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Dean B. Keith Faulkner

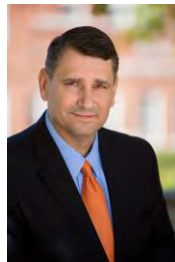
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Chair's Message



by B. Keith Faulkner
Dean, Appalachian School of Law

Law School Debt – Compounding Interest and Stress for New Lawyers

It is an undeniable fact that the practice of law is stressful – very stressful! Non-Lawyers may accuse us of being dramatic, and seasoned lawyers may be tempted by a similar dismissal. It's worth asking, "What makes being a lawyer so stressful?" Could it be that lawyers advise clients on matters that necessarily affect their lives, sometimes their liberty, and often their property? Day in and day out? Truly appreciating the significance of each client's legal issues, held in the strictest of confidence, can by itself be isolating and overwhelming. Some finds to do so, to keep in mind this full and weighty perspective about their own work, is to burden themselves into inefficiency. Exacerbating this pressure comes the juggling act of increasingly complex legal matters, impossible time constraints, and emotionally challenging client demands and needs.¹ Further compounding these professional pressures — lawyers are not immune from the everyday stressors of their personal life. Family needs, civic expectations, and the constant internal pressure many lawyers feel to solve every problem are heavy additional burdens.

The deleterious psychological effects on lawyers from extreme stress has been well documented for some time now, and it has been said that, "The legal industry is, to put it bluntly, unwell."² Studies conducted over the last decade have revealed that, "21 percent of licensed, employed attorneys qualify as problem drinkers, 28 percent struggle with some level of depression and 19 percent demonstrate symptoms of anxiety."³

¹ Sharon Miki, *Why Being a Lawyer is Stressful and 7 Tips to Manage Lawyer Stress*, CLIO BLOG, <https://www.clío.com/blog/lawyer-stress/> (July 20, 2021).

² Sam Rosenthal, *Lawyer Wellness and Mental Health*, *Changing the Conversation*, CLIO BLOG, <https://www.clío.com/blog/lawyer-wellness-mental-health/> (last visited Nov. 5, 2021).

³ *Id.* (quoting ABA, Hazelden Betty Ford Foundation Release First National Study on Attorney Substance Use, Mental Health Concerns, HAZELDEN BETTY FORD FOUNDATION, <https://www.hazeldenbettyford.org/about-us/news-media/press-release/2016-aba-hazelden-release-first-study-attorney-substance-use> (February 3, 2016). To read the study discussed in the quoted source, see Patrick R. Krill, Ryan Johnson, & Linda Albert, *The Presence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. OF ADDICTION MED., 46 (2016).

Law students are not immune from these same challenges. “According to the Dave Nee Foundation, new law school students exhibit rates of depression around 8-9%—but after three years in law school, 40% of students are depressed.”⁴ Let that statistic settle for a moment. Upon leaving law school, some 40% of law students are depressed.⁵ About six months after graduation, the reality of educational loans hit these new lawyers – many of whom have not received their bar results or found a job.

My friends, our profession requires not only emotionally and cognitively demanding work, but it is also plagued by such a sense that it will never amount to enough. The constant hammering of stressors and expectations drive many lawyers and law students deeper into retreat, isolation, and away from a sense of their own efficacy and autonomy.

To compound the reality of young lawyer’s mental state upon leaving law school, the recent graduates and young lawyers in your firm are likely struggling to manage their debt from college and law school. Total educational debt (debt carried forward from undergraduate studies combined with law school debt) was on average \$160,000 for law graduates entering the workforce in 2019-20.⁶ This represents an 89% increase (not adjusted for inflation) from 1999-2000 when the total education debt for new lawyers averaged \$84,300.⁷ Law school debt alone grew by 56% (not adjusted for inflation) during this same period from \$76,000 to nearly \$120,000.⁸

Many senior lawyers were not saddled with debt loads as crushing upon leaving law school and faced comparatively less financial stress starting out their careers. We generally started practice with a sense of optimism and hope. Today’s graduates, however, face all of the normal apprehension associated with major life milestones, but also face significant

financial uncertainty as they begin practice and post-law school life.

In 2021, the ABA conducted a survey that provides insight into the impact student debt is wreaking on young lawyers.⁹ From a sample of over 1,300 lawyers below the age of 36 in 2021, “65% reported high or overwhelming stress over their finances, more than half of the attorneys had concerns about meeting their living expenses, were unable to afford activities they enjoy, or were living paycheck to paycheck, and 52% ... felt regret or guilt because of their debt.”¹⁰ In 2020, a similar survey revealed the following:

More than half of the respondents — 56% — said they put off the decision to buy a house because of their student debt, while 29% said they either decided to not get married because of debt or opted to postpone getting married. And almost half of the survey respondents — 48% — said because of their debt they are either delaying or deciding not to have kids altogether.

Young lawyers had to put on hold decisions like buying a car or going on vacation. Nearly half (46%) of respondents said they postponed or decided not to buy a car because of their debt and 33% said they got a less expensive car than they originally wanted. More than half (58%) said they postponed or decided not to take a vacation because of their debts.¹¹

In a recent study, the impact of student debt (not isolated to law school debt or lawyers specifically) on college graduates is even worse than I ever imagined. “A 2021 mental health survey indicated 1

4 *Id.* (quoting *Lawyers & Depression*, DAVE NEE FOUNDATION, <http://www.daveneefoundation.org/scholarship/lawyers-and-depression/> (last visited Nov. 5, 2021).)

5 *Lawyers & Depression*, DAVE NEE FOUNDATION, <http://www.daveneefoundation.org/scholarship/lawyers-and-depression/> (last visited Nov. 5, 2021).

6 Emily Guy Birken, *Average Student Loan Debt for Law School*, CREDIBLE, <https://www.credible.com/blog/statistics/average-law-school-debt/> (Ashley Harrison ed. Nov. 1, 2021).

7 *Id.*

8 *Id.*

9 Camila Laval, *Law School Debt: Another Blow to Lawyers’ Mental Health*, FINDLAW, (Oct. 11, 2021, 4:02 PM),

<https://www.findlaw.com/legalblogs/greedy-associates/law-school-debt-another-blow-to-lawyers-mental-health/>.

10 *Id.*

11 Alex Andonovska, *Young Attorneys Delay Marriage and Kids Due to Student Debt*, JD J. (July 30, 2020),

<https://www.jdjournal.com/2020/07/30/young-attorneys-delay-marriage-and-kids-due-to-student-debt/>.

in 14 borrowers experienced suicidal ideation in response to the financial stress of student loans. Among borrowers who were unemployed or making less than \$50,000 per year, this rate jumped to 1 in 8.”¹²

As our profession rightly recognizes and seeks to assist lawyers, young and old, in achieving well-being, the debt plight faced by newly-minted and young lawyers should not be overlooked or underestimated. These young lawyers, facing significant anxiety, stress, and other mental health detriments, represent the future of our profession. So what can we do to address this matter? Or, is this wide-spread challenge just the way it has to be? Luckily, the answer is no.

The ABA’s report on student debt provides some recommendations to address this sweeping problem for today’s lawyers. The report states, “These results demonstrate the need for greater understanding and improvement upon the career, financial, and well-being outcomes of law students and graduates who seek loans to finance their legal education.”¹³ Helpful suggestions in the report include expansion and improvements to the Public Service Loan Forgiveness Program and reform of the federal student loan program to provide more flexibility and repayment options among others.¹⁴

In order for the legal profession in Virginia and beyond to provide rewarding careers for our next generation of lawyer leaders and exceptional service to clients, law schools and the bar must work together to discuss meaningful ways to help young lawyers avoid the pitfalls of excessive debt and curb the attendant psychological afflictions. Such a partnership between the academy and practice can positively impact lawyers, clients, firms, society, and our noble profession.

Nominations Open for 2022 Rakes Award

The VSB Section on the Education of Lawyers seeks nominations for the **William R. Rakes Leadership in Education Award**, honoring an individual from the bench, the practicing bar, or the academy who has, through exceptional leadership, made a significant impact on the education of lawyers in Virginia.

Past recipients, criteria, and the nomination process can be found on the [Nomination Form](#).

Nominations should be addressed to B. Keith Faulkner, Chair, Section on the Education of Lawyers, and submitted with your nomination letter to the Virginia State Bar: 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

Nominations must be received no later than December 3, 2021. For questions about the nomination process, please contact Section Liaison Mallory J. Ralston: (804) 775-0514 or mrалston@vsb.org.

12 J. Geiman, *The Psychological Toll of Student Debt*, CLASP (Oct. 8, 2021), <https://www.clasp.org/blog/psychological-toll-student-debt>.<https://www.clasp.org/blog/psychological-toll-student-debt>

13 Tiffane Cochran et al., *Student Debt: The Holistic Impact on Today’s Young Lawyer*, AMERICAN BAR ASSOCIATION YOUNG LAWYERS DIVISION, 1, III (2021), https://www.americanbar.org/content/dam/aba/administrative/young_lawyers/2021-student-loan-survey.pdf.
14 *Id.* at 30-34.

1L Courses in Context at William & Mary: Encouraging New Perspectives

A first-year student at William & Mary Law School described to his classmates the facts of *In re K.A.*, a 1997 opinion from the Illinois Court of Appeals. The defendant, he said, was a juvenile who had been charged with unlawful possession of cocaine that law enforcement had found in an apartment. K.A. had initially fled from the police; he later told the officers that he had only been visiting the apartment to smoke marijuana and listen to music, that he ran because he was afraid, and that he had no knowledge of any narcotics in the apartment.

The student, in setting forth the facts, described the apartment as a “drug house.” Professor Adam Gershowitz, an expert in criminal law and procedure, saw a moment for conversation. “Does anyone want to take issue with any part of the description we just heard?” Professor Gershowitz asked the group of 1Ls. “Does anyone disagree with the characterization of the apartment as a ‘drug house’?”

Challenging assumptions is what the Law School’s pilot initiative, 1L Courses in Context, is all about. The initiative, a six-session series of discussions to be held throughout the 2021–2022 academic year, aims to introduce members of the first-year class to new perspectives in each of their doctrinal courses. Each session is tied to a first-year subject; this fall’s sessions will cover Criminal Law, Torts, and Civil Procedure, with Contracts, Constitutional Law, and Property following in the spring.

Dean A. Benjamin Spencer, Trustee Professor of Law, says that the sessions are designed to provide students “with the opportunity to consider the fairness of legal rules and how certain decisions by judges and policymakers can cause or entrench social inequalities across racial, socio-economic, and other groups.”

Professor Vivian Hamilton, Founding Director of the William & Mary Center of Racial & Social Justice, offered opening remarks at the start of the inaugural session. The goal of the series, she said, is not to

suggest a uniform perspective on the law but rather to encourage students to broaden their own perspectives.

“What this program acknowledges,” she said, “is that as professors, we sometimes are so focused on ensuring that we send you off well-equipped to tackle what comes next that we sometimes don’t always take a minute to focus our attention on both the larger context and the more granular effects of the law.”

Gray Whitsett, a first-year student, said afterward that he appreciated the opportunity to take a different perspective on what he’s been learning in the classroom. “So far, our 1L courses have been so information heavy that it’s been hard to step back and consider the real-world impact of the cases and rules we’ve learned,” he said. “It was especially fulfilling to be able to react to material less out of academic survival and ask the question, ‘Does this ruling make for a better society and, if not, do we need to rethink how the judicial system is working for some but not all?’”

In the Criminal Law session, Professor Gershowitz turned the students’ attention to a second case, the U.S. Supreme Court’s 1996 opinion in *Whren v. United States*, in which two defendants charged with violating federal drug laws unsuccessfully challenged the vehicle stop that led to the discovery of the drugs. The defendants had contended that because total compliance with traffic regulations is impossible, law enforcement can easily use technical violations to justify a stop and then investigate incidents for which the officers have no probable cause.

“How many of you,” Professor Gershowitz asked the group, “have technically failed to comply with a traffic regulation?” The hands went up; several students admitted driving a few miles over the speed limit or failing to come to a complete stop at a stop sign, among other infractions. Professor Gershowitz then asked the students to think about who might get pulled over in these circumstances and who might not, or why many residents of his own affluent neighborhood might not fear police investigation even though they had equal opportunities to engage in unlawful drug use. “The homes in my

neighborhood have large yards; they're set back from the street; they enjoy privacy," he said. "What happens in those houses is not as easily observable as something happening in a ground-floor apartment in a lower-income area," he noted, referring to the first case.

First-year student Sarah Knott later reflected on the discussion. "It was interesting to see how the concepts we're learning in Criminal Law actually play out in our legal system," she said. "I enjoyed diving deeper into the social and economic considerations involved in the law, and I'm looking forward to the next session."

Professor Hamilton ended her remarks at the session with a challenge for the students in attendance. "It is ultimately our hope that the ideas you encounter here don't remain discrete specific lessons but that instead you'll take them with you when you return to your classrooms, when you enter practice, when you enter public life and exert influence on the law's continued development," she said. "We hope this program inspires you not simply to accept what you learn as a given but instead subject it to critique."

A student attendee said afterward that the sessions would serve as a springboard for further discussion: "It was comforting to consider together how the black-letter law we spend so much of our days learning perpetuates systemic injustices. 1L Courses in Context encourages me to continue these vital conversations with the Law School community."



Laura A. Heymann
William & Mary Law School

Saving Email Etiquette from the Brink of Extinction

Think back – when did you last receive a handwritten letter, one that was painstakingly crafted, replete with pleasantries and, cue gasp, correct grammar and punctuation? For many, I

imagine, it has been quite a while. With the prevalence of email and text messages, letters generally, and more specifically, handwritten letters, appear to be going the way of the Dodo Bird. As newer methods of communication flourish, however, what seems to be lacking from these methods is good, old-fashioned courtesy and professional etiquette.

Email and text messaging are frequently and increasingly used by lawyers to communicate with colleagues, clients, and even judges. Email is unquestionably efficient. Unfortunately, speed and spontaneity often result in rushed, ill-thought messages full of typos and unintended tones and void of pleasantries, correct grammar, and punctuation.

What is a good lawyer, academic, law student, or legal professional to do? Here are a few pointers on how to achieve better email etiquette (and accordingly, how to bring back email etiquette from the brink of extinction).

Consider Your Audience:

To ensure that your email has the correct level of formality, think about the person to whom you are writing.

When we send an email to a friend, family member, or someone in our personal capacity, in many instances, we are basically sending an electronic post-it note. In most of these circumstances, informality is acceptable. Abbreviations, like LOL ("laugh out loud") or WTF? ("Why the face?"), are perfectly acceptable. Emoticons (☺) work just fine, as do all capital letters, slang, incorrect punctuation, spelling, and grammar.

Morning. Wanna meet for a mimosa
BEFORE work? Love u. ☺

When an email is written for professional purposes, however, the same formalities should be used as when writing a formal business letter. Correct grammar and spelling, including complete sentences and appropriate punctuation, are necessary; slang, shortcuts, and any of their compatriots should be readily avoided.

Dear Susan,

I write in response to your email of July 29, 2021. Unfortunately, I am unable to meet with you next week to discuss settlement. I am available, however, on August 5, 2021. Please let me know if you are available, and we can pick a mutually-acceptable time. Have a nice afternoon.

Include Pleasantries

Email is not accurately expressive. Intended tone and inflection do not often convey. As a result, email recipients often read negativity and aggression into an email, failing to give the writer the benefit of the doubt. To avoid the issue of unintended tone, take time in each email to include a brief pleasantry. The payoffs are staggering.

As a law school writing professor, I encounter students who are overextended, frustrated, and sleep-deprived (character traits I trust many reading this article appreciate). For years, students would send me emails like this one:

I must meet with you about my memo. I am available only on Monday at 1:17 p.m.

Receiving curt, rushed emails neither endeared me to the student nor made me want to accommodate the student's request. Had the student taken a few seconds to include a pleasantry, however, my reaction would have been much more positive. For example:

Dear Professor,

I hope you are enjoying the beautiful weather this weekend. Although I know you are busy, is there a good time that I could meet with you about my memo? Thank you in advance for your time. I look forward to meeting with you.

To combat the trend of unprofessional emails, several years ago we introduced a formal presentation on email etiquette into our first year legal writing curriculum. The results were significant: professors and teaching assistants started receiving emails from students that expressed

appreciation, leading to quicker and more thorough responses. Employers noted that our law students were polite and appropriately professional, something that made them stand out from the rest of the pack. Everyone was happy. Taking the time to establish rapport with your reader can go a long way to achieving your desired outcome (and perhaps a job). Sometimes good guys (or gals) do finish first!

There is one caveat: email threads sometimes complicate the need for formality; in a series of emails, the pleasantries understandably become less and less necessary. Continuing to talk about the weather at the outset or adding a new pleasantry in each email, such as "I still hope you are having a good day" or "Now that another hour has passed since our last email, I remain hopeful that your day is still delightful" looks insincere and forced.

Think Before You Send

Admit it. We have all sent an email that we later wished we could recall, either because we were angry (or possibly because we shouldn't have been emailing after attending a Virginia Wine Festival – don't knock Virginia wine if you haven't tried it!). Because it is so easy to fire off an email, messages can be particularly impulsive and sometimes offensive. To avoid angry, sarcastic emails, write, wait, re-read, and re-think BEFORE hitting "send."

Email Confidentiality:

Also before hitting "send," check to see that you have sent the email to the correct person. For example, you might have both an opposing counsel and a client named "Elaine." Sending confidential information intended for the client to the opposing counsel could have disastrous consequences. Similarly, be careful with using "Reply All" if you really do not mean to reply to everyone who received the initial email.

Attachments:

If you say that you will attach a document, make sure it is actually attached. Take the time to verify that you are attaching the correct version of the document by opening it first. What kind of message does it send when you have to send a second email with the initial or the correct attachment, particularly

if you are attempting to demonstrate competency and credibility to the recipient?

Return Receipt Requested and High Urgency:

Both are incredibly annoying. Use these features sparingly, if at all. Enough said.

Manners, professionalism, and pleasantries are sorely missed. As bastions of legal education, we should fight to save email etiquette from the brink of extinction. We can change the future --- one email at a time. Well-proofread, grammatically correct questions, comments, and suggestions (as long as they contain a brief pleantry) at dspratt@wcl.american.edu are welcomed.



David H. Spratt
*American University
Washington College of Law*

Would you like to contribute to the next newsletter?

Education Section leaders seek content that will inform Virginia lawyers and connect section members across the state:

- Topical articles that you have written
- Articles that you have read and think bear reprinting
- Cases that you would like to discuss
- CLE ideas or programs of interest
- Law School happenings



Direct submissions to the newsletter editor, Leslie Haley, at lath@parkhaley.com



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