



COLORADO TASK FORCE ON LAWYER WELL-BEING

MEETING MINUTES

March 27, 2019, 1:00-3:05 p.m.

Ralph Carr Building, Conference Room 1D

1300 Broadway

Denver, Colorado 80203

I. Welcome and Introduction (Justice Márquez)

Justice Márquez welcomed members to the meeting, including those on the live webinar. She reviewed the agenda, and she introduced the afternoon's speakers, Professor Debra Austin and Professor John Bliss, both from the University of Denver Sturm College of Law.

II. Addressing Lawyer and Law Student Wellbeing (Professor Austin)

Professor Austin began her presentation with a discussion of how she became interested in studying and teaching about lawyer well-being. She spoke of learning about research showing that stress can lower IQ levels by up to 30 points. This information motivated her to learn about the impact of stress on the brain. She reviewed findings of *The Survey of Law Student Well-Being* released in 2016. She also reviewed the statistics from a survey conducted in 2017 of 886 students at Harvard Law School. *The Harvard Crimson* described these survey results as “grisly.” They showed 25 percent of students surveyed suffered depression, 20.5 percent were at a heightened risk of suicide, and 66 percent reported experiencing a new mental health challenge in law school. Professor Austin discussed data from the American Bar Association's Commission on Lawyer Assistance Programs (ABA CoLAP) and Hazelden Betty Ford Foundation study published in 2016 regarding the well-being of lawyers. She reviewed the National Task Force on Lawyer Well-Being's report from 2017 and its multi-layered definition of well-being. She also spoke about its general recommendations, including those pertaining to law schools.

Professor Austin explained research regarding well-being and academic performance. It shows that teaching well-being skills improves student performance on standardized test scores, as well as on GPA, study habits, and homework submissions. In addition, she reviewed a positive psychology well-being framework which has five aspects: positive emotions, engagement, healthy relationships, meaning, and achievement. It requires an absence of “crippling” elements such as anxiety and depression.

The Institute for the Advancement of the American Legal System (IAALS) published a report titled “Foundations for Practice” in 2016. Professor Austin discussed central themes of the report, which include teaching collaboration competency, well-being, and self-regulation skills.

She discussed how the skills identified in this IAALS report pair with the five-pronged well-being framework that arises from positive psychology.

A major focus of Professor Austin's research is the impact of stress on cognition. She said that stress hormones suppress brain cell birth, and they harm or kill brain cells in the hippocampus, the region of the brain associated with memory processing. New studies released in 2018 continue to support a connection between increased stress and lower cognitive capacity.

Professor Austin has proposed a new course for law students under debate among University of Denver Sturm College of Law faculty. The course title is "Professionalism and Well-Being Skills for the Effective Lawyer," and it covers issues ranging from professional identity and development to self-awareness, social proficiency, to the neuroscience of stress. The course was well-received by students when she first taught it last fall. She did a literature review of the research in support of the course. Not all faculty are convinced the law school should offer the course.

Professor Austin discussed the Carnegie Report from 2007 that looks at professional identity development in various occupations. According to that report, law school socialization heavily impacts a lawyer's professional identity. The report describes a hidden curriculum in law school that generates stress associated with the grade curve and a competitive classroom climate. The report suggested that this hidden curriculum greatly impairs the efficacy of legal education. Professor Austin also reviewed studies discussing the grade curve and reasons why it should be re-thought.

Professor Austin shared with members conclusions from a book titled *The Power Paradox*. It advocates a socially-intelligent model of leadership and learning built on responsibility and cooperation. She has an article discussing ways to transform legal education to create leaders in all aspects of society, not just the legal profession. She believes a greater emphasis on well-being would give law students and lawyers a performance edge. Further, she would like to conduct research into the impact of law school on law students' brains.

III. Empirical Research on "Public Interest Drift" in Law School (Professor Bliss)

Professor Bliss reviewed studies showing that some law students undergo an identity transformation in law school. Initially, these students enter law school with a strong interest in public service work but then by the end of their studies, they exhibit more interest in private practice and joining law firms. He discussed literature attributing this change in interest to socialization in law school, which he noted has been described as "boot camp." In his studies, he has found some law students who enter private practice harbor some negative views of private practice. Students who experience this drift may have specific well-being needs related to the disconnect due to negative feelings about private sector practice and failure to have the professional identity they sought.

Professor Bliss said that debt is one factor in this drift. He said, however, that this is not the whole story and other forces are at play. The doctrinal focus of the 1L year may have an

influence. He noted, too, that those students with a vague preference for public interest work may nonetheless apply to law firms. He said the interview process will sometimes solidify the decision to go into “big law,” with the interview process transforming their perception of private practice and creating a drift.

Professor Bliss reviewed identity mapping exercises. He does not think that 1L year totally transforms students, but they emerge from the process having experienced some professional identity shift, often distancing themselves from professional aspirations that drove their application to law school.

IV. COLAP

To assist working group discussions, Ms. Myers provided an additional overview of COLAP and its services. She began saying that COLAP has been looking at expanding its staff. This is because referrals, calls, and requests for presentations have consistently been on an upward trajectory. While the well-being concept is new at the ABA-level, it is not new to lawyer assistance programs. She noted COLAP is completely confidential pursuant to Colorado Rule of Civil Procedure 254. It may not disclose any information without a written release. It is independent from other legal organizations, including the Office of Attorney Regulation Counsel and the Colorado Bar Association. Its staff are attorneys and legal professionals who have behavioral health credentialing and experience with substance use, mental health, and wellness issues. They have experience vetting resources to help lawyers and to find professionals who can work with lawyers.

COLAP provides an array of services that include:

- Confidential consultations for judges, lawyers, and law students;
- Voluntary monitoring;
- Recovery support and referrals to support groups;
- Presentations on lawyer well-being accredited for continuing legal education purposes;
- Educational articles on well-being topics;
- Referrals to vetted treatment providers as well as career counselors and executive coaches;
- Connection to volunteers for peer-to-peer assistance;
- Referrals to legal resources, such as those available through the Colorado Bar Association.

Ms. Myers explained that when a person calls COLAP, an experienced staff member will consult with them and devise a strategy for addressing the issues raised in the consultation. COLAP will also suggest resources available to that person, including referrals to specialists. COLAP may provide the lawyer, judge, or law student calling with assistance with career concerns, stress/burn-

out/secondary trauma/compassion fatigue, cognitive impairment, anxiety, depression, as well as substance use and relationship issues.

Ms. Myers reviewed a general list of reasons why lawyers call COLAP to give the Task Force a sense of the inquiries the organization handles. The list includes:

- Something is wrong but I do not know what it is and need help.
- My case load is high. I worry I will be overwhelmed and I could be grieved.
- My drinking levels have increased, and I am not as active as I once was.
- Opposing counsel's conduct compromises my ability to represent my client.
- I am depressed and need a therapist or I have been managing my depression but now need a referral.
- I am overwhelmed, unhappy, and thinking of changing careers.
- I have been arrested, what do I do now?
- I am applying on motion to Colorado and need assistance with the character and fitness questions.
- I need a therapist and do not want to use my insurer or employee assistance program.
- My employer has expressed concern over my absences and work product.
- My spouse is a lawyer and his or her drinking/anger/stress/behavior concerns me.
- Our firm would like a COLAP presentation about well-being or we want COLAP to help us create changes in our firm after reading the National Task Force on Lawyer Well-Being's report.

Ms. Myers discussed a proposed addition of an Outreach & Volunteer Coordinator to COLAP. This would be a new full-time employee who could help enhance COLAP's volunteer program, expand COLAP's presentation capabilities, and also assist with creating a speaker's bureau on well-being issues by finding vetted volunteers. She mentioned that other lawyer assistance programs have similar positions. COLAP intends to make the proposal for this additional employee to the Supreme Court Advisory Committee at its May meeting. She said members can submit letters of support for this request.

Following Ms. Myer's comments, Justice Márquez spoke and noted that in approving budgets recommended by the Supreme Court Advisory Committee, the Court thinks carefully about the allocation of attorney registration fees. Ms. Yates said that any letters in support of this COLAP proposal for the Supreme Court Advisory Committee to consider should be submitted in advance of the May 10 meeting.

V. Working Group Reports

Law Schools

Professor Austin reported on this group's progress immediately following her presentation on the neuroscience of stress and its impact on law students. She said that the group used the Report of the National Task Force on Lawyer Well-Being and its recommendations pertaining to law

schools as a framework. One recommendation is to promote resources that address mental health and substance use disorders. Based on this recommendation, there is a subgroup working on a placard outlining student well-being resources that could be given to faculty. Another subgroup is working on language regarding well-being resources to include in all course syllabi. According to Professor Austin, the working group intends to develop a recommendation encouraging law schools to have COLAP give a presentation in every ethics class. Professor Austin said that a new group may form to address well-being issues for diverse law students and lawyers. A group is working on a list of activities that bring students together but do not feature alcohol. Last, a subgroup is working to find ways to educate faculty on well-being issues.

Data Gathering

Ms. Funk and Dr. Wood said this group is trying to sort out what data pieces it should gather, who will get the data, and what the cost will be. One concept the group has begun to explore is collecting data on what would be helpful to lawyers in coping with their stress. This would be a forward-looking assessment and data-gathering process. The group would like to create a survey that can be used multiple times. Dean Boynton mentioned that the University of Denver Sturm College of Law has participated in a national survey on student stress for 1L students and there should be data available by the end of the academic year. The University of Colorado Law School is doing a wellness survey through its own student bar association wellness committee. Justice Márquez encouraged the working group to consider a graduate student to help with the research. Ms. Funk said that it would be interesting to get information that is new, such as what causes burnout and what ideas might help lawyers better deal with a naturally stressful profession.

Business Case

Ms. Yates said that the business case group is considering a law firm certification. There are various models. One is akin to the Colorado Supreme Court Pro Bono Commitment and Recognition Program, where law firms could report on steps taken to meet well-being goals. It is aspirational. Another certification model is the architectural LEED certification model which sets strict parameters and allows auditing. The group is leaning towards an aspirational program coupled with ideas about what it means for a legal employer to have a well-being program. Some of these components could be having an employee assistance program, allowing time for mental health breaks, and structural changes related to billable hours and bonus eligibility predicated on minimum hours. Conversations among group members have included how to market the program. The group is also looking at how to incorporate diversity topics into the certification.

Judicial Officers

Judge Shamis explained this group has been compiling resources that promote well-being among judges. There are many, and a mechanism to rate those resources could be helpful. The group also has worked to identify issues confronting judges such as isolation, safety, and secondary trauma. In addition, the group is looking at ways to bring wellness discussions into judicial conferences. They are surveying the judicial districts statewide to find out about ongoing well-being initiatives. He noted it is a big step in the right direction that these issues are now being discussed although they have persisted in the profession for a long time.

Connecting Lawyers to Resources to Support Well-Being

This group met by phone on March 1 and continued its discussion of priorities. Mr. White said that the group's interest areas revolve around creating a speaker's bureau, providing expanded outreach on lawyer well-being to lawyers in rural parts of the state, creating a "buddy" system for lawyers outside the Front Range to connect with lawyers in similar communities for professional and personal support, and developing some form of flyer on well-being that can be prominently displayed in firms or courthouses. Central to the group's efforts will be publicizing the resources available through COLAP and ensuring that lawyers, judges, and law students are aware of its confidentiality. This group will meet again April 12.

Pledge to Lawyer Well-Being

Mr. Stark reported this group reviewed the ABA Working Group to Advance Well-Being in the Legal Profession's "pledge" to well-being. He is a member of that ABA Working Group. He said the national pledge aims to get legal employers to think about issues related to substance abuse and well-being. He reviewed components of the national pledge. This Task Force's "pledge" working group considered developing an entirely new pledge for Colorado but opted not to because some local law firms have signed on to the national pledge. A pledge commitment form is under review as a way of giving structure to the pledge. That document would be specific to the type of firm entering the pledge. Mr. Stark recommended a recognition program as well as a logo. The group believes strongly that the well-being initiative in Colorado needs to be housed at COLAP.

At the conclusion of the working group reports, Justice Marquez said she heard number of points of commonality. She encouraged the group chairs to collaborate. Mr. Fogg suggested the chairs of the working groups meet with Ms. Myers to avoid duplication. Mr. White will coordinate that meeting. As regards the speaker's bureau proposal, Justice Márquez asked members who have spoken about recovery whether this has been helpful to break through the stigma associated with getting help. Members who have spoken about these issues said it has. She also suggested that the "peak performance" model from athletics may be useful in winning over individuals skeptical about the well-being conversation.

VI. Next Meeting

The next Task Force meeting is from 1:00 to 3:00 p.m. on June 5, 2019, at the Colorado Bar Association, 1290 Broadway, Suite 1700.