

SELF-MASTERY: THE PATHWAY TO PEAK PERFORMANCE AND WELL-BEING IN THE LAW

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In order to optimize their mental health, emotional well-being, and cognitive performance, law students and attorneys must embrace a concerted, comprehensive practice of self-mastery. Only by “looking within,” and purposefully transforming their maladaptive mental, emotional and behavioral patterning can law students and lawyers unlock their fullest potential and achieve their highest form of happiness and success, in both career and life.

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I. THE PROBLEM

We know the legal industry has some of the worst statistics for depression, suicidal ideations, and substance abuse issues.¹ We also know law school is often the beginning of the descent into these terrible states. Law school and legal practice both involve an increase in acute stress. For many students and practitioners, the stress includes dimensions of anxiety and other emotional challenges.² Not only do these stressors make the typical law student and lawyer less happy than he or she otherwise would be, but the stress³ also has a negative impact on his or her focus, energy, productivity, study or work habits, test or courtroom performance, and overall success.⁴

1. William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079, 1082 (1990); Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICT. MED. 46, 46-52 (2016); see also G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT’L J. L. PSY. 233, 234-37 (1990); Rosa Flores & Rose Marie Arce, *Why are Lawyers Killing Themselves?*, CNN (Jan. 20, 2014, 2:42 PM), <https://www.cnn.com/2014/01/19/us/lawyer-suicides/index.html>.

2. See *supra* note 1.

3. We use the colloquial term “stress” throughout this article synonymously with the more technical term, “distress.”

4. It is easy to see how an acute stress response can hinder a law student’s performance in an exam setting where information recall is key to their success on the test. It is similarly easy to see how an acute stress response can hinder a lawyer’s performance in court or a negotiation where critical thinking, executive function, and recall as similarly the key to success/winning. Thus, not only does long-term stress make us less happy (and possibly sick) in the long-term, but short-term stress makes

II. MINDFULNESS IS JUST THE BEGINNING

The increase in mindfulness programs at ABA law schools in the last almost two decades to combat the negative effects of stress is impressive.⁵ We know that done right and done often (continuously and dedicatedly), mindfulness meditation offers something even more than stress reduction and improved lawyering skills.⁶ However, law students are notorious for dropping practices, especially in the 1L year when they need them the most, after just a short period. There is concern in the national mindfulness movement in the law that the students are not actually practicing.⁷ Moreover, even if a law student (or lawyer) has a dedicated mindfulness practice, there are a plethora of physiological, emotional, psychological, and behavioral practices that can significantly enhance law student (and lawyer) well-being in ways that mindfulness, alone, cannot. The programs geared toward serving students stress with just one – or a few – mindfulness session *Band-Aids* will therefore (sadly) likely fail in the long run. There is no doubt that introduction to attention/focus exercises, and specifically mindfulness meditation, is serving and supporting students and current comprehensive classes or multi-week programs should surely continue. However, it is

us less intellectually, cognitively, and academically functional. This misallocation of mental and emotional resources away from the task at hand, and impaired discretionary judgment, can certainly help in a true “life or death” emergency (as our biology intended); however, for performance on law school exams or the bar exam or in law, this stress response is the opposite of what students/lawyers need to perform and succeed. Therefore, law students and legal professionals need direction and support on how to cope with this “inappropriate” stress response and redirect their energies in order to perform.

5. Tim Iglesias, *Offering and Teaching Mindfulness in Law Schools*, 49 U.S.F. L. REV. 24, 24-26 (2014-2015) (citing Karmah Elmusa, *Law Schools Teach the Practice of Meditation*, CAL. LAW. (June 2013), http://www.callawyer.com/clstory.cfm?eid=929087&wteid=929087_Law_Schools_Teach_the_Practice_of_Meditation (listing UC Berkeley, University of San Francisco, UCLA, University of Connecticut, Phoenix School of Law, University of Miami, University of Florida, and University of Missouri as schools that have embraced mindfulness programs)). Several other schools have also developed mindfulness-based programs since Elmusa’s 2013 article, including: Georgia State University, Columbia Law School, Arizona State, Southwestern Law School, CUNY School of Law, Emory Law, Harvard Law School, Michigan State, Northwestern Law, Touro Law, Tulane University, Vanderbilt Law School, and William and Mary. See *National Student Division*, GA. ST. U., <http://sites.gsu.edu/mils/affiliated-universities/> (last visited Jan. 3, 2019).

6. “Interested lawyers must appreciate that mindfulness meditation is a proven method for cultivating deeper insights that touch upon the whole of a lawyer’s life.” Douglas A. Codiga, *Reflections on the Potential Growth of Mindfulness Meditation in the Law*, 7 HARV. NEGOT. L. REV. 109, 110 (2002).

7. This assertion is sourced from talks amongst scores of law professors from over four dozen law schools; conversation occurring with authors present over a two year period in the mindfulness in law community (2016-2018).

blatantly not enough to provide mindfulness programming alone and expect our students or attorneys to have a stress-management solution or epiphany.⁸

We strongly submit that any law firm or law school that offers just mindfulness programming is missing a significant opportunity to impact their students or attorneys. The comprehensive tenants of self-mastery outlined in this article are critical for the success of our future lawyers and legal teams. Mindfulness, alone, is missing critical, science-based components of the stress-cognition loop, as well as science-based interventions and techniques, which our students and attorneys need in order to truly minimize their stress and maximize their cognition, performance, and overall happiness.

III. MASTERY OF THE SEVEN ELEMENTS OF SELF

Introduction: The Stress-Cognition Loop

The scientific research unambiguously reveals that stress and emotional struggles are not only *unnecessary* for optimal performance, but in fact *obstruct* optimal performance. Stress not only reduces our happiness and joy in life, but it significantly impairs virtually every aspect of our cognitive functioning, including sustained focus, learning, reading comprehension, memory, listening, verbal fluency, written fluency, interpersonal communication, decision-making, discretionary judgment, problem-solving, and creative thinking.⁹ When we are stressed, the fear-

8. We note that there are scores of wellness initiatives from Student Affairs, Dean of Students, and other law school departments, and also countless Lawyer Assistance Programs that focus on isolated interventions or the post-problem recovery; however, besides the mindfulness heavy programming in recent years, there was not a program before 2016 that had comprehensive self-mastery tenants included in a multi-week interdisciplinary program (that is: before the *Mindfulness, Stress Management, and Peak Performance Program* piloted at Southwestern Law School from Fall 2016 to Spring 2018). The program is now running at the USC Gould School of Law, (starting in Fall 2018). A two-unit elective course, modeled after the program, entitled "Happiness and Peak Performance for Law Students" (and also entitled "Self-Mastery For Law Students," as a one-unit course in the Short Session) is also running at UC-Irvine Law School as of Spring 2019.

9. Yair Bar-Haim et al., *Threat-related Attentional Bias in Anxious and Nonanxious Individuals: A Meta-Analytic Study*, 133 PSYCHOL. BULL. 1, 1-2 (2007); Shane Darke, *Effects of Anxiety on Inferential Reasoning Task Performance*, 55 J. PERSONALITY & SOC. PSYCHOL. 499, 499-505 (1988); Shane Darke, *Anxiety and Working Memory Capacity*, 2 COGNITION & EMOTION 145, 145-54 (1988); Nazanin Derakshan & Michael W. Eysenck, *Anxiety, Processing Efficiency, and Cognitive Performance: New Developments From Attentional Control Theory*, 14 EUR. PSYCHOL. 168, 174 (2009); Michael W. Eysenck & Manuel G. Calvo, *Anxiety and Performance: The Processing Efficiency Theory*, 6 COGNITION & EMOTION 409, 429-30 (1992); Mara Mather & Nichole R. Lighthall, *Risk and Reward Are Processed Differently in Decisions Made Under Stress*, 21 CURRENT DIRECTIONS PSYCHOL. SCI. 36, 36-40 (2012); Bruce S. McEwen & John H. Morrison, *Brain On Stress: Vulnerability and Plasticity of the Prefrontal Cortex Over the Life Course*, 79 NEURON 16, 18-20 (2013); Shaozheng Qin et al., *Acute Psychological Stress Reduces Working*

center of our brain, the amygdala, gets activated and our brain goes into survival mode. Survival mode involves low-level, impulsive cognitive processing. Simultaneously, the activity in our brain's high-level executive processor, the prefrontal cortex, plummets.¹⁰ As a result, when we are feeling stress, we necessarily are also cognitively impaired. Which means that our focus, productivity, efficiency, and work quality decline. We name this effect the Stress-Cognition Loop.

If we want to maximize our emotional wellness and cognitive performance, we must reject the antiquated and *neuroscientifically-false* proposition that turning ourselves into a ball of stressed-out intensity is somehow a badge of honor that reflects our dedication and superiority as lawyers or law students. Quite the contrary, as personal misery *detracts* from cognitive mastery. If we are overwhelmed by stress, it is a sign that our brain is not functioning at its highest capacity. And of course, it is also a sign that we are not in a high-functioning emotional place either.

The beautiful thing is that our brain and heart are aligned in this way: if we dedicate ourselves to improving our emotional wellness, we will simultaneously improve our cognitive performance. The result is that we will be happier, healthier, and *better* lawyers and law students.

The Seven Elements of Self: A Holistic Approach

In order to archive optimal emotional wellness and peak cognitive performance, all seven of our "Elements of Self" must function maximally. Each individual tends to be stronger in some of the Elements, and weaker in others. But regardless of who we are, if we want to minimize our stress and maximize our cognition, we must train in *all seven*. No matter how brilliant our mind, or how vast our knowledge, or how unlimited our talent, we simply cannot experience true emotional health or peak performance without working with each of the seven Elements. In order to unlock our full

Memory-Related Activity in the Dorsolateral Prefrontal Cortex, 66 *BIOLOGICAL PSYCHIATRY* 25, 29-31(2009); Manpreet K. Rai et al., *The Effects of Stress on Reading: A Comparison of First-Language Versus Intermediate Second-Language Reading Comprehension*, *J. EDUC. PSYCHOL.* 348, 348 (2015); Katrin Starcke & Matthias Brand, *Decision Making Under Stress: A Selective Review*, 36 *NEUROSCI. BIOBEHAV. REV.* 1228, 1241 (2012); Stephanie E. Wemm & Edelgard Wulfert, *Effects of Acute Stress on Decision Making*, 42 *APPLIED PSYCHOPHYSIOLOGY & BIOFEEDBACK* 1, 14 (2017).

10. Amy F. T. Arnsten, *The Biology of Feeling Frazzled*, 280 *AM. ASS'N FOR ADVANCEMENT SCI.* 1711, 1711 (1998); Catherine Liston et al., *Psychosocial Stress Reversibly Disrupts Prefrontal Processing and Attentional Control*, 106 *PNAS* 912, 914 (2009); João J. Cerqueira et al., *The Prefrontal Cortex as a Key Target of the Maladaptive Response to Stress*, 27 *J. NEUROSCI.* 2781, 2784 (2007).

potential – *both in happiness and performance* – we must actively improve all of them.

The vast majority of people have no idea how to improve any of the seven facets of self, much less all of them simultaneously. Most individuals have very limited tools or techniques for improving any of the Elements of Self. Therefore, they remain stuck wherever they naturally have been since early adulthood.

This is unsurprising, considering modern education does not include identification or strengthening of the Elements of Self on the curriculum. Students spend their high school years learning details of chemistry, algebra, world literature, and European history. While there is nothing wrong with any of these topics, none of them has any bearing on an individual's emotional health or cognitive performance in life. We are taught how to solve mathematical problems, but not how to solve emotional challenges. We are taught what occurred in Europe in the early 1900's, but not what is occurring within our own psyche right now. We are taught the chemistry of water and rocks, but not the chemistry of our emotions and brain.

As a result, we remain wherever we naturally happen to be on the spectrum of self-mastery. We do not improve our happiness or cognition because we are never taught how to do so. The research shows that our emotional health and cognitive functioning can be significantly improved,¹¹ but if we want to actually improve them, we must treat these items like anything else we desire to improve: we need to consciously decide they are worth improving, and then take *tangible steps* to improve them. If we do not consciously dedicate ourselves to improving our emotional and cognitive functioning, we will remain frozen at our current levels. Our happiness and academic success in law school and success potential in legal practice will therefore remain stagnant, and we will never reach our true potential.

Why does every collegiate and professional sports team have physical trainers? One could argue they are unnecessary because the game of

11. Elena W. Adlaf et al., *Adult-Born Neurons Modify Excitatory Synaptic Transmission to Existing Neurons*, ELIFE (Jan. 30, 2017), <https://elifesciences.org/articles/19886>; Michael A. Cohn et al., *Happiness Unpacked: Positive Emotions Increase Life Satisfaction by Building Resilience*, 9 EMOTION 361, 361-68 (2009); Gerd Kempermann, *Neuroplasticity in Old Age: Sustained Fivefold Induction of Hippocampal Neurogenesis by Long-Term Environmental Enrichment*, 52 ANNALS OF NEUROLOGY 135, 135-43 (2002); Ilios Kotsou et al., *Emotional Plasticity: Conditions and Effects of Improving Emotional Competence in Adulthood*, 96 J. APPLIED PSYCHOL. 827, 827-39 (2011); David M. Levy et al., *The Effects of Mindfulness Meditation Training on Multitasking in a High-Stress Information Environment*, PROCEEDINGS OF GRAPHICS INTERFACE, May 2012, at 45, 45-52; Michael D. Mrazek et al., *Mindfulness Training Improves Working Memory Capacity and GRE Performance While Reducing Mind Wandering*, 24 PSYCHOL. SCI. 1, 1-6 (2013); Fadel Zeidan et al., *Mindfulness Meditation Improves Cognition: Evidence of Brief Mental Training*, 19 CONSCIOUSNESS & COGNITION 597, 597-605 (2010).

basketball is won and lost based on factors such as shooting percentage, ball movement, and weak-side defense. Similarly, one could argue that physical trainers are unnecessary to football programs because formation, blocking, wide receiver routes, blitz packages, and cornerback coverage are what determines the winner and loser. Why don't sports programs spend all of their practice time working on these technical aspects of performance? Because the athlete's body is her primary instrument of performance. No matter how great her technical skill, and no matter how much she improves her technical skill (through countless hours of practice), if she does not optimize her primary instrument of performance (her body), her technical prowess will never be fully unlocked.

Law students and lawyers must optimize their primary instrument of performance – *which is their brain* (and its neuro-emotional processing) – through dedicated action. To simply hope, or assume, one's brain is functioning at maximal capacity – without any deliberate process for improving the fitness of this instrument – is naïve, and defied by basic neuroscience. It is detrimental to one's ability to maximally succeed in the legal industry and remain happy and balanced while serving our clients and advancing our careers. If we want to maximize our academic or professional success in the law, we must *choose* to improve our neuro-emotional processing, and then we must dedicate effort to doing so. Once we have made this commitment to ourselves (and to our own success), we can begin targeting the seven Elements of Self that directly determine our emotional well-being and cognitive success.

The Seven Elements of Self outlined below are: (1) Body, (2) Mind, (3) Purpose, (4) Energy, (5) Emotions, (6) Behavior, and (7) Communication.

(1) BODY

Self-mastery of our body is critical to our emotional health and cognitive performance. It is a matter of common sense that our emotional state determines our bodily state. For example, when we are happy, we smile. When we are stressed, we scowl. While this is undoubtedly true, modern physiology and neuroscience demonstrate the opposite is also true: when we smile, we become happier; when we scowl, we become more stressed.¹² This doctrine of human physiology and neuroscience is referred to as “Embodied

12. Tara L. Kraft & Sarah D. Pressman, *Grin and Bear It: The Influence of Manipulated Facial Expression on the Stress Response*, 23 PSYCHOL. SCI. 1372, 1375-77 (2012).

Cognition,” i.e., the notion that how we manipulate, hold, and use our body directly influences our emotional and cognitive state.¹³

The research demonstrates that when we do a “forced smile,” even if we are not feeling happy, our happiness increases and our stress decreases. In a particularly fascinating study,¹⁴ a team of psychologists from the University of Kansas provided participants with a chopstick and had them hold the chopstick in their mouth in two different ways (one that generated a forced smile and one that generated a forced scowl), while having them experience a stress-inducing, cold-press treatment, in which their hand was dunked in ice-cold liquid that incites the stress response in humans. When the participants were asked to hold the chopstick at the tip of their lips like a cigarette, the participants were unknowingly morphing their faces into a stress scowl. When they were asked to hold the chopstick horizontally in the back of their molars, they were unknowingly smiling.

In both situations, the participants were subjected to an intense stress-inducing cold-press treatment, and then saliva samples were taken in order to measure their levels of cortisol, the primary stress hormone. The results revealed that when the participants unknowingly smiled while subjected to the stressful experience, their stress levels were significantly lower than when they were subjected to the same stressor but held the chopstick in a way that created an unknowing stress scowl.¹⁵ This study, among others, shows that when we are in a stressful situation, the facial expression we hold during the situation significantly effects the levels of stress we experience.

Similarly, modern research shows that the bodily posture we hold significantly affects our emotional and cognitive state.¹⁶ While many of our parents lectured us as children not to “slouch” at the dinner table, our parents did not realize they were actually providing us with cutting-edge emotional and neurological guidance. Modern research, however, reveals just this.

One study published in the *Journal of Health Psychology* documented the vast emotional and cognitive differences experienced by participants based on whether they sat in a slumped or upright posture.¹⁷ The study concluded, “[a]dopting an upright seated posture in the face of stress can maintain self-esteem, reduce negative mood, and increase positive mood compared to a slumped posture. Furthermore, sitting upright increases rate

13. Jeff Thompson, *Embodied Cognition: What it is and Why It's Important*, PSYCHOL. TODAY (Feb. 20, 2012), <https://www.psychologytoday.com/us/blog/beyond-words/201202/embodied-cognition-what-it-is-why-its-important>.

14. See Kraft & Pressman, *supra* note 12, at 1372-78.

15. See *id.* at 1374-75.

16. Swetha Nair et al., *Do Slumped and Upright Postures Affect Stress Responses? A Randomized Trial*, 34 HEALTH PSYCHOL. 632, 632 (2015).

17. See *id.*

of speech and reduces self-focus.”¹⁸ Therefore, sitting upright may be a simple behavioral strategy to help build resilience to stress.

In short, this study concluded that when our body slumps, our emotional state, focus, and rate of speech also slump, while holding our body upright literally raises our emotional and cognitive state. Moreover, slouching has been proven to alter our brain’s ability to retrieve memories. One study,¹⁹ for example, found that slouching substantially increases our tendency to recall negative information, and substantially reduces our ability to recall positive information. In this study, 92% of participants experienced reduced positive thought recollection when seated in a slumped position, as compared to their thought recollection while seated in a non-slumped position. In this way, our posture directly impacts our brain’s ability to recall positive information and retrieve positive thoughts. Slouching therefore leads to cognitive bias that alters our subjective interpretation of our environment and experiences.

Finally, a team of psychologists from Harvard University conducted a study that found that it takes just two minutes in a particular posture for our hormonal levels to materially change.²⁰ Indeed, in just two minutes in a slouched or constricted posture at the library, at our desks, in class, or at a meeting, our cortisol levels spike and our testosterone levels drop.²¹ Similarly, in just two minutes in a power or confident posture, our cortisol levels drop and our testosterone levels spike.²² When we are in a low-cortisol and high-testosterone state, we tend to be confident, focused, and energized. Conversely, when we are in a high-cortisol and low-testosterone state, we tend to be stressed, distractible, and fatigued. Thus, how we hold our posture is proven to directly affect our emotional and cognitive state.

Mastery of one’s physical body should begin in the 1L year, continue during law school, and carry into practice. Whether a law student or seasoned lawyer is reading this, she should consider how critical her physical posture and facial expressions – especially while under stress – are to her emotional

18. *Id.* (“Self-focus” refers to an inappropriate preoccupation with self that interferes with an individual’s presence and attention towards tasks and one’s external environment.).

19. Vietta E. Wilson & Erik Peper, *The Effects of Upright and Slumped Postures on the Recall of Positive and Negative Thoughts*, 29 APPLIED PSYCHOPHYSIOLOGY & BIOFEEDBACK 189, 189 (2004).

20. Dana R. Carney et al., *Power Posing: Brief Nonverbal Displays Affect Neuroendocrine Levels and Risk Tolerance*, 21 PSYCHOL. SCI. 1, 4-5 (2010),

21. Testosterone is healthy and cognitively beneficial for both men and women, as it increases focus, energy, and exuberance during cognitive task performance. Oliver Beauchet, *Testosterone and Cognitive Function: Current Clinical Evidence*, 155 EURO. J. ENDOCRINOLOGY 773, 774-76 (2006).

22. See Carney et al., *supra* note 20.

well-being and cognitive performance. When she is working on a tight deadline, it is paramount that she mindfully contorts her body and face in a way that maximizes her emotional and intellectual functioning.

(2) MIND

In order to maximize our emotional wellness and cognitive functioning, we must master our thoughts, ingrained beliefs, unconscious assumptions, mindsets, and other cognitions. A famous proverb in yogic philosophy states, “the mind is an outstanding servant, but a terrible master.” When the mind is in control of us, it generates countless thoughts and cognitions (many of which are *unconscious*) that cause us great emotional challenges and pain, and that render us highly distracted and unproductive (professionally and academically). But when we are in control of the mind, our thoughts and cognitions can be consciously identified and used to reduce our emotional challenges and pain, and to enhance our focus, motivation, and productivity. Control of the mind is critical to our emotional health and cognitive optimization.

Essentially all ideological traditions now recognize the fundamental principle that much of our emotional and decisional processing results from *unconscious* thinking and cognitions, which directly affect, and often dictate, our *conscious* thinking and cognitions. All of these ideologies emphasize that if we want to enhance our emotional health, decisions, and functioning in life, we *must* work directly with the unconscious thoughts and cognitions that impact or control us in every moment. Whether it is Byron Katie, a prominent life coach and author whose work teaches us to identify and restructure the unconscious thoughts that cause our own suffering,²³ or Don Miguel Ruiz, a global spiritual teacher whose work shows us how we are “domesticated” at an early age to hold certain thoughts and beliefs that cause our emotional challenges later in life,²⁴ or Shawn Achor, a Harvard Positive Psychologist whose work shows us how to increase our emotional wellness and happiness by changing our ingrained thinking and behaviors,²⁵ or Colin Tipping, a renowned Pastor whose work teaches us how to mentally reframe challenges in our life so we can have greater fulfillment and emotional

23. See generally BYRON KATIE, *LOVING WHAT IS: FOUR QUESTIONS THAT CAN CHANGE YOUR LIFE* (2002).

24. DON MIGUEL RUIZ & JANET MILLS, *THE FOUR AGREEMENTS: A PRACTICAL GUIDE TO PERSONAL FREEDOM* 4 (2001).

25. SHAWN ANCHOR, *THE HAPPINESS ADVANTAGE: HOW A POSITIVE BRAIN FUELS SUCCESS IN WORK AND LIFE* 199 (2010).

health,²⁶ or Daniel Kahneman, a Western Economist and Psychologist who won the Nobel Prize in Economics in 2002 and whose work shows us that much of our life decisions and emotional reactions are the result of unconscious thinking and cognizing,²⁷ it is clear that if we want to upgrade our emotional health, decisions, and actions in life, we must purposefully target and improve the functioning of the unconscious mind.

There are several ways to improve the functioning of the unconscious mind, including the techniques of Belief Restructuring and Mindset Shifting. Belief Restructuring involves identifying – and purposefully transforming – the underlying, *usually unconscious*, cognition that is generating an undesirable emotion and resulting behavior.²⁸ For example, say you are driving in the far right lane of the highway and in the last moment before the exit, a car from the next lane to the left does a last second cut-off into your lane and frantic departure onto the exit ramp, causing you to hit the breaks to avoid contact (but not face any real risk of injury). What emotion instantaneously bubbles up in you? If you are like most people, the answer is “anger.” Perhaps you notice how the anger erupts within you before you even had a chance to consciously reflect on the situation. So why do we instantly feel anger in this situation? Because our mind holds a deeply ingrained – and likely unconscious – belief that states: “anyone who does a last second cut-off of me on the highway is a terrible jerk.” (Your mind may use slightly more colorful language than “terrible jerk,” but the effect is the same.)

Without this underlying belief, it is *impossible* to feel anger in this situation. When neutrally and emotionlessly observed, all that occurred was that one car abruptly departed the highway in a way that caused another car to hit the breaks but not face any real risk of danger. Those are the neutral facts. However, these neutral facts, alone, do not yield the emotion of anger. There is something that stands between the neutral facts and the resulting emotion. There is something that takes the neutral facts and spits out the resulting emotion. That “thing” is your ingrained belief that “anyone who does a last second cut-off of me on the highway is a terrible jerk.” This ingrained belief is what converts a neutral fact into a volatile emotion. Without this ingrained belief in your psyche, you simply would not feel anger in this situation.

26. COLIN TIPPING, *RADICAL FORGIVENESS: A REVOLUTIONARY FIVE STAGE PROCESS-TO HEAL RELATIONSHIPS-LET GO OF ANGER AND BLAME-FIND PEACE IN ANY SITUATION* (2010).

27. DANIEL KAHNEMAN, *THINKING, FAST, AND SLOW* 63 (2011).

28. Steve Handel, *Cognitive Restructuring: The Complete Guide on How to Reframe Your Beliefs*, THE EMOTION MACHINE (Aug. 30, 2017), <https://www.theemotionmachine.com/cognitive-restructuring-complete-guide-reframe-beliefs/>.

Experiment with a different underlying belief. What would happen if you replaced the above ingrained belief with a new belief? That is, a belief that would provide some *alternative* explanation for why the person did a last-second cut-off. Here is one: “the person who did the last second cut-off is rushing to the ER to visit a loved one who may die in the next few minutes.” If you absolutely knew this to be true, what emotion would you experience when the person cut you off last second? Compassion! Which is the exact opposite of anger. Yet the “neutral facts” are the same – a vehicle did a last second cut-off of you on the highway. But the emotion that is generated is the polar opposite. This divergent emotional reaction is based entirely on the underlying belief that you apply to the neutral facts.²⁹

Another technique for mastering the mind is a technique we call Mindset Shifting. A mindset is a default mental framework or default lens through which we receive, interpret, and give meaning to events, information and stimuli in our life, in the courtroom, and in the classroom.³⁰ As the saying goes, “if you are wearing rose tinted lenses, everything will appear rosy; and if you wear clear lenses, everything will appear clear.” An effective tool for shifting into an advanced emotional and cognitive state is to identify the current ingrained mindset you are in, and to purposefully convert to the corresponding empowered version of that mindset.

If you are feeling stress, anxiety, anger, sadness, or some other challenging emotion, it is virtually guaranteed that you are in one of five “Disempowered Mindsets” (*See Chart, infra*). Each of these mindsets is scientifically established to increase stress, anxiety, depression and emotional imbalance, and to impair higher-level cognitive and professional functioning. Each mindset has a corresponding “Empowered Mindset” that you can switch to, in order to shift your state:

29. If you were to dedicate yourself, as an experiment, to believing that anyone who cuts you off in the next week is actually a concerned loved one rushing to the ER to visit a family member, your anger on the road will significantly decrease. Now, you may ask us, “are you suggesting that I engage in delusions in order to modulate my emotions?” Yes, we are! But to be clear, you *already* are engaging in delusions – because when you get cut-off and you react with anger, it is proof that you are believing (probably unconsciously) that the other person is a “terrible jerk.” But that is an obvious delusion. You do not know the person; s/he could be the nicest, most loving person on the planet. But since we do not know, we fill in the uncertainty with an ingrained belief that the person is a terrible/selfish jerk. We literally make this up about someone we know nothing about. That is a quintessential *delusion*. So if you are going to be delusional, you might as well be delusional in a way that leaves you feeling happy, joyful, and emotionally balanced.

30. Gary Klein, *Mindsets*, PSYCHOL. TODAY (May 1, 2016), <https://www.psychologytoday.com/us/blog/seeing-what-others-dont/201605/mindsets>.

<i>Disempowered Mindset</i>	<i>Empowered Mindset</i>
Judgment	Compassion
Victimhood	Gratitude
Fear	Opportunity
Control	Adaptability
Fixed	Growth

The Victimhood-Gratitude dynamic provides a good example. A litany of scientific research reveals that when we purposefully put ourselves into the mindset of gratitude (for example, by using a simple gratitude practice³¹), our neurological and physiological systems shift into optimized states. Our stress and anxiety drop, and our resiliency and executive cognition increase. For example, the research shows that when we engage in deliberate gratitude practices, the following occurs:

- Activity in the amygdala (the brain's fear center) reduces, leading to reduced stress.³²
- The parasympathetic nervous system, the calming branch of the anatomic nervous system, is activated, while the sympathetic nervous system, which governs the stress-response, is deactivated.³³
- Our levels of cortisol, the primary stress hormone, plummet.³⁴
- Activity in the hypothalamus, which links the nervous system to the endocrine system and regulates our homeostasis and hormonal balance, increases.³⁵
- Activity in the brain's executive center, the prefrontal cortex, increases.³⁶

31. *What Is Gratitude? Why Practice It? How Do I Cultivate It?*, GREATER GOOD MAGAZINE (Feb. 26, 2019), <https://greatergood.berkeley.edu/topic/gratitude/definition>.

32. Sunghyon Kyeong et al., *Effects of Gratitude Meditation on Neural Network Functional Connectivity and Brain-Heart Coupling*, 7 SCI. REP., 1, 1-2 (2017).

33. Sammy Caiola, *Gratitude is Good for Health, Research Shows*, SACRAMENTO BEE (Nov. 26, 2014, 6:25 PM), <https://www.sacbee.com/news/local/health-and-medicine/healthy-choices/article4169979.html>.

34. Rollin McCraty et al., *The Impact of a New Emotional Self-Management Program on Stress, Emotions, Heart Rate Variability, DHEA and Cortisol*, 33 INTEGRATIVE PHYSIOLOGICAL BEHAV. SCI. 151, 166 (1998).

35. Giovanni Alesio, *Gratitude and Happiness: The Link Based on Neuroscience*, VERSION DAILY (Sept. 23, 2015), <http://www.versiondaily.com/gratitude-and-happiness-the-link-based-on-neuroscience/>.

36. Prathik Kini et al., *The Effects of Gratitude Expression on Neural Activity*, 128 NEUROIMAGE 1, 2 (2015).

- Impulsive decision-making declines, and will power and prudent decision-making elevate.³⁷

The science is clear: shifting into a state of gratitude reduces your stress and improves your brain functioning. So how can you use this science to your advantage when you are under the gun in the classroom or courtroom? Here is a simple but very effective technique: whenever you notice you are feeling stressed, pause whatever you are doing and identify *three things* about the stressor that you are grateful for. This likely seems counterintuitive, but there are *always* at least three things about a stressor to be grateful for. When we shift our mind into a state of gratitude *over the very situation that is triggering our stress*, our stress plummets.

For example, if you are unexpectedly assigned an important and complex project with an unreasonably short deadline, you will likely enter a state of stress rather quickly. You likely have also unconsciously fallen into a Victimhood Mindset. But here are three possible items to be grateful for even in the midst of the immediate intense challenge: (1) you have earned so much trust and confidence from your supervisors, and your reputation is so impressive, that they elected to put this critical and time-sensitive project in your hands, rather than anyone else's hands; (2) you have built a career that involves constant, intellectually stimulating experiences, as opposed to the vast majority of individuals who spend much of their jobs doing rote or boring work (i.e., this project may be intensely challenging, but at least it is not mindless and boring!); and (3) you have the opportunity to deliver an amazing result to the client or company in a clutch moment that would overwhelm most people, so you are being given an incredible opportunity to let your expansive gifts shine (i.e., "the greater the obstacle, the greater the glory").

This simple technique causes your brain to reframe the challenge. Whenever we are feeling stressed, we have *amnesia* about these sorts of positives. Our mind is necessarily engaging in some sort of victim-based, negative internal processing about the stressor (often *subconsciously*). Essentially we are engaging in the exact opposite of gratitude. Perhaps we are wishing we were not in this situation, or festering in how unfair it is, or fearing that we will not be able to pull off our usual masterpiece, or feeling overwhelmed by how much time and energy will be required to complete the project. These underlying thoughts are coming from a place of subtle

37. David DeSteno et al., *Can Gratitude Reduce Costly Impatience?*, ASS'N FOR PSYCHOL. SCI. (March 31, 2014), <https://www.psychologicalscience.org/news/releases/can-gratitude-reduce-costly-impatience.html>.

victimhood, rather than gratitude. Those thoughts are the origins of and *necessary prerequisites* to stress. And they are the antithesis of gratitude.

When we force our mind to instead identify the positive aspects of the current challenge, the underlying thoughts that give rise to stress get superseded. Instead of feeling overwhelmed, intimidated and victimized by the situation, we feel engaged, impassioned, and emboldened by it. When we are experiencing feelings and thoughts of gratitude, it is actually impossible to simultaneously feel stressed.³⁸

As we master the ability to identify when we are in a Disempowering Mindset and to purposefully shift into the corresponding Empowering Mindset, we will be transforming our mind from foe to friend. Our emotional wellness and cognitive performance will necessarily flourish.

(3) PURPOSE

Finding purpose/meaning in life is critical to self-mastery. We begin this section with a parable to illustrate the nature of “finding meaning” in our day-to-day work:

As a man walked past a construction site, he saw two bricklayers about 10 feet apart from each other, both laying bricks. The first man looked lethargic, despondent, and morose as he laid brick after brick. The second man, on the other hand, looked energized, upbeat, and inspired as he did the identical activity. Curious about this difference, the passerby approached the first man and uttered, “I’m sorry to bother you sir, but may I ask what

38. *Experiential Practice*: So at this moment, we would invite you to pick the one thing in your life that is causing you the most stress at this very second. Notice the Victimhood Mindset you are experiencing – and the related victim-based thoughts that are circulating within you about the situation (i.e., the ways in which you are subtly wishing the situation were different or you feel the situation is somehow “unfair” to you). Now identify the *three things* about the situation that you are deeply grateful for. If it feels difficult or even impossible to come up with three (or any!) things to be grateful for, don’t worry – that is totally normal. Stay with it, and put your creative thinking to the test! It may feel like you are wrestling with yourself, but you will eventually break through and come up with three. This process will get easier and easier each time you do it, as your brain slowly builds this *new muscle* (of experiencing gratitude for challenges). Finally, allow yourself to revel in the three items, and feel the rich emotions of gratitude, appreciation, and wonder as they circulate through you. Do not just intellectually ponder the three items; really feel the emotion of gratitude warming and lighting up your whole body and mind. After you have basked in the gratitude for at least 30 seconds, return to the situation at issue. You will notice your emotional and mental states have likely shifted. While some stress may still be bubbling inside you, your stress should be materially reduced. By first noticing that you were in a Victimhood Mindset, and then purposefully switching into a Gratitude Mindset, you can very quickly shift your emotional and cognitive state. In so doing, you have executed a potent “*pattern interrupt*” of the stress response, which reorganizes your nervous system and neural processing. The more you do it, the easier and more powerful it gets to identify when you are stuck in Victimhood and to shift to Gratitude. Over time, you will be able to shift out of stress far more quickly, and eventually, you will start defaulting to gratitude – with less effort and intentionality.

you're doing?" The despondent man looked up and sluggishly said, "I'm laying bricks." The passerby thanked him and then approached the second man, before asking him what he was doing. The buoyant man enthusiastically answered, "I'm building a cathedral."

A sense of purpose in what we do gives the activity meaning and dramatically increases our fulfillment, buoyancy, and passion for the activity. The problem is that we so often get disconnected from the deeper purpose or meaning of what we are doing. Or, we never connected in the first place to deeper purpose. We get lost in the weeds, and struggles, and forget "the why" of our work. Whether you are a lawyer or a law student, you cannot maximize your emotional wellness or cognitive performance without being keenly and consistently connected to a sense of purpose for what you are doing. Indeed, the research reveals that having a clear sense of purpose is critical to happiness, resiliency, and emotional well-being.³⁹ The research also reveals that having a clear sense of purpose dramatically increases our memory, executive functioning, and overall cognitive performance.⁴⁰

Purpose can be described as a sense that we are part of something bigger and more important than ourselves, and that our efforts are tangibly contributing to that big and important thing. The opposite of purpose is "tunnel vision" – where we view our tasks, projects and deadlines in isolation, rather than as a part of some higher meaning. The study and practice of law unavoidably involves a large amount of difficult and often unenjoyable tasks and projects. Certainly, reading countless pages of cases or never-ending transaction documents is not exactly blissful activity for the average student or practitioner. So what happens to most of us is that as we perform the mundane tasks of the profession, we feel indifferent, at best, or actively resentful, at worst. Either way, it is a sign we have disconnected from purpose. Of course, whenever we are feeling indifferent to or resentful of our project, it is a sign that we are not only less happy than possible, but also performing less attentively, effectively, and efficiently than possible.

39. See Anthony L. Burrow et al., *Purpose in Life as a Resource for Increasing Comfort With Ethnic Diversity*, 40 PERSONALITY SOC. PSYCHOL. BULL. 1507, 1508 (2014); Naelys Diaz et al., *Attachment Style, Spirituality, and Depressive Symptoms Among Individuals in Substance Abuse Treatment*, J. SOC. SERV. RES. 313, 314-15 (2014); Patrick L. Hill et al., *Purpose in Life in Emerging Adulthood: Development and Validation of a New Brief Measure*, 11 J. POSITIVE PSYCHOL. 237, 237-40 (2016); Jina Park & Roy F. Baumeister, *Meaning in Life and Adjustment to Daily Stressors*, 12 J. POSITIVE PSYCHOL. 333, 333-39 (2017); Stacey M. Schaefer et al., *Purpose in Life Predicts Better Emotional Recovery from Negative Stimuli*, 8 PLOS ONE 1, 1-9 (2013).

40. See Nathan A. Lewis et al., *Purpose in Life and Cognitive Functioning in Adulthood*, 24 AGING, NEUROPSYCHOL., & COGNITION 662, 667 (2017); see also Patricia A. Boyle et al., *Effect of a Purpose in Life on Risk of Incident Alzheimer Disease and Mild Cognitive Impairment in Community-Dwelling Older Persons*, 67 ARCHIVES GEN. PSYCHIATRY 304, 304 (2009).

What we must do in those moments – if we want to up-level our emotions and cognition – is to immediately connect the rudimentary task to a higher purpose. If you are a law student who is overwhelmed by the amount of reading you have tonight, do not just mindlessly power-through the reading in agony. Before starting the reading, pause for a moment, and ask yourself why you decided to come to law school in the first place. Do you remember how excited you were about the possibility of going to law school when you first considered it? How about the emotions you felt when you received your admission letter? Now imagine yourself as a practicing lawyer at your ideal job – working on the type of matters that most enliven your spirit. Perhaps you want to be a public defender to protect the constitutional rights of vulnerable members of society. Or perhaps you want to be a prosecutor to fight for victims of crime and ensure that guilty people are removed from the streets. Or perhaps you want to do IP law – because you want to support innovation and technological breakthroughs that transform society. Regardless of what it is that excites you, *connect to it*. Think about it, feel it, see yourself doing it. And then acknowledge the fact that this pile of reading is just a challenging step in arriving at this amazing and meaningful career that you are building. By keeping your higher purpose in mind, the rudimentary tasks and challenges that life brings become more bearable, and less derailling – both emotionally and cognitively.

Additional tools for connecting to our higher purpose include creating a Personal Mission Statement, doing purpose-based visualization exercises, and gratitude practices related to your higher purpose.⁴¹ What is key is *consistently* and *purposefully* connecting to your higher purpose as you face projects and stretches that leave you feeling disinterested or lethargic. The result will be a greater sense of happiness and fulfillment, and enhanced focus, energy, and productivity.

(4) ENERGY

It is critical to emotional wellness and cognitive enhancement that we intelligently monitor, preserve, and harness our sacred will power and energy throughout the day. Our energy levels at any given moment in the day often have less to do with how much energy we “naturally” have, and more to do with how much energy we have imprudently wasted up until that moment in the day. As such, self-mastery inherently involves mastering one’s precious energy supply.

41. Ken Maschke, *Finding Purpose with a Purpose Statement*, 13 LEADERSHIP MGMT. ENGINEERING 295, 295-98 (2013); Jeremy A. Smith, *How to Find Your Purpose in Life*, GREATER GOOD MAGAZINE (Jan. 10, 2018), https://greatergood.berkeley.edu/article/item/how_to_find_your_purpose_in_life.

In 1998, a psychologist named Roy Baumeister conducted a landmark study that made him a giant in the world of psychology.⁴² He walked into a room filled with individuals who had volunteered for a cognitive test, and carried a large plate of piping hot, fresh-baked cookies, as well as a bag of radishes. The fragrance of the fresh cookies filled the entire room. He then randomly offered each volunteer either a fresh-baked cookie or a radish, without giving them a choice, or explanation. After providing each volunteer with her or his respective snack, he then passed out a puzzle, which was actually impossible to solve (unbeknownst to the volunteers). He then recorded how long it took for each group of volunteers to quit on the puzzle. On average, the volunteers who were offered a cookie struggled with the puzzle for *twice* as long before quitting, as compared to volunteers who were offered a radish.⁴³

Baumeister's new theory was born: humans have a limited amount of will power or energy on any given day, and when we needlessly burn that precious fuel, we have reduced attention and will power for subsequent tasks. Baumeister theorized that the volunteers who received the radishes fell into frustration and rumination at their "unfair" disbursement, which burned critical cognitive fuel, leaving them depleted and more likely to quit the puzzle sooner.⁴⁴ Thus, will power and cognitive fuel are limited resources, and if we needlessly burn them throughout the day, our cognition begins to erode over the course of the day. His theory is generally referred to as "will power depletion" or "decisional fatigue."

There have been hundreds of studies published in peer-reviewed professional journals supporting the existence of will power depletion. What the studies reveal is that with certain limited exceptions,⁴⁵ each and every micro-decision, micro-action, and micro-cognition we commit throughout the day causes a palpable reduction in our energy and will power.⁴⁶ As our energy and will power steadily deplete over the course of the day, our

42. Roy F. Baumeister et al., *Ego Depletion: Is the Active Self a Limited Resource?*, 74 J. PERSONALITY SOC. PSYCHOL. 1252, 1254-56 (1998).

43. *Id.* at 1255.

44. Later studies on will power depletion controlled for the possible confounding variables of the sugar rush, glucose spike and/or voluntary emotional withdrawal that could have accounted for the differences in puzzle performance in the original study.

45. A small collection of activities that require an outlay of will power nevertheless lead to a *net increase* in will power at the completion of the activity. Examples include certain forms of exercise, meditation, music and art, and other so-called "right-brain" activation exercises – which are summarized in more detail in the "BEHAVIOR" section of this article. But with rare exceptions, each of the activities we perform throughout the day causes a net reduction in our available will power.

46. See Shai Dazinger et al., *Extraneous Factors in Judicial Decisions*, 108 PNAS 6889, 6889-92 (2011).

cognitive performance similarly depletes, leading to reduced focus, greater distractibility, and impaired decision-making.⁴⁷

Aware of this research, many of society's great thinkers wear virtually the same clothes every day, knowing that the cognitive resources spent on deciding on the right outfit in the morning will quite literally reduce their cognitive firepower available for far more important decisions later in the day. Think of Steve Jobs and the black turtleneck, blue jeans, and white new balance sneakers he wore virtually every day. Or Mark Zuckerberg and the same grey t-shirt and grey zip-up hoodie he wears every day. Or President Obama and the small collection of navy and grey suits that he wore virtually every day for eight years. When asked about his repetitive attire, Obama explained, "I'm trying to pare down my decisions," adding "[y]ou need to focus your decision-making energy. You need to routinize yourself. You can't be going through the day distracted by trivia."⁴⁸ Zuckerberg has cited the decision fatigue doctrine and elaborated, "I really want to clear my life so that I have to make as few decisions as possible, other than how to best serve this community."⁴⁹

47. For example, a study published in the National Academy of Sciences by a team of Israeli and Columbia University psychologists analyzed 1,112 parole rulings over the course of 10 months by eight judges in the Israeli criminal justice system. *See id.* Far from the unique facts of the case or the underlying crime at issue, the critical factor that determined the likelihood of parole being granted was the time of day of each parole decision. Over the course of the 10 months, parole was granted at a rather consistent rate of about 65% in the beginning of the morning sessions, with the grant rate steadily dropping over the course of the morning session until hitting almost an average of 0% in the parole decisions made immediately before the lunch break, before again rising to approximately 65% during the post-lunch session, before steadily declining over the course of the remainder of the day to nearly 0% at the very end of the day. *Id.* Because granting parole requires far more effort, thought, and legal justification than denying parole, the will power depletion that occurred over the course of the parole sessions led to a diminished reserve of will power in the judges, which in turn led to impaired decision-making and diminished parole grants. *Id.* Similarly, a study published by the American Medical Association in JAMA Internal Medicine found that primary care physicians' prescription decisions regarding patients presenting with acute respiratory infections were impacted by the physicians' will power depletion, based on how late in the day each patient happened to arrive. *See* Jeffrey A. Linder et al., *Time of Day and the Decision to Prescribe Antibiotics*, 174 JAMA INTERNAL MED. 2029, 2029-31 ("We found that primary care clinicians' likelihood of prescribing antibiotics for ARIs [acute respiratory infections] increased during clinic sessions, consistent with the hypothesis that decision fatigue progressively impairs clinicians' ability to resist ordering inappropriate treatments.").

48. Drake Baer, *Always Wear The Same Suit: Obama's Presidential Productivity Secrets*, FAST COMPANY (Feb. 12, 2014), <https://www.fastcompany.com/3026265/always-wear-the-same-suit-obamas-presidential-productivity-secrets>.

49. Stefanie Smith, *Zuckerberg: I Wear Same Shirt Daily for a Reason*, CNBC (Nov. 7, 2014, 11:51 AM), <https://www.cnbc.com/2014/11/07/5-things-we-learned-in-mark-zuckerbergs-facebook-qa.html>. To be clear, we are not advising you to create a redundant wardrobe, as this may not be a realistic or beneficial overall strategy for many of you, in light of society's emphasis on fashion and appearance. We are instead inviting you to identify aspects of your life where you waste valuable cognitive firepower on decisions that do not provide any real benefit to your life.

Moreover, as our reservoir of energy and will power slowly declines throughout the day, we become more emotionally imbalanced, impatient, and reactive. If you have ever gotten into an 11 p.m. argument with your significant other, family member, or close friend – over a frivolous issue that would normally not trigger you – after a long and painful day of airports, taxis and delays as you travel home from an out-of-state trip, you have experienced will power depletion.⁵⁰

In order to master one's energy supply, we must attempt to view every action, decision, and thought-process expressly from the perspective of energy and will power depletion. Rather than myopically focusing only on making the “best” decision or taking the “ideal” action in every micro-situation on an *ad hoc* basis, we need to ask ourselves: how much energy and will power should I dedicate to this particular decision or action, and would I be better served to preserve some of that energy for other decisions and actions in the day, even if it means making a slightly “worse” micro-decision in this moment? Examples of micro-decisions and micro-actions we succumb to throughout the day that aggregate to deplete our cognitive firepower may include what we wear, what we eat (did we really need to engage in a 15-minute debate with our coworker over whether to go to a Mexican or Mediterranean restaurant for lunch?), whether we engage in that 10-minute water cooler gossip with our colleague, whether we spend the time and effort trying to prove and persuade regarding an opinion or position we hold, and how much time and effort to spend on each particular email or text message throughout the day. Every person who is reading this is likely guilty of having spent *twice* as much time as necessary on a particular email yesterday, when your extra effort realistically had no discernible effect on the situation. When all of these micro-decisions accumulate over the course of the day (and weeks, and months), our energy levels and cognitive resources for important tasks are materially dwindled.

One recommended technique is to quickly place every micro-decision into one of five priority “buckets” that will provide you with guidance on

We also want to note that a gender disparity likely exists on this topic. The ability of Zuckerberg, Obama, and other *men* to streamline their wardrobe as a way to reduce decision-making may not be as available to women, sadly, in similar roles – as several studies confirm that women's clothing choices are much more scrutinized, rendering a “same-every-day” outfit imprudent and risky for the average woman in business or law. See Emma Rees, *Clothes Do Not Make the Woman: What Female Academics Wear is Subject to Constant Scrutiny*, THE MAGAZINE (Apr. 5, 2018), <https://www.timeshighereducation.com/features/clothes-do-not-make-woman-what-female-academics-wear-subject-constant-scrutiny>.

50. Decisional fatigue/will power depletion is also widely viewed as a reason virtually all mediations reach settlement after 5pm: litigants become “broken down” over the course of an entire day of negotiations and once depleted, are more likely to agree to terms they would have rejected when fresh and energized.

how much of your precious resources to dedicate to the issue: (1) important; (2) above average; (3) average; (4) below average; and (5) unimportant. This mental label may only take two to three seconds per decision, but could save you minutes (or even hours) and heaps of cognitive fuel in making or executing that decision. Another example: most of us get trapped into treating “below average” emails as if they are “above average” emails, which tangibly effects the amount of time, energy, and resources we devote to the email. When we start correcting these repetitive misallocations of resources throughout the day, we will notice ourselves experiencing renewed energy, emotional buoyancy, and cognitive firepower. Our emotional well-being and cognitive performance will inevitably escalate.

(5) EMOTIONS

Dead are the days of pretending we are invincible legal warriors who are “too strong” to feel stress, anxiety, sadness, and other challenging emotions. For centuries the legal industry has been marred by delusion, denial, and toxic suppression of normal human emotions. We have been dangerously conditioned to believe that if we experience these challenging emotions (which all humans experience), it means we are weak, unreliable, and incompetent as a lawyer, and person. Unsurprisingly, the objective data reveals that lawyers suffer from emotional and mental challenges at higher rates than perhaps any other profession.⁵¹

As a matter of basic science, it is beyond dispute that when emotions are denied or suppressed, they wreak far greater havoc and cause far greater problems.⁵² It is equally well established that when we openly and honestly acknowledge our painful emotions to ourselves, they can become more decipherable and we can take intelligent actions to reduce their intensity.⁵³ Indeed, you cannot change what you cannot see.

51. See *supra* note 1 and accompanying text.

52. Nazanin Derakshan et al., *Emotional Information Processing in Repressors: The Vigilance-Avoidance Theory*, 21 *COGNITION & EMOTION* 1585, 1585–614 (2007); Phillip J. Quartana et al., *Anger Suppression, Ironic Processes and Pain*, 30 *J. BEHAV. MED.* 455, 466-67 (2007); Daniel M. Wegner & Ralph Erber, *The Hyperaccessibility of Suppressed Thoughts*, 63 *J. PERSONALITY & SOC. PSYCHOL.* 903, 903-12 (1992); Daniel M. Wegner & Daniel B. Gold, *Fanning Old Flames: Emotional and Cognitive Effects of Suppressing Thoughts of a Past Relationship*, 68 *J. PERSONALITY & SOC. PSYCHOL.* 782, 791 (1995); Daniel A. Weinberger et al., *Low-anxious, High-anxious and Repressive Coping Styles: Psychometric Patterns and Behavioral Responses to Stress*, 88 *J. ABNORMAL PSYCHOL.* 369, 369-70 (1979); Richard M. Wenzlaff et al., *Beneath the Veil of Thought Suppression: Attentional Bias and Depression Risk*, 15 *COGNITION & EMOTION* 435, 448-49 (2001).

53. See *supra* note 52 and accompanying text; see also Emily A. Butler et al., *The Social Consequences of Expressive Suppression*, 3 *EMOTION* 48, 56-57, 62 (2003); Afsoon Eftekhari et al., *Patterns of Emotion Regulation and Psychopathology*, 22 *ANXIETY STRESS COPING* 571, 571-

In order for law students and lawyers to maximize their emotional wellness, they first must acknowledge to themselves that challenging emotions are a completely normal aspect of the human condition. They must consciously attempt to *un-learn* the conditioned, false belief that experiencing challenging emotions is an indicator of one's inherent weakness, inadequacy, or defectiveness. And they must consciously *violate* this conditioned, false belief by openly disclosing their challenging emotions to people they trust. Only if they deliberately and consistently attempt to break this deeply ingrained belief can they start to erode its powerful chokehold over their psyche.

In addition to normalizing challenging human emotions, we can apply a series of tangible tools to healthily process and transcend those emotions. Such tools include: (i) Locate, Label & Love; (ii) Emotional Yin-Yang; (iii) Empty Chair; and (iv) Somatic Processing.⁵⁴

The "Somatic Processing" technique involves disempowering the emotion by becoming fully present to it and identifying it with ultimate clarity.⁵⁵ Like assassins, emotions are most destructive when they are overlooked or lurking in the shadows. You begin by identifying exactly where in the body you are feeling the challenging emotion. The goal is to identify the exact location of the emotion – as if you are scanning and observing your body to locate the region in which the emotion resides. Is it in the stomach? Head? Throat? Solar Plexus? If elsewhere, where? Once the location is identified, ask yourself what the emotion physically looks like. Does it have a particular size or shape? Does it have a specific color or is it black-and-white? What is its density like – is it compacted and heavy, or is it light and airy? Is it moving, or stagnant? If it is moving, where is moving to? If it is stagnant, is it still stagnant a few seconds later? You will notice when you practice this tool that the process of identifying the precise details of the emotion has likely caused a material reduction in the intensity of the

86 (2009); John A. Lambie & Kevin L. Baker, *Intentional Avoidance and Social Understanding in Repressors and Nonrepressors: Two Functions for Emotion Experience?*, 4 CONSCIOUSNESS & EMOTION 17, 19-20 (2002); Lynn B. Myers & Chris R. Brewin, *Illusions of Well-Being and the Repressive Coping Style*, 35 BRITISH J. SOC. PSYCHOL. 443, 443-57 (1996); Jane M. Richards, *The Cognitive Consequences of Concealing Feelings*, 13 CURRENT DIRECTIONS IN PSYCHOL. SCI. 131, 131-33 (2004); Lizabeth Roemer & Thomas D. Borkovec, *Effects of Suppressing Thoughts About Emotional Material*, 103 J. ABNORMAL PSYCHOL. 467, 467-74 (1994); Sanjay Srivastava, *The Social Costs of Emotional Suppression: A Prospective Study of the Transition to College*, 96 J. PERSONALITY & SOC. PSYCHOL. 883, 883-97 (2009).

54. Due to space constraints, we are unable to address all of these tools, but will describe the last two.

55. Somatic experiencing therapy (SE), developed by Dr. Peter Levine, and premised upon ancient techniques of somatic processing, is described at <https://www.thetraumatrapistproject.com/podcast/peter-levine-phd/>.

emotion. The more you simply experience the somatic effects of the emotion, and the less you intellectually toil with and vilify the emotion, the more the emotion will fade.

The “Empty Chair” technique is one of the lodestar techniques of Gestalt Therapy, whereby you imagine the difficult emotion sitting in a chair across from you, and you have a back-and-forth conversation with the emotion, to better understand what it is doing there, and what its purpose is. Research reveals that this technique for directly engaging the challenging emotion often causes a material reduction in the intensity of the emotion, or new awareness that improve one’s overall emotional state.⁵⁶

The key conclusion here is that if we want to maximize our emotional wellness (and our physiologically-linked cognitive functioning), we must consciously reject the antiquated and dangerous “deny and suppress” method of dealing with challenging emotions, and instead transparently face and engage those emotions. We must befriend our challenging emotions by seeing them with clarity, speaking about them, and directly working with them.⁵⁷ Otherwise, they will lurk in our unconscious and cause us far greater pain, and cognitive impairment. So in order to enhance our emotional and cognitive functioning, we must face and befriend our most challenging emotions.

(6) BEHAVIOR

In addition to the above-mentioned *internal* Elements, our *external* behavior is also critical to our Self-Mastery. Unlike our thoughts or perspectives, or sense of purpose, which reside within us and are generally invisible to outsiders, our behavior is reflected externally and can be observed from the outside. Many of the external actions we take – although enjoyable or satisfying in the moment – undermine our emotional and cognitive wellness. They increase our stress, fatigue, and distractibility, yet we impulsively take these actions and then feel the effects afterwards. If we

56. Colle W. Conoley et al., *The Effect of the ABCs of Rational Emotive Therapy and the Empty-Chair Technique of Gestalt Therapy on Anger Reduction*, 20 *PSYCHOTHERAPY: THEORY, RES. & PRAC.* 112, 112-17 (1983); Leslie S. Greenberg & Lyse M. Dompierre, *Specific Effects of Gestalt Two-Chair Dialogue on Intrapsychic Conflict in Counseling*, 4 *J. COUNSELING PSYCHOL.* 288, 288-93 (1981); Leslie S. Greenberg & Laura N. Rice, *The Specific Effects of a Gestalt Intervention*, *PSYCHOTHERAPY: THEORY, RES. & PRAC.* 31, 35-36 (1981); Sandra C. Paivio & Leslie S. Greenberg, *Resolving “Unfinished Business”: Efficacy of Experiential Therapy Using Empty-Chair Dialogue*, 63 *J. CONSULTING CLINICAL PSYCHOL.* 419, 419-24 (1995).

57. Certainly, a regular mindfulness practice can and does help an individual to see emotions with clarity; however, mindfulness practice *alone* does not answer the question of how to “work with” and then shift a challenging emotion. For that work, the other tenants of self-mastery are needed.

do not make these decisions purposefully and consistently with science, our emotions and cognition will suffer.

Two examples of actions (out of many) that directly affect our emotional wellness and cognitive performance are how we spend short breaks and how we use our smart phones.

How We Spend Short Breaks

Say you finish one cognitive task and decide you will take a 15-minute break before starting the next task. If you are like most individuals, you will likely spend those 15 minutes doing one, or some, of the following activities: web browsing, social media, personal email, texting, or socializing on the phone or in-person. After enjoying yourself for those 15 minutes, you will promptly return to your work and notice a very disturbing thing occurs: you are exhausted and cannot concentrate! This is something we all experience: we take a break from work in order to rest and rejuvenate, and then when we return to our work, we notice our brains are exhausted and we feel no more rejuvenated than we felt at the outset of the break. Why is this? Because the vast majority of activities we engage in during our breaks – including each of the activities listed above – involves nearly identical neurological behavior as the work itself. You see, when we engage in any of the above activities during our break, our brain is working tirelessly and engaging in virtually all of the same neurological functions it engages in while actually working.⁵⁸

58. For example, when you read an internet article on your favorite political or sports website, your brain is forced to engage in reading comprehension, new memory formation (which occurs automatically as you read new information), sustained attention (as you focus on each sentence and paragraph), memory retrieval (as you recall prior events or statements that provide context for or relate to the contents of the article), normative analysis (as you internally decipher whether you agree or disagree, like or dislike, the perspective being expressed), and pattern recognition (the human brain's tendency to not only recognize patterns and tendencies based on the underlying events, but to automatically reach conclusions as to what patterns or events may unfold in the future as a result of these underlying recognitions). Thus, when you take a break from work to read a simple article about your favorite sports team or a development in politics, your brain is engaging in reading comprehension, new memory formation, sustained attention, memory retrieval, normative analysis, and pattern recognition. To your brain, the simple activity of reading an enjoyable news article feels like grueling work. Thus, despite the fact that this activity is emotionally satisfying, it is *neurologically depleting*. So when we return to work, our brain does not even know it took a break. So we feel depleted and fatigued, and over the course of the weeks and months, our overworked brain starts to feel burnt out. Then, when we are actually "working," our brain is functioning at a far lower capacity than it otherwise would if we used our interim breaks to rest and rejuvenate the brain. The result is that we are far less focused and efficient, and far more distracted and delayed, in our work. This, in turn, makes us feel stressed, frustrated with ourselves, and overwhelmed by the amount of work we are not completing. In this way, how we spend our 15-minute breaks is critical to our stress levels and cognitive functioning.

Rather than engaging in neurologically challenging tasks during our short breaks, it is important that we engage in neurologically rejuvenating tasks. And what are these? They are plentiful, but essentially any activity that involves primarily right hemisphere activation, such as art, music, meditation, spatial processing, purposeful day-dreaming, or right-brain activation exercises.⁵⁹ By intentionally unplugging from the “language and logic” center of the brain during our short breaks, we can then return to our work with rejuvenated focus, attention, and brainpower. Our cognitive performance – and emotional wellbeing – will be significantly enhanced.

Smart Phone Use

Another example of an external behavior that directly impacts our cognitive performance and emotional well-being is the use of our smart phone. Smart phones provide a litany of benefits and conveniences that make life easier to navigate in many ways, but if not mindfully used, our smart phones quickly become *cognition-killers*, and *stress-enhancers*.⁶⁰ Obviously smart phones provide a major temptation for pulling us away from our work at any given moment: an infinite source of entertainment, information, and socializing is inches away at all times. Thus, as an initial matter, our smart phone can significantly impede our sustained attention and productivity by literally pulling us away from our casework or classwork – which occurs regularly for most people. Our ability to exercise will power by not over-checking our smart phone is critical to cognitive performance and overall productivity.

More importantly, our smart phones can greatly impair our focus and productivity even when we do not check them!⁶¹ That is, even if we withstand the gnawing temptation to check our phone while working on a cognitive task, several research studies reveal that the mere *presence* of a smart phone during cognitive tasks significantly undermines our emotional

59. Right brain activation exercises include any habitual activity done in a non-habitual way. For example, if you write your name with your non-dominant hand and from right-to-left (and then upside down), or if you walk to the bathroom in the office or library via a completely different route (or even while side-stepping), your brain will be using regions that generally remain relatively dormant as you perform your typical analytical tasks. The analytical regions of your brain will finally be getting some actual rest, and then when you return to analytical thinking after your break, you will notice your analytical mind firing on all cylinders. But the majority of us engage in analytical thinking the entire day – without pause – whether we are technically “working” or “on break.” It is no surprise that cognitive fatigue and lethargy are the new normal.

60. Henry H. Wilmer et al., *Smartphones and Cognition: A Review of Research Exploring the Links Between Mobile Technology Habits and Cognitive Functioning*, 8 FRONTIERS IN PSYCHOL. 605, 605 (2017).

61. See *id.*; Bill Thornton et al., *The Mere Presence of a Cell Phone May be Distracting Implications for Attention and Task Performance*, 45 SOC. PSYCHOL. 479, 479 (2014).

wellness and cognitive functioning on the task. That's right, your smart phone can impair your focus and cognitive functioning *even when you resist the urge to check it*. The research shows that the mere *sound* or *sight* of your smart phone leads to reduced attention and reduced performance on the cognitive task at issue.

In one study,⁶² researchers provided the participants with reading comprehension tests, while monitoring their heart rates, sweating, and other indicators of stress. The researchers had the participants place their smart phones on the desk but out of reach – under the ruse that checking the smart phone or having it within reach would interfere with the laboratory's ability to measure stress. The researchers then covertly sent periodic text messages to the participants, and then measured their physiological stress and reading comprehension performance when they heard their phones ding but were unable to check their text messages.

The results were clear: the mere sound of the participants' smart phones caused their stress and anxiety levels to spike, and their reading comprehension abilities to plummet in the periods following a ding.⁶³ During extended periods of smart phone inactivity, the participants stress levels dropped and their reading comprehension levels spiked. So even if we resist the urge to check our smart phones, simply hearing that we are receiving messages causes our stress to rise and our cognition to drop.⁶⁴

In another study,⁶⁵ the participants were given attention-based cognitive tasks to perform, and each subject performed the first half of tasks with his or her smart phone on the desk, and the second half of tasks with the smart phone out of sight in the participant's bag. In order to induce this condition

62. Cary Stothart et al., *The Attentional Cost of Receiving a Cell Phone Notification*, 41 J. EXPERIMENTAL PSYCHOL.: HUM. PERCEPTION & PERFORMANCE 893, 893-97 (2015).

63. *See id.* at 895.

64. A litany of research reveals that increased smart phone use is associated with increased stress, anxiety, and emotional disturbances. *See* Jon D. Elhai et al., *Problematic Smartphone Use: A Conceptual Overview and Systematic Review of Relations With Anxiety and Depression Psychopathology*, 207 J. AFFECTIVE DISORDERS 251, 257 (2017) (reviewing 117 sources, including 23 peer-reviewed studies, addressing the alleged connection between smart phone use and mental health, and concluding that elevated smart phone use is indeed associated with elevated symptoms of depression, mental distress, anxiety, and impairments in self-esteem); *see also* Andrew Lepp & Jacob E. Barkley, *The Relationship Between Cell Phone Use, Academic Performance, Anxiety, and Satisfaction with Life in College Students*, 31 COMPUTERS HUM. BEHAV. 343, 344-48 (2014) (assessing the frequency of smart phone use across 496 college students and concluding that the students' smart phone use was positively correlated with anxiety and negatively correlated with GPA).

65. Adrian F. Ward et al., *Brain Drain: The Mere Presence of One's Own Smartphone Reduces Available Cognitive Capacity*, J. ASS'N FOR CONSUMER RES. 140, 140- (2017); *see also* Thornton et al., *supra* note 61 (similarly concluding that the mere presence of smart phones significantly impairs cognitive performance).

and protect the integrity of the study, the researchers informed the participants they should keep their smart phone on the desk for the first set of tasks because during that set they may be asked questions about details of their smart phone. Yet they were instructed to stow away their smart phone for the other set of tasks because they would not need their smart phone. When the subjects' smart phones were stowed out of visibility, they performed an average of *23.8% better* on the cognitive tasks.⁶⁶ To repeat: the *same person* had a 23.8% difference in cognitive performance based solely on whether their phone was visible during their cognitive tasks.

The moral of the story is that we are similar to a monkey who is trying to perform an important task with a delicious banana sitting next to him the entire time. The mere sight of the banana occupies so much of the monkey's attention that his performance on the task before him is diminished. So, if you are a monkey who is reading this, you would be prudent to hide the banana out of your vision while you are performing cognitive tasks. And if you are a human who is reading this, you would be prudent to hide the smart phone out of your vision (and put it on mute) while you are performing cognitive tasks. Whether it is in your desk drawer, purse, or backpack, do not allow yourself to see or hear your smart phone while you are working (or in a class or meeting). When you need to check it, simply reach into your drawer or purse, and when you are done, store it away again.

This is a very simple technique for immediately improving one's focus and cognitive performance throughout the day. Yet, very few law students or lawyers are aware that the resting location of their smart phone can play a critical role in their cognitive performance.

Plain and simple: if we want to master our legal work, we must master the tangible behaviors that directly impact our cognitive performance and emotional wellness, such as the use of our smart phone and our short work breaks. We simply cannot obtain peak performance and overall happiness if we do not purposefully identify and enhance our external behaviors.

(7) COMMUNICATION

In order to enhance our emotional state and our cognitive functioning, we must also master interpersonal communication.⁶⁷ Interpersonal conflict and interpersonal stress are a significant cause of the emotional turmoil in the

66. Ward et al., *supra* note 65 and accompanying text.

67. Although interpersonal communication is technically a form of external "behavior," we have separated these two concepts into separate categories: "behavior" regarding our external conduct that does not directly involve another person, and "communication" as our external conduct that directly involves another person. Peak performance and emotional enhancement necessitate mastering both.

average person's life. Most people feel they spend far too much time each week managing, ruminating over, and strategizing over conflicts and other interpersonal disagreements in their lives. Not only does interpersonal conflict impair our cognitive performance and productivity in work and school in the period following the conflict, it also has been shown to be a prominent factor in anxiety, depression, and other intrapersonal disturbances.⁶⁸

Answer this question: *how is your focus and productivity in your work in the two hours after having a conflict with a loved one or close friend?* The truth is that we all know that our interpersonal relationships play a critical role in our emotional and cognitive health, yet very few of us have received any formal training on interpersonal communication. This would be akin to a bridge engineer being aware that physics plays a critical role in the ability to build a safe and structurally stable bridge, yet choosing to never receive any training or education in physics! We would never allow a bridge maker to simply “skip” training on physics and let him just go with his gut. Yet we allow lawyers to do just this when it comes to building healthy relationships. If we want our relationships to support and enhance, *rather than impair*, our cognitive and emotional functioning, we must purposefully upgrade our interpersonal communication skills.

Enhancing our interpersonal communication involves learning (and consistently applying) tangible tools of Ascended Listening and Ascending Speaking – particularly in moments of tension, conflict or challenge in our relationships. In a sense, these tools are “simple but not easy” (as the old adage goes), in that they are simple to understand and are largely intuitive,

68. See Kirk R. Blankstein et al., *Depression, Problem-Solving Ability, and Problem-Solving Appraisals*, J. CLINICAL PSYCHOL. 749, 749 (1992); Thomas D’Zurilla & Collette F. Sheedy, *Relation Between Social Problem-Solving Ability and Subsequent Level of Psychological Stress in College Students*, 61 J. PERSONALITY & SOC. PSYCHOL. 841, 841-46 (1991); David A.F. Haaga et al., *Social Problem-Solving Deficits, Dependency, and Depressive Symptoms*, 19 COGNITIVE THERAPY & RES. 147, 147 (1995); Gail L. Kant et al., *Social Problem Solving as a Mediator of Stress-Related Depression and Anxiety in Middle-Aged and Elderly Community Residents*, 21 COGNITIVE THERAPY & RES. 73, 73 (1997); Esme A. Londahl et al., *The Relations of Internalizing Symptoms to Conflict and Interpersonal Problem Solving in Close Relationships*, COGNITIVE THERAPY RES. 445, 445 (2005); Randi E. McCabe et al., *Interpersonal Sensitivity and Social Problem-Solving: Relations with Academic and Social Self-Esteem, Depressive Symptoms, and Academic Performance*, 23 COGNITIVE THERAPY & RES. 587, 587-604 (1999); Amber Nazir & Humaira Mohsin, *Coping Styles, Aggression and Interpersonal Conflicts among Depressed and Non-Depressed People*, 3 HEALTH PROMOTION PERSP. 80, 80-89 (2013); Arthur M. Nezu & George F. Ronan, *Social Problem Solving as a Moderator of Stress-Related Depressive Symptoms: A Prospective Analysis*, 35 J. COUNSELING PSYCHOL. 134, 134-38 (1988); Arthur M. Nezu, *Differences in Psychological Distress Between Effective and Ineffective Problem Solvers*, 32 J. COUNSELING PSYCHOL. 135, 135-38 (1985); Kerry A. Reynolds et al., *Impact of Interpersonal Conflict on Individuals High in Unmitigated Communion*, 36 J. APPLIED SOC. PSYCHOL. 1595, 1595 (2006).

yet they are not easy to consistently live by when intensity brews in our relationships. Making them part of our daily practice takes time, devotion, and effort.

Tools of Ascended Listening include (i) listening without interruption; (ii) listening to understand rather than to rebut; (iii) listening for commonality rather dissonance; (iv) seeking to understand first and be understood second; and (v) asking open-ended questions as part of your listening.

For example, you may notice that when you are in conflict with someone and he says something you completely disagree with or dislike, your very next statement is highly unlikely to be an open-minded question. (“What the hell is wrong with you?!” does not qualify as an open-minded question, by the way.) Typically, the more we dislike or disagree with a statement, the less likely we are to ask an open-minded question. The problem is that as conflict starts to intensify, both parties stop asking questions and start trading increasingly intense proclamations, which only adds fuel to the growing intensity. The power of one person pulling back, resisting the urge to express an opinion, and instead asking an open-ended question is transformative.⁶⁹ Nothing stops conflict in its track more quickly than an open-minded question. It helps the other person feel understood and cared for, reduces their defensiveness and aggression, and tends to deescalate the situation immediately.⁷⁰

Tools of Ascended Speaking include (i) summarizing and “reflecting back” what the other person just said; (ii) making purposeful concessions that demonstrate personal accountability; (iii) framing the issues from the perspective of the parties’ underlying (unspoken) values rather than their superficial (stated) strategic positions; (iv) expressing stress or hurt without anger or judgment; and (v) ultimately choosing happiness and integrity over being “right” in the moment.⁷¹

Let us give you a real-life example of the third tool by describing something that occurred between us (the authors) last academic year. As part of our law school *Mindfulness, Stress Management, and Peak Performance Program*, we decided to break the students into “small discussion teams” throughout the semester in order to advance their experiential and social-emotional learning. We decided that after breaking the students into their

69. Examples of open-ended questions include: “Can you tell me more about why you feel that way?” “I’d like to better understand your perspective – what do you think would occur if we went with your approach?” “I have noticed this theme coming up in our prior conversations, is this a similar issue you have raised in the past or is this different?”

70. MARSHALL B. ROSENBERG, *NONVIOLENT COMMUNICATION: A LANGUAGE OF LIFE* (Lucy Leu ed., 3rd ed. 2015).

71. *See id.*

teams for the first time, we would have them pick a team name, take their own attendance, select a team leader for each class in the semester, and answer the heart-centered discussion question, “what is an important event in your life – either of struggle or triumph – that has helped shape the person you are today?”

We were both enthused, cheerful, and in full alignment about this upcoming class, until we realized we had completely different – and strongly held – views on the *order* of things. Professor Simon thought it was obvious that the teams should start by addressing the three logistical issues (team name, attendance, and team leader), and *then* begin the group discussion question. Professor Green thought it was equally obvious that the teams should start with the group discussion question, and *then* work through the logistical issues. We were each very clear that our perspective was better, and we made this known to the other person. (Neither of us suffers from a lack of confidence or persuasion skills.) As we started “butting heads” and trying to convince the other person, the intensity began to build. We could feel that things were escalating quickly and going in the wrong direction. Suddenly, we decided to pause the convincing and step away from “right and wrong,” and instead dig into what our *underlying values* on the issue were.

Professor Simon shared that the underlying value driving her position was the value of facilitating *emotional intimacy and vulnerability* on the discussion question. She explained that if she were a student in this situation, she would be very hesitant to open up on the deep discussion question if it were the first item on the agenda because it would feel awkward and forced, but if the logistical issues were addressed first, she would feel the ice-breaking and camaraderie building, which would allow her to open up much more authentically and vulnerably once the team moved to the discussion question. Professor Green then shared the underlying value that was driving his position: *emotional intimacy and vulnerability* on the discussion question too! He shared that if he were a student in this situation, he would open up deeply if it were the first item on the agenda because he loves getting right into deep, emotional conversations – even with strangers, but that if he were instructed to do the logistical issues first, he would emotionally withdraw because he dislikes logistics and finds group decision-making (such as picking a team name) emotionally challenging, and hence, if the discussion question were at the end of the agenda, he would be less authentic and vulnerable in his expression.

We both laughed upon realizing that we actually did not disagree with each other. We were both coming from the exact same *underlying value*. That value simply led to different strategic positions for the two of us, based on our personalities and unique behavioral patterns. But, we could see how

aligned and in agreement we were on the core issue: we both were prioritizing the facilitation of emotional intimacy and vulnerability on the discussion question for the students. The moment we saw our complete alignment and agreement on the core underlying value, the tension between us melted away. And even more, a new strategic position – *that neither of us previously saw* – effortlessly arose at that moment: we would allow each team to decide the order of their agenda based on what they, as a group, determined would best facilitate the depth of their own discussion on the question.

This was a perfect solution, which neither of us could see when we were stuck in “proving” our respective positions. The new strategic position was also in full alignment with the self-leadership principles that we emphasize in the program. The technique of focusing on *underlying values* (rather than differing *strategic positions*) in times of disagreement led to a quick and effortless resolution of our disagreement. As a result, we both avoided a great deal of emotional distress and cognitive depletion from the lengthy and intense debate that would have otherwise ensued. Imagine how much more productive – and happy – we both were for the remainder of the day.

Lawyers and law students cannot expect to maximize their emotional wellness and cognitive performance if they do not master interpersonal communication. Without consistently applying evidence-based, ascended communication techniques, we will inevitably succumb to long and draining conflicts that undermine our emotional health, productivity, and cognitive focus.

IV. IMPLEMENTATION

We have integrated teaching Mastery of the Seven Elements of Self into the law school context and law firm space over the last three years.

Legal Academy

We are co-founders of the *Mindfulness, Stress Management, & Peak Performance Program* for law students (the “Peak Performance Program”). In 2016, we ran the program for two years at Southwestern Law School.⁷² The program is now running at USC Gould School of Law in Los Angeles. The *National Task Force on Lawyer Well-Being* recommended our program in its seminal report in August 2017, stating it will have a “transformative

72. REBECCA A. SIMON & JARRETT A. GREEN, THE MINDFULNESS STRESS MANagements & PEAK PERFORMANCE PROGRAM: PILOT YEAR FALL 2016 – SPRING 2018 3-4 (2018), <https://professorsimoncoaching.files.wordpress.com/2019/04/peak-performance-program-report.pdf>.

effect on law student well-being’’.⁷³ We were honored to receive this important recognition.⁷⁴

The *Mindfulness, Stress Management, and Peak Performance Program* provides students with self-mastery tools, techniques, and practices for coping with the stressors and emotional difficulties that inevitably arise in law school. The program also provides students with a collection of science-based techniques for optimizing their cognitive functioning and academic success in law school, and beyond. We have expanded the self-mastery offerings this year by providing Bar Peak Performance programming at USC Gould School of Law, UC Hastings, and other law schools.⁷⁵ We also teach a Self-Mastery elective course at UC Irvine Law School.

Our programs have assisted hundreds of students thus far, in 1L/2L/3L programs and in the bar preparation process, in developing a mastery of the law by helping to eliminate stress barriers and maximize their cognitive performance. Students have widely reported that the tools they have learned have helped them develop a mastery of themselves, both emotionally and cognitively (the key self-management/leadership/executive tools described by design above). As a result, the students who have participated in the *Peak Performance Program* have experienced greater joy and happiness, less anxiety and stress, and have gained peak performance tools for their classes and the bar exam. In addition, there was a significant academic achievement correlation as well (although the authors acknowledge that correlation is not causation).⁷⁶ Finally, the student testimonials – included as a linked

73. NAT’L TASK FORCE ON LAWYER WELL-BEING, CREATING A MOVEMENT TO IMPROVE WELL-BEING IN THE LEGAL PROFESSION 39 (2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf>.

74. *Id.*

75. The UC Hastings students are completing the program fully online. See <http://www.barpeakperformance.com>.

76. There is an academic achievement correlation with the *Peak Performance Program* pilot years (2016-2018). Of the 18 total “CALI Awards” (the highest grade in a given doctrinal course) earned by 1L students (daytime and evening students at Southwestern Law School) during the first semester in the first year of the program, 12 of these CALI Awards were earned by students who completed the Peak Performance Program (“PPP”). Thus, 66.6% of the CALI Awards were earned by students in the PPP. This statistic is even more significant when considering the fact that the PPP students represented a small minority of the total 1L students. Indeed, less than 19% of all 1L students completed the program. However, notwithstanding that less than 19% of all 1L students completed the PPP (and more than 81% did not), 66.6% of the CALI Awards were earned by PPP students. The PPP students earned CALI Awards at a rate that was disproportionate to their representation among the entire 1L student population. Importantly, when analyzing the 1L students who academically “underperformed” in the first semester (as indicated by being placed in the Academic Improvement Program in Spring), the data reveals that students who completed the PPP sessions were 28.7% less likely to be placed in AIP. This finding is based on the following data: of the 185 total 1L students across all sections, 36 of them completed the Peak Performance Program (“PPP”), and 149 did not. Of the 36 who completed the PPP, 10 landed in the Academic

Addendum – indicate that the students that have completed the program have had a transformational experience.⁷⁷ We know these students will carry the stress management and peak performance techniques they have learned into their legal careers and personal lives as well. We are honored to be part of their journeys.

Legal Profession

When we introduce these self-mastery principles to lawyers and law firms, the impact on lawyers and law firms is tremendous. We have worked with dozens of entities in law and business, including many of the largest and most prestigious law firms and corporations in the country, and the evaluations and data show that the participants' stress reduces, productivity increases, and overall happiness improves as a result of the programming. We could spend an entire article outlining the positive effects of entering the law firm space and bringing these teachings into that environment. Our widespread client testimonials reflect the impact of this work on lawyers who have been through our trainings.⁷⁸ It is abundantly clear to us that maximizing one's emotional health and professional greatness in the legal arena, and indeed in all high-stakes business industries, involves learning and applying these techniques of self-mastery.⁷⁹

Improvement Program ("AIP"). Thus, 27.7% of students who completed PPP ended up in AIP. Conversely, of the 149 students who did not complete PPP, 58 of them landed in AIP. Thus, 38.9% of students who did not complete PPP ended up in AIP. *Accordingly, students who completed the PPP were significantly less likely to end up in the AIP.* Only 27.7% of students who completed the PPP academically "underperformed" in their first semester of law school, yet 38.9% of students who did not complete the PPP academically "underperformed" in their first semester of law school. This 11.2% difference between the two groups reflects that students who completed the PPP were 28.7% less likely to end up in the AIP than students who did not complete the PPP (i.e., 11.2% divided by 38.9% equals 28.7%.) An Economist from the UCLA School of Economics who specializes in, *inter alia*, academic and other intervention programs, Dr. Alan Barreca, with whom we consulted, informed us that academic programs are considered successful if they yield a 3% to 5% difference between groups. He stated that a 28.7% difference among group performance is extraordinarily high according to long-established industry and historical norms. The 11.2% figure can also be conceptualized from the perspective of Southwestern Law School's 1L students who did not complete the PPP (i.e., the group of 149 students). According to the above data, these 149 students had a 40.4% increased likelihood of being placed in the AIP (i.e., 11.2% divided by 27.7% equals 40.4%). This finding reveals that if a Southwestern 1L student did not complete the PPP, she or he was significantly more likely to end up in AIP. Again, Professor Barreca stated that this figure is exceptionally high. In sum, the available performance data reveals that students who completed the PPP significantly outperformed students who did not. *See SIMON & GREEN, supra* note 72, at 25-26.

77. *Id.* at 26-33.

78. *See* Jarrett Green, RECENT TESTIMONIALS (2019), <https://perma.cc/4GGW-UVH2>.

79. The ABA is committed, more than ever, to advancing the mental health and emotional well-being of lawyers, as revealed by the recently-issued ABA Well-Being Pledge. *See ABA*

V. CONCLUSION

Teaching self-mastery in law school is a key to our students' academic success, emotional wellness, and bar passage. Self-mastery programs for law firms and bar associations are a key to attorney happiness, productivity, and increasing success and wellness in the legal industry. Therefore, all law schools and law firms dedicated to producing happier and more productive lawyers should implement programs and/or courses that teach these self-mastery principles in a comprehensive, interdisciplinary, and sophisticated fashion to their law students and lawyers. The result will be a legal industry that is far healthier, happier, and better functioning.

Launches Pledge Campaign to Improve Mental Health and Well-Being of Lawyers, ABA (Sept. 10, 2018), <https://www.americanbar.org/news/abanews/aba-news-archives/2018/09/aba-launches-pledge-campaign-to-improve-mental-health-and-well-b/>.



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Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being

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CAPITALIZING ON HEALTHY LAWYERS: THE BUSINESS CASE FOR
LAW FIRMS TO PROMOTE AND PRIORITIZE LAWYER WELL-BEING

JARROD F. REICH*

This Article is the first to make the business case for firms to promote and prioritize lawyer well-being. For more than three decades, quantitative research has demonstrated that lawyers suffer from depression, anxiety, and addiction far in excess of the general population. Since that time, there have been many calls within and outside the profession for changes to be made to promote, prioritize, and improve lawyer well-being, particularly because many aspects of the current law school and law firm models exacerbate mental health and addiction issues, as well as overall law student and lawyer distress. These calls for change, made on moral and humanitarian grounds, largely have been ignored; in fact, over the years the pervasiveness of mental health and addiction issues within the profession have persisted, if not increased. This Article argues that these moral- and humanitarian-based calls for change have gone unheeded because law firms have not had financial incentives to respond to them.

In making the business case for change, this Article argues that systemic changes designed to support and resources to lawyers will avoid costs associated with lawyer mental health and addiction issues and, more importantly, create efficiencies that will increase firms' long-term financial stability and growth. It demonstrates that this business case is especially strong now in light of not only societal and generational factors, but also changes within the profession itself well. As firms have begun to take incremental steps to promote lawyer well-being, lasting and meaningful change will further benefit firms' collective bottom lines as it will improve: (1) performance, as clients are demanding efficiency in the way their matters are staffed and billed; (2) retention, as that creates efficiencies and the continuous relationships demanded by clients; and (3) recruitment, particularly as younger millennial and Generation Z lawyers—who prioritize mental health and well-being—enter the profession.

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INTRODUCTION

GABRIEL MacConaill was a partner in the bankruptcy group of the international law firm Sidley Austin LLP.¹ Resident in the firm's Los Angeles office, "he felt like he was doing the work of three people" and worked so hard on a bankruptcy filing that "he was in distress and . . . work[ed] himself to exhaustion"; however, he refused to go to the emergency room, because, as he told his wife: "You know, if we go, this is the end of my career."² Then, on the morning of Sunday, October 14, 2018, he received an email and "had to go" to the office to "put something together."³ He drove to his office, "taking his gun with him, and shot himself in the head in the sterile, concrete parking structure of his high-rise office building."⁴ He was forty-two.

In an open letter written one month after his death, his wife wrote simply: "'Big Law' killed my husband."⁵

In July 2015, Peter, a partner at the Silicon Valley office of the law firm Wilson Sonsini Goodrich & Rosati LLP, "died a drug addict, felled by a systemic bacterial infection common to intravenous users."⁶ He "lived in a state of heavy stress," as he "obsessed about the competition, about his compensation, about the clients, their demands, and his fear of losing them. He loved the intellectual challenge of his work but hated the combative nature of the profession, because it was at odds with his own nature."⁷ His last phone call was for work: "vomiting, unable to sit up, slipping in and out of consciousness, [he] had managed, somehow, to dial into a conference call."⁸

As he was being eulogized during his memorial service, "[q]uite a few" of his colleagues "were bent over their phones, reading and tapping

1. Joanna Litt, *'Big Law Killed My Husband': An Open Letter from a Sidley Partner's Widow*, AM. LAW. (Nov. 12, 2018, 9:00 AM), <https://www.law.com/americanlawyer/2018/11/12/big-law-killed-my-husband-an-open-letter-from-a-sidley-partners-widow/> [<https://perma.cc/6PD5-RZNQ>].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* While MacConaill's wife acknowledged that "Big Law" did not directly kill him, as he "had a deep, hereditary mental health disorder and lacked essential coping mechanisms," she observed that "these influences, coupled with a high-pressure job and a culture where it's shameful to ask for help, shameful to be vulnerable, and shameful not to be perfect, created a perfect storm." *Id.*

6. Eilene Zimmerman, *The Lawyer, the Addict*, N.Y. TIMES (July 15, 2017), <https://www.nytimes.com/2017/07/15/business/lawyers-addiction-mental-health.html> [<https://perma.cc/B7MA-SDSH>]. Ms. Zimmerman, Peter's ex-wife, declined to use Peter's surname in her article to "protect the privacy of [their] children and Peter's extended family." *Id.*

7. *Id.*

8. *Id.*

out emails. Their friend and colleague was dead, and yet they couldn't stop working long enough to listen to what was being said about him."⁹

These two harrowing stories are hardly unique. Indeed, for more than thirty years, a significant number of studies, articles, and reports have demonstrated the prevalence of depression, anxiety, and addiction in the legal profession.¹⁰ Throughout this time, there have been just as many calls for the profession to make changes to promote, prioritize, and improve lawyer well-being,¹¹ particularly as many aspects of the current law firm model exacerbate mental health and addiction issues,¹² as well as overall lawyer unhappiness and dissatisfaction.¹³

9. *Id.*; see also generally EILENE ZIMMERMAN, SMACKED: A STORY OF WHITE-COLLAR AMBITION, ADDICTION, AND TRAGEDY (2020).

10. See, e.g., Connie J.A. Beck, et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1 (1995); G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT'L J. L. & PSYCHIATRY 233 (1990) [hereinafter Benjamin et al., *The Prevalence of Depression*]; Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016); see also William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079, 1085 tbl.3 (1990). Similar scholarship over this time period also demonstrates the widespread mental health and addiction issues among law students. See *infra* Section II.B.

11. See, e.g., Benjamin et al., *The Prevalence of Depression*, *supra* note 10, at 245 ("The national United States and the regional state Bar Associations should avoid the phenomenon of institutional denial and attempt to reach their members before symptoms lead to malpractice or unethical practice."); see also, e.g., Rick B. Allan, *Alcoholism, Drug Abuse and Lawyers: Are We Ready to Address the Denial?*, 31 CREIGHTON L. REV. 265 (1997); Laura Rothstein, *Law Students and Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual*, 69 U. PITT. L. REV. 531 (2008).

12. See *infra* Section II.C.

13. There is a myriad of scholarship that refers to "happiness" (or, more particularly, a lack thereof) within the legal profession. See, e.g., NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* (2010); Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554 (2015) [hereinafter Krieger & Sheldon, *What Makes Lawyers Happy?*]; Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999); Martin E.P. Seligman et al., *Why Lawyers Are Unhappy*, 23 CARDOZO L. REV. 33 (2001). This scholarship, to which this Article cites, examines "happiness" in the context of lawyer mental health, addiction, distress, or a deeper level of lawyer satisfaction (such as subjective well-being as that is understood under the tenets of self-determination theory—see *infra* notes 123–127 and accompanying text) rather than mere notions of transient happiness or job "satisfaction."

Empirical studies demonstrate the distinctions between the former and the latter. With respect to the latter, studies assessing levels of abstract "happiness" and job "satisfaction" suggest that "[a]s a general matter, lawyers are relatively satisfied with their job/careers." See Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L.J. 225, 261–62 (2011); see also *id.* at 261 (concluding that, upon an analysis of studies from the prior twenty-five years, an average of 78.8% of lawyers describe themselves as "satisfied"). As one example, in a thirty-

Despite these calls for change, the pervasiveness of mental health and addiction issues among lawyers has persisted, if not increased.¹⁴ Recognizing that this pervasiveness “can no longer be ignored,”¹⁵ in a 2017 report entitled *The Path to Lawyer Well-Being*, the American Bar Association’s National Task Force on Lawyer Well-Being issued a “call to action” for the profession to “get serious about the substance use and mental health of ourselves and those around us.”¹⁶ Partially in response to the report, the profession has made some inroads in addressing these problems. For example, some law firms have begun to take proactive steps to improve their lawyers’ well-being,¹⁷ and as of May 2020, 133 law firms signed a pledge to support the ABA’s campaign to address mental health and addiction issues in the profession—which the ABA hoped that “all legal employers” would sign by January 1, 2019.¹⁸

Notwithstanding the recognized need and these calls for change, the majority of firms have “turned a blind eye to widespread health problems” that pervade the profession.¹⁹ This Article argues that this “blind eye” exists in large part because firms have not had a financial incentive to address the problem. Law firms have increasingly moved from being “central players in a noble profession to a collection of profit-maximizing enterprises,” and this pursuit of profits has come at the expense of the well-

year longitudinal study of 1990 University of Virginia Law School graduates, 77.4% of respondents reported being satisfied with their decision to become a lawyer and nearly 91% reported being satisfied with their lives generally. John Monahan & Jeffrey Swanson, *Lawyers at the Peak of Their Careers: A 30-Year Longitudinal Study of Job and Life Satisfaction*, 16 J. LEGAL EMPIRICAL STUD. 4, 19, 21–22 (2019). However, the results of these studies, while helpful, do not speak to and are not inconsistent with the empirical, scientifically validated evidence of widespread lawyer mental health and addiction issues. See David L. Chambers, *Overstating the Satisfaction of Lawyers*, 39 L. & SOC. INQUIRY 313, 315, 330 (2014) (“[O]nly a small proportion of attorneys hold negative views overall about their jobs or careers . . . [but] to the extent that the negative literature reports large numbers of beleaguered lawyers who feel unhappy or ambivalent about many aspects of their work, nothing in the survey literature, properly viewed, should be seen as inconsistent.”); cf. LEVIT & LINDER, *supra*, at 32 (“Claiming that you’re happy . . . appears to be nearly universal, as long as you’re not living in a war zone, on the street, or in extreme emotional or physical pain.” (internal quotation marks omitted) (quoting Sue M. Halperin, *Are You Happy?*, N.Y. REV. BOOKS (Apr. 3, 2008), <https://www.nybooks.com/articles/2008/04/03/are-you-happy/> [<https://perma.cc/PS6D-CMQV>])).

14. Compare *infra* notes 25–43 and accompanying text, with *infra* notes 59–67 and accompanying text.

15. NAT’L TASK FORCE ON LAWYER WELL-BEING, AM. BAR ASS’N, *THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE* 11 (2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf> [<https://perma.cc/B3WH-DDTF>] [hereinafter *THE PATH TO LAWYER WELL-BEING*].

16. *Id.* at 10.

17. See *infra* notes 298–303 and accompanying text.

18. See *infra* notes 292–297 and accompanying text.

19. *THE PATH TO LAWYER WELL-BEING*, *supra* note 15, at 12.

being of the lawyers who generate them.²⁰ As firms' short-term goal of maximizing annual profits has become their principal long-term goal, lawyer distress has risen along with partner profits. Put differently, the commodification of the legal profession is an "unambiguous contributor" to the pervasiveness of lawyer distress.²¹ Additionally, many law firms also are reticent to change in part because of the stigma surrounding mental health or addiction issues—all of which can affect the bottom line.²²

Since the moral- and humanitarian-based cases for firms to promote and prioritize lawyer well-being in the literature largely have been ignored, this Article is the first to make the business case to do so. In particular, this Article argues that systemic changes designed to provide support and resources to firm lawyers will avoid costs associated with lawyer mental health and addiction issues and, more importantly, create efficiencies that will increase firms' long-term financial stability and growth. Further, this Article argues that, given a confluence of societal, industrial, and generational factors, now is the time for firms to focus on the health and well-being of their lawyers.

Part I of this Article provides an overview of the studies of the last three-plus decades demonstrating the prevalence of depression, anxiety, and other mental health concerns as well as substance abuse in the legal profession. It shows that lawyers have consistently suffered from these issues in much greater proportion than the general population. It also demonstrates that the profession has long understood the need to change the paradigm to support lawyers struggling with mental illness and addiction, but it has largely remained silent in the face of calls for such change.

Part II examines the personal and professional risk factors that negatively affect mental health and addiction as well as lawyer distress generally. In particular, it addresses whether and to what extent there exists a lawyer "personality" that is inherently predisposed to mental illness and addiction. Further, relying largely on self-determination theory and related research, this Part explores how both law school and law practice can contribute to and exacerbate lawyer mental illness, addiction, and mental distress.

Part III sets out why law firms have turned a "blind eye" to lawyer well-being. Appeals to law firms—made largely on moral and humanitarian grounds—to provide support and resources to their lawyers and to make systemic changes to their practices largely have not resulted in meaningful change, and this Part analyzes why firms have had little incentive—both financial and cultural—to change their models.

Finally, Part IV makes the business case for law firms to promote and prioritize lawyer well-being. This Part first analyzes the different direct

20. STEVEN J. HARPER, *THE LAWYER BUBBLE: A PROFESSION IN CRISIS* 70 (2013).

21. *Id.* at 96–97; see also generally *infra* notes 200–232 and accompanying text.

22. Sara Randazzo, *Law Firms Tackle a Taboo—On-Site Psychologists for Lawyers Become More Common; Some Bristle at the Idea*, WALL ST. J., May 22, 2017, at B2.

and indirect costs that firms face in failing to address lawyer mental health and addiction issues, from a rise in malpractice claims and sanctions to a decline in productivity to costs associated with high lawyer attrition. This Part also argues that now is the time for the law firm paradigm to shift to one that prioritizes lawyer well-being.

I. MENTAL ILLNESS AND ADDICTION IN THE LEGAL PROFESSION: AN EMPIRICAL OVERVIEW

The first major studies identifying lawyer mental health and substance abuse problems were conducted thirty years ago.²³ These studies showed “significant elevated levels of depression” and a high percentage of “problem drinkers” among lawyers, particularly as compared with both members of other professions and the general population.²⁴ In the three decades since, not much has changed.

In 1990, Andrew Benjamin, Elaine Darling, and Bruce Sales published an empirical study about lawyers in the State of Washington who suffered from depression, alcoholism, and cocaine abuse.²⁵ This study followed a 1986 study of Arizona law students by Benjamin, Sales, and others, which found that “law students and lawyers suffered from depression at a rate twice to four times what would be expected in the general population.”²⁶

Confirming the findings of the 1986 study, the 1990 study found “no statistical differences” between the levels of depression among Arizona law students, young lawyers, and Washington lawyers.²⁷ Specifically, the Washington study found that 19% of lawyers “suffered from statistically significant elevated levels of depression,” with “most . . . experiencing suicidal ideation.”²⁸ The study also found that 18% of lawyers were “problem drinkers”—approximately twice the alcohol abuse or dependency rates for

23. See Benjamin et al., *The Prevalence of Depression*, *supra* note 10; Eaton et al., *supra* note 10.

24. Benjamin et al., *The Prevalence of Depression*, *supra* note 10, at 240–41; see also Eaton et al., *supra* note 10, at 1085 tbl.3 (demonstrating that lawyers have the highest odds ratio for major depressive disorder among 104 professions at a rate of 3.6 times the general population).

25. Benjamin et al., *The Prevalence of Depression*, *supra* note 10, at 235–36.

26. *Id.* at 234 (citing G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 AM. B. FOUND. RES. J. 225 (1986) [hereinafter Benjamin et al., *Role of Legal Education*]); see also *id.* at 247 (finding that “17-40% of law students and alumni in [the] study suffered from depression, while 20-45% of the same subjects suffered from other elevated symptoms”). For a detailed discussion of this study, see *infra* notes 118–121 and accompanying text.

27. Benjamin et al., *The Prevalence of Depression*, *supra* note 10, at 240.

28. *Id.* at 240–41.

adults in the United States.²⁹ Depression rates remained the same across lawyers' length of practice, but the rate of problem drinkers increased.³⁰

Also in 1990, researchers at Johns Hopkins University studied the rates of major depressive disorder³¹ among individuals across 104 professions.³² While 3%–5% of the adult population suffers from major depressive disorder, these researchers found that 10% of lawyers do so.³³ Moreover, when adjusted for sex, race, education, and current employment, lawyers have the highest odds ratio for major depressive disorder among the professions studied—at a rate 3.6 times the general population.³⁴

Five years later, Benjamin, Sales, and Connie Beck published results of a study returning to the data and subjects of Benjamin and Sales's 1990 study.³⁵ They further analyzed the earlier data by: (1) considering additional demographic variables and analyzing how they may correlate with levels of distress and alcohol use; (2) analyzing all types of distress; and (3) “using sequential canonical analysis,” determining “the degree of relationship of the predictor variables to the different categories of psychological distress, a global measure of psychological distress, and current and lifetime alcohol-related problems.”³⁶

Their in-depth analysis yielded findings that further supported Benjamin and Sales's earlier studies as well as the Hopkins study. For instance, they concluded that 20% of female lawyers were above the clinical cutoff

29. *Id.* at 241 (citation omitted). For purposes of the study, “problem drinkers” are defined as those “likely [to be] abusive of or dependent on alcohol.” *Id.* at 237.

30. *Id.* Specifically, the rate of problem drinkers rose from approximately 18% of those who practiced between two and twenty years to 25% of those who practiced twenty years or more. *Id.* The study notes that this likely is because “[a]lcohol abuse and dependency is a chronic and progressive disease[, and] it can take years to become evident in some cases. As a result, those who have practiced longer appear to be more susceptible to developing problem drinking.” *Id.*

31. A person has “major depressive disorder” if: (a) they have five or more of the following symptoms over the same two-week period: (i) “[d]epressed mood”; (ii) “[m]arkedly diminished interest or pleasure in all, or almost all, activities most of the day”; (iii) “[s]ignificant weight loss . . . or weight gain”; (iv) “[i]nsomnia or hyperinsomnia”; (v) “[p]sychomotor agitation or retardation”; (vi) “fatigue or loss of energy”; (vii) “[f]eelings of worthlessness or excessive or inappropriate guilt . . . nearly every day”; (viii) “[d]iminished ability to think or concentrate, or indecisiveness, nearly every day”; and (ix) “[r]ecurrent thoughts of death . . . or suicidal ideation”; (b) “[their] symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of function”; and (c) the symptoms are not attributable to effects of a substance or another medical or psychological condition. AM. PSYCH. ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 160–61 (5th ed. 2013).

32. Eaton et al., *supra* note 10, at 1079.

33. *Id.* at 1081–82 tbl.2.

34. *Id.* at 1085 tbl.3.

35. Beck et al., *supra* note 10.

36. *Id.* at 12.

for anxiety and 16% were above the clinical cutoff for depression,³⁷ and male lawyers were above the clinical cutoffs for these distresses at 28% and 20%, respectively.³⁸ As they observe: “The percentage of lawyers scoring above the cutoff is alarming in that the expected percentage of people scoring above the benchmark is only 2.27%.”³⁹ Further, these numbers do not change markedly over the course of a lawyer’s career.⁴⁰ Similarly, they report an “astounding number of lawyers [have] a high likelihood of developing alcohol-related problems,”⁴¹ with “[a]pproximately 70% of lawyers . . . likely to develop alcohol problems over their lifetime,” a figure that both is “consistent across all years,” and is more than five times greater than the 13.7% rate of lifetime prevalence of alcohol abuse or dependence for the general population.⁴² As a result of their study, they ultimately conclude that “psychological distress, in its many forms, is likely to affect newly practicing lawyers in a similar manner regardless of the state in which they practice,” and that “throughout their career span, a large percentage of practicing lawyers are experiencing a variety of significant psychological distress symptoms well beyond that expected in a normal population.”⁴³

Other studies reached similarly striking conclusions. For instance, a 1987 study performed as part of a doctoral dissertation found that 32% of Florida lawyers “reported feeling depressed at least once a week,”⁴⁴ and a

37. *Id.* at 23 tbl.4 & 25. They also concluded that approximately 27% of female lawyers scored above the clinical cutoff for interpersonal sensitivity, 20% for social alienation and isolation, 15% for obsessive-compulsiveness, and 11% for hostility. *Id.*

38. *Id.* at 23 & tbl.4. They also concluded that approximately 30% of male lawyers scored above the clinical cutoff for interpersonal insensitivity, 25% for social alienation and isolation, 20% for obsessive-compulsiveness, 14% for paranoid ideation, 7% for phobic anxiety, and 7% for hostility. *Id.* at 23 tbl.4.

39. *Id.* at 23.

40. *See id.* at 46–48 & tbls.12 & 13.

41. *Id.* at 50–51.

42. *Id.* at 51.

43. *Id.* at 57. They also conclude:

A picture emerges that does not bode well for harmonious family life. Lawyers have been slowly increasing the number of hours they work over time and taking only two weeks or less of annual vacation. The percentage of lawyers who report that they do not have enough time for themselves or their families has increased 33% from 1984 to 1990. Although this study’s findings indicate limited differences in feelings of stress between lawyers and the general population, another researcher has found that 32.5% of his sample of lawyers indicate that they use alcohol regularly as a coping mechanism to reduce stress. That a critical member of the family is working more, taking less time off, spending less time with the family, and potentially using alcohol to cope with high degrees of psychological distress suggests an impending major crisis for lawyers’ family life.

Id. at 58–59 (footnotes omitted).

44. G. Andrew H. Benjamin et al., *Comprehensive Lawyer Assistance Programs: Justification and Model*, 16 *LAW & PSYCHOL. REV.* 113, 114 (1992) [hereinafter Benjamin et al., *Comprehensive Lawyer Assistance Programs*] (citing Allan McPeak, Lawyer

1988 study performed as part of another doctoral dissertation found that 79% of lawyers in Wisconsin “used alcohol regularly or sometimes to reduce stress.”⁴⁵ Further, a 1991 report by the North Carolina Bar Association reported that over 24% of that state’s lawyers suffer from depression, more than 25% display “anxiety symptoms,” and over 22% have been diagnosed with a “stress-related disease” such as ulcers, hypertension, or coronary artery disease.⁴⁶ Shockingly, 11% of North Carolina lawyers surveyed “admitted they consider taking their lives once a month.”⁴⁷

Additionally, studies published during this time have found a correlation between substance abuse and lawyer discipline, concluding that a disproportionate number of “major attorney disciplinary cases” were a result of lawyer substance abuse.⁴⁸ For instance, a report cited by the American Association of Law Schools in its 1993 *Report on Problems of Substance Abuse in Law Schools* found that substance abuse was “involved” in 50% to 75% of such cases.⁴⁹ An earlier survey conducted by the American Bar Association in New York and California found that “50-70 percent of all disciplinary cases involved alcoholism.”⁵⁰

Occupational Stress (1987) (unpublished Ph.D. dissertation, Florida State University)).

45. *Id.* at 115 (citing Dennis W. Kozich, *An Analysis of Stress Levels and Stress Management Choices of Attorneys in the State of Wisconsin* (1988) (unpublished Ph.D. dissertation, University of Wisconsin-Madison)).

46. N.C. BAR ASS’N, REPORT OF THE QUALITY OF LIFE TASK FORCE AND RECOMMENDATIONS 4 (1991), https://www.nclap.org/wp-content/uploads/2014/07/1991_QoL_summary.pdf [<https://perma.cc/F9R2-X7B9>].

47. SUSAN SWAIM DAICOFF, LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES 8 (2004) (internal quotation marks omitted) (citation omitted).

48. AM. ASS’N OF LAW SCHOOLS, *Report of the AALS Special Committee on Problems of Substance Abuse in the Law Schools*, 44 J. LEGAL EDUC. 35, 36 (1994).

49. *Id.* Additionally, Benjamin and his colleagues noted in their 1990 report that the ABA determined that “27 percent of the discipline cases in the United States involved alcohol abuse.” Benjamin et al., *The Prevalence of Depression*, *supra* note 10, at 243. However, they opine that the actual figure “may actually be much higher, however, because not all state and county bar associations report their disciplinary cases. In addition, under-reporting has occurred because state bar associations were unable to identify alcohol abusing lawyers who became part of the disciplinary process. Until very recently, very few bar associations considered the causes for the lawyer infractions.” *Id.* at 244.

50. Benjamin et al., *Comprehensive Lawyer Assistance Programs*, *supra* note 44, at 118.

In response to the pervasiveness of mental distress and addiction in the legal profession, many practitioners⁵¹ and scholars⁵² have called for changes to the profession. Among the largest changes was the development and expansion of lawyer assistance programs.⁵³ These programs generally provide support services to lawyers and legal professionals with mental health and substance abuse issues.⁵⁴ Currently, all fifty states and the District of Columbia have some sort of lawyers assistance program,⁵⁵ most of which were established in the last thirty years.⁵⁶

Notwithstanding these calls for change, such change has been hard to come by. In the intervening years, articles and books have highlighted lawyers' struggles with unhappiness and mental health and addiction issues,⁵⁷ with one such article asking simply: "Why are lawyers killing themselves?"⁵⁸

51. See, e.g., J. Nick Badgerow, *Apocalypse at Law: The Four Horsemen of the Modern Bar—Drugs, Alcohol, Gambling and Depression*, 18 PROF. L. 2, 2 (2007); G. Andrew H. Benjamin, *Reclaim Your Practice, Reclaim Your Life*, TRIAL, Dec. 2008, at 30, https://depts.washington.edu/petp/Reclaim_Your_Practice_%20Reclaim_Your_Life.pdf [<https://perma.cc/QJ8G-FUAA>]; Ted David, *Can Lawyers Learn to Be Happy?*, PRACTICAL LAW., Aug. 2011, at 29; Linda M. Rao, *Time for an Ideality Check: If You Had Your Ideal Job, Would You Be Satisfied?*, 22 BARRISTER 13 (1995).

52. See, e.g., Allan, *supra* note 11; Ariram Elwork & G. Andrew H. Benjamin, *Lawyers in Distress*, 23 J. PSYCHIATRY & L. 205 (1995); Schiltz, *supra* note 13.

53. See AM. BAR ASS'N, COMM'N ON LAWYER ASSISTANCE PROGRAMS, 2014 COMPREHENSIVE SURVEY OF LAWYER ASSISTANCE PROGRAMS (2015), https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/is/colap_2014_comprehensive_survey_of_laps.authcheckdam.pdf [<https://perma.cc/R36Y-Z3HF>] [hereinafter ABA SURVEY OF LAWYER ASSISTANCE PROGRAMS].

54. See generally *id.*

55. *Id.* at 1–2, A-3, A-4. The ABA's report only identifies forty-eight states and the District of Columbia in its survey, as programs from neither Nevada nor North Dakota replied. However, Nevada's Lawyer Assistance Program was established in 2013, see STATE BAR OF NEVADA, NEVADA LAWYERS ASSISTANCE PROGRAM (NLAP), <http://www.nvbar.org/member-services-3895/nlap/> [<https://perma.cc/G3TY-E89Z>] (last visited May 7, 2020), and North Dakota's in 2004, see N.D. ADMIN CODE 49 (2004).

56. Although the first few Lawyers Assistance Programs (LAPs) were founded in the mid-1970s, thirty-two LAPs were founded since 1990. See ABA SURVEY OF LAWYER ASSISTANCE PROGRAMS, *supra* note 53, at 3 fig.1; see also N.D. ADMIN. CODE 49; NEVADA LAWYERS ASSISTANCE PROGRAM (NLAP), *supra* note 55.

57. See, e.g., BRIAN CUBAN, THE ADDICTED LAWYER: TALES OF THE BAR, BOOZE, BLOW, AND REDEMPTION (2017); HARPER, *supra* note 20; DOUGLAS LITOWITZ, THE DESTRUCTION OF YOUNG LAWYERS: BEYOND ONE L (2006); JEAN STEFANCIC & RICHARD DELGADO, HOW LAWYERS LOSE THEIR WAY: A PROFESSION FAILS ITS CREATIVE MINDS (2005); Patrick Krill, *Why Lawyers Are Prone to Suicide*, CNN (Jan. 21, 2014, 10:15 AM), <https://www.cnn.com/2014/01/20/opinion/krill-lawyers-suicide/index.html> [<https://perma.cc/RLF5-C45T>]; Zimmerman, *supra* note 6.

58. Rosa Flores & Rose Marie Acre, *Why Are Lawyers Killing Themselves?*, CNN (Jan. 20, 2014), <http://www.cnn.com/2014/01/19/us/lawyer-suicides/index.html> [<https://perma.cc/7HZW-9KT3>]. Among other things, Flores and Acre noted that Kentucky had fifteen known lawyer suicides over a four-year period, South Carolina had six known lawyer suicides over an eighteen-month period in 2007–2008, and Oklahoma had one known lawyer suicide per month in 2004. *Id.*

A comprehensive 2016 study confirmed that not much, if anything, has changed in a quarter-century. This study, conducted by Patrick R. Krill, Ryan Johnson, and Linda Albert for the ABA Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation (the Krill Study),⁵⁹ found numbers consistent with—and in some cases, more troubling than—the earlier studies. The Krill Study surveyed nearly 13,000 practicing lawyers across the country and across varying demographics and types of legal practice.⁶⁰ It found that “rates of problematic drinking” were “generally consistent” with those reported in Benjamin, Sales, and Beck’s 1990 study, with 20.6% to 36.4% of those surveyed qualifying as problem drinkers.⁶¹

However, the Krill Study found “considerably higher rates of mental health distress” than those found in the earlier studies.⁶² In particular, it found 28.3% of lawyers surveyed suffer from some level of depression, 19.3% suffer from some level of anxiety, and 22.7% suffer from some level of stress.⁶³ Further, 45.7% of surveyed lawyers reported concerns with depression at some point in their career, and 61.1% reported concerned with anxiety at some point in their career.⁶⁴ An additional 11.5% of participants reported suicidal thoughts at some point during their career.⁶⁵ Moreover, the study found that lawyers have the highest rates of both problem drinking and depression in their first ten years of practice as compared with later years, and those working in private practice also have higher rates of both than those in other work environments.⁶⁶ In particu-

59. Krill et al., *supra* note 10.

60. *See id.* at 47 & tbl.1, 48 tbl.2.

61. *Id.* at 51; *see also id.* at 49 tbl.3. The Krill Study evaluated alcohol use using the Alcohol Use Disorders Identification Test, a ten-item “self-report developed by the World Health Organization (WHO) to screen for hazardous use, harmful use, and the potential for alcohol dependence.” *Id.* at 47.

62. *Id.* at 51. The Krill Study evaluated depression, anxiety, and stress by utilizing the Depression Anxiety Stress Scales-31, a “self-report instrument consisting of three 7-item subscales assessing symptoms” of each. *Id.* at 48.

63. *Id.* at 50 tbl.4. These findings are not unique to American lawyers. For example, a 2014 study of Australian lawyers found that 37% of those sampled experienced moderate to extremely severe depressive symptoms, 31% experienced moderate to extremely severe anxiety symptoms, and 49% experienced moderate to extremely severe stress symptoms; further 35% of those lawyers sampled qualified as hazardous or harmful drinkers. Adele J. Bergin & Nerina L. Jimmieson, *Australian Lawyer Well-Being: Workplace Demands, Resources & the Impact of Time-Billing Targets*, 21 PSYCHIATRY, PSYCHOL. & L. 427, 434 (2014). Additionally, a 2009 study of over 900 Australian solicitors and over 750 Australian barristers found that 31% of solicitors and 16.7% of barristers suffer from high or very high distress, as compared with 13% of the general population. NORM KELK ET AL., BRAIN & MIND RESEARCH INST., U. SYDNEY, COURTING THE BLUES: ATTITUDES TOWARDS DEPRESSION IN AUSTRALIAN LAW STUDENTS AND LEGAL PROFESSIONALS 12 (2009), <https://law.uq.edu.au/files/32510Courting-the-Blues.pdf> [<https://perma.cc/GV7M-GARN>].

64. Krill et al., *supra* note 10, at 50.

65. *Id.*

66. *Id.* at 51.

lar, the study found that 32% of lawyers under thirty are problem drinkers.⁶⁷

In light of, among other things, the Krill Study and a similar 2016 study of law students,⁶⁸ in August 2016, entities within and outside the ABA created the National Task Force on Lawyer Well-Being (the Task Force).⁶⁹ The Task Force recognized that the prevalence of mental health and addiction issues in the profession “are incompatible with a sustainable legal profession,” and argued that “[t]o maintain confidence in the profession, to meet the need for innovation in how we deliver legal services, to increase access to justice, and to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now.”⁷⁰

To that end, the Task Force issued a report in August 2017, concluding that “lawyer well-being issues can no longer be ignored.”⁷¹ The report, entitled *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, issued a “call to action” for the profession to “get serious about the substance use and mental health of ourselves and those around us.”⁷² It provided “three reasons to take action”: (1) “organizational effectiveness”; (2) “ethical integrity”; and (3) “humanitarian concerns.”⁷³ First, the report concludes (as this Article demonstrates)⁷⁴ that “lawyer well-being contributes to organizational success,” as “lawyer health is an important form of human capital that can provide a competitive advantage.”⁷⁵ Second, the report concludes that “lawyer well-being influences ethics and professionalism,” with “40 to 70 percent of disciplinary proceedings and

67. *Id.* at 49 tbl.3; *id.* at 51.

68. See Jerome M. Organ et al., *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*, 66 J. LEGAL EDUC. 116 (2016). This study, resulting from a survey of over 3,300 law students, found that “consumption of alcohol among law students appears to have become more prevalent than two decades ago,” *id.* at 127, and 32% of respondents have used illegal drugs or prescription drugs without a prescription in the prior twelve months. *Id.* at 145. Further, the study found that 17% of law students experienced some level of depression, 37% reported some level of anxiety, and 6% reported suicidal ideation within the last twelve months. *Id.* at 136–39.

69. The Task Force is a “collection of entities within and outside the ABA”; it was “conceptualized and initiated by the ABA Commission on Lawyer Assistance Programs (CoLAP), the National Organization of Bar Counsel (NOBC), and the Association of Professional Responsibility Lawyers,” and created in August 2016. Bree Buchanan & James C. Coyle, *National Task Force on Lawyer Well-Being: Creating a Movement to Improve Well-Being in the Profession*, AM. B. ASS’N (Aug. 14, 2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf> [<https://perma.cc/W8ES-NRUB>].

70. THE PATH TO LAWYER WELL-BEING, *supra* note 15.

71. *Id.* at 7.

72. *Id.* at 10.

73. *Id.* at 8.

74. See *infra* Section IV.C.

75. THE PATH TO LAWYER WELL-BEING, *supra* note 15, at 8 (footnote omitted); see also *id.* at 1 (“To be a good lawyer, one has to be a healthy lawyer.”).

malpractice claims against lawyers involv[ing] substance use or depression, and often both.”⁷⁶ Finally, the report concludes that “from a humanitarian perspective, promoting well-being is the right thing to do.”⁷⁷

The report goes on to make various recommendations for a series of “stakeholders”—judges,⁷⁸ regulators,⁷⁹ legal employers,⁸⁰ law schools,⁸¹ bar associations,⁸² lawyers’ professional liability carriers,⁸³ and lawyers assistance programs⁸⁴—to combat the “blind eye” that the legal profession has turned “to widespread health problems.”⁸⁵ The recommendations to all stakeholders include “buy-in and role modeling” from the top down and taking steps to minimize the stigma of mental health and substance abuse disorders and to facilitate and encourage employees to seek and attain appropriate help.⁸⁶

By its own admission, the report “makes a compelling case that the legal profession is at a crossroads,” as the “current course” of “widespread disregard for lawyer well-being and its effects[] is not sustainable.”⁸⁷ It concludes that the profession has “ignored this state of affairs long enough,” and that “[a]s a profession, we have the capacity to face these challenges and create a better future for our lawyers” that is both “sustainable” and in pursuit of “the highest professional standards, business practices, and ethical ideals.”⁸⁸

II. WHY THIS HAPPENS: PROFESSIONAL RISK FACTORS AFFECTING MENTAL HEALTH AND ADDICTION

There is no one answer for why lawyers disproportionately suffer from mental health and addiction problems compared to the general population. Yet the fact remains that they do. This Article does not minimize the existence of biological, chemical, and genetic conditions that predispose individuals to mental illness or addiction. These cannot, and should not, be discounted or overlooked by individuals with such predispositions. Nevertheless, what this Article does argue, and what is beyond dispute, is that lawyer distress is systemic—that there exists a strong correlation between the legal profession and lawyer distress that can no longer be ig-

76. *Id.* at 8 (footnote omitted).

77. *Id.* at 9.

78. *Id.* at 22–24.

79. *Id.* at 25–30.

80. *Id.* at 31–34.

81. *Id.* at 35–40.

82. *Id.* at 41–42.

83. *Id.* at 43–44.

84. *Id.* at 45–46.

85. *Id.* at 12.

86. *Id.* at 12–13.

87. *Id.* at 47.

88. *Id.*

nored.⁸⁹ Some of the potential systemic sources of lawyer distress include: (1) the possible existence of an inherent “lawyer personality”; (2) the law school experience; and (3) several aspects of law practice.⁹⁰

A. “Lawyer Personality”

It has long been assumed that the legal profession is composed of individuals who are inherently predisposed to being “pessimistic, unhappy, and more prone to destructive addictions than other occupational groups.”⁹¹ Indeed, accounts of the “depressing character of legal study” date back to at least the Middle Ages.⁹² Yet the question of whether lawyers as a group are inherently prone to struggles with mental illness and addiction is far from settled, and the most recent research suggests that the stereotypical “lawyer personality” does not exist.

Early studies support the view that there are inherent qualities in individuals who seek to become or who are successful lawyers. These studies conclude that “personality traits most common among lawyers are not those associated with happy people,”⁹³ and that lawyers exhibit “several personality traits which tend to intensify lawyers’ stress levels,” such as low self-esteem, egotism, inflexibility, workaholism, cynicism, and aggression.⁹⁴

For instance, in an influential 2001 article, Martin Seligman, Paul Verkuil, and Terry Kang argue that lawyers are more successful when they

89. See LITOWITZ, *supra* note 57, at 19.

Let us be very clear on the question of causality: the legal profession makes lawyers unhappy. We must reject any suggestion that lawyers are unhappy *prior* to their immersion in the legal system, that these unhappy people somehow self-select their own unhappiness by subconsciously placing themselves in a depressing profession. . . . We did not bring a cloud of depression to the profession; we discovered the cloud when we got here. In other words, the problems affecting young lawyers are predominately systemic, not personal.

Id.

90. When discussing these as factors that affect lawyer mental health and addiction issues, that is only to suggest, as noted above, the existence of correlations between these factors and such issues and not scientific conclusions of cause and effect. Rather, the studies and other works discussed in this section establish correlations and apparent effects of these factors on lawyer distress. *Cf.* Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 13, at 559 n.8 (explaining how their findings “provide substantial confidence in apparent causal relationships” despite the limitation of its study focusing on correlations, particularly because of “the large sample sizes and the consistency of [their] findings with similar findings in previous related studies”).

91. Margaret L. Kern & Daniel S. Bowling III, *Character Strengths and Academic Performance in Law Students*, 55 J. RES. IN PERSONALITY 25, 25 (2014).

92. See PETER GOODRICH, OEDIPUS LEX: PSYCHOANALYSIS, HISTORY, LAW 1–7 (1995).

93. LEVIT & LINDER, *supra* note 13, at 75.

94. Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1417 (1997) (discussing AMIRAM ELWORK, STRESS MANAGEMENT FOR LAWYERS 15 (1995)).

have a “pessimistic ‘explanatory style,’”⁹⁵ meaning they have a “tendency to interpret the causes of negative events in stable, global, and internal ways.”⁹⁶ Also known as “prudence,” this perspective “requires caution, skepticism, and ‘reality-appreciation,’” and “enables a good lawyer to see snares and catastrophes that might conceivably occur in any given transaction.”⁹⁷ This ability to anticipate problems and “issue-spot” is an essential quality for effective lawyering.⁹⁸

Although this kind of pessimism is a quality of a good lawyer, it also correlates to mental distress, as it is well-documented as a major factor for depression and distress.⁹⁹ Lawyers who are pessimistic in practice often have that pessimism spill into their personal lives. For instance, lawyers who spend their working hours searching for, anticipating, and agonizing over problems tend to see the worst for themselves both inside and outside of the office.¹⁰⁰ They may also have a more negative or pessimistic view of their work and their lives and can focus on, or even catastrophize, problems in both.¹⁰¹ Accordingly, as Seligman, Verkuil, and Yang conclude, “pessimism that might be adaptive in the profession also carries the risk of depression and anxiety in the lawyer’s personal life.”¹⁰²

Beyond this penchant for pessimism, Susan Daicoff has attempted to quantify the “lawyer personality.”¹⁰³ In reviewing studies done on lawyer characteristics, she concluded that on the Myers-Briggs Type Indicator personality assessment measure, lawyers disproportionately represent the “Thinking” rather than the “Feeling” type when compared to the general population.¹⁰⁴ She concluded further that, in contrast to most of the pop-

95. Seligman et al., *supra* note 13, at 39; *see also* Jason M. Satterfield et al., *Law School Performance Predicted by Explanatory Style*, 15 BEHAV. SCI. & L. 95, 100–04 (1995) (determining, in a study of nearly 400 University of Virginia Law School students, that pessimistic students were more successful in law school than optimistic ones).

96. Seligman et al., *supra* note 13, at 39.

97. *Id.* at 41.

98. *See id.* (“The ability to anticipate a whole range of problems that non-lawyers do not see is highly adaptive for the practicing lawyer.”).

99. *See id.*; *cf.* Beck et al., *supra* note 10, at 57 (“[T]he basic pattern of distress may represent the traits necessary to be a successful lawyer (obsessive-compulsiveness, interpersonal sensitivity, and anxiety) and the costs associated with those success (depression and social alienation and isolation).”).

100. Seligman et al., *supra* note 13, at 41.

101. *See, e.g.*, Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL’Y L. & ETHICS 358, 400 (2009); *see also* SHAWN ACHOR, *THE HAPPINESS ADVANTAGE: HOW A POSITIVE BRAIN FUELS SUCCESS IN WORK AND LIFE* 92–93 (2010).

102. Seligman et al., *supra* note 13, at 41.

103. *See, e.g.*, SUSAN SWAIM DAICOFF, *LAWYER KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES* (2004).

104. *See id.* at 32–36.

Thinkers prefer “logical analysis, principles and impersonal reasoning and cost/benefit analyses” and are “more tolerant of conflict and criticism” . . . [while] [f]eelers prefer “harmonizing, building relationships,

ulation,¹⁰⁵ a majority of lawyers are introverts rather than extroverts;¹⁰⁶ intuitors rather than sensors;¹⁰⁷ and judges rather than perceivers.¹⁰⁸ Based on her analysis, Daicoff contends that the “definable lawyer personality” is one

conceptually coalesced into two groups of five traits: (a) a drive to achieve . . . ; (b) dominance, aggression, competitiveness, and masculinity; (c) emphasis on rights and obligations over emotions, interpersonal harmony, and relationships; (d) materialistic, pragmatic values over altruistic goals; and (e) higher than normal psychological distress.¹⁰⁹

However, a 2014 empirical study by Margaret Kern and Daniel Bowling casts doubt on whether there are personality traits inherent within those in and choosing to enter the legal profession. Challenging the notion that there is some inherent “lawyer personality,”¹¹⁰ they recognize that early studies support the vicious cycle of lawyers’ success coming from pessimism, which leads to unhappiness in life, but note that those studies have not been replicated.¹¹¹ Their study revisited lawyer personalities by assessing twenty-four positive characteristics from the Values in Action Classification of Character Strengths (VIA-IS), because the selected traits “were seen as relatively universal, fulfilling to the individual, morally valued by individuals and societies, trait-like, distinctive, and measurable.”¹¹² The study measured the strengths of nearly 300 law students against a sample of U.S. lawyers and six samples of non-lawyers.¹¹³ They found that the

pleasing people, making decisions on the basis of [their own] . . . personal likes and dislikes, and being attentive to the personal needs of others” and like to avoid conflict and criticism.

Id. at 33.

105. *Id.* at 32–36; *see also id.* at 34 tbl.2.1.

106. *Id.* at 32–33. Introverts are those who “focus on their inner world and [who] often feel drained if they spend too much time with other people,” whereas extroverts are those who “focus on the outer world and feel energized by contacts with other people.” *Id.*

107. *Id.* at 33. Intuitors are those who “would rather think about the big picture, abstract ideas, and global themes, learn new things, and solve complex problems,” whereas sensors are those who “attend to concrete, real world things and enjoy working with real facts and details.” *Id.*

108. *Id.* at 32–36; *see also id.* at 34 tbl.2.1. Judges are those who “prefer structure, schedules, closure on decisions, planning, follow through, and a ‘cut-to-the-chase’ approach,” whereas perceivers are those who “prefer a ‘go with the flow and see what develops’ approach.” *Id.*

109. *Id.* at 41 & exh. 2.1.

110. Kern & Bowling, *supra* note 91, at 29.

111. *Id.* at 25 (citing, *inter alia*, Seligman et al., *supra* note 13).

112. *Id.* These characteristics are: “appreciation of beauty, authenticity, bravery, creativity, curiosity, fairness, forgiveness, gratitude, hope, humor, kindness, leadership, capacity for love, love of learning, modesty, open-mindedness, persistence, perspective, prudence, self-regulation, social intelligence, spirituality, teamwork, and zest.” *Id.*

113. *Id.* at 26–27 tbl.1.

law students surveyed “demonstrated a normal range of characteristics, similar to other intelligent, highly educated samples.”¹¹⁴ Consequently, they conclude “that the supposed presence of a negative ‘lawyer personality’ might be overstated.”¹¹⁵

If it is true that there is no such “negative ‘lawyer personality’”¹¹⁶—that it is untrue that “lawyers are . . . unhappy people [who] somehow self-select their own unhappiness by subconsciously placing themselves in a depressing profession,” but rather it is “the legal profession [that] makes lawyers unhappy”¹¹⁷—a question remains whether and to what extent law school and the profession itself contributes to lawyer distress. These are discussed in turn below.

B. *Law School*

A significant, decades-long body of scholarship demonstrates that law school poisons the well of prospective lawyers’ well-being. For instance, in a 1986 empirical study of law students in Arizona, Andrew Benjamin and his colleagues found that law students were as psychologically healthy as the general population when they enter law school, but within six months “average scores on *all* symptom indices changed from initial values within the normal range to scores two standard deviations above normative expectation.”¹¹⁸ These elevated symptoms “significantly worsened” throughout law school, and they “did not lessen significantly between the spring of third year and the next two years of legal practice.”¹¹⁹ They found that, depending on the group, 17%–40% of the student-subjects “suffered significant levels of depression,” with 20%–40% reporting “other significantly elevated symptoms, including obsessive-compulsive, interpersonal sensitivity, anxiety, hostility, paranoid ideation, and psychoticism (social alienation and isolation).”¹²⁰ These elevated symptoms were not dependent on

114. *Id.* at 28.

115. *Id.* at 29; *see also* Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 13, at 621 (“Simply stated, there is nothing . . . to suggest that attorneys differ from other people with regard to their prerequisites for feeling good and feeling satisfied with life. . . . In order to thrive, we need the same authenticity, autonomy, close relationships, supportive teaching and supervision, altruistic values, and focus on self-understanding and growth that promotes thriving in others.”).

116. Kern & Bowling, *supra* note 91, at 29. Daicoff argues that “evidence suggests that humanistic, people-oriented individuals do not fare well, psychologically or academically, in law school or in the legal profession.” Daicoff, *supra* note 94, at 1405. However, evidence exists to the contrary—i.e., that students and lawyers who rely on their strengths and act according to their own intrinsic motivations and values perform better and are less distressed. *See, e.g.*, Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 13, at 576–85; Peterson & Peterson, *supra* note 101, at 412–16; Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAVIORAL SCI. & L. 261, 281 (2004) [hereinafter Sheldon & Krieger, *Undermining Effects*].

117. LITOWITZ, *supra* note 57, at 19.

118. Benjamin et al., *The Role of Legal Education*, *supra* note 26, at 240.

119. *Id.* at 241.

120. *Id.* at 236.

any demographic or descriptive differences, including undergraduate or law school GPA; hours devoted to undergraduate or law school studies or to work after graduation; bar examination passage; or size of law practice.¹²¹

In the mid-2000s, Lawrence Krieger and Kennon Sheldon authored two influential studies of the negative effect law school has on the subjective well-being of law students.¹²² Krieger and Sheldon based their research on the “self-determination theory of optimal motivation and human thriving,” or “SDT,” which “focuses on the contextual and personality factors that cause positive and negative motivation, with corresponding positive and negative performance and subjective well-being (SWB) outcomes.”¹²³ As Krieger and Sheldon describe elsewhere, there are essentially three central tenets of SDT relevant here. First is “that all human beings have certain basic psychological needs—to feel competent/effective, autonomous/authentic, and related/connected with others”; these experiences produce well-being, while their absence correlates to distress.¹²⁴ Second, SDT posits that an individual’s “values, goals, and motivations” form the basis of their behavior, and “intrinsic values and internal motivations are more predictive of well-being than their extrinsic and external counterparts.”¹²⁵ Finally, SDT posits that supervisors, teachers or

121. *Id.* at 246.

122. Sheldon & Krieger, *Undermining Effects*, *supra* note 116; 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, *Longitudinal Test of Self-Determination Theory*]. Elsewhere, Krieger and Sheldon define “subjective well-being” as “the sum of life satisfaction and positive affect, or mood (after subtracting negative affect), utilizing established instruments for each factor.” Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 13, at 562. They continue:

These affect and satisfaction factors provide data on complementary aspects of personal experience. Although moods are experienced as transient, they have been found to persist over time in stable ways. Positive and negative affect are purely subjective, straightforward experiences of “feeling good” or “feeling bad” that many people would interpret as happiness or its opposite. Life satisfaction, on the other hand, includes a personal (subjective) evaluation of objective circumstances—such as one’s work, home, relationships, possessions, income, and leisure opportunities. Th[is] measure of life satisfaction . . . is validated by its use in previous social science research and is broader than the concept of career or job satisfaction

Id. at 562–63.

123. Sheldon & Krieger, *Undermining Effects*, *supra* note 116, at 263.

124. Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 13, at 564.

125. *Id.* at 564–65. As Krieger and Sheldon explain “[v]alues or goals such as personal growth, love, helping others, and building community are considered ‘intrinsic,’ while ‘extrinsic’ values include affluence, beauty, status, and power.” *Id.* at 564. Additionally, “motivation for behavior is distinguished based on the locus of its source, either ‘internal’ (the behavior is inherently interesting and enjoyable, or it is meaningful because it furthers one’s own values) or ‘external’ (behavior is compelled by guilt, fear, or pressure, or chosen to please or impress others).” *Id.* at 564–65.

mentors who provide “autonomy support” to their subordinates “enhance[] their [subordinates’] ability to perform maximally, fulfill their psychological needs, and experience well-being.”¹²⁶ Put simply, SDT research posits that: (1) why a person acts—i.e., for internal satisfaction or external factors; (2) what a person seeks through their actions—i.e., intrinsic goals such as personal growth and community or extrinsic goals such as fame and money; and (3) the level of autonomy support one has from their superiors, all have “significant consequences for [their] satisfaction and performance,” as well as their overall SWB.¹²⁷

In their first study, Krieger and Sheldon found that law students enter law school with a higher positive SWB compared with undergraduates.¹²⁸ Yet, one year into law school, students suffered a decline in SWB and an increase in physical and mental health problems.¹²⁹ These declines in well-being and increases in health problems continued throughout law school.¹³⁰

In particular, they found that these increases in mental and physical distress corresponded with decreases in positive affect and overall life satisfaction.¹³¹ They found further that these increases in distress also corresponded with shifts in their reasons for becoming lawyers—from internal purposes (such as interest and meaning) to external ones (such as money and recognition)¹³²—as well as decreases in values of all kinds after the first year.¹³³

Krieger and Sheldon conclude that students’ “endorsement of intrinsic values” declined over the first year, with a shift toward the extrinsic “appearance and image values.”¹³⁴ Additionally, students’ goals and motivations moved from the internal—“reasons of interest and enjoyment”—to the external, notably “pleasing or impressing others.”¹³⁵ Strikingly, Krieger and Sheldon also found that this shift was not limited to the first year, as “neither the losses in SWB nor in relative intrinsic value orienta-

126. *Id.* at 565. Krieger and Sheldon describe “autonomy support” as when authorities or superiors “support and acknowledge their subordinates’ initiative and self-directness.” Sheldon & Krieger, *Longitudinal Test of Self-Determination Theory*, *supra* note 122, at 884. When they do so, “those subordinates discover, retain, and enhance their intrinsic motivations and at least internalize nonenjoyable but important extrinsic motivations. In contrast, when authorities are controlling or deny self-agency of subordinates, intrinsic motivations are undermined and internalization is forestalled.” *Id.*

127. Sheldon & Krieger, *Undermining Effects*, *supra* note 116, at 264; Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 13, at 565.

128. Sheldon & Krieger, *Undermining Effects*, *supra* note 116, at 271.

129. *Id.* at 272.

130. *Id.* at 280.

131. *Id.* at 270–72.

132. *Id.* at 272 tbl.3.

133. *Id.* at 273.

134. *Id.* at 281.

135. *Id.*

tion rebounded” during law school;¹³⁶ in fact, during the second and third years of law school, all types of valuing decreased.¹³⁷

Krieger and Sheldon did find, however, that students who acted “for intrinsic and self-determined reasons” tended to “perform more persistently, flexibly, creatively, and effectively,” and therefore attained a higher GPA.¹³⁸ However, they note the “potential irony” to this finding, because although such students with intrinsic motivations and values performed well academically, such high-performing students “tended to shift toward more lucrative, high-prestige career preferences.”¹³⁹ And, as discussed below,¹⁴⁰ the values associated with these positions “tend to contribute to decreased health, SWB, and career satisfaction over time.”¹⁴¹

In a 2007 study, Krieger and Sheldon further investigated the negative effects of law school on students’ SWB.¹⁴² It adds to the first study by examining the more nuanced components of SDT—the level of satisfaction of the students’ psychological needs for autonomy, competence, and relatedness to others¹⁴³—as well as the autonomy support students receive from faculty at two different schools, one whose faculty has a “traditional,” scholarly focus, and one whose faculty is “less traditional” and focused more on teaching and practical skills for students.¹⁴⁴ As is relevant here, the study confirmed the findings of their first study, particularly that students’ SWB and internal motivation decreased and their distress increased throughout law school.¹⁴⁵ In particular, they found that these negative outcomes resulted from decreases in students’ satisfaction in their needs for autonomy, competence, and relatedness since entering law school.¹⁴⁶

Thus, these studies, among others,¹⁴⁷ have demonstrated that law students suffer disproportionately high levels of distress and suggest that this

136. *Id.*

137. *Id.* at 282. Krieger and Sheldon observe that this finding is “consistent with the common stereotype that lawyers ‘have no values’—that they are hired guns willing to represent any position that promises to pay.” *Id.*

138. *Id.* at 281; *cf.* Peterson & Peterson, *supra* note 101, at 411 (reporting results of survey of George Washington University Law School students that revealed “students who use their strengths on a regular basis report higher satisfaction with life and lower levels of stress and depression.”).

139. Sheldon & Krieger, *Undermining Effects*, *supra* note 116, at 281.

140. *See infra* Section II.C.

141. Sheldon & Krieger, *Undermining Effects*, *supra* note 116, at 281.

142. Sheldon & Krieger, *Longitudinal Test of Self-Determination Theory*, *supra* note 122.

143. *Id.* at 886–87.

144. *Id.*

145. *Id.* at 889.

146. *See id.* at 893–94. Additionally, students at the law school with the “less traditional” faculty reported a more autonomy-supportive environment and fared better in all other measured outcomes—well-being, grade performance, and career motivation—than students at the school with the “traditional,” and less autonomy-supportive, faculty. *Id.* at 890–91 & tbls.2 & 3.

147. *See, e.g.*, AM. ASS’N OF LAW SCHOOLS, *supra* note 48; JESSIE AGATSTEIN ET AL., FALLING THROUGH THE CRACKS: A REPORT ON MENTAL HEALTH AT YALE LAW

distress correlates to law school itself. These elevated levels of mental health and addiction issues among law students remain high today. In 2014, Jerome Organ, David Jaffe, and Katherine Bender surveyed more than 3,300 students across fifteen law schools to assess mental health and substance abuse issues among students as well as whether and to what extent students seek help for these issues.¹⁴⁸ They found that 17% of respondents screened positive for depression,¹⁴⁹ 37% screened positive for anxiety,¹⁵⁰ 43% reported binge-drinking at least once in the prior two weeks,¹⁵¹ 25% were at risk for alcoholism,¹⁵² and 35% used illicit street drugs or prescription drugs without a prescription.¹⁵³ Additionally, a 2014 non-empirically validated survey of students at Yale Law School found that up to 70% of its students suffer from some form of self-identified mental distress while in school.¹⁵⁴

The reasons why law school causes such declines in well-being and rises in mental health and substance abuse among its students is beyond the scope of this Article, but suffice it to say that as a result of the law school model, students experience many of the same distress, mental health, and addiction issues that pervade the legal profession,¹⁵⁵ and it may lay the groundwork for that very pervasiveness.¹⁵⁶

C. Law Practice

In 2015, Krieger and Sheldon conducted an empirical study of nearly 8,000 lawyers throughout the United States across all areas of practice to determine the contributors to lawyer well-being and life satisfaction, as well as distress and dissatisfaction.¹⁵⁷ In designing their study, they mea-

SCHOOL (2014), https://law.yale.edu/sites/default/files/area/department/studentaffairs/document/falling_through_the_cracks.pdf [<https://perma.cc/38N2-9B8N>]; Mathew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 L. & HUM. BEHAVIOR 55 (1999); Lawrence Silver, *Anxiety and the First Semester of Law School*, 1968 WIS. L. REV. 1201 (1968).

148. Organ et al., *supra* note 68, at 122–26. For a discussion of the barriers to treatment, see *infra* Section II.B.

149. Organ et al., *supra* note 68, at 136.

150. *Id.* at 137–38.

151. *Id.* at 128–29 & tbl.2.

152. *Id.* at 131–32 & tbl.5. Further, the authors noted that “consumption of alcohol among law students appears to have become more prevalent than two decades ago.” *Id.* at 127.

153. *Id.* at 133–36.

154. AGATSTEIN ET AL., *supra* note 147.

155. See, e.g., STEFANCIC & DELGADO, *supra* note 57, at 62–63; see also, e.g., LITOWITZ, *supra* note 57, at 29–51 (discussing “the trouble with law school”); Dammeyer & Nunez, *supra* note 147, at 61; Peterson & Peterson, *supra* note 101, at 358.

156. Debra S. Austin, *Killing Them Softly: Neuroscience and Neural Self-Hacking Can Optimize Cognitive Performance*, 59 LOY. L. REV. 791, 793–94 (2013) (“Stress in legal education may . . . set the stage for abnormally high rates of anxiety and depression among lawyers.”).

157. Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 13.

sured the SWB metrics (need satisfaction, values, and motivations) as well as depression and alcohol consumption.¹⁵⁸

Consistent with their prior studies of law students, Krieger and Sheldon found that internal values and motivations—the very factors that erode during law school—and psychological need satisfaction were most strongly predictive of lawyer well-being, whereas “the external factors emphasized in law school and by many legal employers were, at best, only modestly associated with lawyer well-being.”¹⁵⁹ The strongest predictors of well-being were the psychological needs of autonomy, relatedness to others, and competence, as well as motivation.¹⁶⁰ They determined that the correlations between psychological needs and lawyer well-being were “exceptionally strong,” and that these needs were strongly inversely correlated with depression¹⁶¹ as well as inversely correlated with quantity of drinking.¹⁶²

Accordingly, aspects of the profession that inhibit these psychological needs, and foster external values and motivations, can contribute to lawyer mental health and addiction issues. While a myriad of such aspects certainly exists, three critical areas are: (1) lack of autonomy; (2) lack of relatedness; and (3) extrinsic values and motivation.

1. *Lack of Autonomy*

Autonomy is one of the key metrics for lawyer happiness,¹⁶³ and its absence in “high-pressure, low decision latitude” positions of law firm associates render associates “likely candidates for negative health effects”¹⁶⁴ such as depression.¹⁶⁵ While there are many areas of the profession that engender a lack of autonomy, this Article focuses on two: the reliance on the billable hour as a measure of productivity and compensation and the low decision latitude of particularly junior lawyers.

a. Reliance on the Billable Hour

The prevailing business model for law firms over the last several decades is the billable hour, by which they charge their clients an hourly rate

158. *Id.* at 569.

159. *Id.* at 585; *see id.* at 583 fig.1, 584–85.

160. *Id.* at 585. In fact, psychological need satisfaction measured “relationships to well-being approximately . . . 3.5 times stronger than that of income.” *Id.* at 579.

161. *Id.* at 579.

162. *Id.* at 586–87.

163. *Id.* at 582–84 & figs.1 & 2; *see also* Eaton et al., *supra* note 10, at 1086 (“[P]eople in occupations that involve individual autonomy, control over the environment, and direction and planning of the flow of work will be protected against depression.”)

164. Seligman et al., *supra* note 13, at 42.

165. Eaton et al., *supra* note 10, at 1086 (“Occupations involving little or no direction or control contribute to a relatively stable personality configuration linked to learned helplessness, which has been implicated in depression.”).

for each hour each lawyer works. As law firms have commodified over the last thirty-five years,¹⁶⁶ hour expectations have increased. For instance, in the early 1980s, few law firms had minimum billable hour requirements, but in recent years “most large law firms expressly set them at 1,900 to 2,000,”¹⁶⁷ with some firms expecting much more.¹⁶⁸

Billable hours as a benchmark of productivity is counterintuitive, as “the behavior that maximizes hours is antithetical to true productivity.”¹⁶⁹ While “[p]roductivity [generally] is the ‘relative measure of the efficiency of a person . . . in converting inputs into useful outputs,’” the general benchmark of lawyer productivity—the total time spent on a task without regard to the quality or utility of the work product—is a measure of anything but productivity.¹⁷⁰ Indeed, more hours spent on a task is an indication of unproductivity, as workers are less productive and efficient the longer they toil on a task.¹⁷¹ Put differently, the billable hour system rewards unproductivity and inefficiency.

Notwithstanding this inherent inefficiency, billable hours are the standard measure of work, and law firm associates understand that their futures depend on this measure of output, and their success at the firm requires them to bill much more than the firm’s stated billable hour target.¹⁷² Moreover, a lawyer must “work” many more hours to hit their billable target.¹⁷³ For instance, Yale Law School calculated that a lawyer must

166. See generally HARPER, *supra* note 20. Although billable hours can bear on autonomy and relatedness satisfaction (as well as motivation), see Krieger & Sheldon, *supra* note 13, at 596, but is included as related to “competence” because it rewards inefficiency. Cf. DEBORAH L. RHODE, *THE TROUBLE WITH LAWYERS* 13 (2015) (“[T]he hourly billing system pegs profits more to the quantity of time spent than to the efficiency of its use, and profits have become the dominant concern. High billable hour quotas also screen out individuals with competing values. A willingness to work long hours functions as a proxy for commitment.”).

167. HARPER, *supra* note 20, at 79; *Update on Associate Hours Worked*, NALP BULL. (2016), <https://www.nalp.org/0516research> [<https://perma.cc/7499-TKEQ>] (reporting that nearly 60% of law firms require that lawyers bill at least 1,900 hours). But see CTR. FOR THE STUDY OF THE LEGAL PROFESSION, *GEORGETOWN LAW & LEGAL EXEC. INST., 2019 REPORT ON THE STATE OF THE LEGAL MARKET* 7 fig.8 (2019), http://ask.legalsolutions.thomsonreuters.info/LEI_2019-State_of_Legal_Mkt [<https://perma.cc/MDQ6-V9F8>] (reporting that the average lawyer at 161 U.S.-based law firms surveyed billed 122 hours per month in 2018, or 1,464 hours per year).

168. See, e.g., Ingo Forstenlechner & Fiona Lettice, *Well Paid but Undervalued and Overworked: The Highs and Lows of Being a Junior Lawyer in a Leading Law Firm*, 30 EMP. REL. 640, 642 (2008) (noting that although the international law firm studied had no official billable hour target, “there [was] an unofficial target of 2,400 hours”).

169. HARPER, *supra* note 20, at 77.

170. *Id.* at 78–79.

171. *Id.* (noting the effort spent “on the fourteenth hour of a day can’t be as valuable as that exerted during hour six”).

172. *Id.* at 79.

173. See, e.g., *DLA Piper LLP–U.S. Firmwide: Hours and Work Arrangements*, NALP DIRECTORY OF LEGAL EMP’RS (2019), http://nalpdirectory.com/employer_profile?FormID=11656&QuestionTabID=39&SearchCondJSSe=%7B%22SearchEmployer

be at work 2,420 hours to bill 1,800, and that 2,200 billable hours requires an lawyer be “at work” 3,048 hours.¹⁷⁴

It is no wonder, then, as the ABA’s Commission on Women in the Profession warned nearly twenty years ago, that “[e]xcessive workloads are a leading cause of lawyers’ disproportionately high rates of reproductive dysfunction, stress, substance abuse, and mental health difficulties.”¹⁷⁵ As one lawyer put it, billable hours are “the biggest reason lawyers are so depressed.”¹⁷⁶

b. Low Decision Latitude

Beyond the number of hours worked, many lawyers—particularly junior lawyers¹⁷⁷—experience distress because they lack autonomy in the work that they do. Associates have little say over their work, limited inter-

Name%22%3A%22dla%20piper%22%7D [https://perma.cc/TTJ9-ZNM5] (last visited May 7, 2020) (noting that, on average, associates firm-wide in 2018 billed 1,860 hours yet worked 2,343).

174. *The Truth About the Billable Hour*, YALE L. SCH. (July 2017), https://law.yale.edu/sites/default/files/area/department/cdo/document/billable_hour.pdf [https://perma.cc/ZF2E-2LWF]; see also Colin James, *Legal Practice on Time: The Ethical Risk and Inefficiency of the Six-Minute Unit*, 42 *ALT. L.J.* 61, 62 (2017) (finding, that for Australian solicitors, “time-billing may record 50 to 70 per cent of the actual hours worked”).

175. DEBORAH L. RHODE, *AM. BAR ASS’N, COMM’N ON WOMEN IN THE PROFESSION, BALANCED LIVES: CHANGING THE CULTURE OF LEGAL PRACTICE* 12 (2001); cf. Debra Austin & Rob Durr, *Emotion Regulation for Lawyers: A Mind Is a Challenging Thing to Tame*, 16 *WYO. L. REV.* 387, 401 (2016) (“A lawyer subjected to chronic stress can experience emotional disorders such as anxiety, panic attacks, or depression, and physical problems such as irritability, breathlessness, dizziness, abdominal discomfort, muscle tension, sweating, chills, heart palpitations, chest pain, and/or increased blood pressure.”).

176. Joshua E. Perry, *The Ethical Costs of Commercializing the Professions: First-Person Narratives from the Legal and Medical Trenches*, 13 *PENN. J.L. & SOC. CHANGE* 169, 184 n.57 (2009). But see Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 13, at 596 (finding that while “important psychological predictors of well-being decreased” with increased billable hours, such increases only led to “slightly less happiness”); Bergin & Jimmieson, *supra* note 63, at 437 (finding that high billing lawyers “experienced greater anxiety, more stress, more job dissatisfaction and less work/life balance,” but that their study “did not provide evidence that having high billing targets was related to greater levels of depression and drinking, compared with lawyers with low-to-moderate billing targets or no billing targets”).

177. However, despite their higher status and 62% greater pay than senior associates, junior partners “experience[] no greater happiness than the associates.” Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 13, at 597–98; cf. Jonathan Koltai et al., *The Status-Health Paradox: Organizational Context, Stress Exposure, and Well-Being in the Legal Profession*, 59 *J. HEALTH & SOC. BEHAVIOR* 20, 31 (2018) (finding that “higher status lawyers have a mental health disadvantage relative to their peers in the public sector, and are no better off in terms of health”). In the words of one law firm partner: “[T]he hours don’t get any better for partners; partners have even more pressure than associates do.” Kimberly Kirkland, *Ethics in Large Law Firms: The Principles of Pragmatism*, 35 *U. MEM. L. REV.* 631, 683 (2005).

action with senior partners, and little to no client contact.¹⁷⁸ With this lack of autonomy also comes isolation, as firms have “little mentoring, training, or firm citizenship behaviors,” and there is little institutional incentive to engage in them.¹⁷⁹ Consequently, lawyers feel alienated from their work and cannot see how it matters beyond being a billable deliverable.¹⁸⁰ As an illustration, in one survey of associates at an international law firm, approximately 86% said they have non-interesting work, approximately 88% said they do not have interaction with partners, and approximately 77% said they are not “being shown appreciation for their work” by senior associates or partners.¹⁸¹

Junior lawyers have expressed “angst over pressures to bill exorbitant amounts of money to clients to whom they felt no meaningful connection.”¹⁸² They also have expressed frustration over the conflict between “their presumed role as autonomous professionals who” establish and maintain client relationships “and their more subservient role as employees who” exist to generate partner revenue.¹⁸³

Additionally, with advances in technology, lawyers are increasingly on-demand around the clock. Lawyers are expected to be reachable at all times, and in effect are constantly on call.¹⁸⁴ With this, lawyers have less autonomy support—that is, superiors do not acknowledge the lawyers’ perspective or preferences, or provide them with meaningful choices about when and where to work and how to balance their lives. While technology makes it possible for lawyers to work from home, it also makes it virtually impossible *not* to work from home; consequently, “[p]ersonal lives get lost in the shuffle.”¹⁸⁵ This “effective monitoring” of lawyer work at all times is true not only of junior lawyers, but also for senior lawyers who fear losing clients for being unresponsive on demand.¹⁸⁶

178. Seligman et al., *supra* note 13, at 42.

179. Anne M. Brafford, *Building a Positive Law Firm: The Legal Profession at Its Best 13* (Apr. 1, 2014) (unpublished Master of Applied Positive Psychology (MAPP) thesis, University of Pennsylvania), https://repository.upenn.edu/cgi/viewcontent.cgi?article=1063&context=mapp_capstone [<https://perma.cc/2TTX-L435>]; *see also* Schiltz, *supra* note 13, at 934–38 (discussing how “the vaunted training of big firms does not exist”).

180. LEVIT & LINDER, *supra* note 13, at 63 (“Lawyers become alienated from the nature of their work, and they do not see how their work matters.”).

181. Forstenlechner & Lettice, *supra* note 168, at 647 & tbl.v.

182. Perry, *supra* note 176, at 198.

183. *Id.*

184. Forstenlechner & Lettice, *supra* note 168, at 643; *see also* RHODE, *supra* note 166, at 13 (“In some ways, technology has made a bad situation worse by accelerating the pace of practice and placing lawyers perpetually on call.”).

185. RHODE, *supra* note 166, at 13.

186. Forstenlechner & Lettice, *supra* note 168, at 643; *see also* RHODE, *supra* note 166, at 13 (“It is not uncommon to hear of a client who e-mails on New Year’s Eve and fires a firm for being insufficiently responsive on a Sunday morning.”); Caroline Spiezio, *Constantly on Call: The Client’s Role in the Legal Profession’s Mental Health Crisis*, CORP. COUN. (July 14, 2019), <https://www.law.com/corpocounsel/2019/07/14/constantly-on-call-the-clients-role-in-the-legal-professions-mental-health->

2. *Lack of Relatedness: Adversarial System*

The practice of law is inherently adversarial, which itself is inherently stressful by nature.¹⁸⁷ To thrive in the adversarial system, lawyers are trained to be competitive and aggressive because the goal is to “win.”¹⁸⁸ Such training is “fueled by negative emotions,” and as a consequence “can be a source of lawyer demoralization, even if it fulfills a social function.”¹⁸⁹ Consequently, when the practice of law is reduced to many zero-sum disputes, it can “produce predictable emotional consequences for the practitioner, who will be anxious, angry, and sad much of [their] professional life.”¹⁹⁰ Moreover, dealing with difficult opponents, clients, and colleagues can often leave lawyers feeling “emotionally shattered.”¹⁹¹

3. *Extrinsic Values and Motivations*

Lawyers often enter a firm culture “that is hostile to [their] values.”¹⁹² As Judge (then-Professor) Patrick Schiltz observed:

The system does not want you to apply the same values in the workplace that you do outside of work . . . ; it wants you to replace those values with the system’s values. The system is obsessed with money, and it wants you to be, too. The system wants you—it needs you—to play the game.¹⁹³

As a result of this “game,” law is no longer seen by many as a calling,¹⁹⁴ but as “just a job with ridiculous hours, stress, and unpaid law

crisis/ [https://perma.cc/5S9D-PSVR] (“Client demands for fast turnaround times, even on non-urgent matters, can leave outside counsel in constant crisis mode. That stress can lead to . . . mental health issues such as depression, addiction, and anxiety . . .”).

187. Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 13, at 599.

188. See Seligman et al., *supra* note 13, at 47. A recent study of American and Canadian lawyers revealed that lawyers at large firms experience higher rates of “depressive symptoms and risk of poor health” than those in smaller firms or the public sector, including because such lawyers have “higher levels of overwork” and work-life conflict. Koltai et al., *supra* note 177, at 31–32.

189. Seligman et al., *supra* note 13, at 47.

190. *Id.*

191. ANGUS LYON, *LAWYER’S GUIDE TO WELLBEING AND MANAGING STRESS* 97 (2015).

192. Schiltz, *supra* note 13, at 912.

193. *Id.*

194. There are essentially three different mindsets people have about their work: jobs, careers, and callings. See, e.g., Amy Wrzesniewski et al., *Jobs, Careers, and Callings: People’s Relations to Their Work*, 31 J. RES. PERSONALITY 21, 22 (1997). Briefly, a job “is a means that allows individuals to acquire the resources needed to enjoy their time away from” it. *Id.* A career is a position in which one has “a deeper personal investment in their work and mark their achievements not only through monetary gain, but through advancement within the occupational structure,” which “often brings higher social standing, increased power within the scope of one’s occupation, and higher self-esteem for the worker.” *Id.* A calling is a position one “works not for financial gain or [c]areer advancement, but instead for the

school debt,”¹⁹⁵ and a primary focus on generating revenue for the firm. This “loss of purpose beyond making money” contributes greatly to lawyer dissatisfaction,¹⁹⁶ and it should come as no surprise that along with well-being, lawyers believe legal professionalism is in decline as well.¹⁹⁷ As a consequence, there has been a call for a return to more traditional notions of law practice, ones that prioritizes integrity, civility, and community.¹⁹⁸ More generally, if lawyers “re-discover *why* they became lawyers in the first place and rededicate themselves to those intrinsic goals” and motivations that initially led them to law school, it will lead to a “happier, healthier, and more ethical profession.”¹⁹⁹

III. IGNORING THE MORAL CASE FOR LAWYER WELL-BEING

Notwithstanding the existence and the profession’s knowledge of the widespread prevalence of lawyer mental health and addiction issues, as well as some obvious costs associated with them, law firms (and the profession at large) have ignored the pleas for change. These pleas, largely resting on moral grounds, have gone unheeded largely for two reasons: (1) firms have cared primarily about their bottom lines; and (2) the stigma associated with mental health and addiction issues, as well as other barriers

fulfillment that doing the work brings for the individual.” *Id.* Individuals who view their work as callings generally have “greater life, health, and job satisfaction and . . . better health” than those who view their work as mere jobs or careers. *See id.* at 29, 30–31; *see also id.* at 27 tbl.3. A person can find their calling within any occupation. *See id.* at 22; *cf. id.* at 31 (finding each mindset represented in nearly equal thirds among sample administrative assistants, concluding that “[s]atisfaction with life and with work may be more dependent on how an employee sees his or her work than on income or occupational prestige”).

195. Daniel S. Bowling, III, *Lawyers and Their Elusive Pursuit of Happiness: Does It Matter?*, 7 DUKE F. L. & SOC. CHANGE 37, 49 (2015) (footnotes omitted).

196. BARRY SCHWARTZ & KENNETH SHARPE, PRACTICAL WISDOM: THE RIGHT WAY TO DO THE RIGHT THING 216–17 (2010). Moreover, increased compensation does not contribute to lawyer subjective well-being. *See* Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 13, at 583 fig.1, 597–98. In fact, public interest lawyers responding to Krieger and Sheldon’s survey reported greater subjective well-being than their highly-paid “elite” and “prestige” lawyers at private firms. *Id.* at 590–91, 593 tbl.1.

197. Bowling, *supra* note 195, at 48; *see also* Krieger & Sheldon, *What Makes Lawyers Happy?*, *supra* note 13, at 612 (noting that survey respondents “has a positive view of neither the justice in the justice system nor the professional behavior of professionals in the system”).

198. Susan Daicoff, *Asking Lawyers to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems with Professionalism by Reference to Empirically-Derived Attorney Personality Attributes*, 11 GEO. J. LEGAL ETHICS 547, 582 (1998) (noting the call for a “return to more traditional, gentlemanly law practice,” in which lawyers “abandon these [financial and competitive] motivations and instead adopt a moral system that values integrity, honesty, community service, pro bono work, courteousness, civility, cooperation with others, and sensitivity to interpersonal concerns”).

199. Bowling, *supra* note 195, at 49–50.

ers to treatment. As set forth below, each inhibits, undermines, and puts at risk, lawyer well-being.

A. *The Profit-Centered Practice: Commodification of Law Firms*

Over the past thirty-plus years, firms have moved from the idea of the “noble profession” and toward the profit-maximizing “business model” dominating private practice today.²⁰⁰ As a result of the *American Lawyer* first publishing its annual list of firms’ revenues and profits-per-partner in 1985, lawyers were able to discover how much their colleagues were making elsewhere, and earning a high spot on the “Am Law 100,” or firms with the top 100 revenues nationwide, was a coveted honor.²⁰¹ In response, firms adopted management techniques aimed at moving them up in the annual rankings.²⁰² As a consequence, total gross revenue for Am Law 100 firms has gone from \$7 billion in 1985 to \$71 billion in 2010—a 9.71% compound annual growth rate²⁰³—to \$98.75 billion in 2018.²⁰⁴

Moreover, “[m]anaging partners admit publicly that they run their firms to maximize instant profits for the relatively few”—the partners.²⁰⁵ And, to that end, their practices have been successful: while in 1985 the average profits-per-partner for the top fifty firms on AmLaw’s inaugural list was \$300,000, that figure for the top fifty firms in the Am Law 100 in 2011 had risen to \$1.6 million,²⁰⁶ and to \$2.54 million in 2018.²⁰⁷

Partner profits are maximized through the so-called “Cravath model,”²⁰⁸ which focuses on high leverage, high hourly rates, and high billable hours.²⁰⁹ Taking each in turn, first, a firm’s leverage refers to the ratio of its salaried lawyers (i.e., associates, counsel, and non-equity partners) to equity partners.²¹⁰ The higher the leverage, the more money the firm’s equity partners make.²¹¹ To achieve higher leverage, firms hire

200. HARPER, *supra* note 20, at 70.

201. *Id.* at 72.

202. *Id.*

203. BRUCE MACÉWEN, GROWTH IS DEAD: NOW WHAT? LAW FIRMS ON THE BRINK 15 (2013).

204. *The Am Law 100 2019*, AM. LAW. (May 2019).

205. HARPER, *supra* note 20, at 76.

206. *Id.* at 72.

207. *The Am Law 100 2019*, *supra* note 204. Average profits-per-partner was calculated using data listed for the top fifty firms by total revenue.

208. Under the “Cravath model,” firms “hire a large number of associates . . . so that only the most brilliant legal minds ascended to its partnership. (Historically, about one in twelve associates make partner.) . . . [Meanwhile,] the firm ma[kes] a killing by billing [associates] out at top-of-the-market rates.” Noam Scheiber, *The Last Days of Big Law: You Can’t Imagine the Terror When the Money Dries Up*, NEW REPUBLIC, <https://newrepublic.com/article/113941/big-law-firms-trouble-when-money-dries> [<https://perma.cc/TC96-P5BA>].

209. See HARPER, *supra* note 20, at 76–79. Harper refers to leverage, hourly rates, and billable hours as a “three-legged stool.” See *id.*

210. *Id.* at 77.

211. *Id.*

many more associates than they expect will be promoted to equity partnership (or even remain with the firm beyond a few years).²¹² Put simply, it is in firms' interest to hire many associates with the expectation to make few, if any, partner, because more associates means more profits for partners, and fewer partners means a larger share for each.²¹³ This practice has yielded considerable results. Since the creation of the Am Law 100, leverage ratios have grown considerably: in 1985, the average leverage ratio for the top fifty Am Law-ranked firms was 1.76; it doubled to 3.54 in 2010,²¹⁴ and it rose to 4.47 in 2018,²¹⁵ with, as noted above, the average profits per equity partner at \$2.54 million.²¹⁶

Second, firms' hourly rates have risen steadily both before and after the Great Recession of the late 2000s, with many firms raising their billing rates by 5% annually after the recession, and the top twelve firms raising rates more than 7%.²¹⁷ Finally, the third component of the Cravath model is high billable hour expectations. As discussed in Section II.C.1.a above, as law firms have commodified over the last thirty-five years, hour expectations have increased from no minimum billable hour requirements in the early 1980s to at or above 2,000 hours today.²¹⁸

Thus, as a result of the Cravath model, a firm achieves its success—i.e., maximizing revenue and profits per partner—by hiring large classes of associates each year and requiring them to work long hours for the years preceding their eligibility for partnership.²¹⁹ This model not only keeps equity partner wealth growing by the continuous influx of new junior associates but also leads to significant attrition such that few associates last long enough even to be considered for equity partner.²²⁰ As firms have adopted the Cravath model, they have reinvented themselves as profit-generating businesses by which only a few partners at the top truly benefit.²²¹

Even though firms produce considerable revenue, partners are not content with their existing wealth; they think they should be making more

212. *Id.*

213. Schiltz, *supra* note 13, at 901 (citing Ronald J. Gilson & Robert H. Mnookin, *Coming of Age in a Corporate Law Firm: The Economics of Associate Career Patterns*, 41 STAN. L. REV. 567, 584 (1989)).

214. HARPER, *supra* note 20, at 82.

215. *Am Law 100 2019*, *supra* note 204 (average leverage ratio of top fifty firms by total revenue).

216. *Id.*

217. HARPER, *supra* note 20, at 77.

218. *See supra* notes 166–168 and accompanying text.

219. HARPER, *supra* note 20, at 85–86; *cf. id.* at 90 (noting that the Cravath model “create[s] conditions that decrease opportunities for advancement and are hostile to any attorney’s search for a balanced life”).

220. *Id.*

221. *Id.*

money.²²² Consequently, firms' short-run focus on the maximization of annual profits has also become their "most important long-run goal."²²³

As partner profits and firm revenue have increased so too has lawyer distress and dissatisfaction. While firms and their equity partners have achieved staggering wealth, it has come at considerable costs as lawyer mental health and addiction issues have become pervasive.²²⁴ The added income (as well as the client expectations arising from higher billing rates) brings an assumed obligation to work longer hours, often at the expense of lawyers' health and personal lives.²²⁵ In other words, as set out in Section II.C above, law firms in general are undermining their lawyers' internal values and motivations that foster subjective well-being in favor of prioritizing the external values and motivations that correlate to emotional distress.²²⁶

It is likely that a "disturbingly large number" of Big Law lawyers would acknowledge that their exorbitant salaries have not brought them happiness.²²⁷ In fact, some likely would be willing to take less salary if it meant a more balanced life.²²⁸

Since money—profit generation and maximization—is at the heart of much of the distress and dissatisfaction within the profession,²²⁹ the answer to addressing such distress and dissatisfaction is not to provide addi-

222. MAC EWEN, *supra* note 203, at 21 ("Partners of all classes and genders [are] united on one front: They all think they should be making more money."). In one survey, "[f]ifty-eight percent of all partners said they should be better paid, and among that group, an overwhelming majority wants something more than a token raise. Ninety percent of the survey's respondents thought that their compensation should be increased by more than 10 percent, while 1 percent thought their pay should be doubled." *Id.* But see AM. BAR ASS'N COMM'N ON BILLABLE HOURS, ABA COMMISSION ON BILLABLE HOURS REPORT 2001–2002, at ix (2002), http://ilta.personifycloud.com/webfiles/productfiles/914311/FMPG4_ABABillableHours2002.pdf [<https://perma.cc/MQ7D-248D>] (finding an increasing number of lawyers would prefer a pay cut to increase quality of life rather than continuing to rely on the billable hour).

223. HARPER, *supra* note 20, at 96.

224. *Id.* ("[P]artner profits and attorney [depression and job] dissatisfaction have risen in tandem as big firms' lawyers make more money and enjoy it less. Those twin developments are not coincidental.")

225. *Id.* at 97.

226. See *supra* Section II.C.

227. HARPER, *supra* note 20, at 97.

228. *Id.* (arguing lawyers would accept a lower salary because "their work remains a persistently depressing experience, largely because it seems unfulfilling, unrelenting, or both"). But see Schiltz, *supra* note 13, at 904–05 ("Lawyers could enjoy a lot more life outside of work if they were willing to accept relatively modest reductions in their incomes. . . . But many of them do take the money. [They] choose to give up a healthy, happy, well-balanced life for a less healthy, less happy life dominated by work. And they do so merely to be able to make seven or eight times the national median income instead of five or six times the national income.")

229. See Schiltz, *supra* note 13, at 903 ("Money is at the root of virtually everything that lawyers don't like about their profession: the long hours, the commercialization, the tremendous pressure to attract and retain clients, the fiercely

tional financial incentives.²³⁰ Studies abound demonstrating that money, at a certain level below the median lawyer salary, does not increase happiness.²³¹ Nevertheless, firms have done just that: they have responded in recent years to increased lawyer distress, dissatisfaction, and attrition by increasing salaries. This has continued even in the wake of the Krill Study and the ABA's *The Path to Lawyer Well-Being*: in Summer 2018, many firms began to raise their starting salary for a first-year associate to \$190,000 (if not higher), with an eighth-year associate's salary far exceeding \$300,000.²³²

B. *Stigma and Barriers to Treatment*

Although awareness and understanding of mental illness have increased in recent years, it is still not often treated legitimately or seriously “either by businesses, by the health care system, or by our society.”²³³ This is true in the legal profession, in which “mental health ‘is not talked about openly’” and, for years, has been kept “underground.”²³⁴

competitive marketplace, the lack of collegiality and loyalty among partners, the poor public image of the profession, and even the lack of civility.”)

230. Indeed,

[l]ife satisfaction in the United States has been flat for fifty years even though GDP has tripled. Even scarier, measures of ill-being have not declined as gross domestic product has increased; they have gotten much worse. Depression rates have increased tenfold over the last fifty years in the United States. . . . Rates of anxiety have also risen.

MARTIN E.P. SELIGMAN, *FLOURISH: A VISIONARY NEW UNDERSTANDING OF HAPPINESS AND WELL-BEING* 223 (1st ed. 2011).

231. See LEVIT & LINDER, *supra* note 13, at 10–11.

232. Stacy Zaretsky, *Salary Wars Scorecard: Which Firms Have Announced Raises and Bonuses*, ABOVE L. (June 5, 2018, 1:46 PM), <http://abovethelaw.com/2018/06/salary-wars-scorecard-which-firms-have-announced-raises-2018/> [<https://perma.cc/TU8X-83XQ>]; see also Christine Simmons, *Milbank Boosts Associate Salaries with \$190k Starting Pay*, AM. LAW. (June 4, 2018), <http://www.law.com/americanlawyer/2018/06/04/milbank-boosts-associate-salaries-with-190k-starting-pay/> [<https://perma.cc/HZN2-GLHE>].

233. Stewart Friedman, *The Hidden Business Cost of Mental Illness*, HARV. BUS. REV. (Dec. 3, 2009), <http://hbr.org/2009/12/the-hidden-business-cost-of-me.html#> [<https://perma.cc/J24U-59DL>].

234. William Roberts, *When Counsel Needs Counseling*, WASH. LAW., Jan. 2018, at 20, <http://washingtonlawyer.dcbarr.org/january2018/index.php?startid=16#/p/16> [<https://perma.cc/74CM-Z852>] (quoting Arent Fox LLP partner David Dubrow); see also Zimmerman, *supra* note 5 (“‘Law firms have a culture of keeping things underground, a conspiracy of silence,’ [Dr. Daniel Angres, an associate professor of psychiatry at Northwestern University Feinberg School of Medicine] said. ‘There is a desire not to embarrass people, and as long as they are performing, it’s easier to just avoid it. And there’s a lack of understanding that addiction is a disease.’”). In a 2017 *New Yorker* profile, former Acting Attorney General Sally Yates discussed her father’s suicide in 1986, for which she said: “‘Tragically, the fear of stigma then associated with depression prevented him from getting the treatment he needed.’” Ryan Lizza, *Why Sally Yates Stood up to Trump*, NEW YORKER (May 29, 2017), <http://www.newyorker.com/magazine/2017/05/29/why-sally-yates-stood-up-to-trump> [<https://perma.cc/35ND-B9X7>].

The profession recognizes that this stigma exists. A 2018 survey of managing partners and human resources personnel at Am Law 200 law firms revealed that stigma associated with mental illness and substance abuse is prevalent in the profession.²³⁵ In particular, 81% of those surveyed believe a stigma exists against those suffering from depression, and 75% believe a stigma exists against those suffering from anxiety.²³⁶ The numbers are even starker for those with substance abuse problems, with 94% of those surveyed believing a stigma exists against both those suffering from alcohol addiction and drug addiction.²³⁷

The stigma pervades the profession in a variety of ways. First, there is fear that lawyers struggling with mental health or addiction disorders are incompetent, incapable, or undesirable. This is succinctly captured by the comments of the chairman of an Am Law 100 law firm, who expressed reticence to follow other firms in having an on-site psychologist because of the fear that “our competitors will say we have crazy lawyers.”²³⁸

Second, the overwhelming majority of state bars ask questions relating to applicants’ mental health or substance use. Many states have historically asked bar applicants whether they had any history of mental health treatment. Even after a 2014 Department of Justice settlement with the Louisiana Supreme Court in which the State of Louisiana agreed to remove questions from its bar application about an applicant’s mental health history, several states still ask whether applicants have any such history.²³⁹

As of March 2020, out of the fifty states, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands,²⁴⁰

235. ALM INTELLIGENCE, 2018 MENTAL HEALTH AND SUBSTANCE ABUSE SURVEY (2018).

236. *Id.*

237. *Id.* Additionally, the stigma for drug use may be further internalized; in the Krill Study, less than 27% of participants responded to questions concerning drug use, compared with approximately 90% for questions relating both to mental health and alcohol use. Krill et al., *supra* note 10, at 48–50; *see also id.* at 52 (“Because the questions in the survey asked about intimate issues, including issues that could jeopardize participants’ legal careers if asked in other contexts (e.g., illicit drug use), the participants may have withheld information or responded in a way that made them seem more favorable.”).

238. Randazzo, *supra* note 22 (internal quotation marks omitted).

239. *See* Alyssa Dragnich, *Have You Ever . . . ? : How State Bar Association Inquiries into Mental Health Violate the Americans with Disabilities Act*, 80 BROOK. L. REV. 677, 677 (2015).

240. Applications are on file with the author; the following information is based on the most recent attainable applications. For additional, summary information about U.S. bar applications, see generally *Bar Admission Questions Pertaining to Mental Health, School/Criminal History, and Financial Issues*, JUDGE DAVID L. BAZELON CTR. MENTAL HEALTH L., <http://bazelon.org/wp-content/uploads/2019/12/50-State-Survey-To-Post.pdf> [<https://perma.cc/N9BF-7BP8>] (last updated Feb. 2019); David Jaffe & Janet Stearns, *Conduct Yourselves Accordingly: Amending Bar Character and Fitness Questions to Promote Lawyer Well-Being*, 26 PROF. LAW. 3 (2020).

all but nine jurisdictions ask some question related to the bar applicant's mental health or substance use.²⁴¹ In particular, twenty-eight ask questions about the applicant's current mental health or substance abuse,²⁴² with an additional nine asking about the applicant's past as well as current mental health or substance abuse.²⁴³ Four states ask questions regarding past and current substance use but ask only about current mental health issues.²⁴⁴ Two states have questions about current substance abuse but do not have any questions regarding mental health,²⁴⁵ and an additional state asks about substance abuse treatment but not about mental health.²⁴⁶ Finally, two states ask about past and current instances of mental illness but only current instances of substance abuse.²⁴⁷

As one example, the Michigan bar application asks the following questions of its applicants:

Have you ever used, or been addicted to or dependent upon, intoxicating liquor or narcotic or other drug substances . . . [or h]ave you ever had, been treated or counseled for, or refused treatment or counseling for, a mental, emotional, or nervous condition which permanently, presently or chronically impairs or distorts your judgment, behavior, capacity to recognize reality or ability to cope with ordinary demands of life[; . . . or] which permanently, presently or chronically impairs your ability to exercise such responsibilities as being candid and truthful, handling funds, meeting deadlines, or otherwise representing the interest of others?²⁴⁸

Given the stigma within the profession, as well as the “unduly intrusive” questions in state bar applications that “likely . . . deter” treatment,²⁴⁹ it is no surprise that lawyers are reticent to seek treatment. Lawyers with mental health and addiction issues have “pervasive fears surrounding their

241. Arizona, California, Connecticut, Illinois, Massachusetts, New York, Tennessee, Virginia, and Washington.

242. Alabama, Alaska, Colorado, Delaware, District of Columbia, Guam, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Northern Mariana Islands, Oklahoma, Puerto Rico, Rhode Island, South Carolina, South Dakota, Vermont, Virgin Islands, and Wyoming.

243. Florida, Georgia, Maine, Michigan, Minnesota, Missouri, Nevada, Oregon, and Utah.

244. Arkansas, Iowa, New Jersey, and Texas.

245. California, Hawaii, and Pennsylvania.

246. Wisconsin.

247. Ohio and West Virginia.

248. STATE BAR OF MICH., CHARACTER & FITNESS APPLICATION PREVIEW, <https://www.michbar.org/file/professional/pdfs/preview-app.pdf> [https://perma.cc/EBB5-6V8F] (last visited May 7, 2020).

249. Conf. of Chief Justices, Res. 5 (Feb. 13, 2019), https://www.ncsc.org/_data/assets/pdf_file/0027/23589/07312019-implementation-clear-communications-streamlined-procedures.pdf [https://perma.cc/2TTV-QDGA].

reputation” that prevent them from availing themselves of the help that they need.²⁵⁰ Accordingly, the two most common barriers for treatment for substance abuse are: (1) “not wanting others to find out they needed help”; and (2) “concerns regarding privacy or confidentiality.”²⁵¹

The statistics demonstrate that these are real barriers to meaningful treatment: only 6.8% of lawyers surveyed in the Krill study reported seeking treatment for substance use; the two most common barriers—among those who sought and have not sought treatment—are “not wanting others to find out they needed help” and “concerns regarding privacy or confidentiality.”²⁵² The results are even starker for law students. Only 4% of respondents ever sought help for alcohol or substance use.²⁵³ And while 42% of respondents indicated that they thought they needed help for mental health issues, only approximately half have done so.²⁵⁴ Further, the greatest reported barriers to seeking treatment include “potential threat to job or academic status,” “potential threat to bar admission,” and “social stigma.”²⁵⁵

IV. THE BUSINESS CASE FOR PROMOTING AND PRIORITIZING LAWYER WELL-BEING

As discussed in Part I above, calls have been made to humanize the legal profession for decades. However, throughout most of that time, as *The Path to Lawyer Well-Being* acknowledged, the profession at large generally has “turned a blind eye” to the pervasiveness of and not done enough to address mental health and addiction issues among its members.²⁵⁶ As discussed in Section II.C above, many aspects of the law firm model negatively impact lawyer subjective well-being, which inversely correlates to depression and mental distress. And, as argued in Part III above, law firms and the profession in general have turned such a “blind eye” and ignored the moral case for promoting lawyer well-being because they have not had the financial incentives to change the existing law firm model.

This Part demonstrates how and why it is in law firms’ business interest to promote and prioritize their lawyers’ well-being.²⁵⁷ First, this Sec-

250. Krill et al., *supra* note 10, at 51.

251. *Id.* at 50.

252. *Id.*

253. Organ et al., *supra* note 68, at 140. As noted in the text accompanying notes 151–153 above, a significant plurality of law students reported binge drinking, were at risk for alcoholism, or used illicit street drugs or prescription drugs without a prescription.

254. *Id.*

255. *Id.* at 141 Help-Seeking tbl.1.

256. See generally THE PATH TO LAWYER WELL-BEING, *supra* note 15, at 11–12 (observing that the profession has “not done enough to help, encourage, or require lawyers to be, get, or stay well”).

257. To date, no study has been done to monetize the cost to the legal profession attributable to untreated mental health and addiction disorders, or the corresponding financial gains to the profession by prioritizing lawyer well-being.

tion argues that law firms incur significant direct and indirect costs related to untreated lawyer mental health and addiction issues. Second, this Section summarizes some of the initial steps taken by firms in recent years to begin to acknowledge and address lawyer well-being issues. Finally, this Section argues that while current efforts are important first steps, the time is ripe for firms to benefit financially from enacting lasting and meaningful change to promote and prioritize lawyer well-being.

A. *The Costs of Undermining Lawyer Well-Being*

All professions incur significant costs due to untreated employee mental health and addiction issues. Mental health disorders are by far the most burdensome illnesses to United States employers, costing over \$200 billion each year—well exceeding the cost burden of heart disease, cancer, stroke, and obesity.²⁵⁸ Further, the cost of alcohol abuse in the United States is \$249 billion, with 72% of that total cost—or over \$179 billion—resulting from losses in workplace productivity.²⁵⁹

As recognized by the World Health Organization, the “consequences of mental health problems in the workplace” include, among other things: poor work performance (including “reduction in productivity and output,” “increase in error rates,” and “poor decision-making”) as well as an “increase in disciplinary problems”; absenteeism as well as “loss of motivation and commitment”; “burnout . . . [and] diminishing returns”; and turnover.²⁶⁰ That is no different in law firms, where the costs that firms experience due to untreated lawyer mental health and addiction issues include: (1) lawyer disciplinary actions; (2) absenteeism and presenteeism; and (3) costs associated with high attrition. Each is discussed in turn below.

Accordingly, this Section will look to as instructive studies in other and across professions.

258. See Ron Z. Goetzel et al., *Mental Health in the Workplace: A Call to Action Proceedings from the Mental Health in the Workplace—Public Health Summit*, 60 J. OCCUPATIONAL & ENVTL. MED. 322, 323 (2018) (noting that mental health disorders cost American employers over \$200 billion a year); cf. Matthew Jones, *How Mental Health Can Save Businesses \$225 Billion Each Year*, INC. (June 16, 2016), <http://www.inc.com/matthew-jones/how-mental-health-can-save-businesses-225-billion-each-year.html> [<https://perma.cc/S2M9-JYFK>]. The World Health Organization estimates that depression and anxiety disorders cost the global economy over \$1 trillion annually. See Dan Chisholm et al., *Scaling-up Treatment of Depression and Anxiety: A Global Return on Investment Analysis*, 3 LANCET PSYCH. 415, 419 (2016).

259. *Excessive Drinking Is Draining the U.S. Economy*, CTR. DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/features/costsofdrinking/index.html> [<https://perma.cc/4B6P-DVYB>] (last visited May 7, 2020).

260. NATIONS FOR MENTAL HEALTH, WORLD HEALTH ORG., MENTAL HEALTH AND WORK: IMPACT, ISSUES AND GOOD PRACTICES 8–9 (2000), https://www.who.int/mental_health/media/en/712.pdf [<https://perma.cc/84WJ-YRQR>].

1. *Lawyer Discipline: Malpractice and Sanctions*

There can be no question that lawyers who have untreated mental health of addiction disorders can engage in conduct that gives rise to lawyer discipline or malpractice actions.²⁶¹ For instance, according to the ABA, “40%–70% of disciplinary proceedings and malpractice claims against lawyers involve substance use, depression, or both.”²⁶² Further, a separate ABA survey covering New York and California found that “50 to 70 percent of all disciplinary cases involved alcoholism.”²⁶³ Reports from other states find similar percentages.²⁶⁴

2. *Absenteeism and “Presenteeism”*

In addition to the direct costs of health care and, for lawyers, malpractice and sanctions, firms suffer indirect costs from lawyers struggling with mental health issues. According to one study, businesses suffer over \$102 billion in indirect costs annually due to the absenteeism and “presenteeism” of their depressed employees.²⁶⁵ Absenteeism is the amount of work (in hours or days) an employee loses due to illness or otherwise being absent from work.²⁶⁶ Presenteeism, as the name suggests, is the amount

261. See, e.g., Badgerow, *supra* note 51, at 2 (noting that an “alarming number” of complaints against lawyers for ethics violations “involve lawyers’ use of and dependence upon drugs and alcohol . . . and descent into depression”).

262. THE PATH TO LAWYER WELL-BEING, *supra* note 15, at 8.

263. Carol Langford, *Depression, Substance Abuse, and Intellectual Property Lawyers*, 53 U. KAN. L. REV. 875, 902 (2005) (citing Allan, *supra* note 11, at 268).

264. See, e.g., ATTORNEY ATT’Y REGISTRATION & DISCIPLINARY COMM’N, SUPREME COURT OF ILL., ANNUAL REPORT OF 2016, at 35 (2017), <https://www.iardc.org/AnnualReport2016.pdf> [<https://perma.cc/FN2K-XH6V>] (indicating that “thirty-three of the 107 lawyers disciplined, or 30.8%, had at least one substance abuse or mental impairment issue”); LAWYERS’ FUND FOR THE STATE OF N.Y., ANNUAL REPORT OF THE BOARD OF TRUSTEES FOR CALENDAR YEAR 2016, at 14 (2017), <http://www.nylawfund.org/AR2016%20.pdf> [<https://perma.cc/8SBC-V95B>] (noting that “causes of [lawyer] misconduct are often traced to alcohol, drug abuse, and gambling”); cf. *Indiana Judges & Lawyers Assistance Program, About JLAP*, STATE IND., <https://www.in.gov/judiciary/ijlap/2361.htm> [<https://perma.cc/BY5H-NFF9>] (last visited May 7, 2020) (noting that 85% of calls are about addiction or mental health issues).

265. Paul E. Greenberg et al., *The Economic Burden of Adults with Major Depressive Disorder in the United States (2005 and 2010)*, 76 J. CLINICAL PSYCHIATRY 155, 159 tbl.2 (2015) (finding that over \$23 billion of such costs is attributable to absenteeism and nearly \$79 billion attributable to presenteeism); cf. Sameer Kumar et al., *Operational Impact of Employee Wellness Programs: A Business Case Study*, 58 INT’L J. PRODUCTIVITY & PERFORMANCE MGMT. 581, 583 (2009) (finding that “[d]epressed employees” indirectly cost employers \$52 billion each year, including \$37 billion attributable to absenteeism and \$15 billion attributable to presenteeism. Moreover, active disengagement by employees is estimated to cost businesses more than \$500 billion annually. See SHAWN ACHOR, *BIG POTENTIAL: HOW TRANSFORMING THE PURSUIT OF SUCCESS RAISES OUR ACHIEVEMENT, HAPPINESS, AND WELL-BEING* 102 (2018) [hereinafter, ACHOR, *BIG POTENTIAL*]).

266. See, e.g., Kathryn Rost et al., *The Effect of Improving Primary Care Depression Management on Employee Absenteeism and Productivity: A Randomized Trial*, 42 MED. CARE 1202, 1204 (2004).

of work an employee loses while at work because they are unproductive or under-productive.²⁶⁷ Mental health and substance abuse issues affect both.

Indeed, studies overwhelmingly demonstrate that “[d]epression substantially reduces an employee’s ability to work,” as it increases both absenteeism and presenteeism.²⁶⁸ According to one study, depression doubles the annual sickness days among employees and results in 2.3 days per month of lost productivity.²⁶⁹ Another study found that employees with mental illness reported losing 4.3–5.5 days of productive work in the prior thirty days.²⁷⁰ On average, workers with depression have 3.7 times more unproductive time at work per week than those without depression,²⁷¹ and depressed employees generally have “trouble concentrating, greater difficulty in making decisions, and decreased interest in work.”²⁷²

In addition to lost workdays and lost productivity, the cost of absenteeism and presenteeism to employers can be monetized. For example, a 2003 study found worker absenteeism and presenteeism due to depression results in costs of \$44 billion in 2002 dollars to employers.²⁷³ Additionally, according to another study, 71% of employer expenditures on employee mental health issues are for lost productivity due to presenteeism.²⁷⁴

Moreover, the combination of long hours and all-day availability invariably leads to a lack of sleep.²⁷⁵ Not only does fatigue compromise effectiveness, but sustained lack of sleep both leads to cognitive impairment

267. See, e.g., *id.*

268. *Id.* at 1202.

269. Philip S. Wang et al., *Effects of Major Depression on Moment-in-Time Work Performance*, 161 AM. J. PSYCHIATRY 1885, 1888 (2004).

270. Ronald S. Kessler et al., *The Effects of Chronic Medical Conditions on Work Loss and Work Cutback*, 43 J. OCCUPATIONAL & ENVTL. MED. 218, 220 tbl.2 (2001); see also Gregory E. Simon et al., *Recovery from Depression, Work Productivity, and Health Care Costs Among Primary Care Patients*, 22 GEN. HOSP. PSYCHIATRY 153, 153 (2000) (noting that “current depression is associated with an increase of 2 to 4 disability days per month”); see also *id.* at 154 (“[D]epression is responsible for a tremendous economic burden on employers and insurers.”).

271. Walter F. Stewart et al., *Cost of Lost Productive Work Time Among US Workers with Depression*, 289 JAMA 3135, 3140 (2003).

272. See Kumar et al., *supra* note 265, at 583; see also Wang et al., *supra* note 269, at 1887 (finding that major depression “was associated with decrements of approximately 12 points in task focus and approximately 5 points in productivity on their 0-100 scales . . . equivalent to a 0.4 standard deviation increase in task focus and a 0.3 standard deviation decrease in productivity”).

273. Stewart et al., *supra* note 271, at 3141 tbl.4.

274. Ron Z. Goetzel et al., *Health, Absence, Disability, and Presenteeism Cost Estimates of Certain Physical and Mental Health Conditions Affecting U.S. Employers*, 46 J. OCCUPATIONAL & ENVTL. MED. 398, 408 tbl.4B (2004).

275. Lack of sleep is a natural outgrowth of long hours and total accessibility, and lack of sleep is seen as the cost of exceptional client service. See, e.g., Deborah L. Rhode, *Balanced Lives for Lawyers*, 70 FORDHAM L. REV. 2207, 2211 (2002) (“A common assumption is that client service requires total accessibility.”); cf. Susan Saab Fortney, *The Billable Hours Derby: Empirical Data on the Problems and Pressure Points*, 33 FORDHAM URB. L.J. 171, 182 (2005) (reporting on survey finding 35.7%

and can lead to or exacerbate depression.²⁷⁶ With respect to the compromising effectiveness, fatigue “impair[s] judgment and decision making.”²⁷⁷ For instance, a person who averages four hours of sleep a night for four or five nights will be as cognitively impaired as someone who is legally intoxicated or who has been awake for twenty-four straight hours.²⁷⁸ “Within ten days, the level of impairment is the same as . . . going forty-eight straight hours without sleep,” which significantly “impedes judgment, interferes with problem-solving,” and delays reaction times.²⁷⁹

As for causing or exacerbating depression, lack of sleep is a “major risk factor in the onset, recurrence, chronicity, and severity” of major depressive episodes.²⁸⁰ Accordingly, sleep habits are important and modifiable risk factors to help prevent depression or achieve and maintain depression remission.²⁸¹

Given law firms’ reliance on the billable hour as the measure of both lawyer productivity and firm profitability, presenteeism could be seen as a way to maximize profits—after all, a lawyer who can bill more for a task will make more for the firm. However, as discussed below, clients are demanding that firms increase efficiency—both in their services and the methods for which they bill them—thus making presenteeism costly for firms.

of lawyers reported sleeping an average of five-to-six hours per night and 3% reported sleeping an average of less than five hours per night).

276. JEAN M. TWENGE, *iGEN: WHY TODAY’S SUPER-CONNECTED KIDS ARE GROWING UP LESS REBELLIOUS, MORE TOLERANT, LESS HAPPY—AND COMPLETELY UNPREPARED FOR ADULTHOOD—AND WHAT THAT MEANS FOR THE REST OF US* 116 (2017) (“Sleep deprivation is linked to myriad issues, including compromised thinking and reasoning, susceptibility to illness, increased weight gain, and high blood pressure. Sleep deprivation also has a significant effect on mood: people who don’t sleep enough are prone to depression and anxiety.”).

277. RHODE, *supra* note, at 166; *see also* Austin, *supra* note 156, at 837 (arguing that since “sleep deprivation causes loss in cognitive skill—diminished attention, working memory capacity, executive function, quantitative skills, logical reasoning ability, mood, and both fine and gross motor control—law students . . . and lawyers should make adequate regular sleep a priority”).

278. Bronwyn Fryer, *Sleep Deficit: The Performance Killer*, HARV. BUS. REV. (Oct. 2006), <https://hbr.org/2006/10/sleep-deficit-the-performance-killer> [<https://perma.cc/TU23-D7NK>].

279. *Id.*

280. Jean Twenge et al., *Age, Period, and Cohort Trends in Mood Disorder Indicators and Suicide-Related Outcomes in a Nationally Representative Dataset, 2005–2017*, 128 J. ABNORMAL PSYCHOL. 185, 197 (2019); *see also* Peter L. Franzen & Daniel J. Buysse, *Sleep Disturbances and Depression: Risk Relationships for Subsequent Depression and Therapeutic Implications*, 10 DIALOGUES CLINICAL NEUROSCI. 473, 479 (2008); *see also* Charlotte Fritz et al., *Embracing Work Breaks: Recovering from Work Stress*, 42 ORG. DYNAMICS 274, 275 (2013) (“Employees who do not completely recover during the weekend (i.e., they feel that a free weekend is not enough time to recover from the work week) over time are at an increased risk for depressive symptoms, fatigue, energy loss, and cardiovascular disease.”).

281. Franzen & Buysse, *supra* note 280, at 479.

3. *Replacement Costs and High Attrition*

Mental health and addiction issues can contribute to lawyer attrition. In general, attrition rates among lawyers are high. In 2016, law firms lost an average of 16% of associates.²⁸² As a general matter, 44% of associates depart within three years of being hired, and 75% depart within five years.²⁸³ Moreover, a 2016 survey found that 40% of lawyers surveyed were “likely” or “very likely” to be looking for a new job within the next twelve months.²⁸⁴ According to one estimate, the cost of replacing a departing associate ranges from \$200,000 to \$500,000—roughly one-and-a-half to two times the annual salary of that lawyer.²⁸⁵ This cost—which could include advertising, recruiters’ time and salary, interviewing expenses, and training—does not account for implicit costs. Such costs, including lost productivity time, covering the work of the departing lawyer, and disrupted intrafirm and client relationships, “can dwarf the explicit expenses.”²⁸⁶ Thus, taking the midpoint and ignoring the implicit cost of attrition, associate attrition costs a firm with 100 associates \$5.6 million and a firm with 500 \$28 million annually.²⁸⁷

B. *Incremental Efforts to Address Lawyer Well-Being*

In the wake of the Task Force’s 2017 call to action in its *The Path to Lawyer Well-Being* report, some law firms and other legal employers have

282. NALP FOUND., UPDATE ON ASSOCIATE ATTRITION 12 tbl.6 (2017).

283. *Id.* at 11 tbl.5.

284. 2016 *Lawyer Satisfaction Survey: By the Numbers*, LAW360 (Sept. 2, 2016), <https://www.law360.com/articles/833246/law360-s-2016-lawyer-satisfaction-survey-by-the-numbers> [<https://perma.cc/X35K-52N8>].

285. LEVIT & LINDER, *supra* note 13, at 162 (citation omitted); *see also* Leslie Larkin Cooney, *Walking the Legal Tightrope: Solutions for Achieving a Balanced Life in Law*, 478 S.D. L. REV. 421, 427 (2010) (“The average cost to a law firm when an associate leaves has been documented at \$315,000; while others estimate that it costs a firm 150% of a person’s annual salary when she quits.”).

286. LEVIT & LINDER, *supra* note 13, at 162 (citation omitted); *see also* RHODE, *supra* note 166, at 15; Peter H. Huang & Rick Swedloff, *Authentic Happiness & Meaning at Law Firms*, 58 SYR. L. REV. 335, 336 (2008) (“Attrition of associates is costly to law firms, in terms of money, morale, reputation, and time.”); Seligman et al., *supra* note 13, at 33 (“Unhappy associates fail to achieve their full potential at a cost to them, their firms, their clients, and even their families.”).

287. 100 lawyers x 16% = 16; 16 x \$350,000 = \$5,600,000. 500 lawyers x 16% = 80; 80 x \$350,000 = \$28,000,000.

Further, firms that fail to adequately promote the well-being of their lawyers may face the cost of attrition when that failure is seemingly most acute. For example, after Gabe McConaill’s death (*see supra* notes 1–4 and accompanying text), “a number of employees” reportedly left his firm’s Los Angeles office, purportedly because “they thought that the firm’s leadership did not respond sufficiently in the wake of [his] death,” and that “there was no clear commitment to support employees who . . . found [the firm’s] demanding corporate culture an unwelcome environment in which to raise a hand” to seek help. Lilah Raptopoulos & James Fontanella Khan, *The Trillion-Dollar Taboo: Why It’s Time to Stop Ignoring Mental Health at Work*, FIN. TIMES (July 10, 2019), <https://www.ft.com/content/1e8293f4-a1db-11e9-974c-ad1c6ab5efd1> [<https://perma.cc/P3PL-MHN7>].

begun to, at least, recognize the mental health and addiction issues in the profession, and some have taken incremental steps to promote the well-being of their lawyers. While first steps are helpful toward addressing the crisis, there is still a long way for the profession to go to enact meaningful and lasting change.²⁸⁸

As an initial step, some firms have at least begun to acknowledge that mental health and addiction problems exist in the profession. For instance, in a Summer 2018 survey of managing partners and human resources officials at Am Law 200 law firms on mental health and substance abuse, 86% of those surveyed either agreed or strongly agreed that depression occurs at their firm, and 93% agreed or strongly agreed that anxiety occurs at the firm.²⁸⁹ Further, 90% agreed or strongly agreed that alcohol abuse occurs at the firm, and 48% agreed or strongly agreed that drug abuse occurs at the firm.²⁹⁰ And these firms recognize that their cultures contribute to these problems: when asked to rank the “causes of substance abuse and mental health problems in the law firm environment,” 79% of respondents listed “stress and workload” as the principle cause.²⁹¹

As an additional step, in September 2018 the ABA launched a campaign seeking to “raise awareness, facilitate a reduction in the incidence of problematic substance use and mental health distress and improve lawyer well-being.”²⁹² To that end, the ABA developed a “seven-point framework for building a better future” for lawyer well-being²⁹³ and requested firms

288. Patrick Krill, *Progress, Not Perfection, Is Key to Law Firms' Mental Health Programs*, LAW.COM (June 12, 2019), <https://www.law.com/2019/06/12/progress-not-perfection-is-key-to-law-firms-mental-health-programs/> [<https://perma.cc/GH6A-WR23>] [hereinafter Krill, *Progress, Not Perfection*] (noting the “huge canyon between where the profession is now and where we might otherwise want it to be”).

289. ALM INTELLIGENCE, *supra* note 235.

290. *Id.*

291. *Id.* In conducting the survey, the surveyors “noted that ‘discussing substance abuse and mental health issues has often been considered taboo in the legal industry.’” Patrick Krill, *ALM Survey on Mental Health and Substance Abuse: Big Law's Pervasive Problem*, LAW.COM (Sept. 14, 2018), <https://www.law.com/2018/09/14/alm-survey-on-mental-health-and-substance-abuse-big-laws-pervasive-problem/> [<https://perma.cc/CRX4-RBZY>]. The survey yielded a response rate of only 15%, which “would seem to suggest that the taboo is alive and well.” *Id.*; *see also supra* notes 235–237 and accompanying text.

292. *See ABA Launches Pledge Campaign to Improve Mental Health and Well-Being of Lawyers*, AM. B. ASS'N (Sept. 10, 2018), <https://www.americanbar.org/news/aba-news/aba-news-archives/2018/09/aba-launches-pledge-campaign-to-improve-mental-health-and-well-b/> [<https://perma.cc/SL3P-QERD>] [hereinafter *ABA Launches Pledge Campaign*].

293. These seven points are: (1) “Provide enhanced and robust education to lawyers and staff on topics related to well-being, mental health, and substance use disorders”; (2) “Disrupt the status quo of drinking-based events”; (3) “Develop visible partnerships with outside resources committed to reducing substance use disorders and mental health distress in the profession . . .”; (4) “Provide confidential access to addiction and mental health experts and resources, including free, in-house, self-assessment tools”; (5) “Develop proactive policies and protocols to support assessment and treatment of substance use and mental health problems, in-

sign a pledge of support for the ABA's campaign. The pledge provides as follows:

Recognizing that substance use and mental health problems represent a significant challenge for the legal profession, and acknowledging that more can and should be done to improve the health and well-being of lawyers, we the attorneys of [FIRM] hereby pledge our support for this innovative campaign and will work to adopt and prioritize its seven-point framework for building a better future.²⁹⁴

Thirteen law firms initially signed the pledge upon its September 2018 issuance.²⁹⁵ The ABA called upon "all legal employers" to take the pledge by January 1, 2019;²⁹⁶ through May 2020, only 133 law firms (and fifty other organizations) had done so.²⁹⁷

In addition to acknowledging mental health and addiction issues and pledging to take theoretical steps to improve lawyer well-being, firms have

cluding a defined back-to-work policy following treatment"; (6) "Actively and consistently demonstrate that help-seeking and self-care are core cultural values, by regularly supporting programs to improve physical, mental[,] and emotional well-being"; and (7) "Highlight the adoption of this well-being framework to attract and retain the best lawyers and staff." See *Presentation, Challenging the Status Quo: A Campaign of Innovation to Improve the Substance Use and Mental Health Landscape of the Legal Profession*, AM. B. ASS'N, https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_working_group_pledge_and_campaign.authcheckdam.PDF [<https://perma.cc/WF7X-P7FT>] (last visited May 7, 2020).

294. AM. BAR ASS'N, PLEDGE COMMITMENT FORM 1, https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_working_group_pledge_commitment_form.authcheckdam.pdf [<https://perma.cc/M67S-VJ6S>] (last visited May 7, 2020).

295. The law firms are:

Akin Gump Strauss Hauer & Feld LLP; Corette Black Carlson & Mickelson P.C.; Duane Morris LLP; Honigman Miller Schwartz & Cohn LLP; Latham & Watkins LLP; Morgan, Lewis & Bockius LLP; Nixon Peabody LLP; Perkins Coie LLP; Reed Smith LLP; Schiff Hardin LLP; Seyfarth Shaw LLP; Snell & Wilmer LLP; and Wiley Rein LLP.

ABA *Launches Pledge Campaign*, *supra* note 292.

296. *Id.*

297. *Working Group to Advance Well-Being in the Legal Profession*, AM. B. ASS'N, https://www.americanbar.org/groups/lawyer_assistance/working-group_to_advance_well-being_in_legal_profession/ [<https://perma.cc/Y4ST-4G6Q>] (last visited June 1, 2020). Interestingly, perhaps in a sign of a change of the times, the firm whose chairman warned of client perception of employing "crazy lawyers" is one of the signatories to the ABA's pledge. *Id.*; cf. *OnAir with Akin Gump: Mental Health & Well-Being in the Legal Industry with Kim Koopersmith, Patrick Krill*, AKIN GUMP (June 18, 2019), <https://www.akingump.com/en/news-insights/mental-health-well-being-in-the-legal-industry-with-kim.html> [<https://perma.cc/6GQW-ZKAJ>] (in an interview with the chairman of an Am Law 100 firm, the creator of the well-being pledge describes how he "was essentially laughed off the stage as being a well-intentioned idiot" when he first proposed it to a group of lawyers a few years prior to its launch).

been beginning to take concrete steps to address them,²⁹⁸ with some efforts even predating the formal call to action in *The Path to Lawyer Well-Being*. These programs include continuing education courses, visiting speakers, online resources, and social opportunities promoting healthy lifestyles, as well as employee assistance programs and direct access to professional services.²⁹⁹ For instance, since 2016, Kirkland & Ellis has offered yoga, meditation, and wellness training to its lawyers.³⁰⁰ In 2017, the New York and Washington, D.C. offices of Hogan Lovells started offering on-site psychologists to their employees;³⁰¹ also in 2017, Akin Gump Strauss Hauer & Feld began offering its lawyers the services of on-site behavioral assistance counselors as part of its overall “Be Well” program, which it started the year before.³⁰² Further, in 2019, Morgan Lewis launched an employee well-being program entitled “ML Well,” and created a “Director of Employee Well-Being” position.³⁰³

Moreover, beyond firms themselves, some state bars have taken action to eliminate questions on bar applications relating to an applicant’s mental health history. In February 2019, the Conference of Chief Justices, in recognition that questions about mental health history, diagnoses, or treatment are “unduly intrusive” and “likely to deter individuals from seeking mental health counseling and treatment,” passed a resolution urging state and territorial bar authorities to eliminate such questions from bar applications.³⁰⁴ The conference resolved that it is reasonable to ask about an applicant’s mental health history “only . . . if the applicant has engaged in conduct or behavior and a mental health condition has been offered or shown to be an explanation for such conduct or behavior.”³⁰⁵ Consistent

298. See generally Dan Packel, *Law Firms Tackle Mental Health, One Initiative at a Time*, AM. LAW. (June 17, 2019), <https://www.law.com/americanlawyer/2019/06/17/law-firms-tackle-mental-health-one-initiative-at-a-time/> [<https://perma.cc/ZEG6-VZC6>] (summarizing law firms’ programs and other steps to improve lawyer and staff mental health and wellness).

299. See *id.*

300. Claire Bushey, *Kirkland & Ellis to Offer Wellness Training to All U.S. Lawyers*, CRAI’S CHI. BUS. (May 2, 2016), <https://www.chicagobusiness.com/article/20160502/NEWS04/160509972/kirkland-ellis-to-offer-wellness-training-to-all-u-s-lawyers> [<https://perma.cc/TB8X-SQAM>].

301. Randazzo, *supra* note 22.

302. Ryan Lovelace, *Akin Gump Adds On-Site Counseling as Firms Fret over Mental Health*, NAT’L L.J. (May 15, 2017), <http://www.law.com/nationallawjournal/2018/05/15/akin-gump-adds-on-site-counseling-as-firms-fret-over-mental-health/> [<https://perma.cc/7AY8-5YMX>].

303. *Morgan Lewis Launches ML Well Program*, MORGAN LEWIS (Mar. 18, 2019), <https://www.morganlewis.com/news/morgan-lewis-launches-ml-well-program> [<https://perma.cc/V48C-SE5T>].

304. Conf. of Chief Justices, Res. 5, *supra* note 249.

305. *Id.* In August 2015, the ABA adopted a similar resolution, which called upon state bars to “eliminate any questions that ask about mental health history, diagnoses, or treatment and instead focus questions on conduct or behavior that impairs an applicant’s ability to practice law in a competent, ethical, and professional manner.” Am. B. Ass’n Res. 102 (Aug. 3, 2015).

with the conference's resolution, in 2019 three states—Connecticut,³⁰⁶ Virginia,³⁰⁷ and Wisconsin³⁰⁸—removed questions relating to applicants' mental health history (except when offered as a defense to conduct). Further, California and New York began examining whether they should remove such questions from their respective bar applications.³⁰⁹ As a consequence of these examinations, in July 2019 California enacted legislation prohibiting its state bar from seeking applicants' mental health records beginning on January 1, 2020,³¹⁰ and on March 1, 2020, New York Court of Appeals Chief Justice Janet DiFiore announced that mental health-related questions would be removed from bar applications effective immediately.³¹¹

These pioneering steps are a helpful—and much needed—start to addressing lawyer mental health and addiction issues and well-being issues more generally.³¹² However, more firms and legal employers need to take

306. See Connecticut Bar Examining Committee, CONN. JUD. BRANCH, <https://www.jud.ct.gov/cbec/instadmisap.htm#Forms> [<https://perma.cc/EKF5-4QKQ>] (last visited May 7, 2020). See generally Editorial, *Long Overdue Step Taken to Remove Mental Health Stigma in Law*, CONN. L. TRIB. (Apr. 12, 2019), <https://www.law.com/ctlawtribune/2019/04/12/long-overdue-step-taken-to-remove-mental-health-stigma-in-law/> [<https://perma.cc/9FXM-WDZT>].

307. *Sample Forms*, VA. BD. B. EXAMINERS, <http://barexam.virginia.gov/misc/resources/samples.html> [<https://perma.cc/49YH-AGEY>] (last visited May 7, 2020). The Virginia State Bar removed questions relating to mental health history and treatment in response to organized law student effort for it to do so. Justin Mattingly, *Virginia Panel Scraps Mental Health Question After Law School Student Push*, RICHMOND TIMES-DISPATCH (Feb. 8, 2019), https://www.richmond.com/news/local/education/virginia-panel-scraps-mental-health-question-after-law-school-student/article_36e9b3-078c-5e12-b748-762555b8f081.html [<https://perma.cc/T8H7-WA3N>].

308. See generally *For Attorneys: Admission to the Practice of Law in Wisconsin*, WIS. CT. SYS., <https://www.wicourts.gov/services/attorney/bar.htm> [<https://perma.cc/Q9S4-5BQE>] (last visited May 7, 2020).

309. Susan DeSantis, *Momentum Builds for Allowing NY Bar Applicants to Keep Mental Health History Secret*, N.Y.L.J. (June 10, 2019), <https://www.law.com/newyorklawjournal/2019/06/10/momentum-builds-for-allowing-ny-bar-applicants-to-keep-mental-health-history-secret/> [<https://perma.cc/AY3F-3CLH>].

310. See Cal. Bus. & Prof. Code § 6060(b)(2) (2020).

311. Christian Nolan, *Law School Grads in NY Won't Face Mental Health Inquiry*, N.Y.S. BAR ASS'N (Mar. 1, 2020), <https://nysba.org/mentalhealthinquiry/#:~:text=in%20a%20major%20victory%20for,state%20bar%20application%20effective%20immediately.&text=%E2%80%9CToday%20marks%20a%20historic%20step,said%20NYSBA%20President%20Hank%20Greenberg.> [<https://perma.cc/3UDS-NLCX>].

312. Additionally, legal trade publications are speaking more to mental health and addiction issues in the profession. For instance, in May 2019, the website *Law.com* and its affiliate websites launched “Minds over Matters,” a year-long “examination into mental health, stress, addiction, and overall well-being in the profession,” which includes “articles, analysis, data, expert advice, personal stories of triumph, a resource center . . . and much more.” Gina Passarella Cipriani & Leigh Jones, *Introducing Minds over Matters: A Yearlong Examination of Mental Health in the Legal Profession*, LAW.COM (May 12, 2019), <https://www.law.com/2019/05/12/introducing-minds-over-matters-a-yearlong-examination-of-mental-health-in-the-profession/> [<https://perma.cc/6R4X-KWP9>]. See generally MIND OVER MAT-

action to enable meaningful, profession-wide change. And, of the efforts currently being made by firms, there is some concern that, however well-meaning, they “lack the teeth to address the toughest of the issues,”³¹³ or are “little more than window dressing—a way for firms to check a box and show they are making a difference while avoiding the more complex process of a true reckoning.”³¹⁴ As one associate put it, “the fixes being offered [by firms] are ‘like a band-aid over a bullet wound.’”³¹⁵

Indeed, a 2020 study by ALM, which is based on the results of a survey of nearly 4,000 lawyers, demonstrates that more work needs to be done.³¹⁶ The study found that 41.2% of respondents feel that mental health and addiction problems in the legal profession have reached a “crisis level.”³¹⁷ In particular, that study reported that:

- 31.2% of respondents reported feeling depressed;
- 64% reported feeling anxiety;
- 32.7% reported increasing their drug or alcohol use as a result of work;
- 17.9% reported that they have contemplated suicide over the course of their legal career;
- 67% reported that their personal relationships have suffered as a result of their being in the legal profession; and
- 74.1% reported feeling that the legal profession has had a negative effect on their mental health.³¹⁸

Although not scientifically validated, this study’s findings suggest the prevalence of mental distress and addiction issues at the same or greater levels than those reported in the Krill Study.³¹⁹

Nevertheless, it would be counterproductive to reject this progress as less than the complete culture change or paradigm shift needed to ad-

TERS: AN EXAMINATION OF MENTAL HEALTH IN THE LEGAL PROFESSION, LAW.COM, <https://www.law.com/special-reports/minds-over-matters-an-examination-of-mental-health-in-the-legal-profession/> [<https://perma.cc/manage/create?folder=8393-84673>] (last visited May 7, 2020).

313. Gina Passarella Cipriani, ‘*Like a Band-Aid over a Bullet Wound*’: *The Disconnect Between Firms and Lawyers on Wellbeing Efforts*, LAW.COM INT’L (June 30, 2019, 7:00 PM), <https://www.law.com/international-edition/2019/06/30/like-a-band-aid-over-a-bullet-wound-the-disconnect-between-firms-and-lawyers-on-well-being-efforts-378-112902/> [<https://perma.cc/GVA2-XPTF>].

314. Packel, *supra* note 298.

315. Passarella Cipriani, *supra* note 313.

316. See Lizzy McLellan, *Lawyers Reveal True Depth of Mental Health Struggles*, LAW.COM (Feb. 19, 2020, 11:00 AM), <https://www.law.com/2020/02/19/lawyers-reveal-true-depth-of-the-mental-health-struggles/> [<https://perma.cc/933E-72UD>].

317. *Id.*

318. *Id.*; see also *By the Numbers: The State of Mental Health in the Legal Industry*, LAW.COM (Feb. 19, 2020), <https://www.law.com/2020/02/19/by-the-numbers-the-state-of-mental-health-in-the-legal-industry/> [<https://perma.cc/XRN5-5LAH>] (featuring key data points from survey).

319. Krill et al., *supra* note 10; see also *supra* notes 58–66 and accompanying text.

dress lawyer mental health and addiction issues in meaningful ways.³²⁰ Incremental progress could allow the profession to build the bridge toward the systemic changes the profession needs.³²¹ However, the systemic changes needed may come about more quickly if firms recognize not just the social good in prioritizing their lawyers' well-being (which has long been one of the principal justifications in calls for systemic change), but the benefits that will inure to firms' bottom lines and profit margins. The next section explains why the time is right for these systemic changes, and why it is in firms' financial interests to make them.

C. *The Financial Benefits of Lasting and Meaningful Change*

The time is right for firms to prioritize lawyer well-being in part because we are at a tipping point in mental health awareness. While stigma about mental health certainly still exists—particularly in law firms³²²—people involved in entertainment,³²³ sports,³²⁴ and politics³²⁵ have all

320. Krill, *Progress, Not Perfection*, *supra* note 288 (“Standing on the edge [of the canyon] while complaining about the width of the chasm won’t do anything to narrow its yawn.”).

321. *Id.*

322. *See supra* notes 235–237 and accompanying text.

323. *See, e.g.*, Sandra Gonzalez, *Emma Stone Opens up About Ongoing Battle with Anxiety*, CNN (Oct. 2, 2018, 3:00 PM), <https://www.cnn.com/2018/10/02/entertainment/emma-stone-anxiety/index.html> [<https://perma.cc/ZGQ6-PEWB>]; Cydney Henderson, *Chris Evans Reveals He Almost Turned Down “Captain America” over Anxiety*, USA TODAY (May 26, 2020, 11:44 PM), <https://www.usatoday.com/story/entertainment/celebrities/2020/05/26/chris-evans-almost-turned-down-captain-america-over-anxiety/5264260002/> [<https://perma.cc/9CPT-ALSD?type=image>]; *see also* *Wale Says Record Deals Should Include Mental Health Assistance*, VIBE (Oct. 11, 2019, 10:07 PM), <https://www.vibe.com/2019/10/wale-says-record-deals-include-mental-health-assistance> [<https://perma.cc/LPU6-J7KF>].

324. *See, e.g.*, Kevin Love, *Everyone Is Going Through Something*, PLAYERS’ TRIB. (Mar. 6, 2018), <https://www.theplayertribune.com/en-us/articles/kevin-love-everyone-is-going-through-something> [<https://perma.cc/99M3-B3ZB>]; *see also, e.g.*, Jackie MacMullan, *The Courageous Fight to Fix the NBA’s Mental Health Problem*, ESPN (Aug. 20, 2018), http://www.espn.com/nba/story/_/id/24382693/jackie-macmullan-kevin-love-paul-pierce-state-mental-health-nba [<https://perma.cc/NCH9-BZDK>]. Professional hockey player Robin Lehner won the National Hockey League’s Masterton Trophy as the “player who best exemplifies the qualities of perseverance, sportsmanship, and dedication to ice hockey” for the 2018–2019 season after going public with his battle with addiction and mental illness. Dan Rosen, *Lehner Uses Masterton Trophy to Continue Mental-Health Message*, NHL (June 20, 2019), <https://www.nhl.com/news/lehner-uses-masterton-to-continue-message/c-307928992?tid=280503612> [<https://perma.cc/C2GM-REEZ>]. In his speech accepting the award, he proclaimed: “I’m not ashamed to say I’m mentally ill, but that doesn’t mean [I’m] mentally weak.” *Id.* (internal quotation marks omitted).

325. *See, e.g.*, Jason Kander, *I Suffer from Depression and Have PTSD Symptoms*, MEDIUM (Oct. 2, 2018), <https://medium.com/@JasonKander/about-four-months-ago-i-contacted-the-va-to-get-help-2dc6006804c1> [<https://perma.cc/L7FA-9F6D>]; Tina Smith, *U.S. Senator Tina Smith in Senate Speech: “Why I’m Sharing My Experience with Depression,”* SENATOR TINA SMITH (May 15, 2019), <https://smith.senate.gov/us-senator-tina-smith-senate-speech-why-im-sharing-my-experience-depression> [<https://perma.cc/VH3B-UT74>].

raised awareness of mental health and addiction issues by coming forward to share stories of their personal struggles. Further, many other industries have taken steps to prioritize mental health.³²⁶ And, while “law firms remain 20 years behind corporate America when it comes to taking measures to improve mental health,”³²⁷ it is in firms’ interest to catch up to other professions and industries as prioritizing lawyer well-being will help firms recruit and retain the best talent.

As noted above, the profession has made progress and both recognizing the problems and taking incremental steps to address them are positive steps. This should be acknowledged and applauded. But making lasting, meaningful change in the profession requires a shift in the paradigm within which firms operate at both the organizational and profession-wide levels. After all, as one law firm consultant observed, “the mixed messages sent when a firm says ‘go use our meditation room but make sure you bill 2,000 hours or you won’t get your bonus’ need a broader fix that may require more people in the room than those focused purely on mental health.”³²⁸ As the ABA recognized in *The Path the Lawyer Well-Being*, “[b]road-scale change requires buy-in and role modeling from top leadership.”³²⁹

That buy-in from firm leadership—i.e., those that have helped create and perpetuate the commodification of the legal profession as well as the stigma attached to lawyers with mental health and addiction issues—will not come unless and until that leadership sees a potential return on such an investment.

As explained in Section IV.A above, law firms and legal employers experience costs when lawyer mental health and addiction issues are unaddressed. A number of interventions can significantly lessen the burden of depression or anxiety in the workplace, and specifically work-related interventions can have a positive role in maintaining mental health and facilitating recovery from depression or anxiety.³³⁰ Primary and secondary prevention approaches demonstrate “either moderate or strong efficacy in terms of reducing symptom severity.”³³¹ Thus, workplace interventions

326. See generally *infra* notes 340–345 and accompanying text.

327. Packel, *supra* note 298.

328. *Id.*

329. THE PATH TO LAWYER WELL-BEING, *supra* note 15, at 11–12. At least one senior partner at an international law firm has publicly advocated for such broad-scale change, penning an open letter calling for firms to rethink billing and compensation practices—specifically “de-emphasiz[ing] the billable hour or [doing] away with it completely”—in response to the profession’s “mental health crisis.” Jane Cohen Barbe, *Open Letter from Dentons Partner: Mental Health Crisis Requires Rethinking Firm Business Models*, LAW.COM (July 31, 2019), <https://www.law.com/2019/07/31/open-letter-from-dentons-partner-the-mental-health-crisis-requires-rethinking-firm-business-models/> [https://perma.cc/C3QM-Y6GD].

330. S. Joyce et al., *Workplace Interventions for Common Mental Disorders: A Systemic Meta-Review*, 46 PSYCHOL. MED. 683, 692 (2016).

331. *Id.*

and treatment initiatives can help obviate the costs discussed above. Moreover, these interventions lead to reductions in health care costs (and therefore insurance premiums). The costs associated with promoting wellness are significantly outweighed by the financial benefits. According to one study, for every dollar a company spends on employee wellness programs, medical costs fall by \$3.27 and increased costs attributed to employee absenteeism fall by \$2.73.³³² Further, more generally, a 2016 study estimated that every dollar spent to “scale up” treatment for mental illness between 2016 and 2030 within the thirty-six largest nations will yield \$4.00 in increased productivity and the ability to work.³³³

In addition to these financial savings, healthier workers are more productive, and prioritizing lawyer well-being will likely help with lawyer retention and recruitment.³³⁴ This is especially true now, with the growth of alternative fee arrangements as opposed to traditional hourly fee structures and the increasing importance millennial and now Generation Z lawyers and law students place on mental health and work-life balance.

As set forth below, firms that prioritize lawyer health and well-being similarly will see the indirect benefits of: (1) better performance from their lawyers and staff; (2) better retention; and (3) better yield of incoming lawyers through recruitment.

1. *Performance: Client Demands for Efficiency*

As discussed in Section IV.A.2 above, mental health and addiction disorders result in increased absenteeism and presenteeism. Indeed, the stress faced by lawyers results not only in a decline in their well-being and rise in anxiety, panic attacks, depression, substance abuse, and suicide, but

332. Katherine Baicker et al., *Workplace Wellness Programs Can Generate Savings*, 29 HEALTH AFF. 304, 308 (2010); see also RHODE, *supra* note 166, at 23 (“Some estimates suggest that every dollar invested in policies concerning quality of life results in two dollars saved in other costs.”). As one example, Coors Brewing Company reported a \$6.15 return in profitability for every dollar spent on its corporate fitness program. ACHOR, HAPPINESS ADVANTAGE, *supra* note 101, at 57–58 (citing JIM LOEHR & TONY SCHWARTZ, THE POWER OF FULL ENGAGEMENT: ENERGY, NOT TIME, IS THE KEY TO HIGH PERFORMANCE AND PERSONAL RENEWAL 65 (2003)).

333. Chisholm et al., *supra* note 258, at 415, 420–21. Specifically, the study estimated that while net present value (NPV) of this “scale-up” cost is \$147 billion, the NPV of the resulting increased productivity in the workforce is \$399 billion, with an additional \$310 billion in additional “healthy life-years.” *Id.*

334. See Baicker et al., *supra* note 332, at 304; see also *id.* at 310 (“Although these benefits surely accrue in part to the employee, it is also likely that they accrue in part to the employer—in the form of either lower replacement costs for absent workers or an advantage in attracting workers to the firm.”). Data from a survey published in March 2018 of nearly 65,000 federal government employees provided “strong evidence of the positive association between employee use of work-life programs and high organizational performance, retention, and job satisfaction.” U.S. OFF. OF PERS. MGMT., FEDERAL WORK-LIFE SURVEY GOVERNMENTWIDE REPORT 5 (2018), <https://www.opm.gov/policy-data-oversight/worklife/federal-work-life-survey/2018-federal-work-life-survey-report.pdf> [<https://perma.cc/4CX7-DBTR>].

also in diminished cognitive capacity.³³⁵ It is no surprise, then, that treatment for depression “significantly improve[s] productivity” and improves absenteeism,³³⁶ and substance abuse treatment similarly greatly reduces both presenteeism and absenteeism.³³⁷ Consequently, as a practical matter, more engaged employees generate higher business incomes.³³⁸ And, as recognized by a study of federal employees, employees are “significantly more likely” to receive high performance ratings if they participate in wellness programs, employee assistance programs, or similar wellness-based policies.³³⁹

Recognizing this, several companies outside the legal profession have engaged in what Whole Foods founder John Mackey and economist Raj Sisodia have termed “conscious capitalism”—a system whereby businesses “simultaneously create[] multiple kinds of value and well-being for all stakeholders: financial, intellectual, physical, ecological, social, cultural, emotional, ethical, and even spiritual.”³⁴⁰ As they explain, conscious businesses “place a huge emphasis on improving the health and well-being of [their] team members,” under the belief that when employees are healthy, the company not only generates higher revenue (because the employees do better work and provide better services to customers) but it also spends less money on health care.³⁴¹ As a consequence, such businesses “enhance the[ir] bottom line” through programs that promote employee health and well-being, including onsite gyms, nutrition programs, work-life balance programs, mindfulness training, and stress management classes.³⁴² These businesses take their employees’ physical and mental health

335. Austin, *supra* note 156, at 796–97.

336. Rost et al., *supra* note 266, at 1206; *see also id.* at 1208 (“The improvements in absenteeism and productivity we observed in the total cohort were largely due to the improvements consistently employed workers realized from intervention.”).

337. Eli Jordan et al., *Economic Benefit of Chemical Dependency Treatment to Employers*, 34 J. SUBSTANCE ABUSE TREATMENT 311, 315–17 (2008).

338. James K. Harter et al., *Business-Unit-Level Relationship Between Employee Satisfaction, Employee Engagement, and Business Outcomes: A Meta-Analysis*, 87 J. APPLIED PSYCHOL. 268, 275 (2002) (noting “the correlation between employee engagement and business outcomes, even conservatively expressed, is meaningful from a practical perspective”); *see also id.* (“On average, business units in the top quartile on the employee engagement measure produced 1 to 4 percentage points higher profitability.”); Sonja Lyubomirsky et al., *The Benefits of Frequent Positive Affect: Does Happiness Lead to Success?*, 131 PSYCHOL. BULL. 803, 803, 840 (2005) (noting the correlation between happiness among employees and business success because “positive affect engenders success,” and it also “affect[s] . . . the following resources, skills, and behaviors: sociability and activity . . . , altruism . . . , liking of self and others . . . , strong bodies and immune systems . . . , and effective conflict resolution skills”).

339. FEDERAL WORK-LIFE SURVEY GOVERNMENTWIDE REPORT, *supra* note 334, at 9. *See generally id.* at 36–41.

340. JOHN MACKEY & RAJ SISODIA, CONSCIOUS CAPITALISM 32 (2013).

341. *Id.* at 96.

342. Austin, *supra* note 156, at 798.

seriously, and they “encourage positive emotional energy in the workplace to promote intellectual vigor and enhance productivity.”³⁴³

Unsurprisingly, conscious businesses perform exceptionally well financially. For instance, a sample of conscious businesses outperformed the overall stock market by a ratio of 10.5:1 over a fifteen-year period from 1996–2011.³⁴⁴ These businesses delivered more than 1,646% returns when the market was up only 157% over that period.³⁴⁵

Moreover, research on mindfulness and happiness generally is instructive on the benefits of well-being to employee performance. First, beyond formal wellness programs, firms that promote mindfulness can help to manage and reduce lawyer distress and also enable their lawyers to provide exceptional client service.³⁴⁶ Practicing mindfulness can help lawyers feel and perform better,³⁴⁷ improve lawyer decision-making,³⁴⁸ ethics,³⁴⁹ and even active listening and negotiation skills.³⁵⁰ In fact, lawyers at an international law firm reported a 45% increase in focus, a 35% decrease in stress, and a 35% increase in effectiveness after completing a firm-sponsored mindfulness program.³⁵¹

Second, happiness research has demonstrated that happiness correlates to successful outcomes because “positive affect engenders success.”³⁵² Happiness is inextricably linked to work satisfaction, as “[t]he number one determinant of happiness is ‘a good job’: work that is meaningful and

343. EDWARD M. HALLOWELL, *SHINE: USING BRAIN SCIENCE TO GET THE BEST FROM YOUR PEOPLE* 31 (2011). Moreover, corporations have increasingly recognized their commitment to all stakeholders beyond shareholders. For instance, in August 2019, the Business Roundtable—an association of CEOs of America’s leading companies—issued a “Statement on the Purpose of a Corporation,” in which it announced their respective corporations are committed to, among other things, “[i]nvesting in our employees.” BUS. ROUNDTABLE, STATEMENT ON THE PURPOSE OF A CORPORATION (2019), <https://opportunity.businessroundtable.org/ourcommitment/> [<https://perma.cc/4SPY-JVUR>].

344. MACKAY & SISODIA, *supra* note 340, at 278.

345. *See id.* at 278 tbl.A-1; *id.* at 35–36.

346. Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOT. L. REV. 1, 8 (2002).

347. *Id.* at 46–48.

348. Peter H. Huang, *Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, and Leadership?*, 55 HOUS. L. REV. 63, 79–80 (2017).

349. *Id.* at 101.

350. Riskin, *supra* note 346, at 48–60.

351. Felicity Nelson, *Mindfulness Training an Antidote to Lawyers’ Toxic Lives*, LAW. WKLY. (Dec. 18, 2015), <https://www.lawyersweekly.com.au/news/17721-mindfulness-training-an-antidote-in-lawyers-toxic-lives> [<https://perma.cc/FT9N-GY4E>]. As an additional example, insurance company Aetna found that its fifteen-thousand employees that took part in a training program designed to teach them meditation and yoga found an average gain of “62 minutes of productivity [per] week.” Shawn Achor & Michelle Gielan, *The Busier You Are, the More You Need Mindfulness*, HARV. BUS. REV. (Dec. 18, 2015), <https://hbr.org/2015/12/the-busier-you-are-the-more-you-need-mindfulness> [<https://perma.cc/GMH9-TSKN>].

352. Lyubomirsky et al., *supra* note 338, at 803.

done in the company of people we care about.”³⁵³ In a word, happiness is actually the cause of success, not merely the result.³⁵⁴

In fact, studies have found a strong correlation between happy employees and objective and subjective measures of productivity,³⁵⁵ and as a general matter positive affect can improve not only skills important for effective lawyering (such as sociability, altruism, and conflict resolution), but physical health as well.³⁵⁶ Engaged workers perform better because they often “experience positive emotions, including happiness, joy, and enthusiasm; experience better health; create their own job and personal resources; and transfer their engagement to others.”³⁵⁷

Just as a negative environment can impact employees negatively, a positive environment can impact them positively. Research demonstrates that we can “pick up negativity, stress, and apathy” from others; simply observing a co-worker’s stress “can have an immediate effect upon our own nervous systems, raising our levels of the stress hormone cortisol by as much as 26 percent.”³⁵⁸ By contrast, “the presence of even one positive person in a community can actually ‘infect’ everyone in it with positivity.”³⁵⁹ Put differently, working with positive, engaged, motivated people enhances our own positivity, engagement, motivation, and creativity.³⁶⁰ Thus, in creating an environment that cultivates lawyer well-being, the improved well-being of one or some lawyers will affect positively those around them, thus making teams, departments, and firms more productive and successful.

That healthier employees perform better is critical in the legal profession for several reasons, but notably because of recent client demands for lawyer efficiency. As explained in Section III.B.1 above, firms could avoid addressing lawyer well-being issues on performance-related grounds because their business model was one that thrived on and financially re-

353. MACKAY & SISODIA, *supra* note 340, at 86.

354. ACHOR, *HAPPINESS ADVANTAGE*, *supra* note 101, at 2–4 (“[H]appiness and optimism fuel performance and achievement.”).

355. Huang & Swedloff, *supra* note 286, at 337 (citations omitted); ACHOR, *HAPPINESS ADVANTAGE*, *supra* note 101, at 41 (“Data abounds showing that happy workers have higher levels of productivity, produce higher sales, perform better in leadership positions, and receive higher performance ratings and higher pay. They also enjoy more job security and are less likely to take sick days, to quit, or to become burned out.”); EMMA SEPPÄLÄ, *THE HAPPINESS TRACK* 7–11, 152–61 (2016).

356. Lyubomirsky et al., *supra* note 338, at 840 (“[P]ositive affect fosters the following resources, skills, and behaviors: sociability and activity . . . , altruism . . . , liking of self and others . . . , strong bodies and immune systems . . . , and effective conflict resolution skills . . .”).

357. Arnold B. Bakker & Evangelia Demerouti, *Towards a Model of Work Engagement*, 13 *CAREER DEV. INT’L* 209, 215 (2008). Work engagement is not to be confused with workaholism, as work engagement is positively related to performance, while workaholism is not. *Id.* at 214.

358. ACHOR, *BIG POTENTIAL*, *supra* note 265, at 149.

359. *Id.* at 148–49; *see also id.* at 59–86.

360. *Id.* at 70.

warded inefficiency—the billable hour. Over the last few years, however, clients have caused law firms to move away from the traditional hourly-billing model and toward “alternative fee arrangements,” or a “mutual agreement between a law firm and [client] for billing and payment of outside legal services that does not rely on straight hourly billing by the firm.”³⁶¹ Such arrangements include fixed price agreements, success fee agreements, contingency pricing, and other alternatives to the traditional billable hour.³⁶²

The rise of nontraditional billing is “[o]ne of the most potentially significant” changes to the profession in recent years, as it portends the “effective death of the traditional billable hour . . . in most law firms.”³⁶³ As of 2017, alternative fee arrangements account for 15%–20% of law firm revenues; however, when combined with budget-based pricing, such alternatives to the billable hour “may well account for 80 or 90 percent of all revenues.”³⁶⁴ Nearly 68% of all firms are working with clients to create alternative fee arrangements, and nearly 77% of firms with more than 250 lawyers are doing so.³⁶⁵

Large companies are seeking to change the billing model for their outside counsel and are insisting on alternative fee arrangements. For instance, Microsoft enacted a “Strategic Partner Program” on July 1, 2017, which “plac[ed] a stronger focus on alternative fee arrangements, retainer payments, diversity and developing relationships with outside counsel that go beyond the billable hour.”³⁶⁶ At that time, approximately 55%–60% of its outside counsel matters were billed on a non-hourly, alternative-fee basis, with the hope of raising that figure to “a very robust 90 percent” by mid-2019.³⁶⁷ Additionally, pharmaceutical company GlaxoSmithKline had 80% of outside legal work in 2017 done through an alternative fee arrangement, compared with just 3% in 2008.³⁶⁸

361. ALM LEGAL INTELLIGENCE, *SPEAKING DIFFERENT LANGUAGES: ALTERNATIVE FEE ARRANGEMENTS FOR LAW FIRMS AND LEGAL DEPARTMENTS* 10 (2012).

362. For a list of examples of alternative fee arrangements, see *id.*

363. CTR. FOR THE STUDY OF THE LEGAL PROFESSION, *GEORGETOWN LAW & LEGAL EXEC. INST., THOMPSON REUTERS, 2017 REPORT ON THE STATE OF THE LEGAL MARKET* 9 (2017), <https://www.legalexecutiveinstitute.com/wp-content/uploads/2017/01/2017-Report-on-the-State-of-the-Legal-Market.pdf> [<https://perma.cc/E8QH-ARN2>].

364. *Id.* at 10.

365. ALTMAN WEIL, INC., *2018 LAW FIRMS IN TRANSITION: AN ALTMAN WEIL FLASH SURVEY* 62 (2018), http://www.altmanweil.com/dir_docs/resource/45F5B3DD-5889-4BA3-9D05-C8F86CDB8223_document.pdf [<https://perma.cc/5XPE-WBL3>].

366. David Ruiz, *Microsoft Deputy GC: In New Outside Counsel Program, AFAs Plus Competition Equals Success*, LAW.COM (Aug. 7, 2017), <https://www.law.com/2017/08/07/microsoft-deputy-gc-in-new-outside-counsel-program-afas-plus-competition-equals-success/> [<https://perma.cc/VLK8-59D7>].

367. *Id.*

368. Randall Colburn, *How Brennan Torregrossa and GlaxoSmithKline are Moving Beyond the Billable Hour*, MODERN COUNSEL (Mar. 15, 2018), <https://modern-counsel.com/2018/glaxosmithkline/> [<https://perma.cc/DD98-HTHF>].

In all, since 2008, clients have asserted more control over decisions regarding their legal representation and are “insisting on more value for their legal spend”—i.e., “higher levels of predictability, efficiency, and cost effectiveness in the delivery of legal services, quality being assumed.”³⁶⁹ Moreover, a 2019 survey revealed that 82% of in-house corporate counsel are seeking to cut their company’s legal spend over the next two years.³⁷⁰ Thus, since the billable hour model is one that is antithetical to productivity and efficiency³⁷¹—why finish a task efficiently in four hours when it could be billed over six?—clients are now demanding firms move away from this model, and instead will award their business to firms that demonstrate they can perform the work productively, efficiently, predictably, and cost-effectively.³⁷² Accordingly, firms that prioritize lawyers’ well-being will be better equipped to meet client demands for exceptional yet efficient service.

2. Retention

As discussed in Section III.A.3 above, mental health and addiction issues can lead to high attrition rates. By contrast, firms that promote lawyer well-being will see improved retention rates. This is borne out by experiences in other industries; for example, conscious businesses typically operate with much lower levels of employee turnover, which avoids the replacement cost of new employee hiring and training.³⁷³

Moreover, general counsel at major corporations have begun to understand that balance in the lives of their outside lawyers can be an important factor in their companies’ bottom line.³⁷⁴ In fact, general counsel will consider lawyer attrition as well as the quality-of-life issues that affect

369. 2019 REPORT ON THE STATE OF THE LEGAL MARKET, *supra* note 167, at 13.

370. ERNST & YOUNG, REIMAGINING THE LEGAL FUNCTION REPORT 2019, at 4, 7–8 (2019), https://www.ey.com/en_gl/tax/why-the-legal-function-must-be-reimagined-for-the-digital-age [<https://perma.cc/FW3G-P439>].

371. HARPER, *supra* note 20, at 78 (“Total elapsed time without regard to the quality or usefulness of the result reveals nothing about a worker’s value. More hours often mean the opposite of real productivity. No one inside most big firms questions this perversion because leadership’s primary goal is increasing equity partner wealth. More is better, and the misnomer ‘productivity’ persists.”)

372. 2019 REPORT ON THE STATE OF THE LEGAL MARKET, *supra* note 167, at 13.

373. MACKAY & SISODIA, *supra* note 340, at 287. For instance, at the conscious business The Container Store, “turnover is less than 10 percent per year, in an industry that’s over 100 percent.” *Id.* at 89–90 (internal quotation marks omitted). Additionally, Jet Blue enacted a peer-to-peer recognition program in which one employee could nominate a coworker to be acknowledged for their performance; not only did this program lead to “significantly higher levels of employee performance and engagement,” it also led to an increase in retention. ACHOR, BIG POTENTIAL, *supra* note 265, at 136–37.

374. HARPER, *supra* note 20, at 174 (“No other company would treat its most important commodity poorly enough to cause a turnover rate of 85 percent for first year lawyers who are gone by the sixth year. Why are you doing it? How can you get away with that?”).

attrition when making decisions of which outside firms to retain.³⁷⁵ These corporate clients recognize “that the absence of balance contributes to high associate attrition rates in large law firms and that attrition, in turn, imposes costs that result from the loss of institutional knowledge and continuity.”³⁷⁶ As the former senior vice president and general counsel of the Association of Corporate Counsel recognized more generally, the “greatest investment in any new lawyer” is in “developing the culture, support mechanisms and leadership initiatives that will ensure [that] lawyer’s success,” because firms will not only receive the “returns” generated by that lawyer, but the “larger benefits of cultivating a better work environment will rain down on everyone in the firm.”³⁷⁷ Indeed, in August 2019, 3M—whose legal department is itself a signatory to the ABA Wellness Pledge—has incorporated the pledge into its requests for proposals from outside counsel by asking “law firms if they have signed the pledge and what specific action they have taken to promote well-being among the lawyers and other legal professionals in their firm.”³⁷⁸

Thus, firms that make efforts to retain their lawyers will not only avoid turnover costs and lose institutional knowledge about matters and clients as well as client relationships generally, it will help to foster and retain clients in the first place. And firms will be better equipped to retain their lawyers by taking steps to promote and prioritize their wellness and well-being.

3. *Recruiting Younger Lawyers: Choices for the New Generations*³⁷⁹

The third area in which law firms will benefit will be in recruitment, particularly with respect to millennial and, as they enter the profession, Generation Z lawyers.³⁸⁰ People in these younger generations suffer from “higher levels of depression, anxiety, and suicide ideation than they did a

375. *Id.* at 189–90; *see also id.* (quoting one general counsel as saying they look to “retention issues, training, and flex time” when selecting outside counsel, as those issues “are all creeping into the alternative fee discussion”).

376. *Id.* at 174.

377. *Id.* at 175.

378. Kristen Rasmussen, *Making Mental Health a Money Matter: 3M Uses ABA Wellness Pledge in Outside Counsel Search*, CORP. COUNS., <https://www.law.com/corpcounsel/2019/08/25/making-mental-health-a-money-matter-3m-uses-aba-wellness-pledge-in-outside-counsel-search/> [<https://perma.cc/WD4E-8QAX>].

379. The author notes the anachronism in, and perhaps showing his age by, paraphrasing a corporate slogan from the Generation-X era as a title for a section discussing millennials and Generation Z lawyers. *Pepsi, the Choice of a New Generation*, DUKE UNIV. DIGITAL REPOSITORY, RESOURCE OF OUTDOOR ADVERTISING DESCRIPTIONS, <https://idn.duke.edu/ark:/87924/r3fb4x59j> [<https://perma.cc/5WEL-X2GK>] (last visited May 7, 2020).

380. Millennials are those born, roughly, in the 1980s and early 1990s. COREY SEEMILLER & MEGHAN GRACE, *GENERATION Z GOES TO COLLEGE 4* (2016). Generation Z “refers to those born between 1995 and 2010.” *Id.* at 6.

decade ago.”³⁸¹ Indeed, in 2009, the average age of individuals diagnosed with depression was fourteen and a half, compared to twenty-nine in 1978.³⁸²

Younger millennials are now entering the profession, with older millennials having as much as ten years or more in practice. That latter age cohort has increased a spike in mental health issues. A recent study by BlueCross BlueShield revealed that the prevalence of depression among millennials has increased by 31% from 2014 to 2017, and is the top condition affecting millennials by adverse health impact.³⁸³ Depression is 18% more prevalent for older millennials than Generation X’ers at the same age.³⁸⁴

The trend is more concerning for the next generation. Generation Z’ers are “on the verge of the most severe mental health crisis for young people in decades.”³⁸⁵ Depression of middle- and high school-aged Generation Z children has “skyrocketed” between 2012 and 2015, a trend that exists across all demographic and socioeconomic classes.³⁸⁶ In fact, a 2015 study by the U.S. Department of Health and Human Services found that “56% more teens experienced a major depressive episode in 2015 than in 2010, and 60% more experienced severe impairment.”³⁸⁷

This trend has continued as Generation Z’ers have gotten older. They are increasingly entering college with mental health issues,³⁸⁸ with nearly twice the number of incoming students in 2016 indicating they feel depressed than those who entered college in 2009.³⁸⁹ They are more likely to report feeling “overwhelming anxiety” and that they feel “so depressed they [can] not function.”³⁹⁰ Additionally, a 2019 study revealed that current twenty to twenty-one-year-olds were 78% more likely to have experienced serious psychological distress in the last month than twenty to

381. Thomas Cuiuran & Andrew P. Hill, *Perfectionism Is Increasing over Time: A Meta-Analysis of Birth Cohort Differences from 1989 to 2016*, 145 *PSYCHOL. BULL.* 410, 420 (2019).

382. ACHOR, *BIG POTENTIAL*, *supra* note 265, at 22.

383. BLUE CROSS BLUE SHIELD, *THE HEALTH OF AMERICA REPORT: THE HEALTH OF MILLENNIALS 2* (2019), https://www.bcbs.com/sites/default/files/file-attachments/health-of-america-report/HOA-Millennial_Health_0.pdf [<https://perma.cc/WKGG7-YFUD>]. Substance use and alcohol use disorders were the second and third conditions affecting millennials by adverse health impact. *Id.*

384. *Id.* at 3.

385. Twenge et al., *supra* note 280, at 93.

386. *Id.* at 102–03; *see also id.* (observing that “more and more teens [say] they don’t enjoy life”).

387. *Id.* at 108; *see also* DEP’T OF HEALTH & HUM. SERVS., SUBS. ABUSE & MENTAL HEALTH SERVS. ADMIN., *KEY SUBSTANCE USE AND MENTAL HEALTH INDICATORS IN THE UNITED STATES: RESULTS FROM THE 2015 NATIONAL SURVEY ON DRUG USE AND HEALTH* 38 (2016), <https://www.samhsa.gov/data/sites/default/files/NSDUH-FFR1-2015/NSDUH-FFR1-2015/NSDUH-FFR1-2015.pdf> [<https://perma.cc/2WZU-H5TL>].

388. SEEMILLER & GRACE, *supra* note 380, at 196–97.

389. Twenge et al., *supra* note 280, at 103.

390. *Id.*

twenty-one-year-olds in 2008, and current eighteen to twenty-five-year-olds are 71% more likely to experience such distress than eighteen to twenty-five-year-olds in 2008.³⁹¹ In all, Generation Z'ers are 49% more likely than millennials to have reported serious psychological distress in the past month.³⁹²

Perhaps not surprisingly, then, millennials prioritize work-life balance when choosing employment, even more than salary.³⁹³ As a general matter, millennials seek meaning and purpose in their work, as well as supportive and nurturing work environments.³⁹⁴ In fact, a 2016 survey of millennials revealed that, salary excluded, work-life balance is the most important characteristic millennials search for when choosing a job.³⁹⁵ Other top considerations include leadership opportunities, a sense of meaning or purpose in their work, training, and the impact the work has on society³⁹⁶—that is, the types of motivations and values that enhance one's subjective well-being and, in turn, inversely correlate to depression.³⁹⁷ Thus, millennials respond best to employers who convey “you matter to us”—that is, employers who see their employees' humanity and well-being is integral to the company and its success.³⁹⁸

With Generation Z beginning to enter law school and the profession, firms that address mental health and addiction issues and that foster a

391. *Id.* at 188.

392. *Id.*

393. JOANNE G. SUJANSKY & JAN FERRI-REED, KEEPING THE MILLENNIALS: WHY COMPANIES ARE LOSING BILLIONS IN TURNOVER TO THIS GENERATION—AND WHAT TO DO ABOUT IT 5 (2009); *see also id.* at 11, 51 (citing a study finding that salary was only the fourth-most important “determinant of an attractive workplace,” following health benefits, work-life balance, and promotional opportunities); Leslie Larkin Cooney *Walking the Legal Tightrope: Solutions for Achieving a Balanced Life in Law*, 47 SAN DIEGO L. REV. 421, 450 (2010) (“Millennials undoubtedly seek more work-life balance”); Eddy S.W. Ng et al., *New Generation, Great Expectations: A Field of Study of the Millennial Generation*, 25 J. BUS. PSYCHOL. 281, 289 (2010) (“The need for work-life balance . . . remains an important factor in [millennials'] job choice decisions, despite an expectation for rapid advancement and pay increases.”); Katie French, *Millennials Prioritising Work-Life Balance over Job Security, Study Finds*, TELEGRAPH (UK) (Nov. 19, 2018), <https://www.telegraph.co.uk/news/2018/11/19/millennials-prioritising-work-life-balance-job-security-applying/> [<https://perma.cc/S7C8-YQDY>] (reporting on a survey finding that one third of millennials believe that work-life balance is the “most important factor” in choosing a job).

394. *See* Ng et al., *supra* note 393, at 282–83, 288–89.

395. DELOITTE, THE 2016 DELOITTE MILLENNIAL SURVEY: WINNING OVER THE NEXT GENERATION OF LEADERS 20 & fig.11 (2016), <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/gx-millennial-survey-2016-exec-summary.pdf> [<https://perma.cc/9WTN-MB9V>].

396. *Id.*

397. *See supra* notes 123–127 and accompanying text; *cf.* Brafford, *supra* note 179, at 99–102 (arguing that law firms that promote and foster positive psychology will be “recruiting magnets for law firms”).

398. Brafford, *supra* note 179, at 102 (“The common theme to the Millennial profile is that they respond best to employers that convey ‘you matter to us’; your well-being and enthusiasm are important to our success.”).

healthy environment will help attract these incoming interns and associates. They experience mental health issues in greater frequency than millennials, and they are more likely to talk about³⁹⁹ and seek help for them.⁴⁰⁰

In fact, law students on the millennial/Generation Z cusp have made clear that mental health is a priority to them as they enter the legal profession. In its *2019 Summer Associates Survey*, *The American Lawyer* reported that 42% of respondents said they are concerned about their mental health, including because of the “structure of the legal industry.”⁴⁰¹ Further, when asked to list their top three factors in considering an employment offer from a law firm, work-life balance was the most important factor among the respondents.⁴⁰²

This prioritization of mental health and work-life balance is not an anomaly in this one survey, as young millennial and Generation Z students are engaging in activism to promote and mental health in the profession. For instance, in 2019 the Virginia State Bar removed questions relating to mental health history and treatment in response to a student-led movement for it to do so,⁴⁰³ and several well-being-related programs at law schools are led by students.⁴⁰⁴ Younger Generation Z students are also campaigning for greater mental health awareness and treatment; for instance, in June 2019, in response to student activism, Oregon enacted a law that will allow students to take “mental health days” from school as an excused absence, just as they would a sick day.⁴⁰⁵ Thus, as they enter the workforce, these students certainly will prioritize their mental health and well-being in choosing among employers.⁴⁰⁶

399. Sue Shellenbarger, *The Most Anxious Generation Goes to Work*, WALL ST. J. (May 9, 2019, 12:22 PM), <https://www.wsj.com/articles/the-most-anxious-generation-goes-to-work-11557418951> [<https://perma.cc/QX5C-X6UP>].

400. See AM. PSYCHOL. ASS'N, *STRESS IN AMERICA: GENERATION Z* 4 (2018), <https://www.apa.org/news/press/releases/stress/2018/stress-gen-z.pdf> [<https://perma.cc/6F36-N7EN>].

401. Dylan Jackson, *The 2019 Summer Associates Survey: Wined, Dined and Worried*, AM. LAW. (Sept. 23, 2019), <https://www.law.com/2019/09/23/the-2019-summer-associates-survey-wined-dined-and-worried/> [<https://perma.cc/Y6LH-5D7H>].

402. *Id.*

403. Mattingly, *supra* note 307.

404. See Jordana Alter Confino, *Where Are We on the Road to Law Student Well-Being?: Report on the ABA CoLAP Law Student Assistance Committee Law School Wellness Survey*, 68 J. LEGAL EDUC. 650, 693–98 (2020); Karen Sloan, ‘Law School Was Kind of a Shock:’ Students Take the Lead in Mental Health Initiatives, LAW.COM (Aug. 5, 2019), <https://www.law.com/2019/08/05/law-school-was-kind-of-a-shock-students-take-the-lead-with-mental-health-initiatives/> [<https://perma.cc/6Z45-VGV3>].

405. Sarah Zimmerman, *Teen Activists Score Mental Health Days for Oregon Students*, ASSOCIATED PRESS (July 21, 2019), <https://apnews.com/b2ce8f6a019846f7844f59af449ad567> [<https://perma.cc/W7EM-JB5Z>].

406. Human resources software company Zenefits found that “Gen Z-ers recognize that mental health in the workplace is important, and they are demanding benefits and workplace policies that acknowledge this reality.” Nicole Roder, *Young Workers Demand Emphasis on Mental Health in the Workplace*, ZENEFITS (Jan. 3,

Consequently, firms that prioritize lawyer health and well-being will be attractive both to lateral lawyers who seek better balance as well as to younger and future lawyers who prioritize their own well-being.

CONCLUSION

The legal profession has known for decades that its members suffer from mental illness and addiction in staggering numbers, and firms largely have been unmoved by the moral case for change. As the practice of law has become more of a business, firms can and will make changes to reduce costs, increase efficiencies, and improve profit margins. This Article argues not only that the profession should and should want to create a “better future for our lawyers”⁴⁰⁷ by making such changes, but that it is in its interest to do so. Since firms have not wanted to make changes on moral grounds, they can and should at least make them on business ones, and lawyers and the profession itself will benefit as a result. Put differently, *why* firms make these changes is not as important so long as they *are made*, and if it takes a cost-benefit analysis for firms and the profession to prioritize lawyer well-being, so be it.

2019), <https://www.zenefits.com/blog/young-workers-demand-emphasis-on-mental-health-in-the-workplace/> [https://perma.cc/RPA9-A84T].

407. THE PATH TO LAWYER WELL-BEING, *supra* note 15, at 47.