

# **HOW MIGHT VICARIOUS EXPOSURE TO TRAUMA AFFECT AN ADJUDICATOR'S CREDIBILITY DETERMINATIONS IN CASES INVOLVING TRAUMA?**

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**(Appearing in her Personal Capacity)**

The purpose of my presentation will be to raise a question, rather than provide an answer. It is a question I believe each of us must ask ourselves and a question for which more research is needed. In recent years, through studying the science involving implicit bias, we have come to acknowledge that, if we ignore what is at work under the surface, in our subconscious minds, its effects on us can undermine the fairness of our adjudications. Like the effects of implicit bias, whether our credibility determinations may be affected by Traumatic Exposure Response (sometimes referred to in the health care field as “Compassion Fatigue” or in other contexts as “Vicarious” or “Referred” or “Indirect” Trauma) is a question of great importance, but one which is difficult to recognize and acknowledge. While there is, as of yet, very little science related to the specific question I ask, there is much science on the effects of Trauma and Vicarious Trauma in general and even some studies on their effects on judges specifically. It remains for scientists to study how the effects of Trauma Exposure might intervene in a credibility determination by one who has been affected by repetitively hearing about the trauma of others. But as judges, we also need to take responsibility for exploring this. Many of us work in courtrooms where we are exposed on a daily basis to stories of trauma. From cases involving domestic violence and other violent crimes, to those involving human trafficking and asylum, divorce and child custody/protection, we hear about the worst a human being can do to another human being. The effects Vicarious Trauma has on us may carry the potential of affecting how we judge credibility if we don't recognize, acknowledge and study our reactions to hearing about trauma.

These materials will be brief – simply a list of resources for studying the effects of trauma and a call for more specific research on the effect it may have on whether we believe the traumatic stories we hear. I encourage each of you to think about the question for yourself. I also encourage us as a whole to promote the scientific study of this question toward a better understanding of how exposure to trauma may affect the way we judge credibility.

## DSM – IV: Post Traumatic Stress Disorder

American Psychiatric Association. (2013) *Diagnostic and statistical manual of mental disorders*, (5th ed.)

[The following Criteria are required for a *diagnosis* of PTSD, in the following manner: to meet the diagnostic requirements, a person must be an adult, adolescent or child over six years old, have experienced exposure to a traumatic event that meets specific stipulations and have symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognition and mood, and alterations in arousal and reactivity. All this must last at least one month and cause significant distress or functional impairment. It has been found that vicarious exposure to trauma can manifest the same symptoms as direct exposure, although sometimes to a lesser degree. Remember, that we are not talking about diagnosing ourselves with PTSD, but only whether some of these reactions to trauma may affect the way we judge credibility. The highlights are mine, because these symptoms seem most likely to affect our belief of others about their traumatic events or seem relevant to the question at hand in some other way].

### Criterion A: stressor

The person was exposed to: death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence, as follows: **(one required)**

1. Direct exposure.
2. Witnessing, in person.
3. Indirectly, by learning that a close relative or close friend was exposed to trauma. If the event involved actual or threatened death, it must have been violent or accidental.
4. Repeated or extreme indirect exposure to aversive details of the event(s), usually in the course of professional duties (e.g., first responders, collecting body parts; professionals repeatedly exposed to details of child abuse). This does not include indirect non-professional exposure through electronic media, television, movies, or pictures.

### Criterion B: intrusion symptoms

The traumatic event is persistently re-experienced in the following way(s): **(one required)**

1. Recurrent, involuntary, and intrusive memories. Note: Children older than six may express this symptom in repetitive play.
2. Traumatic nightmares. Note: Children may have frightening dreams without content related to the trauma(s).
3. Dissociative reactions (e.g., flashbacks) which may occur on a continuum from brief episodes to complete loss of consciousness. Note: Children may reenact the event in play.
4. Intense or prolonged distress after exposure to traumatic reminders.

5. Marked physiologic reactivity after exposure to trauma-related stimuli.

### Criterion C: avoidance

Persistent effortful avoidance of distressing trauma-related stimuli after the event: **(one required)**

1. Trauma-related thoughts or feelings.
2. Trauma-related external reminders (e.g., people, places, **conversations**, activities, objects, or situations).

### Criterion D: negative alterations in cognitions and mood

Negative alterations in cognitions and mood that began or worsened after the traumatic event: **(two required)**

1. Inability to recall key features of the traumatic event (usually dissociative amnesia; not due to head injury, alcohol, or drugs).
2. Persistent (and often distorted) negative beliefs and expectations about oneself or the world (e.g., **"I am bad," "The world is completely dangerous"**).
3. Persistent distorted blame of self or others for causing the traumatic event or for resulting consequences.
4. **Persistent negative trauma-related emotions** (e.g., fear horror, **anger**, guilt, or shame).
5. **Markedly diminished interest in (pre-traumatic) significant activities.**
6. **Feeling alienated from others (e.g., detachment or estrangement).**
7. Constricted affect: persistent inability to experience positive emotions.

### Criterion E: alterations in arousal and reactivity

Trauma-related alterations in arousal and reactivity that began or worsened after the traumatic event: **(two required)**

1. **Irritable or aggressive behavior**
2. **Self-destructive or reckless behavior**
3. **Hypervigilance**
4. **Exaggerated startle response**
5. **Problems in concentration**
6. **Sleep disturbance**

## Other Resources

Kate Aschenbrenner, *Ripples Against the Other Shore: The Impact of Trauma Exposure on the Immigration Process Through Adjudicators*, 19 Mich. J. Race & L. 53 (Fall 2013)

Laura van Dernoot Lipsky & Connie Burk, *Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others* (2009)

Charles R. Figley, *Compassion Fatigue As Secondary Traumatic Stress Disorder: An Overview*, in **Compassion Fatigue: Coping with Secondary Stress Disorder in Those Who Treat the Traumatized**, 1 – 20 (Charles Figley, ed., 1995)

Ann E. Freedman, *Fact-Finding in Civil Domestic Violence Cases: Secondary Traumatic Stress and the Need for Compassionate Witnesses*, 11 Am U.J. Gender Soc. Pol'y & L. 567 (2003)

David Gangsei, PhD. *Vicarious Trauma, Vicarious Resilience and Self-Care*

I.M. Gomme & M.P. Hall, *Prosecutors at Work: Role Overload and Strain*, 15 J. Crim. Just. 191 (1995)

Peter G. Jaffe et al., *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 54 Juv. & Fam. Ct. J. 1 (2003)

Andrew P. Levin & Scott Greisbert, *Introductory Remarks: Vicarious Trauma in Attorneys*, 24 Pace L. Rev. 245 (2003)

Andrew Levin, *Secondary Trauma and Burnout in Attorneys: Effects of Work with Clients Who Are Victims of Domestic Violence and Abuse*, 214 PLI/CRIM 103 (2008)

Stuart L. Lustig et al., *Burnout and Stress Among United States Immigration Judges*, 13 Bender's Immigr. Bull 22 (2008)

Lisa McCann & Laurie Ann Pearlman, *Vicarious Traumatization: A Framework for Understanding the Psychological Effects of Working with Victims*, 3 J. of Traumatic Stress 131 – 149 (1990)

Laurie Anne Pearlman & Karen Saakvitne, *Trauma and the Therapist: Countertransference and Vicarious Traumatization in Psychotherapy with Incest Survivors* (1995)

Jean Koh Peters, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions* (3d Ed. 2007)