

Education & Practice

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Lawyers Helping Lawyers: A Critical Time of Need

By Renu Brennan

The legal profession can be immensely rewarding and extremely stressful, often both at the same time. Much is expected of lawyers, whether in private practice or public service. What tools do we have to help ourselves and our peers deal with stress? This article explores one of our best assets in this struggle -- Lawyers Helping Lawyers (LHL). Lawyers Helping Lawyers does just what its name implies: provides lawyers with peers who are willing and able to help them when they sense their professional and personal lives are at risk due to stress, addiction, or mental health concerns.

In my eight years as an assistant bar counsel, it was not often, actually ever, that a lawyer thanked me for disciplining them. It is a true testament, then, to LHL that one who entered into a contract with LHL as part of discipline sought me out to thank me because LHL saved not only his career, but his life. It is my hope that with this article, we create an awareness that will help us help others

before the disciplinary system becomes involved; and better yet, we create an environment that fosters wellness and reduces the numbers of lawyers who face impairment due to stress.

The Problem and the Need to Act

The statistics and the stories are compelling, and show that stress, depression, and substance abuse affect lawyers of all ages and that we must act to address problems not only after they affect a lawyer's practice, but before. The evidence of our struggles is anecdotal – we all know another lawyer who has struggled with these issues – and borne out by data:

ABA Commission on Lawyer Assistance Programs and Hazelden Betty Ford Study published in the January/February 2016 *Journal of Addictive Medicine*:

- 21% to 36% of lawyers qualify as problem drinkers.
- 28% struggle with depression.
- 18% suffer from anxiety.
- 23% deal with stress.

The Hazelden Study surveyed 12,825 licensed, practicing lawyers across nineteen states assessing alcohol and drug use and symptoms of depression, anxiety, and stress. The Substance Abuse and Mental Health Services Administration reports that while only 6.4% of the general population abuse alcohol and only 6.6% experience major depression, lawyers have far higher numbers in both categories. The Hazelden Study concluded that attorneys

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Chair's Column

John M. Bredehoff
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“we are now being exposed to a window – a whole series of windows, a Titanic-sized row of portholes – into how men and women interact both at work and in society as a whole. And what we are seeing is not acceptable”

Harassment: Terms of the Debate

As I write this column, the news cycle is suffused with discussions of sexual harassment, prompted by stories based on allegations ranging from childhood sexual assault to the inappropriate placement of an invalid former President's hand during photo sessions. I have been an attorney for almost 35 years, and involved in employment law for about a quarter-century. I have represented the victims of harassment and I have represented those accused of harassment. I have taught innumerable training courses on how to prevent harassment. And now I would like to add my two cents worth to what has become a national debate.

First, I think it is important that we not let these issues fade from the forefront of our collective public consciousness. Those of us old enough to remember Anita Hill's testimony to Congress can recall a similar groundswell against workplace harassment, which then receded and left little lasting change in its wake. Let us not allow this public conversation to wane in the same way.

Second – and this is why I think the discussion is appropriate for our newsletter, concerned as we all are with the law, the education of lawyers, and the pressing issues of professionalism – I believe we as lawyers have an obligation to help set the terms of the debate. “Sexual harassment” and “hostile environment” (another phrase that is now again *au courant*) have technical, legal meanings. In order for sex-linked conduct to violate federal law, for example, it must be severe, pervasive, interfere unreasonably with the performance of work, be offensive not only to the victim but to a reasonable recipient of that kind of conduct. For someone to be liable – and under federal civil rights law, generally only companies (“employers”) can be liable, not individual harassers – an administrative claim must be made within 300 days of the incident, and in most cases an internal complaint must have preceded the administrative filing. And the overarching theme of the federal Civil Rights Act is that it governs relationships between employers and employees.

However, none of these impedimenta is really pertinent to what is being discussed now. Events 30 or more years ago – even six or more years ago – are, legally, nothing more than stale claims. Single instances of disrespect or improper touching seldom rise to a federal law violation. Much of the conduct we are discussing now did not occur between employees, or between an employee and supervisor (although some of it certainly did).

None of this matters. To allow the discussion to deteriorate to legalism both misses the point and deprives the exercise of its

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value. The point is that we are now being exposed to a window – a whole series of windows, a Titanic-sized row of portholes – into how men and women interact both at work and in society as a whole. And what we are seeing is not acceptable, regardless of whether the “mere single pat on the buttocks” or “stray comment” rises to the level of a federal civil rights claim. We also are being reminded that this conduct is ubiquitous. Not every man harasses – far from it – but almost every woman (and many men) have been harassed.

How do we combat this? Part of it is happening: the current storm has made it more acceptable for women to say, “me, too.”

But what we really need to do – what we as educators and lawyers and citizens need to do – is to grasp the issue by both hands. I have long been a proponent of the term, “civility.” Educating young lawyers, and re-educating older lawyers, on the precepts of civility and professionalism can be a start. Civility does not accept even a casual brush on a colleague’s hindquarters. Civility will not countenance staring at the body of the person ascending the stairs before you, or focusing on something other than the eyes of the lawyer across the table. In the professionalism courses we teach that “lawyer jokes” are unacceptable; so, too, are “dumb blond jokes” and every other type of purported humor that denigrates a sex or race.

I often teach that there are two types of harassers: the evil and the clueless. All we can do against the evil archetype is to encourage reporting, educate potential victims, and identify and address their conduct as quickly as possible. But the clueless are a larger cohort – those of us who say, in retrospect, “what was I thinking?!?!?” And it is among this group (one I am sure I have been in, on occasion, but hopefully not often) that a renewed focus on civility can act to facilitate the changing of social mores. Don’t over-react: that can be a cure as bad as the ill. (In other words, unless and until someone tells you otherwise, it’s still okay to open a door; no one was ever hit with a federal civil rights judgment for standing when someone came in the room.) But the more we resolve to keep these issues at the forefront of our thoughts, and resolve that we shall not revert to casual incivility, the more our profession can stand as a model, rather than (as in some of today’s news stories) a punchline. ✧

CONTRIBUTIONS

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CALL FOR NOMINATIONS William R. Rakes Leadership in Education Award

<http://www.vsb.org/site/sections/educationoflawyers/rakesaward>

Nominations must be received no later than December 8, 2017.

For questions about the nomination process, please contact
The Bar Services Department of the Virginia State Bar.

barservices@vsb.org; (804) 775-0516.

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experience problematic drinking at a higher rate than other professional populations and two to three times the general population. Data also indicates that the incidence of alcohol abuse is higher among lawyers aged 30 or less.

Law Student Well-Being Survey published in 2016:

- 25% of students at risk for alcoholism.
- 17% of students experience depression.
- 14% of students suffer from severe anxiety.
- 23% suffer from mild or moderate anxiety.
- 6% had suicidal thoughts in the past year.

The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, The Report of the National Task Force on Lawyer Well-Being

The good news is that our profession is heeding the call to action. Last year, several groups in the American Bar Association, the National Organization of Bar Counsel, the Association of Professional Responsibility Lawyers, the National Conference of Chief Justices, and the National Conference of Bar Examiners formed a task force -- the National Task Force on Lawyer Well-Being -- to address the mental health and substance abuse problems that plague the profession.

The Task Force issued a report, which directs the stakeholders (the judiciary, regulators, bar associations, firms, legal malpractice carriers, and legal assistance programs) to take responsibility and galvanize profession-wide action.

Our mandate is to work together to focus on lawyer well-being, so that lawyers are fulfilled and do a better job for their clients, the public, and those they serve, while we continue to attract the best and brightest to our profession.

Critically, the Task Force Report emphasizes a positive state of wellness, not merely the absence of illness, and a continuous process where lawyers actively work to improve their quality of life -- emotionally, intellectually, physically, and socially.

The Report's recommendations emphasize a demonstrated commitment to well-being and a concerted effort by all stakeholders to encourage help-seeking behaviors, provide quality educational

programs, and partner with lawyer well-being experts such as LHL.

- "ABA CoLAP and state-based lawyer assistance programs are indispensable partners in efforts to educate and empower the legal profession to identify, treat, and prevent conditions at the root of the current well-being crisis, and to create lawyer-specific programs and access to treatment."¹
- Lawyers who reported past treatment for alcohol use who used programs tailored to legal professionals reported significantly lower scores on current alcohol use.²

What is LHL? How does LHL help? How can LHL help?

LHL is a 501(c)(3) nondisciplinary, nonprofit organization that provides free confidential assistance to lawyers, judges, law students, bar applicants, and legal professionals who are experiencing professional impairment due to addiction, depression, or cognitive impairment issues.

LHL has the foundational elements outlined at 44.4 of the Report:

- A program director with an understanding of the legal profession and experience addressing mental health conditions, substance use disorders, and wellness issues for professionals.
- A well-defined program mission and operating policies and procedures.
 - o LHL's program is designed to promote recovery, protect the client, prevent disciplinary issues, support families and professional associates, and strengthen the profession.
 - o A key part of the mission, other than aiding and assisting the lawyers, judges, law students, and legal professionals, is educating about the impact of chemical dependency and other mental health disorders and the resources provided by LHL.
- Regular educational activities to increase awareness and understanding of mental health and substance use disorders. Regular and varied CLEs sponsored by LHL across the state.
- Volunteers trained in crisis intervention and assistance.
- Services to assist impaired members of

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the legal profession to begin and continue recovery.

- Participation in the creation and delivery of interventions.
- Consultation, aftercare services, voluntary and diversion monitoring services, referrals to other professionals, and treatment facilities.
- A helpline for individuals with concern about themselves or others.

Many of LHL's dedicated, compassionate, and hard-working cadre of volunteers have benefitted from LHL's services, and their role in the monitoring, support and ongoing recovery is critical to its success.

LHL devotes considerable time and attention to educating the legal community regarding substance abuse and mental health disorders, cognitive impairment, and transition and succession planning. LHL provides training and seminars to firms, local bar groups, judges, legal assistance groups, and other related organizations. Through these broad based educational efforts, LHL seeks to support lawyers and the legal community as well as the public. LHL is also a resource for wellness days and programs.

LHL is an invaluable resource to all stakeholders, not just lawyers in need.

LHL helps 200 lawyers annually of approximately 31,000 active, practicing lawyers in Virginia. It can help many more³.

If I don't have a substance abuse, anxiety, or mental health issues why should I care about LHL?

Lawyers are a self-governing, relatively autonomous profession, and with that privilege comes the responsibility of assuring that our behavior conforms to the Rules of Professional Conduct and serves the public interest. As the Preamble to the Virginia Rules of Professional Conduct instructs, **"Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves."**

The Rules of Professional Conduct, including Rule 1.1, Competence; Rule 1.3, Diligence; and Rule 1.4, Communication, **are the most common causes of bar complaints** and often the first manifestation of substance abuse and mental health issues. Addiction, along with mental and physical disorders, can create cognitive deficits that are manifested and particularly severe in terms of executive functions: problem solving, abstract thinking, planning, organizing, and memory. That dysfunction leads to lack of competence and diligence, and a concomitant breakdown in client communications. While Rule 1.16(a) (2) requires a lawyer to withdraw from representation if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent his/her client, an impaired lawyer does not always withdraw. While the Rules of Professional Conduct may not create a duty to proactively address potential impairment, a lawyer who is concerned about another lawyer's impairment could encourage contact with LHL or contact LHL on the lawyer's behalf, confidentially.

Legal Ethics Opinions (LEOs) 1886 and 1887

LEO 1886, approved by the Supreme Court of Virginia on December 15, 2016, instructs that Rule of Professional Conduct 5.1, Responsibilities of Partners and Supervisory Lawyers, requires partners or lawyers with managerial authority to act when they reasonably believe a lawyer under his/her supervisory authority may be suffering from an impairment that poses a risk to clients or the general public. LEO 1886 instructs the managing partner or supervisory attorney to confront the impaired lawyer and encourage an evaluation and/or treatment. The LEO also suggests LHL as a resource to seek assistance, initiate an intervention and obtain an initial evaluation of the lawyer's condition and a referral to an appropriate mental health provider. LHL can provide guidance on how to handle the possible impairment and resources.

Like LEO 1886, LEO 1887, approved by the Supreme Court of Virginia August 2017, discusses LHL as a resource for lawyers who know of a lawyer who is struggling, but are not sure about how and whether to act. While LEO 1887 states that there is no duty to act if there is no supervisory relationship, and no misconduct has occurred, the LEO discusses the distinction between the duty to report to the VSB, and the option to seek guidance

from LHL. Where an attorney observes that a solo practitioner's cognitive abilities are declining, and is concerned, the attorney can encourage the impaired lawyer to contact LHL, or contact LHL for guidance on how best to address the situation.

Both LEOs also instruct that Rule 8.3(a) requires a lawyer to inform the appropriate professional authority if the lawyer has reliable information that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness to practice law.

Conclusion

When we help each other, we improve our profession. If you suspect a lawyer is in need of LHL's service, call LHL's 24-hour toll-free number 1-877-545-4682 or confidential voicemail: 804-644-3212. There should be no stigma in struggle, nor in the seeking of help. We as a profession are made better by our willingness to help ourselves and help others when we encounter addiction, mental health, or cognitive disorders. ✧

End Notes

1. Task Force Report, p. 16.
2. Task Force Report at p. 14 citing P.R. Krill, R. Johnson, & L. Albert, *the Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016).
3. Task Force Report Recommendations to Work with LHL

As the well-being report emphasizes, all stakeholders benefit from partnership with lawyer assistance programs, like LHL. The following are recommendations for all stakeholders and then specific stakeholders (numbered as in the report) that emphasize LHL's value to the stakeholders:

4. Facilitate, destigmatize, and encourage help-seeking behaviors.
5. Build relationships with lawyer well-being experts.
 - 5.1 Partner with lawyer assistance programs.
8. Provide high-quality educational programs and materials about lawyer well-being.
9. Guide and support the transition of older lawyers.
11. Use monitoring to support recovery from substance abuse disorders.
12. Begin a dialogue about suicide prevention.

Recommendations for Judges

14. Communicate that well-being is a priority.
15. Develop policies for impaired judges.
16. Reduce stigma of mental health and substance use disorders.
18. Provide well-being programming for judges and staff.

20. Monitor for impaired lawyers and partner with lawyer assistance programs.

Recommendations for Legal Employers

24. Establish organizational infrastructure to promote well-being.
 - 24.2 Assess lawyers' well-being.
25. Establish policies and procedures to support lawyer well-being.
 - 25.1 Monitor for signs of work addiction and poor self-care.
26. Provide training and education on well-being including during new lawyer orientation.

Recommendations for Law Schools

27. Create best practices for detecting and assisting students experiencing psychological distress.
 - 27.1 Provide training to faculty members relating to student mental health and substance use disorders.
 - 27.3 Provide mental health and substance abuse disorder resources.
32. Facilitate a confidential recovery network.

Recommendations for Bar Associations

36. Encourage education on well-being topics in association with lawyer assistance programs.
 - 36.1 Sponsor high-quality CLE programming on well-being related topics.
 - 36.3 Train staff to be aware of lawyer assistance program resources and refer members.

Recommendations for Lawyers Professional Liability Carriers

40. Actively support lawyer assistance programs. ✧

MEMBER RESOURCES AREA ELECTRONIC NEWSLETTERS FOR SECTION MEMBERS

<http://www.vsb.org/site/sections/education-of-lawyers/membersonly>

To receive newsletters electronically, post your email address on the VSB's website at <https://member.vsb.org/vsbportal/>. You may limit the use of your email address on this site.

Newsletters also will be posted in the Member Resources Area of the section's website.
To access:

Username: educationoflawyersmember
Password: Jem7937

This site is available only to Section members.

News and Events Around the Commonwealth

Regent

- ◆ This fall, Regent University Law Review hosted its annual symposium entitled “The Expansion of Technology in the 21st Century: How the Changes in Technology are Shaping the Law and the Legal Profession in America.” The Honorable Robert J. Humphreys of the Court of Appeals of Virginia provided the keynote address.

University of Richmond

- ◆ The University of Richmond School of Law hosted Senator Tim Kaine for a discussion on “The Constitution at 230: Signs of Stress and Resilience.”
- ◆ Dean Erwin Chemerinsky of the University of California Berkeley School of Law was the Emroch Lecturer for the Fall 2017 semester. He and Dean Wendy Perdue hosted a Q&A and conversation about the future of legal education, and Dean Chemerinsky’s offered a lecture on the topic of free speech on campus.
- ◆ Keynote speakers the Hon. Roger Gregory and the Hon. Anne Holton led a commemoration of the 50th anniversary of the Hon. Robert Merhige’s appointment to the bench.
- ◆ *The Richmond Law Review* hosted its annual symposium on executive authority, and the *Public Interest Law Review* hosted its annual symposium on immigration law.

University of Virginia

- ◆ The University of Virginia School of Law received the inaugural Champion of Justice Award from the Charlottesville-based Legal Aid Justice Center at an event Saturday evening celebrating the center’s 50th anniversary.

William & Mary

- ◆ The **30th Annual Supreme Court Preview** brought together expert panels of journalists, academics, advocates, and other distinguished speakers in September to discuss and analyze the Court’s upcoming term.
- ◆ The Law School hosted the **14th Annual Brigham-Kanner Property Rights Conference** in October. Professor David L. Callies of the University of Hawai’i at Manoa William S. Richardson School of Law received the 2017 Brigham-Kanner Property Rights Prize.
- ◆ The Law School’s sixth **Annual Leadership Conference**—entitled “Power, Accountability & Humility”—saw 16 alumnae return to campus to share career wisdom with students and guests alike.
- ◆ The **Virginia Coastal Policy Center** hosted its fifth annual conference, “Defending Our Coasts: Ensuring Military Readiness and Economic Viability as Waters Rise,” with senior active duty and retired military officers, policy experts, and national, state and local officials.

- ◆ The 63rd annual William & Mary Tax Conference was held on November 8-10, 2017.
- ◆ The Center for the Study of Law and Markets and the Institute of Bill of Rights Law will co-sponsor an Antitrust and the Constitutional Order Conference on February 23-24, 2018. ✦

Faculty News

Regent

- ◆ **Marie Summerlin Hamm** has been appointed Director of the Regent Law Library.
- ◆ **Bill Magee** has been appointed Assistant Director for Public Services of the Regent Law Library.

University of Richmond

- ◆ **Professor Corinna Lain** was named the S.D. Roberts & Sandra Moore Professor of Law.
- ◆ **Professor Hank Chambers** and **Professor Kimberly Robinson** were named the Austin E. Owen Research Scholars.
- ◆ **Joyce Janto** was honored with the American Association of Law Libraries Hall of Fame Award.
- ◆ **Professor Bill Fisher** was recognized as a University of Richmond Distinguished Educator.

University of Virginia

- ◆ **James E. Ryan**, a 1992 graduate and former professor of the University of Virginia School of Law, has been chosen as the next president of the University of Virginia. His term begins Oct. 1, 2018.
- ◆ **Crystal Shin**, a 2010 graduate of the University of Virginia School of Law with experience in child advocacy and special education law, will be the new director of the Program in Law and Public Service, starting July 1.
- ◆ **Professors Julia Mahoney** and **Saikrishna Prakash** of the University of Virginia School of Law have recently been elected as members of the American Law Institute.

William & Mary

- ◆ **Professor Kevin Haeberle**, a securities law expert who teaches Business Organizations, Capital Markets Regulation, Securities Litigation, and Corporate Finance, joined the William & Mary Law faculty this fall.
- ◆ **Professor David Boelzner** became co-director of the Lewis B. Puller, Jr., Veterans Benefits Clinic in June. ✦

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