

The Law and Psychological Wellbeing: Can they go together? How?

***Robyn Bradey B.Soc. Stud. (SYD) Mental Health Accredited Social Worker.
2020***

Introduction

We do know that the mental health of lawyers is not good when compared to other professions. Studies from around the world and here in Australia consistently show lawyers suffering from major depression and anxiety disorders over 3 times greater than non-lawyers. US studies have it at 3.6 times greater with a quarter of Californian lawyers experiencing extreme anxiety.¹

In research commissioned by the UK Bar Council and led by my colleague Bencher Rachel Spearing, Co-founder of the Wellbeing at the Bar UK, (WATB)² conducted across 2,500 barristers in 2014 the following findings were made. 1 in 3 barristers reported finding it difficult to control or stop worrying. 2 in 3 thought showing signs of stress equalled weakness thereby making it highly unlikely they would mention their distress to anyone. 1 in 6 said they were in low spirits most of the time. 59% demonstrated unhealthy levels of perfectionism. And for all of the above reasons psychological wellbeing was not being discussed in the profession.³ The same body of research uncovered a report that encouraged legal leaders to initiate measures to better understand and promote wellbeing in the profession.⁴

Here in Australia research (7551 participants) found that lawyers experienced the highest incidents of depressive symptoms compared to 9 other professions, with 52% reporting they were considering leaving the profession.⁵ I have heard anecdotally that 70% of new lawyers in this country leave after 5 years. Let me at first speculate on what I think some of the causes of these alarming statistics might be and offer some possible remedies along the way.⁶

Possible Causes

Perfectionism & Isolation

There are some hints in the above research, I think. The notion that lawyers believe showing signs of stress equals weakness is telling. From the moment young lawyers take up their place in most law schools, they are told they are the cream of the crop, but only half of them will complete their degree. Not all of them even then will find a job they are also told. So, from the outset they get the message the Law is only for the brightest and the toughest and is for the survival of the fittest. We know from fabulous research by Carol Dweck⁷ that high achievers, the so called “Gifted and talented” become so afraid of failure they only focus on what they are good at and won’t risk failing by trying something new. They value being smart, and first in the class and assume they will succeed

¹ Patrick J Schiltz, On being Happy, Healthy and Ethical Member of an Unhappy, and Unethical Profession, 52 Vand.LRev 871,874 (1999)

² Research funded by the 4 Inns of Court, the Bar Council and Charlie Waller Memorial Trust

³ http://www.barcouncil.org.uk/media/348371/wellbeing_at_the_bar_report_april_2015_final.pdf

⁴ Daniel Bowling, Lawyers and their Elusive Pursuit of happiness: Does it Matter? Forum for Law and Social Change Vol 7:37 2015

⁵ Adele J Bergin and Nerina L Jimmieson, Australia Lawyer Well-being: Workplace Demands, Resources and the Impact of Time-billing Targets, Psychiatry & Psychology and Law, 2014 Vol. 21, No. 3, 427-441

⁶ I am indebted to Rachel Spearing Co-Founder of WATB for these references that she sourced, and we used in a co-presentation to Inner Temple Pupils, London 2017

⁷ Carol S Dweck, Mindset. The New Psychology of Success. Ballantine Books, NY 2006

without much effort which is usually true at least until the end of their schooling. They develop what Dweck refers to as a “fixed mindset” that closes them off to experimental learning and learning through failure and collaboration with others. All of which diminishes their capacity for resilience and support. They believe perfectionism is both desirable and achievable. So long as they keep achieving easily, they are fine.

Once they enter the world of more rigorous study, with high work volumes and self-directed learning that Law School requires; whilst finding themselves for the first time a small fish in a big pond of high achievers, many of whom are smarter than them, some begin to flounder. Some cheat, plagiarise and bluff their way through. Many as we have already noted quit. The seeds of anxiety and depression are planted here and will come with them into their professional lives.

Those that do get a job find themselves the most junior person in a firm, large government department or legal centre often reporting to lawyers who came through the “if it’s too hot in the kitchen get out” school of law described above. They are put to long hours, boring and repetitive tasks with files returned to them laden in red ink more often than not correcting style rather than substance. Or they are thrown in at the deep end listening to very distressed clients in family law, criminal law, immigration, personal injury and other volatile areas with huge caseloads and few resources. They lack the life experience to deal with this and with no culture of supporting staff or being able to ask for help they repress and bluff.

Others do get lucky and have at worst a benign and at best kind, well intentioned senior who is working so hard and such long hours themselves the new lawyers don’t feel they can ask for support for fear of overloading the boss. Also, they think if the boss is working that hard, they should too. I have heard eminent, excellent senior legal practitioners boast about being workaholics and perfectionists. Where does that leave the exhausted youngster who wants to have a life and a successful career? She becomes just like the boss (rather reminiscent of the message of the 70’s song Cat’s in the Hat)⁸ and the culture is reinforced for the next intake. He struggles on, growing those seeds of depression and anxiety and possibly Vicarious Trauma. But because there is no-one to talk to the psychological distress continues until a mistake, a or a complaint, or worse, suicide brings the issue to light.

The suicide rates in the law are very high and, in the study, cited above⁹ Schiltz quoted figures suggesting that the suicide rate for white male lawyers maybe over twice that for other white males. Until fairly recently the law, in first world countries at least as been dominated by white males. My observation alarmingly is that many successful white female lawyers have emulated the culture and attitudes of their male colleagues. Its my prediction that the gender gap on suicidality will narrow.

It is not a lot better for the large majority of lawyers who go into solo or small private practices (which is the large majority of law societies memberships at least in Australia and NZ to my knowledge) where they quickly have to become practice managers, accountants, accidental counsellors as well as being lawyers. Often working long hours only to be abused by their clients when they send the bill. These lawyers always express to me the burden of being over regulated and under appreciated by government, their own societies and the public. Those working in the regions find all of these problems exacerbated by isolation. I shall return to isolation on its own merits below.

⁸ Harry Chapin 1974

⁹ Patrick J Schiltz ibid

As can be seen by the UK Bar study cited above, the majority of those called to the Bar, go to the private Bar where even though they are often in large Chambers they are effectively in competition with each other for briefs and operate as sole practitioners, colleagues and clerks being in the same building, notwithstanding. Isolation was once again cited as a huge issue for the cohort in that survey. An eminent Senior Counsel here took the trouble to walk me through the rabbit burrow of his chambers in Sydney to show me his colleagues all locked behind their doors with only the clerks bringing briefs coming and going. He was trying to disabuse me of my naïve Social Work thinking that they would be willing or able to support each other in their workplace. Notably he had only recently recovered from a serious bout of depression himself, that was picked up by his wife, not his colleagues.

Finally, barristers and solicitors in every jurisdiction report feeling bullied and extremely stressed in the Courts. The pressure on the Courts imposed by the sheer numbers waiting to appear before them coupled with misinformed public opinion and media beat ups is enormous. Judges, magistrates, registrars and senior counsel have all come through legal training and the workplaces that bring the attitudes and practices described above and are not immune to developing the resultant mental illnesses. The consequences for judges admitting to being unwell or even simply, stressed, whilst still sitting are enormous. So most don't acknowledge a mental illness until they are about to retire. One exception in recent times is Magistrate David Heilpern in NSW, whose brilliant, brave article and interview for the then named Tristan Jepson Memorial Foundation (now Minds Count Foundation) did exactly what its title said and "Lifted the Judicial the Veil on Stress."¹⁰ His article describes how he suffered from PTSD for months on the bench reacting particularly to a multiple victim child abuse matter, but didn't realise what he had. (As in the case of the barrister above it was his wife who insisted something was wrong. His colleagues either had not noticed or felt they couldn't say anything) He links the period of his illness with being very agitated and cranky when in court and realised only after he recovered what a difficult time, he had given everyone else in court during those months. He had become as a result of his illness an "unintentional bully" which make up 96% of bullies in Australian workplaces.¹¹

Possible Remedies

Perfectionism has to go. Legal academics and leaders need to recognise the quest for perfection as the fool's quest that it is. They need to cure it in themselves, first, by following the program set out by Tal Ben Shahar, Harvard Professor.¹² Recognise it in their students and colleagues and encourage the profession to strive for Optimialism, which is 80% all of the time without burnout. Optimialists are more efficient, more productive, happier and therefore much more likely to make good decisions and be more resilient. Further, because they allow themselves to make mistakes and fail sometimes, they are better placed to assist others who will confess their mistakes more readily and not try to cover them up or blame others. One of my teams of Immigration lawyers has adopted the mantra: "turn your losses into data." Instead of energy sapping self-blame for losing a case, find out how you lost and do it differently next time. In recognising his own perfectionism Ben Shahar identified that it had helped turn him into the world's best procrastinator. He had to re-read every submission couldn't settle on strategies, could not finish or hand in work because it might not be good enough. His in-tray never went down, and he was exhausted. He could not believe the energy

¹⁰ David Heilpern Lifting the Judicial Veil Vicarious Trauma, PTSD and the Judiciary: A Personal Story. [http://www.judicialcollege.vic.edu.au/sites/default/file.Helipern%20\(2017\)20TJMF%20Lifting%the20%Judicial%20Veil.pdf](http://www.judicialcollege.vic.edu.au/sites/default/file.Helipern%20(2017)20TJMF%20Lifting%the20%Judicial%20Veil.pdf)

¹¹ Evelyn M Field Bully Blocking at Work 2011

¹² Tal Ben Shahar The Pursuit of Perfect. 2009

he found when he ditched the perfectionism. Many of the lawyers I have recommended do his program report the same to me.

I was heartened to hear Sir Andrew McFarlane President of the Family Division and Head of Family Justice UK speaking at the Wellbeing for Law Conference in 2019, urging us to learn to work differently in order to stay well. He had instructed his judges for example that “short orders would do.” Just write the judgement and get it out there.” On the matter of overwork, he said “if it’s the list or the judge that has to go, it’s the list every time.” He also had instructed his judges not to be checking and responding to emails and texts out of hours. He also was encouraging his judges to “work differently.” He conceded he could do little to stem workflow, so they all had to learn to use the technology and try different systems to do the job without getting sick. At the time they were moving to video courts; something of course that not long later, the COVID19 virus has forced all courts around the world to be using. This is leadership and this is going in the right direction.

Whist on the point of too much work and too little time to do it in, billable hours has to go. Unrealistic time frames attached to tasks, micromanaging and not valuing the unbillable components of the work like research, consulting, self-care and training mean they don’t happen. Lawyers report their stress levels go up when they have to log their billable hours, time which by its nature is also not billable!

Flexibility is a core component of wellness. Daniel Siegel a psychiatrist in the US has even proposed a model in which he reconfigures all of the mental illnesses as being the product of either rigidity or chaos,¹³ which he conceptualises as the banks of river and wellness is going with the flow in the river. The law has been perhaps the most rigid and inflexible of professions which has not only contributed to the poor mental health of its practitioners it has also contributed to making it impervious to sensible change and unnecessarily vulnerable to the disruption brought by technological change. Richard Susskind has been warning the legal (and other professions) about this for years¹⁴ encouraging them to embrace the change and make the disruption work for them. Those who have heeded his message will emerge from the COVID19 period not only with businesses intact but flourishing. Their anxiety right now at the time of writing which has most legal workplaces, including the courts having to work virtually will be much lower than colleagues who have not already been adapting.

The ability to embrace new learning that is implied above also has been shown to enhance mental and physical wellbeing because it strengthens the synaptic connections in the brain, which improves the brain’s plasticity.¹⁵ So from Law School on into required continued professional development new skills in diverse subjects need to be introduced and constantly updated. Professional training and development should include subjects like recognising mental illness, mindfulness, developing empathy, computer courses, lateral thinking, diversity, working collaboratively, business practices. The list is literally endless and should include something the practitioner has not tried before. New learning goes to competence and as I have said increased brain power, which leads to confidence and that leads to enhanced wellness.

One specific skill that can and should be taught as it is in Social Work and Psychology courses and is required to be demonstrated in cpd is self-awareness. The capacity to know yourself, question your

¹³ Daniel J Siegel The Mindful Brain 2007 NY

¹⁴ Richard Susskind Transformation of the Law 200, Tomorrow’s Lawyers 2013, The End of lawyers? 2008 The Future of the Professions 2015, Online Courts and the Future of Justice 2019

¹⁵ Michael Merzenich Soft-Wired How the New Science of Neuroplasticity Can Change Your Life 2013
www.soft-wired.com

own practices, decisions and emotional states is considered a necessary skill in the other professions that work with distressed clients and distressing material. Why hasn't it been required of lawyers? Self-awareness combined with mindfulness practices mean the practitioner will no longer be the last person to know they are unwell.

The other practice missing from the law is professional supervision as practised by Social Workers and Psychologists. This is not line supervision, it is the practice of meeting with a senior colleague on a regular basis (usually monthly) to be checked for wellbeing and vicarious trauma, asked about good and bad interventions and what you have learned from them. It can also be conducted in groups. The process involves self-reflection with another who can help and direct you to new learning when needed, pick up early signs of distress and support wellbeing practices. I am not allowed to practice as a Social Worker even after over 40 years without proving I submit myself to this process for a required number of hours in a working year. I am not allowed by my professional body to be isolated because it's not safe. I currently run social work style supervision with a number of legal centres and have done it with individual practitioners both junior and senior. They love it, in one group I led recently one of the senior practitioners said, "Isn't it great we get to do this to reflect on what's happening and help each other plan strategy."

Regular supervision is a great way to make sure practitioners don't get isolated, as is mentoring. The Law has had a great tradition of informal mentoring which billable hours has eroded. Many legal organisations including the UK Bar are beefing up their mentoring now. This is also now starting to happen in Law Schools too which is a great thing.

Fear of Being Seen as Weak or Unable to Function

It is evident from the research that once thrust into this aggressive, competitive environment the last thing a new lawyer is going to do is tell anyone they are not coping. As we have already seen they believe they will be seen as weak. All lawyers worry that getting a diagnosis may call into question their ability to do complex work, threatening promotion, and indeed their practising certificates. So, they suffer quietly or turn to comfort strategies like alcohol, drug taking, eating, gambling, spending and unsafe sexual practices or relationships. All of these are well known to exacerbate poor mental health and lead to malpractice and client complaints. I deal with Legal regulators in Australia and New Zealand, all of whom have observed the correlation of the practitioner being unwell and the likelihood of complaints. In a profession that values the acuity of the practitioner's mind admitting to mental illness is an anathema. And of course, the legal regulation processes only enhance the risks of anxiety and depression, worsening the practitioner's mental health. Many regulators are quite rightly deeply concerned about the effect of their own processes on the mental health of both the practitioner and those investigating.

Possible Remedies

Training in Law School, Colleges of Law and workplaces in understanding, recognising and responding to mental illness in yourself and others should be mandatory. Clear statements from societies, regulators and employers that you will not be punished, or your career adversely affected for declaring yourself to have a mental illness. As thankfully has been the case for Magistrate Heilpern. And if the illness turns out to be a factor in malpractice or poor behaviour it will be taken

into account. Also train members of staff in chambers, firms and larger organisations in Mental Health First Aid, so that they can quickly recognise and respond to colleagues in distress.

You will find on the UK Bar wellbeing portal¹⁶ a resource of mine to help a colleague who has been off getting treatment for a mental illness have a supported return to work, like you would have if they were returning from physical illness. There is also a template for gaining prior consent from someone with a known illness, say for example Bi-polar to enact a care plan when early signs of the illness arise. A practitioner with a mental illness, who acknowledges having it, advises his employer or colleagues, keeps himself well and co-operates with sensible care plans in the workplace is a valuable practitioner we will want to keep. We should no longer tolerate having a different approach for physical illness to mental illness in the modern workplace. Helping practitioners feel safe to disclose an illness and supporting their recovery will end the fear of being seen as weak.

Vicarious Trauma

Several mentions have been made of Vicarious Trauma (VT) above. I want to turn to it specifically now. VT is the trauma we get from another person's trauma. Because "the thought is the same as the activity to the brain"¹⁷ when we read, listen to and deal with material that describes something traumatic happening to another person; our brain reacts as if it's happening to us and turns on our fight, flight, fright centre getting us ready to respond. This is not a psychological response, initially, but a physiological response with the brain pumping out cortisol, adrenalin and hypertensive chemicals into our system to help us meet the threat and keep us in hyper alert. This is what got us out of the way of predators in the past and is hardwired into our DNA. Originally, as it still is in the animal kingdom it was a short-term response, minutes not hours, days, weeks or months and it turned off when the danger passed. However, over time the human brain has developed in a way our animal cousins brains have not. We have grown more connections in the prefrontal neo-cortex which has enabled our brains to anticipate bad things happening. We also do what other animals don't do and that's ruminate (which is why they don't get ulcers) so we keep the bad event in our head going over and over it and in so doing we keep our fear centre on pumping chemicals we don't need and can't easily disperse into our systems.¹⁸ And lawyers are the best ruminators I know with good memories so a lot of nasty stuff stays in their brain bringing the symptoms of trauma and depression, anxiety and intrusive thoughts with it. And of course, many lawyers have a high caseload of distressing cases.

The symptoms are hyperarousal, literally the fight, flight fright, evidenced by anger, overreacting to little things, startle response, hypervigilance, over working and a rescue mentality. Next is its cousin, hypo arousal typified by tiredness, lack of motivation, and low mood. Finally, withdrawal and avoidance of distressing material or clients. Coupled with this the practitioner's world view changes. Some adopt a very dark world view in which they see perpetrators and dangers everywhere and become over-protective of themselves and others. Others become cynical and hardened which they think will work to protect them, but it only cements their isolation. As evident from Magistrate Heilpern's account above, the sufferer is the last person to know they have it and typically soldier on until a seemingly minor incident becomes the "straw that breaks the camel's back."

Possible Remedies

¹⁶ www.wellbeingatthebar.org.uk

¹⁷ Baroness Susan Greenfield Mind and Its Potential Conference Sydney 2015

¹⁸ Robert Sapolsky Why Zebras Don't Get Ulcers 3rd Edition OUP

Many legal organisations have begun to understand and recognise VT and have begun educating lawyers and those who work with them to know the signs and adopt practices to minimise its harm. This is a good thing. It should be in all Law School syllabuses, covered by Colleges of Law and Law Societies, Bar Councils and Judicial educators. I have done this training with the Family Law Bar in the UK,(indeed they have a video of it on their website and there is a VT manual on the UK Bar wellbeing portal.¹⁹) the Redress Scheme in Australia, community legal centres, CDPP, ODPP, Legal Aid and many others. When lawyers receive this training, it makes sense to them and they can immediately adopt practices and strategies to stay well. ²⁰This is another issue demonstrating the need for supportive supervision and mentoring as outlined above. Every supervision session the practitioner should be checked for VT, asked if they have any particularly distressing matters recently and be helped to implement their self care strategies or if necessary, referred to a clinician.

Some of the workplaces mentioned above have implemented Wellbeing checks for lawyers working in known risk areas like, child abuse, immigration, criminal, personal injury and so on. In some cases, the checks are mandatory. Others have made them opt-out, so at least we know who is not going and other measures can be put in place for those lawyers. The Ontario (Canada) Prosecutor's Office has embedded counselling staff within the organisation to be available onsite on a daily basis for the prosecutors.

In addition, many of these workplaces and others have made gym membership, yoga and Pilates available to staff either onsite or nearby to encourage the exercise component that is also crucial in managing VT.

Ethics & Values

I have heard many lawyers worry about the ethics of the firm or agency they work for or used to work for, and this is an oft cited reason for leaving a legal job or the law alt together. Is the mental health of lawyers also being compromised by how some lawyers are being asked to work? As it happens there is some Australian research ²¹which found exactly that. Law students and new lawyers show heightened stress levels and low job satisfaction if they are required by the seniors to work contrary to their values. Ethic law practices have higher morale and better retention.

Possible Remedies

Teach values, ethics

¹⁹ www.wellbeingatthebar.org.uk

²⁰ Further strategies can be found in Robyn Bradey The Resilient Lawyer
[Http://www.lawcover.com.au/personal-wellbeing/](http://www.lawcover.com.au/personal-wellbeing/)

²¹ Tony Foley, Vivien Holmes, Stephen Tang & Margie Row Helping Junior Lawyers Thrive. Law Institute Journal, September 2015 pp44-47 Available at SSRN <http://ssrn.com/=2699981>