



UNC  
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

---

Volume 93

Number 5 Symposium 2014: *Vulnerable Defendants  
in the Criminal Justice System*

Article 10

---

6-1-2015

# Is It Crazy to Think that Attorneys with Mental Health Disabilities are Uniquely Situated to Help Prisoners?

Lisa T. McElroy

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

---

## Recommended Citation

Lisa T. McElroy, *Is It Crazy to Think that Attorneys with Mental Health Disabilities are Uniquely Situated to Help Prisoners?*, 93 N.C. L. REV. 1419 (2015).

Available at: <http://scholarship.law.unc.edu/nclr/vol93/iss5/10>

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact [law\\_repository@unc.edu](mailto:law_repository@unc.edu).

# IS IT CRAZY TO THINK THAT ATTORNEYS WITH MENTAL HEALTH DISABILITIES ARE UNIQUELY SITUATED TO HELP PRISONERS?\*

LISA T. MCELROY\*\*

*The psychotherapist . . . must understand not only the patient; it is equally important that he should understand himself . . . The patient's treatment begins with the doctor, so to speak. Only if the doctor knows how to cope with himself and his own problems will he be able to teach the patient to do the same. Only then.*

— C.G. Jung<sup>1</sup>

INTRODUCTION .....	1419
I. “PASSING” OR “COVERING” .....	1422
II. MENTAL HEALTH ISSUES IN THE LEGAL COMMUNITY .....	1426
III. INMATES AND MENTAL ILLNESS .....	1430
IV. WHAT WE CAN LEARN FROM CONSUMER-LED MENTAL HEALTH SERVICES AND THE LITERATURE ON CROSS-CULTURAL REPRESENTATION.....	1432
CONCLUSION AND RECOMMENDATIONS .....	1435

## INTRODUCTION

In the summer of 2013, I was a newly tenured law professor. I had just lived through the hardest year of my life, waiting for my tenure vote and the rubber stamp from the university. That the 2012–2013 academic year was the hardest of my life really meant

---

\* © 2015 Lisa T. McElroy.

\*\* Associate Professor of Law, Drexel University Thomas R. Kline School of Law. The author would like to thank Professor Tamar Birckhead and Dr. Katie Pryal as well as the members of the *North Carolina Law Review* for their gracious invitation to participate in this symposium. As always, I would have been lost without the fine research assistance of John Cannan. Finally, I would like to thank my husband, Steve McElroy, and my dean, Roger Dennis, for supporting me as I continue to work through, live with, and talk openly about mental illness.

1. C.G. JUNG, *MEMORIES, DREAMS, REFLECTIONS* 132 (1961). While I certainly do not advocate for lawyers treating clients as psychotherapy patients, I do believe that lawyers who see themselves in their clients may be better equipped to practice empathic law.

something, because for the twenty-five years before that, I had been living with a psychiatric disability, a severe anxiety disorder.

I had spent all of my adult life “passing,” pretending to be someone who is calm and confident, competent and clear-headed, when in my mind I was terrified for just about every waking moment.

Why did I hide my disability? Because I was convinced that passing for “normal” was the only way I could succeed in my career.

The problem was that now, despite achieving a benchmark of success, I still did not always feel like I could get through the day.

During the summer after I earned tenure, I thought hard about how I had been coping. I had been hiding. I had been trying to assimilate. I had been passing. And while I may have fooled colleagues and friends, I had not fooled myself. I was just as disabled as I had been as a college student. I had to change my approach.

I am the mother of two daughters, now teenagers, who have always been voracious readers. Back before they could read on their own, we would have long story sessions where I would read to them, piled up in the master bedroom, all entranced by the world of imagination. As it was for so many parents and children, *Winnie the Pooh* was high on our reading list.<sup>2</sup> Now, at least ten years after reading with my children, I remembered a scene in which Pooh, Rabbit, and Piglet were lost in the Hundred Acre Wood.<sup>3</sup> After circling around in the mist, they kept finding themselves back at the same pit, no nearer to home. Pooh suggested a crazy idea.

How would it be . . . if, as soon as we're out of sight of this Pit, we try to find it again? . . . [W]e keep looking for Home and not finding it, so I thought that if we looked for this Pit, we'd be sure not to find it, which would be a Good Thing, because then we might find something that we *weren't* looking for, which might be just what we *were* looking for, really.”<sup>4</sup>

And, much to the characters' surprise, it worked.<sup>5</sup>

---

2. See generally A.A. MILNE, *THE WORLD OF POOH, THE COMPLETE WINNIE-THE-POOH AND THE HOUSE AT POOH CORNER* (E.P. Dutton 1967).

3. *Id.* at 262 (“Christopher Robin guessed that Pooh and Piglet and Rabbit were all lost in the mist on top of the Forest.”).

4. *Id.* at 264.

5. See *id.* at 266–67.

I had been trying to get to a place of peace from the wrong direction, I thought. Passing and covering had not worked for me. Initially with trepidation, then with hesitation, and finally with cautious enthusiasm, I decided to try openness.

That summer, I published an essay on *Slate* describing my mental illness to the world.<sup>6</sup>

Much to my surprise, the direct feedback I received was overwhelmingly positive.<sup>7</sup> In fact, many readers (some of them strangers, some of them colleagues and friends) suggested that I could be even more effective in my role as a law professor by becoming a role model for pre-law and law students who believed that the practice of law would be out of reach for them because they too lived with mental illness.<sup>8</sup>

After living openly for the past two years, I have come to agree. What I had always viewed as a liability could, in fact, be a strength. Perhaps, I have thought, I can implicitly encourage and support others who strive to live an authentic life. Perhaps, in the words of symposium contributor Professor Frank Cooper (who expressed it far better than I could in his symposium talk), “It has to be incumbent on every one of us to lift all of us up.”<sup>9</sup>

I welcomed the invitation to participate in this symposium, not because I am a criminal justice expert—far from it—but because I saw the parallels between my situation (a law professor teaching students)

---

6. Lisa T. McElroy, *Worrying Enormously About Small Things*, SLATE (July 18, 2013, 8:16 AM), [http://www.slate.com/articles/health\\_and\\_science/medical\\_examiner/2013/07/living\\_with\\_anxiety\\_and\\_panic\\_attacks\\_academia\\_needs\\_to\\_accommodate\\_mental.html](http://www.slate.com/articles/health_and_science/medical_examiner/2013/07/living_with_anxiety_and_panic_attacks_academia_needs_to_accommodate_mental.html).

7. Before I published my essay, I made the decision not to expose myself to Internet bullying. Therefore, while the piece received many online comments, I did not read them. I am told that some of them were quite negative. For some reason, the comments are no longer on the online piece; I am not sure why.

8. I received literally hundreds of emails in the days following publication of the essay, and I still continue to receive one or two a month more than a year afterward.

9. Frank Rudy Cooper, Professor, Suffolk Univ. Sch. of Law, Panel at the North Carolina Law Review Symposium: Vulnerable Defendants in the Criminal Justice System (Oct. 10, 2014). *See generally* Frank Rudy Cooper, *Always Already Suspect: Revising Vulnerability Theory*, 93 N.C. L. REV. 1339(2015) (arguing for the revision of vulnerability theory to address racial profiling). I should note here that I have intentionally refrained from discussions with students about their own disabilities, both because I am not a therapist and because maintaining my own mental health requires me to limit the emotional burdens (of others, at least) that I take on. However, at least one attorney with dyslexia has described the emotional impact he experienced when a law professor disclosed to him (as a law student) that the professor also lived with dyslexia. *See* Ben Foss, *Ben Foss*, in *LAWYERS, LEAD ON: LAWYERS WITH DISABILITIES SHARE THEIR INSIGHTS* 28, 30 (Carrie G. Basas et al. eds., 1st ed. 2011) (“It simply had not occurred to me that a professor could be ‘in the club [of people with hidden disabilities].’”).

and that of a criminal defense lawyer (a lawyer with mental illness representing a criminal defendant with a similar disability). I wanted to explore these parallels, and in this Article, I describe my conclusions.

Part I explains the concept of “passing” and a parallel concept some scholars have called “covering.” It discusses reasons why lawyers in particular may decide to pass or cover their psychiatric disabilities. Part II summarizes the research on the number of lawyers and law students with mental health disabilities, as well as the issues they face. Part III summarizes that same data for inmates of U.S. correctional institutions. Part IV considers the intersection of the concepts laid out in Parts I through III and asks whether lawyers with mental health disabilities might be uniquely situated to help prisoners with psychiatric issues. Part V concludes and recommends that lawyers consider whether passing is a prerequisite to professional success and whether “coming out” about mental health disabilities could actually inform and support their representation of criminal defendants.

#### I. “PASSING” OR “COVERING”

“Passing”<sup>10</sup> and “covering”<sup>11</sup> are not new concepts. In every society, members of some minority group may perceive it to be advantageous to pass themselves off as members of the majority.<sup>12</sup> For example, at various points in world history, African Americans

---

10. Elaine Brohan et al., *Systematic Review of Beliefs, Behaviours, and Influencing Factors Associated with Disclosure of a Mental Health Problem in the Workplace*, 12 BMC PSYCHIATRY, no. 11, 2012, at 5 (defining passing as “the processes of keeping a stigmatised identity successfully concealed”); see also Randall Kennedy, *Racial Passing*, 62 OHIO ST. L.J. 1145, 1145 (2001) (“Passing is a deception that enables a person to adopt certain roles or identities from which he would be barred by prevailing social standards in the absence of his misleading conduct.”).

11. KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS*, at ix (2006) (“To cover is to tone down a disfavored identity to fit into the main-stream.”); see also Anthony V. Alfieri, *(Un)covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805, 811 (2008) (“Covering constitutes a form of assimilation and conformity.”).

12. See, e.g., Angela Onwuachi-Willig, *Undercover Other*, 94 CALIF. L. REV. 873, 885 (2006) (“In the post-Civil Rights era, racially palatable Blacks can become honorary Whites. Covering gays and lesbians can become honorary heterosexuals. Assertive women who ‘play the game’ by rejecting feminine qualities or roles can become one of ‘the Boys.’ Interestingly, progressive Whites with the ‘right’ politics can become honorary Blacks, and therefore suffer discrimination that is usually reserved for minorities.”); see also Kennedy, *supra* note 10, at 1147 (“It is clear, however, that at the middle of the twentieth century, large numbers of African Americans claimed to know people engaged in passing.”).

have attempted to pass as white,<sup>13</sup> women as men,<sup>14</sup> Jews as Christians,<sup>15</sup> and gay people as straight.<sup>16</sup>

As difficult as it may be to deny their authentic identities and selves, members of minorities may want to pass for any of several reasons: social acceptance or avoidance of stigma,<sup>17</sup> access to legal and civil rights,<sup>18</sup> professional<sup>19</sup> and educational opportunities and integration,<sup>20</sup> and physical safety,<sup>21</sup> among others.<sup>22</sup>

Still, as Professors Kenji Yoshino and Shari Motro have discussed,<sup>23</sup> passing or covering also comes with enormous costs.<sup>24</sup>

---

13. Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 YALE L.J. 109, 137 (1998).

14. William N. Eskridge, Jr., *A History of Same-Sex Marriage*, 79 VA. L. REV. 1419, 1479 (1993).

15. Belle Rose Ragins, *Disclosure Disconnects: Antecedents and Consequences of Disclosing Invisible Stigmas Across Life Domains*, 33 ACAD. MGMT. REV. 194, 194 (2009).

16. Raymond M. Berger, *Passing: Impact on the Quality of Same-Sex Couple Relationships*, 35 SOCIAL WORK 328, 328 (1990). The literature tends to analogize these groups' desire to pass to each other. See, e.g., Carrie Griffin Basas, *The New Boys: Women with Disabilities and the Legal Profession*, 25 BERKELEY J. GENDER L. & JUST. 32, 39 (2010) ("Covering' among disabled women is akin to the experiences of racial minorities and gay and lesbian attorneys passing or downplaying their differences.").

17. Ragins, *supra* note 15, at 196.

18. Eskridge, *supra* note 14, at 1479.

19. See Rich DeJordy, *Just Passing Through: Stigma, Passing, and Identity Decoupling in the Work Place*, 33 GROUP & ORG. MGMT. 504, 514 (2008) ("Specifically, both impression management and façade of conformity are employed by individuals to increase the opportunities available to them, and the underlying motivation for emotional labor, from perspectives of the organization dictating it, is to optimize transactional outcomes.").

20. See Erin A. Cech & Tom J. Waidzun, *Navigating the Heteronormativity of Engineering: The Experiences of Lesbian, Gay, and Bisexual Students*, 3 ENGINEERING STUD. 1, 21 (2011) ("LGB students rely on tactics of passing and covering, compartmentalization, and achievement of expertise and indispensability to navigate the climate they experience.").

21. See Ragins, *supra* note 15, at 198 ("Nondisclosure of a stigmatized identity in a supporting environment is quite different from an environment where individuals would react harshly to the stigma. Similarly, disclosure in a positive environment could be an enriching experience but could lead to disastrous consequences in a negative environment.").

22. For many reasons, hiding a mental health disorder may simply be easier. See Scott Burris, *Disease Stigma in U.S. Public Health Law*, 30 J.L. MED. & ETHICS 179, 181 (2002).

23. See Shari Motro, *Scholarship Against Desire*, 26 YALE J.L. & HUMAN. 115, 148-50 (2015); YOSHINO, *supra* note 11, at 17.

24. See, e.g., Roberto J. Gonzalez, *Cultural Rights and the Immutability Requirement in Disparate Impact Doctrine*, 55 STAN. L. REV. 2195, 2201 (2003); Sabrina Haake, *The M Word*, 4 HUM. RTS. & GLOBALIZATION L. REV. 3, 43-44 (2011) ("Although some may believe that legal rights should be attenuated to the degree that the stigmatizing trait could be downplayed or camouflaged, the societal and personal costs of coerced assimilation have been fiercely debated. . . . [Damaging] in terms of costs to the employer as well as the assimilating employee is that an employee who is enmeshed in perpetuating a personal contrivance has less time and mental energy to devote to the work he is paid to do, and the

People with disabilities may especially experience conflict: “‘[B]oth passing and overcoming take their toll. The loss of community, the anxiety, and the self-doubt that inevitably accompany this ambiguous social position and the ambivalent personal state are the enormous cost of declaring disability unacceptable.’”<sup>25</sup> Or, as one attorney has put it, simply, “[t]elling people about your disability can be freeing.”<sup>26</sup>

To pass or cover is to forego authenticity,<sup>27</sup> to falsify identity,<sup>28</sup> to relinquish, as scholars note, a sense of community.<sup>29</sup> It is perhaps to receive inappropriate or ineffective medical treatment.<sup>30</sup> It is to give up the opportunity for others to truly know us.<sup>31</sup>

---

resulting diminishment in output represents costs to both employer and employee.”); Ashleigh Shelby Rosette & Tracy L. Dumas, *The Hair Dilemma: Conform to Mainstream Expectations or Emphasize Racial Identity*, 14 DUKE J. GENDER L. & POL’Y 407, 420 (2007) (“People have a need to express relevant aspects of their identities. When people are unable to express these self-aspects, they experience dissatisfaction and frustration.”); Michael Ashley Stein, *Disability Human Rights*, 95 CALIF. L. REV. 75, 116 (2007) (“[E]ven if sexual minorities who are dissuaded from thriving in a particular manner end up economically well off, they still suffer violations to individual dignity and personal flourishing. This is particularly true if they pursue social advancement by repressing elements of their identities.”).

25. Basas, *supra* note 16, at 94 (quoting SIMI LINTON, CLAIMING DISABILITY: KNOWLEDGE AND IDENTITY 17–22 (1998)); *see also* Kate E. Toth & Carolyn S. Dewa, *Employee Decision-Making About Disclosure of a Mental Disorder at Work*, 24 J. OCCUPATIONAL REHABILITATION 732, 739 (2014) (“Participants also disclosed [their mental health disorders] at work for personal reasons, including eliminating the need to keep a secret. Participants found keeping a secret to be burdensome, and in that way disclosure could be liberating. [Two study participants] talked about the benefit to others of disclosing in terms of reducing stigma. Participants spoke about their desire to be their authentic selves with others, and this included disclosure.”).

26. Foss, *supra* note 9, at 29; *see also* Ragins, *supra* note 15, at 194 (“Employees with invisible stigmas face challenges not encountered by those with visible stigmas. Individuals with invisible stigmas can conceal their identity in order to avoid prejudiced reactions and discrimination, but this concealment can take a toll on these individuals through psychological strain, emotional stress, and stress-related illnesses.”).

27. *See* DeJordy, *supra* note 19, at 516 (finding that “passing is a distinct construct, integrally tied to identity, and focused on avoiding negative consequences with a need for constant vigilance [to avoid uncovering one’s true characteristics]”).

28. *See id.* at 514.

29. *See id.* at 519 (“[Passing] leads both to the individual’s alienation from his new group, . . . and to a self-imposed isolation through voluntary maintenance of various types of distance.” (internal quotations and citations omitted)).

30. *See* Bronwen Lichtenstein, *Stigma as a Barrier to Treatment of Sexually Transmitted Infection in the American Deep South: Issues of Race, Gender and Poverty*, 57 SOC. SCI. & MED. 2435, 2440 (2003) (“The desire to avoid patient spotting meant that some men pursued alternative methods of treatment or that they delayed seeking care or failed to keep appointments or follow-up care.”).

31. “But you’re not the only failure here. I act scary, Mike. But most of the time . . . I’m terrified.” “How come you never told me that before?” “Because we weren’t friends before.” MONSTERS UNIVERSITY (Walt Disney Pictures 2013).

Lastly, it is to give a pass on a leadership role, one of acting as a role model for others.<sup>32</sup>

As Professor Sharon Elizabeth Rush has said, “In [some] contexts, identity and passing might be considered ‘low-level’ concepts that mark an individual’s attempt to fit into the dominant culture and, simultaneously, not lose sight of his or her experiences and self-definition.”<sup>33</sup>

And, as Kenji Yoshino has argued,

Covering is a hidden assault on our civil rights. . . . [I]f we look closely, we will see that covering is the way many groups are being held back today. The reason racial minorities are pressured to “act white” is because of white supremacy. The reason women are told to downplay their child-care responsibilities in the workplace is because of patriarchy. And the reason gays are asked not to “flaunt” is because of homophobia. So long as such covering demands persist, American civil rights will not have completed its work.<sup>34</sup>

But, as we might expect given the temptation of passing or covering, there are advantages to hiding our true selves. Passing allows us to dispense with assumptions others might make of us, given our minority status.<sup>35</sup> It permits us to choose the time and place of our “coming-out,”<sup>36</sup> if, indeed, we ever choose to expose our real identities to the world. It lets us refrain from being the example that everyone points to, asks questions of, and learns from—sometimes at the expense of our own peace of mind.<sup>37</sup>

To disclose a psychiatric disability—particularly to those at work—is a difficult decision, particularly for the vast majority of Americans who, unlike me, are employees at-will.<sup>38</sup> For lawyers and

32. Jennifer Louise Petriglieri, *Under Threat: Responses to and the Consequences of Threats to Individuals’ Identities*, 36 ACAD. MGMT. REV. 641, 641 (2011).

33. Sharon Elizabeth Rush, *Equal Protection Analogies—Identity and “Passing”: Race and Sexual Orientation*, 13 HARV. BLACKLETTER L.J. 65, 70 (1997).

34. YOSHINO, *supra* note 11, at xi.

35. Basas, *supra* note 16, at 69–70 (“I was scared I’d be pegged as ‘difficult’ or as not having the ability to practice law because of disability-related barriers. I thought I’d experience discrimination, so I hid my disabilities.”).

36. YOSHINO, *supra* note 11, at 185.

37. And covering or passing may seem commonplace to people with disabilities. See Stein, *supra* note 24, at 121 (“Historically, persons with disabilities have been among the most politically marginalized, economically impoverished, and least visible members of society. Many societies have viewed and continue to view this social exclusion as natural, or even a warranted consequence of the inherent inabilities of disabled persons.”).

38. See, e.g., Foss, *supra* note 9, at 27 (“Decisions about disclosing a disability are complex and personal. They are particularly so for individuals with disabilities that are not



law students, it may be particularly difficult given the demands of the profession and the expectations of clients and supervising attorneys that lawyers appear competent, unflappable, and in control. Yet the legal profession is replete with lawyers with mental health issues.

## II. MENTAL HEALTH ISSUES IN THE LEGAL COMMUNITY

Lawyers and law students<sup>39</sup> have higher rates of mental health disabilities such as addiction, anxiety, and depression than nonlawyers—sometimes even twice as high.<sup>40</sup> Lawyers are much more likely to commit suicide than people in the general population.<sup>41</sup> Researchers have found that lawyers suffer from depression more than workers in almost any other occupation.<sup>42</sup> Still, many lawyers who suffer from these disabilities may be surprised to learn these statistics, having believed that they were the “only ones.”<sup>43</sup>

---

readily apparent . . .”); Toth & Dewa, *supra* note 25, at 743 (“Perceived job security is not often explicitly mentioned in the literature as a factor in decision-making, but it was a prominent finding in the present study. Participants were concerned about losing their job or losing opportunities for advancement if they disclosed. Perceived job security seemed to be linked to awareness of legal protections against discrimination.”). Toth and Dewa also noted that “[p]articipants who were aware of their [statutory legal] rights related to disabilities . . . tended to feel they had greater job security and could not be discriminated against based on the mental disorder.” *Id.* at 740.

39. See generally G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1968 AM. B. FOUND. RES. J. 225 (1986) (presenting the results of a research design that indicated that the process of legal education impairs emotional well-being in law students).

40. See, e.g., Susan Daicoff, *Lawyer, Be Thyself: An Empirical Investigation of the Relationship Between the Ethic of Care, the Feeling Decisionmaking Preference, and Lawyer Wellbeing*, 16 VA. J. SOC. POL'Y & L. 87, 88–89 n.1 (summarizing a number of studies establishing that lawyers have higher rates of mental health disabilities). Some studies showed a significantly higher rate of depression and suicidal ideation among lawyers than in the general population. *Id.* at 94 nn.28–32; see also Darcy Clay Siebert, *Work and Well-Being*, N.C. ST. B.J., Fall 2010, at 12, 13 (reporting on a 2009 study of North Carolina lawyers that found “10.3% of respondents scored at or higher than the cutoff for depression,” and in which “12.4% reported taking medication for stress or anxiety” and 11.4% for depression). See generally Benjamin et al., *supra* note 39 (reporting similar findings in a study looking at lawyers in Washington and Arizona).

41. See Andrew Jay McClurg, *Fight Club: Doctors vs. Lawyers—A Peace Plan Grounded in Self-Interest*, 83 TEMP. L. REV. 309, 344 (2011).

42. William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079, 1085–86 (1990).

43. See, e.g., Sarah Deer, *Sarah Deer*, in LAWYERS, LEAD ON: LAWYERS WITH DISABILITIES SHARE THEIR INSIGHTS, *supra* note 9, at 39, 41 (“I won’t try to convince you that there is no stigma attached to psychological disabilities. You may have to consider carefully to whom you disclose. But I will tell you that there are a lot more of ‘us’ out there than you might think. The legal profession is made up of all kinds of people . . .”).

Some experts attribute this phenomenon to the fact that lawyers possess certain personality characteristics such as perfectionism and competitiveness; when they have depression on top of these traits, suicide becomes more of a risk.<sup>44</sup> As one lawyer notes, “[B]ecause we expect perfection from ourselves and our colleagues, we are reluctant to acknowledge our susceptibility to human failings. As a result, treatment is delayed or even refused.”<sup>45</sup>

We also know that while the percentage of entering law students with mental health issues is no greater than that of the general population, by the time these students graduate, the percentage has increased exponentially,<sup>46</sup> meaning many of these mental health issues surface during law school. Those mental health issues may be exacerbated by the fear of being stigmatized. As one lawyer has described it, “[M]ental illness has always had a stigma attached to it, but law school seemed to add an additional layer of stigma.”<sup>47</sup>

As Professor Laura Rothstein notes, law school student-service professionals generally must certify a student’s character and fitness to practice law to the bar of the state where the student plans to practice.<sup>48</sup> A conflict may arise when such a professional has referred a student to mental health or addiction counseling services and then must answer questions on a bar reference form about whether a student has availed herself of these services.<sup>49</sup> And as Professor Carrie Griffin Basas learned in her study about female lawyers with disabilities, this conflict of roles sometimes leads to a student’s decision not to seek mental health care during law school, often to the

---

44. Debra Cassens Weiss, *Lawyer Personalities May Contribute to Increased Suicide Risks*, A.B.A. J. (Apr. 30, 2009, 6:43 PM), [http://www.abajournal.com/news/article/lawyer\\_personalities\\_may\\_contribute\\_to\\_increased\\_suicide\\_risk/](http://www.abajournal.com/news/article/lawyer_personalities_may_contribute_to_increased_suicide_risk/).

45. Yvette Hourigan, *Chasing*, BENCH & B., Sept. 2011, at 16, 17.

46. Benjamin et al., *supra* note 39, at 247.

47. Deer, *supra* note 43, at 40. Mental illness is not the only disability that is particularly stigmatized in the law school setting. *See, e.g.*, David Estrada, *David Estrada*, in *LAWYERS, LEAD ON: LAWYERS WITH DISABILITIES SHARE THEIR INSIGHTS*, *supra* note 9, at 85, 86 (“Despite the fact that I have an apparent disability, there were others in my law school class that had learning disabilities who confided in me and told no one else. I can completely respect the fact that they don’t want others to know. It’s too bad our society puts so many negative labels on individuals and groups.”).

48. Laura Rothstein, *Law Students and Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual*, 69 U. PITT. L. REV. 531, 547 (2008).

49. *Id.* at 547.

detriment of her health.<sup>50</sup> Similarly, the fact that students must answer questions about mental health conditions and treatment on their bar applications may deter them from seeking care.<sup>51</sup>

Licensed attorneys may also find it difficult to seek help for themselves while simultaneously maintaining a professional identity.<sup>52</sup> Although they may (or may not) realize that they have done nothing to cause their disabilities and that having a psychiatric disability does not equate to moral turpitude,<sup>53</sup> they may still be reluctant or ashamed to admit, even to themselves, that they have a mental health issue.<sup>54</sup> As one attorney has described it, “I didn’t and don’t disclose my disability to anyone unless absolutely necessary. . . . It seems in employment that if you’re seen as vulnerable because of a disability, your work is seen as inferior. Or, others think that you’re trying to get

---

50. Basas, *supra* note 16, at 77 (“No one admitted depression before they were safely past the bar screening process and certainly no one admitted to getting counseling in school. I didn’t even consider getting counseling then, although I needed it desperately.”).

51. Rothstein, *supra* note 48, at 547 (citing Allison Wielobob, *Bar Application Mental Health Inquiries: Unwise and Unlawful*, HUM. RTS. MAG., Winter 1997, at 12, 15; *Report of the AALS Special Committee on Problems of Substance Abuse in the Law Schools*, 44 J. LEGAL EDUC. 35, 54–55 (“Only 10 percent [of law students surveyed] answered an unqualified yes [when asked if they would seek assistance for a substance abuse problem]. But 41 percent responded that they would seek assistance if they were assured that bar officials would not have access to the information.”); see also Lisa T. McElroy & Katie Rose Guest Pryal, *The Worst Part of the Bar Exam: It’s Time to Drop Mental Health Questions*, SLATE (Aug. 7, 2014, 8:08 AM), [http://www.slate.com/articles/health\\_and\\_science/medical\\_examiner/2014/08/bar\\_examiner\\_s\\_ask\\_lawyer\\_applicants\\_about\\_mental\\_health\\_the\\_question\\_policy.html](http://www.slate.com/articles/health_and_science/medical_examiner/2014/08/bar_examiner_s_ask_lawyer_applicants_about_mental_health_the_question_policy.html) (“The most dangerous risk of all is that law students with psychiatric disabilities will avoid treatment out of fear of having to report it to the bar examiners and consequently being denied a license to practice law.”); Melody Moezzi, *Lawyers of Sound Mind?*, N.Y. TIMES, Aug. 6, 2013, at A17 (“Recognizing that the admission of a mental illness on a fitness application could be harmful to their careers, some applicants with mental disorders either delay or forgo treatment, while others lie under oath, risking perjury charges.”).

52. Mark Merritt, *A Hard Look in the Mirror*, N.C. ST. B.J., Fall 2010, at 6, 7 (“[S]tatistics show the challenge that we face: lawyers suffer significant substance abuse and mental health issues but are very reluctant to seek help for themselves. This shows that the stigma around issues of substance abuse and mental illness remains and prevents a highly educated group of professionals from receiving the help they need to lead happier and more fulfilling lives.”).

53. *Id.* (“Medical research has shown that substance abuse and mental illness are not the result of flawed character or low morals, but stem from differences in the way that the brains of people can handle substances and deal with the stressors that life imposes on us. Despite that body of knowledge, lawyers still feel constrained from acknowledging their personal struggles with substance abuse or mental illness out of fear that it will harm their professional reputation or cause them to lose their law license.”).

54. Anonymous, *A Stigma Within Our Profession*, J. KAN. B. ASS’N, Apr. 2014, at 12, 12.

special treatment.”<sup>55</sup> Even more dramatically, a mental health disability may be perceived by others as a liability or as a mark of an incompetent brain, the primary tool of lawyers.<sup>56</sup> As one attorney with mental health and nonapparent disabilities put it, “Lawyers are ‘attack train’ listeners. We watch for weakness in our opponents so we can exploit them. Why would I want to do what amounts to announcing a vulnerability?”<sup>57</sup> Still another writes, “Revealing a disability is a personal and often difficult decision. I’m very disappointed that in 2011 I can’t tell you to be out, loud, and proud about your disability.”<sup>58</sup>

Of course, some individuals have no choice about whether to disclose their mental health issues, especially if they wish to seek treatment. There is no better example of this problem than that of inmates in America’s prisons.

---

55. Kylar Broadus, *Kylar Broadus*, in *LAWYERS, LEAD ON: LAWYERS WITH DISABILITIES SHARE THEIR INSIGHTS*, *supra* note 9, at 51, 53. Studies have borne out the fear that lawyers with disabilities would be perceived as inferior or less competent at their jobs. *See, e.g.*, Olegario D. Cantos VII, *Ollie Cantos*, in *LAWYERS, LEAD ON: LAWYERS WITH DISABILITIES SHARE THEIR INSIGHTS*, *supra* note 9, at 43, 44–45 (“Some people may believe that disclosing will result in discriminatory treatment resulting from prevailing myths and misconceptions either about disability generally or about your own disability particularly. Others may feel that, to the degree that they were able to hide their disability or otherwise not to reveal its presence, greater opportunities may abound due to people ‘not knowing.’ ”); Toth and Dewa, *supra* note 25, at 735 (reporting on a study of thirteen employees with mental health disorders at a Canadian post-secondary educational institution) (“Participants spoke about three primary stereotypes that they felt were applied to employees diagnosed with mental disorders. All of the participants expressed the fear that they would be perceived as incompetent to do their jobs.”); *id.* at 742 (“[P]articipants talked about fear of stereotypes such as incompetence to perform their jobs and being held responsible for the disorder. They were also concerned about being perceived as faking or trying to manipulate the system. Such stereotypes are common for mental disorders and disability more generally.”).

56. Anonymous, *supra* note 54, at 12.

57. Jodi Hanna, *Jodi Hanna*, in *LAWYERS, LEAD ON: LAWYERS WITH DISABILITIES SHARE THEIR INSIGHTS*, *supra* note 9, at 35, 37. Academics (who bear some similarity to lawyers because their jobs are based on thinking and analyzing) without job security have expressed similar sentiments. Katie Rose Guest Pryal, *Disclosure Blues: What Should You Tell Colleagues About Your Mental Illness?*, *VITAE* (June 13, 2014), <https://chroniclevitae.com/news/546-disclosure-blues-should-you-tell-colleagues-about-your-mental-illness> (“[C]ontingent—and even pre-tenure—professors simply don’t have ‘the luxury to volunteer stigmatizing personal information. They hired you for your mind . . . Why would you volunteer that there’s was something wrong with it?’ ” (quoting anonymous contingent professor with a psychiatric disability)); *id.* (“ ‘[I]n academia, one’s brain is supposed to be the most essential asset one has.’ ” (quoting a second such professor)).

58. Hanna, *supra* note 57, at 36.

## III. INMATES AND MENTAL ILLNESS

According to the Bureau of Justice Statistics, in 2005 more than fifty percent of prisoners had a mental health issue.<sup>59</sup> A significant percentage of these lived with psychotic disorders.<sup>60</sup> Only one in three state prisoners and one in six jail inmates who lived with mental health issues had received treatment while incarcerated.<sup>61</sup> One researcher has estimated the percentage of supermax<sup>62</sup> prisoners with a mental illness to be twice as high as found among prisoners in the general population,<sup>63</sup> with a study of two supermax prisons in Indiana leading to the conclusion that “ ‘over half of the inmates at the SHU are mentally ill.’ ”<sup>64</sup> Moreover, incarceration, especially at more restricted levels, may exacerbate mental illness rather than improve behavior.<sup>65</sup>

In prison, rules are paramount, and rule violations typically lead to higher levels of security and incarceration. Prisoners with a mental health issue are significantly more likely to break rules than those

---

59. DORIS J. JAMES & LAUREN E. GLAZE, U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 1 (2006) (basing statistics on data from personal interviews with state and federal prisoners in the four years prior).

60. *Id.* (“An estimated 15% of State prisoners and 24% of jail inmates reported symptoms that met the criteria for a psychotic disorder.”).

61. *Id.* Interestingly, the report makes this rate sound high, using phrases like “more than a fifth” rather than “only a fifth” when describing inmates who had received mental health treatment. *Id.* at 9.

62. A supermax prison is “a prison or prison-unit for heavily supervised single-cell confinement of inmates who are particularly violent or disruptive. Supermax prisons can be stand-alone facilities or part of another facility and are designed to hold the most troublesome prisoners in solitary confinement, typically for a three-year or indefinite term.” BLACK’S LAW DICTIONARY 1387–88 (10th ed. 2014).

63. Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQ. 124, 142 (2003).

64. Thomas L. Hafemeister & Jeff George, *The Ninth Circle of Hell: An Eighth Amendment Analysis of Imposing Prolonged Supermax Solitary Confinement on Inmates with a Mental Illness*, 90 DENV. U. L. REV. 1, 47 (2012) (citing HUMAN RIGHTS WATCH, COLD STORAGE: SUPER-MAXIMUM SECURITY CONFINEMENT IN INDIANA 11 (1997)).

65. *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999) (“[I]n a tragically ironic twist, [prisoners with mental illness] may be confined in conditions that nurture, rather than abate, their psychoses.”); Jamie Fellner, *A Corrections Quandary: Mental Illness and Prison Rules*, 41 HARV. C.R.-C.L. L. REV. 391, 391 (2006) (“Prison conditions are hard on mental health in general, because of overcrowding, violence, lack of privacy, lack of meaningful activities, isolation from family and friends, uncertainty about life after prison, and inadequate health services. The impact of these problems is worse for prisoners whose thinking and emotional responses are impaired by schizophrenia, bipolar disease, major depression, and other serious mental illnesses. The mentally ill in prison also face inadequate mental health services that leave them under-treated or mistreated.”).

without.<sup>66</sup> They are also more likely to commit verbal or physical assaults on correctional officers<sup>67</sup> or other inmates.<sup>68</sup> As a scholar recently explained, “Many mentally ill prisoners lack the capacity to comply with these demands and they may end up in trouble as a result. If they are not treated for their problems, the pattern is likely to be repeated and eventually can lead to confinement in a supermax unit,” where the likes of the “Unabomber”<sup>69</sup> and the “Shoe Bomber”<sup>70</sup> are incarcerated.<sup>71</sup> Another scholar stated that “prison officials often ‘treat disordered behavior as disorderly behavior,’ ” resulting in prisoners with psychiatric disabilities being more likely to be segregated from the general prison population.<sup>72</sup> Prisoners in “supermax” prisons are required to follow stricter rules than in most other types of institutions, but are also twice as likely to be mentally ill.<sup>73</sup> Of course, as one scholar has noted, “if punishment is supposed to help deter future misconduct, that goal is clearly misplaced when individuals have no meaningful control over their conduct.”<sup>74</sup>

We must also remember that police and correctional officers may be more likely to perceive people with mental illness as rule breakers (as opposed to healthy people) and to treat them accordingly.<sup>75</sup> They

66. JAMES & GLAZE, *supra* note 59, at 10 (citing statistics of 57% vs. 43.2% in state prison, 40% vs. 27.7% in federal prison, 19% vs. 9.1% in local jails); Fellner, *supra* note 65, at 395 (offering multiple examples of situations in which manifestations of mental illness may constitute unintentional rule-breaking).

67. JAMES & GLAZE, *supra* note 59, at 10 (citing statistics of 24% vs. 14% in state prisons, 15% vs. 7% in federal prisons, and 8% vs. 2% in local jails).

68. *Id.*

69. The Unabomber’s name is Theodore Kaczynski. *See, e.g.,* Alli Knothe & Travis Andersen, *Harvard Alumni Association Apologizes for Listing Unabomber Ted Kaczynski’s ‘Awards’—His Life Sentences for Terror Campaign*, BOSTON.COM (May 24, 2012, 1:24 PM), <http://www.boston.com/metrodesk/2012/05/24/harvard-alumni-association-apologizes-for-listing-unabomber-ted-kaczynski-awards-his-life-sentences-for-terror-campaign/qJekNsHOeMZHgLG6S7JxtI/story.html>.

70. The Shoe Bomber’s name is Richard Reid. *See, e.g.,* Debra Burlingame, *Revenge of the ‘Shoe Bomber’*, WALL ST. J. (July 29, 2009, 10:31 PM), <http://online.wsj.com/articles/SB10001424052970203609204574317090690242698>.

71. Hafemeister & George, *supra* note 64, at 49 (quoting Haney, *supra* note 63, at 142).

72. *Id.* (quoting *Developments in the Law—The Impact of the Prison Litigation Reform Act on Correctional Mental Health Litigation*, 121 HARV. L. REV. 1145, 1145 (2008)).

73. Haney, *supra* note 63, at 142.

74. Fellner, *supra* note 65, at 401.

75. *See, e.g.,* SASHA ABRAMSKY & JAMIE FELLNER, HUMAN RIGHTS WATCH, ILL EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS 60 (2003) (citing Memorandum from John Stoner, Colo. Dep’t of Corr., to Human Rights Watch (Aug. 26, 2002)); Robert Bernstein & Tammy Seltzer, *Criminalization of People with Mental Illnesses: The Role of Mental Health Courts in System Reform*, 7 D.C. L. REV.

may also believe that accommodating the needs of prisoners with mental illness in terms of rule breaking may encourage others to pretend to be mentally ill to escape punishment.

Finally, at least one recent study demonstrates that when people with serious mental illness leave jail, the majority of them will never seek mental health treatment outside of reentry programs.<sup>76</sup>

Were lawyers with mental illness to help similarly situated inmates, however, that problem might be substantially transformed. In other contexts, consumer and peer-led mental health services have benefited consumers of those services to great effect.

#### IV. WHAT WE CAN LEARN FROM CONSUMER-LED MENTAL HEALTH SERVICES AND THE LITERATURE ON CROSS-CULTURAL REPRESENTATION

Social scientists have long recognized that people who have experienced some type of illness or disability may be uniquely situated to help others with the same illness or disability.<sup>77</sup> For example, the ABA has said

The states that have staffed lawyer assistance programs (LAPs) can provide peer support for individuals and referrals to counseling—career, mental, and financial. The lawyers helping lawyers component of LAPs has existed from the beginning and continues to be of critical assistance in times of relapse, stress, and trauma. These volunteers can share a special bond and understanding, which has been found to be true in other professional peer support programs as well.<sup>78</sup>

Indeed, peer-support programs have succeeded in many settings and for people with many kinds of medical and mental health

---

143, 145 (2003) (“During street encounters, police officers are almost twice as likely to arrest someone who appears to have a mental illness.”).

76. Amy Blank Wilson, *How People with Serious Mental Illness Seek Help After Leaving Jail*, 23 QUALITATIVE HEALTH RES. 1575, 1586 (2013).

77. See, e.g., *Commission on Lawyer Assistance Programs, About Us*, ABA, [http://www.americanbar.org/groups/lawyer\\_assistance/about\\_us.html](http://www.americanbar.org/groups/lawyer_assistance/about_us.html) (last visited Jan. 25, 2015).

78. *Id.*

conditions.<sup>79</sup> As one researcher put it, such programs are effective because “people who share a common problem have a unique resource to offer one another.”<sup>80</sup> The support need not be formal in nature; “simple, frequent, affirming, and pleasant contact from a supporter may be especially helpful to those with emotional distress.”<sup>81</sup>

While these programs have mostly been studied in the context of health care, including mental health care, an analogy to legal services may be appropriate. While it would certainly be inappropriate for lawyers to provide therapy or counseling to clients with mental health issues, lawyers with mental health disabilities might be able to provide support to clients through understanding and compassion stemming from a shared lived experience and understanding of some of the clients' issues. For example, they might encourage clients to participate in available mental health services, facilitate change within institutions by explaining from personal knowledge the needs of clients with mental health issues, and model success for clients for whom mental illness contributes to a state of hopelessness or despair.

---

79. See Carolyn Doughty & Samson Tse, *Can Consumer-Led Mental Health Services Be Equally Effective? An Integrative Review of CLMH Services in High-Income Countries*, 47 COMMUNITY MENTAL HEALTH J. 252, 263–64 (2010) (reviewing studies of the effectiveness of mental health peer support and finding it beneficial); Jane Hughes, Eleri Wood & Gaynor Smith, *Exploring Kidney Patients' Experiences of Receiving Individual Peer Support*, 12 HEALTH EXPECTATIONS 396, 400 (2009) (study finding positive feedback when kidney patients received individual peer support); Erin Kelly et al., *A Pilot Test of a Peer Navigator Intervention for Improving the Health of Individuals with Serious Mental Illness*, 50 COMMUNITY MENTAL HEALTH J. 435, 443 (2014) (finding that “a peer health navigation intervention for individuals with serious mental illness . . . demonstrated considerable promise through positively impacting a range of outcomes related to health status and healthcare utilization”); Jennifer L. Peterson et al., *The Forms and Functions of Peer Social Support for People Living with HIV*, 23 J. ASS'N NURSES AIDS CARE 294, 301 (2012) (finding that peer support is helpful to HIV patients); Nancy Pistrang et al., *Telephone Peer Support for Women with Gynaecological Cancer: Benefits and Challenges for Supporters*, 22 PSYCHO-ONCOLOGY 886, 891 (2013) (finding benefits to peer support for cancer survivors); Phyllis Solomon, *Peer Support/Peer Provided Services Underlying Processes, Benefits, and Critical Ingredients*, 27 PSYCHIATRIC REHABILITATION J. 392, 393–94 (2004) (describing types of peer-support programs); Rhonda M. Williams et al., *Evaluation of a Peer Consultation Program for Burn Inpatients*, 23 J. BURN CARE & REHABILITATION 449, 452 (2002) (finding that peer support was helpful for burn patients).

80. Hughes, Wood & Smith, *supra* note 79, at 397.

81. Edwin B Fisher et al., *Peer Support in Health Care and Prevention: Cultural, Organizational, and Dissemination Issues*, 35 ANN. REV. PUB. HEALTH 363, 370 (2014). The effectiveness of peer support may vary across cultures and with the issues addressed. *Id.* at 365–66.



The literature is also clear that lawyers who understand a client's culture through a shared lived experience,<sup>82</sup> race,<sup>83</sup> or language<sup>84</sup> may more easily establish a bond with the client, who may be suspicious of the lawyer because of differences or may have difficulty communicating with a lawyer of another culture. While disability is certainly a different personal characteristic than race, ethnicity, first language, or cultural background, it, too, forms a component of a person's identity.<sup>85</sup> Where a lawyer and a client share some component of personal identity, investment, understanding, and trust may be easier to foster and grow. And the common bond of mental illness may motivate the lawyer to advocate for his clients even more zealously, with an eye toward making life better than what the lawyer now knows it to be.

---

82. See, e.g., Janet Ward Schofield, Lu-in Wang & Pat Chew, *Culture and Race in Provider-Client Relationships*, 23 SOC. WORK IN PUB. HEALTH, no. 2/3, 2007, at 1, 15 ("It is essential that clients and their lawyers communicated effectively and be 'in sync' about how to resolve the clients' problems in order for these tasks to be completed in a way that best serves the clients' wishes. Emerging social science research suggests, however, that Americans from different cultural backgrounds approach problem-solving in contrasting ways and have distinct communication patterns. Thus, clients from racial and ethnic minority groups who have White lawyers may find that their varied problem-solving styles and communication patterns impede the client-lawyer relationship.")

83. Shani M. King, *Race, Identity, and Professional Responsibility: Why Legal Services Organizations Need African American Staff Attorneys*, 18 CORNELL J.L. & PUB. POL'Y 1, 4 (2009) ("African-American lawyers and clients share a group identity that makes it more likely that a black attorney will be able to gain a black client's trust."); Schofield, Wang & Chew, *supra* note 82, at 4 ("Although evidence of the effect of provider-client math (in terms of race and ethnicity) is less direct in medical and legal settings [than in education], studies on various aspects of provider-client relationships in these settings provide reason to believe that racial match would often be beneficial."); Kenneth P. Troccoli, "I Want a Black Lawyer To Represent Me": Addressing a Black Defendant's Concerns with Being Assigned a White Court-Appointed Lawyer, 20 L. & INEQUALITY 1, 17 (2002) (explaining that black clients may have three concerns about white lawyers: racism, effectiveness, and expediency); *id.* at 21-22 ("The basis for the effectiveness argument is not that the appointed lawyer or the system is racist per se, but that the lawyer, being a member of the majority, cannot or will not fully understand or appreciate what it means to be Black in America. . . . Thus, a Black indigent defendant may feel more comfortable with a lawyer of his own race. He may believe that a Black lawyer will be less critical and more sensitive, accepting, knowledgeable, and empathetic than a white attorney.").

84. See, e.g., Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1038 (2007) ("[S]hared experiences are important not only for interpreting gestures and intonation, but for understanding the intended meaning of speech acts in their entirety. Because communication is a socially mediated phenomenon, the success of an enterprise depends upon a common perceptual frame between speaker and listener, or more simply, a common culture. . . . Language and culture are partially constitutive of one another.").

85. See, e.g., Christopher J. Johnstone, *Disability and Identity: Personal Constructions and Formalized Supports*, 24 DISABILITY STUD. Q. ("[D]isability as an identity is often a personal construction, a purposive attempt to make meaning of self in the world.").

## CONCLUSION AND RECOMMENDATIONS

Lawyers with mental health disabilities have long sought to keep themselves hidden, either because they feared termination, stigma, or perception of incompetence. As peer-support programs demonstrate, however, peers may be instrumental or at least helpful in the recovery of patients with mental or other illnesses.

Because prisoners are much more likely than members of the general population to have mental health disabilities, they are a particularly vulnerable group of clients. The literature evidences that mental health treatment may be inadequate and that prisoners may experience discrimination based on their mental illnesses.<sup>86</sup> It also describes the rigidity of prison rules and the potential inability of prisoners with mental illnesses to follow those rules.<sup>87</sup>

Were attorneys with mental illnesses to disclose their mental health status to their clients and to prison officials, several positive developments might well occur. First, attorneys might experience a sense of authenticity in their own identities. As Professor Shari Motro says about law professors, "Health is maximal authenticity. By stepping into an identity more fully aligned with her True Self, the teacher-scholar can set an example for the type of equilibrium, deep wisdom, and compassion that is essential to excellent lawyering."<sup>88</sup>

---

86. *See supra* Part III.

87. *See supra* notes 75–76 and accompanying text.

88. Motro, *supra* note 23, at 150; *see also* DAVID HALL, *THE SPIRITUAL REVITALIZATION OF THE LEGAL PROFESSION* 158–160 (2005) ("Before we can be the dispenser of healing energies, we must work to be in a place where we have experienced and dealt with those same forces in our own lives. This is not an easy part of our calling. It is certainly not something that all lawyers can provide based on their present training and orientation toward the practice of law. This perspective of the practice of law challenges us to rethink the way in which we train lawyers to assume their role in society, and how bar associations cultivate and promote the profession. There are various practices, perspectives and lifestyles that can contribute to lawyers being at this state . . . [y]et what primarily is at stake is whether lawyers embrace this healing goal as part of their role. Some lawyers feel that this is outside of their area of expertise and training, since they are not licensed to be psychotherapists. In addition, they are concerned that this is not something for which they should be billing a client for when there are more qualified individuals who can provide these services and have been trained specifically for this type of situation. These arguments, and many others, serve as legitimate lines that some lawyers draw around their practices and use as a justification for rejecting this role as healer. The difficulty with these positions is that this work and these issues are fundamental to and intertwined with the work the client has asked the lawyers to do. We cannot separate a person's emotional and spiritual state from his legal situation. They are there, staring us in the face, crying out for attention. When we ignore them or pretend that they are a marginal part of the experience, we still are affecting the person and negatively contributing to his unhealthy state. Every person who interfaces with the person during this period of brokenness is either contributing to his healing or contributing to his present

Second, were lawyers with mental illness to disclose their conditions and their satisfactions in, among other things, representing prisoners and others with psychiatric disabilities, law students might feel less concerned about disclosing and bar examiners might be more willing to ask questions about conduct rather than mental health treatment.

Third, prisoners might receive truly informed representation from a lawyer who understands firsthand the challenges of living with mental illness and is therefore willing to advocate with prison officials to accommodate or better understand client needs.

Fourth, lawyers may be able to encourage clients who have not disclosed their mental illnesses to prison officials to do so or to ask for help from prison officials when they have not done so. To disclose and request accommodation might prevent exacerbation of the prisoner's mental illness during the term of incarceration; it might also encourage a prisoner to organize with others to effect change.<sup>89</sup>

Fifth, in a career with which many practicing attorneys report dissatisfaction, assisting prisoners with mental illness might improve the *attorney's* mental health through the commonly known psychological benefits of helping someone.<sup>90</sup> Where people with mental illness have disclosed that illness for a purpose, they have

---

state of disequilibrium. We cannot run from this human reality. In effect, we are already billing clients for this work—just not giving them their monies worth. One reason some individuals have negative perceptions of lawyers is because their interaction with them left so much to be desired. Their perceptions are as much a product of the fact that they did not get the results they desired, as their feeling that they or their problem did not get the care they needed. Being a healer is not about practicing psychotherapy—it is about being a caring, positive and sensitive human being in all our interactions with those we serve.”).

89. Alfieri, *supra* note 11, at 808–09 (“Faculty should teach students how and when to counsel marginalized and hypermarginalized clients to uncover their difference-based identities in order to serve larger group and societal interests. Counseling uncovering serves two purposes. First, it affords clients a potentially beneficial opportunity to engage in authentic self-elaboration, to obtain equal treatment, and to exercise the liberty of full participation in cultural and social environments. Second, it gives clients a useful chance to collaborate in grassroots, interest group mobilization in support of economic justice . . . . In formal terms, counseling uncovering treats client difference as a meaning-making factor central to the construction of individual, group, and community identity, and views the elaboration of identity as a moral value independent of client goals and objectives. In instrumental or strategic terms, counseling uncovering links difference-based client identity to related group and community interests, and posits collaborative forms of interest group organization and mobilization as a moral value likewise independent of client goals and objectives. Thus, counseling uncovering presents new ways to evaluate . . . the lawyering process, and civil rights and poverty law.”).

90. Toth & Dewa, *supra* note 25, at 738 (“Participants most often disclosed to help others. Their experience was frequently shared as a method of expressing understanding of a difficult time the other was going through or to offer support to those struggling with mental disorders.”).

frequently benefited from the commonly known positive feeling derived from helping another person in distress.<sup>91</sup>

Finally, lawyers in treatment for mental illness might be particularly aware of the need for such treatment; when their clients are released from prison, they might be more likely to ensure that the client has access to and receives appropriate mental health services.

In the end, we can hope that the next generation of lawyers might share the sentiments of Hilary Martin Chaney, an Arkansas lawyer with bipolar disorder: "Today was a glorious day when I feel proud of my profession and lucky that I have found somewhere to do good while living with a mental illness."<sup>92</sup>

---

91. See *id.* at 738; see also Pistrang et al., *supra* note 79, at 892–93 (detailing benefits of supporting peers in the context of cancer).

92. Hilary Martin Chaney, *Through the Open Door: A Bipolar Attorney Talks Mania, Recovery and Heaven on Earth*, ARK. LAW., Spring 2014, at 42 (personal narrative describing the author's success and satisfaction in representing clients with disabilities).

