

## Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James



### Full Episode Transcript

With Your Host

**John E. Grant**

[The Agile Attorney](#) with John E. Grant

## Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James

When we talk about stress and burnout in law, we're often describing the end result of systems that weren't really designed with human wellbeing in mind. The impact of the stress from overwhelming workloads, from billing pressures, from difficult clients, doesn't just make us less effective advocates. It can transform our personalities and relationships in ways that ripple throughout our lives.

Today, I'm talking with Dr. Colin James, author of the book *Vicarious Trauma and Burnout in Law*. We explore the science behind trauma theory as it applies to legal practice and examine how individual practitioners, law firm leadership, and even larger institutions like courts and law schools can adopt trauma informed practices that create better outcomes for clients and practitioners alike.

Something new this week. This episode is eligible for a one hour MCLE credit in Oregon under the mental health and substance abuse requirement. And if you're not in Oregon, most US states and even jurisdictions in other countries offer CLE comity, so you can probably claim at least a general credit from this episode. Instructions will be in the show notes at [agileattorney.com/71](https://agileattorney.com/71).

You're listening to the *Agile Attorney Podcast*, powered by Agile Attorney Consulting. I'm John Grant, and I help legal professionals of all kinds build practices that are profitable, sustainable, and scalable for themselves and the communities they serve. Ready to become a more Agile Attorney? Let's go.

Alright everyone, welcome back to the *Agile Attorney Podcast*. I am honored this week to be joined by Dr. Colin James, who is a recently retired professor of law in Australia. And Dr. James caught my attention because he posted something on social media a few weeks ago around his recent book launch. And the title of the book is *Vicarious Trauma and Burnout in Law*.

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

And it's something that caught my attention because I know a lot of my clients are certainly experiencing some form of burnout by the time they reach out to me. I know you all have heard of the work I do with the Commons Law Center, which is a modest means program, which encounters a lot of clients that are experiencing trauma that may or may not be related to their particular legal challenge. And so I just think this is an important topic that is not maybe discussed enough or certainly not discussed openly enough. And so I'm excited to have Dr. James. And I'll let you introduce yourself and cover any of the details I might have missed.

Colin: Okay, thank you very much, John. Thanks for having me. Just a small correction, I'm not, I was not actually a full professor of law. I was a senior lecturer of law at the Australian National University most recently and a similar level law teacher at Newcastle Law School in New South Wales and a couple of decades before that at Murdoch University in Western Australia, always in Australia. But as you say now, I'm retired and my final act, final contribution, I like to think of it before I retired was to write this book, which took four years. Basically, it summarizes the science around trauma theory as pertaining to legal education and practice because I think it is a huge lacuna in the legal profession, at least in the Western world.

And I thought after writing a literature review back in 2020 in the Journal of Psychology, Psychiatry and Law, that I could do something better and fill in more gaps by doing a book. And so that was what occupied me for the past four years.

So, I do have a doctorate in legal history and a master of science in coaching psychology, another master's in sociology, as well as law degrees and a Bachelor of Arts and qualifications in tertiary teaching, which helped

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

me in my the last stage of my professional and legal education while I was practicing.

I developed a particular love of clinical legal education, which I advocate because that's something I missed out on in my professional training and I really wished I'd had it once I discovered it and learned how to do it.

Particularly good because it encourages the law student to develop a reflective practice, thinking about how they are responding to situations, particularly situations of stress and difficulty and challenge and how their inner experience involves emotions necessarily. Instead of repressing those emotions, to recognize them and understand how they are probably influencing, impacting on their thinking processes so that the student can minimize cognitive distortions and be able to stay focused despite having those emotions, however strong they are.

So that was the benefit of reflective practice, which is very much part of clinical legal education. And it's really interesting because I, I discovered clinical legal education as a contrast to my own legal education, which was very doctrinal and teacher student duology, if you like, where there was this big difference and law is just a matter of learning a whole lot of stuff that you need to remember and replicate and reproduce for the exam purposes. And then apparently you're a lawyer or you get in our system 12 months of an articulated clerkship where you learn to practice and that's supposed to qualify you fully as a lawyer to do anything. And that was so not the case for not only me, and I was a mature age student, so I had a certain advantage, but also for many other students and I could understand why so many young lawyers were stressed and distressed and many dropped out. And I continued to see that in my practices over the coming decades.

John: Yeah, well, it's one of the things and, you know, my podcast listeners will have heard me say this before, but at its core, I think of lawyering as a caregiving profession, which is not a framing that you hear very often, but we're mostly not trained as caregivers. And certainly in that doctrinal

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

training sense of it, we haven't been trained as caregivers. And I think to your point, it's one of the advantages of a more clinical approach is that you are engaged in the giving of care for legal clients from the start and it does give you some experience and the opportunity to reflect on that.

Let me back up, just to sort of take it from the top because even the title of your book, right, which is *Vicarious Trauma and Burnout in Law*, there's two terms in there and then there's some other concepts that come up. I think you mentioned stress already. What is sort of the clinical or, you know, the trauma theory definition of trauma and what are the places where it manifests in the experience of a legal practitioner?

Colin: Okay, well, that's a simple question. I'm sure it's a big answer. So let me try and reduce it right down. We're talking about psychological trauma here, although the original meaning of the word was physical trauma, but it became recognized that people experience psychological trauma in a similar way to how they experience physical trauma. It can be debilitating, it can be really harmful, and it can change a person's entire wellbeing. And it comes from the experience of stress to the point of distress, fear, a risk, a sense of imminent serious harm or imminent death.

And it can be experienced directly as in you just escape like an assault or a car accident where you survive and or it can be experienced indirectly where you watch something happen to somebody else. You see somebody killed, even watching something on a film or reading a description in a statement of evidence, for example, about what a person experienced. These experiences can be traumatic, even though they're not a direct risk to the person experiencing them, they can still have a similar psychological effect and harm as if the risk was real to that person.

So, that's our indirect trauma. Secondary trauma is now recognized by the DSM, that didn't happen until 1980, I think, after the experiences of psychological counselors who were working with Vietnam veterans. Those

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

counselors were experiencing serious symptoms, but they were not allowed to be diagnosed or treated or compensated for PTSD because they weren't ever at harm, but they were showing the same symptoms as their clients.

So eventually the DSM got around to recognizing it. Interestingly, the ICC, the European equivalent has not yet got around to formally recognizing secondary acquisition or secondary cause of PTSD, but they just pretend that they have done that officially and they continue to work with researchers and practitioners as if it's all okay here, we don't need to formally recognize it. That's interesting administratively. But anyway, symptoms are really diverse and that's that's sort of made it difficult to define things like PTSD secondarily or directly acquired, but the symptoms are really diverse and there's many of them and they're listed in the in the DSM and many other journals and they're not hard to find.

The conditions, let's stay focused on law so I don't get too distracted. The book talks about burnout as you mentioned, John. Burnout is not a direct consequence of trauma exposure, but it is so common in the legal profession that we know that it increases a lawyer's vulnerability to trauma exposure and makes them much more susceptible to developing symptoms from their work, that's trauma symptoms from their work, simply by having too much work.

And so we can manage the risk of trauma and its symptoms and conditions simply by making sure that lawyers are not overstressed, overstretched, that they have their breaks, that they don't work weekends, that the workload is managed, and that the workload is diverse and not of one single direction or one particular type, especially if that work involves traumatized clients as in criminal law or domestic violence or child abuse and that sort of work. Yeah.

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

John: Yeah, I mean, I sorry, there's so many different situations where I could see it coming up. I mean, certainly there are experiences where lots of situations where trauma comes up and I guess this idea and one of the sections of your book is around trauma informed lawyering. And as I take it, there are multiple benefits to trauma informed lawyering. Some of them to the people doing the lawyering and some of them to the people who are being sort of lawyered to or lawyered for. And I want to get back to this notion of workload and capacity and sort of things that legal organizations can do. So I'm making a mental note for myself to come back to that.

But for now, maybe help me unpack a little bit. Let's start with what legal practitioners can do when they suspect they are working with clients who are experiencing trauma or PTSD or other sort of these highly emotional, highly effective situations in their own lives. And there's there's the obvious ones that you mentioned, which is domestic violence or maybe violence victims, criminal situations and things like that. But what are maybe the hallmarks that a practitioner can be on the lookout for that might make them think, oh, this person is not just nervous about working with a lawyer, is not just uncomfortable, they actually are having something of a trauma reaction or trauma response, I guess.

Colin: Well, there are many potential signs and indicators and they're not necessarily consistent and they're not necessarily inevitable. But experienced lawyers learn this by practice, of course, and there's no way that you can shortcut it other than to do it. But to sit in and watch, that's what the value of clinical legal education, you can watch it happening with your supervising lawyer working with a distressed client. The more often you do that, the better, the faster you develop and you pick up and remember different signs and symptoms. But people respond to trauma in different ways, obviously.

And they also repress or try to repress their symptoms in different ways. And when a distressed client is sitting in front of a lawyer, that adds

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

additional stress on top of the distress of their traumatic experience. Say they're they're a survivor of domestic violence, for example, sitting in front of a lawyer and they feel it's really important to persuade this lawyer about the horrible situation that they went through. So they want to be accurate, but they want to also be credible. They want to be believed and these challenges are add stress upon stress and it can cause a client to respond in a lot of physical ways. They might sweat, they might shake, they might look florid, they might look very, very anxious and nervous. And some lawyers can misconstrue that as this client is dishonest, they're trying to con me in some way.

And it's really important that lawyers don't prejudge clients based on what they observe, how the client's demeanor is. There's a lot of cliches about what certain physical appearances and mannerisms mean, whether a person's telling the truth or not. And they're not necessarily true. There's a lot of research on that now saying that what we used to believe ain't necessarily so. You can't make presumptions. You just have to take it slow, which is always a problem when we're in a profession that's often based on time billing.

But especially with traumatized clients or clients who may have been traumatized, to take it slow and focus on the client's needs, not your needs as a lawyer, what you need to prove the case or to open a file or to meet your billing targets. You have to focus on the client, work out what this client needs, what how I can meet those needs in this moment here and now, but realize you can't solve their problems here and now. This is usually the beginning of a long process if it's the first meeting, of course. But the most important is you need to help the client establish trust and to relax so that they can focus on answering the question as clearly and concisely as possible.

And that's tricky and it depends on you, the lawyer, your ability to model calmness and that modeling calmness can really help a distressed client to

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

feel calm as well and to allay their anxieties. You have to be sincere and you have to be candid and relate as person to person a lot more than you think you need to relate as lawyer to client. That lawyer to client thing is a problem in the legal profession because it refers to having needing to display a professional identity. You don't need a professional identity in the situations when you're working with a traumatized client. You need a personal identity.

You need to be a person that the client can trust, that the client can talk to and open up and tell you things that they might be afraid of telling someone with a professional identity, which is, you know, a scary thing and has a whole lot of implications and potential risk factors around, not least of which is, what is this lawyer going to charge me at the end of the day and will I have to sell my car in order to pay the first bill. This is not always a problem, but it is a problem in too many cases and it really gets in the way of legal process and providing people with good legal help.

John: Yeah, well, and, you know, as you're speaking, I can hear just echoes of so many either conversations I've had or maybe overheard or whatever where I don't know that it's common, but it's not uncommon for there to be something of an almost adversarial relationship between lawyer and client. And I don't mean literally adversarial, but lawyers often complain that, oh, this client just went on and on, they can't get to the point or they are needy or, you know, I don't have time for this.

And as you sort of alluded to, especially for those that are hourly billers, there's often sort of a flippant response that comes out that says, well, they'll be a little less needy when they get their first bill and see how much my hourly rate is for them to be needing to. And I'm a lawyer, not a therapist, or I'm a lawyer, not a mental health professional. What I hear you saying is that it's not that stark a choice and that if you are truly engaged in the act of lawyering, which as I try to frame it is again an act of caregiving, and it doesn't mean that you have to go all the way down.

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

You're not there to solve all of the root causes of the problems of the client, but you have to at least be human enough, be present enough and create the capacity and the time and the space to be able to relate with the client and make sure that they relate to you.

And you know, again, the thing you said about and the way I sometimes frame it with my lawyer clients is you have to realize that even for a non-traumatized client, for them to get over whatever they have about hiring a lawyer because that is in itself an inherently stressful and complicated process, then their underlying problem has to be pretty bad, right? Because they have to, it has to push them up over that hump of, oh my gosh, I guess I really do need help for this.

Colin: Yeah, exactly right. Of course, but when trauma informed practices started to develop in the human service professions, and I agree with you, law is definitely a human service profession. It focused on the client, of course, and not retraumatizing the client and there's ways of questioning to facilitate a good interview without retraumatizing the client and getting the information that the lawyer needed. And it only later became extended to say, well, how we also need to protect the lawyer in this interaction.

And that's when we started to talk about secondary trauma and vicarious trauma. But coming back to the points of this particular discussion, I think I mentioned in the book, not enough, but there is some hints in there about strategies that lawyers can develop. And everyone develops their own style, of course, in an interview and you and you develop it by doing it and doing it and refining it. But some strategies that I, I developed, I suggest in the book, I think was when a client is going on and on as you suggest, that's a venting process and that's therapeutic and it can be useful for them psychologically. And if the lawyer has time and is not time billing, it to allow that to happen to an extent is a good thing because that helps the client to relax. In relaxing, they develop trust and in trust that comes more candid information and more sincerity and there is distracting information that's not

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

relevant, but also it opens the door to useful, legally relevant information that the lawyer obviously is honed to identify.

But if it goes on too long and it's up to each lawyer to decide when too long is long enough, it's open to interrupt the client and to say something like, can I just stop you there? It's really interesting about this. However, can I just take you back to where you spoke about da and direct the client like that in a respectful way that really tells the client, hey, this lawyer is actually listening to me. Okay, so that's an important bit, is it okay? And what was I saying there? And they're immediately engaged and they start to think in a similar way to what the lawyer is thinking, they start to detect what the lawyer needs to know, and that can help the interview process.

John: Yeah, I'm reminded of a conversation I had many years ago now. It was before the pandemic, which is of course all now a blur, but there's an attorney in Arizona here in the States, Billy Tarascio, and she has a family law practice and I know at one point she told me, and I guess the point that I'm making and the thing that Billy understood is, right, family law is one of the situations where you tend to have clients that are that are at least experiencing high levels of stress and some of them probably into the realm of trauma. And she has hired intake people who are not lawyers, but have the specific job of basically letting clients tell their stories.

And at least at the time, I don't know if this is still true, but her call to action or her mandate for her intake team was, you don't have a time limit to the conversation that you're having. And obviously, they had to be able to manage the conversation and not let it get completely out of control. But she, while she was still billing hourly, and again, I don't know if she is today or not, but was able to sort of do some labor arbitrage in order to create that client experience, get the information, build some trust, at least with the organization, and then do the sort of warmer handoff to whichever lawyer in the firm was going to go on and handle that.

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

So, there are multiple ways, I guess, to get at the meeting the client's needs. And I think ideally we would do it as a lawyer, but as you said, the economics and the pressure of law practice don't always make that easy to do. And so there's there's ways to get at it outside of just doing it directly.

Colin: Yeah, I think that sounds like a really good system. It's similar to clinical legal practice. One of the clinics that I was in had two or three students interview the client without time limit, basically, and they were able to get enough data, enough information without any time pressure. And then they would talk to the lawyer to get supervision and then go back and talk about legal options.

John: And I want to come back to the either vicarious or secondary, but trauma of legal practitioners themselves. But before I do, I'd love to just have you reflect on where, you know, obviously clients are one source of people that we might come into contact with who are experiencing trauma. What are some others? And I'm thinking witnesses, I'm thinking maybe sometimes opposing parties, opposing counsel, maybe even sometimes court staff and judges and others that are that are seeing these sort of high stress situations on a regular basis.

Colin: Yes, John, that's true. There's a growing body of research on the stress that judges experience and how they manage or don't manage that stress in their work. There's been some very recent empirical studies published recently in Australia, which are really valuable adding to the discourse. But as to other court staff, I don't think there's been anywhere near enough research, but I'm sure that it's warranted and we should be looking at other staff as well around the court.

But in terms of legal practice, which is the core of my focus in my research, there's always contexts, of course, and personality and personal situations are one of those things because each one of us has a unique genetic and epigenetic mix of circumstances, vulnerabilities and resilience that impact

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

whether or not we're going to be vulnerable in a particular situation or particular professional circumstance. So there's that to complicate the research, of course, but the research acknowledges that.

There's still some similarities in workplace risks for lawyers that legal systems can do a lot better in addressing because so far, lawyers are faced with systems that are not trauma informed, that are relatively reckless and careless about the impacts of trauma, stress and other forms of stress on lawyers. And similarly, employers are not, generally speaking, trauma informed, legal employers are reluctant to adopt trauma informed systems. And in Australia, we've had a recent case a couple of years ago where a government employee, a prosecutor, successfully sued the government for failing to protect her in her work as in a child abuse section where she was prosecutor. And she won that case.

It went all the way to the High Court on appeal and the High Court found in her favor against the government, which was really a valuable case. I mentioned in my book. In terms of the experiences or the conditions that the symptoms of trauma can lead to among lawyers, as I've already mentioned burnout, of course, not directly a result of trauma, but certainly can increase a lawyer's vulnerability to trauma symptoms and conditions. But there's also this concept of compassion fatigue where lawyers, particularly working with children or in domestic violence cases, just become overwhelmed with the emotionality, emotional load that they feel they are carrying.

Compassion fatigue is not an accurate word, unfortunately, although I think we're stuck with it. A better description is emotional distress fatigue because it's it's not compassion that they are exhausted from, it's the emotional load and that's a different thing. Compassion is an active thing that you decide to have in an informing your work and it's something that you do and we use effectively. But the emotional load that you carry is how

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

much you are allowing the suffering of other people to weigh down on you and to distract you and to exhaust you.

And with good self-care practices, we can develop resilience so that we are not compressed, if you like, with that emotional load and we can resist what is known as compassion fatigue and that's one condition that is often discussed in the discourse and in therapy situations. Another one is secondary trauma stress, which is I think analogous to PTSD as it is commonly understood. PTSD became well known and researched and understood following Vietnam that I mentioned before, the Vietnam War or as the Vietnamese call it, the American War. And the thousands and thousands of soldier survivors who came back to America from that and then received counseling and PTSD became very well understood as a common symptom of for those soldiers.

And then as I mentioned before, the counselors suffered similar symptoms and that was eventually recognized as secondarily acquired PTSD. And now we talk about secondary trauma stress. That's that's that condition, but it has the same large set of symptoms. I think 14 or 15 are recognized in the PTSD in the latest DSM, although there are many others as well, I think. And a fourth condition, we've mentioned burnout, compassion fatigue or emotional distress fatigue, secondary trauma stress. And another one is vicarious trauma, which was the title of my book. And we use this my publishers insisted we use that in the title because that's what everyone talks about.

But my understanding of vicarious trauma is not so much a pathological condition, although it can happen with STS with secondary trauma stress, but vicarious trauma is better understood most recently as personality shift, like a change in the way we see ourselves, the way we see the world and our place in it. And it's not clinical in the sense that you can treat it or you can get therapy for it. It's like a new way of seeing everything and there's

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

no going back in the sense. You're not necessarily suffering, you just see things differently and there's no return.

That's vicarious trauma. It's not necessarily bad. Some might say that your eyes are opened and you have a better understanding and it's possible that, you know, you can have a post traumatic growth, post traumatic resilience experience from that vicarious trauma experience so that you are more able to be effective in your work, that you can be more constructive in how you relate to people. You can listen and hear people more effectively so that you can help them understand their situation and to make better decisions.

John: Yeah, it's interesting. You see it, right? And lawyers and other folks that are dealing with the legal aid population, which isn't by definition experiencing trauma, but they are more likely, I think, to be involved in traumatic situations than your typical corporate business client. And that's not to minimize that corporate business clients can't also experience trauma. It obviously comes across the way. But there is a certain, I guess the colloquial term you'd hear is like an old salt maybe or and it's not necessarily that they have become hardened to the situation. They, to your point, it's almost a heightened sense for some people where they understand it better and therefore maybe are better able to equip with it, to deal with traumatic situations themselves and behave in healthier ways or more sustainable ways at least.

Colin: I think that's true. The book talks about post traumatic growth and vicarious post traumatic growth as well, which is, you know, many people can survive traumatic experiences and they might think that they understand the world better from that traumatic experience. And similarly in the professions, you know, it can happen vicariously. We can develop a better understanding of the world and our place in it from engaging with and processing and reflecting upon the experiences of others in our professional work.

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

John: So, let me flip to the other side of your book title though, the burnout piece. What are some things that, again, my audience is probably primarily small law firm owners, but they might also be lawyers or folks working in those firms. But let's start with the individual lawyers. Like how might I distinguish between, and I don't want to minimize it with the term I'm going to use, but let's call it garden variety stress, which is there is just stress around the profession, right? There's things we need to do that aren't always fun and aren't always easy and it takes a certain amount of effort that can be exhausting and overwhelming at times.

But generally that's recoverable as opposed to getting more into a trauma reaction or as you said, a sort of a post trauma understanding of things where you really do see your worldview or you notice your worldview changing, your personality becoming different or others are reflecting to you that personality is different. What other things might an individual practitioner notice or hear if they're into a situation where they maybe need to be paying some attention?

Colin: Well, the individual lawyer, we're talking about the lawyer themselves, what they might notice about themselves. So, I think a number of things and there's nothing guaranteed, but a common thing might be energy levels. Your energy for the job. And this is also similar with compassion fatigue, but it's not necessarily compassion fatigue, it might be a type of job where you're not necessarily relating to traumatized individuals, but you're still experiencing this drop in energy where you used to be able to work quite okay with a 12 or 14 hour day, say 5 days a week, maybe 6 even.

And you're doing that for say 18 months and then you have one or two complicated cases that extend your abilities a bit even further and your energy starts to drop. That's a sign. It's not a guaranteed sign, but it's a sign. Another thing is a sense of feeling negative about things, having feeling a bit grumpy, snapping at your partner, for example, or at your kids

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

or noticing that you're having you have less tolerance of things that you would ignore and move on from now you're biting or now you're feeling critical or even aggressive towards situations or towards people that you normally would not or that you did not in the past. They're psychological effects. They can be psychological effects of burnout. And if you have enough ability to reflect on your situation, you might think about, oh, you know, what's going on here? How many hours am I working?

What's my workload like? Is it affecting me? It could very well be a situation of burnout, which is a product of having too much work on, particularly of a similar type of case. The symptoms can even be physical. You know, you might feel loss of appetite, lacking in energy, physical energy. You can't walk to work anymore, so you end up driving where you used to walk. You might have a loss of libido. You might have an increased tendency to reach for a drink, have a drink after work every day instead of only on Fridays or every second day or whatever.

These can also be symptoms of burnout. And they're very easily overlooked because they don't necessarily get in the way of you achieving your billing targets or whatever you however you measure your work, but they can be symptomatic and a good cause for looking inwards and deciding what can I change here to improve this situation?

John: I mean, so many of the things you just described are almost an assumed part of lawyer culture. And maybe that just goes to show sort of how widespread this challenge is that the reaching for the drink, the having relationship problems. And of course, it's something of a vicious cycle too, where once you do some of those things, your support network starts to erode, your own resilience, your coping mechanisms, etc. get worn away and it, I'm sure that it plays a role in what in the process world we would call a negative reinforcing feedback loop.

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

Colin: There are things that employers can do and supervisors can do, especially in small firms. It's sometimes harder in larger firms because there's the firm culture that has its own momentum that is supposed to be preserved, the firm's identity, for example, and their reputation, you know. But in smaller firms, it can be much more adaptable and much more flexible and can respond in ways that are much more helpful to their employed lawyers.

Some specific things that managers and employers and supervisors can do is to make sure that their lawyers have enough breaks, that they are not oppressed by the billing target or whatever management system the firm has decided to adopt. I argue strongly against billing targets. I've published on that. There's a lot of research on that billing targets can be really dangerous to many lawyers, not every lawyer, but to enough lawyers to make them a bad policy decision, you know. There's got to be better ways for the firm to survive and to reach its profitability.

John: Well, and that's part of where I help. So I'm you're preaching to the choir on that as someone who never enjoyed having billable targets myself, I'm quite passionate about finding alternative ways to manage very successful and profitable law practices without needing to track your life in six minute increments.

Colin: I totally agree with you there, John.

John: You're kind of bumping up against something that I'm going to call out explicitly, which is we started this conversation talking about trauma and secondary trauma that can come from the dealing with clients. But I think a big part of what you're describing is that the legal workplace can inflict levels of stress that approach or even reach the levels of trauma for some people that cause burnout, that cause these personality changes, emotional challenges, unhealthy coping mechanisms and so on.

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

And you started down this path and I'll let you continue, but what are things and I do tend to agree with you with respect to big law firms and it's partly why I choose to work with smaller firms is that I think there's more opportunity to affect the culture and to see cultural change and process change and other things. But I guess maybe help continue your line of thinking around the two sides of the coin of what are the unhealthy practices like billable hour targets that smaller firms can avoid and then what are maybe some intentional practices they can put in place that will help mitigate, certainly their team members and hopefully probably themselves from getting to those burnout levels of stress and trauma.

Colin: Okay, okay, that's that opens big door. Let's talk about three common conditions, John, in legal practice. And these are in large firms, but also in small firms and also in government and community legal services. Many lawyers experience, we've mentioned burnout, but there is a bullying phenomenon that seems to occur in the legal profession more than many of the other human services. There's a lot of bullying that goes on. Harassment is a form of it, including sexual harassment.

John: Yeah, I was going to say, so I was going to ask you to define bullying, but that it's it's interesting to me that you include harassment under the bullying topic.

Colin: Well in the book I've separated them.

John: It makes sense.

Colin: Yeah, well it does. It's it's a form of it, but I've referred to them discreetly in the book in three areas is bullying, harassment, mostly sexual harassment, and discrimination in terms of allocation of work or promotions, things like that. And they're discussed separately in the book and there's discreet research on all three of them, but there's obvious overlaps between them all. And quite a few, a growing number of legal

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

cases on compensation against employers for enabling or allowing these three experiences to happen in their legal practice.

And I'm thinking, well, if it comes to that, then the courts will force on employers eventually better practice, you know, if they don't realize what's going on. But one of the problems obviously is that employers want to protect their high earners. And so you get senior lawyers who are really keep the firm going in some small practices. And the employer who might not be the same person as the high earner, doesn't want to upset that person because they might lose them to another firm and so they just try to play down any suggestion that they might be harassing somebody or bullying somebody else. It's quite difficult, you know, but it needs to be addressed. And one of the things I talk about ways of managing those three types of situations in a legal practice is to simply to adopt a trauma informed system which covers the experience of secondary trauma by lawyers working with the clients, but it also includes management practices that don't increase the risk of those lawyers developing symptoms from the trauma in their work.

There are ways and I talk about several models in the book of adopting trauma informed systems in an organization which employers can adopt and it all begins with consultation, of course, and not something you just want to impose on the top of a bunch of employed lawyers, but you start talking with them individually about what their concerns are. And if you've got enough trust between employer and employee, then the consultation process can be really valuable in just in itself. You can identify where the trouble points are and develop strategies for addressing those trouble points even if you decide not to adopt an overall trauma informed management system.

John: Yeah, I mean it occurs to me and specifically with the concept of bullying and I won't deny that there are certainly lawyers in the world who engage in bullying behavior. I guess I won't, I won't name call that they are

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

bullies, but they engage in bullying behavior. I certainly have witnessed where there are people that are engaged in behavior that feels like bullying to the person that's on the receiving end of it that isn't intended that way. And it's something about maybe the lack of good models in the profession over the last, you know, century or so where, well, that's how I learned. I was thrown into the deep end and I had to sink or swim or figure things out for myself and all the rest where it worked well enough for me, so I guess that's what I'll do to this young new associate, young lawyer, whatever the role might be.

Colin: Exactly, that is a big problem, John, that's it really is a problem. It's the common rationale or not to some in some cases excuse for bullies and people who say, well, you know, this is just the way things are, you just got to tough up. It's a tough world up there and you should thank me for giving you a hard time because that's going to help you develop the resilience you're going to need out there in legal practice. Sometimes you get that attitude and it has even risen in some cases with harassment cases. You know, I was harassed at work and these things happen, people are under stress.

But coming to your earlier point on different definitions of what amounts to bullying, what amounts to discrimination or even harassment is sometimes a personal decision and some people might genuinely believe that because they experienced harsh working conditions and harsh communications when they were a younger lawyer that they genuinely believe that this is okay, this is what you do in law without noticing that, oh, it's a different world now, world's change, communities change and what was okay 10 years ago is not necessarily okay now.

John: Right. There are so many things that are just kind of part of the experience of becoming a lawyer that I think of as a version of trial by ordeal. That starts with the Socratic method, which some people in law school are fine with, but some people have very stressed reactions to being

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

called upon to work socratically in a classroom situation. And then, you know, law school exams and finals and papers, which again, I'm not saying that we need to replace them, but they are part of this overall culture that you have to do the work to get over these hurdles and then of course the bar exam is the big one for a lot of people. And I'll put in a quick plug for, you know, here in Oregon, we now have two different pathways for becoming a member of the Oregon bar that don't involve a bar exam that are more of a supervised practice pathway.

We're starting to address some of those things. All of them are examples of what's part of lawyer culture. And so working a new job and being handed a project to go work on with very little instruction, very little background, no exemplars, whatever, that's another common occurrence that maybe is suboptimal, I guess, in its impact. You know, certainly it's suboptimal in terms of getting a result for the client, but it's suboptimal as a means of lawyer training as well.

Colin: Yeah. Yeah, I'm glad you mentioned that because legal education is so important and I have a chapter on that in the book. And it is where, as we know, a lot of problems, a lot of lawyers problems begin in law school, how they begin to develop what they think is their professional identity is really in many cases has pathological elements to it and it's a product of the culture in many law schools and it involves the Socratic method as you say, there's a lot of criticism about the Socratic method as a form of teaching for the last few decades, but as you say, some people are fine with it and other people really suffer with it.

But that aside, I think there are many things that a law school can do to adopt trauma theory to improve the situation and the learning capacity of their students, which is what it's all about, learning and development capacity of their students. I think it begins right at the very beginning. First year is most important, most important. And in Australia here, we have a annual, almost annual conference on first year legal education, dedicated

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

researchers and practitioners and teachers on how to teach first year law students better so that they become more effective and productive in their studying and development practice and become better lawyers at the end of the day. A lot of things happen in first year. But we know that the Dean's welcome at the beginning of first year is a typical thing that happens in every law school, I think.

And the Dean usually welcomes law students, congratulate them for getting in and most students are feeling really optimistic and very positive, very proud of themselves and they don't want to hear anything negative. But this is the time when the Dean can say a caution, be aware, you know, you are entering a dangerous profession. The Dean should repeat that. You are entering a dangerous profession. You need to now develop your habits of self-care, develop a reflective practice and develop and maintain good friends, your connections with people and sustain them throughout law school and into practice. These are the three things that I think that the Dean can say to really help many students who will be listening. They will listen to the Dean whereas they might not listen to subsequent teachers and other exhortations from different people.

John: Well, but it's another opportunity to set the culture of the organization overall, right? Where I'm a second career lawyer, so I was a little bit older when I went to law school, which means that I went to law school a little bit more recently than other folks my age. But even then, and I think maybe still to some extent, there's a perception that the job of the law school in your first year is to sort of deprogram your brain from things you thought you know in order to be able to reprogram it to think like a lawyer. I don't love that framing. And I know of law professors and law schools that are doing this already.

So it's not like it's unique to me. But it's not how do we take something away from you so that we could replace it with your how to be a lawyer. It's how do we add how to be a lawyer to what you already bring to this

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

equation from your life experience and educational background and everything else.

Colin: Yes, I totally agree. And thinking like a lawyer is the problem. The way traditionally we have done it, I think in most, in many law schools, I won't say most and I know there's good changes happening in many law schools, but thinking like a lawyer is aligned with the way of teaching and the way of developing students into, as you say, taking stuff away and leaving just the bits that are consistent with thinking like a lawyer. The problem with thinking like a lawyer is that we don't teach it strategically. We allow students, some students at least, to adopt it as part of their professional identity.

So that they then decide, I am a lawyer now with a capital L, even though they're still a law student, but they think that it is best practice to do it all the time and to think like a lawyer and it extends into their personal relationships and communications with partners and friends and kids and everybody. And other people look at them and say, what WTF, this person is different and I don't like what they've become. And also the student themselves can see what's happening but they don't admit it to themselves. And this is behind in many cases, the reason for the high rates of depression, sadness and depression and dissatisfaction with themselves as law students. And we know this, every time we measure mental health in law schools, we can see that they are way down and their conditions, they develop depression as they go through law school. So something's happening in law school that's causing that to happen.

And I think the concept of thinking like a lawyer has a big role to play in pushing that depressive effect. The obvious strategy, most obvious strategy is to never talk about it without setting limits on it and saying you only do this, you only think like this in legal situations. It's not for general application, it's not for your personality. Don't change your personality, you are wonderful as you are. But your professional identity requires a specific

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

way of thinking that can help a client, for example, who's distressed to stay on point and to answer the question and to compassionately bring them back to relevant situations. But don't do that to your boyfriend, girlfriend, don't talk to your parents like that or to your siblings or your friends, you will lose your friends. They will not like you anymore and you will lose yourself. You risk developing depression because you won't like that person as a person. Sure, as a lawyer, fine, but there's a limit.

John: It's interesting to me, going back to the beginning of our conversation where you talked about one of the signs of experiencing trauma is personality change and what you're describing is personality change as a result of the pressures of the legal education or, you know, and I think it can happen at different points of legal practice. And it's almost for some people, inherently traumatic to undergo this process. But I think you and I agree, it doesn't have to.

Colin: No, that's right. Yeah.

John: We should draw to a close, but again, my world is mostly around process improvement and workflow improvement, but there's some interesting overlapping concepts that come into play. One of them is the notion of capacity. And I am constantly trying to work with my client law firms to understand what their actual capacity for doing legal work is. And there's dynamics of capacity because part of capacity is volume and time, but also part of capacity is different stress levels or different knowledge sets around different practice areas and things like that. And it sounds to me like the cautions and the sort of advice that I have around managing capacity at an organizational level applies equally well to the individuals within that organization trying to manage their personal capacity.

Colin: Absolutely. And in terms of management, I think it's a primary responsibility of supervisors to get to know their lawyers at a personal level and that includes understanding their capacity. Everyone has different

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

capacities as you say and to avoid loading onto lawyers identical workloads as if, you know, you should be able to handle this, you know, the other two lawyers can do it, why can't you? Capacity is not just a quantity thing, it's also a quality thing, you know. So you might have a lawyer who can't handle too many cases, but the cases they do handle, they do so well, you know, they really end up with a very, very happy client who comes back again and again.

Hopefully not in a criminal defense situation, but yeah. Yes, right. You get what I mean and they don't miss important things. Their practice is high quality whereas others might be able to churn through the work and they skip this bit and they don't think that's important enough and they forget something and they overlook to ask an important question. So the compromise of quality, compromising getting high quantity might be quality. So there's that issue. But that's up to a supervisor to understand and recognize the differences in their lawyers and to work with them to develop both.

But in terms of individual lawyers themselves knowing their capacity, well, this very much is self-awareness is what we're talking about. And that self-awareness can only be developed by having a reflective practice.

Reflective practice is what I mentioned earlier in our discussion, which you can begin to develop as law students during clinical practice where supervisors encourage law students to reflect on their feelings and their thinking about the client's situation and about the client's experience and about the legal impact moving forward and how we're going to give the advice about this, whether it's good or bad or not only that, but to also reflect inwards about how they're feeling about these situations with the clients and with the law and the legal impact and all of that.

So it begins there and it never ends, you know, we are never the same person. Every day we're a different person in this sense and we have a different level of self-awareness and we like to think that it's improving as

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

we build on the benefits of our reflective practice from the day before and reflect on everything that happens. I don't mean to say we necessarily take time out, although that is a good system. In the olden days, we would have a prayer session or we might meditate, for example, and I think that's really healthy psychologically, especially for lawyers under stress.

John: It's interesting. So one of the practices that I encourage my client firms to use is a daily standup or a daily huddle, right? Where there's a communion of the team to discuss the work of the day. And I've learned from some of my clients and a reckoning with capacity is often a part of that, but a lot of firms will initially take that to mean that quantitative capacity. How many free blocks do I have in my calendar in order to accomplish certain tasks for the day. But I have one client in particular, Richard Hoare and the Hoare Law firm in Bath, England or outside of Bath, England, and they have taken that daily huddle and introduced a subjective capacity component to it.

And so in addition to a discussion about, yeah, these are the blocks of time I have, they really do get to, how am I feeling today? And they even are sort of tracking that inside of their systems so that other team members have a kind of a durable record of, oh, Rich is a bit off today because he's got a sick kid or something going on or is distracted by the, you know, here in America, we're distracted by the politics of things all the time. Other countries too, but it's particularly acute here at the moment.

And I think getting that subjective piece into it and understanding, again, as you said at the top of the conversation, there's so much of lawyering that requires emotional reserve, emotional energy, emotional attention and really taking the time personally to become attuned to that and then creating organizationally the culture and the psychological safety to be able to have conversations around it. I really think is essential to the modern practice of law. It's not something that you can change overnight. It's something you have to work at.

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

Colin: Yes. Oh, I totally agree, John. That sounds inspiring that model of having a daily huddle, especially if you're able to incorporate both the internal qualitative experiences of lawyers as well as the external productivity levels and earning capacities is.

John: Yeah, well. This is a truly enlightened firm, they're one of my favorite clients. Among other things, they have a true four day work week. Oh wow. And, you know, they're not working four tens, they're working four, you know, standard hour days and they are wildly successful as a law practice. No surprise, they've jumped away from hourly billing in order to do that. So they're doing value pricing and they're able to achieve a better balance. So, hello Rich, you're welcome for the plug. I know he's a listener.

Well, Dr. James, thank you so much for spending time with me, for talking about it. I want to enthusiastically plug your book. I really hope and before we got on the actual recording, you sort of expressed your hope that it finds a wide audience and that it finds an audience in law schools, which we talked about, that it finds an audience among law firm owners and practitioners and managers, maybe in bigger practices, law librarians, hopefully the courts. I mean, I would love to get a copy of it to, one of the nice things about being here in Oregon is I know some of the Supreme Court justices, if we passed each other on the street, we would stop and say hello and I would, I would love to get copies of your book to them because I think that they would find a lot from it and to the extent that they shape the profession, I think it's important.

Colin: Excellent. Thanks very much, John.

John: Okay, we covered a lot of information in that conversation, but if you're in any kind of leadership role in a law firm or other institution, I really encourage you to pick up a copy of Dr. James's book. It's obviously not light reading, but you don't have to consume it cover to cover. He's organized it really well to serve as a resource and a reference tool that can

## **Ep #71: How Trauma Informed Lawyering Helps Avoid Burnout with Dr. Colin James**

help you work through specific issues in your organization. I'll have all the links you need in the show notes.

Also, a reminder, if you've listened this far, you can probably claim a CLE credit for this episode. Instructions for that are in the show notes as well and also on this episode's page on my website at [agileattorney.com/71](https://agileattorney.com/71). As always, this podcast gets production support from the wonderful team at Digital Freedom Productions and our theme music is Hello by Lunara. Thanks for listening and I'll catch you again next week.

That's it for this week. As always, this podcast gets production support from the fantastic team at Digital Freedom Productions. And our theme music is Hello by Lunara. Thanks for listening, and I'll catch you next week.