

The Value in the 3 Ps of Wellness

Peer Programs for Prosecutors

by MARY ASHLEY

It was just another busy Monday morning, rushing into the office with an already full agenda on my mind. I exchanged the usual pleasantries that we all do as we pass colleagues, in between texts and emails on my cell phone. I was half listening and continuously moving towards the entrance to our six-story office building. Eye contact hardly played a role. I passed a fellow prosecutor who I vaguely knew but had never personally worked with over the past two decades. The dialogue was standard. I said, “Good morning; how was your weekend?” as I dashed past him on into the elevator. It was while hitting the appropriate floor button that I heard him say something to the effect of, “Not very good.”

That was a moment when I could have done one of two things: either let the elevator doors close and go about my day, never knowing what went wrong, or get out of the elevator car and speak to the man who was trying to tell me something. The reason I am writing this article is because I chose option number two. It took a couple minutes of listening, cost nothing, and created goodwill between essential strangers that has lasted far longer than ever anticipated. A peer program for prosecutors can have the same impact on you.

Wellness in the Attorney’s Workplace

There has been a recent concern placed on the wellness of people in the legal profession. In August 2017, the American Bar Association (ABA) released a report from the National Task Force on Lawyer Well-Being called *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, creating a call to action for lawyer wellness and providing a host of recommendations and suggestions. (Nat’l Task Force on Lawyer Well-Being, Am. Bar Ass’n, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (Aug. 14, 2017), <https://bit.ly/2x3WRHm>.) This was followed by a series of articles, surveys, and research. The task force is a coalition of entities within and outside the ABA. (Nat’l Task Force on Lawyer Well-Being, Am. Bar Ass’n, *Creating a Movement to Improve Well-Being in the Legal Profession* (Aug. 14, 2017), <https://bit.ly/2x3WRHm>.) It includes the Commission on Lawyer Assistance Programs, National Organization of Bar Counsel, and Association of Professional Responsibility

Lawyers. (*Id.*)

The ABA recommended that the rules of professional responsibility be modified to require that well-being be a part of a lawyer’s duty and included in the definition of competence. (*The Path to Lawyer Well-Being, supra*, at 26.) Rule 1.1 of the ABA’s Model Rules of Professional Conduct require a lawyer to “provide competent representation.” (*Id.*) The intention of adding a well-being requirement was to remind lawyers that “mental and physical health impacts clients and the administration of justice.” (*Id.*) Additional recommendations included that organizations create wellness committees and policies and practices that support well-being, provide ongoing training to monitor signs of work addiction and poor self-care, and work to actively combat social isolation and encourage interconnectivity. (*Id.* at 31-33.)

The concept of corporate health meaning internal support for staff seems to be popular in the private sector, where they often have the financial resources to implement such programs. Private law firms and companies are now employing in-house directors of wellness. (See, e.g., Meghan Tribe, *Morgan Lewis Takes on Lawyer Mental Health with New Program Executive*, Am. B. Law. (Mar. 18, 2019), <https://bit.ly/2JN7iUP>; News Release, Latham & Watkins LLP, *2012 Spring Challenge Displays Latham’s Dedication to Employee Wellness & Firm Unity* (Aug. 15, 2012), <https://bit.ly/2GbWzH2>.) These individuals are not extra human resource directors. Not additional personnel advisors. Not more risk managers. Instead, it is the director of wellness whose job it is to oversee the health of the environment and create spaces for employees to feel heard and cared for beyond their paychecks and financial benefits.

Wellness in Prosecutorial Offices

Unfortunately, it is different story in the public sector. The traditional prosecutor office models do not have high budgets or extra resources to hire specialists, pro-

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vide enhancements, or create complementary services for staff. The same is true for public defenders, county counsel, deputy attorney generals, US attorneys, and other government law offices. We certainly have the everyday stress, high volume, and responsibility to the public, charged individuals, and our victims for whom we need to be accountable. It makes sense, then, to adopt a model that encourages employees to strive for thriving in each dimension of their lives: occupational, emotional, intellectual, social, physical, and spiritual. (*The Path to Lawyer Well-Being*, *supra*, at 9.) Developing a sense of connection, purpose, and belonging and a dynamic support network enables people to see the relation between their work and the goals of the organization. (*Id.*) In the prosecution world, that means the business of seeking justice, helping victims, and holding the guilty accountable for their actions to protect the community. While compassion, fatigue, and stress certainly impact all the stakeholders in the criminal justice system, this article focuses on the unique dynamics within the prosecution profession.

Emotional Survival for Law Enforcement by Dr. Kevin Gilmartin, Ph.D., is a book law enforcement should be very familiar with. Dr. Gilmartin describes the long-term effects of hypervigilance and provides strategies for emotionally surviving the difficult profession of being a first responder. (Kevin Gilmartin, *Emotional Survival for Law Enforcement: A Guide for Officers and Their Families* (E-S Press Publishing 2002).) The comparisons between the professions and some shared attitudes certainly ring true. Some of the oldest clichés are accurate about “being tough” and not asking for help when needed. This goes on every day in a prosecutor’s office. Have you ever felt like you could not handle your case load, or you cry when feeling sad? Do those feelings make you consider whether you might not be cut out for prosecutorial work? No, you are exactly cut out for this type of work if you are an empathetic individual. But the message has been not to show that empathy, to go grab a drink or two after work and deal with it. I spent nearly a decade in the Family Violence Unit with an emphasis on child abuse cases. This is often how we dealt with the horrors of what we were exposed to daily as a part of our job. However, short-term solutions have created long-term, life-long systemic problems for many. And it’s getting worse. Unfortunately, suicide rates among law enforcement is staggering. (Timothy Roufa, *Exploring the Problem of Police Suicide, Balance Careers* (Jan. 25, 2019), <https://bit.ly/2M0vWUq>.) We are now seeing increased rates of attorney suicides, including prosecutors. (Jeena Cho, *Attorney Suicide: What Every Lawyer Needs to Know*, A.B.A. J. (Jan. 1, 2019), <https://bit.ly/2xPRw5S>.)

Fortunately, prosecutorial offices are now taking notice. They are beginning to create in-house programs

designed for assisting those who may experience secondary trauma from intense work situations. The indirect and repeated exposure to trauma—listening to details of abuse, preparing violent cases for court, and viewing graphic photographs—left unrecognized, can significantly impact one’s professional work life, personal life, and mental health. (Missoula (Mont.) Cty. Att’y’s Office, *Secondary Trauma Group—Implementing Organizational Resiliency for Prosecutors* 3 (2017), <https://bit.ly/2Sf7JuW>; see also Kristine Hamann, *Prosecutor Wellness*, Prosecutors’ Ctr. for Excellence (Nov. 30, 2017), <https://pceinc.org/prosecutor-wellness/>.)

In recent years, the prosecution profession has been under fire and viewed differently. The national conversation has shifted to the concept of prosecutors being held solely responsible for the concept of “mass incarceration” and prison overpopulation. This change in public perception has added a layer of stress to the profession and could possibly serve as a deterrent for young lawyers to become prosecutors. Often once thought of as those who wear “the white hat” and fight for justice, there has been a trend where prosecutors are condemned as a whole. (Barry Latzer, *The War on Prosecutors*, Nat’l Rev. (May 15, 2019), <https://bit.ly/2EegNdx>.) Accusations include hiding evidence, convicting innocent people by design, and regularly abusing our authority. As in any profession, there have, indeed, been instances of misconduct and abuses. As most of us in this profession know, however, the regrettable instances do not represent how prosecutors conduct themselves or why they chose this line of work. The negativity and increased public scrutiny, as they have done to law enforcement, take its toll over time, and the need for resiliency is at its peak.

Secondary Trauma Stress and Hypervigilance

In 2016, Missoula County District Attorney Kirsten Pabst created the first program of its kind for her office: Secondary Trauma Group Implementing Organizational Resiliency for Prosecutors. Ms. Pabst recognized the needs of the entire staff who work with victims of crime and the long-term effects they can have on those professionals. The objective of the program is to foster an organizational culture that is safe, supportive, and trauma-informed. “All staff are educated on the neurobiological and behavioral effects of primary trauma on victims of crime, the population directly served. By educating the staff, the organization becomes fluent in secondary trauma. This knowledge provides an understanding of the risks and symptoms associated with secondary trauma in a legal setting and allows staff to learn specific prevention strategies and remediation techniques.” (*Secondary Trauma Group*, *supra*, at 5–6.) This kind of program within a prosecutor’s office was unprecedented at the time and required the commitment

to work with a social worker and sexual assault examiner to create a curriculum to fit the legal field. (*Id.* at 8.) The program was not costly to establish and can be continuously reimplemented without further staffing. In the San Francisco District Attorney's Office, trauma-informed practices and policies have also since been created to address secondary trauma stress (STS) and promote resiliency for staff. (Carly Baetz, *Resilience in the Face of Secondary Trauma Exposure: Working with Child Survivors of Trauma*, 41 Prosecutor's Brief (Cal. Dist. Att'y's Ass'n no. 3, Spring 2019, at 6, <https://bit.ly/2y1QzZo>.)

STS is the associated effects of being indirectly exposed to a traumatic event that someone else has experienced. Direct and secondary trauma, particularly when chronic, can alter an individual's perception of safety and can lead to hypervigilance. (*Id.* at 2.) Hypervigilance is the state of always being on guard for danger. STS can create difficulty with effectivity managing strong emotions and with trusting others and forming relationships. Sometimes this is also referred to as "vicarious trauma" or "compassion fatigue." (*Id.*) The question is, now that we know that it exists, what are some of the ways we can combat the problem and promote discussion and opportunities for people to manage the issues.

Some of the best and most fascinating research in the area of trauma was by Dr. Bessel Van Der Kolk, M.D., in the area of child abuse, sexual assault, and adverse childhood experiences. Dr. Van Der Kolk further explored methods and experiences that utilize the brain's own neuroplasticity to help survivors of trauma to move on with their lives. Some of these developments consisted of "talking, (re-) connecting with others and allowing ourselves to know and understand what is going on with us." (Bessel Van Der Kolk, M.D., *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* 3 (Penguin Books 2014).)

Secondary trauma exposure, post-traumatic stress disorder, and the effects of brain injury have been some of the most profound areas affecting prosecutors. Dr. Carly Baetz, Ph.D., a former prosecutor and presently a clinical assistant professor with the Department of Child and Adolescent Psychiatry at Langone Medical Center, addressed these topics in the California Prosecutor's Brief and discussed how STS can be suffered by those who work with victims of violent crime. (Baetz, *supra*, at 2.) She concluded that many prosecutors struggle with hypervigilance and other long-term effects that STS has on their lives. While it seems like common sense that repeated exposure to violent imagery, gruesome crime scene photos, and tragic stories of horror would be difficult, the impact is often far more profound. The exposure can affect our well-being and long-term health if not managed, monitored, and treated.

But how does a district attorney's office address secondary trauma? There are numerous recommendations

and suggestions, but what a district attorney's office can and should do as an organizational strategy is to create peer support groups to provide prosecutors and staff a place to share their experiences and receive informal support. (*Id.* at 5.)

Peer Support as an Organizational Strategy

Although not every member of a district attorney's office or other public attorney office needs formal assistance or suffers from STS, nearly everyone at some point in his or her life is in need of compassion and empathy—at the very least, a friendly ear or shoulder when a "bad day" or personal challenge leaves one struggling. To function as a healthy, competent, and professionally supportive team, each person should be tended to and treated with care and respect.

For many years, peer support has been a useful tool for overcoming a variety of common problems, such as substance addiction, family caregiving, and mental health issues. The Substance Abuse and Mental Health Services Administration has long advocated and utilized research to reinforce the power of peer support. "Peer support encompasses a range of activities and interactions between people who share similar experiences. This mutuality, called 'peerness,' between a peer support person and a person seeking help promotes connection and inspires hope. Peer support offers a level of acceptance, understanding, and validation not found in many other professional relationships." (Shery Mead & Cheryl McNeil, *Peer Support: What Makes It Unique*, 10 Int'l J. Psychosocial Rehab. no. 2, 2006, at 29-37.) Some positive reported outcomes for individuals who receive peer support are increased self-esteem and confidence, increased sense of control and ability to bring about changes in their life, raised empowerment, and a feeling that treatment can be responsive and inclusive of their needs. (Substance Abuse & Mental Health Servs. Admin., *Value of Peers*, 2017, <https://bit.ly/2XHvTnC> (last visited Apr. 25, 2019).)

Peer support programs are modeled after law enforcement and the numerous programs across the country that enable first responders and people in the emergency field an internal resource to deal with the daily struggles and pressures in a hypervigilant profession. Often, a person just needs someone to listen and to know they are cared about and heard. We all can appreciate that. Sometimes, however, a problem could be much more serious. A peer supporter can be the bridge to an employee assistance program or enabling someone to seek professional help.

Some people are mistrusting of work-related assistance programs or do not know how to access them. Or they fear asking a supervisor. A peer supporter is a great resource and guide, so an employee can feel comfortable and safe in reaching out for help. The

peer supporter is not a counselor, therapist, or mental health professional. He or she is there to actively listen, not to offer personal opinions or instruct. (See Nancy Bohl-Penrod, Ph.D, Counseling Team Int'l, *Manual and Guidelines: Basic Peer Support*, www.thecounseling-team.com.) A peer supporter is also the link to which someone could feel secure in making that initial call for counseling. Peer supporters are volunteers from within the office who complete a series of formal trainings and commit to the guidelines that the office establishes. There is no additional compensation or financial gain offered. Rather, along with the tremendous value that can be derived from helping a fellow employee, the training provided gives the volunteer peer supporters additional skills and understanding that they can apply to their own lives.

How a Peer Program Works

A peer support program offers assistance and appropriate support resources to employees when personal or professional problems negatively affect their work performance, family, or self. The assistance is confidential; providing it does not violate any law or office policy. A program is typically designed to do the following:

1. Provide emotional support during and after times of personal or professional crisis to other employees who express a need for assistance.
2. Promote trust, allow anonymity, and preserve confidentiality for persons using peer supporters within the guidelines of the program.
3. Develop peer supporters who can identify personal conflicts and provide guidance or referral to professional/alternate sources as required.
4. Maintain an effective training and response program.
5. Support those who have had a family tragedy.
6. Check on the status of illness and injuries on duty and provide support where desired and needed.

(*Id.*)

A district attorney's office's most valuable resources are its employees. When employees are struggling with stresses caused by either personal or professional problems, it impacts the organization and the overall effectiveness in serving the community and victims of crime. (*Id.*) The key to a successful internal peer support program is having someone who understands your job, atmosphere, and experiences within the profession. Therefore, peer support programs have done well in the fields of law enforcement, emergency, fire, and first responders. To be blunt, cops trust cops—and so on. We are willing to trust someone who has walked in our shoes and appreciates the demands. Without the personal understanding, it just does not work the same way. When a prosecutor loses a major child abuse trial, support from another prosecutor who has been in that

situation and can empathize is key to the support being valuable. Often, we rely heavily upon our victim advocates to assist not only our victims but our staff members as well. But who is there for the advocates and what happens when an entire organization is impacted by an event?

Creating a Team with Purpose

In early 2015, the San Bernardino County District Attorney's Office formed a peer support team. On December 2, 2015, the county was the target of a terrorist attack that resulted in the mass shooting of county employees, with 22 seriously injured and 14 killed. Many of those victims were friends, family, or colleagues of people in our office. We had no idea something like that was about to happen, but, because it did, the true need for peer support teams had become more real than ever.

Establishing a peer support team requires groundwork in planning and budgeting. There are several steps:

Selection: Selection and screening processes are needed to identify those likely to be effective in the role of a peer supporter and willing to volunteer.

Training: After an initial meeting with interested and/or recommended applicants, a basic peer support training is required to provide potential team members with guidelines, requirements, parameters, and a true understanding of what peer support is and what it is not. This needs to be done by a professional organization that runs peer support programs and has a licensed staff member to administer training. Therefore, there is an up-front cost to be invested for a proper team to be established. After a basic training, participants may decide if this is something they would be able to commit to and follow the guidelines, understanding this is voluntary and they can be removed for any reason by an administration.

Tracking: Internal mechanisms need to be created to keep statistics on confidential peer contacts, areas of need and focus, along with time that is being spent on peer supporting.

Follow-Up: From that point on, a team that is supported by the administration and has a committed coordinator can go in a variety of directions, including advanced training programs, educational events featuring guest speakers, holiday awareness gatherings, and lunchtime opportunities for employees to socialize and learn about what resources the office has for them. Many of these things can be done simply and inexpensively. The simple act of encouraging involvement and conversation and finding solutions without shame or embarrassment can transform a culture of negativity into one of community.

Peer support programs can offer training in Group Crisis Intervention and Critical Incident Stress Management (CISM) for members of the team to be able to

engage in debriefings for staff and assist other agencies in crisis. (See, e.g., *Group Crisis Intervention*, Int'l Critical Incident Stress Found., <https://bit.ly/2lGfeyl>.) Once a major incident occurs, it is imperative to provide a forum for discussion and stress release. A managed, structured discussion is far more effective than institutional silence after an incident. Providing information about what to expect and how to cope with a set of reactions helps build resiliency within the staff. What becomes essential later is the follow-up and ongoing continuum of care and accessibility that a peer support team can provide long after the initial incident is over. Whether it be an informal check-in or a professional referral, these pieces can be invaluable to one in crisis or distress. People appreciate the immediate condolences, cards, flowers, care baskets, and texts, but these gestures can evaporate quickly, leaving a person alone and feeling forgotten. A peer support team can reinforce the message that the office cares and is there for the employee for as long as needed.

The Next Steps

The first step is eliminating the concept that self-care is an indulgence and not something that “strong people” need to do. Self-care is a discipline and requires a person to commit to doing things that are good for him or her, whether they are easy or not. Self-care “requires tough-mindedness, a deep and personal understanding of your priorities, and a respect for both yourself and the people you choose to spend your life with.” (Tami Forman, *Self-Care Is Not an Indulgence. It's a Discipline*, *Forbes* (Dec. 13, 2018), <https://bit.ly/32v5NDO>.) It becomes very easy to dispense with the hour you carved out for a workout class in exchange for a last-minute conference call or meeting—or the after-school event you promised your child you would attend, until the deadline on a project got moved up and you chose to stay at the office. It seems nearly impossible to silence that cell phone in the evening or stop checking work emails on the weekends when we made plans to visit an elderly relative or take the dog for a walk. While these sacrifices may sound trivial, in the long run, it is the perpetual forbearance of these “indulgences” that creates resentment and negativity down the line. We all panic if our cell battery is low and in the red but do not prioritize our own low-battery status when needed.

If that is not enough to make you a believer, if you are in management of an office, you are compelled to think about risk management, liability, and the duties owed to your employees. Budgets now must factor in all the costs that will be needed for after the damage is done: stress leaves, disability, ongoing mental health costs, alcohol and drug treatment, depression, job dissatisfaction, disruptions in the workplace, lawsuits, and the list goes on. We spend a great deal of focus these days

telling people to exercise, eat right, and get more rest. These are all good things and do help reduce stress. Another concept is to share your stress with someone and then be rid of it. (Rick B. Allan, *Ten Tips to Manage Stress*, A.B.A. (Apr. 2, 2019), <https://bit.ly/2O5HR6q>.) Whether it just feels good to release your worry to another or realize it may not be as bad as imagined, it does seem to be a good way to acknowledge a fear and then be able to let it go. In other words, “Life can be difficult, but misery is optional.” (*Id.*)

Frankly, and possibly more compelling, is the tremendous impact the decisions prosecutors make have on all the stakeholders in the criminal justice community. While we represent the “people,” the daily decisions of filing cases, charging defendants, negotiating dispositions, dismissing cases, and going to trial directly affect the lives of victims, families, witnesses, those who are charged with crimes, law enforcement, and the courts. A prosecutor who is emotionally supported by his or her organization and trained to manage stress is a far better reasoned and capable decision maker who can exercise good judgment and perspective on each case. From the public's perspective, we are the “gatekeepers” of the criminal justice system. It benefits everyone to have those entrusted in these critical positions to be at their very best in every sense.

Can we stop some of these problems before it is too late? For the most part, the answer is “yes.” Peer support is real and demonstrates an office's commitment to employees' competence, safety, well-being, and resiliency. Many say that their workplace is like a “second family.” And like all families, they can become dysfunctional and create fractured relationships. Having a peer support network provides an outlet to resolve issues, discuss worries, and talk out the frustrations that often fester into major workplace problems when left untended. A social support network that incorporates listening and “reciprocity” is critical to having safe and meaningful connections. (Van Der Kolk, *supra*, at 81.)

A program can be designed, customized, and tailored to meet the needs of any organization. Every office has its own “culture” and set of personalities. Many of the issues, however, are human issues and often the same. When people walk through the door in the morning to work, every single person on any given day brings a piece of something that is going on in his or her life—whether it be a marital issue, coping with an illness, bereavement, caring for an elderly parent, grief, alcoholism, handling a child having issues at school, financial crisis, or depression, it's there on every level. From elected officials on down the organization's chain, we each battle our own difficulties and it impacts others, whether we realize it or not. It does not take a major catastrophe such as a terrorist attack to know that people need each other and want ongoing support from their organization.

The Direct Impact

In a recent exit interview, an employee who retired from my office was asked about what benefit the peer support program had, both to self and others. The employee stated, "The training provided helped me both personally and professionally. I learned different listening techniques to be a better listener. I also learned how to guide peers to find their own solutions to their issues, keeping my bias and opinion aside. Working with my colleagues gave me a new understanding and profound respect for them and the work they do at the district attorney's office. We had supervisors, advocates, attorneys, investigators, and upper management part of the team and it brought to light the needs of our peers, and seeing the unity of all involved was uplifting. Giving employees of the department trusted colleagues to be able to talk to showed that the department really cared for the employees' mental health and well-being."

In another interview, this time with an employee who received peer support in addition to professional assistance, the employee described that she "never would have sought counseling but for the information provided by the peer support coordinator." The employee, who had suffered a significant trauma, described the counseling as "life-saving," and she was able to rid herself of anxiety and the fear she was feeling and return to work as a productive and positive employee. One peer supporter who had been through the formal training was able to assist when a serious real-life scenario came into his personal life and used the skills to assist a friend's family who was in need. These stories go on and on from the people inside and outside the support team.

There is no magic to the concept, and it certainly isn't foolproof. There will be naysayers and doubters. For those who think this means forming a circle and holding hands every time there is a problem, that is certainly not the idea of peer support. The idea is having a structure in place for someone to go to another person whom they know will give them their time and attention, without judgment; to close the door and just "listen" is invaluable. And it may not work for everyone; finding the right "fit" can take time. There are also individuals who do not want contact with their colleagues in any personal way or ever share information, and that is completely fine. The goal is to try something that lets people know they are not alone, and they are important to the organization beyond the tasks they are employed to do. It is amazing how many people really do care and have so much experience and kindness to share with one another if given the freedom to do so.

Time to Get Started

Peer support can work in any size organization, but it can be particularly effective in a larger organization where not everyone knows each other. In environments where there is often change and movement, people can be even more comfortable speaking to a member of the office with whom they do not normally interact every day or are not already involved in a relationship, such as a friend or manager. Having a diverse team with people of all backgrounds provides a rich pool of experience, camaraderie, and understanding, from the smallest to the most extensive issues.

When I chose option number two and stepped off the elevator and spoke with the gentleman I referenced in the beginning of this article, it turned out to be one of the best things I ever did. It provided a bit of comfort to him in his time of need, and it created a bond of human decency between two otherwise strangers. Over the years, there would be a nod and smile from across a room or a simple hello here and there, but with eye contact and sincerity. No longer do I succumb to the robotic "walk through" of work life without human interaction. The irony of the story is that, years later, when the tables had turned and I found myself in a less-than-ideal situation, it was this same gentleman who offered me kindness and courtesy. It cost neither of us a dime. It was simply the right thing to do. ■