

# REGENT UNIVERSITY LAW REVIEW



WHY LAWYER WELL-BEING IS IMPORTANT TO SOCIETY

*Leonard C. Heath, Jr.*

---

VOLUME 31

2018-2019

NUMBER 1

---

# REGENT UNIVERSITY LAW REVIEW

Volume 31

2018-2019

Number 1

## WHY LAWYER WELL BEING IS IMPORTANT TO SOCIETY

*Leonard C. Heath, Jr.\**

In recent years we have invited law students to attend our Annual Meeting here in Virginia Beach. The law students are selected by their law school deans. I ask that all law students stand and be recognized. You will also notice that one law student is sitting up front. He is my son and a rising third-year law student. He is also responsible for much of the research that went into my talk tonight. These young lawyers-to-be are one of the many reasons for the selection of my topic. They are our messengers into the future; and they are the future of our profession. Please take a few minutes this evening to say hello to them, to get to know them, and to welcome them. As a lawyer, it is important that each of us takes time to mentor younger lawyers. Please welcome them.

Mentors are critical to our profession. I started practicing in 1986 with the law firm of Williams, Wornell, Kelly & Greer, PC in Norfolk. During the second year of my practice, I was assigned to a senior partner as his mentor. That partner, William F. Prince, sat down with me for about ninety minutes one Friday afternoon. Surprisingly, the vast majority of the time was not spent on a discussion of the law. Instead, Mr.

---

\* This excerpt from the Institution of President Address was delivered on June 14, 2018, at the Virginia State Bar Annual Meeting. It has been adapted for publication. Heath is a partner at Heath, Osales, Vason & Ohl P.C. He has served in numerous positions at the VSB since 1989. He currently serves on Bar Council, the Executive Committee, and the Law and Finance, Better Annual Meeting, Bench-Bar Institute, and Lawyer Insurance committees, as well as the Professionalism Committee. He is the former chairman of the Newport News Bar Association and is a member of the Newport News Bar Association and the Williamsburg Bar Association. Since 2013, Heath has served as the chair of Christopher Newport University's Just for Justice program. Heath received his BBA from the College of William and Mary, and his J.D. from the Marshall-Wythe School of Law at the College of William and Mary. Heath focuses his practice in the area of civil litigation, including personal injury, business disputes, real estate litigation, and will/trust/estate litigation.

The author thanks his son, Jordan C. Heath, for his research into the topic covered in this speech and the numerous other speeches made and articles written during the author's term as President of the Virginia State Bar.

Prince got to know me. At the end of our meeting, he said "well the first thing we are going to do is get you involved in the Virginia State Bar." What I did not know at the time of our meeting was that in 1978, the year that I graduated from high school, Mr. Prince had served as the fortieth President of the Virginia State Bar.<sup>1</sup> I learned that later. What he did not know was that on that Friday afternoon he started me on a course to become the eightieth President of the Virginia State Bar.

Anyone who has been around me knows that I love being a lawyer. I cannot imagine doing anything else. That passion for the profession, along with my concern for my fellow attorneys, is why I believe that lawyer well-being must be addressed. The statistics for our profession are not impressive. They are as follows:

1. 21-36% of attorneys are problem drinkers.<sup>2</sup>
2. 28% suffer from some form of depression.<sup>3</sup>
3. 19% experience anxiety.<sup>4</sup>
4. 23% have elevated stress.<sup>5</sup>
5. 35% are clinically classified as having a work addictions<sup>6</sup> and
6. Our profession has an unacceptably high suicide rate.<sup>7</sup>

Unfortunately, these statistics do not tell the whole story, at least not for me. When you start your career as a lawyer, you start long way to molding who you ultimately become as a lawyer. Williams, Worrell, Kelly & Greer had some of the finest lawyers in Virginia and represented railroads, banks, utilities, insurance companies, and municipalities. If you took a snapshot of that firm in 1987, at the same time that I was having my first mentor/mentee meeting with Mr. Prince, the firm had about twenty-five attorneys. I left that firm in 1990 to become a named partner in another firm and Williams, Worrell, Kelly & Greer disbanded many years later. However, if you fast forward to today, of the approximately twenty-five attorneys that were in the firm in 1987, two have committed suicide. That is 8% of the firm. These two individuals were exceptional attorneys and

<sup>1</sup> Past Presidents of the Virginia State Bar, VA. ST. B., <http://www.vsb.org/site/about/past-presidents-of-virginia-state-bar.html> (last visited Sept. 28, 2015).

<sup>2</sup> James B. Kirk et al., The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, 30 J. ADDICTION MED. 46, 51 (2008).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> NAT'L TASK FORCE ON LAWYER WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 32 (2015), [www.speccollbar.org/canter/Edin/sharpe/peccolbarnews/ThePathToLawyerWellBeing091015M.pdf](http://www.speccollbar.org/canter/Edin/sharpe/peccolbarnews/ThePathToLawyerWellBeing091015M.pdf).

<sup>7</sup> *Id.* at 35-37. According to a 2012 Center for Disease Control study, suicide rates for males are higher than females across all occupational groups. However, the report lists suicide rates for women in the legal occupation at 13.6 per 100,000, making it the second highest suicide rate for women per occupational group. Wendy Larson-Wy, Mcintosh et al., Suicide Rates by Occupational Group—17 States, 2012, 65 MORTALITY & MORBIDITY WEEKLY REP. 641-644 (2013), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6509a1.pdf>.

wonderful people. For me, more importantly, they were my friends. Simply stated, this outcome is unacceptable. This is why attorney well-being is important to me.

On August 14, 2017, the National Task Force for Lawyer Well-Being issued a landmark report illuminating the well-being crisis in our profession.<sup>8</sup> The report is a clarion call to our profession to perform a critical self-evaluation as to what is happening in our profession and how we can change our well-being for the better. The report has significant ties to the Commonwealth of Virginia. Our own Chief Justice, Donald W. Lemons, is a co-author of the report.<sup>9</sup> Chief Justice Lemons is an advocate for our profession and a true student of the law. He cares about the lawyers in our state, and for that, we are grateful. In addition to Chief Justice Lemons, Kathleen M. Ustun, with our own Virginia State Bar, served as a peer reviewer for the report.<sup>10</sup> Finally, Chris Newbold, with the Attorneys Liability Protection Society Corporation ("ALPS"), also co-authored the report.<sup>11</sup> Chris is ALPS's liaison to the Virginia State Bar through our underbar lawyer professional liability carrier program.<sup>12</sup> Virginia has a special relationship with ALPS in that we are their largest statewide market.<sup>13</sup> In addition, due to the hard work of past bar leaders, we have a Lawyers Insurance Committee that works closely with ALPS to discuss policy provisions and to conduct risk management programs across Virginia.<sup>14</sup> I have served on this committee with Chris for the past six years and consider him a friend.

I have spoken with Chief Justice Lemons about this report and we both had the same observation. That observation is that this report is more than a discussion of the "impaired lawyer." It goes much deeper than that. Many of the lawyers who will suffer from a mental health issue during their career will never get to the point of actually being impaired. But when you have mental health problems, you simply cannot be at your best professionally.

It is simply not enough to say that lawyers are suffering from stress, anxiety, or depression. We have to drill down to the root causes of these symptoms. Over the past year of studying the wellness initiative, I have

<sup>8</sup> See NATIONAL TASK FORCE ON LAWYER WELL-BEING, *REPORT ON THE CURRENT STATE OF LAWYER WELL-BEING AND THE IMPORTANCE OF SELF-CARE IN THE LEGAL PROFESSION* (2017), <http://www.taskforceonlawywellbeing.org>.

<sup>9</sup> *Id.* at 66.

<sup>10</sup> *Id.* at 71-72.

<sup>11</sup> *Id.* at 71.

<sup>12</sup> David H. Hodgins, *Lawyer Insurance: Va. St. B. Proprietary Insurance Trust Program*, *INSURANCE* 2017 (last visited Sept. 28, 2018).

<sup>13</sup> Laura Clendinning, *ALPS and Virginia State Bar Celebrate 14 Years of Partnership*, ALPS BLOG (Dec. 11, 2013), <http://alps.org/news-and-events/state-bar-relationship-14-years-of-partnership>.

<sup>14</sup> Hodgins, *supra* note 12.

started compiling a list of occupational risks associated with the profession that might lead to mental health issues. Currently, I have three factors identified. We do not have enough time this evening to go over each of these risks, but I will provide you with a few by way of illustration. Generally, our jobs are sedentary, involve long hours, and are subject to client demands. Those are three easily identified factors. However, some lawyers suffer from something that I did not know about until this year—“vicarious trauma.”<sup>15</sup> “Vicarious trauma” is experienced when lawyers are exposed to the worst crime in our society.<sup>16</sup> For example, prosecutors, defense attorneys, and judges involved in gang-initiation type crimes see horrific events, many of which are videotaped as part of the gang initiation process.<sup>17</sup> As lawyers, we are told to remain objective and emotionally-detached. However, we are all human beings, and as humans, we are like sponges, absorbing these examples of the darkest parts of the human soul. We have to understand these different occupational risks so that we can also learn how to minimize their effects.

As another example of an occupational risk, we work indoors. So that you do not come away thinking that I am only speaking about problems of others, I will tell you right now that I suffer from Seasonal Affective Disorder. For me, this means I become a big grumpy in January and February. However, for others, it can be debilitating.<sup>18</sup> Fortunately, I have

<sup>15</sup> Other terms used to describe this phenomenon are occupational fatigue, secondary traumatic stress, and secondary victimization. AM. COUNSELING ASS'N. VIOLENCE TRAUMA FACT SHEET #9 (2012), <https://www.aacounseling.org/what-is-a-vicarious-trauma-sheet-9-vicarious-trauma.pdf>.

<sup>16</sup> Andrew P. Lewis & Scott Ginsberg, *Vicarious Trauma in Attorneys*, 24 *PROCT. REV.* 249, 246 (2003).

<sup>17</sup> See Andrew P. Lewis, *Secondary Trauma and Burnout in Attorneys: Effects of Work with Clients Who are Victims of Domestic Violence and Abuse*, U.S. B.A. COMMISSION ON DOMESTIC VIOLENCE, (N.W.A.), Winter 2008, <https://www.americanbar.org/sections/committees/advancing%20justice/committees/advancing%20justice/secondary-trauma.pdf>. Learn how Secondary Trauma (also using vicarious trauma) can be used by lawyers and judges in the context of domestic violence cases; Deborah Wood Shook, *Secondary or Vicarious Trauma among Judges and Court Personnel*, NAT'L. LJO. FOR ST. CT'Y (2017), <https://www.nationaljournal.com/secondary-trauma-among-judges-and-court-personnel/>. “Today, victims’ stories in many formats, including grisly photos and videos of the crime scenes, voice mails, and text messages . . . This repeated exposure to traumatic details that judges and other court personnel routinely can lead to secondary or vicarious trauma.” In our study comparing attorneys with mental health professionals and social service workers, attorneys were consistently higher on both secondary trauma and burnout scales. *Secondary Trauma, Burnout, and Coping Strategies of Third Year Law Students Working with Trauma Victims in a Semester Course Setting*, the study found that while the students scored lower than practicing attorneys with mental health professionals, a small majority had self-report responses. *Id.*

<sup>18</sup> Liz Behrman, *How to Cope With Seasonal Affective Disorder*, N.Y. TIMES (Mar. 21, 2018), <https://www.nytimes.com/2018/03/21/health/seasonal-affective-disorder-cope.html>.

a wife who spotted the problem long before I did. One day, she had a treadmill and a full spectrum light box delivered to our house. When I asked what that was all about, she said it was for me. My first reaction to the treadmill was, "Sweetheart, what are you trying to say?" She quickly said, "It's not what you think. I have done some research, and I think that you have Seasonal Affective Disorder." Believe it or not, two of the ways to control Seasonal Affective Disorder are to get exercise and to be exposed to full spectrum light. Then my wife added, "oh, I also want you to be checked out by the doctor." Following her sage advice, I went to my family practice doctor and he quickly diagnosed me with Seasonal Affective Disorder. He confirmed that exercise and light therapy are important, particularly during the winter months. He also wrote out on a sheet of paper, "take vitamin D3 forever" and sent me a bill for my wife's diagnosis. The point is that Seasonal Affective Disorder causes anxiety and depression. However, understanding the source of the anxiety and depression, I discovered a treatment that did not involve the medications generally associated with those mental health issues. This is my point: before we can adequately protect lawyers from these well-being issues, we need to know what they are and how to treat them.

My father was a roofer. To this day, I have the great joy of having lunch with him and his older brother every Friday. They are part of my tribe and support system. When I was ten, my mother passed away from cancer. I do not tell you this to make you feel sorry for me. Instead, I tell you this to put this next story into context and to explain the closeness between my father and me. When I was twelve, my father was having a difficult time keeping an eye on me during the summer. The only way that he could make sure that I stayed out of trouble was to take me to work with him, which he did. I had to get up at 5:30 in the morning and we usually get home around 6:00 at night. I made five collars a day. I basically swept up the shop, ran small errands, and did anything else that could be expected of a young aid. By the time I was fourteen, I asked to go up on the roof and work with one of his crews. It was a great education. I met some of the sanest people I have ever known on job sites. However, before I ever set foot on a construction site, my father taught me all of the risks involved. He made sure that I knew how to set up, climb, and get off of a ladder. He made sure that I had the proper work shoes, hard hat, clothing, and work gloves. Before I ever touched any machinery, I was trained extensively on how to use it and the dangers involved. Compare that with what we do with young lawyers. Basically, we give them a law degree, have them take the bar exam, and then set them loose to fend for themselves without telling them of the occupational risks.

Again, in comparison to roofers, the realtors are a pretty happy lot. I asked my father the other day, after forty-seven years of being in the industry, did he know of any roofers that committed suicide. After

taxing long and hard, he could only recall one. I can think of at least ten lawyers that have committed suicide. This makes no sense to me. Feeling is a hard, physically demanding, and messy job. You have to work in the worst of weather and under the worst of conditions. In comparison, lawyers work inside, in a controlled environment, and without risk of falling twenty-five feet to our deaths. Now we are discovering the not-so-obvious, long-term risks of our profession. Studies show that young lawyers, and even law students, are particularly impacted by wellness issues.<sup>19</sup> We must properly equip them with the knowledge and the tools to protect them from the risks of our profession.

During my year as President of the Virginia State Bar, lawyer well-being will be my top agenda item. Keep in mind that well-being is not a "one size fits all" topic. What works for me, may not work for you. But for all of us, it is important. The topic reminds me of what we all hear when we are taxiing to the runway on an airliner. The flight attendants always tell us "if the masks deploy, please put yours on first before you tend to others." With this in mind, before lawyers can tend to others, we have to take care of ourselves. There is a great line in the National Task Force report that gets right to the point: "To be a good lawyer, one has to be a healthy lawyer."<sup>20</sup>

But why should lawyer well-being be important to anyone other than lawyers and their families? Because *good* lawyers are vital to a vibrant democracy. Our democracy was formed by individuals who were trained in the law.<sup>21</sup> Given their unique American experience, they became intimately aware of ideals that we today hold dear: revolutionary concepts like individual rights, government by the people, and the citizen lawyer.<sup>22</sup> Lawyers' importance to the drafting of the Declaration of Independence and our Constitution are not in question. However, from very early on, lawyers played a deeper and more complex role in American society. Alexis de Tocqueville, the famous French observer of American life, wrote that the legal profession in America "is qualified by its attributes, and even by its faults, to neutralize the vices inherent in popular government. When the American people are intoxicated by passion, or carried away by the impetuosity of their ideas, they are checked and stopped by the almost

<sup>19</sup> NACI TASK FORCE ON LAWYER WELL-BEING, *REPORT*, supra note 5, at 7.

<sup>20</sup> *Id.* at 7.

<sup>21</sup> See, e.g., *Signers of the Declaration of Independence*, NATIONAL ARCHIVES, <http://www.archives.gov/founding-docs/declaration-signers> (listing the signers of all seventy-seven signers of the Declaration, twenty-two of which were trained as lawyers).

<sup>22</sup> See THE FRANKLIN: NO. 1 (Alexis de Tocqueville; Florence Gilchrist ed., 2004) (describing in great detail the colonies' debate about the importance of establishing a government that would protect and claim for the people inalienable liberty and prosperity).

invisible influence of their legal counselors.<sup>21</sup> American lawyers play a unique role in protecting, promoting, and perfecting the great American experiment.

In addition, *good* lawyers assist every day in the orderly flow of business, the governance of human affairs, the fair and efficient operation of government, and the proper delivery of justice. *Good* lawyers are critical in protecting individual rights. I cannot put it more succinctly than Justice Hugo Black did in *Oliver v. Winteright* in 1963:

[I]n an adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. . . . From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.<sup>22</sup>

As a profession, we are constantly being told that we need to adapt to the ways of others, particularly those in England and Australia.<sup>23</sup> However, American lawyers are different than other nation's lawyers. I recently met with my good friend, Paul Marcus, a professor at the William & Mary School of Law,<sup>24</sup> for lunch with two of his friends who were here from Australia to observe our legal system. During the lunch, they asked me about my normal routine during the day and the types of matters that I handled. Our lunch date came near the end of these two Australian lawyers observing our system for approximately a year. So, at the end of our lunch I asked them, "What have you found the most surprising about our system in the United States?" They did not pause or raise a beat. They said, "this idea of individual rights." I was shocked. I asked them what was to stop the government from taking away personal rights. Their response was "the next election."

Well my friends, our legal system is different. And for our great experiment in democracy that was started in 1776, we need *good* lawyers to protect the individual rights that we hold dear.

<sup>21</sup> W. JAMES HENRY, *THE IDEA OF DEMOCRACY IN AMERICA* 233 (Stanley Howard, Henry Rees Trans., Barnes & Noble 2006) (1982).

<sup>22</sup> 379 U.S. 315, 331 (1963).

<sup>23</sup> See Daniel Fisher, *The U.S. Legal System Good in Some Things, Borrowed or Taken From Others* (Sept. 3, 2011), <http://www.fishers.com/articles/andfisher/20110903/the-us-legal-system-good-in-some-things-borrowed-or-taken-from-others/12100-4031/> (comparing the United States' common law legal tradition with the civil law tradition of other nations, and discussing the United States' comparatively high number of lawyers per capita and divergent treatment of mass torts and class actions, see also Avery Katz, *Mimicking the Devil and the Litigator: Is the English Rule Really Cheaper?*, 34 J. LEGAL EDUC. 148, 149 (1987) (discussing the trend towards the English rule to avoid excessive costs and litigation).

<sup>24</sup> Paul Marcus, Faculty Biographies, WM & MARY, [http://www.wm.edu/faculty/biographies/phydiaz/vited/Sept\\_28\\_2011/](http://www.wm.edu/faculty/biographies/phydiaz/vited/Sept_28_2011/).



Finally, *good lawyers* are important to the independence of our judiciary. I am going to say that again. *Good lawyers* are important to the independence of our judiciary. We are constantly reminded of the importance of an independent judiciary, but rarely do we focus on the lawyer's role in protecting that judicial independence. *Good lawyers*

- Select the cases to be filed in court;
- Present evidence and create a record on which the court can render a decision;
- Submit arguments for the appropriate applicable laws, or how those laws should be changed;
- Publicly defend the judiciary when the judiciary is unfairly criticized;
- Serve as the defenders of the rule of law; and
- Ensure that access to justice is provided.

We sometimes forget how unique our democratic system in the United States is as compared to other civilized societies in the world. Among other unique characteristics, we have a concept of American judicial review.<sup>27</sup> Literally, the combination of one good client, one good lawyer, and one good legal argument can change society. Does the case of *Brown v. Board of Education*<sup>28</sup> ring a bell?

What we do every day is important. In preparing for my year as President of the Virginia State Bar, I studied extensively the larger importance of the Bar. And I have discovered that my son is a much better researcher than I am. He recently brought me a series of speeches by Professor Lawrence J. Fox, a visiting lecturer in law at Yale Law School, and a former Chair of the American Bar Association ("ABA") Ethics Committee.<sup>29</sup> My son pointed out that Mr. Fox and I had many of the same views of our profession, but that he had been advocating those views for decades. For example, in a speech to the ABA House of Delegates in 1999, a speech that he viewed as one of the most important in his career,<sup>30</sup> Mr. Fox eloquently summed up the critical responsibilities of lawyers. He stated:

Each of us is an officer of the court, each of us is licensed with power to start law suits, subpoena witnesses, opine regarding transactions, stand between our clients and the awesome power of the state. It is we

<sup>27</sup> See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (establishing the principle of judicial review in Supreme Court precedent).

<sup>28</sup> *Brown v. Board of Educ.* (Brown I), 347 U.S. 483 (1954) (overturning *Plessy v. Ferguson*, 333 U.S. 557 (1948)).

<sup>29</sup> Lawrence J. Fox Faculty Biography, YALE L. SCH., <http://law.yale.edu/lawrencejfox/> (last visited Sept. 28, 2018).

<sup>30</sup> Lawrence J. Fox, You've Got the Soul of the Profession in Your Hands: Address at ABA Commission on Multidisciplinary Practice Advisory Meeting (Feb. 1, 1999), [http://www.americanbar.org/groups/ethics/ethics\\_of\\_responsibility/commision\\_multidisciplinary\\_the\\_effect.html](http://www.americanbar.org/groups/ethics/ethics_of_responsibility/commision_multidisciplinary_the_effect.html).

who are charged with undertaking pro bono services, defending the independence of the judiciary, accepting court appointments, providing volunteer services for our bar associations, promoting discipline of our own, teaching continuing legal education courses, explaining our system to the public and working to improve the laws and legal institutions.<sup>14</sup>

It is for all of these reasons, my friends, which our society has to care about the well-being of lawyers. As we move forward this year, the "experts" on lawyer well-being are the attorneys across this great Commonwealth who, day in, day out, actually practice law. We are the ones who must participate in critical self-evaluation, not only for ourselves, but for our families, and for those attorneys yet to come. But, most importantly, we are compelled to do this for our clients, for our system of justice, and for the public trust.

Let's get started.

---

<sup>14</sup> *Id.*