
Lawyers and Mental Health

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Firstly, let me acknowledge and pay respects to the Gadigal people of the Eora Nation, the Traditional Owners of the land now called Sydney.

How else can I start but by quoting from the late – and much missed – Leonard Cohen. “Everybody knows”, he tells us, “everybody knows that the boat is leaking”. He goes on

Everybody knows that the captain lied
Everybody got this broken feeling
Like their father or their dog just died
...Everybody knows, everybody knows
That’s how it goes
Everybody knows...

It is so pessimistic, and indeed he was depressed at the time of writing, but note that he does say we know certain things

... that the boat is leaking
... that the good guys lost
... that the fight was fixed
... that the poor stay poor, the rich get richer

None of these facts he denies and by the very tone of his disappointment we are urged to respond and that's what I will attempt to do tonight in relation to known problems for those working in the legal profession.

What about Politics and Mental Health?

You may think it impertinent of me, a twenty-three-year long participant as local councillor and parliamentarian in the zero-sum game of politics, to be commenting on matters related to mental health and legal practice. Politics is not all about power and the numbers but that's a significant percentage of what is involved. There's the inevitable judgment day for the participants, not delivered by judge or jury but by voters directly and for a wide range of reasons not all of which we would say was "in the public interest". What we may see as speech and behaviour that is unacceptable in most circumstances, including workplaces today, is part and parcel of the sometime- ruthless give-and-take of parties and factions. The glass is always half empty and the pressures never absent.

For Ministers in particular it is, as the British peer and historian, Peter Hennessy¹ puts it, "a physical and mentally health-sapping regime". He goes on and I quote:

As they say in the social services world, these people need help; and, as so often in life, they are the last ones to realise.

Politics, he says, "is immensely risky and tends to appeal to chancers who live on a diet of adrenalin and are engaged in a constant search for boredom avoidance". So it is that

there are books and articles with titles like **The Pathology of Leadership**² or **“Hubris and Nemesis in Heads of Government”**³.

Plenty of psychology to talk about there but political leadership is a topic for another day. Certainly, viewing leadership in technical or managerial terms alone is never enough, a point I wish to make tonight but in relation to lawyers and their work and wellbeing. Psychology is a hard nut to crack and the complications it adds to inquiry are many, but it can't be avoided when thinking seriously about pleasure and pain. This leads me to an assumption we need to make, not only in relation to the legal profession but to our aspirations generally. It's all there in the World Health Organisation's definition of health as **“a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”**. It should be the guiding principle for all of our considerations.

Examining the Practice of Law

I do appreciate that there are different participants – private and non-private practice lawyers and lawyers working in different types of private practice. The wellbeing concerns of the corporate lawyer, the lawyer in a law centre, the native title lawyer, a high-flying barrister and a suburban solicitor are by no means the same. They will differ as to their client demands, any vicarious trauma they may experience and the sort of billing methods they will use.⁴ This being noted I am still going to use the category “lawyer” in what I have to say and I apologise up front if the level of generalisation involved in my paper doesn't fit your own experience. Mine is that of the “outsider looking in” and “burr in the sock” variety of commentary but nevertheless, I hope, appropriately evidence- based and constructive.

It was in the 1990s that legal scholars and practitioners in the USA started to reflect on the social and the psychological aspects of working as a lawyer, especially if you were a lawyer in one of the big firms. Patrick Schiltz⁵ put it this way: “On Being a Happy, Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession”. He went on to say that “lawyers don’t sit down and think logically about why they are leading the lives they are leading any more than buffalo sit down and think logically about why they are stampeding”. What’s driving this, he says, are the hours, the money and the “game”. No holds barred there!

Before long the argument shifted from social criticism to one of occupational health and safety, it being discovered that a significant percentage of lawyers were not just distressed and overworked but also anxious and depressed. Writing in 1995⁶ Alfini and Vooren quoted from a 1991 report by the American Bar Association on the various ailments that could be identified.

“(1) Encouraging lawyers to sacrifice rather than dedicate themselves to their firm by working ever-increasing billable hours; (2) failure to share information regarding firm management with all lawyers; (3) failure to communicate to all lawyers practice and time expectations and to measure performance against those expectations; (4) failure to provide adequate training, mentoring, and feedback; (5) compensating lawyers solely on the basis of hours worked rather than on the value of service to clients and contribution to the firm; (6) failure to provide equal opportunities for women and minorities and to provide an environment free of actions that demean, embarrass, or harass them; (7) failure to delegate client work properly; and (8) failure to encourage lawyers to communicate openly professional as well as personal needs and problems, and to develop collegiality, mutual support, and institutional loyalty”.

Clearly the leadership of the profession was being called to action, not just for lawyers but for those at law school preparing to become lawyers.

Discussion around these lines came to Australia in the following decade with **beyondblue** leading the way with its 2007 Australian Business and Profession Study (ABPS). In 2009 the Tristan Jepson Memorial Foundation and the Brain and Mind Institute published their **Courting the Blues Report**. These reports and others were a real wake up call. It was found that lawyers fared worse than other professionals in relation to depression and non-prescription drug use. Law students too were found to be suffering from high levels of depression. Add to that the discovery that lawyers exhibited a reluctance to seek help when experiencing distress. Speaking in 2008 Professor Ian Hickie concluded the following:

“Depression affects almost 33% of solicitors and 20% of barristers”

“40% of law students experience severe stress/depression to the extent of requiring medical treatment”

“11% of lawyers contemplate suicide each month”.⁷

Based on her own research in 2015 Rebecca Michalak⁸ made similar conclusions to the American Bar Association Report:

Lawyers were more likely than other professionals to be exposed to the majority of the poor interpersonal behaviour psychosocial risks/sub-risks examined (12 out of 15), including incivility, interpersonal deviance, verbal abuse, work obstruction, emotional neglect, mistreatment overall, bullying via destabilisation, isolation, overwork, and threat to professional standing behaviours, gender harassment, and overall sexual harassment.

A whole set of society-wide issues related to gender and cultural diversity, rights at work, and corporate social responsibility were being brought to the table of consideration and couldn't be avoided given the political momentum they were creating.

Providing Support and New Services

On the positive side the researchers were also able to establish that the legal community was responding to these disturbing findings. Mental health training and access to services was being arranged following the work of various committees and working groups across Australia. In 2011 the Law Society of Western Australia provided a summary of what was being done in each of the states and territories, and it is a pretty impressive list.⁹

In their study of the effectiveness of wellbeing initiatives Poynton et al¹⁰ pointed to three types of intervention that have been utilised:

1. Raising awareness of, and reducing stigma related to mental health and well-being issues.
2. Equipping students and lawyers with the skills and resilience necessary to manage stressors and ensure their wellbeing.
3. Identifying and addressing underlying structural or cultural issues contributing to the problem, such as billable target pressures, inflexible working arrangements, inadequate management systems and a lack of response to bullying and harassment.

Added to these are the various tertiary interventions involving “reactive efforts ...to treat, compensate and rehabilitate workers with stress-related illness or mental health issues” that one would expect of a good employer.¹¹

There has been constructive discussion about all of these initiatives and what works or doesn't. That gathering of evidence is most important and to be effective should involve not just researchers but researchers in partnership with lawyers and their various associations which educate and support. In all of this it has been the opening up of a serious re-think within the profession that has created the space for researchers to play a role. Just as the individual sufferer joins the road to better health when they seek help so too the profession itself. Long did lawyers see themselves as invulnerable and "above all of that happy talk".

That still leaves us with the question of effectiveness. Is what is being done enough to turn the ship around? On the specifics the study by Poynton et al did conclude that avenues to help legal organisations improve their performance, namely by focussing on workload and benefits, organisational culture and individual coping styles were "identified as the most promising". So too Omari¹² in her study of bullying found that policies have "a significant and positive impact". In ensuring that interventions make a meaningful difference two issues consistently emerge; firstly, those related to organizational leadership and, secondly, those related to the persistence of stigmatising attitude in the culture. In respect of the latter it is sobering to report that a survey by Medlow, Kelk and Hickie in 2011 found that over 50 per cent of participants in their study involving Australian barristers and solicitors thought depressed colleagues were likely or be discriminated by their employers. This suggests, they continued, that a large proportion of the sample is likely to be reluctant to discuss their personal experiences with employers or colleagues.¹³

The Meaning of Freedom

The argument I would like you to consider tonight goes like this. Progress has been made in relation to tackling the stigma associated with mental illness but it still persists as a negative influence, particularly when it operates in the mind of those who suffer and who

are reluctant to seek help. So too does it still operate as a factor when priorities are being set by individuals and their managers.

It all goes back to the concept of freedom which underpins our way of thinking and behaving. It's the idea of human beings as rational and calculating machines looking to further their clearly defined interests, subject only to the qualification that the interests of others are respected in the process. It's a mind over matter world in which we value a society that gives us the freedom to determine our own interests and the freedom from oppression to pursue those interests. It's not just that we ought to value that freedom but that we have got it; "Formulate and follow your dreams" we are urged to do, or as the motto of an association I attended on behalf of my party as newly elected MP in 1986 put it: "It is your attitude not your aptitude that takes you to the highest altitude".

Take that idea into the world of those who are experiencing mental illness themselves and problems emerge. How often is it the case that when confronted with depression and anxiety disorders we think to ourselves: "Why don't those who are depressed and anxious pull themselves together? After all we all have our ups and downs and learn to cope". It might involve toughing out a bad period or taking some time off to re-charge the batteries. This is actually the lived experience of many and it makes sense to think this way. In other words, it's all about will; mental illness being seen as a sign of weakness rather than a clear signal that treatment is required.

Seeing mentally ill people as pathetic and their illnesses as a sign of weakness - and believing all others hold those views too - can have devastating consequences for an individual if not treated. What is not appreciated here is the all-embracing, intensive and serious nature of such an illness - it overwhelms and it dominates in ways that can eliminate the joy of living in all its forms. All too often self-harm and suicide result as the battle between the will and the emotions it is trying to suppress fail to deliver the outcome

the person desires. A part of this scenario too will be the sufferer turning the “stigmatising attitudes against themselves” and all too often feelings are bottled up and relief sought by destructive means, thus compounding the problem.¹⁴

Freedom comes not through avoidance but when help is sought. That’s the rationality and resilience required, not wishful thinking about willing away the problem in ignorance and isolation. When talking about the human condition complexity rather than simplicity is always the best starting point. Indeed, freedom is best defined not so much as freedom of the will but rather as self-awareness. That brings our inner-self into play, our feelings, our emotions our experiences – and all of that in relation to work we do and the world in which we live. This is the individual we need to talk about, the real one with his or her or LGBTQA+ self and its bio-chemistry, experiences and aspirations.

Understanding the causes in play may often be beyond us as individuals but symptoms not so. When anxiety overwhelms and depression sets in sufferers know about it, and others will have a pretty good inkling too. That’s when help sought and/or help offered can make a real difference. Treatments can be commenced, strategies formulated and priorities set such that happier and more productive lives are possible. The fact is remedies are available such that the “prognosis of major depression is among the best of any medical illness of similar severity”.¹⁵

We should think more deeply about what our **real** interests are rather than get dragged along by what we imagine them to be. Freedom is important to our integrity as human beings but hardly valuable if its exercise comes at the expense of our well-being and mental health. In order to **be ourselves** we need **others** and we need to **manage ourselves** in the various relationships that make up our lives. Indeed, self-awareness ought to not only be a necessity for those prone to anxiety or mental illness. All of us can gain from understanding more fully our emotional make-up and more generally our

political and technical strengths and weaknesses and what they mean for the work we do and the lives we lead. The world's pre-eminent management scholar, the late Peter Drucker, made this idea of self-awareness a central feature of his thinking.¹⁶

Working as a Lawyer

Now to the world of lawyers. They've had to work hard and make some sacrifices to get to Law School. There the story is the same with "the best and brightest" amongst us starting to exhibit characteristics that become even more not less evident when a working life is commenced. It's a profession of vital importance to the working of our society – and indeed to the economy these days – but it has its traditions and its formalities that can put up barriers not just to equal opportunity but to the wellbeing of those involved. More to the point for my purposes tonight there are features of its practices which produce the findings of research I pointed to at the beginning of my talk. In the **Courting the Blues Report** they are listed as follows:

1. A culture of competitiveness and associated fear of failing
2. Pessimism, always thinking the worst is to happen
3. Learned helplessness in relation to client's instructions, even if they contradict a lawyer's better judgment
4. Disillusionment about the profession generally and the compromises it requires
5. A strong tendency to perfectionism and the obsessive behaviours it can create.

According to the former Chief Justice of Western Australia, Hon Wayne Martin, time-billing where it is dominant is also a factor of significance. He writes of "**the unsatisfying nature of legal work in a time billing environment**" which "**discourages professionalism and reduces work satisfaction to unacceptable levels**".¹⁷

To this list we can add the observations of Professor Gordon Parker about the profession, based on his many years of experience as a practising psychiatrist. In **A Vulnerable Profession** he notes **the stressful scenarios brought to lawyers by their clients and on full display in the courtroom, the existence of “excessively stylised conservatism” which has produced slow progress of equal opportunity, and a Zeitgeist not just of competitiveness but also of invulnerability and stoicism.**¹⁸

Like soldiers, says Will Hardy, they “lead physically tough lifestyles; long hours, separated from family life and both are sent to fight other people’s conflicts, no questions asked”. In all of this “their personal moral opinions must be absolutely repressed”.¹⁹ Reading up on findings like this isn’t easy and may seem too extreme, there being significant issues with regard to mental illness in Australian society more generally and not just amongst professionals like lawyers. It’s true of course that life is full of ambiguity and contradiction and the sources of stress and anxiety are many but should that mean we complicate matters even further with dysfunctional social relationships and unrealisable aspirations? We need that balanced mix of realism and idealism and all of that in the context of that other mix of individual and collective responsibility.

The Individual Lawyer and the System

What all of this research tells us is that the forces at work in a lawyer’s working environment are complex and powerful just as the forces within an individual, lawyer or otherwise, are complex and powerful and not always understood or recognized. It follows that individual law students and practitioners are subject to challenges that are very important to their health and wellbeing but not always easy to manage, let alone conquer. It’s a world set for worry not just because of a fear of failure but for a fear of disclosure. There is, for example, the issue of admission to practice and the role mental illness should or shouldn’t play, noting of course the wide range of such illnesses and what they may

mean for the individual. Here we see two competing considerations described as follows by Professor Gino Dal Pont: “One is to avoid discriminating against an individual, otherwise qualified for admission, by reason of a disability. The second target the broader public interest, specifically to ensure, as far as possible, that clients are not disadvantaged by choosing a lawyer whose mental illness could prejudice the representation”.²⁰

There’s no easy answer or perfect answer to the dilemma thrown up by these competing considerations. Careful and balanced adjudication will be needed but necessarily conducted in the light of our anti-discrimination commitments, both here and internationally. As Frances Gibson has put it: “Recognition of the right of lawyers with mental illness to continue in their chosen profession, where possible, should be accepted and endorsed by the profession”.²¹ We know, of course, that there are lawyers who do have an illness and who are being treated appropriately and who are performing very well. That should tell us something but so too should the fact that these are factors that frequently emerge in complaint cases, the estimate being about 1 in 3 involving psychological stress of some sort. Just to focus on the individual as the key element in this equation is to miss the point about managerial responsibilities to create healthy workplaces. It is the law and as Bridget Burton has put it so clearly: “While we all wish therapy puppies and lunchtime yoga were the answer, they are not. Healthy legal workplaces address the root causes of the high rates of distress among lawyers rather than focussing on employees’ responsibilities to be unrealistically resilient.”²²

There’s evidence that collective efforts to reform workplaces can be effective and not inefficient, even for the commercially oriented organisations that are part of our mixed economy. There’s hope then not just because of developments in the medical sciences and the treatments that have been develop but also in relation to what can be done to improve the working environment. For example, Wayne Martin’s critique of time billing outlined a range of alternatives that have the potential to help lawyer and client alike.²³

Dysfunctional workplaces, destructive leadership styles and poor interpersonal relationships aren't beyond repair but efforts to do just that need to be serious, persistent and leadership-driven²⁴

Concluding Remarks

By way of conclusion I would like to, firstly, emphasize the progress that has been made in awareness-raising, evidence-gathering, and initiative-taking by the medical and legal professions working in partnership. It's been impressive; our knowledge is greater and our treatment options better.

Secondly, we can say that the "Soldier Culture" and the attitudes that surround it has been recognised as a risk-factor, particularly when placed alongside the other aspects of lawyering I have noted.

Thirdly, we can say that all of this is an encouragement to lawyers to think more deeply and carefully about themselves and their aspirations.

Fourthly, we can say that all of this is an encouragement too, for employers to provide mentally healthier working environments.

We can now say there is more knowledge, more treatment options and not insignificant encouragement for individuals and organisations to become more active. However, despite all of the above, stigma and the barriers it creates is still an issue. It ensures law students and lawyers are in a "yes... but", "half-in and half-out world"; the encouragement for the individual to dig deeper and for the organisation to respond more comprehensively is there but not embraced with the consistency and vigour needed to achieve sustainable progress. It's so important, as Medlow, Kelk and Hickie have reminded us, that programs to support lawyers "be conducted regularly over the course of a lawyer's professional life,

rather than on one-off occasions or over short periods”.²⁵ I wish too, that we could say that the inner self is no longer a hidden space, not to be entered for fear of what it might ask of us, but I’m not so sure. Just how serious are we when it comes to re-prioritising our working lives, individually and collectively? As the Buddhist Stephen Batchelor has written:

“How much of our life is spent in avoiding what we really are? Yet in a quiet corner of ourselves, do we not secretly recognise the deceptive strategies of such avoidance? How often do we find ourselves happily indulging in some trivial pursuit, even though a deeper awareness is whispering to us of its futility?”²⁶

References

¹ The Hidden Wiring, 1986: Chapter 7: 172-73.

² Hugh L'Etang, 1970. See also his Fit to Lead? 1980.

³ David Owen in J R Soc Med, 2006; 99:548-51.

⁴ Richard Collier, "How do we tackle the legal professions' mental health problem?" Legal Check, 29 April 2019:3.

⁵ Vanderbilt Law Review, 1999; 52:871-951.

⁶ J.L. & Health, 1995; 10:61-67.

⁷ Quoted in Resilience@Law: Legal Profession Mental Health Toolkit: 4.

⁸ Causes and Consequences of Work-Related Psychological Risk Exposure, 2015: ii.

⁹ Psychological Distress and Depression in the Legal Profession, 2011.

¹⁰ UNSW Law Journal 2018; 41(2): 584-619.

¹¹ Ibid., p. 589.

¹² Towards Dignity and respect at Work, 2010.

¹³ Sydney Law Review, Vol 33:792-793.

¹⁴ See Geoff Gallop, Politics, Society, Self: Occasional Writings, 2012:315-325. That all of this is complicated by our drug policies is acknowledged as is the constructive contribution of senior members of the law profession on how best to deal with that issue. Current drug policies add to marginalisation and stigma and compound any mental

health problems that may co-exist with drug use. See Bill Bush: “Tackling the mental health crisis”. Pearls and Irritations, 29 September 2020.

¹⁵ Mamta Gautam, “Depression and Anxiety”; <http://www.drgautam/article>.

¹⁶ See Peter Drucker, Management Challenges for the 21st Century, 1999.

¹⁷ “Billable Hours – past by their use-by date”, Perth Press Club, 17 May 2010:18-19.

¹⁸ “A Vulnerable Profession: Depression among lawyers”, PRECEDENT, 2012: Issue 110.

¹⁹ The Unhappy Lawyers (May 2008):2.

²⁰ “Admitting mental illness”, BRIEF, March 2017:6.

²¹ See Frances Gibson, “Psychiatric disability and the practising lawyer in Australia”, 2012, JLM:291-399.

²² “Mental illness and stigma in legal practice”, PROCTER, April 2019:23.

²³ “Billable Hours”:19-23.

²⁴ See Black Dog and others, Developing Mentally Healthy Workplaces, November 2014.

²⁵ Sydney Law Review, Vol 33:799.

²⁶ Flight: An Existential Conception of Buddhism, 1984:1.