MANAGING STRESS, GRIEF, AND MENTAL HEALTH CHALLENGES IN THE LEGAL PROFESSION; NOT YOUR USUAL LAW REVIEW ARTICLE

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INTRODUCTION

The statistics are shocking and the stories are worse. Lawyers report almost three times the rate of depression and almost twice the rate of substance abuse as other Americans.1 Law ranks among the top five careers for suicide.2 Although entering students rank better than students in other fields with respect to mental health and substance abuse, law graduates leave with higher rates of problems.3 Of equal concern are the numbers of current and future lawyers who, when surrounded by signals of distress, look away or fail to look at all. For example, one third of law students have reported that if they saw a classmate suffering, they would be very or somewhat likely to do nothing.4 And to state the obvious, the pandemic has made all these problems worse. New research suggests that about half of Americans believe that challenges posed by COVID-19 have adversely affected their mental health; a third of Americans are showing signs of clinical anxiety or depression, and rates of drug and alcohol abuse are soaring.5

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4. Organ et al., supra note 3, at 143.
Stories of lawyer impairment are similarly disturbing because they put a human face on those statistics. One story that particularly affected me, and thousands of others, came to light in a 2017 New York Times article, now a book, Smacked.6 The author, Eilene Zimmerman, movingly described the death of her ex-husband, Peter, from an infection related to drug abuse. Peter was a partner at a leading Silicon Valley law firm who had exhibited signs of serious ill health and substance abuse that were missed or ignored by his colleagues. The Stanford Center on the Legal Profession subsequently invited Eilene to join a dialogue with Patrick Krill, one of the nation’s leading experts on substance abuse in the profession, and Andrew Benjamin, who has done pathbreaking research on mental health among law students.7

Before a large and stunned audience, Eilene described a scene from Peter’s memorial service. When a young associate from his firm “stood up to speak of their friendship . . . [q]uite a few of the lawyers attending the service were bent over their phones, reading and tapping out emails. Their friend and colleague was dead, and yet they couldn’t stop working long enough to listen to what was being said about him.”8

Since that occasion, I have registered the need to write more about wellness for lawyers and have done so both in law review articles and in my casebooks Legal Ethics and Leadership for Lawyers. All of these publications review research on the scope and causes of the challenges and the sources of meaning and happiness that can insulate those individuals from distress.9 I won’t reiterate all of those research findings here. Rather, this Article provides a brief updated overview of the problem and essential responses. It proceeds in three parts. Part I offers a brief overview of recent research on the scope of mental health challenges in the legal profession and


7. Patrick Krill is the founder of a behavioral-health consulting firm for the legal profession and the former director of the Hazelden Betty Ford Foundation’s treatment program for addicted lawyers, judges, and law students. Andrew Benjamin is a law and psychology professor at the University of Washington. A recording of the program is available, and it makes for an unsettling experience. See Stanford L. Sch., The Elephant in the Room: The Legal Profession, Mental Health, and Substance Abuse, YOUTUBE (Feb. 16, 2018), https://www.youtube.com/watch?v=sJngsXBIQeQ [https://perma.cc/3FWD-CSV3].


its underlying causes. Part II suggests some institutional strategies for change. Part III provides some strategies for individuals who are struggling with these issues.

I. MENTAL HEALTH CHALLENGES

A. The Scope of the Problem

The most comprehensive recent study of lawyers and substance abuse was cosponsored by the American Bar Association and Hazelden Betty Ford Foundation. Based on responses from almost 13,000 attorneys, it found that about a fifth of all lawyers qualify as problem drinkers and suffer from anxiety and just over a quarter struggle with mild or serious depression.\textsuperscript{10} Figures on drug use are unreliable because three-quarters of the survey participants declined to answer even an anonymous survey question, a refusal that reflects the stigma and illegality associated with such substance abuse.\textsuperscript{11}

A smaller 2019 study by ALM Intelligence of 3800 lawyers and allied professionals in large law firms reported even higher frequencies of problems.\textsuperscript{12} For example:

- Almost two-thirds of respondents reported feelings of anxiety and over three-quarters knew of colleagues who did.\textsuperscript{13}
- Almost three-quarters of respondents reported that work conditions were contributing to the respondent’s own issue(s) of anxiety, depression, substance abuse, and/or other mental health problems.\textsuperscript{14}
- Two-thirds of respondents reported that work has caused their personal relationships to suffer.\textsuperscript{15}
- Seven out of ten respondents believed that mental health and substance abuse were significant problems within the profession.\textsuperscript{16}

Even the accumulation of relatively minor “microstresses” can make people more vulnerable to physical and mental health difficulties and impair judgment, motivation, and work performance.\textsuperscript{17} By some estimates, at least 60 percent of doctor-related visits have something to do with stress-related complaints.\textsuperscript{18}

\textsuperscript{10} Patrick R. Krill et al., \textit{The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys}, 10 J. ADDICTION MED. 46, 46 (2016).

\textsuperscript{11} Zimmerman, \textit{supra} note 6.

\textsuperscript{12} ALM INTEL., \textit{MENTAL HEALTH AND SUBSTANCE ABUSE SURVEY} (2019).

\textsuperscript{13} \textit{Id.}

\textsuperscript{14} \textit{Id.}

\textsuperscript{15} \textit{Id.}

\textsuperscript{16} \textit{Id.}


\textsuperscript{18} \textit{Id.}
B. Underlying Causes

Primary reasons for lawyers’ disproportionate vulnerability involve both the characteristics of those who enter law and also the priorities and pressures that they encounter in legal education and legal practice. Research generally suggests that law attracts a disproportionate number of individuals with personality traits such as competitiveness, combativeness, and pessimism, which combine to make them especially susceptible to pressure, stress, and related mental health difficulties.\(^{19}\) Law school often compounds the problem. Entering students rank better than students in other fields in terms of mental health and substance abuse but graduate with higher rates of problems.\(^{20}\) Reasons include the excessive work, crushing debt burdens, intense competition for jobs and grades, and lack of resources concerning psychological health.\(^{21}\) For students of color, racial bias and feelings of isolation and exclusion create further challenges.\(^{22}\) Students from socially and economically disadvantaged backgrounds experience related stigma and a perceived lack of cultural competence.\(^{23}\)

Even students who recognize that they have problems are often understandably reluctant to seek help. They worry about reputation, stigma, expense, and threats to bar admission, employment, or academic status.\(^{24}\) In one recent survey of fifteen law schools, although over 40 percent of students thought that they had needed help for mental health problems in the prior year, only about 20 percent received counseling from a mental health professional.\(^{25}\) Although a quarter reported signs of excessive drinking, only 4 percent reported ever receiving assistance for substance abuse.\(^{26}\) Students with the most serious issues were the least likely to seek assistance.\(^{27}\)

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19. See Nancy Levit & Douglas O. Linder, The Happy Lawyer: Making a Good Life in the Law 74–75 (2010); see also Rhode, The Trouble with Lawyers, supra note 9, at 17, 155 n.56.
20. Organ et al., supra note 3, at 117; Sheldon & Krieger, supra note 3, at 262.
24. Organ et al., supra note 3, at 141; Young, supra note 21.
25. Organ et al., supra note 3, at 140–41.
26. Id. at 140.
27. Id.
half of students say that their law school places substantial emphasis on preparing them to handle the stresses of law practice.28

In many professional settings, the problems escalate. Causes include excessive competition and workloads, concerns about job security, and a culture that rewards immediate accessibility. Law is the nation’s second most sleep-deprived occupation, which escalates the risk of anxiety and depression and impairs performance.29 Availability 24/7 functions as a proxy for commitment, and overwork is a major cause of psychological and physical challenges.30 As a cartoon in The New Yorker puts it, “[a]ll work and no play makes you a valued employee.”31 Technologies that have made it easier to work from home have made it increasingly difficult not to. In the ALM Intelligence survey, the most commonly identified problems were: always being on call (72 percent); billable hour pressure (64 percent); lack of sleep (59 percent); and client demands (59 percent).32 Almost two-thirds of respondents struggled to use all their vacation, and when on vacation, almost three-quarters felt unable to disconnect.33

Microstresses that cumulatively cause impairment fall into three general categories:
- those that drain your personal capacity (the time and energy available for life’s demands);
- those that deplete your emotional reserves; and
- those that challenge your identity and values.34

Many of these problems are particularly pronounced for lawyers of color and for women. Other pieces in this Symposium detail the challenges of structural racism.35 Other studies detail the difficulties for women, who still assume a vastly disproportionate share of work in the home and pay the price in the world outside it.36 One female associate in the ALM Intelligence survey described the challenges: “The ability to disconnect is non-existent,

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32. ALM Intel., supra note 12.
33. Id.
34. Cross et al., supra note 17.
so much client pressure and internal pressure . . . . I’m on track to bill 2,150 hours this year and I have a 19-month old baby. This set-up is not sustainable and completely unhealthy.”

37 Such problems have intensified during the pandemic, as women take on greater caretaking responsibilities for elderly relatives and children coping with distance learning from home.

Yet many workplace leaders place responsibility for solutions anywhere and everywhere else. In my prior survey of managing partners and general counsel, common views were:

- “Everyone feels stressed. . . . It’s the profession we’ve chosen.”
- “Clients expect availability twenty-four hours a day.”
- “It’s a real tough issue. We do programs on the subject but I’m not sure people have time to attend.”

In the ALM Intelligence survey, 60 percent of respondents believed that their firms had sincere concerns for their mental health, yet only 37 percent believed that such concerns influenced the firms’ practices and business models. When asked if their firm pushed back on unreasonable client demands, more than 70 percent said “No.”

II. INSTITUTIONAL STRATEGIES

Changing the culture, policies, and practices that contribute to these issues is no small challenge. The National Task Force on Lawyer Well-Being has sketched out a comprehensive reform agenda, with forty-four specific recommendations for legal employers, legal educators, bar regulators, and other stakeholders. The ALM Intelligence survey also identified reform priorities for law firms. They included setting reasonable expectations for lawyer workloads, resisting excessive client demands, and reducing reliance on billable hours in reward structures.

Further lessons have emerged from the pandemic. Considerable evidence has suggested that reducing face time and commutes and giving lawyers more flexibility to work remotely and control their schedules can increase

37. ALM INTEL., supra note 12.
40. Id. (quoting Interview by Deborah L. Rhode with participant (June 24, 2014)).
41. Id. (quoting Telephone Interview with Stephanie Corey, Chief of Staff for Gen. Couns., Flextronics Int’l Ltd. (July 17, 2014)).
42. ALM INTEL., supra note 12.
43. Id.
44. Buchanan & Coyle, supra note 21.
45. ALM INTEL., supra note 12.
productivity and enhance psychological well-being.46 Yet one large-scale study also found that the average workday was almost an hour longer during the pandemic.47 And although workers appreciated the flexibility to address caretaking needs during the day, having job obligations bleed into evening hours brought corresponding downsides. Employees were expected to be constantly accessible.48 That is not a new phenomenon, as noted above.49 Employers need to be careful that as the profession expands opportunities to work from home, it also preserves opportunities not to.

III. INDIVIDUAL STRATEGIES

A. Setting Priorities and Managing Time

In periods of stress, setting priorities and managing time are especially critical because people have limited bandwidth and may be easily distracted. Research demonstrates that “attention deficits” under stress can significantly impair both work performance and personal relationships.50 So during these periods, researchers advise taking care of basic health needs (sleep, exercise, diet), avoiding alcohol and drugs, structuring your time to match your values, and developing strategies to maximize efficiency.51 Experts recommend scheduling crucial work for the time of day when you perform best, protecting that time from nonessential interruption, and dividing daunting tasks into smaller manageable ones.52 They also advise against multitasking and working for too long or too short a stretch.53 To avoid being overwhelmed, individuals under stress should delegate, ask for help, and focus only on what is most critical and most urgent.54


48. McGregor, supra note 47.

49. See Rhode & Ricca, supra note 39, at 2483, 2500–01.


51. Robert Steven Kaplan, What to Ask the Person in the Mirror, in HBR’S 10 MUST READS ON MANAGING YOURSELF, supra note 50, at 147, 154, 150.


53. See Rampton, supra note 52; see also Rasch & Rasch, supra note 52.

54. Hallowell, supra note 50, at 82, 91–93.
However, the conventional wisdom that people should not “sweat the small stuff” can be misleading in professional contexts. Researchers find that conscientiousness is a key predictor of effective performance and that inability to handle small matters promptly and courteously is a sign of performance failure.\footnote{Adam Grant, Opinion, No, You Can’t Ignore Email. It’s Rude., N.Y. TIMES (Feb. 15, 2019), https://www.nytimes.com/2019/02/15/opinion/sunday/email-etiquette.html [https://perma.cc/WH5C-WSRQ].} For example, responding promptly to emails is a signal that the person is conscientious, organized, dependable, and hardworking.\footnote{Id.} That does not mean responding instantly or outside of normal working hours. But, researchers suggest, if “you’re habitually ‘too busy’ to answer legitimate emails, there’s a problem with your process. It sends a signal that you’re disorganized—or that you just don’t care.”\footnote{Id.} Of course, that signal may not be accurate for people under exceptional stress. They may not be indifferent or totally disorganized, just intermittently overwhelmed. Because so much communication was now online, and alternative distractions were less available during the COVID-19 crisis, people’s expectations for prompt responses have escalated.

In this context, it is important to make every effort to avoid missing important deadlines. But, not all deadlines are created equal. When I clerked for Justice Thurgood Marshall, and he saw his clerks looking excessively and unnecessarily stressed, he would remind us, “No one is on death row.” But he also had ample experience in dealing with individuals who were. In those circumstances, his hours were legendary and he expected the same of others, stress be damned.\footnote{Deborah L. Rhode, Character: What It Means and Why It Matters 180 (2019); Deborah L. Rhode, Lessons from Iconic Leaders: Thurgood Marshall and Nelson Mandela, 48 Hofstra L. Rev. 705, 711 (2020).} Although few legal tasks have the urgency of those involved in capital cases, law is a profession where deadlines generally matter. Extensions are not always possible and missed deadlines can cause real hardships for clients, colleagues, students, staff, and publishers. So, even those in distress should try to meet key due dates and to leave some margin for error.

The key when facing serious challenges is to recognize which deadlines and obligations are unrealistic or just far too costly to your health and other responsibilities. Engaging in triage and deferring nonessential tasks can sometimes buy enough time to meet critical obligations. But, sometimes bailing is the only plausible choice, and what matters is when and how you do it. Waiting until the last minute in the hope that you can manage is riskier than alerting others while there is time for them to make reasonable accommodations. Helping to find others to replace you signals your acknowledgment of the disruption you have caused and your commitment to minimize it.
B. Reframing, Refocusing, and Reaching Out: The Value of Gratitude and Giving

Research from positive psychologists makes clear the benefits from being grateful for what you have, instead of dwelling on what you do not.59 Experts recommend reframing your circumstances by comparing them to something worse, because that can give you hope and perspective.60 I usually pick cancer because it has caused so much pain for members of my family, and I have had several personal scares. During the pandemic, when I was experiencing symptoms, I tried modifying my reframing exercise. “Well, at least I don’t know I have cancer,” or “at least my cancer is one of the good treatable kinds.” It also helped to broaden my horizons. I reminded myself of all the pandemic miseries I was spared: people dying because they don’t have access to the kind of health care I could afford. “How about doing something for them?” I told myself.

Altruism is always a good strategy for making people feel better about themselves, and it can be particularly important for those in distress because it diverts focus from their own problems. When I was a child, my mother (a social worker) often invoked the cliché that “it is better to give than to receive.” I dismissed it then as platitudinous nonsense. I know now the ways that she was right. When you give something meaningful to others, it gives pleasure both to you and the recipient.

A large body of research bears this out. Activities that “contribute to the world beyond ourselves” are best able to promote meaning, fulfillment, and well-being.61 And they generally bring greater long-term satisfaction than activities that are just pleasurable in the moment.62 Even if the meaningful pursuits are not always enjoyable at the time, they tend to make individuals feel good afterwards because they resonate with deeply held personal values.63 Although cultural messages push us constantly to think about what


63. DIENER & BISWAS-DIENER, supra note 62, at 225; Huta & Ryan, supra note 62, at 759.
will make us happier, researchers find that focusing attention solely on ourselves tends to diminish happiness over the long run. "Selfless" activities are good for the self. Activities aimed at helping others result in greater physical and psychological health, longer lives, higher satisfaction, and even more effective performance. One British commentator put it this way: "We make a living by what we get; we make a life by what we give." Gifts where you have some personal connection to the recipient or the cause are especially beneficial.

For similar reasons, concern for others can help you keep from letting your own stress and related difficulties cause problems for those who work with and for you. One major cause of mental health challenges in our profession comes from colleagues or supervisors who let their own challenges or lack of planning cause chaos for those around them. Subordinates end up picking up the balls that their superiors drop or having to work excessive or inconvenient hours because their stressed supervisors were willing to impose stress on them. Constant directives to “just make it happen” by thoughtless coworkers breeds what Patrick Krill calls a “trickle down toxicity [and] downward flowing distress.”

What is, in short, needed for the legal profession is not a short agenda. At both the individual and institutional levels, lawyers need to develop far better strategies for assisting themselves and others who are coping with stress. Making more individuals aware of the pervasiveness of problems and the best ways to deal with them can help reduce the disabling consequences of distress and the stigma. That compounds the problem. Acknowledging our own and our profession’s vulnerabilities and resolving to address their causes are among the greatest contributions we can make to our collective well-being. That is part of how we all get through life’s challenges and help others do so as well.

64. D IENER & BISWAS-DIENER, supra note 62, at 187.