PROFESSIONALISM & THE ART OF WELL BEING

LORELEI LEIN, GENERAL COUNSEL
ALABAMA LEAGUE OF MUNICIPALITIES

Disclaimer. This presentation and paper take the 30,000 feet approach to the issue covered. I am not a licensed medical or psychological professional and am not providing any medical or psychological advice. What I am is a licensed attorney (AL, NM and CO) with 27 years of practice behind me. I am also a wife, mother, daughter, sister, friend and frustrated artist who faces many personal struggles balancing work and career. In addition, I am a certified yoga instructor (Yoga Alliance registered RYT200). Discussing issues of substance abuse, mental and physical health and how they impact our professional responsibilities can never fully be addressed to cover the multitude of issues and underlying causes of mental illness and/or addiction in its many forms. Simply put, you cannot breathe your way out of addiction. As such, the content of this paper and presentation is not intended to be a substitute for professional medical or psychological advice, diagnosis, or treatment. Always seek the advice of your physician or other qualified health provider with any questions you may have regarding a medical condition, physical or emotional. Need helpful assistance and guidance? Every state bar now has a lawyer assistance program for lawyers suffering from possible substance abuse or mental health issues.

THE PROBLEM.

"Competition, long hours, high expectations, and chronic stress can wear down even the most competent and energetic lawyer, often leading to depression, anxiety, relationship problems, gambling issues, substance abuse, and other problems."[i]

In case you haven't noticed, the legal profession is a particularly stressed-out profession. In 2016, the American Bar Association (ABA) Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation published a landmark study involving nearly 13,000 practicing attorneys on the prevalence of substance abuse and mental health issues in the legal profession.[ii] This truly was a landmark study as never before had comprehensive national data been gathered addressing both substance use and behavioral health concerns simultaneously. It examined alcohol use, substance abuse, mental health issues and help-seeking behaviors of lawyers. The data is compelling and disturbing. Specifically, the participants were asked to assess their alcohol and/or drug use and their levels of depression, anxiety and stress. It showed:

- Among the participants, 28% reported depression, 19% anxiety, 23% stress, and 20.6% for "problematic drinking" (hazardous use of, possible dependence on alcohol). Among the general population the rate is 6.4% for problematic drinking;
- Younger lawyers and men were more at risk for problematic drinking;
- Men had higher levels of depression while women have higher levels of anxiety and stress;
- 61% reported anxiety at some point in their career;
- 11.5% reported suicidal thoughts at some point in their career.

With the issue of the problematic use of alcohol, the study found that the problem is even worse among attorneys under 30 years of age. For that group the report of problematic drinking rises to 32% - five times higher than the general population!

The problem starts early. Elevated rates of substance abuse (above the general population) have been reported for many years among law students. As far back as 1994, the American Association of Law Schools (AALS) began actively studying the problem resulting in programs being developed to address the issue.[iii] Unfortunately, more recent AALS surveys have found no significant improvement. A 2016 study determined that as much as one-quarter of law students fell into the category of being at risk for alcoholism.[iv] The study also showed that almost 20% suffer from some degree of depression and 6% (the national average among adults is 3%) had serious suicidal thoughts the previous year. To make matters worse, many law students refuse to seek help for fear that it will impact their ability to sit for the bar exam upon graduation. For practicing lawyers, often they don't seek help for fear of losing their license to practice law.

Not all manifestations of "the problem" appear as addiction problems. Stress, in its many forms, can lead to other chronic mental and physical problems which interfere with our ability to practice our chosen profession effectively. It can lead to a whole host of problems not only in our professional life but in our personal life as well. Take my friend Claire (names have been changed to protect the …) who is a 54 year old force of nature – only female litigation partner in a mid-sized firm, 3 teenage sons, active with the BSA (again, 3 boys), volunteers with church

and community activities, devoted wife, friend and consummate professional. For years I've watched in awe as she juggled her life with ease and poise. Above all else she is a driven and talented lawyer who puts her clients at the very top of her list at all times, even in times of crippling depression. A couple of professional set-backs to this highly successful lawyer resulted in a rapid descent into depression. With limited energy to go around, all that she had went into her clients and everything else fell to the wayside – friends, family, church, community. While she was blessed with many folks who performed regular welfare checks, periodic nourishment, fill-in for speaking engagements etc… as she navigated the dark hole she found herself in, it was painful to witness and raised issues for me as a lawyer about when am I obligated to step in professionally.

Stress, simply defined, is a physical, mental or emotional factor that causes bodily or mental tension.[v] Levels of stress can range from very low to very high. Not all stress is bad or harmful. Getting stressed about performing well can lead to positive and creative work as we advocate for our clients. Take my friend Claire, as she pulled herself out of depression (thanks to meds and support), she navigated a difficult jury trial to great success for her client. But at what cost to her personally and physically? As she came out of the black hole she found herself in emotionally she realized how much physical pain she was in and ended up in physical therapy for severe neck and shoulder pain. At chronic, high levels, stress can lead to a whole host of negative physical and emotional impacts including:

- Headaches (mild to severe)
- Muscle tension and pain
- Chronic fatigue and/or changes in sleep patterns
- Digestive problems

- Coronary/heart problems
- Anxiety
- Depression
- Anger issues
- Lack of focus
- Self-harm
- Domestic Violence
- Suicide

Whether the prevalence of stress related illnesses and addictions among lawyers is due to the nature of the profession itself, the culture surrounding the study and practice of law, or the unique characteristics of individuals who are drawn to the profession is a matter for the experts to speculate about. We do know, however, that there are some factors unique to the legal profession which contribute to the problem including:

- Conflict. The basic foundation of our profession is conflict;
- Competition. The legal profession is highly competitive; not only from the adversarial nature of the profession but also from within law firms and among solo practitioners as we strive to "succeed".
- Perfectionism. We tend to be perfectionists who are rarely satisfied with our own performance and who are frequently disappointed in the performance of others;
- Overload & Decision Burden. Both workload and decision burden contribute to chronic procrastination. We are trained to analyze from so many different angles and sometimes the "solution" isn't always clear so we often avoid finalizing our work until the court ordered deadline is upon us and a decision must be made;
- Isolation. We tend to operate autonomously and can tend to isolate ourselves (see competition above);
- Lack of Control. We are not in control of many of the deadlines placed upon us;
- Failure. Failure is a big part of our day to day existence.

- Emotional Trauma. We are "more likely than other professionals to be exposed to toxic behavior in the workplace, including verbal abuse, mistreatment, bullying, etc…"[vi] For governmental attorneys, there is the added reality of working for publicly elected officials who can be particularly unwieldy clients to manage, direct and keep out of trouble.

THE RULES.

"The reason why lawyers must care for their own well-being is that it is the cornerstone of being a competent lawyer." ~Jeena Cho

The preamble to the American Bar Association (ABA) Model Rules of Professional Conduct set a very high bar for attorneys. From its opening paragraphs expounding on how Lawyers have a "special responsibility for the quality of justice" and providing that "[i]n all professional functions a lawyer should be competent, prompt and diligent" to its closing paragraph extolling the fact that "Lawyers play a vital role in the preservation of society" the pressure to be super-human in all things and above the failings of the average person is ever present for lawyers. To be sure, we are part of a noble calling that is trapped within a toxic professional culture.

What rules of professional conduct are most affected by the negative effects of stress among our profession? The "big 4" that routinely come up include the following:

Competence. ABA Model Rules, Rule 1.1.

> "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."

Diligence. ABA Model Rules, Rule 1.3.

> "A lawyer shall act with reasonable diligence and promptness in representing a client."

Impairment. ABA Model Rules, Rule 1.16(a).

> "… a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
> (1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
(3) the lawyer is discharged."

Professional Misconduct. ABA Model Rules, Rule 8.4.

"It is professional misconduct for a lawyer to:
A. violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another;
B. commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
C. engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

While these four rules of professional conduct predominate in the reported decisions where impaired lawyers get in trouble, it's important to remember that impairment can affect every aspect of a lawyer's practice, including relations with the courts and third parties, which are covered by other rules.

Another rule that could come into play relates to the self-policing nature of our profession and our duty to report possible misconduct.

Reporting Misconduct. ABA Model Rules, Rule 8.3.

"A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate professional authority." (State Bar Disciplinary Board)

And finally, for those of us who supervise other lawyers, there is the responsibility on managers and supervisors.

Responsibilities of Partners, Managers & Supervisory Lawyers. ABA Model Rules, Rule 5.1.

"(c) A lawyer shall be responsible for another lawyer's violation … if:
…
(2) the lawyer is a partner or has comparable managerial authority in the law firm … or has direct supervisory authority … and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

THE SCIENCE.

"You don't have to run faster than the bear, you just have to run faster than the guy next to you." ~Jim Butcher

From early childhood we are taught that we have five basic senses: sight, sound, smell, taste and touch. But we also have a sixth and seventh sense – proprioception and interoception. In simple terms, proprioception is the body's ability to sense itself in space and interoception is the body's ability to sense itself from within.[vii]

Proprioception is the ability to sense stimuli arising within the body regarding position, motion, and equilibrium. Even if a person is blindfolded, he or she knows through proprioception if an arm is above the head or hanging by the side of the body. Well-honed proprioception is easy to spot. All you have to do is watch an elite athlete like Megan Rapinoe play soccer to see an example of proprioception in action. Good at standing on one leg? You can thank your proprioceptors for that. One of the main reasons proprioception is important is because it keeps you safe. You can walk down a crowded street, stay on a bicycle, balance in a yoga pose, and avoid running into walls because of proprioception.

Whereas proprioception is about where your body is in space outside of the body, interoception is about how your body feels inside itself. Am I hungry, do I have to use the bathroom, do I feel hot or cold, do I feel nervous or anxious? When we tune in to ourselves, we can then make appropriate behavioral decisions in order to stay balanced and feel comfortable in our bodies – i.e. have a snack, go to the bathroom, turn on the A/C, take some deep breaths to calm down. Heightened interoception can help us become aware of the unconscious stress, anxiety and muscle tension in our bodies and that awareness can lead us to take action to help ourselves. Some researchers have suggested that poor interoception lies at the heart of many chronic diseases[viii] – think about it – if you work too hard, you probably don't have time to

exercise, you probably don't pay attention to your diet, you probably don't manage your stress, and then, surprise, you get diagnosed with heart disease. Being aware of the sensation is the first step to taking action to diminish the levels of stress we experience in our bodies.

While awareness of stress in our body is an important first step to doing something about it, why do our bodies react the way they do to stress? The stressful situations attorneys find themselves in on a regular basis trigger a cascade of stress hormones that race through our bodies resulting in well-orchestrated physiological changes that lead to addiction, depression and a whole host of other evils. When under stress, our muscles tense, our hearts pound and our blood pressure goes up; we may also sweat and breathe faster than normal. This combination of physiological reactions to stress is commonly referred to as the "fight-or-flight" response and it evolved in our DNA as a survival mechanism. The fight or flight response enables us to react quickly to life-threatening situations – like being chased by a wild animal. We are hardwired for survival and our bodies are designed to react accordingly.

Unfortunately, physical evolution of our bodies hasn't moved as fast as the evolution of the creature comforts that now protect us from the truly life-threatening dangers faced by cavemen. But our bodies can't tell the difference between perceived threats (which are often psychological) and real threats. Regardless of the stressor or stressful trigger, the same sequence of events is triggered in our bodies. As such, the body often overreacts to stressors that are non-life-threatening, like work pressure, difficult clients, family issues, and traffic jams.

There is no question that chronic activation of "fight or flight" impairs our health. Research suggests that chronic stress contributes to high blood pressure, promotes the formation of artery-clogging deposits, and causes brain changes that may contribute to anxiety, depression, and addiction. More preliminary research suggests that chronic stress may also contribute to

obesity, both through direct mechanisms (causing people to eat more or consume empty alcohol calories) or indirectly (decreasing sleep and exercise).[ix]

When someone experiences a stressful event, the area of the brain that contributes to emotional processing, sends a distress signal to the body's command center, the hypothalamus. This area of the brain communicates with the rest of the body through the autonomic nervous system which has two components: the sympathetic nervous system and the parasympathetic nervous system. If we think of our body like a car, the sympathetic nervous system is the gas pedal and the parasympathetic nervous system is the brake. The sympathetic nervous system triggers the fight-or-flight response, flooding the body with stress hormones and providing the body with a burst of energy so that it can respond to perceived dangers. The parasympathetic nervous system acts like a brake. It promotes the "rest and digest" response that calms the body down after the danger has passed.

Both the sympathetic and parasympathetic nervous systems operate "automatically" or unconsciously, but there are things we can do to consciously trigger the brakes (parasympathetic nervous system) on the stress response thus slowing the chronic damage to our bodies.

THE MINDFULNESS APPROACH – JUST BREATHE.

"The breath is seen to be the key between the emotional state, the mental state and the physical state. It is perhaps the most important tool, and it's one whose importance is underestimated in the West." ~Paul Harvey

Unlike our other bodily functions (heart rate, digestion etc…) that we have no control over because they work automatically or unconsciously, we do have the ability to consciously change our response from stress to relaxation by changing the way we breathe. One of the first things that happens when someone experiences a stressful situation is they hold their breath (poor interoception). How often have you heard someone say "take a deep breath" when trying to

calm someone down? When we slow down and deepen our breath (good interoception) we help trigger our parasympathetic nervous system to flood our body "rest and digest" chemicals and hormones and thereby lower the stress we are experiencing in our bodies.

For years I've said that smokers "get it" when it comes to the connection between breath and relaxation. Think about it, what do smokers do? They stop what they are doing, they go outside and then they inhale and exhale deeply. While nicotine is a stimulant and highly addictive, I would argue that the deep inhale and exhale are equally addictive and contribute to a sense of calm. To be clear, I'm not advocating taking up smoking, but I am advocating paying attention to your breath and using it to bring your awareness to your body. By doing so, you will naturally trigger your parasympathetic nervous system.

There are many breathing techniques and practices available. You don't have to become a master meditator to reap the benefits of a regular breath practice. A simple internet search for breathing and mindfulness techniques will turn up a variety of options for you to try. Find one that rings true with you and work towards applying it to your day. Maybe set your phone or other smart device to prompt you with reminders until it becomes a regular part of your day to take a "breath break" and refocus your attention inward. Remember it is a practice and by practicing regularly bringing mindful breathing it into your daily routine, you'll be better able to access it during times of crisis and high stress or anxiety.

Mindful breathing is nothing more than actively focusing your attention on your breath as you inhale and exhale. You may find it easier to maintain your focus if you close your eyes. Sometimes, especially when trying to calm yourself in a stressful moment, it might help to start by taking an exaggerated breath: a deep inhale through your nose, briefly holding your breath and followed by a long strong exhale through your mouth. Otherwise, simply observe

each breath without trying to adjust or manipulate it. Here is a simple and easy practice available to anyone:

- **Start in a comfortable upright seated position.** You could be seated on a chair or on the floor on a cushion. Focus on lifting your ribs away from your hips as you get long in the spine. Relax your shoulders and keep the back of the neck long but not tight. Allow your hands to rest wherever they're comfortable. Relax the jaw at the hinge but keep your mouth closed and your lips gently together as you breathe in and out through your nose.

- **Notice how your body feels**. Without judgment, notice your body; its weight and where it connects to the chair. Let yourself relax and become curious about your body seated here, your belly soft, your eyes closed or your gaze soft. Breathe into any areas of tightness or tension inviting them to release.

- **Tune into your breath**. Feel the natural flow of your breath—in, out. Notice the air as enters and exits your nose – cool as it enters, warm as it exits. Notice the rise and fall of your chest. Begin to deepen your inhales as you draw the breath down to your navel as you soften and expand your belly and then lengthen your exhales as you release all the air in your lungs and body. Notice where you feel your breath in your body. It might be in your abdomen. It may be in your chest or throat or in your nostrils. See if you can feel the sensations of breath, one breath at a time. When one breath ends, the next breath begins.

- **Notice your wandering mind**. As you breathe, you will most likely, at least as you start developing your breath practice, start thinking about other things. This is very natural. Just notice that your mind has wandered and return your focus to your breath – inhaling and exhaling. Sometimes you can repeat in your head "I breathe in and I breathe out."

- **Continue mindfully breathing for five to seven minutes**. Deep inhales, long slow exhales. I breathe in and I breathe out.

- **Check in before you check out**. After a few minutes, once again notice your body, your whole body. Allow yourself to relax even more deeply and then offer yourself some appreciation for taking the time to bring your awareness to your body and consciously breath relaxation into your day.

Next time you're aware of feeling stressed, know that stress reduction is a few conscious breaths away. When you take the time to focus on your inhale and exhale, it becomes easier to bring your attention inward and feel what is really going on inside your body (interoception). Ask yourself, what exactly am I feeling? If your shoulders feel tight, bring your awareness there

and continue with deep inhales and long slow exhales, breathing into the upper back and shoulders. More often than not, your shoulders will loosen up and relax.

WHERE TO GO FOR HELP

"We all have holes in our shoes, we just haven't been caught yet." ~ L.Lein

It's impossible to avoid stress but there are ways to minimize and manage stress so that we can be more resilient. Taking a "breath break" through-out the day and becoming more mindful of what is happening in your body is one easy step you can take. As you use the breath to bring your awareness inward, you can learn to recognize when you are feeling emotionally and physically stressed and start to shift your focus to better coping strategies.

But let's not kid ourselves, you cannot breathe your way out of possible addiction problems or severe depression and mental health issues. But help and support are only a phone call away. Thanks to the ABA's work, every state bar across the country, has established some form of a lawyer assistance program. These programs offer free services to lawyers including confidential professional and peer assistance to help individuals identify and address problems with alcohol and other drugs as well as depression and other mental health/emotional disorders.

Most local rules of professional conduct provide for strict confidentiality for lawyers seeking assistance from an assistance program. Typically, they provide that all communications and actions taken are held in the strictest confidence and are not reported to any individual or entity outside of the program, including any professional disciplinary agency, without the impacted lawyer's permission. Likewise, the identities of individuals who contact the program to report concerns about a member of the legal profession are confidential as well. Please check your local rules.

If you need help, or know someone who needs help, contact:

STATE BAR JUDGES AND LAWYERS ASSISTANCE PROGRAM

NATIONAL SUICIDE PREVENTION HOTLINE: 800-273-8255

https://suicidepreventionlifeline.org

https://www.aa.org

https://www.na.org

TAKE THE PLEDGE

In conclusion, consider asking your law firm or law office to "Take the Pledge." In 2018, the ABA launched the Well-Being Pledge Campaign to address the legal profession's troubling rates of alcohol and substance abuse issues, as well as mental health issues. The campaign's goals are to raise awareness, facilitate a reduction in the incidence of problematic substance-use and mental health distress and improve lawyer well-being. From education to policies to culture, the seven-point pledge identifies the core areas on which firms should focus and the concrete steps they should take as they seek to achieve those goals.

Some of the key provisions of the pledge include:

- Providing enhanced and robust education with workplace mental health training.
- Developing proactive policies and protocols to support assessment and treatment of substance abuse and mental health issues.
- Providing CONFIDENTIAL access to assessments and resources.
- Demonstrating that help-seeking and self-care are core cultural values.
- Reducing the expectation of alcohol at work events.

For more information on the Pledge and how your office can participate, visit:

https://www.americanbar.org/groups/lawyer_assistance/well-being-in-the-legal-profession/

REMEMBER, BE WELL TO DO WELL.

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