

Addressing Lawyer & Law Student Wellbeing

A Response to the Reports:

Carnegie,

*ABA Path to Lawyer Well-Being: Practical Recommendations for Positive Change
and the
IAALS Foundations of Practice*

Debra Austin, JD, PhD



Law Student Wellbeing Research*

- 11,000 students
 - 43% binge drank in past 2 weeks
 - 36% of other graduate students
 - 17% depression
 - 7.7% of general population
 - 37% anxiety
 - 18.1 % of general population
 - 6.3% considered suicide in last 12 months
 - 3.9% of adults and 2.5% of age 18-25 in general population
- July 2014 - February 2015, 7 law student suicides and 1 law professor suicide



* (Organ, Jaffe & Bender 2016)

Law Student Wellbeing Research

- 2017: 886 Harvard law students
- Harvard Crimson described the results as **“grisly”**
 - 25% suffering from depression
 - 24.2% struggling with anxiety
 - 20.5% felt a heightened risk of suicide, and
 - 66% experienced new mental health challenges during law school



Lawyer Wellbeing Research

- Survey 12,825 licensed & employed lawyers (Krill, Johnson & Albert 2016)
 - 23% qualify as problem drinkers
 - 11.8% other highly-educated professionals
 - 28% experience depression
 - 19% have anxiety
 - 23% are stressed



- Lawyers 4th in suicides (doctors, dentists, pharmacists)

(Flores & Arce 2014)

*ABA The Path to Lawyer Well-being Report**

- Enhance the Effectiveness of Legal Organizations;
- Improve the Professional and Ethical Behavior of Lawyers; and
- Help Individual Lawyers Thrive in 6 Domains
 - Physical
 - Emotional
 - Intellectual
 - Occupational
 - Social
 - Spiritual



- **Physical**

- Exercise, Diet, Sleep & Minimize Addictive Substances

- **Emotional**

- Manage Emotions to Support Mental Health, Achieve Goals & Inform Decision-making

- **Intellectual**

- Monitor Cognitive Well-being & Foster Ongoing Development

- **Occupational**

- Financial Stability, Satisfaction, Growth & Enrichment

- **Social**

- Connection, Belonging & Making Contribution

- **Spiritual**

- Meaning & Purpose



General Recommendations



- Identify Stakeholders & Reduce Toxicity in Profession,
- Eliminate Stigma associated with Help-Seeking Behaviors,
- Emphasize Well-being is part of Lawyer's Duty of Competence,
- Educate Lawyers, Judges, & Law Students on Lawyer Well-being, and
- Take Incremental Steps to Instill Greater Well-being in the Profession

Law School Recommendations

- Identify Organizational Practices that may contribute to well-being problems, and Assess Changes that can be made
- Educate Faculty on Well-being Issues in the Legal Profession
- Provide Well-being Curriculum for Students
- Provide Student Resources on Mental Health and Substance Use Disorders
- Create Peer Mentoring Program
- Discourage Alcohol-centered Social Events
- Survey Student Well-being



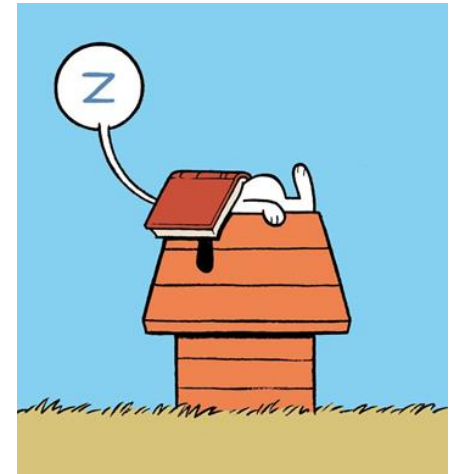
Legal Employer Recommendations

- Create Policies & Practices to Support Lawyer Well-being
- Provide Training & Education on Lawyer Well-being, including New Lawyer Orientation



Well-being & Academic Performance Research

- Teaching Well-being Skills Enhances Student Performance
 - Standardized Tests
 - **Social & Emotional Training**
 - **Decision-Making, & Critical Thinking**
 - Study Habits, Homework Submission, Grades, and Adult Education Attainment, Health & Wealth
 - **Self-Regulation Skills**



- Adler, A. & Seligman, M. E. P. (under review) "Increasing Well-being Enhances Academic Performance in Bhutan." *American Education Research Association Open*.
- Adler, A. & Seligman, M. E. P. (under review) "Well-being and Academic Achievement: A Call for Research Action." *International Review of Education*.

Positive Psychology Well-being Framework

(Thriving: PERMA Adler & Seligman 2016)

- Positive Emotions,
- Engagement,
- Healthy Relationships,
- Meaning,
- Achievement
 - Thrive across Multiple Domains
 - Hedonic WB (Feeling Good) & Eudaemonic WB (Functioning Well)
 - Absence of Crippling Elements: Depression, Anxiety, Anger, & Fear



Foundations for Practice Report

(Gerkman & Cornett, IAALS, 2016)

- 24,137 Lawyers
- Blend of Legal Skills, Professional Competencies & Character
 - Character Attributes
 - Collaboration Competencies
 - Well-Being & Self-Regulation Skills



PERMA WB & *Foundations* Report Characteristics

- **Positive Emotions**

- Optimism & Energy
- Stress Management
- Handle Dissatisfaction Appropriately

- **Engagement**

- Intellectual Curiosity
- Resourcefulness
- Flexibility, Adaptability & Resilience
- Decision-making under Pressure

- **Meaning**

- Strong Moral Compass
- Self-awareness (Strengths, Weaknesses, Boundaries, Preferences, Sphere of Control)
- Ownership, Passion for Work



PERMA WB & *Foundations* Report Characteristics

• Positive Relationships

- Positive Professional Relationships
- Work Cooperatively & Collaboratively as Part of a Team
- Express Disagreement Thoughtfully and Respectfully
- Integrity, Courtesy, Respect, Tact & Diplomacy
- Tolerance, Sensitivity & Compassion
- Humility & Patience

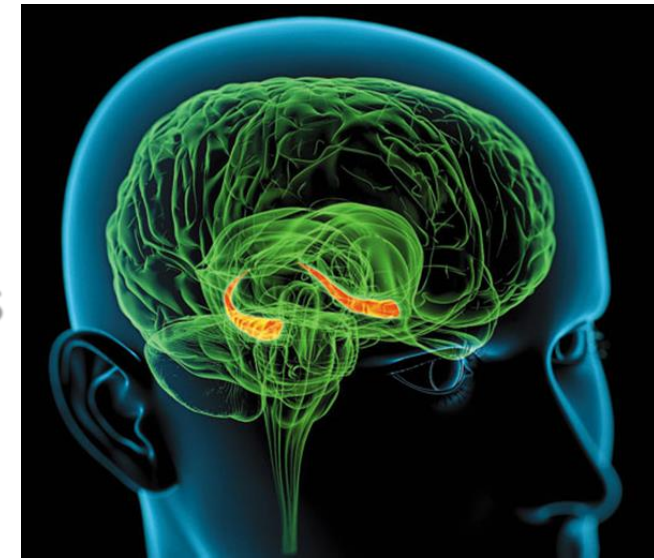
• Achievement

- Commitment to Excellence



Stress and Cognition

- Stress Hormones in Brain
 - **Suppress Brain Cell Birth in Memory-Processing Hippocampus**
 - **Harm or Kill Hippocampus Neurons**
- Impaired
 - Memory, Concentration, Problem-solving
 - Math performance & Language processing
 - Curiosity, creativity, and motivation
 - Secure survival memory & obstruct other memory
 - Impair learning new material & retrieval of learned material
- **Hippocampi Shrink in Size**
 - Depression & PTSD
 - Repeated jet lag
 - Alcoholics & young chronic cannabis users
 - Shrinkage and memory loss directly proportional to elevations in stress hormones



Invest in Brain Health

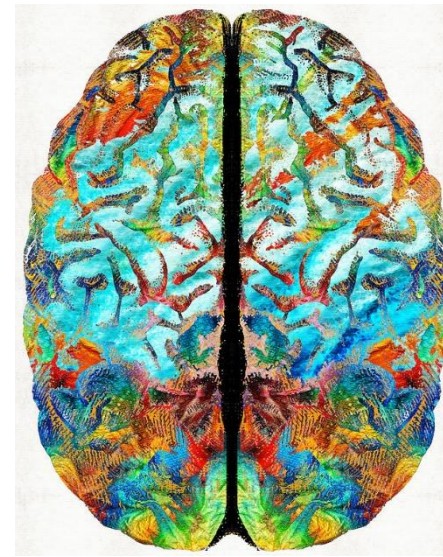
- 2,018 Framingham Heart Study participants, of an average age of 48
 - Increased stress hormones resulted in smaller brain volume and lower cognitive capacity: reduced memory & visual perception (Fall 2018)
- 160 sedentary adults over 55 & at risk for cognitive decline (December 2018)
 - Aerobic exercise improved cognition
 - A combination of aerobic exercise and heart-healthy Dietary Approaches to Stop Hypertension (DASH) diet improved cognition even more
 - Vegetables, fruits, whole grains, fat-free or low-fat dairy products, fish, poultry, beans, nuts, and vegetable oils
 - Limit salt, sugar, and saturated fat



Addressing Lawyer Well-being



- Optimizing the Lawyer Brain: Improve Well-being and Enhance Performance
- Ethics & General CLE: CO, KS, IL, NM, OK, UT, VA and WY
 - Brain Structure
 - The Process of Memory Formation
 - The Impact of Stress on Cognition
 - How the Brain can be Hijacked: Motivation & Reward
 - The Effect of Self-Medication: Caffeine, Alcohol, Nicotine, Study Drugs & Cannabis
 - Neuro-Destructive Conditions
 - The Influence of Nutrition on the Brain
 - Recommendations for Strengthening the Mind and Optimizing the Brain



Addressing Law Student Well-being

- 1L Orientation
- Guest Lectures
- Professionalism and Well-being Skills for the Effective Lawyer Course



Professionalism and Well-being Skills for the Effective Lawyer

Objective: Support professional identity formation and growth in the professionalism, leadership, and well-being skills of future lawyers

1st Half:

- Professional Identity & Development
- Lawyer Well-being Issues
- Brain Structure
- Learning, Memory, & Habit Formation
- Stress & Impact on Cognition
- Self-Medication & Brain Function
- Nutrition & Building a Healthy Brain
- Optimizing Brain Health & Mental Strength

The Lawyer Brain: Transform your Well-being and Develop a Performance Edge
by Debra Austin
Work-in-Progress

2nd Half:

- Research on Essential Attorney Soft Skills
- Self-Awareness
- Self-Development
- Social Proficiency
- Wisdom
- Professionalism
- Leadership

Soft Skills for the Effective Lawyer
by Randall Kiser
Cambridge University Press, 2017

- Professionalism and Leadership Skills
 - Research on Essential Attorney Soft Skills
 - **Self-Awareness:** how well we understand ourselves, how accurately we evaluate our own performance, and what biases distort our self-perception
 - **Self-Development:** how we identify characteristics and habits that facilitate self-development, how professionals develop expertise, and how we can unknowingly impede our own development
 - **Social Proficiency:** how we understand and communicate with other people, build trust and instill confidence, and solve problems
 - **Wisdom:** how we acquire wisdom by developing perceptiveness, foresight, creativity, fairness, judgment, self-renewal, and courage
 - **Professionalism:** how we address challenges, and the responsibilities we owe to ourselves, clients, judges, other lawyers, and society
 - **Leadership:** how we plan, manage cases and projects, handle crises, and lead teams and law firms; and Principles of Servant Leadership

• Online Assessments

- Mindfulness Attention Awareness Scale (Positive Psychology Center, University of Pennsylvania)
- Assess your Implicit Social Attitudes Assessment (Harvard Project Implicit)
- Values in Action Survey of Character Strengths (VIA Institute on Character)

• Journaling

- **Access to Justice:** Think about a situation in your life where you witnessed an access to justice problem, perhaps one in which race, gender, or sexual orientation exacerbated the barriers to obtaining justice. Write about this experience and also about how you and/or the profession might help to solve the access to justice problem.
- **Social Exclusion:** Social exclusion can sustain the status quo. Describe a time when you felt like an outsider, someone who was socially excluded. Why did you feel this way? Did another person or persons have a role in your experience? Why do you think the person(s) acted in a way that made you feel excluded?
- Have you ever caused another to feel like an outsider or socially excluded? Summarize the story. Why do you think you acted this way?
- Have either of these experiences changed you as a person? How? As you reflect on the concept of bias and social exclusion, describe your personal and/or professional mentor and/or leadership goals related to this issue.

• Class Presentations & Final Paper

Legal Education Recommendation

Identify Organizational Practices

That may Contribute to Well-being Problems
and Assess Changes that can be Made



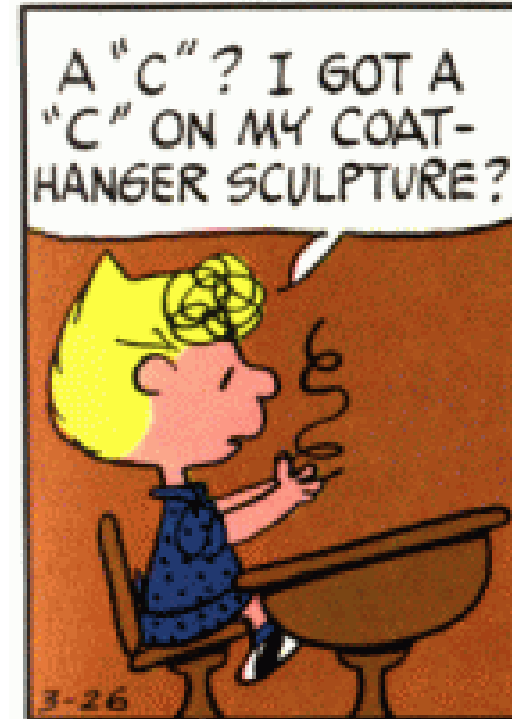
Carnegie Report (Sullivan 2007)

- Professional Identity is Shaped by Socialization of Legal Education
- Culture (Hidden Curriculum) & Sources of Student Stress
 - Grade Curve
 - Competitive Classroom Climate and Law School Atmosphere
 - Encourages “a single-minded focus on competitive achievement” 31
- Hidden Curriculum may Cripple Legal Education 31-32
- Students “are formed, in part, by the formal curriculum but also by the informal or ‘hidden’ curriculum of unexamined practices and interaction among faculty and students and of student life itself.” 29

Grade Curve

Adam Grant, NYT, Why we Should Stop Grading Students on a Curve

- Arbitrarily restricts number of students who can excel
- Dis-incentivizes studying and decreases motivation
- Reduces social connections & sense of belonging
- Creates toxic classroom environment
- Increases anxiety, depression & suicide risk
- Teaches zero-sum culture
 - for one to win, someone else must lose
- Extends zero-sum climate to work culture



Competitive Education Culture

A Bigger Prize: How we can do Better than the Competition (2014)

Margaret Heffernan

- “Competition stokes panic and a desperate sense that every student is on his or her own, left to hack a solitary path through a dangerous educational jungle.”
- Creates a Social Structure that Features Stress, Corruption, & Inequality



Competition and Problem-Solving

- Competition is Antisocial because Individual Focus is on Self-Interest
- Collaborative Models of Problem-Solving & Organization Structure Outperform Competitive Models
- Competition
 - Kills Creativity
 - Narrows Perspective
 - Dampens Innovation
 - Intensifies Cheating and Corruption
 - Defeats Collective Progress



Replicate Social Hierarchy Zero-Sum Culture of Legal Education

- Power-Distance Index: the steepness of a hierarchy and the emotional distance between those who have power and those who do not
- The Higher the Power-Distance Score, the Steeper the Hierarchy
 - Russia 93
 - United States 40
 - Finland 33
 - Austria 11



- Cultures with Significant Hierarchies: the Wealth, Power & Privilege is Concentrated in a Few at the Top. “Hierarchy of human value” Heather McGhee
- Empathy Deficit: Powerful People are Less Able to Take the Perspective of Others
- High Power People May Stereotype Others

THE POWER PARADOX

How we gain and
lose influence

- Socially-Intelligent Model: Social Intelligence, Responsibility, and Cooperation
 - Successful Leaders
 - Dynamic, playful, outgoing, energetic, modest, and engaged
 - Possess the ability to understand and advance the goals of the others in the group
 - Negotiate conflicts, enforce group norms, and allocate resources fairly
 - Treat subordinates with respect, share power, generate camaraderie and trust
- When Leaders Attain Power, Power Corrupts
 - More instances of stereotyping
 - Judge others' attitudes, interests, and needs less accurately (study on most powerful college professors)
 - Prompts people to act like sociopaths: interrupt others, speak out of turn, and fail to make eye contact during conversation; tease friends and colleagues using hostility and humiliation; rude behaviors, such as shouting, profanities, and harsh critiques

Transform Legal Education

- Transform Culture of Competition to Collaboration and Problem-Solving
 - Adopt Learning Objectives and Competency-Based Grading
 - Eliminate Grade Curve & Modify Socratic Method
 - Address Workload
- Cultivate Strong and Equitable Law School Community
- Expose Social Inequity
- Teach and Practice
 - Well-being Skills
 - Socially-Intelligent Leadership Skills
 - Social Aikido



Social Aikido

- Convert enemies into allies and commute hatred into good will
- Change objective from win-lose, zero-sum to win-win
- Shift from adversarial tactics focused on parties and positions to strategies for problem-solving
- Social Aikido Blueprint
 - Foster Relationships
 - Active Non-Judgmental Listening;
 - Gratitude for a Willingness to Problem-Solve;
 - Acknowledgment that the Problem Impacts All of Us; and
 - Suggestions as a Starting Point to Working on the Problem.



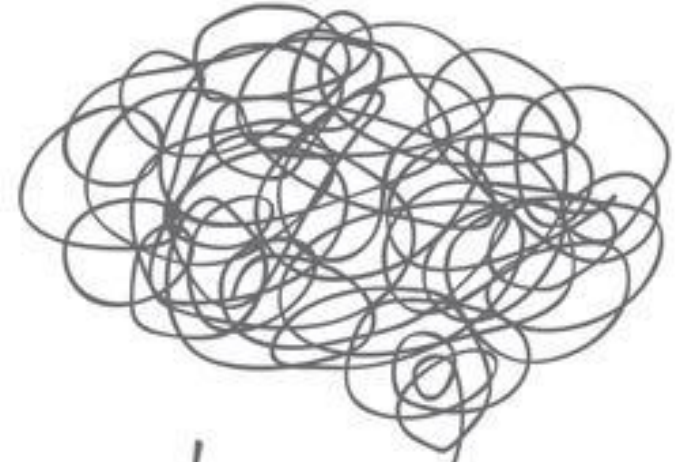
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- <http://www.debraaustin.info/>
 - Killing Them Softly, Drink Like a Lawyer, Food for Thought & Positive Legal Education
- The Lawyer Brain: Transform your Wellbeing and Develop a Performance Edge
 - Book in Progress
- Professionalism and Well-being Skills for the Effective Lawyer Course
- Research Study
 - Psychological
 - Brain Scans & Stress Hormones
 - Academic Performance
 - Stressors
- The Neuroscience of Leadership
 - Article in progress



the lawyer brain

Law School Working Group Report 3-14-19 Meeting

- Promote student resources that address mental health & substance use disorders
 - Develop a Faculty Resources Placard outlining student well-being resources
 - Develop Syllabus Language regarding student well-being resources for inclusion in all law class syllabi
 - Develop a Task Force Recommendation that COLAP make a presentation in every Ethics class at the Colorado Law Schools, presentation includes lawyers who have dealt with well-being challenges
 - Potential Project: Develop Resources to Address the Well-being Issues of Diverse Lawyers
- Discourage Alcohol-centered Social Events
 - List of Social Events that do not include alcohol
- Educate faculty on well-being issues in the legal profession
 - Present at a Faculty Meeting at DU, CU and WY
 - Describe and Deliver Resources Developed by Working Group