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DAILY REPORT

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Going Beyond Fear Is the Next Phase in Addressing Attorney Mental Health

ERIC C. LANG

I WAS INVITED to speak to the Mercer University Law Review's Seventy-Fifth Anniversary Symposium ("A Course of Action: Shaping the Next Seventy-Five Years"), held in October. They asked me to speak generally on the subject of attorney mental health. I had talked at Mercer Law School numerous times on this topic, and they wanted me to do a deeper dive.

My background is relevant. In 2012, I tried to take my own life and then learned that I had been for, well, a long time, been dealing with undiagnosed and untreated bipolar disorder. Along the road to my attempt, I did some unethical things, and consequently had some time away from the law. I did the work (therapy and meds and awareness) and came back in 2015. I am med compliant and in therapy through this day, and enjoy a fulsome and rewarding practice.

I started speaking on this subject in 2013, and have been giving a few talks a year since then to CLE audiences, bar events, judicial conferences and, of course, to students. (In a chilling coincidence, my speech was originally scheduled for the day after a federal assistant public defender took his life in the State Bar of Georgia parking garage. The speech was delayed due to winter weather and took place a month later.)

Starting Anew

In prepping for the symposium, I realized that, though my presentation had evolved here and there over the course of the years, it still resembled the first one I gave. I decided that the symposium was the time to start anew. I wanted to share some of my realizations about the evolution of the focus on attorney mental health.

Attorneys did not have mental health issues until the early 21st century. (Let's get this out of the way—I take these issues, which almost killed me, very seriously, but part of taking these issues seriously is a deliberate choice to attack stigma with flippancy.)

More accurately, very few people talked about them, and when they did, they used words like "stress" and "dissatisfaction." Sometime in the 2000s, somebody noticed that attorneys were dying by their own hands. It's not that this was never true before, it's just that, as with everything else, our ability to share news and information grew, so our knowledge of events grew. Look hard enough and you'll find someone describing it as an epidemic.

The Phases of Mental Illness

So if phase one was "there is no problem," phase two became "putting a face on the problem." (More on that face later.) We learned who died. That led to some brave attorneys stepping forward and telling strong stories of battles with mental health issues. It also led to much-needed growth in Lawyer Assistance Programs (LAPs). LAPs were originally designed and publicized for alcohol and substance issues, but their mission grew with the realization that such issues were one kind of mental health issue.

Which brings us to phase three, where we are now. Phase three has three characteristics: statistics, fear and wellness. Since the mid-2010s, there's been roughly a study per year declaring that some percentage of us have some issues, which is a multiple of what the general population has.

Sometimes it's phrased in terms of "lawyers are X times more likely..." You've seen them because every time one is released, the legal press runs with them, as they should. I'm not calling out any author or study by name; that would require much more space than an opinion column.

I can, however, tell you what I told the symposium: while these studies provide a data point to consider, they are far from definitive or conclusive. Indeed, those who write the studies tend to include the right disclaimers in that regard, but disclaimers make for boring news.

Statistics, Fear and Wellness

That is where fear comes in. We've been using the numbers (which are imperfect) along with words in a way that is intended to be attention-getting. And we've chosen fear as our tool to get attention. My own guilt in that process became clear as I was going over my past materials. Words like "crisis" abound in the literature.

Even the best of writers making the best of points can fall victim to fear-based numbers. This week in its regular ethics column, the Daily Report ran a comprehensive list of the efforts made by the Georgia Bar (lauded below by me) but led into by noting that lawyers are "more than twice as likely as the general adult population to have thoughts of suicidal ideation."

The study the article cites does not reach that conclusion, but rather cites another article, which has various and disclosed issues of its own. I don't criticize the individual authors of the ethics column for relying on the descriptions of others in drafting their commentary. Rather, it's just an example of how we in this space reflexively cite attention-grabbing numbers for something more than they may actually mean.

Remember when I said phase two was putting a face on the issue? Well, in phase three, the face often looks like this (visit <https://btl.ly/48gGUw8> and scroll down to page 14). That's the graphic the American Bar Association used when it rolled out one of the studies I alluded to above.

All that's missing, I think, is the man's hand holding a gun to his head. (It also propagates the myth that mental illness is the sort of thing that is plain on one's face, and that there's no such thing as a happy-looking person masking internal pain.)

The final leg of phase three is wellness. Wellness can and does mean many things. The State Bar is way out in front of the curve in this area—every year there is a new initiative and a new way to deliver services.

Demand for the State Bar's services and assistance in this area has been so strong that it has just formed the Center for Legal Well-Being, which will work with and through all of the stakeholders and actors in the area of attorney mental health. Consult gabar.org/wellness to learn what the State Bar is doing.

The wellness tent is a large tent, though, and many if not most of the things in the tent are things designed to keep you healthy, as opposed to things designed to address illness directly. As part of my preparation for the symposium, I read/reviewed something like 150 articles.

"Mindfulness" was mentioned 888 times and "meditation" 399 times. "Medication" merited 66 mentions (14 in one article). I have no criticism of meditation or mindfulness—no one should take this paragraph as disrespect for wellness.

But, if we were talking about heart health, wellness would be diet and exercise, etc. If someone is having a heart attack, "eat better" won't help at that moment. It could have helped before, and it might help later. Just not now. It is time for another phase, one that builds on the successes, and learns from the missteps, of the earlier phases.

Phase Four

In my mind phase four must be characterized by knowing and respecting the audience. If you ask the folks at the National Institute of Mental Health (NIMH) for

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vocabulary, they will tell you that there are three groups of people: no mental illness, any mental illness and (a subset of any) serious mental illness.

For this discussion, I'm going just to look at the big groups—none and any. (Any is broad: phobias, anxieties and things as serious as schizoid issues.) Roughly 80% of the population have no mental illness; 20% have any. (Those numbers are general population numbers and rounded.) This yields three groups of lawyers: (1) lawyers with no mental illness, (2) lawyers with mental illness that don't realize it and (3) lawyers with mental illness that do realize it.

I would suggest that the first group—lawyers with no mental illness—is perfectly served by wellness programming and the counseling made available by L.A.P. I would suggest that this group is the one least served by fear.

Indeed, you may have noticed I didn't list a fourth group “attorneys who have no mental illness but think they do.” There are no such people because those folks have illness anxiety disorder/hypochondria. We should stop scaring this group into believing they have problems.

I do not mean this group should be kept ignorant of mental illness topics. What I do think we need to do is eliminate one-size-fits-all messaging. My opinion—which is not universal—is that the list of “signs” we are given to look for is too self-referential.

The Signs Someone Is Considering Suicide

How might you know someone is considering suicide? Well, if they are having suicidal thoughts, of course. There are a num-

ber of law practice-tailored lists out there (missing deadlines, resetting meetings, etc.) that I suggest would be more helpful. The same is so with respect to advising people how to raise possible issues with their colleagues. One size does not fit all, and the “next phase” should include more discussion of those tools.

It's the second group—lawyers with issues that don't realize they have issues—that is ill-served. If you don't know you need assistance, well, then you aren't calling the L.A.P. If you follow the wellness advice and it doesn't change you, then you may perceive you've done all you can do.

What this group needs to hear—and near as I can tell is rarely if ever told—is that they are on a different footing (health-wise) than the larger group, that different does not mean worse, but it does mean that different steps are called for. Take it from a former member of the second group, now a proud member of the third: talking about useful medications, symptoms, and genetics and triggers in a frank fashion could have been helpful.

And this is where the third group comes in. We have to be more active in the process. We have the credibility of those who have been there. We are lawyers who have dealt with the issue. We are not counselors to such lawyers. We are not consultants looking to get hired by law firms. We are not academics looking at numbers. There is an unsurprising divide here—there's a decent-sized slate of lawyers with any mental illness who are out there talking about this issue.

But those of us who have survived an attempt (meaning, a plan implemented that for whatever reason did not end in death,

as opposed to ideation/thought)—my last count was that there are five of us nationwide, with the fifth one only coming forward over the last few months.

Here's how few will talk publicly—next month the ABA is releasing a collection of essays called “Her Story: The Resilient Woman Lawyer's Guide to Conquering Obstacles (Book 2).” The suicide essay is coming from me.

The Next Phase

Finally, I think the next phase needs to scale way back on the numbers and the language of fear. We have a hard profession; we don't need a study to tell us that. A hard profession pushes more buttons than an easy one, so our number might run higher. So what.

There are plenty of things we can't change in our profession that are certainly associ-

ated with stress. (“I would like 30-ish days to respond to the motion, not 30” doesn't seem right.) So let's drop the ratios, the percentages, the crises, the epidemics and for heaven's sake the macabre black and white anguish photos, and do the work we need to do to stay well.

I am immensely proud of the progress our profession has made on these issues. I know that every time I write or speak on the issue of suicide, I get a call, an email, a “hey, wait up” in the parking lot, all of which result in someone seeking more help.

This obviously is one more example of why, if everyone were more like me, the world would be better. (See opening note regarding flippancy.) I hope that we move on to this next phase with the same spirit and success that we have already displayed. ☺