

Senior Lawyers Section: Exploring Lawyer Well-Being

By Stephen P. Gallagher

I first joined the staff of the New York State Bar Association in 1990 as the Director of Law Office Economics and Management, shortly before Bob Ostertag started his year as NYSBA President. As I recall there was no Senior Lawyers Section back then. It does seem like that was a long time ago until I look at the current Senior Lawyer Section roster, and I see so many familiar names.

During my 13 years at NYSBA, I primarily worked to develop Law Practice Management programs for solo and small firm practitioners, young lawyers looking to get started, and individuals looking for career transition. I also remember working with the fledgling Electronic Communication Task Force (ECTF), which was tasked with developing a plan to begin using emerging technologies, including shaping the bar association's internet offerings.

In 2003, after moving from my life's work with the NYSBA community, I took time to help a family member who was struggling with early-onset Alzheimer's, a serious life transition if ever there was such. I returned to teaching at a local university, while completing a second master's degree in coaching. I stayed active in bar activities through my writings about the aging workforce and its impact on the legal profession.

As one of the early baby boomers myself, I already knew that my generation was in the process of changing the traditional demographic shape of our entire society. After leaving the bar world, I began to realize that aging is not just about people 50 and older; it affects people of all generations, who need to rethink everything—how we live, work, and play, and especially how we organize our family and community life, i.e., how we take care of each other across the generations. The aging process should be an era of continual growth and renewal, rather than a period of decline. My own journey for personal growth and renewal allows me to see what works in my own transitions.

Lawyer Well-Being

In August, 2017, the National Task Force on Lawyer Well-Being released its report, "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change."¹ This report incorporates research findings from the 2016 ABA CoLAP and Hazelden Betty Ford Foundation's study of mental health and substance use disorders among lawyers, and also research of the 2016 Survey of Law Student Well-Being. The Hazelden Betty Ford Foundation survey had found that between 21 percent and 36 percent of lawyers drink alcohol at levels consistent with alcohol use disorder.² This rate of alcohol use disorder as reported was three to five times higher than govern-

ment estimates for the general population. If that were not enough, they also found that the highest incidence of distress among lawyers was reported to be in the first 10 years of practice, not among the more experienced practitioners as previously thought.

Earlier this year, Jordan Yocim, Kansas Bar Association Executive Director, added interesting insights to the conversation on lawyer well-being in an article, "Climate Change in the Profession,"³ for *ABA BarLeaders* magazine. Jordan suggested that we must "develop a profession of not just problem solvers but problem preventers. The world desperately needs people working within every facet of the human endeavor who understand, deeply, what it means to preserve the rule of law." He went on to say that we need to find ways to regain public confidence in the profession and increase access to justice in order to better serve the needs of the public. I believe that we need to find new and better ways to serve the needs of lawyers as well.

We can predict that change will be particularly difficult for people and a work culture that believes change should be slow, risks avoided, stability is best, and the past is a good source of information about how to approach the future. We also know that lawyers are particularly susceptible to looking to the past to predict the future.

Senior Lawyer Section Challenge—Renewing Sense of Purpose

Senior Lawyers Section member Leonard E. Sienko, Jr., and I wrote an article for the NYSBA's *Bar Journal* (September 2017) where we challenged readers to "start a dialogue about how the legal profession can better utilize the skills of the older attorneys age 55 and up currently in the workforce." We also wrote about "finding ways to convince bar associations to create forums that would enable younger lawyers to meet with experienced lawyers for support in finding their place in the profession." Our final challenge was, "to convince law firms to allow transition planning to begin much earlier than previously thought."

We felt that whether you are planning on winding down your law practice, selling it to a partner or third party, or bringing in a protégé to transition the practice

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over time, bar associations could do more to help members transfer their life works. Lenny and I also believe that everyone who holds a license to practice law needs to be involved in this dialogue, because senior lawyers cannot solve this on their own. I want to thank the leadership of the Senior Lawyers Section for inviting me to keep the conversation alive.

The Senior Lawyers Section is made up of lawyers who are age 55 or older. Today, it is one of NYSBA's most rapidly growing Sections, but with only age as a qualification, it may be difficult to determine what such a diverse group of lawyers want for value in their membership. Recent research conducted by Adam Grant,⁴ a Wharton School professor who specializes in making workplaces more collaborative, creative, and productive, may be helpful. Grant worked with Facebook personnel to find out what their employees value most, beyond fulfilling basic needs.

Facebook surveyed its workforce twice a year, asking what employees value most. After examining hundreds of thousands of answers, the research team identified three motivators: career, community, and cause. Facebook employees rated all three as equally important, but people aged 55 and above were the only group at Facebook who cared significantly more about cause than about career and community.

Career Is About Work

The Facebook study shows that having a job provides autonomy, allows individuals to use their strengths, and promotes learning and development. We may assume that Senior Lawyers Section members share these same career aspirations. Many are trying to determine whether to continue to pursue their full-time legal careers or transition to a new position, a reduced time commitment at their current position, and/or retirement from a full-time legal career.

At this same time, the profession is losing market share as the public turns to more accessible, affordable alternative legal service providers. This suggests that the legal profession's "well-being," or existence as we currently know, it may be at risk, so the senior lawyer has a vested interest in making meaningful changes in the profession to help the profession continue to survive and thrive. So, career interests should clearly remain at the heart of the Section's motivation and program.

Community Is About People

Feeling respected, cared about, and caring for others is key for building communities. Our sense of well-being is connected to the broader community. We don't live our lives in silos. Lawyers looking to move away from full-time law practice will need a broader range of communities and networks to make this transition. Senior lawyers looking to transition away from full-time law practice may need to explore new types of relationships, e.g., with

young lawyers who may, themselves be interested in moving into full-time law practice.

In my experience, bar associations, as legacy institutions, have a particularly low tolerance for risk, even an intense bias against change—of any kind. In decades past, the core value of such legacy institutions was isolation—closed systems. Their actions were closed off from outside influence, all interactions and knowledge transmitted within these closed systems. One of the major shifts in the digital age has been pervasive connectivity—to each other and to what seems like every piece of information ever created.

In the early days of the Task Force on Electronic Communications (now the Electronic Communications Committee), I remember a meeting held at Cornell Law School where we met with co-directors Thomas R. Bruce and Peter W. Martin of The Legal Information Institute (LII). I refer to this meeting because it stands out in my mind as an excellent example of how powerful open communities have become. It was 1992 when LII was just beginning to build its online community of collaborators whose mission was to promote open access to law, worldwide. They brought together publishers, legal scholars, computer scientists, government agencies, engineers, and editorial teams housed at the Cornell Law School in Ithaca, NY. I remember they had just started offering the opinions of the Supreme Court ten years before the Court had its own website. Today, their extensive legal collections are used by more than 32 million people from more than 240 countries and territories.

Bar associations, like much of society, are increasingly complex, filled with so many intertwining and diverging interests, personalities, and issues, that no one can confidently represent everybody else's point of view. Bar associations need to set priorities to provide services as solutions to address the needs of lawyers at every stage along their career paths.

Today, bar associations, with countless overlapping constituents, can be where real value is found at the intersection of spontaneous encounters and collaboration. Lawyer well-being is seen as far more complex than in the past, requiring support by a broader range of communities beyond the profession's former boundaries. Expanding the range of community initiatives for the aging workforce and lawyer well-being should be at the heart of the Senior Lawyers Section.

Cause Is About Purpose

Feeling that you can make a meaningful impact on other people, identifying with the organization's mission, and believing that it does some good in the world is key for meaning and cause. Most of the lawyers I have worked with over the years have never had a problem finding meaningful causes. When transitioning from full-

time law practice, finding a new cause or purpose can prove to be a challenge.

In 2012, the Senior Lawyer Division (SLD) of the North Carolina Bar Association identified an important “cause” for their members. They were interested in finding out how other professionals handled what they termed “retirement with dignity.” They convened outside authorities, from beyond the legal profession, to study this issue. SLD brought together members of the medical profession, their own professional liability carrier, the Chief Justice’s Commission on Professionalism and three ancillary groups that control lawyers’ licenses to practice law; those who advise lawyers on standards of practices, competency and professionalism; and those who assist lawyers in recognizing that they are all humans and subject to frailties to devise a plan to address this concern.

The resulting program they identified is a multi-faceted approach to assist three groups of people: (1) lawyers who need to retire but will not; (2) lawyers who want to retire, but they are not certain how to do so; and (3) caregivers—be they lawyers, paralegals, staff or families who are looking for resources to assist in their role as caregivers.

Today, their Transitioning Lawyer Commission (TLC) leads the country in having supports in place for any lawyer showing signs of cognitive impairment, process addictions, burnout, depression and chronic stress. In addition, supports are in place for retirement/succession planning and sale of a law practice. They also provide CLEs, general training programs, how-to guides, check lists, etc.

It’s difficult, of course, to measure a concept like meaning or cause, so I was pleased to find a definition of lawyer well-being included in “The Path to Lawyer Well-Being” report. Lawyer well-being was defined as “a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others.” The report highlights that complete health is not defined solely by the absence of illness; it also includes a positive state of wellness. I see such positive wellness ... well-being ... as being at the heart of what the Senior Lawyers Section must do to address the needs of its members.

Senior Lawyers Section—Action Plan

I believe the Senior Lawyers Section is in a unique position to bring people together in new ways. The complexity and density of associations require that the whole system be engaged in order to harvest the invisible intelligence that exists throughout all Sections and Committees. Who better than senior lawyers to step forward? Every change, every burst of creativity, begins with the identification of a problem or opportunity that somebody

finds meaningful. Until and unless you invite people to participate in problem solving, the demand for change will remain unresolved.

When I suggest that the Section bring people together in new ways, I am not limiting this to online communities. I like the idea of expanding local or regional programs or joint programming with local bar associations. That would be an easy way to broaden communities who share common concerns. If lawyers, paralegals, staff or families are looking for resources to assist in their role as caregivers, why shouldn’t they look toward their professional associations for help? I believe taking care of each other will take place on the local level. If the Senior Lawyers Section were to begin losing members, it will be to local bar associations who will be listening better.

We know that the Senior Lawyers Section has a particularly large number of sole practitioners, each of whom has invested a lifetime into making his or her business a success. Many are only lately starting to think about life’s next steps—both in business and in life. If this Section wants to add value to its membership, we must find ways to engage our members in meaningful issues such as lawyer well-being.

We can’t force anybody to change. No two people see the world the same way, so we can only begin by engaging individuals in a change process. If the issue is meaningful to them, they will become enthusiastic and advocates for change. If the Senior Lawyers Section wants members’ broad support for a cause, the Section must welcome the entire community of lawyers in as co-creators, much as our colleagues in North Carolina have done. We will only support what we have a hand in creating, so if you agree that the legal profession’s “well-being” or existence may be at risk, the Senior Lawyers Section has a vested interest in building alliances with a broader range of outside interest groups to make meaningful changes in the profession that better serve senior lawyers.

Endnotes

1. The task force was formed by the ABA Commission on Lawyer Assistance Programs (CoLAP), the National Organization of Bar Counsel (NOBC), and the Association of Professional Responsibility Lawyers (APRL).
2. Alcohol Use Disorder is defined as a pattern of alcohol use that involves problems controlling your drinking, being preoccupied with alcohol, continuing to use alcohol even when it causes problems, having to drink more to get the same effect, or having withdrawal symptoms when you rapidly decrease or stop drinking.
3. Yocim, Jordan, *Climate Change in the Profession*, ABA BarLeaders, February, 2018.
4. Lori Goler, Janelle Gale, Brynn Harrington and Adam Grant, *The 3 Things Employees Really Want: Career, Community, Cause*, Harvard Business Review, digital article, Feb. 20, 2018.