

# Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns

Jerome M. Organ, David B. Jaffe,  
and Katherine M. Bender, Ph.D.

This article reports the results of the Survey of Law Student Well-Being (SLSWB) implemented in spring 2014 at fifteen law schools around the country. The SLSWB is the first multischool study in over twenty years to address law student use of alcohol and street drugs, and the first-ever multischool study to explore prescription drug use and the mental health concerns and help-seeking attitudes of law students. The results of the study indicate that roughly one-quarter to one-third of respondents reported frequent binge drinking or misuse of drugs, and/or reported mental health challenges. Moreover, the results indicated that significant majorities of those law students most in need of help are reluctant to seek it. The article concludes by discussing how law school administrators and other relevant leaders within the legal academy and legal profession can promote and improve wellness so that law students are better-positioned to find success as law students and to serve their future clients well as lawyers.

**Jerome M. Organ** is Professor of Law and Co-director of the Holloran Center for Ethical Leadership in the Professions at the University of St. Thomas School of Law (Minnesota); **David B. Jaffe** is Associate Dean for Student Affairs at the American University Washington College of Law; **Katherine M. Bender, Ph.D.**, is an Assistant Professor at Bridgewater State University and programming consultant for the Dave Nee Foundation. In addition to being very grateful for the financial support that made this project possible, referenced *infra* at note 5, we want to express our deep gratitude to three people who helped in researching the article and in analyzing the data, Hannah Lindeborg and Tim Lacine, graduates of the University of St. Thomas School of Law, and Sara Smith, Research and Policy Analyst for the Division for Legal Services at the American Bar Association. The results reported in Section IV.D., focused on help-seeking behaviors, were previously published in the December 2015 issue of the *The Bar Examiner*, in an article entitled *Helping Law Students Get the Help They Need: An Analysis of Data Regarding Law Students' Reluctance to Seek Help and Policy Recommendations for a Variety of Stakeholders*,

### Section I: Introduction

Law school, like medical school or any other doctoral program of study, can be a time riddled with anxiety, stress, and financial upheaval. Unfortunately, there has been little empirical work examining how law students respond to these stresses, either in terms of patterns of substance use or patterns of mental health problems. What little empirical data exist regarding law student substance use and law student well-being indicate that law students may have higher rates of anxiety and depression than other graduate students,<sup>1</sup> and may engage in patterns of alcohol and drug use that many would consider problematic.<sup>2</sup> In the past few years, the news media have reported on addiction and mental health issues among law students and lawyers, with several prominent stories addressing suicide among lawyers and law students.<sup>3</sup> Ten law-school-related deaths occurred between July 2014 and February 2015, including eight suicides (seven students and one law school professor), and two homicides (one law student and one parent of a law student) at the hand of a law student.<sup>4</sup> These deaths indicate a need to learn more about the substance

1. The most commonly reported statistics on law student mental health come from a study published in the American Bar Foundation Research Journal, which found that 40% of third-year law students reported symptoms of depression. G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225 [hereinafter Benjamin et al., *Psychological Distress*] (discussed *infra* at notes 21, 24-26 and accompanying text). Many articles cite this study. See, e.g., Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression among Law Students: Current Knowledge and Future Directions*, 23 L. & HUM. BEHAV. 55, 55-56 (1999); Patrick J. Schiltz, *On Being a Happy, Healthy, Ethical Member of an Unhappy, Unhealthy and Unethical Profession*, 52 VAND. L. REV. 871, 875 n. 18 (1999). More recently, Ken Sheldon and Larry Krieger conducted empirical studies of law student well-being at two law schools that showed declines in well-being during the first year. Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 261-63 (2004) [hereinafter Sheldon & Krieger, *Undermining Effects*] (discussed *infra* at notes 13-18 and accompanying text).
2. EXEC. COMM., ASSOC. AM. LAW SCH., REPORT OF THE AALS SPECIAL COMMITTEE ON PROBLEMS OF SUBSTANCE ABUSE IN THE LAW SCHOOLS (1993) [hereinafter AALS REPORT] (discussed *infra* at notes 29-32 and accompanying text).
3. In January 2014 CNN broadcast a report on the high rate of attorney suicides, citing that the legal profession ranks among the top five careers for suicide. Rosa Flores & Rose Marie Arce, *Why Are Lawyers Killing Themselves?*, CNN (Jan. 20, 2014), <http://www.cnn.com/2014/01/19/us/lawyer-suicides/>.
4. Six of the deaths referenced here were made public. See Rick Jurgens, *Vermont Law School Professor Cheryl Hanna's Death Ruled Suicide*, VALLEY NEWS (Aug. 4, 2014), <http://www.vnews.com/news/13016059-95/professors-death-ruled-suicide>; Debra Cassens Weiss, *Vermont Law Student and His Mother Die in Murder-Suicide*, AM. BAR ASS'N J. (Sept. 18, 2014), <http://www.abajournal.com/news/article/vermont-law-student-and-his-mother-die-in-murder-suicide>; Colleen Murphy, *Second-Year Law Student's Death Ruled a Suicide*, G.W. HATCHET (Mar. 16, 2015), <http://www.gwhatchet.com/2015/03/16/second-year-law-students-death-ruled-a-suicide/>; Jim Mustian & Benjamin Oreskes, *Tulane Law School Students, Faculty Struggle to Understand Murder-Suicide*, NEW ORLEANS ADVOC. (Feb. 6, 2015), <http://www.theneworleansadvocate.com/news/11497215-123/tulane-law-school-students-faculty>. However, one of the authors knows of four additional law-student suicides in the 2014-15 academic year (personal communications with Katherine Bender).

use and mental health and wellness of today's law students so that we can better understand the nature of these challenges and explore strategies to encourage students to seek help so that fewer of these tragic situations occur.

The authors responded to this need by undertaking the Survey of Law Student Well Being (SLSWB), the first multischool study in over twenty years to address patterns of alcohol use and use of street drugs, and the first-ever multischool study to focus on prescription drug use, mental health and help-seeking attitudes.<sup>5</sup>

The SLSWB, which was implemented in spring 2014, was designed as an exploratory survey to answer the following four research questions: 1) to what extent are law students drinking alcohol, using prescription and nonprescription drugs, and engaging in nonmedical use of prescription drugs (taking prescription drugs without a prescription); 2) to what extent do law students experience mental health issues; 3) to what extent are law students with substance use or mental health issues inclined to seek assistance or treatment for such issues; and 4) what factors discourage law students from seeking help for substance use and/or mental health concerns.

This article begins in Section II with a review of the limited literature on law student wellness. Section III then describes the methods used in conducting the SLSWB and discusses the survey's limitations. Section IV describes in detail the SLSWB results, presenting the most recent and robust data on law students' use and misuse of alcohol, street drugs and prescription drugs, law students' mental health, and law students' attitudes toward seeking help. Section V recommends actions law school administrators and others can take to help law students lead healthier lives and have more productive legal careers.

## Section II: Literature Review

Although an existing body of literature suggests that law students disproportionately experience mental health and substance use issues

5. We are very grateful for grant funding we received from the ABA Enterprise Fund (with sponsorship from the ABA Commission on Lawyer Assistance Programs and the support of the ABA Law Student Division; Solo, Small Firm and General Practice Division; Young Lawyers Division; and Commission on Disability Rights), without which this survey would not have been possible; We also are very grateful for the support we received from the Dave Nee Foundation, which allowed us to expand the number of law schools participating in the survey. The Dave Nee Foundation, a nonprofit association based in New York, was established after Dave Nee, a very successful graduate of the Fordham University School of Law, died by suicide in June 2005. *History*, DAVE NEE FOUND., <http://www.daveneefoundation.org/history> (last visited July 30, 2016). Uncommon Counsel, the primary program of the Dave Nee Foundation, raises awareness about depression, anxiety, addiction, and suicide prevention in the legal field via law school and state bar association presentations. *Uncommon Counsel*, DAVE NEE FOUND., <http://www.daveneefoundation.org/uncommon-counsel/> (last visited July 30, 2016).

compared with other graduate students or the general population,<sup>6</sup> there are more anecdotal stories about law students and their levels of distress, substance use, and suicidal thoughts than there are empirical studies. Indeed, prior to the SLSWB, only one multischool empirical study of substance use among law students had been conducted (and it did not include prescription drug use),<sup>7</sup> and only one multischool empirical study of law student well-being had been conducted.<sup>8</sup> No multischool empirical studies of law student mental health more generally were undertaken, nor studies of law student prescription drug use or of students' help-seeking attitudes.

Researchers have examined the mental health of law students using single-school samples since at least 1968.<sup>9</sup> Empirical studies varying in both sample sizes and methodology through the late 1960s and 1970s generally reported similar findings: Law students experienced anxiety,<sup>10</sup> and their levels of anxiety were disruptive to their ability to study.<sup>11</sup> Law students reported "changes in student personality characteristics," and first-year students experienced "a drop in sociability [and] . . . an increase in psychological distress, internal conflict, and anxiety"<sup>12</sup> in the first several months of law school.

While these studies are over thirty years old, more recent studies have reached similar results. Larry Krieger and Ken Sheldon researched law student

6. See, e.g., AALS REPORT *supra* note 2; JESSIE AGATSTEIN ET AL., FALLING THROUGH THE CRACKS: A REPORT ON MENTAL HEALTH AT YALE LAW SCHOOL (2014), [https://www.law.yale.edu/system/files/falling\\_through\\_the\\_cracks\\_120614.pdf](https://www.law.yale.edu/system/files/falling_through_the_cracks_120614.pdf) [hereinafter AGATSTEIN ET AL., FALLING THROUGH THE CRACKS]; Benjamin et al., *Psychological Distress*, *supra* note 1; James M. Hedegard, *The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students*, 4 L. & SOC. INQUIRY 791 (1979); Marilyn Heins, et al., *Law Students and Medical Students: A Comparison of Perceived Stress*, 33 J. LEGAL EDUC. 511 (1983); Robert Kellner, et al., *Hypochondriacal Fears and Beliefs in Medical and Law Students*, 43 ARCHIVES GEN. PSYCHIATRY 487 (1986); Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65 (1985) (hereinafter *Distress in Law Students*); Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (2007) [hereinafter Sheldon & Krieger, *Self-Determination Theory*] (discussed *infra* at notes 14-18 and accompanying text); Sheldon & Krieger, *Undermining Effects*, *supra* note 1; Lawrence Silver, *Anxiety and the First Semester of Law School*, 1968 WIS. L. REV. 1201 [hereinafter Silver, *Anxiety*].
7. See AALS REPORT *supra* note 2.
8. See Sheldon & Krieger, *Undermining Effects*, *supra* note 1; Sheldon & Krieger, *Self-Determination Theory*, *supra* note 6 (both discussed *infra* at notes 13-18 and accompanying text).
9. Silver, *Anxiety*, *supra* note 6, published in 1968, is the first law review article discussing law student anxiety among first-year students.
10. See, e.g., *id.* at 1201.
11. See, e.g., *id.* at 1202.
12. See, e.g., Hedegard, *supra* note 6, at 835. The study was conducted on BYU law students who were predominately male, mostly married, Mormon, and had attended the same undergraduate school. *Id.* at 812-13. Accordingly, there is uncertainty about generalizing the results to other law students.

well-being at two separate law schools, publishing their initial results in 2004,<sup>13</sup> with further results published in 2007.<sup>14</sup> Sheldon and Krieger measured law students' subjective well-being (referred to as SWB), by assessing their mood, life satisfaction, and physical health.<sup>15</sup> The results indicated that at the start of law school, students tend to have a positive SWB as compared with undergraduates.<sup>16</sup> One year into law school, the results indicated a decline in SWB and an increase in physical health problems.<sup>17</sup> When the study was expanded to include students from more than just one law school, the results supported the previous findings of an overall decline in law student well-being after a year in law school.<sup>18</sup>

Most recently, in 2014 the Yale Law School Mental Health Alliance published a report on the mental health of Yale Law students.<sup>19</sup> Half of the respondents agreed that mental health challenges impaired law school academic performance, and just over half agreed that mental health challenges affected them socially.<sup>20</sup>

While the above studies focused on distress levels and well-being, studies by Dr. Andy Benjamin are among the most cited that specifically address law student mental health and substance use.<sup>21</sup> In the mid- to late 1980s, Dr. Andy Benjamin, a prominent researcher of mental health in the legal profession, set out to compare law student distress with medical student distress.<sup>22</sup> Using psychological measures as the survey tools, Benjamin found that "law students have higher rates of psychiatric distress than a contrasting normative population or a medical student population."<sup>23</sup> Benjamin then set out to study law student mental health at different points on the journey through law school.

13. Sheldon & Krieger, *Undermining Effects*, *supra* note 1.

14. Sheldon & Krieger, *Self-Determination Theory*, *supra* note 6.

15. *Id.* at 261, 278.

16. *Id.* at 271.

17. *Id.* at 280.

18. *Id.* at 280-82.

19. AGATSTEIN ET AL., *FALLING THROUGH THE CRACKS*, *supra* note 6. This report provides the first in-depth analysis of student experiences with mental health challenges (MHCs) and mental health services during their time at Yale Law School.

20. *Id.* at 52.

21. Benjamin et al., *Psychological Distress*, *supra* note 1, has been cited 149 times in the Law Reviews and Journals Database on Westlaw. WESTLAW, [HTTP://WWW.LAWSCHOOL.WESTLAW.COM](http://www.lawschool.westlaw.com) (last visited July 30, 2016). Shanfield & Benjamin, *Distress in Law Students*, *supra* note 6, has been cited eighty-two times in the Law Reviews and Journals database on Westlaw. WESTLAW, [HTTP://WWW.LAWSCHOOL.WESTLAW.COM](http://www.lawschool.westlaw.com) (last visited July 30, 2016).

22. Shanfield & Benjamin, *Distress in Law Students*, *supra* note 6.

23. *Id.* at 69.

Using a cohort model, Benjamin and colleagues administered five psychological measures to each cohort of students at three different stages in their law school careers.<sup>24</sup> Results included responses from first-year law students, second-year law students, third-year law students and law school alumni up to two years after graduation.<sup>25</sup> Benjamin compared results across each year of law school and before and after the law school experience. Benjamin found that:

Elevations of symptom levels significantly increase for law students during the first to third years of law school. Depending on the symptoms, 20-40% of any given class reports significant symptom elevations . . . the symptom elevations do not significantly decrease between the spring of the third year and the next two years of law practice as alumni.<sup>26</sup>

Another frequently cited article on law student distress is one by Dammeyer and Nunez, in which the authors analyzed published studies that measured law students' levels of anxiety and depression from 1970 to the late 1990s.<sup>27</sup> Their article emphasized the findings described above—that law students have disproportionate levels of stress, anxiety, and mental health concerns compared with other populations.<sup>28</sup>

Less frequently cited but perhaps with data just as compelling is a report published in 1994 from the Association of American Law Schools (AALS) Special Committee on Problems of Substance Abuse in the Law Schools.<sup>29</sup> The report was the final product of two and a half years of work, including a survey of nineteen law schools, yielding 3388 student responses.<sup>30</sup> The AALS study revealed “increased usage and frequency of usage of some substances as students progress through law school, and also among older law students. The pattern is most dramatic with alcohol.”<sup>31</sup>

Despite these studies, large gaps remain in the literature on law student substance use and mental health. No research has been done on alcohol or drug use among law students in over two decades, nor on prescription drug

24. Benjamin et al., *Psychological Distress*, *supra* note 1. The survey involved 320 law students at the University of Arizona divided into three cohorts. *Id.* at 226-27.

25. *Id.* at 231-33.

26. *Id.* at 246.

27. Dammeyer & Nunez, *supra* note 1.

28. *Id.* at 67.

29. AALS REPORT, *supra* note 2.

30. *Id.* at 35-36. The response rate was 24.9% across all nineteen participating law schools.

31. *Id.* at 42.

use among law students. Nor has any multischool study focused on mental health or on help-seeking attitudes of law students.<sup>32</sup>

This article focuses on a survey project designed to fill some of these gaps—the first multischool, national study of alcohol and substance use among law students since the early 1990s, the first study to assess nonmedical use or misuse of prescription drugs among law students, and the first multischool study of mental health issues and help-seeking attitudes among law students. The authors hope that the results of this study can open the door for dialogue and specific action within the law school community to improve the health and wellness of law students.

### Section III: Methodology

Before implementing the Survey of Law Student Well-Being (SLSWB) in spring 2014, the principal investigators (PIs) of the study conducted a pilot study in spring 2013.<sup>33</sup> The pilot study, just like SLSWB, was formatted as an online survey using skip logic.<sup>34</sup> The pilot study included roughly the same universe of questions as the SLSWB, with several distinct “sections”—a demographic section, a section on alcohol use, a section on drug use (both street drugs and prescription drugs), a section on mental health, and a section

32. Notably, all studies discussed in the preceding text or referenced in footnote 6, *supra*, other than the AALS Survey, results of which were described in the AALS Report, were limited to one school or two schools, and many had small sample sizes ranging from nine to 320, limiting the extent to which the results were generalizable. *See, e.g.*, Benjamin et al., *Psychological Distress*, *supra* note 1, at 226-27 (survey involved 320 law students at the University of Arizona divided into three cohorts); Hedegard, *supra* note 6 (small number of Mormon students at Brigham Young University); Heins, *supra* note 6 (discussing groups of law students and medical students at the University of Arizona in response to growing student concern over the stress of education); Kellner et al., *Distress in Medical and Law Students*, 27 *COMPREHENSIVE PSYCHIATRY* 220 (1986) (discussing sixty law students and sixty medical students at the University of New Mexico); Alan Reifmann et al., *Depression and Affect Among Law Students During Law School: A Longitudinal Study*, 2 *J. EMOTIONAL ABUSE* 93-106 (2000) (focusing on 45 law students at the University of Michigan).
33. The pilot study was conducted at the PIs' home institutions with Institutional Review Board (IRB) approval from the University of St. Thomas—IRB # B10-183-01. The PIs collaborated with SoundRocket (formerly Survey Sciences Group, LLC) a full-service social science research provider. *See Why SoundRocket?*, SOUNDROCKET, <http://www.soundrocket.com/soundrocket-why> (last visited July 30, 2016). SoundRocket programmed, tested, and hosted both the pilot survey and the SLSWB. SoundRocket's survey infrastructure included the DatStat Illume survey system engine, with a Microsoft SQL database back-end, along with custom proprietary applications to support the survey effort.
34. The skip logic design meant that if a respondent answered “No” to an introductory question in a set of questions, the survey would “skip” past the remaining questions in the subset.

on help-seeking attitudes.<sup>35</sup> The response to the pilot study demonstrated both that law students were willing to answer intrusive questions about alcohol use, drug use and mental health with reasonable response rates and that the survey was not inordinately time-consuming.<sup>36</sup>

Recruiting law schools to participate in the SLSWB was a challenge. Some law schools were not willing to encourage their students' participation in a survey addressing controversial and at times illegal behaviors (taking prescription drugs without a prescription, using cocaine, etc.). Other schools expressed concern about protecting their students' anonymity and the law school's anonymity, having the financial resources to participate,<sup>37</sup> and obtaining IRB approval. These concerns precluded the possibility of having a truly random set of representative law schools participate in the survey. Rather, the PIs drew on a network of law faculty and administrators known to have particular interest in these topics, while also paying attention to the importance of diversity of schools in size, region, and institution type. Invitations to participate in the survey were extended to a few dozen ABA-accredited law schools.<sup>38</sup> Each law school was promised that the data collected from the school would be kept confidential, that the name of the participating school would not be disclosed, and that the school would receive a report containing school-specific results along with the aggregate results.

These invitations resulted in seventeen schools expressing interest in participating in the SLSWB. Ultimately, two schools were unable to obtain IRB or institutional approvals in a timely manner and were not able to participate, leaving a total of fifteen law schools participating in the survey,

35. Almost all of the questions in the SLSWB survey have been used in other surveys, such as the Healthy Minds Survey or the Student Life Survey. Others, as noted *infra*, notes 60 (binge drinking), 63 (the CAGE screen for alcoholism), 73 (PHQ-2 depression screen), 78 (Kessler 6 anxiety screen), and 84 (SCOFF eating disorder screen), are widely used and validated screening tools addressing substance use or mental health concerns.
36. Respondents took about eighteen minutes on average to complete the survey, which was helpful in communicating with prospective survey participants when the actual survey was implemented in spring 2014. The data collected in the pilot study have not been integrated into the data set for the SLSWB.
37. Schools that were invited were informed that they would need to contribute a small fee to cover administrative costs. As noted *supra*, note 5 and accompanying text, the SLSWB was substantially funded by a grant from the ABA Enterprise Fund and by additional funds contributed by the Dave Nee Foundation. These grants covered roughly 85% to 90% of the costs of implementing the survey. The balance was covered by each school contributing \$400.
38. The PIs included some public schools and some private schools, as well as schools that had only full-time programs and schools that had full-time and part-time programs.



with over 11,000 students.<sup>39</sup> The fifteen participating law schools reflect a cross-section in terms of enrollment,<sup>40</sup> affiliation,<sup>41</sup> and geographic location.<sup>42</sup>

Participants in the SLSWB were students enrolled in Juris Doctorate (JD) programs at each of the fifteen participating ABA-accredited law schools. At each participating law school, all JD students were invited by email to complete the online survey, with email reminders sent to those who had not completed the survey.<sup>43</sup> The overall response rate was just under 30%, a response rate slightly higher than the roughly 25% response rate of the 1991 AALS Survey, results of which were published in the AALS Report, or the recent iterations of the Healthy Minds Study.<sup>44</sup>

The SLSWB was designed as a cross-sectional survey, taking a snapshot of respondents at one point in time, rather than a longitudinal survey, because of both cost factors and concerns about attrition and confidentiality with a longitudinal survey design. As a result, the SLSWB did not attempt to establish a baseline for respondents' pre-law school behavior against which to compare their responses as law students. Nonetheless, in a number of questions discussed in the following section, respondents were asked to identify changes in behavior regarding alcohol use or drug use since the twelve months prior to

39. The University of St. Thomas IRB granted "master" approval of the survey project with RB No. 437533-1. Several schools accepted the IRB master approval while several schools required separate IRB approval at their own university. The two schools that ended up not participating could not get approval through their university review process in time to participate in the survey.
40. The percentage of respondents from small schools (those with fewer than 550 students) is close to the percentage of students nationally from small schools. The percentage of respondents from larger law schools is larger than the percentage of students nationally in larger law schools (those with more than 900 students), while the percentage of respondents from medium-sized law schools is smaller than the percentage of students nationally in medium-sized law schools (those with student bodies ranging from 550 to 900).
41. The percentage of respondents from private law schools is close to the percentage of students nationally from private schools. The percentage of respondents from religiously affiliated law schools is larger than the percentage of students nationally from religiously affiliated law schools, while the percentage of respondents from public law schools is smaller than the percentage of students nationally in public law schools.
42. The percentage of respondents from law schools in the Southeast is close to the percentage of students nationally from law schools in the Southeast. The percentage of respondents from law schools in the Midwest and Northeast is larger than the percentage of students nationally in law schools in those regions, while the percentage of respondents from law schools in the Southwest and West is smaller than the percentage of students nationally in law schools in those regions.
43. Based on the pilot survey, students were informed that the survey took an average of fifteen to twenty minutes and were asked to give informed consent before commencing the survey.
44. See AALS REPORT, *supra* note 2 (noting a response rate just less than 25%). See also HEALTHY MINDS, THE HEALTHY MINDS STUDY 2014-15 DATA REPORT 2, [http://healthybodiesstudy.org/wp-content/uploads/2015/07/HMS\\_national\\_14\\_15.pdf](http://healthybodiesstudy.org/wp-content/uploads/2015/07/HMS_national_14_15.pdf) (noting response rate of just more than 23%) [hereinafter HEALTHY MINDS, 2014-15 HEALTHY MINDS STUDY]. The vast majority of law schools had a response rate between 25% and 35%. *Id.*

starting law school.<sup>45</sup> In addition, questions regarding mental health diagnoses asked respondents whether their diagnosis had been obtained since starting law school.<sup>46</sup>

The demographic distribution of students at the fifteen law schools roughly approximates the demographic distribution of students across all ABA-accredited law schools. The sample included roughly 49% women and 51% men, compared with the national population of law students in 2013-2014, which was 48% women and 52% men.<sup>47</sup> Among actual respondents, 56% of those completing the survey were women and 44% men, which is a result common in large surveys of college students or graduate students.<sup>48</sup>

As shown in Table 1, the percentage of respondents who indicated they were black/African-American and Asian was close to the percentages across law schools generally, while the percentage of respondents who indicated they were white was slightly larger than across law schools generally. In addition, the percentage of respondents who indicated a multiracial ethnicity was larger than across law schools generally, while the percentage of respondents who indicated Hispanic was smaller than across law schools generally.<sup>49</sup>

Note that we have not made an effort to “reweight” the results to account for these discrepancies in the proportion of law schools in each category or in the proportion of respondents based on gender or ethnicity. As a result, readers should be cautious about generalizing results with too much specificity—the results perhaps should be best understood as rough estimates of what one might expect within a student population at a given law school. At a large, urban, private law school, results on some questions might differ from those at a small, rural public law school. Law schools with more women or more men might see different results, particularly on those questions for which the differences in results between male respondents and female respondents are notable.

45. See *infra*, notes 59-62 and accompanying text (paragraph following Alcohol Table 4).

46. See *infra*, note 77 and accompanying text (depression); note 83 and accompanying text (anxiety).

47. See AM. BAR ASS'N, 2009-2013 TOTAL FULL-TIME JD ENROLLMENT BY GENDER AND ETHNICITY, [http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html) (last visited July 30, 2016) [hereinafter AM. BAR ASS'N, FULL-TIME ENROLLMENT]; AM. BAR ASS'N, 2009-2013 TOTAL PART-TIME JD ENROLLMENT BY GENDER AND ETHNICITY, [http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html) (last visited July 30, 2016) [hereinafter AM. BAR ASS'N, PART-TIME ENROLLMENT]. The authors calculated overall percentages by gender for 2013-14 in a spreadsheet on file with the authors using both of these resources.

48. See, e.g., HEALTHY MINDS, 2014-15 HEALTHY MINDS STUDY, *supra* note 44 at 5 (noting 54% of respondents were women and 45% of respondents were men); AALS REPORT, *supra* note 2, at app. B, tbl. 1 (noting that women made up 43% of the sample, but 46% of the respondents).

49. See AM. BAR ASS'N, PART-TIME ENROLLMENT, *supra* note 47; AM. BAR ASS'N, FULL-TIME ENROLLMENT, *supra* note 47. The authors used these resources to calculate overall percentages by ethnicity for 2013-14 in a spreadsheet on file with the authors.

**Table 1 - Comparison of Racial/Ethnic Composition of Law Student Population and Survey Population**

	Asian	Black African American	Hispanic/Latino	Multi-racial	Other	White	Unknown (Prefer not to disclose)
All ABA-Accredited Law Schools	7	8	10	2	3	64	5
Respondents	7	8	5	7	3	69	2

In that same vein, the SLSWB involved self-reporting by respondents. Respondents may not have been totally forthcoming in their self-report. It also is possible that there is response bias or nonresponse bias on the very issues on which the survey is focused—alcohol use, drug use and mental health issues—although it is impossible to know which way the bias might operate. It is possible that there is a response bias in that those students with alcohol or drug use issues or mental health issues at participating law schools might have been disproportionately inclined to respond to the SLSWB given that it inquired about topics that might have been of particular interest to such respondents. On the other hand, it is possible that there is a non-response bias as well, in that students with alcohol or drug use issues or mental health issues at participating law schools might have been disproportionately inclined not to respond to the SLSWB given that it asked a number of intrusive questions, some of which involved illegal conduct.<sup>50</sup>

It would be fruitful if similar studies could be conducted to provide a broader framework for understanding the extent to which law students use alcohol or drugs or deal with mental health issues. It also would be helpful to assess the extent to which a variety of efforts might make a difference with respect to the help-seeking attitudes of law students. It would be particularly useful if these studies could be designed to be longitudinal so that they could inform us more about the extent to which law students see changes in alcohol use, drug use, mental health issues, or help-seeking attitudes during law school.

#### **Section IV: Analysis of Survey Results**

The following section provides the results of the Survey of Law Student Well-Being (SLSWB) in the categories of alcohol, drug use, mental health, and help-seeking attitudes. To contextualize the results of the SLSWB, we have provided some comparisons, where possible, with other survey results that used similar questions with somewhat comparable populations. All results are rounded up or down to whole percentages using traditional rounding principles.

50. Studies suggest that those with alcohol and mental health problems are underrepresented in empirical studies on health. See Fartein Ask Torvik et al., *Alcohol Use and Mental Distress as Predictors of Non-Response in a General Population Health Survey: The HUNT Study*, 47 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 805 (2012).

### A. Alcohol

The SLSWB documents that consumption of alcohol among law students appears to have become more prevalent than two decades ago when the AALS Survey project was conducted at nineteen law schools.<sup>51</sup> First, as shown in Alcohol Table 1, while the percentage of respondents who have had a drink in their lifetime has remained relatively consistent since the AALS Survey, the percentage of law students responding to the respective surveys who have had a drink in the prior thirty days is higher now than in the early 1990s. Drinking among law students also appears to be more prevalent than drinking among graduate students more generally, based on both the Core Alcohol and Drug Survey from the 1990s<sup>52</sup> and the Healthy Minds Survey, which has been implemented annually since 2007 at hundreds of college campuses across the country.<sup>53</sup>

**Alcohol Table 1 - Percentage of Respondents Who Have Had a Drink in Their Lifetime and in Prior 30 Days**

	SLSWB (2014)	AALS (1991) <sup>1</sup>	Core Alcohol and Drug Study (1992-1994) Graduate Students) <sup>2</sup>	Healthy Minds (Graduate) <sup>3</sup>	Healthy Minds (Undergraduate) <sup>4</sup>
Drink in Lifetime	98%	98%	Not Available	90%	90%
Drink in past 30 days	90%	82%	75%	75%	75%

Notably, the increase in the prevalence of drinking within the prior thirty days between the AALS Survey and the SLSWB was fairly consistent among

51. See AALS REPORT, *supra* note 2, at app. B, tbl. 4. Although one should be cautious in making direct, specific comparisons as the sets of law schools participating in the survey are not identical, these two surveys provide the only multi-school survey data covering law student alcohol and drug use. Thus, we believe it is appropriate to provide comparisons on questions that overlap across the two surveys.
52. CHERYL A. PRESLEY ET AL., IV ALCOHOL AND DRUGS ON AMERICAN COLLEGE CAMPUSES 51, tbl. 4-11 (1994) (hereinafter CORE ALCOHOL AND DRUG STUDY). This survey included over 40,000 students at seventy-four four-year campuses, including over 2000 graduate and professional students.
53. We are very grateful to Daniel Eisenberg and the Healthy Minds Survey team, particularly J.P. DeWitt, who has worked closely with us in developing comparative data from the Healthy Minds data set. The Healthy Minds Survey is an annual web-based survey examining mental health, service utilization, and related issues among undergraduate and graduate students. Since its national launch in 2007, HMS has been fielded at over 100 colleges and universities, with over 100,000 survey respondents. <http://healthymindsnetwork.org/hms>. Healthy Minds openly shares its data on a user-friendly web-based interface. For more specifics on the Healthy Minds Study, methodology, etc., please visit the Healthy Minds webpage, <http://healthymindsnetwork.org/>.

respondents across all three years of law school, with first-year respondents and second-year respondents in the SLSWB at 89% (up from 81% and 80%, respectively, in the AALS Survey)<sup>54</sup> and with third-year respondents in the SLSWB at 91% (up from 84% in the AALS Survey).<sup>55</sup> The percentage of female respondents having had a drink in the prior thirty days increased slightly more than the percentage of male respondents (from 81% in the AALS Survey<sup>56</sup> to 90% in the SLSWB for female respondents; from 83% in the AALS Survey<sup>57</sup> to 89% in the SLSWB for male respondents),<sup>58</sup> a result shown to have statistical significance at  $p < .01$ .

With respect to drinking behaviors that might be of concern, as shown in Alcohol Table 2, more than half of the respondents in the SLSWB reported drinking enough to get drunk in the prior thirty days, compared with 61% of undergraduate respondents and 39% of graduate student respondents in the Healthy Minds Study.<sup>59</sup> Moreover, 43% of the respondents in the SLSWB indicated that they had engaged in binge-drinking at least once in the prior two weeks, compared with 45% of undergraduates and 36% of graduate students in the Healthy Minds Study.<sup>60</sup> In addition, 22% of law students binge-drank two

54. AALS REPORT, *supra* note 2, at app. B, tbl. 6.

55. *Id.*

56. *Id.* at app. B, tbl. 4.

57. *Id.*

58. *Id.*

59. These results from the Healthy Minds Study were provided by J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan. These percentages are drawn from a set of over 4300 undergraduate respondents and over 1600 graduate student respondents (comprising both graduate and professional students). Email from J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan to Jerome M. Organ, Professor of Law at the University of St. Thomas School of Law (August 28, 2015, 06:31 CDT)(on file with authors).

60. The Healthy Minds data on binge-drinking are based on more than 100,000 undergraduate respondents and over 25,000 graduate student respondents. This data can be found by going to the Healthy Minds website, <http://data.healthymindsnetwork.org/>, registering as a guest and then searching the Healthy Minds “All Years Combined” survey dataset and using the drop down boxes to search “binge drinking (any in past two weeks)” and “degree level”. In both the SLSWB and the Healthy Minds Study, respondents were asked the frequency with which they consumed four or more drinks (for women) or five or more drinks (for men) in one sitting in the past two weeks. This measure of binge-drinking also has been used in the Harvard College Alcohol Study. See Henry Wechsler & Toben F. Nelson, *What Have We Learned from the Harvard School of Public Health College Alcohol Study: Focusing Attention on College Student Alcohol Consumption and the Environmental Conditions that Promote It*, 69 J. STUD. ON ALCOHOL & DRUGS 481 (2008).

or more times in the prior two weeks, compared with 27% of undergraduate respondents and 12% of graduate student respondents in the Healthy Minds Study.<sup>61</sup>

**Alcohol Table 2 - Percentage of Respondents Who Drank Enough to Get Drunk in Past 30 Days and Binge-Drank in Prior 2 Weeks**

	SLSWB (2014)	Healthy Minds (Graduate) <sup>5</sup>	Healthy Minds (Undergraduate) <sup>6</sup>
Drank enough to get drunk in prior 30 days	53%	39%	61%
Binge-drank at least once in prior 2 weeks	43%	36%	45%
Binge-drank 2 or more times in the prior 2 weeks	22%	21%	30%

As shown in Alcohol Table 3, more male than female respondents in the SLSWB reported both drinking enough to get drunk in the prior thirty days and binge-drinking in the prior two weeks, results shown to have statistical significance at  $p < .001$ . Indeed, male respondents in the SLSWB were roughly one and a half times more likely than female respondents to have reported engaging in binge-drinking two or more times in the prior two weeks, a result shown to have statistical significance at  $p < .001$ . Notably, the percentage of third-year respondents who reported binge-drinking in the prior two weeks was larger than the percentage of first-year respondents, a result shown to have statistical significance at  $p < .01$ . In addition, those SLSWB respondents ages 21-30 were roughly twice as likely to report engaging in binge-drinking behavior as those over age 30, results shown to have statistical significance at  $p < .001$ .

61. These results from the Healthy Minds Study were provided by J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan. These percentages are drawn from a set of over 4300 undergraduate respondents and over 1600 graduate student respondents (comprising both graduate and professional students). Email from J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan to Jerome M. Organ, Professor of Law at the University of St. Thomas School of Law (August 28, 2015, 06:31 CDT)(on file with authors).

**Alcohol Table 3 - Percentage of Respondents in the Survey of Law Student Well-Being Who Reported Drinking Enough to Get Drunk in Prior 30 Days and Binge-Drinking in Prior Two Weeks Broken Out by Gender and by Year in Law School**

	Men	Women	1Ls	2Ls	3Ls
Drank enough to get drunk in prior 30 days	54%	52%	51%	53%	54%
Binge drank at least once in prior two weeks	47%	40%	40%	44%	45%
Binge drank two or more times in prior two weeks	27%	18%	18%	23%	24%

As shown in Alcohol Table 4, when binge-drinking, male respondents in the SLSWB as well as the Healthy Minds Study drank much more than female respondents, with a median of seven drinks for men compared with a median of five drinks for women, a result shown to have statistical significance at  $p < .001$ .<sup>62</sup>

**Alcohol Table 4 - Percentage of Men and Women Respondents Consuming a Given Number of Drinks When Binge-Drinking**

		4	5	6	7	8	9 (M) 9+ (W)	10+ (M)
SLSWB	Men	X	15%	21%	18%	17%	11%	16%
SLSWB	Women	28%	27%	21%	9%	10%	6%	X
Healthy Minds (Graduate)	Men	X	23%	26%	22%	13%	6%	10%
Healthy Minds (Graduate)	Women	31%	38%	17%	6%	4%	4%	X
Healthy Minds (Undergraduate)	Men	X	11%	22%	16%	18%	12%	21%
Healthy Minds (Undergraduate)	Women	22%	30%	24%	10%	8%	6%	X

62. These results in Alcohol Table 4 from the Healthy Minds Study were provided by J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan. These percentages are drawn from a set of over 2000 undergraduate respondents and over 400 graduate student respondents (comprising both graduate and professional students). Email from J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan to Jerome M. Organ, Professor of Law at the University of St. Thomas School of Law (August 28, 2015, 06:31 CDT)(on file with authors). For undergraduate male respondents in the Healthy Minds Study, the median number of drinks was eight drinks rather than seven. *Id.* For the majority of respondents in the SLSWB, binge-drinking generally occurred over a period of three hours or more, without much difference between men and women or between 1Ls, 2Ls, and 3Ls - three hours, 22%, four hours, 31%, five hours, 21%, six or more hours, 19%.

Interestingly, a higher percentage of respondents in the SLSWB indicated that their drinking had decreased in comparison with the twelve-month period prior to starting law school (36%), as opposed to increased (29%), with little difference across male and female respondents or across first-year, second-year and third-year respondents. With respect to ethnicity, however, white respondents were less likely to experience an increase in drinking since starting law school than all other respondents (27% vs. 34%, respectively), a result shown to have statistical significance at  $p < .01$ . Black/African-American and Asian respondents were more likely to experience an increase in drinking since starting law school than all other respondents (38% v. 28%, and 38% v. 27%, respectively), a result shown to have statistical significance at  $p < .01$ .

The SLSWB also looked at a number of “problem” behaviors associated with drinking, as described in Alcohol Table 5, asking respondents to indicate the frequency with which they experienced in the prior year any of sixteen possible problems associated with drinking. A subset of these problem behaviors is known as the CAGE questionnaire, a widely used tool for screening for alcoholism.<sup>63</sup> A positive response to two of the four CAGE questions indicates someone who should be evaluated more carefully for alcoholism.<sup>64</sup> Among the respondents to the SLSWB, 25% had positive responses to two or more of the four CAGE questions (27% of male respondents and 23% of female respondents responding positively to two or more of the four CAGE questions, a result shown to have statistical significant at  $p < .01$ ). Respondents who identified as white were more likely to be positive on two or more of the four CAGE questions than all other respondents (27% v. 20%), while Asians were significantly less likely to be positive on two or more of the four CAGE questions (17% v. 26%), results shown to have statistical significance at  $p < .05$ .

As indicated in Alcohol Table 5, many of these problem behaviors overlap with a set of problem behaviors identified in the Core Alcohol and Drug Study. Alcohol Table 5 contains a listing of the twelve overlapping items with the percentage of respondents experiencing the problem in the prior twelve months. Notably, five of the six most frequent problem behaviors in the SLSWB occurred with greater frequency among law student respondents to the SLSWB than among graduate student respondents in the Core Alcohol

63. *CAGE Questionnaire*, NAT'L INST. ON ALCOHOL ABUSE & ALCOHOLISM, <http://pubs.niaaa.nih.gov/publications/inscage.htm> (last visited July 30, 2016). The four CAGE questions are:

1. Have you ever felt you should Cut down on your drinking?
2. Have people Annoyed you by criticizing your drinking?
3. Have you ever felt bad or Guilty about your drinking?
4. Have you ever had a drink first thing in the morning to steady your nerves or to get rid of a hangover (Eye-opener)?

64. *Id.*



and Drug Study; the exception is “drove while under the influence of alcohol,” which was significantly less likely among respondents in the SLSWB.<sup>65</sup>

**Alcohol Table 5 - Percentage of Respondents Who Experienced Various Problems Associated with Drinking (Reported in Descending Order of Frequency in the SLSWB)**

	SLSWB (2014)	Core Alcohol and Drug Survey (1992- 1994) (Graduate Students) <sup>7</sup>
Vomited	37.3%	28.6%
*Felt that you should Cut down your drinking	31.4%	N/A
*Felt Guilt, remorse or regret	30.2%	21.8%
Had amnesia or memory loss	24.8%	14.6%
Missed class	19.3%	12.3%
Had unplanned sex	15.9%	N/A
Drove while under the influence of alcohol	15.3%	27.7%
Thought I had a problem—afraid I might be an alcoholic	13.9%	8.8%
*Been Annoyed with criticism about drinking or been criticized about drinking	11.2%	13.8%
Was hurt or injured	7.3%	4.4%
*Had an “Eye-opener” first thing in the morning to get rid of a hangover	6.7%	N/A
Performed poorly on a test/project	4.7%	7.7%
Drove a car after five or more drinks in two hours	4.0%	N/A
Thought about suicide	3.9%	2.6%
Been taken advantage of sexually	3.1%	4.6%
Taken advantage of someone else sexually	0.1%	2.5%

\*Indicates CAGE assessment question

Notably, 16% of respondents in the SLSWB indicated at least five of these sixteen problem behaviors, with male respondents being more likely than

65. This might suggest that educational efforts in recent years to discourage drinking and driving have been successful, but it also may simply indicate that law students are sufficiently concerned about having to report a DUI to bar admissions authorities that they try to avoid drinking and driving.

female respondents to reflect five or more problem behaviors (19% compared with 15%, a result shown to have statistical significance at  $p < .01$ ).

### B. Drug Use Among Law Students

#### 1. Street Drugs

As shown in Drug Table 1, law students responding to the SLSWB reported use of marijuana and cocaine in the prior twelve months and prior thirty days at higher percentages than law students responding to the 1991 AALS Survey. By contrast, reported use of LSD and other psychedelic drugs was lower among the respondents to the SLSWB than among respondents to the AALS Survey.<sup>66</sup> Male respondents in the SLSWB were more likely than female respondents in the SLSWB to use marijuana and cocaine in the prior twelve months and prior thirty days, results shown to have statistical significance at  $p < .001$ .<sup>67</sup> Few respondents to the SLSWB (less than 0.2%) reported use of heroin, crystal meth, inhalants or anabolic steroids. As indicated in Drug Table 1, frequency of use of marijuana, cocaine and Ecstasy among law student respondents to the SLSWB was more comparable to undergraduate respondents in the Healthy Minds Survey than to the graduate respondents in the Healthy Minds Survey.

**Drug Table 1 - 12-Month and 30-Day Use of Selected Street Drugs**

	SLSWB (2014)		AALS (1991) <sup>8</sup>		Healthy Minds (Graduate) <sup>9</sup>		Healthy Minds (Undergraduate) <sup>10</sup>	
	12 Month	30 Day	12 Month	30 Day	12 Month	30 Day	12 Month	30 Day
Marijuana	25%	14%	21%	8%	14%	7%	33%	18%
Cocaine	6%	2%	5%	1%	2%	1%	4%	1%
Ecstasy	4%	1%	N/A	N/A	1%	0.2%	5%	1%
LSD	1%	0.2%	2%	1%	0.7%	0.1%	3%	0.7%
Other Psychedelics	1%	0.2%	3%	1%	1%	0.1%	4%	1%

66. Notably, there was a fairly wide range across schools with respect to the use of marijuana in the past twelve months, ranging from 14.3% to 36.9%.

67. Male respondents in the SLSWB also were more likely to use other psychedelics than female respondents in the SLSWB in both the prior twelve months and prior thirty days, results shown to have statistical significance at  $p < .001$  (for twelve months) and  $p < .05$  (for thirty days). Male respondents in the SLSWB also were more likely to use LSD than female respondents in the SLSWB in both the prior twelve months and prior thirty days, although only the twelve-month results were shown to have statistical significance, at  $p < .01$ .

## 2. Prescription Drug Use

As noted earlier in this article, the SLSWB is the first survey to assess the use of prescription drugs among law students.<sup>68</sup> As shown in Drug Table 2, between 9% and 15% of respondents reported use of one or more of five categories of prescription drugs *with* a prescription during the prior year. Female respondents reported a higher rate of prescription drug use *with* a prescription than male respondents in every category of prescription drugs other than stimulant medication, results shown to have statistical significance at  $p < .001$  (for sedatives/anxiety medication, pain medication and anti-depressants), and at  $p < .05$  (for sleeping medication).

**Drug Table 2 - Use of Prescription Drugs *with* a Prescription During the Prior Year**

	Sleeping Medication	Sedatives - Anxiety Medication	Stimulants	Pain Medication	Anti-depressants
All SLSWB Respondents	9%	12%	13%	15%	12%
Male Respondents	8%	7%	13%	10%	8%
Female Respondents	10%	15%	13%	18%	14%

Of those respondents who reported using prescription drugs *with* a prescription, 13%, roughly one in eight, reported giving away their prescriptions drugs, with stimulants (17%) and sedatives/anxiety medication (12%) being given away most frequently.

## 3. Prescription Drug Use *Without a Prescription*

Overall, 14% of respondents reported having used prescription drugs *without a prescription* in the prior twelve months.<sup>69</sup> Stimulants were the prescription drug most frequently used without a prescription (9%), followed by pain medication and sedatives/anxiety medication (4%).<sup>70</sup> Notably, 61% of law student respondents to the SLSWB who reported using a stimulant medication without a prescription reported an increase in use compared with the twelve months prior to law school, while nearly 50% of those who reported using sedative/anxiety medication without a prescription noted an increase in use compared with the twelve months prior to law school, and 44% of those who

68. See *supra* text located between notes 32 and 33.

69. The percentage of respondents using prescription drugs *without a prescription* ranged across schools from 9% to 18%.

70. The most common sources of prescription drugs were a family member and a friend outside law school for all categories of prescription drugs other than stimulants. For prescriptions stimulants, the most common sources were a law school friend followed by a friend outside law school.

reported using sleeping medication without a prescription noted an increase in use compared with the twelve months prior to law school.

Law students were asked to identify the specific prescription stimulant they had used without a prescription. The most commonly reported stimulants used without a prescription were: Adderall (79%), followed by Adderall XR (39%), with Ritalin a distant third (12%) and Concerta fourth (6%). The most common reported reasons for using prescription stimulants without a prescription were:

- 1) to concentrate better while studying (67%);
- 2) to increase alertness to study longer (64%);
- 3) to enhance my academic performance (49%);
- 4) to increase my alertness to work longer (46%);
- 5) to concentrate better while working (45%)

Nearly 20% of law student respondents who reported using a prescription stimulant without a prescription indicated one reason was to “prevent other students who [also use a prescription stimulant] from having an academic edge over me.” This suggests that some law students may be inclined to use prescription stimulants without a prescription in an effort to gain a perceived advantage in law school.

Respondents also were asked about ten possible problem behaviors associated with drug use,<sup>71</sup> similar to but slightly different from the problem behaviors associated with alcohol.<sup>72</sup> More than 10% of the respondents indicated that they had experienced three or more of the ten problem behaviors associated with drug use, with male respondents more likely than female respondents (14% compared with 8%) to experience three or more

71. The ten problem behaviors about which respondents were asked relating to drug use were the following:

Have you used drugs other than those required for medical reasons?  
 Have you used more than one drug at a time?  
 Are you always able to stop using drugs when you want to?  
 Have you had blackouts or flashbacks as a result of drug use?  
 Have you ever felt bad or guilty about your drug use?  
 Have family members ever complained about your involvement with drugs?  
 Have you stayed away from your family because of your use of drugs?  
 Have you engaged in illegal activities in order to obtain drugs?  
 Have you ever experienced withdrawal symptoms (felt sick) when you stopped taking drugs?  
 Have you had medical problems as a result of your drug use (e.g., memory loss, hepatitis, convulsions, bleeding)?

The most common problematic behaviors were having used drugs other than those required for medical reasons (64%), having used more than one drug at a time (22%), and having felt bad or guilty about drug use (20%).

72. These 10 problem behaviors associated with drug use can be compared with the 16 problem behaviors associated with alcohol use discussed in Alcohol Table 5 and the accompanying text.

problem behaviors associated with drug use, a result shown to have statistical significance at  $p < .001$ .

### *C. Mental Health Results*

The survey asked a number of questions regarding each respondent's mental health condition, including embedded valid and reliable screening tools related to depression, anxiety and eating disorders, along with questions regarding history of diagnosis, and questions regarding whether respondents had hurt themselves or had thought about suicide. As the results are described, footnotes include the specifics about these psychological measures.

#### 1. Depression

The survey used the Patient Health Questionnaire-2 (PHQ-2) to screen for depression,<sup>73</sup> with 17% of respondents screening positive for depression. This compares with 20% of undergraduate respondents and 14% of graduate student respondents screening positive for depression in the Healthy Minds Study.<sup>74</sup>

Respondents also were asked if they had been diagnosed with depression during their lifetime, with 18% of respondents indicating a depression diagnosis (15% for male respondents and 20% for female respondents, a result shown to have statistical significance at  $p < .001$ ).<sup>75</sup> This compares with 15% of undergraduate respondents and 17% of graduate student respondents in

73. The PHQ-2 is scored on a 0,1,2,3 basis, with a positive screen reflected by a score of 3 or more (out of a possible six points). The Healthy Minds Study used the PHQ-9 (from which the PHQ-2 is derived). HEALTHY MINDS, 2014-15 HEALTHY MINDS STUDY, *supra* note 44 at 6 For a good description of the PHQ-2 and the PHQ-9, please see *Screening for Depression*, AM. FAM. PHYSICIAN, <http://www.aafp.org/afp/2012/0115/p139.html> (last visited July 31, 2016). The SLSWB also included a three-question screen asking about the frequency with which the respondents felt happy or hopeful or enjoyed life in the prior week. These three "positive" questions were drawn from the CES-D, a twenty-question depression screen. Ctr. for Substance Abuse Treatment, *Managing Depressive Symptoms in Substance Abuse Clients During Early Recovery*, TREATMENT IMPROVEMENT PROTOCOL SERIES, No. 48 (2008), <http://www.ncbi.nlm.nih.gov/books/NBK64056/>. In the SLSWB, Respondents were asked about the frequency in the past week in which they felt each of the three "positive" feelings. It was scored on a 0,1,2,3 basis, but scored inversely (to highlight those who did not enjoy life, were not happy, or were not hopeful about the future), with a score of 4 or more (out of 9) yielding a positive screen. This "short" version of the CES-D has not been validated, but we wanted to have something that could provide a cross-check with the PHQ-2 responses, without the full set of the CES-D, given concerns that the survey instrument was already long. Using this "positive" screen, 18% of respondents to the SLSWB surveyscreened positive for depression.
74. This data can be found by going to the Healthy Minds website, <http://data.healthymindsnetwork.org>, registering as a guest and then searching the Healthy Minds "All Years Combined" survey dataset and using the drop down boxes to search "Any depression (PHQ-9)" and "degree level". The Healthy Minds Study results were based on responses from over 81,000 undergraduates and over 28,000 graduate students (comprising both graduate and professional students).
75. Across law schools, respondents with a depression diagnosis ranged from 10% to 25%.

the Healthy Minds Study.<sup>76</sup> Notably, one-sixth of those respondents with a diagnosis of depression in the SLSWB had been diagnosed since starting law school.<sup>77</sup>

Both the screening data and the diagnosis data suggest depression may be slightly more prevalent among law students than among graduate students more generally. When compared with undergraduates, however, law student respondents to the SLSWB screened positive for depression with less frequency than undergraduate respondents to the Healthy Minds study, but reported a diagnosis of depression with greater frequency than undergraduate respondents to the Healthy Minds study.

## 2. Anxiety

The survey used the Kessler 6,<sup>78</sup> a six-question screening tool for generalized anxiety. Thirty-seven percent of respondents screened positive for anxiety—23% for mild to moderate anxiety and 14% for severe anxiety (15% for female respondents, 12% for male respondents,<sup>79</sup> a result shown to have statistical significance at  $p < .01$ ). This compares with 21% of undergraduate respondents and 15% of graduate student respondents who screened positive for anxiety in the Healthy Minds Study, of whom 8% of undergraduate respondents and 5% of graduate student respondents screened positive for severe anxiety.<sup>80</sup>

76. These results from the Healthy Minds Study were provided by J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan. These percentages are drawn from a set of over 117,000 undergraduate respondents and over 25,000 graduate student respondents (comprising both graduate and professional students). Email from J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan to Jerome M. Organ, Professor of Law at the University of St. Thomas School of Law (August 28, 2015, 09:17 CDT)(on file with authors).

77. Across law schools, respondents with a depression diagnosis since starting law school ranged from 0% to 43%.

78. The Kessler 6 is a six-question screening tool with a five-point Likert scale, 0-4, scored on a 0-24 scale with moderate anxiety reflected by a score of 8-12 and severe anxiety reflected by a score of 13 or more. For more information about the Kessler 6, please see <http://dhds.cdc.gov/guides/psychdistress>. For comparison purposes, a national study of more than 197,000 people found 9% with mild to moderate anxiety and 4% with severe anxiety using the Kessler 6. See Satvinder S. Dhingra, et al., *Psychological Distress Severity of Adults Reporting Receipt of Treatment for Mental Health Problems in the BRFSS*, 62 PSYCHIATRIC SERVS. 396 (2011).

79. A study examining the threshold of the Kessler 6 found that those who scored in the moderate mental distress range for the Kessler 6 reported some levels of impairment in their lives while those in the severe mental distress range reported “a lot of impairment.” Further, those in the moderate group reported twelve days of impairment, and those in the severe range reported sixty-six days of impairment. See Judith J. Prochaska et al., *Validity Study of the K6 Scale as a Measure of Moderate Mental Distress Based on Mental Health Treatment Need and Utilization*, 21 INT’L J. METHODS PSYCHIATRIC RES. 88 (2012).

80. This data can be found by going to the Healthy Minds website, <http://data.healthymindsnetwork.org>, registering as a guest and then searching the Healthy Minds “All Years Combined” survey dataset and using the drop down boxes to search “Anxiety (GAD-7)” and “degree level” and “Severe anxiety (GAD-7)”. The Healthy Minds Study results were based on responses from over 32,000 undergraduates and over 12,000 graduate

In addition, 21% of respondents in the SLSWB indicated that they had been diagnosed with anxiety at some point in their lives (16% for male respondents and 25% for female respondents,<sup>81</sup> a result shown to have statistical significance at  $p < .001$ ). This compares with 14% of undergraduate respondents and 15% of graduate student respondents in the Healthy Minds Study.<sup>82</sup> Of those in the SLSWB with an anxiety diagnosis, roughly 30% had been diagnosed with anxiety since starting law school.<sup>83</sup>

Both the screening data and the diagnosis data suggest that anxiety may be much more prevalent among law students than among undergraduates or graduate students more generally.

### 3. Eating Disorders

Part of the SLSWB included the SCOFF questionnaire, a five-question screening tool regarding eating disorders, on which two affirmative responses are considered indicative of a behavior symptomatic of an eating disorder.<sup>84</sup> Somewhat surprisingly, 27% of respondents screened positive for an eating disorder (18% of male respondents and 34% of female respondents, a result

---

students (comprising both graduate and professional students). The Healthy Minds Study screened for anxiety using the Generalized Anxiety Disorder-7 (GAD-7), a 21-point scale in which any score of 10 or more is viewed as positive for moderate anxiety with a score of 15 or more for severe anxiety. HEALTHY MINDS, 2014-15 HEALTHY MINDS STUDY, *supra* note 44. These results were based on over 32,000 undergraduates and over 12,000 graduate students (comprising both graduate and professional students). *Id.* For a list of the questions on the GAD-7, please see Robert L. Spitzer et al., *A Brief Measure for Assessing Generalized Anxiety Disorder*, 166 INTERNAL MED. 1092 (2006). For a description of the GAD-7, please see Nerys Williams, *The GAD-7 Questionnaire*, 64 Occupational Med. 224 (2014), <http://occm.oxfordjournals.org/content/64/3/224.full>.

81. Across law schools, respondents with an anxiety diagnosis ranged from 10% percent to 28%.
82. These results from the Healthy Minds Study were provided by J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan. These percentages are drawn from a set of over 117,000 undergraduate respondents and over 25,000 graduate student respondents (comprising both graduate and professional students). Email from J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan to Jerome M. Organ, Professor of Law at the University of St. Thomas School of Law (August 28, 2015, 09:17 CDT)(on file with authors).
83. Across law schools, respondents with an anxiety diagnosis who received the diagnosis since starting law school ranged from 16% to 57%.
84. The five questions on the SCOFF questionnaire are:  
 S - Do you make yourself Sick because you feel uncomfortably full?  
 C - Do you worry you have lost Control over how much you eat?  
 O - Have you recently lost more than One stone (6.35 kg or 14 lbs.) in a three-month period?  
 F - Do you believe yourself to be Fat when others say you are too thin?  
 F - Would you say Food dominates your life?

A yes answer to two or more questions suggests the need for a more comprehensive screening. See John F. Morgan, et al., *The SCOFF Questionnaire: A New Screening Tool for Eating Disorders*, 172(3) WEST. J. MED. 164-165 (2000); available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1070794>.

shown to have statistical significance at  $p < .001$ ).<sup>85</sup> This compares with 18% of undergraduate respondents and 14% of graduate student respondents in the Healthy Minds Study.<sup>86</sup>

The results of the SCOFF screening appear to contrast with the results from the survey question that specifically asked for a diagnosis of an eating disorder, for which just over 3% of respondents reported a diagnosis (less than 1% of male respondents and just over 5% of female respondents, a result shown to have statistical significance at  $p < .001$ ). This compares with 2% of undergraduate respondents and 3% of graduate student respondents in the Healthy Minds Study.<sup>87</sup> Less than 3% of those with an eating disorder diagnosis in the SLSWB reported receiving their diagnosis since starting law school.

#### 4. Self-Harm

The SLSWB survey asked respondents about whether, in the prior year, they had engaged in self-harm, such as cutting or burning oneself, with 9% of respondents indicating that they had done so. This compares with 18% for undergraduate respondents and 11% for graduate student respondents in the Healthy Minds Study.<sup>88</sup>

#### 5. Suicide

Respondents were asked about the extent to which they had seriously thought about attempting suicide, both in their lifetimes and in the prior twelve months. The survey revealed that 21% of participants reported they had seriously thought about suicide in their lifetime. Six percent had seriously thought about suicide in the prior twelve months, with no meaningful differences between male and female participants. This compares with 9% of undergraduate respondents and 5% of graduate student respondents in the Healthy Minds Survey who reported they had thought seriously about suicide in the prior twelve months.<sup>89</sup> The Centers for Disease Control and Prevention

85. The range across law schools was 19% to 31%.

86. These results from the Healthy Minds Study were provided by J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan. These percentages are drawn from a set of over 41,000 undergraduate respondents and over 8,000 graduate student respondents (comprising both graduate and professional students). Email from J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan to Jerome M. Organ, Professor of Law at the University of St. Thomas School of Law (August 28, 2015, 09:17 CDT)(on file with authors).

87. *Id.*

88. This data can be found by going to the Healthy Minds website, <http://data.healthymindsnetwork.org>, registering as a guest and then searching the Healthy Minds “All Years Combined” survey dataset and using the drop down boxes to search “Non-suicidal self-injury (past year)” and “degree level.” The Healthy Minds Study results were based on responses from over 79,000 undergraduates and over 27,000 graduate students (comprising both graduate and professional students).

89. This data can be found by going to the Healthy Minds website, <http://data.healthymindsnetwork.org/>, registering as a guest and then searching the Healthy Minds



reports that roughly 4% of Americans over age 18 reported suicidal thoughts in the prior year.<sup>90</sup>

#### *D. Help-Seeking Attitudes*

As indicated above, one of the most important aspects of this research involved gathering empirical information for the first time regarding law students' attitudes toward seeking help for substance use or mental health issues. The "help-seeking" results are detailed in the following paragraphs.

##### 1. Seeking Help Individually

The initial set of help-seeking questions concerned the extent to which respondents would be likely to use a health professional, to consult with a dean of students, or to talk to a state Lawyers Assistance Program (LAP) for help with substance use or mental health concerns. Respondents reported that they were more likely to seek help from a health professional, with 81% saying they would be very likely or somewhat likely to seek help from a health professional for an alcohol or drug problem and 79% for a mental health concern. By contrast, only 14% said they would be very likely or somewhat likely to seek help from a dean of students for an alcohol or drug problem and 15% for a mental health concern.<sup>91</sup>

Only 4% of respondents indicated that they actually had ever used a health professional for issues associated with alcohol or drugs, which seems to be a very low percentage relative to the percentages of respondents described above who indicated behavior that might suggest substance use issues.

As for mental health, 42% of respondents indicated that in the prior year they thought they needed help for emotional or mental health problems, with female respondents being much more likely than male respondents to report such a need (50% compared with 31%, a result shown to have statistical significance at  $p < .001$ ). Of these, approximately half reported that they actually received counseling from a health professional, with female respondents reporting getting help with more frequency than male respondents (28% compared with 19%, a result shown to have statistical significance at  $p < .001$ ).

---

"All Years Combined" survey dataset and using the drop down boxes to search "suicidal ideation (past year)" and "degree level." The Healthy Minds Study results were based on responses from over 79,000 undergraduates and over 27,000 graduate students (comprising both graduate and professional students).

90. A link to the CDC webpage can be found at <http://www.cdc.gov/violenceprevention/pdf/suicide-datasheet-a.pdf>.

91. We asked about willingness to seek help from state LAPs as well, but inadvertently asked this only with respect to alcohol/drugs, not with respect to mental health. Respondents were more likely to seek help from state LAPs than from deans of students, with 30% indicating a willingness to seek help for alcohol/drugs from a LAP.

## 2. Factors Discouraging Respondents from Seeking Help

The survey also asked respondents about factors that would discourage them from seeing a health professional for substance use issues and separately for mental health concerns. The most common factors are set forth in Help-Seeking Table 1.

**Help-Seeking Table 1 - Factors Discouraging Respondents from Seeking Help**

Factor	Percentage re. Substance Use	Percentage re. Mental Health
Potential threat to bar admission	63%	45%
Potential threat to job or academic status	62%	48%
Social stigma	43%	47%
Concerns about privacy	43%	30%
Financial reasons	41%	47%
The belief that they could handle the problem themselves	39%	36%
Not having the time	36%	34%

Notably, male respondents were much more likely than female respondents to believe that they could handle things themselves with respect to both alcohol/drugs and mental health concerns (51% for male respondents and 30% for female respondents for substance use and 45% for male respondents and 29% for female respondents for mental health concerns, results shown to have statistical significance at  $p < .001$ ). In addition, with respect to mental health, male respondents also had a higher concern about social stigma than female respondents (54% to 41%, a result shown to have statistical significance at  $p < .001$ ).

Perhaps most significantly, with respect to mental health, the percentage of third-year respondents concerned that seeking help would be a potential threat to job or academic status or a potential threat to bar admission was higher than the percentage of first-year respondents for whom these factors were of concern, a result shown to have statistical significance at  $p < .01$ . With respect to alcohol/drug concerns, the percentage of third-year respondents for whom potential threat to bar admission was a concern also was higher than the percentage among first-year respondents, a result shown to have statistical significance at  $p < .05$ . This may suggest that while in law school, students are getting messages indicating that seeking help for mental health concerns or alcohol/drug concerns may be problematic for their academic or professional careers.

Participants were also asked about perceived implications of talking with a dean of students or a state LAP regarding substance use or mental health concerns.

Respondents first were asked if they thought such conversations would be confidential. With respect to substance use, 80% of respondents reported believing a conversation with a state LAP would be confidential, while 58% thought a conversation with a dean of students would be confidential. Similarly, 80% of respondents reported believing a conversation with a state LAP about a mental health concern would be confidential, while 65% thought a conversation of this nature with a dean of students would be confidential.

Respondents separately were asked if they thought such a conversation would delay/prevent admission to the bar. Notably, 54% of participants reported that a conversation with the dean of students about substance use would delay/prevent admission to the bar, while 46% thought that such a conversation with a state LAP would delay/prevent admission to the bar. With respect to conversations about mental health, 42% thought that a conversation with the dean of students about mental health would delay/prevent admission to the bar, while 39% thought that such a conversation with a state LAP would delay/prevent admission to the bar.

Moreover, 49% of all respondents indicated: "If I had a drug or alcohol problem, my chances of getting admitted to the bar are better if the problem is hidden"; 43% of all respondents indicated: "If I had a mental health problem, my chances of getting admitted to the bar are better if the problem is hidden." Male respondents were much more inclined than female respondents to keep a problem hidden (53% compared with 44% for alcohol/drugs, 47% compared with 42% for mental health), results shown to have statistical significance at  $p < .001$  (for alcohol/drugs) and at  $p < .01$  (for mental health).

If one looks at the subgroup of slightly over 300 respondents who reported binge-drinking two or more times in the prior two weeks and indicated five or more problem behaviors associated with alcohol use, the percentages of those believing they are better off keeping the problem hidden increase to 58% (alcohol/drugs) and 56% (mental health), compared with all other respondents (46% (alcohol/drugs) and 41% (mental health)), results shown to have statistical significance at  $p < .01$  (alcohol/drugs) and at  $p < .001$  (mental health). In addition, if one looks at the subgroup of roughly 200 respondents who reported three or more of five issues of concern (two or more incidents of binge-drinking, use of street drugs, use of prescription drugs without a prescription, positive screening for depression and/or positive screening for severe anxiety), the percentages of those believing they are better off keeping the problem hidden increase to 72% (alcohol/drugs) and 62% (mental health), compared with all other respondents (47% (alcohol/drugs) and 42% (mental health)), results shown to have statistical significance at  $p < .001$  (alcohol/drugs) and at  $p < .001$  (mental health). Thus, those who might benefit most from getting help appear to be among those least inclined to seek help.

### 3. Encouraging Others to Seek Help or Taking Steps to Inform Appropriate Parties About Concerns About Other Students

The SLSWB also asked about the extent to which respondents would be likely to encourage a student to seek help if the respondents believed the student had an alcohol or drug problem or a mental health problem “that was sufficient to significantly impair his or her ability to fulfill his or her responsibilities as a student.”

Over three-quarters of respondents reported they were somewhat likely or very likely to encourage the student to seek help from a campus counseling center for alcohol/drug use (76%) or for mental health concerns (77%). Roughly half of respondents reported they were somewhat likely or very likely to encourage the student to seek help from a state LAP for alcohol/drug use (50%) or for mental health concerns (49%). Roughly one-third of respondents reported they were somewhat likely or very likely to encourage the student to seek help from a dean of students for alcohol/drug use (33%) or for mental health concerns (36%). Approximately one-third of participants reported they were somewhat likely or very likely to do nothing for a student they felt had a substance use or mental health problem.<sup>92</sup>

Female respondents were more likely than male respondents to report that they would encourage the student to seek help from campus counseling (82% (alcohol/drugs) and 83% (mental health) for female respondents and 70% (alcohol/drugs) and 68% (mental health) for male respondents), results shown to have statistical significance at  $p < .001$ . Correspondingly, male respondents were more likely than female respondents to report that they would do nothing (40% (alcohol/drugs) and 42% (mental health) for male respondents and 28% (alcohol/drugs) and 31% (mental health) for female respondents), results shown to have statistical significance at  $p < .001$  with respect to both alcohol/drugs and mental health.

Perhaps most significantly, respondents who were first-year students were more likely than respondents who were third-year students to report that they would encourage the student to seek help from campus counseling (79% (1Ls) to 75% (3Ls) (alcohol/drugs) and 80% (1Ls) to 74% (3Ls) (mental health)), results shown to have statistical significance at  $p < .05$  (alcohol/drugs) and at  $p < .01$  (mental health). Correspondingly, respondents who were third-year students were more likely than respondents who were first-year students to report that they would do nothing (36% (3Ls) to 30% (1Ls) (alcohol/drugs) and 38% (3Ls) to 33% (1Ls) (mental health)), results shown to have statistical significance at  $p < .05$  with respect to both alcohol/drugs and mental health.

If the student whom the SLSWB respondent thought had an alcohol or drug problem or a mental health problem that was sufficient to significantly impair his or her ability to fulfill his or her responsibilities as a student did

92. The percentages somewhat likely or very likely to do nothing were 33% for substance use and 36% for mental health. The respondents were encouraged to answer all subquestions on a 4-point scale from very unlikely to very likely, which is why the sum of responses exceeds 100%.

not seek help following the respondent's encouragement to do so, the vast majority of respondents reported being somewhat likely or very likely to do nothing (63% for alcohol/drugs, 55% for mental health), while much smaller percentages reported being somewhat likely or very likely to inform a campus counseling center (23% for alcohol/drugs, 31% for mental health), a dean of students (17% for alcohol/drugs, 20% for mental health), or a state LAP (12% for alcohol/drugs, 15% for mental health).<sup>93</sup>

Female respondents indicated a greater willingness than male respondents to inform campus counseling of their concerns about another student (26% (alcohol/drugs) and 34% (mental health) for female respondents and 19% (alcohol/drugs) and 25% (mental health) for male respondents), results shown to have statistical significance at  $p < .001$  for both alcohol/drugs and mental health. Correspondingly male respondents reported being more likely than female respondents to do nothing (67% (alcohol/drugs) and 60% (mental health) for male respondents and 59% (alcohol/drugs) and 51% (mental health) for female respondents), results shown to have statistical significance at  $p < .001$  with respect to both alcohol/drugs and mental health.

Perhaps most significantly, once again, respondents who were first-year students reported being more likely than respondents who were third-year students to inform campus counseling (29% (1Ls) to 19% (3Ls) (alcohol/drugs) and 35% (1Ls) to 26% (3Ls) (mental health)), results shown to have statistical significance at  $p < .001$  for both alcohol/drugs and mental health. Correspondingly respondents who were third-year students reported being more likely than respondents who were first-year students to do nothing (66% (3Ls) to 59% (1Ls) (alcohol/drugs) and 59% (3Ls) to 52% (1Ls) (mental health)), results shown to have statistical significance at  $p < .01$  with respect to both alcohol/drugs and mental health.

#### 4. Factors Discouraging Respondents from Informing Appropriate Parties About Concerns About Other Students

Respondents were asked to indicate reasons why they would be discouraged from informing a campus counseling center, a dean of students or a state LAP about concerns for a fellow student. The top four reasons were the following: potential threat to job or academic status (60% for alcohol/drugs, 53% for mental health), potential threat to bar admission (57% alcohol/drugs, 48% mental health) (both higher among third-years than first-years), social stigma (54% alcohol/drugs, 53% mental health), and don't want to get involved (53% alcohol/drugs, 54% mental health).

#### *E. Summary of Survey Data*

In summary, the results of the SLSWB should be a wakeup call to law schools and those involved with legal education and admission to the legal profession. The current culture of law school at many law schools appears to

93. Once again, the respondents were encouraged to answer all subquestions on a 4-point scale from very unlikely to very likely, which is why the sum of responses exceeds 100%.

foster a variety of challenges for students navigating their way into the legal profession:

1) Alcohol use should be seen as a concern. Law students appear to be drinking more now than they were twenty years ago. Nearly one-quarter of respondents reported binge-drinking two or more times in the prior two weeks and one-quarter of respondents screened positive on the CAGE assessment, which suggests further screening for alcoholism is appropriate.

2) Illegal use of street drugs and prescription drugs is fairly common, with nearly one-third of respondents (32%) having used marijuana or cocaine or used prescription drugs without a prescription in the prior year.

3) Over one-third of respondents screened positive for moderate or severe anxiety (much higher than comparable populations), and roughly one-sixth screened positive for depression (somewhat similar to comparable populations).

4) Of the one-fifth to one-sixth of respondents with a diagnosis of anxiety or depression, many received their diagnosis after beginning law school.

5) Even though many respondents indicate that they would benefit from help for substance use issues or for mental health concerns, significant majorities of those most in need of help are unlikely to seek help, for a variety of reasons.

The remainder of this article focuses on what law school administrators and other relevant leaders within the legal academy and legal profession can do to discourage misuse of alcohol and drugs among law students and to promote improved mental health among law students, especially in terms of encouraging those students who would benefit from help to seek help so that they are better-positioned to find success as law students and to serve their clients well as lawyers.

### **Section V: Discussion**

It is clear that more than twenty years after the AALS Survey on substance use among law students, the substance use and mental health issues facing law students have not decreased. Although the AALS Report included numerous recommendations<sup>94</sup> to improve the situation for law students, the data reported

94. In its Executive Summary, the Committee set forth the following specific recommendations for law school substance abuse programs for students.
  1. Even if its affiliated university has a substance abuse policy, a law school should promulgate its own supplementary written policy.
  2. The law school should designate at least one person as substance abuse coordinator and highly publicize that designation.
  3. The law school should institute an education program about the consequences and treatment of substance abuse. If resources permit, the school should seriously consider implementing a general wellness program.
  4. The law school should be prepared to intervene early to assist students with substance abuse problems.
  5. Following intervention, a medical evaluation should be completed and the student should be advised regarding appropriate counseling and treatment.
  6. The law school should consider adopting an alcohol policy.

here from the Survey of Law Student Well-Being (SLSWB) suggest that law schools and officials tasked with assisting law students may have failed to implement these recommendations effectively or that these recommendations have not been sufficient to address the challenges facing law students.

This section begins by discussing what various stakeholders can do to help law students dealing with substance use or mental health issues. The section concludes with a call for collective action to change the culture of legal education and the legal profession so that those in need of help find an environment in which they are encouraged to seek help.

#### *A. Suggestions for Various Stakeholders*

Law school faculty, staff and administrators bear responsibility for the development of the law students at their law school. Although the degree of that responsibility may be subject to debate, and may vary from student to student, law schools cannot expect students to grow intellectually and professionally when they are experiencing significant mental and emotional challenges. The transition for many of our students from college to law school, which includes learning the new language of the law, dealing with anxieties about their future beyond graduation, and managing the debt many take on to finance their legal education, creates stressors for which many are unprepared. If these stressors do not have an outlet, or if students do not have access to resources to help address these stressors, students are left on their own to understand (or not) why they are no longer thinking clearly and feeling healthy, why they are giving way to medications, legal or illicit, and why they have departed from

---

7. Whatever disciplinary sanctions the law school adopts for substance abuse should be consistent with a disease model emphasizing counseling and treatment.

8. The law school should highly publicize its substance abuse programs to students, faculty, and staff.

9. The law school should review the Americans with Disabilities Act (ADA) to ensure that the school's policies and practices comply with the requirements of the Act.

10. The law school should consider coordinating its internal substance abuse program with relevant lawyer assistance programs.

11. The law school should endeavor to persuade the relevant state bar admission authority to agree that:

(1). The authorities will maintain the general confidentiality of substance abuse information divulged to them;

(2) Any inquiries that bar admission authorities make concerning applicant's history of substance abuse or treatment for substance abuse will be limited to reasonably recent events; and

(3) Otherwise qualified applicants who are recovering from substance abuse will be admitted to practice.

12. At the national level, the Association of American Law Schools should cooperate with the American Bar Association Section of Legal Education and Admissions to the Bar and with the National Conference of Bar Examiners to urge bar admission authorities to provide assurances that otherwise qualified applicants who are recovering from substance abuse will not be denied admission to practice.

13. A law school should inform its students of the substance abuse policies of the jurisdictions where its graduates most frequently apply.

AALS REPORT, *supra* note 2, at vi-vii.

their intended course when first matriculating to law school. The stakeholders referenced hereinafter must take advantage of the many opportunities to help the students with whom they come in contact.<sup>95</sup>

### I. Admissions

Law school admission committees have the first look at the backgrounds and profiles of an entering class. To comply with relevant questions on a law school's application, a number of applicants will disclose prior issues involving substance use or mental health or may disclose conduct that suggests concern about a future student's wellness.<sup>96</sup> In most instances, the conduct will not prevent the student from being admitted.<sup>97</sup> However, the issues reported should not be ignored; if left entirely unaddressed, the behaviors have an increased chance of resurfacing during law school when any number of new stressors can serve as triggers or catalyze a relapse to former behavior. Admissions officials are in an ideal position to provide resources to the student, to refer the student to the dean of students, or to provide the dean of students a list of names for outreach post-matriculation.

A well-informed dean of students can in turn have a meaningful and constructive conversation with a potentially at-risk student. First, the dean of students should commend the student for having provided the information and assure the student that s/he has the ability to demonstrate to the bar that s/he is fit to practice law. Second, by informing the student in a caring way of the availability of resources and how to access them, and by sharing that the dean of students is one among several resources available should the student

95. Portions of the following section are adapted from AM. BAR ASS'N, SUBSTANCE ABUSE AND MENTAL HEALTH TOOLKIT FOR LAW STUDENTS AND THOSE WHO CARE ABOUT THEM, [http://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/ls\\_colap\\_mental\\_health\\_toolkit\\_new.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_mental_health_toolkit_new.authcheckdam.pdf) (last visited on July 31, 2015).
96. Law school applications generally have character and fitness questions that are similar to, but generally not as detailed as, state bar character and fitness questions. The Law School Admission Council Standards discusses the responsibility of law school applicants to provide accurate information to law schools in the admissions process. *Applying to Law School: Misconduct and Irregularities*, LAW SCH. ADMISSIONS COUNCIL, <http://www.lsac.org/jd/applying-to-law-school/overview/misconduct-and-irregularities> (last visited July 23, 2016). In addition, Standard 504 of the ABA Standards and Rules of Procedure for Approval of Law Schools sets forth the obligation law schools have to inform students of the character and fitness questions that will be asked by state boards of law examiners. *See Standard 504*, AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 33-34 (2015-2016), [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2015\\_2016\\_aba\\_standards\\_for\\_approval\\_of\\_law\\_schools\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_aba_standards_for_approval_of_law_schools_final.authcheckdam.pdf) [hereinafter ABA, STANDARDS].
97. *See, e.g.*, Susan Fortney, *Law Students Admissions and Ethics—Rethinking Character and Fitness Inquiries*, 45 S. TEX. L. REV. 983, 988 (2004) (stating that even for initial nondisclosures later amended, admission is typically not revoked). *See also*, Patricia A. Sexton, *When Character and Fitness Disclosures Collide: The Dilemma of Inconsistent Law School and Bar Admission Applications*, 21 PROF. LAW 1 (2012).



ever need assistance,<sup>98</sup> a dean of students will allow the entering student to feel good about the steps already taken, and to appreciate the support offered by the law school. Furthermore, as the student begins to settle in, should further situations arise, the student knows that s/he can and should access support through the law school. A significant note of caution here: Students with challenges in their background are potentially more sensitive to their surroundings and to the perception others have of them; a dean of students needs to carefully evaluate whether his or her approach is viewed as supportive and nonjudgmental. Even a kind offer of assistance may not always be welcome. It should always be clear that conversations with a student about his or her past or current substance use or mental health issues are voluntary.

**ACTION:** Admissions offices can carefully use relevant application information in a caring, productive way.

## 2. Administration

The dean of students or the student services administrator performing the functions of that position (hereinafter “dean of students”) plays a crucial role in raising awareness of law student wellness issues and in helping students to cope effectively with the stressors of law school. These officials are in a position to strategize how best to support awareness of the issues addressed. At the same time, the results of this survey show that no more than 15% of students would seek assistance from a dean of students for alcohol/drugs or mental health issues.<sup>99</sup> Consequently, changes must be made to raise the comfort level for a student to seek the assistance of a dean of students. In addition, efforts should be made to develop prominently displayed and publicized alternative sources of information. A dean of students must ensure that the appropriate contact points, as set forth below, are in place.

### *a. Orientation*

First-year orientation is one of the most important times to address law student wellness issues. Entering students are eager to absorb early on how they can succeed in law school. The dean of students should ensure that each first-year orientation includes a presentation on each or all the following topics: coping effectively with stress and anxiety, the incidence and prevalence of substance use and depression/anxiety in law school and the legal profession, the character-and-fitness bar application questions as related to substance use and mental health, and an overview of the mental health services available through the law school, the university, and the local LAP.

To further underscore the relevance of the issues, particularly if wellness is not raised during orientation, a professor in each first-year section can set aside

98. See, e.g., Lawrence Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112 (2002) (suggesting also that faculty consider how they approach their teaching and curriculum in preventing student issues from arising).

99. See *infra* note 106 and accompanying text.

time for discussion of these topics during an early or relevant portion of the semester; for faculty who hold a midterm exam, for example, the lead-up to the exam may prove a good time to raise these issues.

*b. Wellness Policy or Statement*

A law school that relies solely on its undergraduate institution for a substance use and/or mental health policy might consider whether that policy serves the particular needs of the law school population. Law students are usually of legal drinking age, which is one reason for a different policy. Law students will want assurances that disclosure of substance use or mental health issues to a dean of students will not result in negative academic consequences, and that disclosure will not be an impediment to bar admission. Although deans of students are not in a position to guarantee bar admission, a policy or statement can debunk myths and explain the process, emphasize that receiving help for an issue will improve a student's position both in the short and long term, and reemphasize available resources, and the level of confidentiality the resource offers.

A dean of students can develop a wellness statement or policy by identifying and involving the groups or individuals<sup>100</sup> necessary for support of the statement. At a minimum, the statement should affirm support for students, identify potential issues that may arise, and emphasize available resources. Working from the inside out enhances the likelihood of buy-in from the student community. Focus groups may provide a student perspective on how a statement will be most effective; at the same time, faculty and staff should be aware and supportive of any reporting obligations of matters brought to their attention. In the end, the goal of a policy or a statement should be to encourage help-seeking behavior by being affirming rather than punitive.<sup>101</sup>

*c. Publicity of Available Resources*

Law schools' websites are often aimed at an external audience and consequently do not serve as a primary resource for current students. However, a law school should consider the many prospective students—particularly those who have had prior substance use or mental health issues and/or are addressing such challenges at present—who seek law schools that embrace a welcoming and healthy atmosphere. For example, the results of an online search of law schools using “substance use” or “mental health” do not include a number of law schools with recognized wellness programs. Accordingly, administrators may want to consider the interrelationship among substance use, mental health, and wellness both when developing their programs and when publicizing them

100. The student governing board, journals if their membership encompasses a strong percentage of the student population, the Honor Code or Code of Conduct prosecutor, and the student organization championing wellness all have a stake in developing a positive statement.

101. Schools may wish to consider, for example, *Supporting Students: A Model Policy for Colleges and Universities*, JUDGE DAVID L. BAZELON CTR. FOR MENTAL HEALTH L., <http://www.bazelon.org/LinkClick.aspx?fileticket=2sA8atOxLT0%3d&tabid=225> (last updated May 15, 2007).

internally and externally. Active publicity of wellness resources normalizes the process for seeking assistance and taking care of oneself, while ensuring the accessibility of those resources. The stigma associated with these issues, the apprehension about character-and-fitness questions, the culture of law school—suggesting to some students that “being tough” is the only way to see it through—can result in a fear of seeking assistance. The Yale Law School reported that “students overwhelmingly feared exclusion and stigma from a variety of sources, including state bar associations, faculty, administrators, and peers.”<sup>102</sup> Making wellness a priority can help counteract these fears. Given the SLSWB results indicating law students’ reluctance to seek out a dean of students, the need for alternative resources is great.<sup>103</sup>

A law school should provide on-campus and off-campus alternative resources. Administrators want to ensure that resources are confidential and that they are publicized on a regular basis, particularly in advance of and during peak stress times. A dean of students should coordinate regular meetings with the law school dean, the local Board of Law Examiners, and the state LAP to develop a concerted approach to wellness. Working with the state bar sends the message that the matters are real-world and need to be addressed while in school. Ideally, a full-time law school mental health counselor would be available to address issues when they arise. Having a counselor available at the law school may help to destigmatize the act of seeking help, while bringing this resource closer to students may increase the likelihood that a student will seek immediate assistance.<sup>104</sup> Some deans of students have cited “losing” their students between a conversation with them and the anticipated follow-up at the university counseling center. On the other hand, if concerns about stigma make it less useful to have a counselor in the law school, it may be fruitful to have a counselor available near the law school. If financial resources present an issue, the law school should consider a partnership with the local LAP to include a counselor at the law school on a regular basis.<sup>105</sup>

**ACTION:** A dean of students must ensure that affirmative messages to support students are readily available at orientation, through statements and policy, and on the school’s website and social media platforms.

102. AGATSTEIN ET AL. FALLING THROUGH THE CRACKS, *supra* note 6, at 3. *See also supra* notes 19-20 and accompanying text.

103. *See infra* note 106 and accompanying text.

104. *See Personal Counseling*, GEO. L., <https://www.law.georgetown.edu/campus-life/advising-counseling/personal-counseling/> (last visited July 31, 2016).

105. Texas was able to implement such a project through its Lawyers Concerned for Lawyers group. *Texas Lawyers Assistance*, STATE BAR TEX. <https://www.texasbar.com/Content/NavigationMenu/ForLawyers/TexasLawyersAssistanceProgram/SheeranCrowleyMemorialTrust/default.htm> (last visited July 31, 2016).

### 3. Faculty

The SLSWB shows that students with the most significant challenges to wellness are often the least likely to seek help.<sup>106</sup> Although many students will only rarely see the dean of students, every student interacts with faculty. Students look up to faculty, and meet with them regularly for academic and career development support. Faculty, if properly educated and willing to play this role, can spot potential issues before they become a crisis. It is critical that faculty be trained to recognize the signs and risk factors associated with common mental health and substance use issues, and to respond appropriately to a student in need.<sup>107</sup> A number of faculty around the country have set examples by addressing wellness issues, as well as sharing their personal experiences.<sup>108</sup> The following are areas in which faculty can assist in promoting wellness.

#### a. Class Attendance

A range of law school attendance policies exist around the country, as the American Bar Association Section of Legal Education and Admissions to the Bar has taken a largely hands-off approach to this law school practice.<sup>109</sup> At the

106. See *supra* sec. IV (D)(2).

107. See Danna Ethan & Erica J. Seidel, *On the Frontlines of Student Crisis: Urban Community College Professors' Experiences and Perceived Role in Handling Students in Distress*, 31 COLL. STUD. AFFS. J., 15 (2013).

108. For example, Brian Clarke at Charlotte Law blogged quite personally about his depression and also authored *Coming Out in the Classroom: Law Professors, Law Students, and Depression*, 64 J. LEGAL EDUC. 403 (2015). See Brian Clarke, *Law Professors, Law Students and Depression ... A Story of Coming Out (Part 1)*, FACULTY LOUNGE (Mar. 31, 2014, 7:00 AM); Brian Clark, *Law Professors, Law Students and Depression ... A Story of Coming Out (Part 2)*, FACULTY LOUNGE (Apr. 2, 2014, 7:30 AM), <http://www.thefacultylounge.org/2014/04/in-part-i-of-this-little-series-i-laid-out-some-of-the-statistics-regarding-the-scope-of-the-problem-of-depression-and-anxie.html>; Brian Clark, *Law Professors, Law Students and Depression ... A Story of Coming Out (Part 3)*, FACULTY LOUNGE (Apr. 7, 2014, 10:05 AM), <http://www.thefacultylounge.org/2014/04/the-coming-out-trilogy-part-3.html>. In addition, there are articles or blogs by others, such as Elyn Saks, who published *THE CENTER CANNOT HOLD: MY JOURNEY THROUGH MADNESS* (2008), about her challenges with schizophrenia and acute psychosis. See also Lisa McElroy, *Worrying Enormously About Small Things*, SLATE (July 18, 2013, 8:16 AM), [http://www.slate.com/articles/health\\_and\\_science/medical\\_examiner/2013/07/living\\_with\\_anxiety\\_and\\_panic\\_attacks\\_academia\\_needs\\_to\\_accommodate\\_mental.html](http://www.slate.com/articles/health_and_science/medical_examiner/2013/07/living_with_anxiety_and_panic_attacks_academia_needs_to_accommodate_mental.html); Marjorie Silver, who talks with students at Touro Law Center about her depression. Marjorie A. Silver, *Commitment and Responsibility: Modeling and Teaching Professionalism Pervasively*, 14 WIDENER L.J. 329 (2005). See also James Jones, *Walking the Tightrope of Bipolar Disorder: The Secret Life of a Law Professor*, 57 J. LEGAL EDUC. 349 (2008). Some professors are working on helping students manage stress and maintain mental health through mindfulness. See, e.g., Scott Rogers, Lecturer in Law and Director of the Mindfulness in Law Program. *Mindfulness in Law Program*, MIAMI L., <http://www.miamimindfulness.org/Program/jurisight/index.html> (last visited July 31, 2016).

109. Accreditation standards previously required each law school to have an attendance policy. ("A law school shall require regular and punctual class attendance."). *Standard 304(d)*, Am. Bar Ass'n, ABA Standards and Rules of Procedure for Approval of Law Schools 2013-2014, at 24, [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2013\\_2014\\_final\\_aba\\_standards\\_and\\_rules\\_of\\_procedure\\_for\\_approval\\_](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_approval_)

same time, any counselor or expert who has worked with a student in crisis will attest that class absences are less likely a result of apathy than of a student nearing or in crisis.<sup>110</sup> Further, students care not only about missing class but also about what their faculty think.<sup>111</sup> Some faculty wish not to be directly involved with student absences, owing to feeling ill-equipped, or otherwise not wanting to be pulled into a student's personal life, or out of concern that classroom dynamics may change if a student feels singled out. One law school's student affairs office has responded to this challenge by conducting random "check-in"-style student outreach, asking students to come in for brief conversations. This outreach method allows for a student about whom a concern has been raised to be folded quietly into the outreach.<sup>112</sup> Another school has established a procedure whereby anyone concerned about a student can send an email containing only the student's name; trained law school officials then check in with one another and investigate further to determine if a meeting with the student is warranted.<sup>113</sup> A third law school has established an online protocol for a student to self-report absences in advance; this teaches the students the professional practice of providing advance notice, and also enables the dean of students to follow up as appropriate when medical or other personal problems are noted.<sup>114</sup>

---

of\_law\_schools\_body.authcheckdam.pdf. At its annual meeting in 2015, the ABA, over objection, voted to adopt what some perceive to be a softer standard *Standard 308(a)*, ABA, STANDARDS, *supra* note 114, at 20. ("A law school shall adopt, publish, and adhere to sound academic standards, including those for regular class attendance, good standing, academic integrity, graduation, and dismissal."). For comment on the proposal, see [http://americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/20150320\\_notice\\_comment\\_march\\_2015.authcheckdam.pdf](http://americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20150320_notice_comment_march_2015.authcheckdam.pdf).

- 110. See BRUCE S. SHARKIN, *COLLEGE STUDENTS IN DISTRESS: A RESOURCE GUIDE FOR FACULTY, STAFF, AND CAMPUS COMMUNITY* 10 (2006).
- 111. Kent Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. LEGAL EDUC. 247, 251 (1993).
- 112. The "check-in" style is currently practiced at American University Washington College of Law.
- 113. The "Safety Net" Program at Georgetown has this feature. E-mail from David Jaffe, Assoc. Dean., American University Washington College of Law, to Mitchell C. Bailin, Assoc. V. Pres. and Dean of Students, Georgetown University Law Center (June 23, 2015, 13:46 EDT) (on file with author).
- 114. *Dean of Students: Absence Notification*, U. MIAMI SCH. L., described at <http://www.law.miami.edu/students/dean-of-students> (last visited July 31, 2016). It should be noted that some mental health crises do not lend themselves to giving advance notice. In such a case, it might be a reasonable accommodation of disability to excuse a student's attendance for the period in which he or she was managing symptoms and/or seeking care.

*b. Recognizing a Student Potentially in Crisis and Referring the Student for Help*

A faculty member should anticipate having conversations with students expressing concerns<sup>115</sup> and can learn and implement skills essential for facilitating conversations in which a student may be seeking assistance. Among these skills are nodding while the student is speaking, maintaining eye contact to demonstrate active listening, and reflecting the student's feelings or paraphrasing what the student is saying.<sup>116</sup> It is important to remember both content and feeling when students are speaking. Details are important so the student knows the faculty member is listening and has accurately heard the story. Hearing a student's feelings and then reflecting them back builds rapport and helps a student feel he or she really is being understood. Asking open-ended questions is also helpful: "Tell me how you feel about your law school experience" will yield a more helpful response than "Do you like law school?" Being comfortable with silence also helps, as it allows a student to gather thoughts and think about them more deeply before speaking; it also prevents the faculty member from attempting to rush a solution, as the student will develop more insight and mastery if encouraged to find preliminary answers solutions on his/her own. Finally, encouraging a student through unconditional positive regard and rewarding positive behavior will be more helpful than blaming or shaming the student (i.e., by using phrases such as "you should have . . ." or "why didn't you . . .?"). It can be very helpful to be affirming. For example, when a student has refrained from turning to alcohol for stress relief one can acknowledge that choice: "Instead of drinking, you dealt with the situation in a healthy manner and continued to communicate your feelings."

**ACTION:** Faculty should establish and follow sound attendance policies in coordination with their dean of students, and be prepared to assist students who approach them by being active listeners. Law schools should require regular trainings for faculty on recognizing symptoms of mental health issues and warning signs of suicide.<sup>117</sup>

115. A research document from the Higher Education Research Institute at UCLA states that 38% of students believed that there was a very good chance that they would be communicating with their professors. HIGHER RES. INST., *THE AMERICAN FRESHMAN: NATIONAL NORMS FALL 2010* (2011), [http://www.heri.ucla.edu/PDFs/pubs/briefs/HERI\\_ResearchBrief\\_Norms2010.pdf](http://www.heri.ucla.edu/PDFs/pubs/briefs/HERI_ResearchBrief_Norms2010.pdf).
116. Examples might be: "That sounds very frustrating; this must be very hard for you" or "So you became angry with the situation and went out drinking to calm yourself down."
117. Often campus counseling centers can provide this training; other options include: KOGNITO, [HTTPS://WWW.KOGNITO.COM/](https://www.kognito.com/) (last visited July 31, 2016); QPR INST., [HTTPS://WWW.QPRINSTITUTE.COM/](https://www.qprinstitute.com/) (last visited July 31, 2016). QPR focuses on suicide prevention. It stands for Question, Persuade, Refer. *See also* ASIST, <https://www.livingworks.net/programs/assist/>; The Dave Nee Foundation can provide training and/or can share the best-practices registry for this type of training. DAVE NEE FOUND., [HTTP://WWW.DAVENEEOFUNDATION.ORG/](http://www.daveneefoundation.org/) (last visited July 30, 2016).

## 4. State Bar/Board of Bar Examiners

The SLSWB confirms that one of the most significant obstacles to seeing a health professional for alcohol or drug or mental health issues is a fear of not being admitted to the bar, owing to the character-and-fitness component of bar applications.<sup>118</sup> The United States Department of Justice (DOJ) recently concluded an investigation into the mental health inquiries on Louisiana's character-and-fitness examination. The Department determined that questions about bar applicants' mental health status violated the Americans with Disabilities Act because "[i]nquiring about applicants' medical conditions substitutes inappropriate questions about an applicant's status as a person with a disability for legitimate questions about an applicant's conduct."<sup>119</sup>

As a result, Louisiana and other states subsequently changed their questions,<sup>120</sup> and the National Conference of Bar Examiners (NCBE), the body that provides questions for several jurisdictions, recommended the same changes in the jurisdictions to which it supplied the questions.<sup>121</sup> At about the same time, DOJ expressed similar concerns in response to an inquiry from the Vermont Human Rights Commission.<sup>122</sup> An investigation also has commenced in Florida, a jurisdiction that does not rely on the NCBE for character-and-fitness questions.<sup>123</sup> In August 2015, the American Bar Association passed a resolution urging state bar licensing bodies to "to eliminate from applications required for admission to the bar any questions that ask about mental health history, diagnoses, or treatment and instead use questions that focus on conduct or behavior that impairs an applicant's ability to practice law in a competent, ethical, and professional manner."<sup>124</sup> It remains to be seen how quickly state-licensing authorities will take responsive action. We have seen

118. See *supra* Section IV, D, 2. Jennifer Jolly-Ryan also has written about these concerns in her recent article *The Last Taboo: Breaking Law Students with Mental Illnesses and Disabilities Out of the Stigma Straitjacket*, 79 UMKC L. Rev. 123 (2014) [hereinafter Jolly-Ryan, *The Last Taboo*].
119. See Letter from U.S. Department of Justice to Louisiana Supreme Court, Feb. 5, 2014, at 19 (available at <https://www.ada.gov/louisiana-bar-lof.pdf>); see also Alyssa Dragnich, *Have You Ever . . . ? How State Bar Association Inquiries into Mental Health Violate the Americans with Disabilities Act*, 80 BKLYN L. REV. 677 (2015) [hereinafter Dragnich, *Have You Ever*].
120. Settlement Agreement Between the United States of America and The Louisiana Supreme Court Under the Americans with Disabilities Act (Aug. 13, 2014), [http://www.ada.gov/louisiana-supreme-court\\_sa.htm](http://www.ada.gov/louisiana-supreme-court_sa.htm).
121. See Memorandum from Erica Moeser, Pres., Nat'l Conf. of Bar Examiners, to Bar Admission Administrators (Feb. 24, 2014) (on file with authors).
122. See Letter from U.S. Department of Justice to Vermont Human Rights Commission, January 21, 2014, *supra* note 119 (the Letter to Vermont follows immediately after the Letter to Louisiana starting on page 36).
123. See Letter from U.S. Dep't of Justice, Civil Rights Div., to Chief Justice Jorge Labarga, Fla. Supreme Court (Dec. 10, 2014) (on file with authors).
124. AM. BAR ASS'N, RESOLUTION (REVISED 102) (2015) <http://www.americanbar.org/content/dam/aba/images/abanews/2015annualresolutions/102.pdf>.

already that the Georgia State Bar does not plan to adjust the questions despite the resolution.<sup>125</sup>

A level of distrust or lack of understanding may also be present. State boards of law examiners may feel that law schools have not taken seriously enough character-and-fitness issues when admitting students to law school or when certifying students to sit for the bar upon graduation. Law school administrators, in turn, may fear that providing adverse student information will result in a student's not being admitted to the bar, or may fear that litigation will ensue over the type of information provided. Ideally, these two bodies could agree on a set of mutually satisfying parameters and allow students to seek the assistance they need while in law school.<sup>126</sup>

With these concerns in mind, it is imperative that the parties invested in the health of the country's future lawyers—from the Department of Justice to state supreme courts to the National Conference of Bar Examiners—work together to eliminate discriminatory character-and-fitness questions, while simultaneously strengthening and spreading the message that seeking help while in law school is appropriate, necessary, and acceptable.

**ACTION:** The process for each state character-and-fitness application should be transparent and nondiscriminatory. Law schools and state bar examiners should be in regular and open dialogue about these issues. A universal message to the students that getting help now generally will not delay the bar admission process should be clearly articulated. At a minimum, bar officials should meet with all law students in their jurisdiction, standing side by side with the law school's dean of students and/or LAP designee to communicate that getting assistance while in law school can only enhance their position for being admitted to the bar.

### *B. Call for Collective Action*

This survey should be a call to action for law school faculty, staff and administrators, for the ABA and state LAPs and for the NCBE and state

125. See Alyson Palmer, *Georgia Doesn't Plan Changes in Wake of ABA Push Against Mental Health Inquiries on Bar Applications*, DAILY REP. (Aug. 18, 2015), <http://www.dailyreportonline.com/id=1202735065671/Georgia-Doesnt-Plan-Changes-in-Wake-of-ABA-Push-Against-Mental-Health-Inquiries-on-Bar-Applications?sIreturn=20150803100338>.

126. It is worth noting here that research suggests little correlation between those flagged for character-and-fitness issues during the bar admission process and later misconduct as a practicing attorney. See Dragnich, *Have You Ever*, *supra* note 119 at 721-22 (citing Leslie C. Levin, et al., *A Study of the Relationship Between Bar Admissions Data and Subsequent Lawyer Discipline*, 13 LAW SCH. ADMISSIONS COUNCIL GRANTS REPORT SERIES 1 (2013), [http://www.lzac.org/docs/default-source/research-\(lsac-resources\)/gr-13-01.pdf](http://www.lzac.org/docs/default-source/research-(lsac-resources)/gr-13-01.pdf)). Also of note, relatively few bar applications that include a mental health issue result in denial of admission. Dragnich, *Have You Ever*, *supra* note 119, at 728. Taken together, one may wonder whether (invasive) character-and-fitness questions are serving their stated purpose and intent.



boards of law examiners.<sup>127</sup> Incremental efforts by a handful of people at a handful of law schools will not solve this problem—it is a problem that requires a coordinated and sustained effort by a variety of stakeholders. A number of academics have highlighted these concerns over the past three decades, and the AALS Special Report focused on the substance use concerns as of the early 1990s. But despite the efforts of many individuals to bring attention to these concerns and despite the concerted effort of the AALS Special Committee in the early 1990s, little progress has been made on these issues.

Law schools and state LAPs and boards of law examiners need to explore best practices and develop empirically supported solutions. Research needs to center on suicide,<sup>128</sup> on faculty attitudes and beliefs about law students' wellness (it is possible that law school faculty themselves affect the wellness of our law students; do faculty members contribute to the stigma or do they help to destigmatize?), and on the efficacy of suggested best practices (guidance on best practices; effectiveness of various interventions; assessment of the law school with the "healthiest" law students and how it became that way, or whether the law school influenced them, etc.). Legal education also can look to other professional educational contexts for possible insights.<sup>129</sup>

This coordinated and sustained effort will require communication and data. Some entities that don't always trust one another or talk to one another—such as law schools and boards of law examiners—need to be in direct communication. Some experimental efforts need to be commenced and assessed so that we can identify and disseminate ideas that truly are best practices. Who will lead this charge remains to be seen. If the various stakeholders do not come together to work on improving this situation, however, twenty years from now we will find ourselves in the same place—a place where our students are suffering and where some of their clients ultimately will be suffering because legal education will remain a culture that fosters excessive drinking and drug use, that causes stress and triggers mental health issues, and yet discourages the students (and lawyers) who need help from seeking the help they need.

127. We are not the first to call for such action. The AALS REPORT, *supra* note 2, at vi-vii, set forth a list of recommendations. Laura Rothstein, in her 2008 article *Law Students and Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual*, 69 U. PITT. L. REV. 531 (2008), also has several recommendations, as does Jennifer Jolly-Ryan in her recent article, *The Last Taboo*, *supra* note 118.

128. Attention needs to be given to an in-depth analysis of law students who have died by suicide; qualitative interviews with deceased students' friends, family, and law school administrators; and a review of students' law school applications to better predict suicidality among law students and how to appropriately intervene.

129. Stuart J. Slavin et al., *Medical Student Mental Health 3.0: Improving Student Wellness Through Curricular Changes*, 89 ACAD. MED. 573 (2014).