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BIAS AND PREJUDGMENT IN THE QUASI-JUDICIAL DECISION-MAKING PROCESS

THE PUBLIC RELEASE OF BODY CAMERA VIDEOS

PUBLIC NUISANCE: MUNICIPALITIES AND THE COMMON GOOD



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LISTSERV

BY: BRAD CUNNINGHAM,
Municipal Attorney, Lexington, South Carolina and IMLA Board Member

Let's Take Care of Ourselves So We Can Take Care of Others

Everyone has seen the proverbial presentation where the speaker stands up and says "I had a prepared speech, but I'm not using it tonight…" You all know the story. Well, this is one of those, albeit in a written column.

An event happened late a few weeks ago which is exemplary of a topic we have often discussed on the Listserv and the Water Cooler--the issue of mental health for lawyers. Some are uncomfortable or uneasy talking about it, but as I implied above, something something transpired which brought the subject to the forefront for the legal community here in our fair city.

A few weeks back, I received a call from Judge Jeffcoat informing me that "Tommy" (name changed) a 46-year-old lawyer in Lexington had died. He knew no details yet. Ten minutes later, our Chief of Police came in and asked if I knew Tommy. I said "Yes, the Judge just called and said he had died." The Chief then told me that Tommy had committed suicide by shooting himself in the chest.

By outward appearances Tommy had a lot to be excited about. According to his obituary, he was a prominent divorce lawyer here in town, who "loved spending time with his girls, traveling, and collecting art. He loved history, and his personality left an impact on everyone he met. He could easily walk in a room and fill it with humorous storytelling, or intelligent and stimulating conversation. He was an adventurous guy from the time he was young and carried that over with every moment he spent with his loves, his beautiful three girls."

So, a young, bright, funny, intelligent, successful lawyer with three beautiful young girls (for which he had sole custody due to the death of their mother years ago) decides to end it all? Tommy seemed to have everything, including his health. So, what gives? The answer lies quite literally beneath the surface. Tommy appears to have had problems that nobody could "see." His family reports in the obituary that "At many stages of his life he was faced with adversity, but he met each challenge with courage, enthusiasm, and perseverance. His ambition and ability were remarkable." I suppose at some point folks just get tired of fighting.

For anyone reading this, if you ever get to that point, you need help – counseling, etc.… Actually, it is probably a sign you should already have sought help but I'm no professional. I do not know if Tommy sought counseling and won't delve too far into the specifics, but it was apparent he couldn't battle his demons on his own any longer. There is no shame in needing this type of help, and we need to drop the stigma that still seems to surround seeking this type of assistance.

Tommy was a good lawyer, but he is quite far from being alone in his field insofar as this type of problem is concerned. I did a little research on lawyer wellness, and the results are definitely alarming. I consulted an American Bar Association article on the subject of substance use and mental health disorders among law students and lawyers. The article cites findings of two co-chairs of the National Task Force on Lawyer Well-Being – Bree Buchanan, director of the State Bar of Texas Lawyers' Assistance Program, and James C. Coyle, Attorney Regulation Counsel of the Colorado Supreme Court. Their findings were presented in an ABA webinar "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change." (IMLA's May-June 2021 *Municipal Lawyer* featured the same topic).

Buchanan said the task force had engaged in a survey of 3,300 law students from fifteen different law schools. Among the findings were that "25 percent of law students are at risk for alcoholism; 17 percent suffer from depression; 37 percent report mild to severe anxiety; and 6 percent report having suicidal thoughts in the past year."

In addition, Buchanan reports

"another devastating finding of the task force is the culture of secrecy that surrounds substance use among law students. Law students will not ask for help. They are terrified of somebody finding out that they have a problem, which will result in their not being admitted to the bar or not being able to get a job. It's really about the stigma that attaches to this issue," she concludes in the study results.

Buchanan goes on to say "the outlook didn't improve for practicing lawyers. More than 13,000 working lawyers responded to the task force survey, and reported that 28 percent of lawyers suffered from depression, 9 percent of lawyers had severe anxiety and 11.4 percent of lawyers had suicidal thoughts in the previous year."

She concludes that "At some point in their career, 11.4 percent felt that suicide might be a solution to their issues," and "members were surprised to learn how much substance use and abuse, depression and anxiety were affecting younger lawyers. The younger the lawyer, the greater the rate of impairment," Buchanan said. "The good news is the older the lawyer, the rates of depression and substance use declined."

Coyle maintains that "these numbers paint a dark picture of the health of those in the legal profession, which begs the question, what can be done about it? We must try to change the culture of the legal profession," Coyle said. The survey sent by the task force generated 44 practical recommendations directed to various legal stakeholders such as judges, regulators, law firms, law schools, bar associations, professional liability carriers and lawyer assistance programs, all in an effort to change the culture and discussion surrounding attorney well-being.

The moral of all this is that the problem is likely more serious than many think, that it isn't going away, and it is likely only going to get worse. We just need to get away from the stigma attached to mental health, and let people know it is ok to seek help and ok to say, "I'm not ok."

A Go Fund Me page has been created for Tommy's girls, twins age 15 and the little one age 11, who must now grow up without their mother or father. This one hits home for me. It was often that my family would run across Tommy and his girls at an event or in a restaurant, and we were always able to exchange pleasantries. A 9-iron would be plenty of club to reach his office from mine, as it sat just on the other side of the courthouse from here. The Lexington County Bar members are all in shock after losing a colleague who many enjoyed knowing.

I implore everyone to drop any perceived stigma about mental health and get help if you feel you need it. Let's work on the statistics and improve things for everyone. Please take care of yourself so that you can take care of others. Let's stand together on this as we are all in it together.

In my state, the South Carolina Bar has a program titled "Lawyers Helping Lawyers." It is described by the Bar as follows: "A member benefit of the South Carolina Bar, this program is available to all lawyers, judges and law students experiencing challenges with substance use disorders, mental health illnesses and/or stress-related issues that affect their professional and personal lives. No matter what you're going through, Lawyers Helping Lawyers is here to help."

The Bar reports its basis for the program: "It's no secret that law students and lawyers face stressful circumstances on a regular basis. You or others may have high expectations for success and self-sufficiency or concern for clients and time management. These challenges too often create an environment in which substance use disorders and other mental illnesses and emotional issues can develop. Lawyers Helping Lawyers exists to help you reduce the pain and loss that result from struggles with alcohol, other drugs and mental and emotional illnesses."

Lawyers Helping Lawyers provides referral to appropriate treatment services, peer support, five free counseling sessions each year, mental health and wellness CLEs, law student assistance through scheduled office hours and mindfulness sessions at in-state law schools, interviews, evaluations, and case management for bar applicants under Character and Fitness review, oversees court-mandated monitoring for lawyers involved with Office of Disciplinary Counsel, and monitors lawyers at the request of employers when appropriate and for lawyers who want to enhance their success in early recovery through added accountability. (See the South Carolina Bar website-www.scbar.org).

It is likely each state or province has a somewhat similar program, and I urge you to make use of it if you think you need to--or encourage a colleague you think might be struggling to take advantage of this help. We don't need anyone else to become a statistic. We are all colleagues, sons, daughters, moms, dads, or other relatives cared about and needed by someone. Let's not let them down. Again, let's take care of ourselves so we can take care of others who depend on us.

Last but not least, remember that these issues are typically magnified by the holidays, and this article was submitted only nine days before Christmas…

The prosecution rests, your honor.

(*Source and credit for information and facts goes to the ABA and individual sources cited herein as well as the South Carolina Bar).

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