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8-22-2017

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DEALING WITH CAUSES AS WELL AS SYMPTOMS OF LAW STUDENTS' AND LAWYERS' LACK OF WELL-BEING

AUGUST 22, 2017 | JOHN LANDE | 1 COMMENT

The National Task Force on Lawyer Well-Being just issued its report, [The Path to Lawyer Well-Being: Practical Recommendations for Positive Change](#).

It's a thoughtful, constructive effort to address problems that lawyers face in practice and to promote their well-being. It deals with serious issues including substance abuse, mental health problems, and suicide. It includes recommendations for better education, fostering collegiality and civility, enhancing lawyers' sense of control, mentoring, and systematic monitoring colleagues' well-being, among many others. It addresses legal education, recommending adjustment of the admissions process to promote well-being, detection and assistance of students experiencing problems, addressing of issues of well-being in professional responsibility courses, and provision of onsite counselors, among other things.

An appendix suggests topics for educational programs, including conflict management. This section reads:

Our legal system is adversarial—it's rooted in conflict. Even so, lawyers generally are not trained on how to constructively handle conflict and to adapt tactics based on context—from necessary work-related conflicts to inter-personal conflicts with clients, opposing counsel, colleagues, or loved ones. Conflict is inevitable and can be both positive and negative. But chronic, unmanaged conflict creates physical, psychological, and behavioral stress. Research suggests that conflict management training can reduce the negative stressful effects of conflict and possibly produce better, more productive lawyers. [Footnotes omitted in this and subsequent quotations.]

Dealing with Causes of Law Students' Problems

I believe that many students' and lawyers' problems are caused by law school and legal practice. To the extent that's so, treating the symptoms will not fundamentally deal with the systemic causes of the problems. Rather, significant changes in the nature of legal edu-

cation and practice – not merely dealing with the symptoms – would be necessary to prevent many of these problems from arising.

I recently wrote a piece, [Escaping from Lawyers' Prison of Fear](#), in which I examined lawyers' fears about negotiation and a long list of other things. I summarized evidence that

the law school experience often is highly stressful and stimulates fear-related responses. Patterns of fear initiated in law school can persist and grow as students move into legal practice. ... Several studies have found that law students 'consistently report more anxiety than the general population. ... Although some students obviously thrive in law school, for others, law school is an experience of "fear and loathing" ... During law school, [] symptom levels are elevated significantly when compared with the normal population. These symptoms include obsessive-compulsive behavior, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism (social alienation and isolation). Elevations of symptom levels significantly increase for law students during the first to third years of law school.

Depending on the symptom, 20–40% of any given class reports significant symptom elevations. Finally, further longitudinal analysis showed that the symptom elevations do not significantly decrease between the spring of the third year and the next two years of law practice as alumni.

It is not clear what causes law students' distress. Theorists have suggested various features of legal education may be causal factors including "overvaluing theoretical scholarship and undervaluing the teaching function, employing generally unsound teaching and testing methods, and emphasizing abstract theory rather than providing practical training." In particular, some things causing distress may include an intimidating Socratic teaching method, novelty of the subject matter, ambiguity of the law, heavy work load, competition, lack of grades in most courses until the end of the semester, feelings of isolation, de-emphasizing personal relationships, ignoring emotional reactions, and reluctance to get help. Some have compared the first year of law school to "military indoctrination" in which instructors intimidate students, who are "stripped naked, so to speak, so that [they] may be remade" as lawyers and, as a result, become passive and fearful. Some scholars argue that legal education trains students to ignore their own values, which undermines their self-confidence. For example, Dean Edward Rubin argues that lawyers experience "ethical stress" where "lawyers [and law students] are required to be insincere, to speak words they themselves do not necessarily believe."

The Task Force Report recommends that faculty "assess law school practices and offer faculty education on promoting well-being in the classroom." It cites Larry Kreiger and Kennon

Sheldon's research suggesting that "potential culprits that undercut student well-being includ[e] hierarchical markers of worth such as comparative grading, mandatory curves, status seeking placement practices, lack of clear and timely feedback, and teaching practices that are isolating and intimidating."

The Report recommends "that law schools assess their classroom and organizational practices, make modifications where possible, and offer faculty programming on supporting student well-being while continuing to uphold high standards of excellence."

If law school faculty and administrators want to take serious action to prevent law students' mental health problems and lack of well-being, they should conduct a careful examination of features of their programs that unnecessarily contribute to these problems. Students with manifest problems are like canaries in the coal mine for a much larger group of students who experience great stress but whose problems do not manifest outwardly. Thus dealing with fundamental causes of students' problems could benefit a large portion of the student population.

As I wrote in connection with the [Stone Soup Project](#), students may [do better if they feel that their studies are relevant to professional goals — and fun.](#)

Obviously, no set of measures dealing with causes or symptoms would completely prevent students' problems. And there is a [long list of pressures inhibiting law schools from making substantial changes in their educational practices](#), so change would be hard. But changing the law school environment – and not only addressing individual students' issues – might be necessary to effectively address the cause of many students' problems.

Dealing with Causes of Lawyers' Problems

Most lawyers' work is stressful. Litigation is inherently adversarial and transactional work involves efforts to gain competitive advantage. So the stress of constantly being immersed in conflict is unavoidable to some extent. But not completely unavoidable.

Some lawyers view their roles as problem-solvers and, as such, seek to de-escalate conflict whenever appropriate while always providing diligent representation. Even these lawyers need to fight hard when dealing with untrustworthy adversaries. But they do so only when needed.

The culture in some practice communities is generally adversarial. Acting tough is the default and the norm, not something that lawyers do to deal with a few exceptionally problematic cases.

This culture seems unnecessary and counterproductive both for clients and lawyers. I believe that changing this culture would substantially improve lawyers' well-being. This is not merely being civil, which is good but doesn't fundamentally change lawyers' approach to their work. Rather, this involves a legal culture where problem-solving is the norm for the way that lawyers serve their clients. My book on [lawyering with planned early negotiation](#) is one of many efforts encouraging this approach.

As with changes in legal education, changing legal practice culture is not easy nor a complete solution to the problems. But I think that seeking such changes is worth the effort. Hopefully, such changes would produce better education and client service – with the side-effects of improving law students' and lawyers' well-being.

◀ FOR TEACHERS AND STUDENTS ◀ **LAWYERING**

ONE THOUGHT ON “DEALING WITH CAUSES AS WELL AS SYMPTOMS OF LAW STUDENTS’ AND LAWYERS’ LACK OF WELL-BEING”

Kristen Blankley

AUGUST 23, 2017 AT 9:38 AM

Thanks for posting and for your thoughtful comments, John!

I try to address wellness issues in my Legal Profession (ethics) class, and I do my best to be a resource for students to talk about these issues.

I look forward to reading the report in more detail!

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