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PREPARING LEADERS: THE EVOLUTION OF A FIELD AND THE STRESSES OF LEADERSHIP

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PREPARING LEADERS: THE EVOLUTION OF A FIELD AND THE STRESSES OF LEADERSHIP

Deborah L. Rhode*

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INTRODUCTION

Let me begin by thanking all the students and staff of Santa Clara University who made this event possible, and also saying a word in tribute to the leadership of Donald Polden. He is truly a founding father of the field of lawyers and leadership. He organized what I believe was the first national conference and law review symposium on the subject here at Santa Clara in 2012. In these brief comments, I will first comment on the evolution of the field, and then turn to a neglected topic within it: the need to educate lawyers about the conditions and stresses of leadership.

I. THE EVOLUTION OF LEADERSHIP FOR LAWYERS

At the time of the first Santa Clara conference, the field of lawyer leadership was in fact, barely a field. My keynote observed

It is ironic that the occupation most responsible for producing America's prominent leaders has done so little to educate them for that role. The legal profession [although only .4 percent of the

* Ernest W. McFarland Professor of Law and Director of the Center on the Legal Profession, Stanford University. The research assistance of Gemma Donofrio, Eun Sze, and George Wilson is gratefully acknowledged.

population] has supplied a majority of American presidents, and in recent decades, almost half of Congress. Lawyers occupy leadership roles as governors, state legislators, judges, prosecutors, general counsel, law firm managing partners, and heads of corporate, government, and nonprofit organizations. Almost none of these lawyers received academic training for their leadership responsibilities. Although leadership development is now a forty-five billion dollar industry, it is missing or marginal in legal education.¹

That description of lawyers' roles and lack of preparation has not dramatically changed. Most lawyers still receive no formal education in leadership. Nor do many of them find this problematic, which is of itself a problem. But what has changed is that legal educators are now starting to do something about it. Today, to paraphrase Martin Luther King, Jr., "We aren't where we want to be and we aren't where we should be, but thank God, we aren't where we were."²

So what has changed? Well to begin with, legal academics interested in leadership have an organizational home. With the assistance of many leaders in this field, especially Baylor Law School's vice dean Leah Jackson Teague, faculty began coming together at the annual meeting of the Association of American Law Schools (AALS). From those gatherings came the creation of an AALS Section on Leadership for those interested in teaching, research, and programmatic ideas in the field. Over 150 legal academics are now members of the section.³ Its work is being shared by an executive committee, all of whom participated in this symposium.⁴

With this increasing interest has come an increasing array of

1. Deborah L. Rhode, *Developing Leadership*, 52 SANTA CLARA L. REV. 689, 689-90 (2012). For recent figures, see DEBORAH L. RHODE & AMANDA K. PACKEL, *LEADERSHIP FOR LAWYERS* 3 (2018); Deborah L. Rhode, *Leadership in Law*, 69 STAN. L. REV. 1603, 1605 (2017).

2. The quote comes from Martin Luther King Jr., *Emancipation Proclamation Speech* (New York City, 1962). King quotes from a slave preacher. For the original phrasing in the recorded speech, see *A Promise Unfulfilled: 1962 MLK Speech Recording Is Discovered*, NPR (Jan. 20, 2014, 2:39 PM), <https://www.npr.org/2014/01/20/264226759/a-promise-unfulfilled-1962-mlk-speech-recording-is-discovered>.

3. *Section on Leadership*, THE ASS'N OF AM. L. SCH. (Nov. 9, 2017), https://memberaccess.aals.org/eWeb/dynamicpage.aspx?webcode=ChpDetail&chp_cst_key=54f0b34b-c67e-4f2b-9a69-fdad2d31ef71 [hereinafter *Section on Leadership*]. For a list of signatories and section members, see Materials Compiled by Leah Jackson Teague, Chair-Elect of the American Association of Law Schools (Mar. 2, 2018) (email correspondence on file with author) [hereinafter *Teague Compilation*].

4. The Executive Committee members currently include: Deborah L. Rhode (Chair), Leah Witcher Jackson Teague (Chair-Elect), Rachel F. Moran, David H. Gibbs, and Douglas A. Blaze (Executive Committee). *Section on Leadership*, *supra* note 3.

courses, teaching materials and casebooks.⁵ A growing number of law schools and law reviews have also devoted symposia to lawyers and leadership, most recently the University of Tennessee, Georgia State, Stanford, and of course Santa Clara twice.⁶

A. Challenges for the Field

Despite such progress, substantial challenges remain. Part of the problem is that the field has only recently emerged, and its reputation has been tarnished by pop publications, which I have elsewhere labeled “leadership lite.”⁷ Celebrated classics include *Leadership Secrets from Attila the Hun*, and *Toy Box Leadership; Leadership Lessons from the Toys You Loved as a Child*.⁸ A related problem is that many lawyers, law students, and law professors view the subject as somewhat squishy—a “touchy feely” curricular “frill,” unlike the more doctrinal courses tested on bar exams.

But what that latter objection ignores is a wide array of research indicating that effective leadership requires so-called “soft skills,” particularly those demanding personal and interpersonal capabilities such as self-awareness and emotional intelligence.⁹ And by training and temperament, these are not the skills in which lawyers and law students excel.¹⁰ Lawyers rank lower than the general population on interpersonal skills and resilience, and tend to devalue their importance.¹¹ For many legal students and practitioners, “the soft stuff

5. For the rise in courses, see Teague Compilation, *supra* note 3; for examples of casebooks, see RHODE & PACKEL, *supra* note 1; DEBORAH L. RHODE, *LAWYERS AS LEADERS* (2013); PAULA MONOPOLI & SUSAN MCCARTY, *LAW & LEADERSHIP: INTEGRATING LEADERSHIP STUDIES INTO THE LAW SCHOOL CURRICULUM* (2017).

6. For papers from the University of Tennessee Symposium, see *Leading the Future: 2016 Symposium on Professional Leadership Education*, 83 TENN. L. REV. RA Pages 709 (2016); for papers from the Stanford Law School Symposium, see *Lawyers and Leadership: Raising the Bar*, 69 STAN. L. REV. 1593 (2017).

7. See RHODE, *LAWYERS AS LEADERS*, *supra* note 5.

8. WESS ROBERTS, *LEADERSHIP SECRETS OF ATTILA THE HUN* (1990); RON HUNTER & MICHAEL E. WADDELL, *TOY BOX LEADERSHIP: LEADERSHIP LESSONS FROM THE TOYS YOU LOVED AS A CHILD* (2008).

9. For the importance of these soft skills, see MAUREEN BRODERICK, *THE ART OF MANAGING PROFESSIONAL SERVICES: INSIGHTS FROM LEADERS OF THE WORLD’S TOP FIRMS* 266-80 (2011); DANIEL GOLEMAN ET AL., *PRIMAL LEADERSHIP: REALIZING THE POWER OF EMOTIONAL INTELLIGENCE* app. B 253-56 (2002) (self-awareness, self-management, social awareness, empathy persuasion, and conflict management); RONALD H. HUMPHREY, *EFFECTIVE LEADERSHIP: THEORY, CASES, AND APPLICATIONS* 97-98, 233 (2014) (self-management, conscientiousness); and sources cited in Rhode, *Leadership in Law*, *supra* note 1, at 1609-10.

10. Most lawyers prefer learning focused on analytic rather than non-cognitive skills. See Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1392-93 (1997).

11. Larry Richard, *Herding Cats: The Lawyer Personality Revealed*, 29 ALTMAN WEIL

is the hard stuff.”¹²

A related challenge is that many students are reluctant to advertise an interest in leadership. The term seems to conjure up visions of high school student body presidents or overreaching politicians desperate for power and adulation. Some female students are particularly uncomfortable opting for courses or positions that type them as “ambitious.” “That word itself makes me want to run and hide,” said one contributor to a recent anthology on women and ambition.¹³ “It’s got some memorable pejorative stench to it.”¹⁴ Although evidence is mixed on whether young women are in fact less ambitious than men, professionals of both sexes often find the term a “polite backhanded insult.”¹⁵

Yet many law students who are reluctant to announce themselves as potential leaders will inevitably occupy leadership positions. Even if they do not rise to the top of an organization, they will exercise leadership as heads of teams, committees, task forces, and charitable initiatives. When I was a law student, I never thought of myself as a potential leader and would never have taken a leadership course. But I would have surely have benefitted from one, and I deeply regret that I did not know earlier some of what I know now. I particularly wish I had focused at an earlier point on what I have labeled the “leadership paradox.”¹⁶ Individuals often reach top positions because of high needs

2, 4 (2002), <http://www.managingpartnerforum.org/tasks/sites/mpf/assets/image/MPF%20-%20WEBSITE%20-%20ARTICLE%20-%20Herding%20Cats%20-%20Richards1.pdf>; Douglas B. Richardson & Douglas P. Coopersmith, *Learning to Lead*, AM. LAW., July 2008, at 57; Daicoff, *supra* note 10, at 1392-94; *see also* RHODE, *LAWYERS AS LEADERS*, *supra* note 5, at 4-5.

12. RHODE & PACKEL, *supra* note 1, at 71 (discussing Richard J. Leider, *The Ultimate Leadership Task: Self-Leadership*, in *THE LEADER OF THE FUTURE: NEW VISIONS, STRATEGIES, AND PRACTICES FOR THE NEXT ERA* 189 (Frances Hesselbein et al. eds., 1996)).

13. Elisa Albert, *The Snarliest Girl: Notes on Ambition*, in *DOUBLE BIND: WOMEN IN AMBITION* 195 (Robin Romm ed., 2017).

14. *Id.*

15. The quote comes from Sarah Ruhl, *Letters to My Mother and Daughters on Ambition*, in *DOUBLE BIND: WOMEN IN AMBITION* 281 (Robin Romm ed., 2017); *see* DEBORAH L. RHODE, *WOMEN & LEADERSHIP* 7-10 (2017), for discussion of the evidence on gender differences in aspirations to leadership. My own read of the evidence is that women and men are equally ambitious, just ambitious for somewhat different things. Men attach somewhat higher value to money and power, and women to balanced lives and the chance to make a difference. *See* sources cited in RHODE, *WOMEN & LEADERSHIP*; SHERYL SANDBERG, *LEAN IN* (2013); *Women in the Workplace 2016*, MCKINSEY & Co. (Sept. 2016), <https://www.mckinsey.com/business-functions/organization/our-insights/women-in-the-workplace-2016>.

16. *See* Rhode, *Leadership in Law*, *supra* note 1, at 1620-21; *see also* Jennifer A. Chatman & Jessica A. Kennedy, *Psychological Perspectives on Leadership*, in *HANDBOOK OF LEADERSHIP THEORY AND PRACTICE: AN HBS CENTENNIAL COLLOQUIUM ON ADVANCING LEADERSHIP* 159, 163-64 (Nitrin Nohria & Rakesh Khurana eds., 2010).

for personal achievement. But to perform effectively in those positions, their attention needs to center on enabling achievement by others. As English essayist Charles Montague noted, “there is no limit to what a man can do so long as he does not care a straw who gets the credit for it.”¹⁷

A final challenge in building the field is that many students and lawyers believe that leadership cannot be effectively learned in law school. Some are convinced that leaders are born not made, and others believe that leadership skills are best acquired through leadership experience. The lawyers who have held this country’s highest positions had no formal leadership training. Barack Obama famously said that the community organizing work he did in Chicago was the “best education I ever had, better than anything I got at Harvard Law School.”¹⁸

B. The Rationale for Leadership Education in Law Schools

Yet although we should not overclaim what law school leadership education can accomplish, neither should we undervalue its potential contributions. Researchers find that the vast majority of leadership skills are acquired, not genetically based.¹⁹ A growing array of teaching materials are available to help students develop some of those capacities, such as decision-making, influence, communication, and conflict management.²⁰ Leadership education can also inspire future lawyers to be life-long learners. That entails recognizing the skills that they will need to be effective leaders, identifying strategies for acquiring those skills, and becoming reflective about their own capacities, limitations, and aspirations.²¹ Law students can also benefit through increased awareness of the need for sponsorship and mentoring, “stretch” assignments, perseverance, and interpersonal skills; they can similarly profit from exposure to biases and ethical dilemmas that can impede their

17. C.E. MONTAGUE, *DISENCHANTMENT* 260 (1922).

18. Serge Kovalski, *Obama’s Organizing Years, Guiding Others and Finding Himself*, N.Y. TIMES (July 7, 2008), <http://www.nytimes.com/2008/07/07/us/politics/07community.html> (quoting Obama).

19. See sources cited in RHODE & PACKEL, *supra* note 1, at 4; Richard D. Arvey et al., *The Biology of Leadership*, in THE OXFORD HANDBOOK OF LEADERSHIP & ORGANIZATION 79 (David V. Day ed., 2014); see R. Avery et al., *The Determinants of Leadership Role Occupancy: Genetic and Personality Factors*, 17 LEADERSHIP Q. 1 (2006), for studies on twins suggesting that 70 percent of leadership skills are acquired, and not genetically based; Bruce Avolio, *Pursuing Authentic Leadership Development*, in HANDBOOK OF LEADERSHIP THEORY AND PRACTICE 739, 752 (Nitin Nohria & Rakesh Khurana eds., 2010); sources cited in RHODE & PACKEL, *supra* note 1, at 4.

20. See, e.g., RHODE & PACKEL, *supra* note 1.

21. Rhode, *Leadership in Law*, *supra* note 1, at 1640-41.

paths.²²

Perhaps most importantly, law school initiatives can encourage students to think more deeply about what they want leadership for. Positions of influence offer many rewards, but those that are most fulfilling are generally not the extrinsic perks of power, money, and status that individuals often envy. Students can benefit from research indicating that workplace satisfaction generally depends most on other, intrinsic factors, such as feeling effective, exercising strengths and virtues, and contributing to socially valued ends that bring meaning and purpose.²³ Goals that transcend the self have the greatest impact on individuals' sense of fulfillment.²⁴ Prospective lawyers would do well to ask the question that Marion Wright Edelman put to herself at the beginning of her career in civil rights. Well before she became the legendary head of the Children's Defense Fund, Edelman recalled an entry in her journal that read: "The time has come for you Marian, to have a frank talk with yourself. Where are you headed? . . . What do you really want?"²⁵

Leaders in legal education should ask similar questions about their own institutions. Those running law schools are more than happy to claim credit for the leadership successes of their alumnae. These institutions should do more to deserve that recognition. What that requires is not simply offering a course or special program for those who self-identify as potential leaders, useful as that first step would be. What

22. *Id.* at 1640-41. For the importance of perseverance and passion, see ANGELA DUCKWORTH, *GRIT: THE POWER OF PASSION AND PERSEVERANCE* 8 (2016). For the importance of mentoring and sponsorship, see RHODE, *LAWYERS AS LEADERS*, *supra* note 5, at 37-39; RHODE, *WOMEN & LEADERSHIP*, *supra* note 15, at 16-17, 28, 33, 81-82, 92.

23. See David G. Myers & Ed Diener, *Who is Happy?*, *PSYCHOL. SCI.* 10, 15-17 (1995) (noting the importance of being engaged and challenged in work but not to the point at which it overwhelms available time and skills); WILLIAM C. COMPTON, *INTRODUCTION TO POSITIVE PSYCHOLOGY* 48-49, 53-54 (2005) (emphasizing importance of meaning and purpose); see generally DAVID G. MYERS, *THE PURSUIT OF HAPPINESS: WHO IS HAPPY—AND WHY* 37-46, 129-30 (1992) (noting that over a certain minimum level of comfort, income does not much influence happiness, and that professional satisfaction depends on challenging and purposeful work); Ed Diener et al., *Subjective Well-Being: Three Decades of Progress*, 125 *PSYCHOL. BULL.* 276, 288, 293 (1999) (discussing the limited influence of income on satisfaction and the importance of workplace stimulation, meaning and identity); *Cf.* CHRISTOPHER PETERSON & MARTIN E.P. SELIGMAN, *CHARACTER STRENGTHS AND VIRTUES: A HANDBOOK AND CLASSIFICATION* 28-30 (2004) (describing character strengths and virtues that contribute to human flourishing such as wisdom and knowledge, courage, humanity, justice, temperance and transcendence).

24. See, e.g., JONATHAN HAIDT, *THE HAPPINESS HYPOTHESIS: FINDING MODERN TRUTH IN ANCIENT WISDOM* 88, 170 (2006) (stressing the satisfaction that comes from exercising virtue and feeling connected to something beyond the self). For the need for a higher purpose, see THOMAS J. DELONG, *FLYING WITHOUT A NET: TURNING FEAR OF CHANGE INTO FUEL FOR SUCCESS* 47-48 (2011).

25. MARIAN WRIGHT EDELMAN, *LANTERNS: A MEMOIR OF MENTORS* 61 (1999).

is still more important is to think systematically about where leadership skills can be acquired throughout the law school experience. For example, leadership development should be integrated in core curricular offerings and in extracurricular activities, including outreach to heads of student organizations and pro bono projects.

Evaluation is also critical. Leadership as a field is sadly lacking in systematic research about the long-term impact of leadership courses in business and professional schools and the approaches that are most cost-effective.²⁶ Legal educators from multiple institutions need to work together to develop metrics for evaluation.²⁷ Demanding such information and institutionalizing the most promising approaches is itself a crucial act of law school leadership.

In the final analysis, the question is not *whether* law schools should prepare students for leadership. Law schools already *are* developing leaders; they are just not doing it intentionally and effectively. Students pick up messages about leadership skills from the silent as well as formal curricula, from subtexts as well as texts, and from the role modeling that they see around them by faculty, administrators, and peers. We owe it to our students to do better. The next generation of lawyer leaders will confront problems of growing scale and complexity in a wide variety of areas, including civil rights, human rights, environmental quality, national security, immigration, economic inequality, corporate governance, and the protection of democratic processes. Future attorneys deserve our best efforts to prepare them for these challenges.

II. THE CONDITIONS AND STRESSES OF LEADERSHIP

Another topic largely neglected in legal education and in the field of leadership generally involves stress management. This issue deserves far more attention. Recent research suggests that stressful workplace conditions and their associated physical and mental health problems are a major social problem; they cost the United States as much as \$500 billion annually in impaired performance, increased turnover, and health care costs.²⁸ Law is no exception. Lawyers have among the highest rates of stress-related dysfunctions of any occupation.²⁹ And leaders are

26. See Rhode, *Leadership in Law*, *supra* note 1, at 1644. For the problem in leadership studies generally, see BARBARA KELLERMAN, *THE END OF LEADERSHIP* 180 (2012); BARBARA KELLERMAN, *PROFESSIONALIZING LEADERSHIP* 1-8 (2018).

27. One project of the AALS' Section on Leadership is to develop such initiatives.

28. For a comprehensive overview of research, see JEFFREY PFEFFER, *DYING FOR A PAYCHECK: HOW MODERN MANAGEMENT HARMS EMPLOYEE HEALTH AND WHAT WE CAN DO ABOUT IT* 2-3 (2018) (estimating employer costs at \$300 billion and health system costs at \$200 billion).

29. See *infra* text accompanying notes 35-36. For the adverse effects of chronic stress,

particularly susceptible, given the pace and pressures of their work.

A. Lawyers Experiencing the Stress of Leadership

In the summer of 2017, many in the legal and leadership community read with shock a front-page article in the Sunday *New York Times* business section.³⁰ The author, Eilene Zimmerman, movingly described the death of her ex-husband, Peter, from an infection related to drug abuse. Peter Zimmerman was a leading partner at a leading Silicon Valley law firm who, for several years, had exhibited signs of serious ill health and substance abuse. It is, of course, no secret that many highly successful lawyers suffer from such problems. But what the article brought home is just how serious and tragic their difficulties may be when others look away, or fail to look at all. Eilene Zimmerman writes:

Of all the heartbreaking details of his story, the one that continues to haunt me is this: The history on his cellphone shows the last call he ever made was for work. Peter, vomiting, unable to sit up, slipping in and out of consciousness, had managed, somehow, to dial into a conference call.³¹

Some six months after the article appeared, Stanford's Center on the Legal Profession sponsored a panel featuring Eilene Zimmerman along with two of the nation's leading experts on the subject. One was Andrew Benjamin, a law and psychology professor at the University of Washington; the other was Patrick Krill, the founder of a behavioral health-consulting firm for the legal profession and the former director of the Hazelden Betty Ford Foundation's treatment program for addicted lawyers, judges, and law students. A podcast of the program is available and it makes for an unsettling experience.³²

What that program demonstrated is that Peter Zimmerman's case is all too typical. The most comprehensive recent study of lawyers and substance abuse, coauthored by Krill, was cosponsored by the American Bar Association and Hazelden Foundation. Based on responses from almost 13,000 attorneys, it found that about a fifth of all lawyers (21%) qualify as problem drinkers and suffer from anxiety (19%), and over a

apart from its association with mental health impairments and substance abuse, see sources cited in Pamela Bucy Pierson et al., *Stress Hardiness and Lawyers*, 42 J. LEGAL PROF. 1, 5 (2017).

30. Eilene Zimmerman, *The Lawyer, The Addict*, N.Y. TIMES (July 16, 2017), <https://www.nytimes.com/2017/07/15/business/lawyers-addiction-mental-health.html>.

31. *Id.*

32. See Stanford Law School, *The Elephant in the Room: The Legal Profession, Mental Health, and Substance Abuse*, YOUTUBE (Feb. 16, 2018), <https://www.youtube.com/watch?v=sJngsXBIQeQ>.

quarter struggle with mild or more serious depression (28%).³³ Figures on drug use are unreliable because three-quarters of the survey participants declined to answer the question, an omission that Krill attributes to the stigma and illegality associated with such substance abuse.³⁴

The limited research available also suggests that lawyers report almost three times the rate of depression and almost twice the rate of substance abuse as other Americans.³⁵ Law ranks among the top five careers for suicide.³⁶ Primary reasons for legal professionals' particular vulnerability involve: first, the characteristics of individuals who become lawyers; second, the priorities and pressures that they experience in law school; and third, the conditions of practice that they encounter after graduating. As to the first reason, most research suggests that law attracts a disproportionate number of individuals with personality traits such as competitiveness, combativeness, and pessimism, which combine to make them susceptible to pressure, stress, and related mental health difficulties.³⁷

The law school experience compounds the problem. Although entering students rank better than students in other fields with respect to mental health and substance abuse, law graduates leave with higher rates of problems.³⁸ Reasons include the competition for jobs and grades, the

33. Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTIVE MED. 46 (Jan., Feb. 2016).

34. Zimmerman, *supra* note 30 (quoting Krill).

35. Fred Zaharias, *A Word of Caution for Lawyer Assistance Programming*, 18 GEO. J. LEGAL ETHICS 237, 241 n.15 (2004); Sue Shellbarger, *Even Lawyers Get the Blues: Opening Up About Depression*, WALL ST. J. (Dec. 12, 2007, 11:59 PM), <https://www.wsj.com/articles/SB119751245108525653>. Most of these accounts rely on earlier data. Current data are lacking but earlier studies find that lawyers' rates of depression (19%) were three and a half times higher than that of 104 other occupational groups. See Anthony Eaton & Garrison Mandel, *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079 (1990); 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).

36. Rosa Flores & Rose Marie Arce, *Why Are Lawyers Killing Themselves?*, CNN (Jan. 20, 2014, 2:42 PM), <http://www.cnn.com/2014/01/19/us/lawyer-suicides/>.

37. See NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* 74-75 (2010); Daicoff, *supra* note 10, at 1337; see also other sources cited in DEBORAH L. RHODE, *THE TROUBLE WITH LAWYERS* 17, 155 n.56 (2015).

38. Kenneth M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students?*, 22 BEHAV. SCI. & L. 261 (2004); *Report of the AALS Special Committee on Problems of Substance Abuse in the Law Schools*, 44 J. LEGAL EDUC. (1993), discussed in 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, 117 (2016); G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 LAW & SOC. INQUIRY 225, 246 (1986).

pressure of overwork, the stress of crushing debt loads, and the lack of education and resources concerning psychological health.³⁹ For students of color, both subtle and overt forms of racial bias, and feelings of isolation and exclusion create further challenges.⁴⁰ White students from socially and economically disadvantaged backgrounds experience related difficulties.⁴¹ Even students who recognize that they have problems are often unwilling to seek help. Major barriers include concerns about privacy, social stigma, financial implications, and potential threats to bar admission, employment, or academic status.⁴² In one recent survey of fifteen law schools, although over forty percent of students thought that they had needed help for mental health problems in the prior year, only about half actually received counseling from a mental health professional.⁴³ Although a quarter were at risk for excessive drinking, only four percent reported ever receiving assistance for substance abuse.⁴⁴ Prescription drug abuse was also a significant problem.⁴⁵ Students with the most serious issues were the least likely to seek assistance.⁴⁶ Almost half of all survey participants believed that if they had a drug or alcohol problem, their chances of bar admission were better if the problem remained hidden, and forty-three percent thought the same about mental health difficulties.⁴⁷ A third of students reported that if they saw a classmate with such an impairment, they were very or somewhat likely to do nothing.⁴⁸ Similarly disturbing is that only half of students say that their law school places substantial emphasis on preparing them to handle the stresses of law practice.⁴⁹

These stresses are increasing, and set lawyers up for an array of

39. BREE BUCHANAN ET AL., NAT'L TASK FORCE ON LAWYER WELL BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 7, 35 (2017); Ian Ayres et al., *Anxiety Psychoeducation for Law Students: A Pilot Program*, 67 J. LEGAL EDUC. 118, 119 (2017).

40. Bonita London et al., *Psychological Theories of Educational Engagement: A Multi-Method Approach to Studying Individual Engagement and Institutional Change*, 60 VAND. L. REV. 455, 462-63 (2007); Abigail J. Stewart & Andrea L. Dottolo, *Socialization to the Academy: Coping with Competing Identities*, in NAVIGATING THE FUTURE: SOCIAL IDENTITY, COPING, AND LIFE TASKS 168-69 (Geraldine Downey et al. eds., 2005).

41. London et al., *supra* note 40, at 463. For a moving account of an Appalachian student's experience at Yale Law School, see J.D. VANCE, HILLBILLY ELEGY: A MEMOIR OF A FAMILY AND CULTURE IN CRISIS (2016).

42. Organ et al., *supra* note 38, at 141.

43. *Id.* at 140-41.

44. *Id.* at 142.

45. *Id.* at 134-35.

46. *Id.*

47. *Id.* at 142.

48. *Id.* at 143.

49. *Student Engagement in Law School: Enhancing Student Learning*, LSSSE 1, 7 (2009), <https://files.eric.ed.gov/fulltext/ED512516.pdf>.

health-related concerns. As I have argued elsewhere, in both private practice and public sector work, competitiveness has grown within and across organizations; job security also means less and is harder to obtain.⁵⁰ Too many lawyers find much of their work “soul-crushing, stressful, and tedious.”⁵¹ For lawyers in firms, billable hours have sharply escalated, and what has not changed is the number of hours in the day.⁵² Law is the nation’s second most sleep-deprived occupation, which escalates the risk of anxiety and depression, and seriously impairs performance.⁵³ “All work and no play” is increasingly the norm and, as a *New Yorker* cartoon adds, it “makes you a valued employee.”⁵⁴ Overwork is a major cause of psychological and physical impairment.⁵⁵ Yet all too often, a willingness to work sweatshop schedules functions as a proxy for commitment.⁵⁶ This was true for Peter Zimmerman. His wife describes a memorable Christmas when a call from a vacationing partner forced Peter to skip their family dinner to finish a brief.⁵⁷ Unsurprisingly, most surveyed lawyers report that they do not have sufficient time for themselves and their families, and overwork is a leading cause of lawyers’ physical and psychological health difficulties.⁵⁸

In addressing these issues, technology has created as many problems as it has solved. Electronic communication has made it

50. RHODE & PACKEL, *supra* note 1, at 43, and sources cited.

51. Paul Campos, *Lawyers and Spoiled Identity*, 28 GEO. J. LEGAL ETHICS 73, 99-100, 107-09, 111 (2015) (quoting lawyers including Barone, LAOL Needs Advice, JD Underground (Mar. 2013)); see RHODE, THE TROUBLE WITH LAWYERS, *supra* note 37, at 18 (2015).

52. RHODE, THE TROUBLE WITH LAWYERS, *supra* note 37, at 12-13; Pierson et al., *supra* note 29, at 20-21.

53. Catherine Rampell, *America’s Ten Most Sleep Deprived Jobs*, N.Y. TIMES (Feb. 22, 2012, 4:41 PM), <https://economix.blogs.nytimes.com/2012/02/22/americas-10-most-sleep-deprived-jobs/>; Anahad O’Connor, *Really? The Claim: Long Work Hours Can Cause Depression*, N.Y. TIMES (Feb. 7, 2012, 11:40 AM), <https://well.blogs.nytimes.com/2012/02/06/really-the-claim-long-work-hours-can-cause-depression/>; A.M. Williamson & Anne-Marie Feyer, *Moderate Sleep Deprivation Produces Impairments in Cognitive and Motor Performance Equivalent to Legally Prescribed Levels of Alcohol Intoxication*, 57 OCCUPATIONAL & ENVTL. MED. 649, 653-54 (2000); Yvonne Harrison & James Horne, *The Impact of Sleep Deprivation on Decision Making: A Review*, 61 J. EXPERIMENTAL PSYCHOL. 236 (2000).

54. Leo Cullum, THE NEW YORKER (Oct. 30, 1998), available at <http://www.Cartoonbank.com>.

55. PFEFFER, *supra* note 28, at 133-35.

56. RHODE, THE TROUBLE WITH LAWYERS, *supra* note 37, at 13; PFEFFER, *supra* note 28, at 128.

57. Zimmerman, *supra* note 30.

58. For surveyed lawyers reports, see *ABA Young Lawyers Division Survey: Career Satisfaction*, A.B.A., Table 20 (2000). For overwork, see sources cited in Buchanan et al., *supra* note 39, at 32, 55; RHODE, THE TROUBLE WITH LAWYERS, *supra* note 37, at 20, 158 n.86.

increasingly possible for lawyers to work at home or on vacation, but has also made it increasingly impossible for them not to do so.⁵⁹ Lawyers remain tethered to their devices, as Eilene Zimmerman notes in describing Peter's memorial service. When a young associate from his firm "stood up to speak of their friendship . . . [q]uite a few of the lawyers attending the service were bent over their phones, reading and tapping 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."⁶⁰

Racial, ethnic, gender, and class bias also creates additional stress. Underrepresented groups often face isolation, denigration, harassment, and pressures to suppress aspects of their identity to fit the dominant culture.⁶¹ Chronic "micro-inequities"—subtle insults, denigrating messages, and patterns of being overlooked and undervalued—can impair performance and psychological well-being.⁶² Indeed, some research finds that these forms of often unintended bias can have more adverse consequences than overt discrimination, because they occur with greater frequency and targets are more likely to blame themselves than the perpetrators.⁶³

B. Challenges for Leaders

Stress and overwork escalate for lawyers who lead. Although the contexts of contemporary leadership vary, most share some common features, including an increase in competition, complexity, scale, and pace.⁶⁴ Leaders face growing "pressure to perform, to be constantly competitive, constantly innovative, constantly communicative, constantly at the top of their game, constantly at the service of followers whose level of patience with those in charge has dropped to new,

59. Lawyers' problems are reflective of broader cultural patterns. See generally LESLIE A. PERLOW, *SLEEPING WITH YOUR CELLPHONE* (2012).

60. Zimmerman, *supra* note 30.

61. For examples of the devaluation of competence of lawyers of color, see ARIN N. REEVES, *WRITTEN IN BLACK & WHITE: EXPLORING CONFIRMATION BIAS IN RACIALIZED PERCEPTIONS OF WRITING SKILLS* 3 (2014); Jerry Kang et al., *Are Ideal Litigators White? Measuring the Myth of Colorblindness*, 7 J. EMPIRICAL LEGAL STUD. 886 (2010). For pressures to "cover" to fit in, see Kenji Yoshino, *The Pressure to Cover*, N.Y. TIMES MAG. (Jan. 15, 2006), <https://www.nytimes.com/2006/01/15/magazine/the-pressure-to-cover.html>. For an overview of diversity-related issues in the legal profession, see RHODE, *THE TROUBLE WITH LAWYERS*, *supra* note 37, at 60-86; see also RHODE & PACKEL, *supra* note 1, at 470-47, and sources cited.

62. Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 AM. PSYCHOL. 271, 273 (2007).

63. Kristen P. Jones et al., *Not So Subtle: A Meta-Analytic Investigation of the Correlates of Subtle and Overt Discrimination*, 42 J. MGMT. 1588, 1589-92, 1605-06 (2013).

64. The discussion in this section draws on RHODE & PACKEL, *supra* note 1, at 43.

arguably precipitous lows.”⁶⁵

Other challenges arise from changes in legal organizations. Over the last half century, the size of the largest firms has increased more than ten times, and the most prominent public interest legal organizations have also mushroomed.⁶⁶ In-house offices of large corporations have grown as well and all of these organizations confront more issues involving multiple states, countries, and stakeholders.⁶⁷ The risks and consequences of bad decisions are amplified by social media and a 24/7 news cycle.⁶⁸ Technological advances have increased both the pace of decision-making and the responsibilities of decision makers. Leaders often face an information overload, along with pressure to make complex decisions instantly and to be constantly available.⁶⁹ As former deputy attorney general Jamie Gorelick noted, “if you don’t like an issue before you, wait fifteen minutes. . . . Somebody will give you a new one.”⁷⁰

Lawyers who lead also have a responsibility to address the working conditions in their organizations that impair health. Although data is lacking on the prevalence and effectiveness of stress management and wellness programs in legal workplaces, the experience in other fields is not especially encouraging. All too often employers supply voluntary opportunities with or without modest incentives for participation, which do not attract most employees or address the root causes of stress (such as overwork, inflexible and unpredictable schedules, excessive competition, and unrealistic time pressure).⁷¹ Failure to modify these conditions is not only inhumane, it is economically unproductive. Bleary, burned out, disaffected, and/or addicted lawyers are not delivering cost effective services.⁷² Leaders need to know more about how their policies and practices are exacerbating rather than combatting the problem.

65. BARBARA KELLERMAN, *HARD TIMES: LEADERSHIP IN AMERICA* 301 (2015).

66. Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 *STAN. L. REV.* 2027, 2032-33 (2008). For example, the National Resources Defense Council (NRDC), where my husband works, began in the mid-1970s with a half dozen lawyers; NRDC currently employs over 500 people including scientists, communications experts, and administrators. See *About Us*, NRDC, <https://www.nrdc.org/about> (last visited Apr. 23, 2018).

67. BEN W. HEINEMAN, JR., *THE INSIDE COUNSEL REVOLUTION: RESOLVING THE PARTNER-GUARDIAN TENSION* (2016).

68. Pierson et al., *supra* note 29, at 38-39 (discussing leaders’ constant high visibility).

69. MICHAEL FULLAN, *LEADING IN A CULTURE OF CHANGE 2* (2001).

70. ELIZABETH VRATO, *THE COUNSELORS: CONVERSATIONS WITH 18 COURAGEOUS WOMEN WHO HAVE CHANGED THE WORLD* 51 (2002) (quoting Gorelick).

71. PFEFFER, *supra* note 28, at 29-43.

72. *Id.* at 137-38, 194-96; RHODE, *TROUBLE WITH LAWYERS*, *supra* note 37, at 20-23.

C. Strategies for Improving Lawyer Well-Being

Addressing these issues is no small task. Our Stanford program was titled “The Elephant in the Room: The Legal Profession, Mental Health and Substance Abuse.” Despite the overwhelming magnitude of that elephant, it is one that lawyers and legal educators have often preferred to ignore. Many place responsibility everywhere and anywhere else, and have averted their eyes when individuals such as Peter Zimmerman have suffered in silence.⁷³ Much needs to change, and a National Task Force on Lawyer Well Being has sketched out a comprehensive reform agenda, with forty-four specific recommendations for legal employers, legal educators, bar regulators, and other stakeholders.⁷⁴ Because time at this symposium is short and that agenda is not, and because my focus here is on leadership in legal education, let me close with some key proposals for law schools.

The most obvious first step is to provide better education for students about health challenges and appropriate responses. More information should be available from multiple sources to enable individuals both to recognize that they, or one of their classmates, need assistance, and to know how to get it. The National Task Force and other experts recommend that schools consider:

- ensuring that mental health and substance abuse issues receive coverage in mandatory professional responsibility courses;
- establishing lecture series or programs on wellness and coping strategies for stress, including sessions during orientation for first year students;
- providing adequate counseling and referral structures;
- publicizing resources to normalize the process of seeking assistance;
- offering training for peer counselors; and
- working with legal employers to structure activities for student summer associates and recruits that do not foster alcohol abuse.⁷⁵

73. Buchanan et al., *supra* note 39, at 12.

74. Buchanan et al., *supra* note 39.

75. Buchanan et al., *supra* note 39, at 36-39; Organ et al., *supra* note 38, at 148-50. For strategies to increase “stress hardiness” see Pierson, *supra* note 29, at 40-60. The suggestion about alternative events for students comes from Email from Patrick Krill, Founder of Krill Strategies. Pub. Aff. & Pol’y Advisor to the Hazelden Betty Ford Found., to Deborah L. Rhode, Ernest W. McFarland Professor of Law at Stanford University (Mar. 21, 2018) (on file with author). For an innovative program to address student anxiety piloted at Stanford and Yale, see Ayres et al., *supra* note 39.

Equally important is educating faculty. Most lack adequate information about psychological dysfunction in their students or attribute it to factors outside law schools' control.⁷⁶ Law professors should know more about how to recognize students at risk and how to provide constructive assistance. They also need to understand their own reporting responsibilities to the law school and to the bar in such circumstances. So too, faculty also should be better informed about practices that researchers believe are compromising student well-being, such as mandatory grading curves, inadequate feedback, and intimidating classroom teaching styles.⁷⁷

Finally, law schools should do more to assess their cultures and implement appropriate correctives. The National Task Force recommends strategies such as conducting anonymous student surveys about well-being and discouraging alcohol-centered social events. Legal educators can also do more to partner with other schools and the bar on related issues. One high priority should be ensuring that the state's moral character inquiries for bar admission do not discourage students from seeking mental health treatment. Despite frequent litigation under the Americans with Disabilities Act, and an American Bar Association resolution urging bar licensing authorities to drop overbroad questions, not all states have done so.⁷⁸ Another priority should be to collect data on student well-being programs from other law schools and academic institutions to identify the most cost-effective strategies.

CONCLUSION

As a law teacher for almost four decades, I have observed many legal professionals—friends, colleagues, students, and staff—struggle with issues of well-being. Large numbers of these individuals are, or will become, leaders. The vast majority, I hope, have gotten the assistance they need. But some, I suspect, have not. For that, our profession has much to answer for. It should not take a story like Peter Zimmerman's to shock us into action. Events like this symposium are a reminder of how much progress is yet to be made and our own responsibilities to contribute.

76. Robert P. Schwerck, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students*, 45 S. TEX. L. REV. 764-66 (2004).

77. Kenneth M. Sheldon & Lawrence S. Kreiger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. 853 (2007).

78. Organ et al., *supra* note 38, at 154-56. For general discussion, see *No One Should Be Forced to Choose Between the Ability to Practice Law and Their Rights to Privacy and to Be Free From Discrimination*, DISABILITY RTS. WASH. (Sept. 1, 2016), <https://www.disabilityrightswa.org/2016/09/01/questions-of-discrimination/>.