomes. There was often a marked humaneness and levity, even in the face of the clinic's everyday pressures. Other clinicians have also focused on the importance of creating safe spaces for students engaged in high-stress direct representation.<sup>68</sup>

An in-depth discussion of the individual workshops follows.

## *2. Detailed Workshop Descriptions*

Careful thought went into the sequencing of workshop sessions over the course of the quarter. Consistent with the "just in time" learning mode available in clinical education, topic presentations were meant to coincide with the evolving client interaction and case events that the students might encounter.

### *a. Introduction and Attorney/Client Relationship Formation Sessions*

The first self-care workshop session introduced the common modules of personal reflection, narrative appreciative inquiry, and group discussion that would be repeated in each of the remaining sessions. Near the beginning of the workshop, students were given a brief exposure to the relaxation technique of sitting meditation in preparation for their first personal reflection.

The workshop also served as an introduction to the concepts of burnout, secondary trauma and self-care. Students were asked to identify a time when they experienced secondary trauma or a tendency towards burnout and to further identify the positive steps taken to care for themselves. In the group discussion, students were invited to share tools they used to help restore balance, whether the tools were in the physical, emotional, social, or spiritual realm.

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<sup>68</sup> In discussing the steps death penalty clinic directors should take to guard students' wellbeing, Sarah Mourer advises that the classroom should be a safe zone where students can freely express themselves and that "classroom sessions [should] leave time for free- form talking and encourage teamwork, unity, and cohesion among members of the class." Sarah Mourer, *Study, Support, and Save: Teaching Sensitivity in the Law School Death Penalty Clinic*, 67 U. MIAMI L. REV. 357, 387 (2013).

Student comments demonstrated that this early introduction was helpful:

In clinic it always felt like there was so much to do, and it always felt like I needed to be doing more . . . being reminded that taking time for myself was important not only relaxed me during the self-care sessions themselves, but also made me feel less guilty about taking time for self-care at other times.<sup>69</sup>

The second session, on implicit bias, was scheduled shortly after students had met with their clients, to address unconscious judgments that arise in all of us at the commencement of interpersonal interactions.<sup>70</sup> The workshop participants were introduced to commonly held unconscious biases, based on characteristics such as gender or race. Students were taught that people are often unaware that they possess these biases and thus cannot address them. These unconscious, or implicit biases, can impact behavior in important ways. The clinical students were shown how implicit bias could damage newly forming attorney/client relationships. In addition to instruction on the concepts, students were provided with key interventions to surface and reduce the impact of implicit bias.<sup>71</sup> Reducing that impact would also prevent a tendency towards depersonalization – the second component of burnout.

In reflections on their work, some students raised concerns over whether implicit bias had impacted the way they worked on their cases, specifically whether they unconsciously prioritized their work based on such bias. One student wondered whether the relative ease with which she bonded with two of her clients in comparison to the distance she felt from a third was grounded in implicit bias.

Students later commented on the effectiveness of the implicit bias workshop, for example:

I found that learning about implicit bias, and reflecting upon the instances of implicit bias that I have experienced, made me more mindful of how that dynamic might affect my relationships with my clients.<sup>72</sup>

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<sup>69</sup> Anonymous student comments collected in August-September 2014 (on file with author).

<sup>70</sup> Jerry Kang offers thorough treatment of this now widely-discussed phenomenon in his seminal 2005 article. *See generally* Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005).

<sup>71</sup> *Cf.* Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012).

<sup>72</sup> Anonymous student comments collected in August-September 2014 (on file with author).

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      25

The third self-care session, on setting boundaries, was presented at a time when the students were likely to have overcome the initial relationship-formation issues. They had begun forming closer bonds with their clients. The workshop goal was to help students to manage those bonds. Students were shown how boundary violations could result from an over-dedication to client-centeredness.

On the one hand, a key feature of the Criminal Defense Clinic is to encourage students to adopt the client-centered values. A heightened focus on the needs of the client, as opposed to the goals of the lawyer, can substantially humanize the lawyer-client relationships. However, in the boundaries workshop, students are introduced to an important, inherent risk: objectivity and effective representation may be sacrificed on the altar of client-centered lawyering. A lawyer may over-identify with her client, resulting in heightened emotional reactions, excessive worry, atypical time commitments, inappropriate self-disclosure, and eventual feelings of anger and disengagement.<sup>73</sup> Other clinicians have also recognized the boundary risks that arise through successful client bonding by students.<sup>74</sup>

In the boundaries workshop, I also discussed how the psychological features of transference and countertransference could lead to a loss of appropriate attorney-client boundaries. As a key source for didactic material, I relied on Marjorie Silver's article on teaching law students and lawyers how to cultivate emotional intelligence to enhance the lawyer/client relationship.<sup>75</sup> While Silver notes that teaching about emotional intelligence, transference and countertransference is uncommon in law schools, she and others cite several successful

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<sup>73</sup> See Lynda L. Murdoch, *Psychological Consequences of Adopting a Therapeutic Lawyering Approach: Pitfalls and Protective Strategies*, 24 SEATTLE U. L. REV. 483 (2000); Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathic, Heroic Public Defender*, 37 U.C. DAVIS L. REV. 1203 (2004).

<sup>74</sup> In her article about teaching clinical law students how to handle traumatized clients, Lynette Parker of the Katharine & George Alexander Community Law Center at Santa Clara University School of Law observes: "If the law student is successful in building a bond of trust with the client, the client then looks to the student for help with more than just the specific legal issue. The client may begin to approach the meetings as counseling sessions . . . The client might also seek the law student's help in dealing with housing needs, safety concerns, and other, unrelated, legal issues." Parker, *supra* note 39, at 169.

<sup>75</sup> See generally Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259 (1999).

examples in the clinical realm.<sup>76</sup>

Boundary-setting questions arose every quarter in the Criminal Defense Clinic. Some clients, enthralled by the level of attention that law students could afford them, pushed the envelope of expectations. Communication would come at late hours. Requests for assistance would exceed those things a lawyer could reasonably do: one alcoholic client called his student-attorneys repeatedly very late in the evening to rant about perceived societal slights not directly pertinent to the case. Another client grew so close to the students that they believed she was developing a romantic interest. A third client called evenings and weekends seeking advice on what he perceived as emergency child custody issues with his wife.

Key interventions to address boundary violations presented in the boundaries workshop included tools to balance neutrality and objectivity against over-involvement.<sup>77</sup>

Student responses to the setting boundaries workshop were positive:

There were a couple of self-care workshops that I think made a big difference in my ability to deal with the combination of workload and client interaction. The dealing with suffering and countertransference workshops were both invaluable for me in recognizing why I found certain interactions draining and in figuring out how to prepare so as to be a better zealous advocate.<sup>78</sup>

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<sup>76</sup> Silver cites a text on interviewing and counseling that introduces clients to psychotherapy concepts and is widely used in law school clinics: Robert M. Bastress & Joseph D. Harbaugh, *INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION* (1990). Lois Kanter at the Northeastern University School of Law Domestic Violence Institute trains clinic students on transference and counter-transference. See Doucet, *supra* note 3, at 152. Those same topics are taught by Alexis Anderson, Lynn Barenberg and Carwina Weng in their law school clinics at Boston College Law School and Indiana University Maurer School of Law. See Alexis Anderson, Lynn Barenberg & Carwina Weng, *Challenges of "Sameness": Pitfalls and Benefits to Assumed Connections in Lawyering*, 18 *CLINICAL L. REV.* 339 (2012) (noting best practices to address issues of interpersonal dynamics, including transference and countertransference).

<sup>77</sup> Marjorie Silver's article is a key source for the tools offered to the students. See Silver, *supra* note 75, at 296-99. Another source for the tools mentioned in the text is Anderson, Barenberg, & Weng, *supra* note 76.

<sup>78</sup> Anonymous student comments collected in August-September 2014 (on file with author).

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      27

*b. Sessions on Emotional Challenges and  
Opportunities for Attorney and Client*

Halfway through the clinical student's quarter, the self-care sessions turned to more emotionally challenging topics. The first such topic was "Being with Suffering Clients."

In each quarter of the clinic, examples of client suffering arising from the case or from other sources have figured prominently. Clients contending with alcohol and drug abuse are commonplace. Many CDC clients also struggle with mental illness. In a particularly distressing case, one team discovered that their client, a defendant in a domestic violence case, was actually a long-term victim of abuse at the hands of the putative complaining witness. While the case was ongoing, the team repeatedly observed the aftermath of recent beatings endured by their client: fresh bruises, black eyes, and finally a broken nose.

The self-care session opened with the acknowledgement that many clients, including those represented at that moment within the clinic, came into the attorney-client relationship suffering. (Other clinicians have addressed this burden of public-interest lawyering, as well.)<sup>79</sup> I hoped that by being introduced to the sources of suffering in a self-care session, clinical students exposed to suffering would be less likely to respond with self-protective behaviors that could lead to depersonalization of their clients.

Students learned that in each of their cases, a client's suffering might emanate from numerous sources, some connected with, and some distinct from the case itself. Examples of sources of suffering include unemployment, chronic mental illness and addiction. Students were alerted to the prevalence of mental illness in our society and were given a brief primer on common major mental disorders, such as schizophrenia, bipolar disorder and major depression. Students learned that the various sources of suffering increase the likelihood that clients would return to the criminal justice system.<sup>80</sup>

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<sup>79</sup> CUNY School of Law's contemplative practices course aims to provide self-care skills to social justice lawyers out of this same recognition of the suffering that their clients often endure: "While all lawyers face pressures . . . social justice lawyers face the added pressures that their clients are very likely to be confronted with suffering that involves class, race, gender, a dysfunctional criminal system and the debilitating effects of poverty." Victor Goode, *Contemplative Practice and the Law, (L)ove in (A)ction with (W)isdom*, 28 *TOURO L. REV.* 1178, 1180 (2012) (published as appendix to Silver, *supra* note 34, at 1178).

<sup>80</sup> Other commentators have remarked on this prominent feature of defending

During this group discussion module, students routinely described suffering clients. In one workshop, a student spoke of a mentally ill client whose delusional belief as to his mother's presence at a hotel directly led to the trespass charges levied against him. Another student described how the combination of mental illness and substance abuse affected a client's perspective of the case and complicated the representation. Numerous students reflected on how clients suffering from addiction to alcohol or controlled substances became enmeshed in the criminal justice system.

It must be noted that the "Being with Suffering" workshop was summary in nature, given my lack of in-depth expertise. I could enhance a future session by incorporating psychotherapy readings such as those mentioned by Silver.<sup>81</sup> A future workshop on this and other topics would also benefit from collaboration with a trained psychotherapist. A few doctrinal and clinical law school professors have engaged in such collaboration.<sup>82</sup>

The "Being with Suffering" Workshop was followed by a workshop on delivering bad news. Criminal defense attorneys often must deliver bad news: the motion is lost; the plea counter-offer is rejected; the verdict is guilty; the sentence is likely to be harsh. In spite of the fact that bad news is endemic to the practice, defense attorneys traditionally receive no training in communicating such information to clients. In the analogous medical context, since the 1990s "there has been an outpouring of medical literature about this particular challenge in counseling: how to tell patients 'bad news.'"<sup>83</sup> The "Delivering Bad

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indigent folks: "Most [public defender] clients cycle through their lawyers' offices as a result of deeper social problems and, most significantly, the failure of other social services to address their problems that include unemployment, mental health, addiction, and alcohol abuse." Cait Clarke, *Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 GEO. J. LEGAL ETHICS 401, 423 (2001).

<sup>81</sup> See, e.g., Bastress & Harbaugh, *supra* note 76.

<sup>82</sup> Timothy Floyd has described the benefits of collaboration between clinical law professors and mental health professionals (as well as between doctrinal professors and such professionals). See generally Timothy W. Floyd, *The Lawyer Meets the Therapist, the Minister and the Psychiatrist: Law School Cross-Professional Collaborations*, 63 MERCER L. REV. 959 (2012). Lynette Parker's clinic at Santa Clara brought in psychologists who specialize in trauma to conduct group sessions with students and supervisors working on trauma cases. See Parker, *supra* note 39, at 191.

<sup>83</sup> Linda F. Smith, *Medical Paradigms for Counseling: Giving Clients Bad News*, 4 CLINICAL L. REV. 391, 395 (1998).

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      29

News” Workshop took on that responsibility in the law school clinic arena. Students were presented information regarding common mistakes in delivery of bad news and best practices to avoid those mistakes. Linda Smith’s article on medical paradigms for client counseling provided substantial theoretical underpinning.<sup>84</sup>

Student responses to the “Being with Suffering” and “Delivering Bad News” workshops were encouraging:

The skills I learned in the workshops about being with suffering and delivering bad news helped me to be more thoughtful in the difficult discussions I would sometimes have with clients.<sup>85</sup>

The self-care workshops did increase my sense of empathy. For one client in particular, recognizing why I had a particular reaction to her demeanor and expressions of pain helped me to be more unconditionally supportive and empathetic.<sup>86</sup>

I would say the primary effect of the self-care workshops was to make me more aware of issues that our clients may be facing, and make me better attuned to their needs. This may have had the secondary effect of relieving stress, as I was probably better prepared to deal with some of the more serious issues our clients presented.<sup>87</sup>

As the students moved beyond the midpoint of their clinical experience, the self-care curriculum became even more emotionally intense, taking advantage of the depth of rapport the students had created with each other. A key workshop explored the value of vulnerability, using as its source a TED talk by Brené Brown of the University of Houston College of Social Work.<sup>88</sup> In her talk, “The Power of Vulnerability,” Dr. Brown discusses her research on human connection. She concludes that our ability to empathize, belong, and love are deeply bound up with our ability to be vulnerable. Given the depth of the emotional challenges caused by the students’ client relationships at this later point in the quarter, it was critically important that they be able to nurture the support network of their clinic mates. Forming empathetic connections among themselves through shared vulnerability was key to that support. During the group discussions, some students shared

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<sup>84</sup> *See id.*

<sup>85</sup> Anonymous student comments collected in August-September 2014 (on file with author).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Brené Brown, *The Power of Vulnerability*, TEDxHOUSTON (June 2010), [http://www.ted.com/talks/brene\\_brown\\_on\\_vulnerability](http://www.ted.com/talks/brene_brown_on_vulnerability) (last visited May 8, 2016).

profoundly moving personal reflections on interpersonal connections, friendships and loss. On the other hand, some students chose to remain silent during the group discussion and were unwilling to share their vulnerabilities.

*c. Closing Sessions*

As the clinical quarter neared its conclusion, students were treated to two closing self-care workshops. In “Exploring Self-Care,” students were exposed to multiple facets of self-care: intellectual, physical, social, relational, emotional and spiritual. They were presented with concrete examples of steps to take in each realm to achieve greater wellbeing.

To give two examples: in the intellectual realm, students were encouraged to nurture their creativity and to engage their intelligence in novel areas outside of the law; in the spiritual realm, they were invited to focus on an ongoing search for meaning in life and a connection to some higher purpose. Just as in each of the preceding workshops, during personal reflection, paired inquiry and group discussion, students were encouraged to identify ways in which they already were successfully caring for themselves in the six realms identified.

Some students were particularly complimentary of the Exploring Self-Care Workshop:

I really appreciated one of the self-care workshops near the end where we talked about ways that we take care of ourselves. I had not ever considered that public defenders sometimes talk to counselors—to deal with their own emotions in processing the trauma client’s experience—and it relieved stress about the potential future to keep perspective on how to make a career sustainable.<sup>89</sup>

I found one person’s revelation that they went for monthly massages in addition to staying active to be a good suggestion that I hope to follow through on this year.<sup>90</sup>

In each quarter, I closed out the self-care workshops with a guest roundtable centered on meaning in the practice of law. Invited guests were from a variety of practice areas: criminal, civil, small firm and corporate. Each guest had a high degree of career satisfaction and they each reflected to on how they arrived at personally meaningful work.

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<sup>89</sup> Anonymous student comments collected in August-September 2014 (on file with author).

<sup>90</sup> *Id.*

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      31

The workshop directly countered the reduced sense of personal accomplishment at the core of burnout. It served as a capstone on the eight weeks of self-care sessions.

### *3. Student Feedback for Workshop Improvements*

Student feedback on the workshops was not uniformly glowing and suggested a path toward improvement. There were a number of recurring concerns. One of the most common was a sense that the workshops created stress by taking time away from client work:

Particularly in the beginning of the quarter, [the workshops] could feel like more time-consuming trainings that reminded me of additional tasks or skills to remember rather than time to rejuvenate.<sup>91</sup>

Sometimes, participating in [the workshops] (especially near the end of the quarter when we were very busy) actually somewhat added to my stress, because I felt that I had pressing client matters at the back of my mind that were more important (or more urgent) than my own self-care needs.<sup>92</sup>

There were times, especially toward the end of the quarter, when a self-care workshop could feel like a burden added onto what seemed like an already heavy load.<sup>93</sup>

Several students also found the self-care workshop format to be more structured than necessary, or that the structure needed improvement to increase student participation:

It might have been helpful to have had more unstructured time to talk about particular stressful or moving experiences, perhaps sometimes one on one with someone other than our partner. While I appreciated the very organized structure of the workshops, having a variety, with some workshops with less structure and more opportunities for venting/talking/reflecting informally might have helped to reduce stress further.<sup>94</sup>

I also think that the conversations could be less structured—I would have valued the conversations we had even without going through the ritual of meditation, paired sharing, and group sharing.<sup>95</sup>

[B]ecause it can be hard for students to come up with things on the spot (even with knowledge that a session is coming up), it

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

might be helpful to have the students keep a “journal” of sorts in which each week they write at least one moment they found particularly stressful and one thing they did that they felt lessened their stress. Perhaps they could then meditate on those moments if they choose to, or others that come to them.<sup>96</sup>

Some students felt that the meditation component of the workshops could be modified to better serve them:

Part of [the sometimes burdensome nature of the self-care workshops], I think, was due to the structure of the workshops themselves, and in particular, the pressure that we (or at least I) felt to comment after our meditation and one-on-one discussions. I know this was always technically optional, but I at least felt irresponsible if I didn’t make some comment. Earlier in the quarter this was a good thing, as it encouraged clinic members to get to know one another and spurred discussion. Toward the end of the quarter, however, we might have benefitted from a more open-ended (and possibly longer) meditation session with the option to comment at the end. The focus would have to be on the meditation rather than the commenting though, so that students would feel the opportunity to share if they wanted, but not the need to otherwise. I think this would improve the quality of our meditation, as we wouldn’t spend the time thinking of something to say at the end of it (which in my mind can somewhat defeat the purpose of meditation).<sup>97</sup>

Another student suggested that the workshops be split into two sections, one devoted to a variety of self-care (without giving preference to meditation or eliminating it altogether) and another devoted to enhancing empathy.<sup>98</sup>

#### IV. LOOKING FORWARD

##### A. Future Criminal Defense Clinic Self-Care Workshops

Self-care workshops were not a one-time experiment in the criminal defense clinic. As each quarter begins, new versions of the workshop begin as well, relying on lessons learned from the maiden voyage. Some of the key lessons come from my own reflection while others have stemmed from student evaluations.

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<sup>96</sup> *Id.*

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

<sup>98</sup> *Id.*

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      33

### *1. Integration of Self-Care Concepts into General Clinic Experience*

As mentioned earlier, several students expressed the concern that, at various points during the quarter, they were so busy tending to case responsibilities that taking time out for self-care workshops ironically caused them greater stress. In the newer versions of the workshops, I incorporate certain of the features from the initial, stand-alone eight-week workshops into the overall clinic experience rather than teaching independent, differentiated self-care sessions. For example, I integrate brief periods of quiet reflection into the beginning of regular clinic seminars each week during the quarter. In some quarters, I reduce the number of specific workshops, slightly, to accommodate extraordinary case-related responsibilities.

Moreover, in response to student feedback about the desirability of a broader menu of self-care options, I now encourage students to pursue their own choices each week. On some days, I delay the clinic start time with the express instruction that students use the extra time for self-care.

### *2. Future Collaboration with Subject Matter Experts*

As I presented some of the individual workshop sessions in the past, it became clear that students would benefit from the participation of guest lecturers trained in the particular subject matter: A specialist in implicit bias training might be better able to help students navigate such difficult terrain; a mental health professional would be better suited to introduce students to the range of disorders that clients often suffer from. For law schools, such as my own, situated within a larger university, opportunities for such collaboration can certainly be explored.<sup>99</sup>

### *3. A Future Quantitative Study of the Efficacy of the Self-Care Workshops*

When I designed the self-care workshops, I considered whether I might be able to measure their effectiveness quantitatively. Several of the analogous ventures in medicine were designed to demonstrate that the workshops made a difference – that participating physicians or

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<sup>99</sup> A fine example of possible collaboration at my own institution for the implicit bias self-care session would be 2014 MacArthur Foundation Fellow Jennifer Eberhardt, a social psychologist who specializes in the study of implicit bias. For Eberhardt's profile, research agenda and publication list, see <http://web.stanford.edu/~eberhard/////index.html>.

medical students were better off as a result. They used psychology survey instruments to measure stress or empathy levels. With varying degrees of success, those studies employed statistical methods to prove their point. Some used control groups; some devised methods for randomizing the selection of the workshop participants; and some worked to obtain sample sizes that could be viewed as statistically significant.

In evaluating my self-care workshops, I ultimately concluded that fundamental aspects of a scientifically rigorous study were beyond the scope of the project, which was essentially qualitative in nature. I could not identify a suitable control group and the pedagogically appropriate small size of the clinic prevented me from obtaining a large enough sample, or a random selection. An intriguing area for the future might be to address those limitations, in collaboration with an expert in quantitative analysis.

### **B. Future Self-Care Workshops for Public Defenders**

I have begun conducting single session, ninety-minute self-care workshops at public defender conferences around the country.<sup>100</sup> My goal in the future is to create a comprehensive workshop, modeled after the eight-week course given to the law students. Conducting such a workshop for public defenders would present several advantages.

As compared to the single session public defender workshops, a longer course would offer the same benefits as the longer clinic student workshops: coverage of a broader array of didactic material; reinforcement of the mindfulness practices at the core of the workshop, through repetition; and fostering a core group of attorneys within a particular office who would carry forward the key concepts from the workshop.

An eight-week course for public defenders would also offer an additional possibility for embarking on the more rigorous analysis of the efficacy of the workshops mentioned above. Co-authoring an efficacy study with an expert in psychometrics would enhance the validity of any

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<sup>100</sup> See, e.g., Ron Tyler, Attorney and Legal Staff Self-Care in Public Defender Offices: Addressing Stress That Leads to Burnout, Workshop at the 2012 Annual Criminal Defense Conference, Office of the Wisconsin State Public Defender (Nov. 8, 2012); Ron Tyler, Wellness in the Practice of Law, Workshop at the 19th Annual Felony Defense Practice Seminar, California Public Defender's Association (Nov. 8, 2014) (notes on file with author).

2016      *THE FIRST THING WE DO, LET'S HEAL ALL THE LAW STUDENTS*      35

quantitative analysis.<sup>101</sup> However, even without an efficacy study, the qualitative feedback from the clinic workshops demonstrates that self-care sessions for public defenders would be of significant value in addressing secondary traumatic stress and burnout.

## V. CONCLUSION

Every quarter I marvel at the level of energy and excitement my students exhibit while they serve as fully committed attorneys for indigent people in the local community. Just as my students owe a duty of zealousness to their clients, I owe a high duty of care to my students. I strive to ensure that their full engagement in the heartfelt work of representing people on the margins of society will not result in lasting damage from secondary traumatization and incipient burnout. Through the ongoing improvement of the self-care workshops described in this article, I aim to provide my students with the tools that will allow them to thrive in clinic and beyond as effective advocates who take good care of their clients and who also take good care of themselves.

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<sup>101</sup> Such an approach would be similar to the AALS Bellows Scholars program, which is a collaboration between social scientists and clinicians interested in empirical research. The program is an example of the burgeoning collaborative movement in social science and public interest law. See Jeanne Charn, *Foreword: The Work of the Bellow Scholars*, 16 UDC/DCSL L. REV. 1, 4-6 (2012).